

**ONTARIO SUPERIOR COURT OF JUSTICE**

HALDIMAND COUNTY - CAYUGA - *Criminal Proceedings*

BETWEEN:

**Gary McHale** (Applicant)

and

**HER MAJESTY THE QUEEN** (Respondent)

**BOOK OF AUTHORITY**

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# **Crown Attorneys Act**

R.S.O. 1990, CHAPTER C.49

## **Attorney-General's agent**

**10.** Every Crown Attorney and every provincial prosecutor is the agent of the Attorney General for the purposes of the *Criminal Code* (Canada). R.S.O. 1990, c. C.49, s. 10.

### **Duties:**

**11.** The Crown Attorney shall aid in the local administration of justice and perform the duties that are assigned to Crown Attorneys under the laws in force in Ontario, and, without restricting the generality of the foregoing, every Crown Attorney shall,

#### **to examine informations, etc.**

(a) examine informations, examinations, depositions, recognizances, inquisitions and papers connected with offences against the laws in force in Ontario that the provincial judges, justices of the peace and coroners are required to transmit to him or her, and, where necessary, cause such charges to be further investigated, and additional evidence to be collected, and sue out process to compel the attendance of witnesses and the production of papers, so that prosecutions may not be delayed unnecessarily or fail through want of proof;

#### **to conduct prosecutions**

(b) conduct, on the part of the Crown, preliminary hearings of indictable offences and prosecutions for indictable offences,

(i) at the sittings of the Superior Court of Justice where no law officer of the Crown or other counsel has been appointed by the Attorney General,

(ii) before provincial judges in summary trials of indictable offences under the *Criminal Code* (Canada),

in the same manner as the law officers of the Crown conduct similar prosecutions at the sittings of the Superior Court of Justice, and with the like rights and privileges, and attend to all criminal business at such courts;

#### **special Crown counsel**

(c) where a law officer of the Crown or other counsel has been appointed by the Attorney General, deliver to the Crown officer or other counsel all papers connected with the criminal business at the sittings of the Superior Court of Justice before the opening of the court and, if required, be present at the court and assist the Crown officer or other counsel;

## **cases brought by private prosecutors**

(d) watch over cases conducted by private prosecutors and, without unnecessarily interfering with private individuals who wish in such cases to prosecute, assume wholly the conduct of the case where justice towards the accused seems to demand his or her interposition;...

## **Provincial judges and justices to deliver informations, etc., to Crown Attorney**

**12.** Where a person is committed for trial to answer a criminal charge, the committing provincial judge shall deliver or cause to be delivered without delay to the Crown Attorney the informations, depositions, examinations, recognizances and papers connected with the charge, and the Crown Attorney is the “proper officer of the court by which the accused is to be tried” within the meaning of the committal for trial provisions of the *Criminal Code* (Canada) and, where an information has been laid before a justice of the peace, whether proceedings have been taken thereon or not, the justice shall deliver to the Crown Attorney all papers connected therewith on being required by the Crown Attorney so to do. R.S.O. 1990, c. C.49, s. 12.

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## **Criminal Code, R.S.C. 1985, c. C-46**

### **In what cases justice may receive information**

**504.** Any one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information, where it is alleged

(a) that the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person

(i) is or is believed to be, or

(ii) resides or is believed to reside,

within the territorial jurisdiction of the justice;

(b) that the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice;

(c) that the person has, anywhere, unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice; or

(d) that the person has in his possession stolen property within the territorial jurisdiction of the justice.

R.S., c. C-34, s. 455; R.S., c. 2(2nd Supp.), s. 5.

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### **Justice to hear informant and witnesses — public prosecutions**

**507.** (1) Subject to subsection 523(1.1), a justice who receives an information laid under section 504 by a peace officer, a public officer, the Attorney General or the Attorney General's agent, other than an information laid before the justice under section 505, shall, except if an accused has already been arrested with or without a warrant,

(a) hear and consider, *ex parte*,

(i) the allegations of the informant, and

(ii) the evidence of witnesses, where he considers it desirable or necessary to do so; and

(b) where he considers that a case for so doing is made out, issue, in accordance with this section, either a summons or a warrant for the arrest of the accused to compel the accused

to attend before him or some other justice for the same territorial division to answer to a charge of an offence.

### **Process compulsory**

(2) No justice shall refuse to issue a summons or warrant by reason only that the alleged offence is one for which a person may be arrested without warrant.

### **Procedure when witnesses attend**

(3) A justice who hears the evidence of a witness pursuant to subsection (1) shall

(a) take the evidence on oath; and

(b) cause the evidence to be taken in accordance with section 540 in so far as that section is capable of being applied.

### **Summons to be issued except in certain cases**

(4) Where a justice considers that a case is made out for compelling an accused to attend before him to answer to a charge of an offence, he shall issue a summons to the accused unless the allegations of the informant or the evidence of any witness or witnesses taken in accordance with subsection (3) discloses reasonable grounds to believe that it is necessary in the public interest to issue a warrant for the arrest of the accused.

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### **Referral when private prosecution**

**507.1** (1) A justice who receives an information laid under section 504, other than an information referred to in subsection 507(1), shall refer it to a provincial court judge or, in Quebec, a judge of the Court of Quebec, or to a designated justice, to consider whether to compel the appearance of the accused on the information.

### **Summons or warrant**

(2) A judge or designated justice to whom an information is referred under subsection (1) and who considers that a case for doing so is made out shall issue either a summons or warrant for the arrest of the accused to compel him or her to attend before a justice to answer to a charge of the offence charged in the information.

### **Conditions for issuance**

(3) The judge or designated justice may issue a summons or warrant only if he or she

(a) has heard and considered the allegations of the informant and the evidence of witnesses;

(b) is satisfied that the Attorney General has received a copy of the information;

(c) is satisfied that the Attorney General has received reasonable notice of the hearing under paragraph (a); and

(d) has given the Attorney General an opportunity to attend the hearing under paragraph (a) and to cross-examine and call witnesses and to present any relevant evidence at the hearing.

### **Appearance of Attorney General**

(4) The Attorney General may appear at the hearing held under paragraph (3)(a) without being deemed to intervene in the proceeding.

### **Information deemed not to have been laid**

(5) If the judge or designated justice does not issue a summons or warrant under subsection (2), he or she shall endorse the information with a statement to that effect. Unless the informant, not later than six months after the endorsement, commences proceedings to compel the judge or designated justice to issue a summons or warrant, the information is deemed never to have been laid.

### **Information deemed not to have been laid — proceedings commenced**

(6) If proceedings are commenced under subsection (5) and a summons or warrant is not issued as a result of those proceedings, the information is deemed never to have been laid.

### **New evidence required for new hearing**

(7) If a hearing in respect of an offence has been held under paragraph (3)(a) and the judge or designated justice has not issued a summons or a warrant, no other hearings may be held under that paragraph with respect to the offence or an included offence unless there is new evidence in support of the allegation in respect of which the hearing is sought to be held.