

<p>TYPE OF DOCUMENT – TYPE DE DOCUMENT : Policy – Politique</p>	<p>EFFECTIVE DATE – ENTRÉE EN VIGEUR : April 1, 2021 Le 1^{er} avril 2021</p>	<p>DOCUMENT ORDER – No. DU DOCUMENT: Policy – Politique 13</p>
<p>CHAPTER II – CHAPITRE II : The Decision to Prosecute Décision d’engager une poursuite</p>	<p>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.</p>	

INDICTMENTS AND DIRECT INDICTMENTS

1. Indictments

Where a preliminary inquiry is held and an accused is ordered to stand trial, the Crown Prosecutor shall prepare an Indictment and file it with the Court of Queen’s Bench. The Crown Prosecutor shall ensure that the Regional Director or the Director of Specialized Prosecutions, as the case may be, has reviewed the Indictment before it is filed. Ordinarily, the Crown Prosecutor shall endeavor to file the Indictment within a week following the date on which the accused was ordered to stand trial.

2. Direct Indictments

2.1 Introduction

Section 577 of the *Criminal Code* provides that, where the Attorney General or the Deputy Attorney General provides personal consent in writing, an indictment may be preferred even where the accused has not had an opportunity to request a preliminary inquiry, a preliminary inquiry has been commenced but not concluded, or a preliminary inquiry has been held and the accused has been discharged.

This Policy outlines the procedure that the Crown Prosecutor shall follow to request a direct indictment and the criteria to be considered when making such a request.

2.2 Procedure

Where the Crown Prosecutor wishes to request a direct indictment, he or she shall consult with the Regional Director or the Director of Specialized Prosecutions, as the case may be, who shall consider the criteria set out in subsection 2.3 below and determine whether a direct indictment may be appropriate.

Where the Regional Director or the Director of Specialized Prosecutions, as the case may be, determines that a direct indictment may be appropriate, he or she shall forward the request to the Director of Public Prosecutions. The request shall include each of the following materials:

- (a) a concise statement of facts, which shall include
 - (i) the name of each accused in respect of whom the direct indictment is requested;
 - (ii) each of the charges for which the direct indictment is requested;
 - (iii) a summary of the evidence;

- (iv) where there is more than one accused person, a description of how the evidence implicates each accused person; and
- (v) the reasons for requesting a direct indictment;
- (b) in respect of each accused person, a statement describing the disclosure that has been provided to the accused and the disclosure that will be provided to the accused prior to the trial; and
- (c) the original Indictment which sets out all of the charges for which the direct indictment is requested, and is signed in the usual way by the person who normally signs Indictments in the regional office of Specialized Prosecutions, followed by the following form:¹

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

Dated at _____, New Brunswick, this ___ day of _____, 20__.

Attorney General/Deputy Attorney General

Where the Director of Public Prosecutions receives a request for a direct indictment, he or she shall consider the criteria set out in subsection 2.3 below and determine whether a direct indictment would be appropriate.

Where the Director of Public Prosecutions determines that a direct indictment would be appropriate, he or she shall forward the request to the Attorney General or Deputy Attorney General and recommend that the request for a preferred indictment be granted. The Attorney General or Deputy Attorney General shall then determine whether to grant the request.

Where the Director of Public Prosecutions determines that a direct indictment would not be appropriate, he or she shall note the reasons in the file and advise the Regional Director or the Director of Specialized Prosecutions, as the case may be, that the request will not be forwarded to the Attorney General or Deputy Attorney General.

2.3 Criteria

A direct indictment is appropriate only where the following criteria are met:

- (a) the charge meets the usual charge approval standard; and
- (b) the public interest requires that the matter be brought directly to trial.

2.3.1 Circumstances Engaging the Public Interest Requirement

The public interest may require that a matter be brought directly to trial in circumstances including, but not limited to, the following:

- (a) the accused was discharged after a preliminary inquiry as a result of an error of law, a jurisdictional error, or a palpable error of fact;

¹ The form of the written consent refers specifically to section 577 of the *Criminal Code* in order to avoid the erroneous conclusion that the preferment of the direct indictment is intended to require a trial by judge and jury pursuant to section 568. Where the Attorney General requires a trial by judge and jury, given the extraordinary character of such a requirement, this should be expressly stated on the Indictment. For more information, refer to Policy 27 – Trial by Judge and Jury: Elections and Re-elections.

- (b) the accused was discharged after a preliminary inquiry and new evidence is later obtained that, if it had been tendered at the preliminary inquiry, would likely have resulted in an order to stand trial;
- (c) the accused was discharged after a preliminary inquiry in which the Crown failed to call important, available evidence, and the charge is in relation to a serious offence;
- (d) the accused was ordered to stand trial and new evidence is later obtained that justifies trying the accused on a different or more serious offence;
- (e) the order to stand trial may be invalid due to a procedural error;
- (f) there has been significant delay such that the accused person's right to trial within a reasonable time under paragraph 11(b) of the *Charter of Rights and Freedoms* may be infringed unless the matter is brought to trial forthwith;
- (g) there is a reasonable basis to believe that the lives, safety, or security of witnesses or their families may be in danger, and this danger can be reduced significantly by bringing the matter directly to trial;
- (h) there is a significant danger of psychological harm to a witness, and this danger can be reduced by bringing the matter directly to trial;
- (i) the age, health, or other circumstances relating to a witness require that the witness's evidence be presented before the trial court as soon as possible;
- (j) there is a need to protect the identity of an informant;
- (k) there is a need to protect an ongoing police investigation or operation;
- (l) there are serious logistical problems, such as an absconding co-accused, or a complex case involving numerous witnesses and lengthy testimony, or international complications;
- (m) a direct indictment is necessary to avoid multiple proceedings;
- (n) the holding of a preliminary inquiry would unreasonably tax the resources of the Crown, the police or other investigative agency, or the court; or
- (o) proceedings against the accused should be expedited to ensure public confidence in the administration of justice.

2.4 Re-election to Trial Without a Jury

Pursuant to section 565 of the *Criminal Code*, where a direct indictment has been preferred, the accused is deemed to have elected to be tried by a judge and jury. The accused may re-elect to be tried by a judge without a jury, which, in accordance with section 561, requires the written consent of the Crown Prosecutor.

3. Related Documents

Policy 25	Preliminary Inquiry
Policy 27	Trial by Judge and Jury: Elections and Re-elections