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Private Prosecutions

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Generally, allegations of criminal activity are reported to the police. After the police investigate, they may lay criminal charges. However, anyone who has reasonable grounds to believe that a person has committed an offence may lay an information in writing and under oath before a Justice of the Peace.

When the information is presented to the court by a private citizen, it is then referred to either a provincial court judge or a designated justice of the peace, who holds a special hearing. The purpose of the hearing is to determine whether a summons or warrant should be issued to compel the person to attend court and answer to the charge.

This hearing, held under s. 507.1 of the Criminal Code, takes place in private, without notice to the accused person. At the hearing, the judge or justice of the peace must hear and consider all of the allegations and available evidence.

The Crown must also receive a copy of the information, get notice of the hearing, and have an opportunity to attend. The Crown may attend at the hearing without being deemed to intervene in the proceedings.

If the judge or justice of the peace decides not to issue a summons or a warrant, then the information is deemed never to have been laid.

If the judge or justice of the peace issues a summons, the person will be served with a copy of the summons, which notifies them of the charge and compels them to attend court. If the judge or justice of the peace issues a warrant, the person will be arrested and brought before a justice.

To avoid any abuse of the private prosecution process, the Criminal Code and the Crown Attorneys Act authorize Crown Counsel to supervise privately laid charges to ensure that such prosecutions are in the best interest of the administration of justice. If a summons or warrant is issued and the case involves an indictable offence, the Crown is required to take over the prosecution. So, a private citizen's right to swear an information is always subject to the Crown's right to intervene and take over the prosecution.

If the Crown intervenes, the Crown will review the matter, as it does in every other criminal case, to determine whether there is a reasonable prospect of conviction and whether a prosecution is in the public interest. If so, the Crown will proceed with the prosecution. If not, the Crown is duty-bound to withdraw the charge.