

## MEMO

**To:** Provincial Court Staff, Justices of the Peace and Provincial Court Judges  
**From:** Chief Judge Nancy K. Orr  
**Date:** June 25, 2018  
**Re:** Private Prosecutions - Criminal Code of Canada

Sections 504 and 507.1 of the **Criminal Code of Canada** set out the circumstances in which a private prosecution may be initiated. This memo supplements the memo of Chief Judge Douglas, dated October 26, 2006.

The private informant must provide sufficient details of the alleged offence to permit the information to be drafted, and once it is in the proper format, it can then be sworn by the Justice of the Peace. The private informant must then provide the Justice of the Peace with a list of names, addresses and telephone numbers of the witnesses whose evidence will be relied upon at the hearing to determine if process should be issued to compel the accused to answer the charge. The private informant must also indicate to the Justice of the Peace whether the police have investigated the offence alleged and describe any prior attempts the informant has made to lay an information or have process issued. Attached is a form to assist in obtaining the information needed.

Once the information has been sworn by the Justice of the Peace, and the above information has been provided, the Justice of the Peace will obtain from the Chief Judge or designate, a date for the hearing to determine whether process of the Court (whether by summons or by warrant), will issue to compel the attendance of the accused to answer the charge.

This hearing is called the *pre-enquete* process. The Court will need to know the number of witnesses likely to be called for that hearing, in order to allocate the necessary time for the *pre-enquete* hearing. As noted below, the private informant does not need to call all of the witnesses who might be required if the matter proceeds to a trial. However, the private informant must call sufficient evidence to establish a *prima facie* case for process to issue, as well as comply with the other requirements.

Once the information has been received, the Crown (Attorney General) must be given a copy of the information and reasonable notice of the date for the hearing. This is provided for in section 507.1 of the Criminal Code. The Justice of the Peace will be responsible for providing this notice to the Crown and for obtaining confirmation it has been received. The Crown must be given an opportunity to attend and may also cross-examine witnesses or call its own witnesses. This is not intervening but a part of the *pre-enquete* process.

The *pre-enquete* is an *in camera* and *ex parte* hearing involving only the informant and his or her witnesses, and the Crown and its witnesses, if any. This means it is not open to the media or the public and the accused is not at the hearing. The onus is on the private informant to establish that a summons or a warrant should be issued to compel the accused to answer the charge.

The evidence produced for this purpose must be admissible evidence (for example, it cannot be hearsay). The informant is responsible for notifying any witnesses he or she intends to call at the pre-enquete hearing, advising them of the time and place of such hearing, and for ensuring their attendance.

The *pre-enquete* hearing is not a trial - the private informant does not have to establish that the accused committed the offence beyond a reasonable doubt. At this stage, it is not the role of the Judge hearing the *pre-enquete* to weigh the evidence or consider potential defences.

The Judge must consider the following:

- a) whether a prima facie case has been made out on all of the elements of the offence or offences;
- b) that the matter is not frivolous or vexatious; and
- c) that the witnesses are competent (for example, not mentally disordered) and credible.

If this is established, then the Judge may issue process.

If the Judge hearing the *pre-enquete* determines not to issue process, section 507.1 indicates what happens to the information.

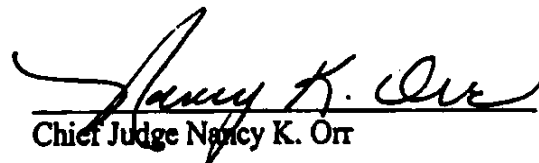
The role of the Crown is set out in the Criminal Code and in particular section 579 of the Criminal Code provides that the Attorney General or an instructed agent may direct a stay of proceedings at any time after an information is laid. This can be done before the commencement of the *pre-enquete* or at the commencement of the *pre-enquete* or at any time after.

The Crown may choose to simply attend the hearing to see what the nature of the evidence is and to ensure proper procedures are followed.

If the Judge issues process, the private informant can take the matter to court and conduct the prosecution. The Crown is not required to take on any specific role to assist the private informant.

However, the role of the private prosecutor does not take subvert the role of the Attorney General, and if the Attorney General determines it is in the interests of justice to intervene, the Attorney General may take over the prosecution and continue or terminate it as he or she considers appropriate.

A copy of section 507.1 of the Criminal Code of Canada is attached for ease of reference. It can be found online at: <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

  
Chief Judge Nancy K. Orr