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THE ROLES AND RESPONSIBILITIES OF CANADIAN PROSECUTORS

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THE ROLES AND RESPONSIBILITIES OF CANADIAN

PROSECUTORS

1.0 STATEMENT OF PURPOSE

- 1.1 Canadian Prosecution Services are a key component of the Canadian criminal justice system. The purpose of Canadian Prosecutors, known as Crown Counsel or Crown Attorneys, is to contribute to the protection of society by preparing and conducting prosecutions diligently, objectively and fairly.

2.0 GENERAL PRINCIPLES

- 2.1 Prosecutors represent the interests of society as a whole, not just the interests of specific individuals. This prosecutorial role was set out with authority by Mr. Justice Rand of the Supreme Court of Canada in the following quotation:

"It cannot be overemphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown, (the prosecutor), considers to be credible evidence relevant to what is alleged to be a crime. Counsel has a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings."

Boucher v. The Queen (1954) 110 C.C.C. 263 at 270 (S.C.C.).

3.0 THE JUSTICE SYSTEM WITHIN WHICH CROWN COUNSEL PRACTICE

- 3.1 The Justice system is adversarial in nature with defence counsel and the prosecutor having very separate and distinct roles. Within this adversarial system, both the prosecutor and defence counsel must follow the strict evidentiary rules which have evolved to ensure innocent people are not wrongly convicted on unreliable, untrustworthy evidence.
- 3.2 The role of defence counsel is to pursue any and all legitimate defences for their

client within the confines of their ethical responsibilities and legal duties as practicing members of the legal profession. Defence counsel have no duty to the public other than in their role as an officer of the court.

- 3.3 The prosecutor has a duty to the public above and beyond that of an officer of the court that is to ensure that justice is done. In presenting his or her case, the prosecutor “...cannot adopt a purely adversarial role towards the defence”. (*R. v. Cook, supra at p.60*). The prosecutor is entitled to legitimately press the strength of the prosecution but not go beyond the requirement to put the case forward in a fair manner. Prosecutors are governed by the principle that justice does not require a conviction to be obtained at all costs.

4.0 PROSECUTORIAL RESPONSIBILITIES

- 4.1 The responsibilities of prosecutors are generally consistent across Canada. For instance those mandated by the *Crown Counsel Act* in British Columbia are as follows:

- “a) to approve and conduct, on behalf of the Crown, all prosecutions of offences in the Province;
- b) to initiate and conduct on behalf of the Crown, all appeals and other proceedings in respect of any prosecution of an offence in the Province;
- c) to conduct, on behalf of the Crown, any appeal or other proceeding in respect of a prosecution of an offence, where the Crown is named as a respondent;
- d) to advise the government on all criminal law matters;
- e) to develop policies and procedures in respect of the administration of criminal justice in the Province;
- f) to liaise with the media and affected members of the public on all matters respecting approval and conduct of prosecutions of offences or related appeals;
- g) any other function or responsibility assigned to the Branch by the Attorney

General.”

5.0 CHARGE APPROVAL GUIDELINES

5.1 In determining whether a charge is to be approved for prosecution, prosecutors examine the evidence provided to determine:

1. whether there is a substantial likelihood of conviction and, if so,
2. whether a prosecution is required in the public interest.

5.2 A substantial likelihood of conviction exists where the prosecutor is satisfied there is a strong, solid case of substance to present to the Court. In determining whether this standard is satisfied, the prosecutor must determine:

1. what material evidence is likely to be admissible;
2. the weight to be attached to admissible evidence;
3. viable but not speculative defences.

5.3 If a case satisfies the substantial likelihood of conviction component of the charge approval standard, then the public interest factors will be considered while viewing the particular circumstances of each case and the legitimate concerns of the local community.

5.4 The proper use of prosecutorial discretion ensures that each individual case is considered on the basis of its unique circumstances, local community standards, applicable law and policy from the time of the charge approval decision until the time of the consideration of an appeal. Rigid application of criteria would ignore the complexity of the law, the individual accused and the unique circumstances of individual victims. The need for prosecutorial policies is an acknowledgment that the circumstances of cases can be complicated by public perception and concerns, victim concerns, evidentiary hurdles, legislative developments and case law decisions. The principled use of prosecutorial discretion governed by established

policies allows the consideration of the many facets of a criminal case without compromising accountability to society for prosecutorial decisions.

6.0 ALTERNATIVE MEASURES

Based on the assumption that not all anti-social behavior requires criminal sanctions imposed by the Court, prosecution services have, over the years, established policies and procedures to divert minor offences away from the criminal justice system and into alternate measures programs. Such diversions reflect the notion that many lesser offences can best be dealt with by using community resources other than the court system. Minor offences such as petty theft and mischief are often dealt with by requiring the offender to participate in community programs as a way for the person to make restitution for his or her wrong doing.

7.0 RESOLUTION DISCUSSIONS (PLEA BARGINING)

7.1 Resolution discussions are essential to the proper functioning of the justice system in Canada, " and when properly conducted, benefit not only the accused, but also victims, witnesses, counsel, and the administration of justice generally" (*Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions, Martin, G. Arthur, Hon., Ontario 1993*).

7.2 Resolution discussions include all discussions between the prosecutor and defence counsel as to the charges laid and their possible dispositions. Such discussions are considered to be beneficial because they allow the prosecutor to consider information known only to the defence. Since there is only an extremely limited obligation on the defence to provide disclosure of its case to the prosecutor this is an important method for obtaining information.

7.3 Prosecutors accept a guilty plea only to a charge which meets the charge approval

standard. Assessment of the ability to prove the case is made on the information available to the prosecutor who should not accept a guilty plea where the case can not be proved.

8.0 ACCOUNTABILITY

In Canada, prosecutors are delegated their authority by the Attorney General and are ultimately responsible to the Attorney General for their decisions. The Provincial Attorney General is an elected member of the legislature appointed to the position of Attorney General by the leader of the governing party in the legislature, the Premier of the Province. There is a general acceptance that decisions with respect to who should or should not be prosecuted should be made without reference to the political affiliation of the accused person or to the political agenda of the government of the day and hence, with very few exceptions, the Attorney General is not involved in decision making regarding individual cases.

9.0 CONCLUSION

Prosecutors are independent advocates representing society as a whole who must, on occasion, make decisions which may be potentially unpopular. The role of the prosecutor incorporates accountability for decisions made throughout the prosecution without imposing rigidity in the decision making process. Prosecutorial independence is a requirement in Canadian Society.