Guide Book of Policies and Procedures for the Conduct of Criminal Prosecutions in Newfoundland and Labrador

“Many inherent qualities, it may be surmised, are essential if public confidence in the administration of justice is to be maintained. Nowhere is it more evident than in the institution and conduct of criminal prosecutions. Among the criteria by which the justice system is publicly judged are fairness and evenhandedness in the handling of criminal proceedings, the absence of perception of bias or political interference on the part of those exercising police and prosecutorial authority as well as professional competence and integrity throughout the system.”

- Professor J. Ll. J. Edwards (1989)

Introduction

In Newfoundland and Labrador, the prosecutorial discretion of the Attorney General must be exercised independently and in an objective and consistent fashion. The independence required to exercise the prosecution function has been protected through a number of safeguards. The consistency required in the exercise of discretion is controlled through public guidelines contained in this Guide Book of Policies and Procedures.

The Criminal Division is an entity which constitutes an integral part of the Department of Justice. It is comprised of the Office of the Director of Public Prosecutions to which the Regional Crown Attorneys’ Offices throughout the Province and the Special Prosecutions Office are accountable.

The Minister of Justice, who is usually also the Attorney General of the Province, is responsible for carrying out many varied duties which either involve or are related to the prosecution of offences. Broadly speaking, the Criminal Division performs the criminal litigation responsibilities of the Attorney General and the Minister of Justice, that is, the prosecution function and prosecution-related functions. The Minister is aided in the carrying out of the prosecution function by prosecutors (also known and referred to throughout this Guide Book interchangeably, as Crown Attorneys or Crown counsel) whose principal task is the prosecution of offences, and by other counsel whose principal task is assisting the Minister in the carrying out of prosecution-related functions. These include, for example, advice and support to the Minister in the area of liaison with the Federal
Prosecution Service (Director of Public Prosecutions Canada) and those of other provinces as well as the development of prosecution policies.

The Director of Public Prosecutions for Newfoundland and Labrador (DPP) and the Crown Attorneys acting under his or her direction act as prosecutors in all matters prosecuted by the Attorney General on behalf of the Crown. The Director of Public Prosecutions provides legal advice to all law enforcement agencies and government departments with law enforcement responsibilities. The Criminal Division, in this respect, acts as a centre of expertise for criminal law and related matters.

Tradition and case law require political independence for the Attorney General and Minister of Justice in the carrying out of the prosecution function. On the other hand, the Minister remains accountable to the House of Assembly for the manner in which his or her functions have been carried out. The following principles have emerged as a result of the need to satisfy the requirement for both independence and accountability.

1. Prosecutors and counsel acting on behalf of, or assisting the Attorney General, have no more authority than that which the Attorney General has provided them with: they are subject to review as determined by the Attorney General and are required to act in accordance with the Attorney General’s instructions and guidelines as set out in this Guide Book.

2. The Attorney General will rarely intervene in the carrying out of day-to-day operations of the prosecution function so as to avoid any suggestion of political interference.

Functional Responsibility within the Department of Justice

The Director of Public Prosecutions is the only member of the Criminal Division who is also a member of the Executive. The Director of Public Prosecutions has been given functional responsibility over the manner in which prosecutions are carried out on behalf of the Attorney General and Minister of Justice. He or she is in turn answerable directly to the Deputy Minister and then to the Minister, with respect to the manner in which he or she exercises that functional responsibility.

The Assistant Director of Public Prosecutions is responsible to the Director for such tasks and duties as may be assigned by the Director from time to
time. These may include special projects and the management of complex prosecutions as well as policy and advisory functions.

On the other hand, the Senior Crown Attorneys remain responsible, at the regional level, for the manner in which the prosecution function is carried out by counsel under his or her supervisory or managerial control.

**The Relationship between the Director of Public Prosecutions and the Senior Crown Attorneys**

Functional responsibility is a term which includes functional authority. It means establishing policies and guidelines, giving direction, advice, assistance and guidance. It also means having a say in how resources are allocated and re-allocated to provide for a proper service level. Functional responsibility is the primary tool to ensure integrated and coordinated standards of prosecutorial excellence will be provided and maintained.

The Director of Public Prosecutions also known as the Assistant Deputy Minister (Criminal Division) or ADM (Criminal Division) provides functional direction, advice and assistance to those in the Department of Justice, who discharge direct prosecution functions or prosecution related activities.

However, the day-to-day exercise of the functional responsibility of the Director of Public Prosecutions in a region has been delegated to the Senior Crown Attorney who is:

- responsible for ensuring that the prosecution resources within the region are deployed so that the prosecution responsibilities of the Attorney General are fulfilled;

- accountable to the Director of Public Prosecutions- ADM (Criminal Division) for ensuring directly that all counsel in the region for whom the Senior Crown Attorney is responsible, exercise the prosecutorial discretion of the Attorney General independently in accordance with the guidelines contained in the Guide Book.

It is recognized in this context that the Director of Public Prosecutions-ADM (Criminal Division) has the authority:
• to intervene personally in a local matter. In practice, however, this authority should be relatively infrequent;

• in partnership with Senior Crown Attorneys, where appropriate, to participate actively in the allocation of resources for the performance of the prosecution function;

• to develop, in consultation with the Senior Crown Attorneys, prosecution policy guidelines and directives as required to ensure that the highest standards are maintained and that prosecutorial excellence is achieved for the people of Newfoundland and Labrador.

Purpose of the Guide Book

This part of the Guide Book includes directives and policies of the Criminal Division of the Department of Justice which relate to decision-making by Crown Attorneys in the course of prosecuting criminal cases. The policies and directives are, in essence, the instructions of the Attorney General to his agents, the Crown Attorneys. Cumulatively, they are the principal device through which the Attorney General strives to achieve the level of consistency necessary to ensure fair and equal treatment of all citizens involved in prosecutions or affected by prosecutorial decisions.

This part of the Guide Book serves two main purposes. First, it is a convenient vehicle through which to distribute and consolidate the policies which have been developed for the guidance of Crown Attorneys. It helps to ensure that the current policies are readily available to the Crown Attorneys who must utilize them on a daily basis.

A second purpose of this part of the Guide Book is to enhance transparency in the decision making process. The contents of this Guide Book are public documents. Accused persons, victims and the public are entitled to be informed about the basis upon which important decisions in the criminal process are made. Such transparency helps to foster public confidence in the administration of justice and engenders respect for the decision makers.

Interpretation and Use

The directives and policies contained in this part of this Guide Book do not purport to cover all aspects of the criminal process. Some issues are not
addressed; other issues are more comprehensively covered. Even where a policy has been drafted to give relatively complete guidance in regard to a particular type of decision, it is impossible to anticipate the infinite variety of circumstances in which criminal cases arise. There will often be gaps, between the ambit of the policies and the reality encountered by Crown Attorneys. Accordingly, it is essential that readers and users of this part of the Guide Book understand and remember the context in which these policies are presented. This requires an appreciation of the Crown Attorney’s proper place in the criminal process, and an understanding of the fundamental role of a Crown Attorney.

The fact that Crown Attorneys are accountable to their superiors for the exercise of discretion in the criminal process and that there is an expectation of compliance with policy directions should not cause Crown Attorneys to be fearful of making difficult decisions. Only a small number of policies eliminate options or demand consultation with a Senior Crown Attorney before decisions are made. The vast majority of decisions which are left to Crown Attorneys envisage a range of options. A common challenge for a Crown Attorney is to select from those options the one, which, in the prosecutor’s assessment of the public interest at the time that a decision must be made, is most responsive to the circumstances.

It is clearly understood at all levels of the Department of Justice that the exercise of judgment in the criminal process is not an exact science. Reasonable, competent people often disagree. When the balancing of competing factors is precarious, inexperienced counsel are encouraged to consult with Senior Crown Attorneys and other experienced counsel in order to arrive at an appropriate decision. Similarly, when there is uncertainty in regard to what should be done in the absence of specific guidance in the Guide Book, the fullest possible discussion of the issues with supervisors and colleagues is strongly encouraged.

It is important for all Crown Attorneys to be aware that to neglect or to avoid making a necessary decision can be more harmful to the administration of justice and the public interest than actually making a decision that is later challenged.

Just as the failure to exercise available discretion can be destructive, so too would be the blind, unthinking application of stated policies. Prosecuting, even by experienced counsel, requires careful analysis of issues, and
consultation. Crown policies and directives as set out in this Guide Book are not designed to be “automatic” decision makers or to be a substitute for judgment. The criminal law requires that people be treated as individuals in unique situations, and policies are not intended to distort this approach. There cannot, for instance, be a single approach prescribed in advance for a class of persons. Prosecuting counsel must carefully consider criminal cases, one at a time, and the particular nuances of each case must be reflected in the decision making process. This is an imperative of professional decision making.

Because the very idea of discretion implies that a range of reasonable options exists, Crown Attorneys are entitled to assume that their decisions will be supported by their supervisors whenever the decision that is made falls within the range of reasonable options. It is clearly recognized that the effective functioning of the criminal justice system depends on flexible decision making at the local level by qualified professionals with the necessary support and resources.  


2 See also in this Guide Book materials related to “The Independence of the Attorney General in Criminal Matters”. At the time of preparation of this Guide Book, the position of Attorney General and Minister of Justice were occupied by different persons.

3 See also in this Guide Book materials related to “Crown Attorney’s Independence and Accountability in Decision Making”.