



THE NUNAVUT COURT OF JUSTICE

PRACTICE DIRECTIVE #27

JURY PANEL SCREENING IN NUNAVUT

Explanatory Note:

The barrister has a duty to ensure that jurors selected to try a case are impartial. The jury selection process is not to be used to choose jurors who are partial to a particular cause or person. Impartiality is a cornerstone of the rights guaranteed by section 11(d) and section 7 of the Charter of Rights and Freedoms. The Court expects all officers of the court to ensure that the judicial process is not tainted or eroded by partisan considerations. The duty owed to the court to ensure juror impartiality transcends all other duties, including the barrister's duty to client. No client has the right to use jury selection to secure an unfair advantage over other litigants.

A recent policy directive from the Director of Public Prosecutions has restricted the ability of Crown counsel to screen jury panel members for familial connection with trial witnesses or for panel members who would otherwise be unqualified or exempt from jury duty under the *Jury Act* R.S.N.W.T. 1988, c.J-2. Such a restriction undermines the viability of jury selection in Nunavut's small communities and greatly enhances the risk of a mistrial. Many families in these communities are related to one another by birth, custom adoption or conjugal relationship. Any practice directives related to screening of a jury panel must be sensitive to the unique challenges associated with jury selection in Nunavut. Any fetter upon jury screening that arbitrarily impairs the barrister's duty to ensure juror impartiality is potentially damaging to the administration of justice in Nunavut.

This Practice Directive is intended to guide counsel on the practice to be followed in the screening of a jury panel.

Effective February 1st 2010, Crown and Defence counsel shall screen all members of a jury panel:

- a. To ensure that all panel members meet the necessary qualifications for jury service set out in section 4 and 5 of the *Jury Act*, namely:
 - (i) The potential juror must be a Canadian citizen or a permanent resident of Canada;
 - (ii) The potential juror must be 18 years of age or over;
 - (iii) The potential juror must be able to speak and understand an official language as defined by the *Official Languages Act*;
 - (iv) The potential juror has not been convicted of an offence for which he or she was sentenced to a term of imprisonment exceeding one year;
 - (v) The potential juror does not possess any physical or mental disability that is incompatible with the discharge of the duties of a juror;
- b. To identify all persons on the panel who are exempt from service as a juror under section 6 of the *Jury Act*;
- c. To identify all persons who by reason of immediate family connection (mother, father, brother, sister) to the accused, the complainant, or other important trial witness should not participate in the trial as a juror. Second or first cousins, aunts or uncles of an accused or complainant will be screened in open court by the presiding judge to determine their suitability for selection as a juror;
- d. The screening of a jury panel by Crown counsel is restricted to informal inquiries made at the detachment level of local police and or bylaw officers, employees of the RCMP or Public Prosecution Service and Crown witnesses. This Practice Directive does not permit or condone reference to any data bases maintained by government other than the CPIC records maintained by the RCMP.

The Crown shall disclose the results of its screening to the defence no later than 48 hours before jury selection commences.

Issued this 21st day of December 2009 at the direction of the Judges of the Nunavut Court of Justice.

Mr. Justice R. Kilpatrick

Mr. Justice E. Johnson

Mr. Justice N. Sharkey