



Guide Book

of

Policies and Procedures

for the

Conduct of Criminal Prosecutions

in

Newfoundland and Labrador

**Office of the Director of
Public Prosecutions
October 2007**

INTRODUCTION.....	1
- Functional Responsibility within the Department of Justice	1 - 2
- The Relationship between the DPP and the Senior Crown Attorneys	1 - 3
- Purpose of the Guide Book	1 - 4
- Interpretation and Use	1 - 4
CROWN ATTORNEY’S INDEPENDENCE AND ACCOUNTABILITY IN DECISION MAKING.....	2
- Introduction	2 - 1
- Statement of the Policy	2 - 2
- Accountability	2 - 2
- Delegation of Decision-Making Power	2 - 3
- Consultation	2 - 3
- Safeguards	2 - 4
- Functional authority	2 - 4
- Delivery of prosecution services	2 - 4
- Resource allocation	2 - 5
INDEPENDENCE OF THE ATTORNEY GENERAL IN CRIMINAL MATTERS.....	3
- Foundation	3- 1
HISTORY OF THE CRIMINAL LAW IN NEWFOUNDLAND AND LABRADOR....	4
- From Settlement to Confederation	4 - 1
o Canada	4 - 1
o The Criminal Code	4 - 3
o Newfoundland and Labrador	4 - 4
- Purpose of the Criminal Law	4 - 4
THE DECISION TO PROSECUTE.....	5
- Introduction	5 - 1
- Statement of the Policy	5 - 2
- Sufficiency of the Evidence	5 - 2
- Critical Assessment of the Strength of a Case	5 - 3
- Public Interest Criteria	5 - 6
- Public Interest in the Regulatory Context	5 - 10

- Irrelevant Considerations 5 - 10
- Consultation 5 - 10
- Transparency 5 - 12

DUTIES AND RESPONSIBILITIES OF CROWN ATTORNEYS..... 6

- Introduction 6 - 1
- Management or Policy Decisions 6 - 2
- Solicitor-Client Privilege 6 - 2
- Obligations during the Conduct of Criminal Litigation 6 - 3
- The duty to ensure that the responsibilities of the office of the Director of Public Prosecutions are carried out with integrity and dignity 6 - 4
- Preserving judicial independence 6 - 5
- The duty to be fair and to appear to be fair 6 - 5
- Inflammatory Remarks and Conduct 6 - 6
- Prevention of Wrongful Convictions 6 - 9
- Mentoring and Guidance 6 - 10
- Summary References on Crown Attorneys’ Duties and Responsibilities 6 - 10

RELATIONSHIP BETWEEN CROWN ATTORNEYS AND THE POLICE 7

- Introduction 7 - 1
- The Common Law 7 - 1
- Role of Crown Attorneys before and after Charges Are Laid 7 - 2
 - o Introduction 7 - 2
 - o Statutorily Prescribed Involvement of Crown Counsel Before Charges Are Laid 7 - 3
 - o Non-Statutory Involvement of Crown Attorneys 7 - 3
 - o Advice Concerning Police Operations 7 - 3
 - o Access to Sealed Packets 7 - 5
 - o Extensions of the Time the Seized Items May be Detained 7 - 5
 - o Preparation of the Court Brief 7 - 6
 - o Disclosure Procedures 7 - 6
 - o Interviewing of Witnesses Prior to Charges 7 - 7
 - o During the Course of an Investigation 7 - 7
 - o Critical Assessment of Charges 7 - 8
 - o Post Charge Proceedings 7 - 9
 - o Disagreements between Crown Attorneys and Investigators 7 - 10

CONDUCT OF CRIMINAL LITIGATION 8

- Basic Principles of the Policy	8 - 1
- Critical Assessment of Charges	8 - 2
○ DIRECTIVE #1	8 - 3
○ DIRECTIVE #2	8 - 3
○ DIRECTIVE #3	8 - 3
- Prosecutorial Independence	8 - 3
- Termination of Proceedings	8 - 4
○ DIRECTIVE #4	8 - 4
○ DIRECTIVE #5	8 - 6
○ DIRECTIVE #6	8 - 6
- Charging Standards – Consistency	8 - 7
○ DIRECTIVE #7	8 - 7
- Charging Practices	8 - 7
○ DIRECTIVE #8	8 - 7
- Critical Assessment of Cases	8 - 8
- Introduction	8 - 8
○ DIRECTIVE #9	8 - 8
- Alternative Measures and Diversion	8 - 8
- Plea Discussions and Agreements	8 - 9
- Introduction	8 - 9
○ DIRECTIVE #10	8 - 9
○ DIRECTIVE #11	8 - 10
- Informed and Voluntary Pleas	8 - 10
○ DIRECTIVE #12	8 - 10
○ DIRECTIVE #13	8 - 10
- Early Pleas	8 - 10
○ DIRECTIVE #14	8 - 11
▪ Crown Attorneys will inform the defence of their best offer in return for a guilty plea as early as reasonably possible in the criminal process.	
○ DIRECTIVE #15	8 - 11
▪ Senior Crown Attorneys will establish within their respective offices a practice aimed at ensuring that the Crown’s initial plea offer is communicated to the accused at the first reasonable opportunity.	

- **DIRECTIVE #16** **8 - 11**
 - Absent a change in circumstances, no subsequent offer of settlement made by the Crown should be more advantageous to the defence than the initial plea arrangement proposed.
- **DIRECTIVE #17** **8 - 11**
 - Senior Crown Attorneys will put in place practices in their respective offices to oversee when and how a prosecutor may depart from a previous assessment of the best possible offer or agree to negotiate a sentence for plea at any time after the trial date has been set.
- **Agreed Statements of Fact** **8 - 11**
 - **DIRECTIVE #18** **8 - 12**
 - The facts upon which a plea agreement is concluded should be clear. To the extent that it is reasonably possible and useful to do so in the circumstances, prosecutors should have those facts reduced to writing and agreed to by the accused.
- **Special Practice Directions** **8 - 12**
 - **DIRECTIVE #19** **8 - 12**
 - Crown Attorneys will keep on file a record of resolution discussions and, where appropriate, of the particular factors considered. The refusal of any offer by the defence and the grounds alleged for such refusal should also be recorded where appropriate.
- **Issue Resolution** **8 - 12**
 - **DIRECTIVE #20** **8 - 12**
 - Crown Attorneys will, to the extent reasonably possible, pursue issue resolution at pre-hearing conferences and at other appropriate opportunities during the course of criminal proceedings.
- **Admissions of facts to be Proven** **8 - 12**
 - **DIRECTIVE #21** **8 - 13**
 - Whenever appropriate, Crown Attorneys will seek to obtain a joint statement of facts on all or some of the issues at trial, with a written record of agreed facts being prepared for filing with the court.

- **Admission and Use of Evidentiary Aids** **8 - 13**
 - **DIRECTIVE #22** **8 - 13**
 - Before engaging the court process (preliminary inquiry or trial), Crown Attorneys will first explore with the defence the possibility of narrowing or resolving issues and limiting the number of witnesses to be called by either party.
 - **DIRECTIVE #23** **8 - 13**
 - Crown Attorneys will seek from the defence a clear indication of Charter and other legal issues likely to be raised, and endeavour to have these matters addressed at pre-hearing conferences
- **Unrepresented Accused** **8 - 13**
 - **DIRECTIVE #24** **8 - 14**
 - Discussions with unrepresented accused will be carried out in accordance with the rules of caution set out in the Guide Book on plea discussions and agreements with unrepresented accused.
- **Disclosure** **8 - 14**
 - **DIRECTIVE #25** **8 - 14**
 - In accordance with the Disclosure policy, disclosure will be provided as soon as it is reasonably possible.
 - **DIRECTIVE #26** **8 - 14**
 - Senior Crown Attorneys, will seek arrangements with law enforcement agencies by which the agencies will undertake to identify cases involving information which, in the public interest, should not be disclosed, or for which disclosure will require editing or other means to protect the public interest involved.
 - **DIRECTIVE #27** **8 - 15**
 - Crown Attorneys involved in providing disclosure will be alive to the need to protect privileged information from disclosure and will discuss with the law enforcement agency involved the manner in which this information can be protected while still complying with the Crown's disclosure obligations.
 - **DIRECTIVE #28** **8 - 15**
 - Senior Crown Attorneys will develop and enforce practices aimed at ascertaining and recording in any

given case, what has been disclosed and what disclosure obligations or requests, if any, remain to be dealt with.

- **DIRECTIVE #29** **8 - 15**
 - Crown Attorneys involved in complex investigations will advise investigators on the issue of disclosure and on the preparation of the necessary disclosure material as the investigation progresses.
- **DIRECTIVE #30** **8 - 16**
 - The DPP will explore with law enforcement agencies how the use of available technology can provide more cost-effective means of providing disclosure.
- **Complex Cases** **8 - 16**
- **Co-operation between Police and the Crown** **8 - 16**
- **DIRECTIVE #31** **8 - 17**
 - Senior Crown Attorneys will meet with law enforcement agencies in their regions to discuss their priorities. This will enable them to identify:
 - cases where dedicated prosecution resources may be required at the investigative stage;
 - cases which will require substantial prosecution resources after charges are laid;
 - cases where investigators should be preparing at the investigative stage materials for use in the judicial process.
- **Role of the Crown Attorney** **8 - 17**
- **DIRECTIVE #32** **8 - 17**
 - The role of the Crown Attorney at the investigative stage is one of support and assistance. The components of that role may include:
 - providing legal advice to investigators including guidance about potential Charter issues and the admissibility of evidence;
 - assisting investigators in determining appropriate charges;
 - assisting investigators in assessing the strength of the case, including the credibility of witnesses;

- advising investigators in the preparation of the court brief and the marshalling of the materials which will be required for various post-charge purposes such as disclosure, bail, voir dices, etc.; and preparing for the prosecution during the course of the investigation so that timely and informed decisions can be made.
- **DIRECTIVE #33** **8 - 18**
 - Senior Crown Attorneys and the DPP will seek to identify those cases where early involvement of an assigned prosecutor during the course of the investigation might best serve the interests of effective post-charge proceedings.
- **DIRECTIVE #34** **8 - 18**
 - Senior Crown Attorneys will seek to ensure continuity when assigning counsel to a particular prosecution. To this end, prosecutors assigned to assist investigators during their investigation of complex cases may also be assigned to the prosecution of the case once charges have been laid.
- **DIRECTIVE #35** **8 - 19**
 - Specially assigned Crown Attorneys shall proceed during the course of the investigation in a way that will reduce as much as possible the risk of being called as a witness in the case.
- **Major Case Assessment** **8 - 19**
 - **DIRECTIVE #36** **8 - 19**
 - Senior Crown Attorneys will ensure that an assessment is prepared regarding the effective management of each major case identified and treated as significant for the purposes of this policy.

DISCLOSURE..... 9

- **Introduction** **9 - 1**
- **Statement of Policy** **9 - 1**
- **Mandatory Inclusions** **9 - 3**
- **Role of the Investigator** **9 - 7**

TAB

- Exceptional Situations	9 - 7
- Third Party Information	9 - 7
- Protecting Witnesses Against Interference	9 - 7
- Consent by person at risk	9 - 8
- Witnesses refusing to be interviewed	9 - 8
- Controlled interviews	9 - 8
- Unrepresented Accused	9 - 8
- Exclusions	9 - 10
- Reply Evidence	9 - 10
- Police Informers	9 - 11
- On-going Investigations	9 - 11
- Investigative Techniques	9 - 11
- Cabinet Confidences	9 - 11
- International Relations/National Security	9 - 11
- Solicitor-client Privilege	9 - 11
- Work Product Privilege	9 - 12
- Disclosure Costs	9 - 12
- Form of Disclosure	9 - 13
- Delaying or Limiting of Disclosure	9 - 13

COMMUNICATIONS WITH THE MEDIA 10

- Introduction	10 - 1
- Statement of the Policy	10 - 1
- Scope of the Policy	10 - 2
- Relationship to Departmental Policy	10 - 2
- Types of Communication	10 - 2
- Contacts Initiated by the Media	10 - 2
- Contacts Initiated by Crown Counsel	10 - 2
- Communications before Charges are Laid	10 - 2
- Communicating with the Media in a Personal Capacity	10 - 3
- Application of the Policy	10 - 3
- Guiding Principles	10 - 3
- Specific Direction	10 - 4
- Provision of Factual Information	10 - 5
- Information which Cannot be Provided	10 - 5
- Expression of Personal Opinion	10 - 6

- **Deferring Requests** 10 - 6
- **Internal Responses to Media Inquiries** 10 - 6

ELECTIONS AND RE-ELECTIONS 11

- **Introduction** 11 - 1
- **Crown Elections in Dual Procedure Offences** 11 - 1
- **Statement of Policy** 11 - 1
- **Consenting to Re-elections by an Accused** 11 - 3
- **Statement of Policy** 11 - 4
- **Requiring trial by Judge and Jury** 11 - 4
- **Statement of Policy** 11 - 4

PLEA DISCUSSIONS AND AGREEMENTS 12

- **Introduction** 12 - 1
- **Statement of Policy** 12 - 2
- **Application of the Policy** 12 - 2
- **Charge Discussions** 12 - 2
- **Procedural Discussions** 12 - 3
- **Sentence Discussions** 12 - 4
- **Conducting Sentence Discussions** 12 - 4
- **Agreements on the Facts of the Offence** 12 - 5
- **Pre-Trial Conferences** 12 - 6
- **Narrowing the Issues for Trial** 12 - 7
- **Consultation and Accountability** 12 - 7
- **Unrepresented Accused** 12 - 9
- **Accuracy** 12 - 9
- **Openness and Fairness** 12 - 10
 - o **Openness** 12 - 10
 - o **Fairness** 12 - 11

IMPAIRED DRIVING CASES: NOTICE TO SEEK GREATER PUNISHMENT 13

- **Introduction** **13 - 1**
- **Statement of Policy** **13 - 2**
- **Guidelines for Application of the Policy** **13 - 3**

THE DECISION TO APPEAL..... 14

- **Introduction** **14 - 1**
- **History of the Crown's Right to Appeal** **14 - 1**
- **Statement of Policy** **14 - 2**
- **Guidelines for Application of this Policy** **14 - 3**
- **Irrelevant Criteria** **14 - 4**
- **Conceding Appeals** **14 - 4**

SPOUSAL VIOLENCE..... 15

- **Introduction** **15 - 1**
- **Application of the Policy** **15 - 2**
- **Judicial Interim Release** **15 - 3**
- **Court Brief** **15 - 4**
- **Review of the Court Brief** **15 - 5**
- **Review of detention or conditions of release** **15 - 5**
- **Violation of Release Conditions** **15 - 6**
- **Preparation of Witnesses** **15 - 6**
- **Reluctant Witnesses** **15 - 7**
- **Where the witness fails to attend Court** **15 - 8**
- **Where the witness attends, but refuses to give evidence** **15 - 8**
- **Where the witness fails to describe the events in question as anticipated** **15 - 9**
- **The recanting witness** **15 - 9**
- **Child Witnesses** **15 - 10**
- **Termination of Proceedings** **15 - 10**
- **Sentence** **15 - 12**

VICTIMS OF CRIME 16

- **Introduction** 16 - 1
- **Application of the Policy** 16 - 2
- **Statement of Policy** 16 - 2
- **Operation of the Policy** 16 - 3
- **Special Needs of Victims** 16 - 3
- **Alternative Measures** 16 - 4
- **Judicial Interim Release** 16 - 5
- **Safety Measures** 16 - 5
- **Aids to Trial Testimony** 16 - 5
- **Participation in Court Processes** 16 - 7
- **Victim Fine Surcharges** 16 - 8
- **Appeals** 16 - 8

TRANSFER OF CHARGES 17

- **Introduction** 17 - 1
- **Statement of Policy** 17 - 1
- **Procedure** 17 - 3
- **Additional Matters** 17 - 4
- **References** 17 - 5
- **Appendix A – Request for Transfer of Charges** 17 - 6
- **Appendix B – Consent to Transfer** 17 - 7
- **Appendix C- F/P/T** 17 - 8
 - o **Protocol on the Inter-Provincial Transfer of Criminal Charges** 17 - 8

PROSECUTIONS BY THE CROWN AGAINST THE CROWN 18

- **Introduction** 18 - 1
- **Purpose of the Policy** 18 - 2
- **Investigative Stage** 18 - 2
- **Decision to Prosecute** 18 - 2
- **Conduct of the Prosecution** 18 - 3
- **Appeals** 18 - 3

DIRECT INDICTMENT 19

- **Introduction** 19 - 1
- **Statement of Policy** 19 - 2
- **Procedure** 19 - 3
- **Procedural Considerations after Direct Indictment** 19 - 4
- **Re-elections** 19 - 4

INFORMER PRIVILEGE 20

- **Introduction** 20 - 1
- **Importance of the Privilege** 20 - 1
- **Statement of Policy** 20 - 1
- **Operation of the Privilege** 20 - 2
- **Scope of the Privilege** 20 - 3
- **Situations Where the Privilege Might Not Apply** 20 - 3
- **Distinguishing Agents from Informers** 20 - 3
- **References** 20 - 4

CONTACT WITH THE COURTS 21

- **Introduction** 21 - 1
- **Business or personal relationship with a judicial officer** 21 - 2
- **Improper attempts to influence judicial officer** 21 - 2
- **Communicating with judicial officer in contested matters** 21 - 2
- **Meetings in relation to administrative matters** 21 - 2

JAILHOUSE INFORMANTS 22

- **Introduction** 22 - 1
- **Credibility** 22 - 2
- **Relationship between the Informant and the Police** 22 - 3
- **Mandatory Considerations** 22 - 4
- **Approval for the Use of the Jailhouse Informant** 22 - 5
- **Informant Benefits** 22 - 6

YOUTH DIVERSION 23

- **Introduction** 23 - 1
- **Options for Crown Attorneys** 23 - 1
 - o **Withdrawal of the charge** 23 - 1
 - o **Referral to a community program or agency** 23 - 2
 - o **Crown caution** 23 - 2
 - o **Extrajudicial sanctions** 23 - 3
- **General Principles for the Use of Extrajudicial Measures** 23 - 3
- **Determining Whether an Extrajudicial Measure Would**
- **Be Adequate to Hold a Young Person Accountable** 23 - 5
- **Factors related to the seriousness of the offence, and the history**
- **of previous offences or any other aggravating circumstances** 23 - 5
- **Extrajudicial sanctions: specific considerations** 23 - 7
- **Appendix I**

TRAINING AND PROFESSIONAL DEVELOPMENT 24

- **Introduction** 24 - 1
- **Statement of Policy** 24 - 1
- **Discussion** 24 - 1