



OFFICE OF ATTORNEY GENERAL • CABINET DU PROCUREUR GÉNÉRAL

PUBLIC PROSECUTIONS OPERATIONAL MANUAL
MANUEL DES OPÉRATIONS DE POURSUITES PUBLIQUES

TYPE OF DOCUMENT – TYPE DE DOCUMENT : Policy – Politique	EFFECTIVE DATE – ENTRÉE EN VIGEUR : September 1, 2015 Le 1^{er} septembre 2015	DOCUMENT ORDER – NO. DU DOCUMENT: Policy – Politique 21
CHAPTER IV – CHAPITRE IV : Pre-trial, Trial, and Appeal Matters Questions avant le procès, pendant le procès et en appels	Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.	

APPLICATIONS FOR COURT APPOINTED COUNSEL

1. Introduction

An unrepresented accused may make an application to the court for the appointment of counsel in accordance with *R. v. Rowbotham*¹, commonly referred to as a “*Rowbotham* application”. The court may appoint counsel in certain rare circumstances where it is necessary to ensure a fair trial.

In some circumstances the accused may also seek to obtain special or specific counsel for his or her defence. To apply for this, the accused may make an application to the court in accordance with *R. v. Fisher*², commonly referred to as a “*Fisher* application”. The court may permit the accused to obtain special counsel, at a specific hourly rate to be set by the court, where the unique circumstances of the matter make it necessary in order to ensure a fair trial.

This Policy does not apply to young persons. As set out in Policy 42, Youth Criminal Justice, subsection 25(5) of the *Youth Criminal Justice Act* governs applications for court appointed counsel in circumstances where the accused is a young person.

2. Procedure on *Rowbotham* and *Fisher* Applications

Due to the potential for a perceived conflict of interest, where the Crown Prosecutor encounters a *Rowbotham* or *Fisher* application, he or she shall advise the Director of Specialized Prosecutions, who will assign the matter to a Crown Prosecutor within the Specialized Prosecutions unit or refer the matter to the Legal Services Branch of the Department of Justice and Attorney General.

Specialized Prosecutions will take carriage of the matter throughout the *Rowbotham* or *Fisher* application. Once the *Rowbotham* or *Fisher* application is complete, the matter will be returned to the Crown Prosecutor from whom it had been received.

The Crown Prosecutor, or counsel, who takes carriage of the matter during the *Rowbotham* application shall advise the court that where the accused seeks court appointed counsel, the procedure set out in *R. v. Rowbotham* applies: the accused must provide sufficient evidence to prove that counsel is necessary for a fair trial, the accused does not have the ability to retain counsel, and the case is serious and complex.

¹ (1988), 41 C.C.C. (3d) 1 (Ont. C.A.).

² [1997] S.J. No. 530.

In cases where the court appoints counsel but the procedure in *R. v. Rowbotham* was not followed or the test was improperly applied, the Crown Prosecutor, or counsel, shall review the case with the Director of Specialized Prosecutions to determine whether the matter should be referred to the Appeals and Education Counsel for consideration.

The Crown Prosecutor, or counsel, who takes carriage of the matter during the *Fisher* application shall advise the court that where the accused seeks special counsel, at a specific hourly rate to be set by the court the procedure set out in *R. v. Fisher* applies: the unique circumstances of the matter must be such that it is necessary for the court to permit the accused to obtain special or specific counsel to ensure a fair trial.

In cases where the court permits the accused to obtain special or specific counsel but the procedure set out in *R. v. Fisher* was not followed or the test was improperly applied, the Crown Prosecutor, or counsel, shall review the case with the Director of Specialized Prosecutions to determine whether the matter should be referred to the Appeals and Education Counsel for consideration.

3. Related Documents

Policy 42 Youth Criminal Justice