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<p>CHAPTER IV – CHAPITRE IV : Pre-trial, Trial, and Appeal Matters Questions avant le procès, pendant le procès et en appel</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>	

TRIAL BY JUDGE AND JURY: ELECTIONS AND RE-ELECTIONS

1. Introduction

Trial by judge and jury allows public participation in the trial process and enhances public confidence in the administration of justice. Yet, there may be circumstances where a trial by judge alone will be in the public interest in order to ensure a more efficient and orderly trial process.

2. Crown Consent to Mode of Trial

Where an accused requests the consent of the Crown Prosecutor in order to elect or re-elect the mode of trial, the Crown Prosecutor shall, unless there are exceptional circumstances, consent to the request. Where consent is withheld, the Crown Prosecutor shall note in the file the reason for withholding consent.

The Crown does not base such decisions on an attempt to achieve an unfair advantage based upon a prediction of the likelihood of a conviction by either a trial by judge and jury or a trial by judge alone. Neither are such decisions made in an attempt to steer the case to or from a particular judge or court.

2.1 Crown Consent to a Request for a Trial by Judge Alone Where the Accused is Charged with an Offence under Section 469 of the *Criminal Code*

Ordinarily, offences under section 469 of the *Criminal Code* are tried by judge and jury. Section 473 permits an accused charged with an offence under section 469 to be tried by judge alone where the accused and the Attorney General consent to this mode of trial.

As an agent of the Attorney General, the Crown Prosecutor may consent on behalf of the Attorney General to a trial by judge alone. Where such consent is sought, the Crown Prosecutor shall consult with the Regional Director or the Executive Director, as the case may be, and, unless there are exceptional circumstances, shall not consent to the request.

2.2 Crown Consent to Re-election by the Accused

Section 561 of the *Criminal Code* permits an accused who elected, or is deemed to have elected, a mode of trial other than trial by a provincial court judge to re-elect

- (a) to be tried by a provincial court judge at any time before or after the completion of the preliminary inquiry with the written consent of the Crown Prosecutor;
- (b) to be tried by a judge of the Court of Queen's Bench without a jury or by a judge and jury at any time before the completion of the preliminary inquiry or before the fifteenth day following the completion of the preliminary inquiry as of right; and

- (c) to any mode of trial on or after the fifteenth day following the completion of the preliminary inquiry with the written consent of the Crown Prosecutor.

Where an accused requests consent to re-elect a mode of trial under section 561, the Crown Prosecutor shall, unless there are exceptional circumstances, consent to the accused person's request to re-elect the mode of trial.

3. Requiring Trial by Judge and Jury

Unless an accused is charged with an offence that is punishable with imprisonment for five (5) years or less, section 568 of the *Criminal Code* permits the Attorney General to require a trial by judge and jury even where the accused has elected or re-elected to be tried by judge alone.

The Attorney General will only require a trial by judge and jury where he or she believes it is clearly in the public interest.

Where the Crown Prosecutor believes it is appropriate to require a trial by judge and jury, he or she will consult with the Regional Director or the Executive Director. Where the Regional Director or the Executive Director agrees, the Crown Prosecutor shall prepare the following material for submission to the Director of Public Prosecutions:

- (a) a concise statement of the facts of the case;
- (b) an assessment of the factors considered in the decision to require trial by judge and jury;
- (c) the recommendation of the Regional Director or the Director Specialized Prosecutions; and
- (d) an original Indictment containing all charges on which the requirement is sought and signed in the usual way by the person normally signing Indictments in the regional office or at Specialized Prosecutions.

At the bottom of the Indictment, the following should appear:

I hereby require the above-named accused to be tried by a court composed of a judge and jury pursuant to section 568 of the *Criminal Code*.

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

Attorney General/Deputy Attorney General

Once prepared, the Crown Prosecutor shall forward the materials to the Director of Public Prosecutions. If the Director of Public Prosecutions concludes that the circumstances do not justify requiring a trial by judge and jury, he or she will so advise the Regional Director or the Executive Director. If the Director of Public Prosecutions concludes that the circumstances justify requiring a trial by judge and jury, he or she will prepare advice on the case for the Attorney General or the Deputy Attorney General.

4. Related Documents

Policy 11	Pre-charge Screening
Policy 13	Indictments and Direct Indictments