

Policy:

Direct Indictment

Policy Code:

DIR 1

Effective Date:

March 1, 2018

Cross-references:

Under section 577 of the *Criminal Code*, the Attorney General or Deputy Attorney General may prefer an indictment where:

- a preliminary inquiry has not been held
- a preliminary inquiry has been commenced but not concluded
- an accused has been discharged after preliminary inquiry, whether the discharge applies to the whole of the Information or only particular counts

Section 3(2) of the *Crown Counsel Act* designates the Assistant Deputy Attorney General as a 'lawful deputy' of the Attorney General. In light of this express designation, and pursuant to section 2 of the *Criminal Code*, the Assistant Deputy Attorney General may give the required consent to an indictment under section 577 in lieu of the Attorney General or Deputy Attorney General.

Crown Counsel seeking consent to proceed by direct indictment must forward a written request to a Regional Crown Counsel, Director, or their respective deputy, which includes a:

- copy of the Information
- copy of the Report to Crown Counsel
- a trial plan in an approved form
- memorandum briefly summarizing the history and status of the prosecution and the factors in support of direct indictment
- Crown Counsel's opinion for each count:
 - that it meets the charge assessment standard
 - it is in the public interest to proceed by direct indictment

- draft of the indictment to be preferred if consent is granted

If a Regional Crown Counsel, Director, or their respective deputy approves the request, the material should be forwarded to the Assistant Deputy Attorney General for review. A Regional Crown Counsel, Director, or their respective deputy should independently confirm the charge assessment as well as Crown Counsel's opinion on the appropriateness of proceeding by direct indictment and provide any additional information which may be appropriate.

Proceeding by direct indictment will generally be appropriate when one or more of the following public interest factors (or other reasonably comparable ones) come into play:

- victims and witnesses – where there is significant danger of harm, either psychological or physical, to victims or witnesses and it is reasonable to believe that they would be adversely affected if required to participate in multiple judicial proceedings
- informant – to protect the identity of a confidential informant
- logistical problems – where the public interest requires resolution of a serious logistical problem, such as an absconding co-accused, complexities involving numerous witnesses and lengthy testimony, or other procedural or substantive complications
- delay – where it is a reasonable possibility that conducting or completing a preliminary inquiry would cause such delay that the trial process would become unmanageable, or result in a successful application for a judicial stay of proceedings under the *Charter of Rights and Freedoms*
- expedited trial necessary – 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
 - similar developments that make an early trial date necessary
- ongoing investigations – to protect ongoing police investigations, operations, and security where the need for such protection is significant and demonstrable
- courtroom security – where, because of the nature of the issues involved or the parties or witnesses involved, there exist significant problems of courtroom security, including the safety of those involved in the administration of justice and the public

- multiple proceedings – 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 has just been charged with the same offence)
- discharge – where a judge at a preliminary inquiry has made a decision that is clearly unreasonable in that it is either not supported by the evidence or is based on a clear error in law and results in a failure to commit on an Information, or a particular count which the public interest requires to be prosecuted
- unable to obtain admissions – 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 inordinate
- procedural error – where after a full preliminary inquiry, the committal order may be invalid solely due to procedural error
- good faith error by the Crown – where the Crown failed to call material evidence available at a preliminary inquiry resulting in a discharge on an Information or particular count and the evidence is still available for trial
- new evidence – where material new evidence has become available after a discharge at a preliminary inquiry and the public interest requires that the matter be prosecuted (for example, where similar fact evidence arises linking the charge to a subsequent charge or DNA evidence becomes available)
- different or additional charges – where material new evidence becomes available after committal and the public interest requires a prosecution on different or additional charges
- new complainant – where material evidence from an additional complainant becomes available after committal and, taking into account the law on similar fact evidence 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