

APPLICATION AND USE

The purpose of this Manual is two-fold: to ensure the fair and effective prosecution of criminal and quasi-criminal cases and related matters in New Brunswick, and to communicate Public Prosecution Services' intention to the public in order to maintain public confidence in the administration of justice.

The policies in this Manual do not cover all aspects of the criminal process. Some issues are not addressed; other issues are addressed more comprehensively. Even where a policy has been drafted to give relatively complete guidance with regard to a particular type of decision, it is impossible to anticipate the infinite variety of circumstances in which a criminal case may arise. There will often be gaps between the ambit of the policies and the reality encountered by the Crown Prosecutor. Accordingly, it is essential to understand the context in which these policies are presented. This requires an appreciation of the Crown Prosecutor's proper place in the criminal process, and an understanding of the fundamental role of the Crown Prosecutor.

The Crown Prosecutor is required to make difficult decisions. Although the Crown Prosecutor is accountable for the exercise of his or her discretion, and is required to comply with these policies, this should not cause the Crown Prosecutor to be reluctant in making difficult decisions. Only a small number of policies eliminate options or require consultation or approval before decisions are made. The vast majority of decisions that the Crown Prosecutor must make encompass a range of options. A common challenge for the Crown Prosecutor is to select from the range of reasonable options the one that, in the Crown Prosecutor's assessment, is the most appropriate in the circumstances.

The Department of Justice and Attorney General understands that the exercise of judgment in the criminal process is not an exact science. Reasonable, competent people often disagree. When, it is not clear to the Crown Prosecutor, how to balance competing factors, inexperienced counsel are encouraged to consult with senior colleagues, the Regional Director, or the Director of Specialized Prosecutions 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 this Manual, the fullest possible discussion of the issues with colleagues and supervisors is strongly recommended.

It is important for the Crown Prosecutor to bear in mind that to neglect, or to avoid, making a necessary decision can be more harmful to the administration of justice and public interest than actually making a decision that is later challenged. Just as the failure to exercise discretion can be destructive, so too would be the unreasoned application of these policies. Prosecuting, even by experienced counsel, requires careful analysis of issues and, frequently, consultation. The policies set out in this Manual are not designed to be implemented automatically or to be a substitute for judgment. The proper administration of criminal justice requires that people be treated as individuals in unique situations, and these policies are not intended to distort this approach. The Crown Prosecutor must carefully consider criminal cases, and the particular nuances of each case must be reflected in the decision making process.

By tradition and necessity, the Crown Prosecutor has a broad and generous area of discretion in prosecutions, subject to general policy directions of the Attorney General or specific direction in exceptional cases. The very idea of discretion implies that a range of reasonable options exists. The Crown Prosecutor is entitled to expect that his or her decisions, when made in accordance with this Manual, will be supported by Public Prosecution Services.

This Manual does not have the status of law. It does not in any way override the *Criminal Code*, *Charter of Rights and Freedoms* or any other applicable legislation. It is not intended to provide legal advice to members of the public or create any rights enforceable at law in any legal proceeding.