



## THE SUPREME COURT OF THE NORTHWEST TERRITORIES

### PRACTICE DIRECTION

#### Juror Background Checks

In the interest of enhancing trial fairness, and recognizing that the objective in a criminal jury trial is to have a jury that is impartial and not one that is favourable to either side, the judges of the Supreme Court issue these directions to guide counsel on the practice to be followed for the screening of jury lists and conducting background checks on prospective jurors.

Both the *Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c. 20, and *The Privacy Act*, R.S.C. 1985, c. P-21, contain provisions that prohibit the collection, use or disclosure, by or for a government institution, of personal information unless such collection, use or disclosure is authorized by a statute or for the purpose of law enforcement. The jury selection process is considered part of the conduct of a criminal jury trial. When Crown Attorneys disclose jury lists to the police, and receive information as stipulated herein, that is done for the purpose of the jury selection process in a specific pending criminal proceeding. It is at least arguable that the exchange of information is done for the purpose of a specific law enforcement matter.

However, there is no express statutory or regulatory provision in or under the *Criminal Code*, R.S.C. 1985, c. C-46, or the *Jury Act*, R.S.N.W.T. 1988, c. 12, or any other statute or regulation, that specifically describes the types of personal information to be collected by the Crown from the police in these circumstances. Therefore, these directions are aimed at specifying what type of information may be collected in accordance with the traditionally accepted practices in this jurisdiction.

#### Criminal Records Check:

The *Jury Act* provides that no person is qualified to serve as a juror who has been convicted of an offence for which he or she has been sentenced to a term of imprisonment exceeding one year and has not been pardoned for it.

Since this is an eligibility criterion, Crown counsel may request the police to conduct CPIC and provincial/territorial data base system checks to ascertain if a prospective juror does not satisfy this criterion. The information obtained shall be disclosed to the defence in a timely manner.

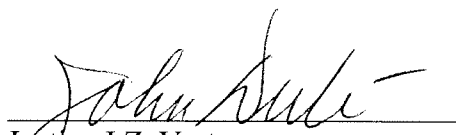
Obvious Partiality by Relationship:

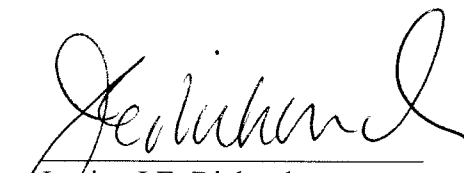
Due to the fact that in this jurisdiction criminal jury trials are often held in communities with small and often inter-related populations, and Crown counsel are not familiar with these communities, Crown counsel may make inquiries of police officers in the community, persons in the employ of those police officers, person in the employ of the Public Prosecution Service of Canada, and key Crown witnesses, as to whether a prospective juror is closely related to the accused, a Crown witness, or involved in the investigation of the case. Only information that is already known is to be related. Any information obtained by the Crown shall be disclosed to the defence.

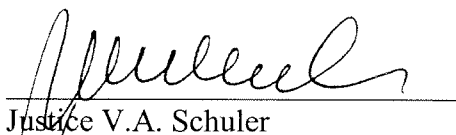
The obligation to disclose any and all information obtained is in line with the Crown's disclosure obligations. Nothing in privacy legislation affects the Crown's obligation to make timely disclosure of all relevant information to the accused prior to trial.


Crown counsel are not to request the police to undertake any further or other investigations into prospective jurors. Under no circumstances must police conduct out-of-court investigations into the private lives or opinions of prospective jurors. To do so would constitute, in the words of the Supreme Court of Canada judgment in *R. v. Latimer*, [1997] 1 S.C.R. 217, a flagrant abuse of process and interference with the administration of justice.

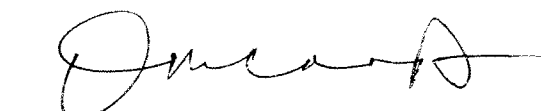
Issued this 12<sup>th</sup> day of November 2009, by direction of the judges of the Supreme Court of the Northwest Territories.

  
Justice J.Z. Vertes,  
Senior Judge

  
Justice J.E. Richard

  
Justice V.A. Schuler

  
Justice L.A. Charbonneau

  
Justice D.M. Cooper