



NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

**BACKGROUND CHECKS ON
PROSPECTIVE JURORS**

NATURE OF DOCUMENT: DPP DIRECTIVE

FIRST ISSUED: December 17, 2009

EDITED / DISTRIBUTED: January 8, 2010

LAST SUBSTANTIVE REVISION: February 12, 2019

NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE "**WORDS & PHRASES**" SECTION OF THIS PART OF THE MANUAL.

BACKGROUND CHECKS ON PROSPECTIVE JURORS

Conducting inappropriate background checks on prospective jurors may result in a miscarriage of justice and may lead to an order for a re-trial. In *R. v. Latimer*, [1997] 1 S.C.R. 217, for example, where a Saskatchewan prosecutor and the RCMP created a questionnaire which was presented directly to some of the prospective jurors by the police, Chief Justice Lamer characterized the practice as “a flagrant abuse of process and interference with the administration of justice” [para 43]. Further judicial comment on the issue of background checks on jurors is expected to flow from cases presently under appeal.

Excessive background checks may also amount to an inappropriate interference with the privacy interests of prospective jurors. In October, 2009, the Information and Privacy Commissioner of Ontario issued an order that Ontario Crown Attorneys cease collecting any personal information on prospective jurors beyond that which is necessary to determine criminal conviction information relevant to jury eligibility under the *Juries Act* and the *Criminal Code* [Order PO-2826].

Pending further judicial direction and the development of formal processes for verifying the eligibility of prospective jurors, and in order to avoid a miscarriage of justice and to ensure the privacy of jurors, **the review of jury lists by prosecutors is to be in accordance with these principles:**

- 1. Prosecutors shall not request the police to conduct any background checks on prospective jurors except for criminal record checks.**
- 2. If a criminal record check is requested, the request should be limited to a check for convictions which resulted in a sentence of 12 months or more [see section 638 of the *Criminal Code*].**
- 3. The results of criminal records checks on prospective jurors are to be disclosed to defence counsel.**

If prosecutors are concerned about the eligibility or suitability of a prospective juror for reasons other than the existence of a conviction revealed through a record check as described above, the “challenge for cause” provisions of section 638 of the *Criminal Code* should be utilized. In some instances, e.g. the prospective juror has a “relationship” with the accused, there may also be an opportunity to request that the presiding trial judge exercise the relatively broad discretion found in section 632 of the *Criminal Code* to excuse certain prospective jurors.

Note: This Directive relates to an evolving area of law and procedure. Persons who utilize a hard copy of this Directive should refer to the PPS website to ensure that they have the current edition of the Directive.

Directive Update:

On December 21, 2012, the Supreme Court of Canada issued a trilogy of judgments on the issue of background checks on jurors. The decisions, *R. v. Davey* [2012] 3 S.C.R. 828, *R. v. Emms* [2012] 3 S.C.R. 810 and *R. v. Yumnu* [2012] 3 S.C.R. 777 provide the following guidance:

1. It is appropriate for Crown Counsel to have police conduct inquiries for the purpose of determining juror ineligibility, for exercising Crown discretion in the peremptory challenge process, and for challenge for cause purposes.
2. These inquiries are limited to identifying potential jurors, who by virtue of their criminal conduct, are not eligible for jury duty. It is not intended for identifying whether a juror is, or might be, a person of disreputable character.
3. Any information received relevant to the selection process (focusing on a potential juror's eligibility, suitability or ability to remain partial) must be disclosed to defence counsel.
4. Information about a potential juror that falls into the category of general impression, personal or public knowledge in the community, rumors, hunches or information that is readily obtainable elsewhere, need not be disclosed.

In the event of a question concerning jury vetting, Crown Attorneys should seek the advice of their Chief Crown Attorney. Background checks of jurors including those that may be done informally through social media, are not to be conducted outside of these parameters, whether before, or after, a jury has been selected.