



***The Supreme Court confirms that new restrictions on the availability of preliminary inquiries do not apply to certain ongoing criminal proceedings.***

This is an appeal about the interpretation of a new rule limiting who is eligible to have a preliminary inquiry as part of their criminal proceedings. A preliminary inquiry is a hearing before a court to determine whether there is enough evidence against an accused person to proceed with a trial.

In unrelated cases, Agénor Archambault and Gilles Grenier were charged with one or more historical sexual offences against a child. After the dates of the alleged offences and before charges were laid in 2019, the maximum penalty for the impugned conduct was increased from 10 to 14 years' imprisonment. Since the law in place at the time of the alleged crime governs the maximum sentence, the maximum that applies to the cases of Mr. Archambault and Mr. Grenier is 10 years, not 14 years.

In 2020, Mr. Archambault and Mr. Grenier each requested a preliminary inquiry. However, under an amendment to s. 535 of the *Criminal Code* that took effect on September 19, 2019, the availability of preliminary inquiries was now restricted to accused persons charged with offences with a maximum penalty of 14 years or more of imprisonment. In both cases, the Crown argued that, under the amended version of s. 535, the court could not hold a preliminary inquiry.

The Court of Québec held that the new s. 535 applied to Mr. Archambault and Mr. Grenier and that it lacked jurisdiction to preside over the preliminary inquiry. Both of them challenged that interpretation before the Superior Court but were unsuccessful. They argued that they had the right to a preliminary inquiry because the new rule in s. 535 did not apply to their proceedings. They also argued that even under the new rule they were still entitled to a preliminary inquiry. They said their offences should be considered punishable by 14 years or more for the purposes of the new rule.

The Court of Appeal allowed their further appeals and sent the cases back to the Court of Québec for preliminary inquiries. The Court of Appeal concluded that the amended version of s. 535 did not apply to Mr. Archambault and Mr. Grenier. They had an entitlement to preliminary inquiries before s. 535 was amended. The Court of Appeal decided that the entitlement to a preliminary inquiry is based on the date of the alleged offence. Given its conclusion, the Court of Appeal did not address the question of how the amended version of s. 535 should be interpreted.

The Crown appealed to the Supreme Court of Canada, arguing that Mr. Archambault and Mr. Grenier were not entitled to a preliminary inquiry. The Supreme Court has dismissed the appeal.

**A preliminary inquiry is available where the person is charged with an offence for which they actually face a maximum sentence of at least 14 years and in some other cases on a transitional basis.**

A majority of the Court held that both Mr. Archambault and Mr. Grenier were entitled to the preliminary inquiries they requested. The old version of s. 535 continued to apply to them, rather than the new rule. The fact that they had not requested a preliminary inquiry before the change in the law was not determinative of their entitlement to preliminary inquiries.

A different majority of the Court held that neither Mr. Archambault nor Mr. Grenier was eligible for a preliminary inquiry under the new rule if it applied, as the offences were each punishable by a maximum of 10 years' imprisonment. The new rule in s. 535 requires that the accused actually be liable to 14 or more years' imprisonment in respect of the offence with which they are charged for a preliminary inquiry to be available.

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**Breakdown of the decision:** **Reasons:** Justices [Côté](#) and [Rowe](#) dismissed the appeal | **Concurring:** Justice [Kasirer](#) dismissed the appeal but for different reasons (Justice [Jamal](#) agreed) | **Concurring:** Justice [Martin](#) dismissed the appeal but for different reasons | **Dissenting:** Justice [Karakatsanis](#) would have allowed the appeal (Chief Justice [Wagner](#) and Justices [O’Bonsawin](#) and [Moreau](#) agreed)

**More information:** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** Decision (Mr. Archambault) (Court of Québec – unreported) | Decision (Mr. Grenier) (Court of Québec – unreported) | [Application \(Mr. Archambault\)](#) (Superior Court of Québec) (in French only) | [Application \(Mr. Grenier\)](#) (Superior Court of Québec) (in French only) | [Appeal](#) (Court of Appeal of Québec)

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