



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: 55620-00	EFFECTIVE DATE: November 22, 2004	POLICY CODE: DIR 1
SUBJECT: Direct Indictment		CROSS-REFERENCE: Practice Directive

POLICY

Under section 577 of the *Criminal Code*, it is the Deputy Attorney General who personally provides the requisite consent in writing to an indictment being preferred where a preliminary inquiry has not been held or an accused has been discharged after preliminary inquiry (see the Practice Directive entitled Consent of the Attorney General).

Crown Counsel wishing to proceed by direct indictment should first request the approval of Administrative Crown Counsel. If Administrative Crown Counsel approves, Crown Counsel should prepare a written request to Regional Crown Counsel including:

- a copy of the Information
- a copy of the Report to Crown Counsel
- a precise outline of the evidence on each count (consider using a chart to outline the evidence in complex cases)
- a memorandum summarizing the history and status of the prosecution and the factors in support of direct indictment
- a draft of the indictment to be preferred by Crown Counsel if consent is granted (the consent will be prepared at Headquarters)

If Regional Crown Counsel approves the request, the material should be forwarded by Regional Crown Counsel to the Assistant Deputy Attorney General for review. Regional Crown Counsel should provide his or her opinion that each count on the draft indictment meets the charge assessment standard. The Deputy Attorney General must be satisfied not only that the consent is appropriate and consistent with this policy, but also that each count meets the charge assessment standard.

If the request is approved by the Assistant Deputy Attorney General, the Deputy Attorney General will be asked to sign a consent under section 577. Consent will be given when it is in the public interest, including the circumstances outlined below.

DISCUSSION

Examples of circumstances where it is in the public interest to give consent include the following:

1. Where there is significant danger of harm to a witness, whether psychological or physical. This includes cases where the witnesses are children and it can be demonstrated that they would likely suffer trauma if forced to participate in multiple judicial proceedings.
2. Where the public interest requires a solution to serious logistical problems such as an absconding co-accused or a complex case involving numerous witnesses and lengthy testimony or international complications.
3. Where it is likely that a preliminary inquiry would cause such delay that the trial process would become impossible or result in a successful application for a judicial stay of proceedings under the *Charter of Rights and Freedoms*.
4. Where a judge at a preliminary inquiry has made a decision which is clearly unreasonable in that it is either not supported by the evidence or based on a clear error in law and results in a failure to commit on a particular charge which the public interest requires to be prosecuted.
5. Where the Crown has led evidence at the preliminary inquiry and has been unsuccessful in obtaining admissions of fact from the accused for the purposes of the preliminary inquiry on easily proven matters, and the cost of a full preliminary inquiry would be substantial and unreasonable.
6. Where after a full preliminary inquiry, the committal order may be invalid due to procedural error.
7. Where the Crown erred in failing to call important available evidence at a preliminary inquiry resulting in a discharge on a serious matter and where the evidence is still available for trial.
8. Where significant new evidence has become available after a discharge at preliminary inquiry and the public interest requires a trial (for instance, where similar fact evidence arises linking the charge to a subsequent charge or DNA evidence now supports a substantial likelihood of conviction).
9. Where significant new evidence becomes available after committal on a lesser charge and the public interest requires a prosecution on a more serious charge.

10. Where significant new evidence from an additional complainant becomes available after committal and, taking into account the law on similar fact and severance, it is in the public interest that a trial be conducted on all charges together by direct indictment and not be delayed for a preliminary inquiry on the new complaint. Consideration must be given, *inter alia*, to trial delay issues and factor #1 described above.
11. To protect the identity of an informant.
12. Where the public interest requires an expedited trial date for reasons such as: serious health problems of an accused or an essential witness; the likelihood that hostile Crown witnesses will change their evidence in the near future; or similar developments of an urgent nature.
13. To protect ongoing police investigations, operations and security where the requirement for such protection is of importance and can be significantly demonstrated.
14. Where a major case involving substantial civil disobedience poses significant problems of court room security, including the safety of the public and those involved in the administration of justice.

Where the Crown proceeds by direct indictment, the accused will not have a preliminary inquiry; however, it should be noted that the accused receives full disclosure through the regular Crown disclosure process. In some cases, the accused may have received additional disclosure through a co-accused having had a preliminary inquiry or trial or through the accused having had an extradition hearing.