

Public Prosecutions New Brunswick	Direct Indictments: AG Criminal Code: Section 577	DPP Guideline 16 March 10, 2003
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Table of Contents

Introduction

Direct Indictment

Statement of Policy
Regional Crown Prosecutor
Director of Public Prosecutions
Re-Elections

Laying a New Information

Introduction

Section 577 of the *Criminal Code* permits the Attorney General or the Deputy Attorney General to send a case directly to trial without a preliminary inquiry or after an accused has been discharged at a preliminary inquiry. It also provides for the laying of a new information after the accused has been discharged at a preliminary inquiry. The Attorney General or the Deputy Attorney General must personally perform the powers provided in section 577 by giving the required direction in writing. These are extraordinary procedures which are used very infrequently in New Brunswick.

This guideline outlines the criteria and procedure to be applied when requesting the Attorney General or the Deputy Attorney General to consent to the preferment of an indictment, or the laying of an information, pursuant to this provision.

Direct Indictment

Statement of Policy

The discretion vested in the Attorney General under section 577 of the *Criminal Code* is exercised only in exceptional circumstances involving serious violations of the law. The controlling factor in all instances is whether the public interest requires a departure from the usual procedure of indictment following an order to stand trial made at a preliminary

inquiry. The public interest may require a direct indictment in circumstances which include (but are not restricted to) the following:

- where the accused is discharged at a preliminary inquiry because of an error of law, jurisdictional error, or palpable error on the facts of the case;
- where the accused is discharged at a preliminary inquiry and new evidence is later discovered which, if it had been tendered at the preliminary inquiry, would likely have resulted in an order to stand trial;
- where the accused is ordered to stand trial on the offence charged and new evidence is later obtained that justifies trying the accused on a different or more serious offence for which no preliminary inquiry has been held;
- where significant delay in bringing the matter to trial resulting, for instance, from persistent collateral attacks on the pre-trial proceedings, has led to the conclusion that the right to trial within a reasonable time guaranteed by section 11(b) of the *Charter of Rights and Freedoms* may not be met unless the case is brought to trial forthwith;
- where there is a reasonable basis to believe that the lives, safety or security of witnesses or their families may be in peril, and the potential for interference with them can be reduced significantly by bringing the case directly to trial without preliminary inquiry;
- where proceedings against the accused ought to be expedited to ensure public confidence in the administration of justice ;
- where a direct indictment is necessary to avoid multiple proceedings – for example, where one accused has been ordered to stand trial following a preliminary inquiry, and a second accused charged with the same offence has just been arrested or extradited to Canada on the offence;
- where the age, health or other circumstances relating to witnesses requires there evidence to be presented before the trial court as soon as possible; and
- where the holding of a preliminary inquiry would unreasonably tax the resources of the prosecution, the investigative agency or the court.

The circumstances in a case for which a direct indictment is recommended must meet the normal charge approval standard – namely, that there is a reasonable prospect of conviction at trial, and the public interest requires a prosecution to be pursued.

Regional Crown Prosecutor

The Regional Crown Prosecutor will review a request from a Crown Prosecutor for a direct indictment, and if satisfied that the case is appropriate for consideration, ensure preparation of the following to be forwarded to the Director of Public Prosecutions.

- a concise statement of facts sufficient to conclude that there is a reasonable prospect of conviction at trial and that the public interest requires a prosecution to be pursued. The statement must include the names of the accused, the charges and the evidence, the reasons for requesting a direct indictment and the date for which the indictment is required. Where the indictment charges several accused, the statement must be sufficient to demonstrate that there is sufficient evidence to implicate each accused individually;
- a statement of the extent of disclosure already given to the defence or that will be given before trial;
- an original indictment containing all charges for which the indictment is requested and signed in the usual way by the person normally signing indictments in the Regional Crown Prosecutor Office. Below that, the following should appear:

I hereby consent to the preferment of this indictment pursuant to section 577 of the *Criminal Code*.

Dated at Fredericton, New Brunswick this ___ day of _____, _____.

Attorney General (or Deputy Attorney General, as the case may be).

Director Of Public Prosecutions

The Director of Public Prosecutions may recommend that the Attorney General or the Deputy Attorney General consent to the preferment of the indictment.

If the Director of Public Prosecutions concludes that a direct indictment is not appropriate in the circumstances, the Regional Crown Prosecutor will be advised that the recommendation will not be forwarded.

Re-elections

Where an indictment has been preferred pursuant to a consent under section 577, the accused is deemed under subsection 565(2) of the *Criminal Code* to have elected to be tried by a court composed of a judge and jury. Under that same subsection, however, the accused may re-elect for trial by a judge without a jury, with the written consent of the

Crown Prosecutor. The procedures necessary to give effect to this right of re-election are described in subsections 565(3) and (4).

As noted earlier, a direct indictment should be endorsed to read that consent has been given “pursuant to section 577 of the *Criminal Code*”. This is intended to avoid the erroneous conclusion that the preferment of the indictment by the Attorney General or the Deputy Attorney General was intended to *require* a jury trial under section 568. A requirement of that nature, given its extraordinary character, will be expressly endorsed on the indictment.

DPP Guideline: Trial by Judge and Jury

Laying a New Information

Where an accused has been discharged at the conclusion of a preliminary inquiry, a new information may be laid with the personal consent in writing of the Attorney General or the Deputy Attorney General (paragraphs 577(b) and (c) of the *Criminal Code*).

Where the evidence meets the charge approval standard but the case fails to meet the test for a direct indictment described above (“exceptional circumstances involving serious violations of the law”), it may nonetheless be appropriate to consider laying a new information. A new information may be laid where:

- the accused was discharged at the preliminary inquiry because of an error of law, jurisdictional error, or palpable error on the facts of the case, or
- new evidence has been discovered after the accused was discharged which, if it had been tendered at the preliminary inquiry, would likely have resulted in an order to stand trial.

Since the laying of a new information is an alternative to the seeking of a direct indictment, the merits of both options should be canvassed in a single memorandum when the Attorney General’s consent is sought.