



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

ARCS/ORCS FILE NUMBER: 56300-00	EFFECTIVE DATE: September 15, 2004	POLICY CODE: TRI 1
SUBJECT: Trial Without Jury – Section 469 Offences (e.g. Murder) Consent of Attorney General		CROSS-REFERENCE: Practice Directive

POLICY

It is **Regional or Deputy Regional Crown Counsel** who provides the requisite consent of the Attorney General to trial without jury (by judge alone) for murder and other offences listed in section 469 of the *Criminal Code* (see the Practice Directive entitled Consent of the Attorney General).

Trial by jury allows public participation in the trial process and enhances public confidence in the administration of justice; however, in appropriate cases, trial by judge alone may lead to a more efficient and orderly trial process.

The advantages of trial by judge alone in certain cases include:

- **elimination of the need for complex jury instructions and resulting appeals, especially where there are difficult legal issues, for example involving mental disorder**
- **reduction in the number of mistrials arising from pre-verdict publicity or the inadvertent leading of prejudicial evidence**
- **a more efficient trial process which allows the admission of voir dire evidence without the necessity to repeat it and provides more flexibility in adjournments to accommodate the attendance of witnesses**
- **the availability of Reasons for Judgment explaining the verdict**

In deciding whether to seek the consent of the Attorney General, Crown Counsel should consider the above-mentioned factors on a case-by-case basis and keep in mind the presumption in favour of trial by jury except where trial by judge alone will provide a greater benefit to the administration of justice.

When Crown Counsel is faced with an application by the accused for a change of venue with respect to an offence listed in section 469, consideration should be given to whether the consent of the Attorney General to trial by judge alone would address the concerns

about the ability of the accused to have a fair trial in the community where the offence is alleged to have taken place.

DISCUSSION

A change of venue may be ordered where there has been undue or untimely publicity surrounding the commission of the offence for which the accused is being tried, resulting in a reasonable probability of partiality or prejudice against the accused on the part of prospective jurors notwithstanding the various mechanisms which exist to protect the accused's right to a fair trial.