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<p>CHAPTER V – CHAPITRE V :</p> <p><b>Witnesses and Victims Témoins et Victimes</b></p>	<p>Readers are referred to the list of Related Documents at the end of this Policy for additional information.</p> <p>Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p>	

## EXPERT WITNESSES

### 1. Introduction

Expert witnesses should be treated with courtesy and respect. This requires that the Crown Prosecutor advise potential expert witnesses about what services may be required of them and how they will be compensated. The Crown Prosecutor should strive to maintain minimal inconvenience to expert witnesses.

### 2. Retaining the Expert Witness

Where the attendance at trial of an expert witness is required, and the expert is one whom Public Prosecution Services must compensate for his or her time, the Crown Prosecutor shall obtain the Regional Director's approval of the billing arrangements before securing the expert's attendance at trial.

The Crown Prosecutor should attempt to accommodate the schedule of expert witnesses as much as possible without disrupting the conduct of the case. Section 657.3 of the *Criminal Code* allows for the introduction of the evidence of a person as an expert by means of a report where certain conditions are met. The Crown Prosecutor is encouraged to use section 657.3 where possible.

Where the Crown Prosecutor is prosecuting a provincial offence, the Crown Prosecutor is encouraged to consider giving evidence by witness statements under section 35 and by agreed statements of facts under section 39 of the *Provincial Offences Procedure Act*. If the Crown Prosecutor intends to use section 35 of the *Provincial Offences Procedure Act*, the Crown Prosecutor must give at least twenty (20) days' notice.

#### 2.1 Expert Witnesses Other Than Physicians

Where the Crown Prosecutor wishes to retain an independent expert witness, other than a physician, who is not otherwise involved with the file, such as a forensic psychiatrist, arson investigator, or accountant, the Crown Prosecutor shall obtain the prior approval of the Regional Director or the Executive Director before retaining the expert's services. As well, the Crown Prosecutor shall obtain approval of the billing arrangements from the Regional Director or the Executive Director at the time the expert's services are retained.

#### 2.2 Physicians as Expert Witnesses

Generally, the Crown Prosecutor should avoid calling physicians to give evidence unless absolutely necessary. The Law Society of New Brunswick has adopted a requirement that members adhere to the guidelines set out in the publication *Interaction Between Lawyers and Physicians in Litigation*, a copy of

which is included in Appendix A. In particular the Crown Prosecutor should be familiar with the section pertaining to criminal proceedings, Lawyer-Physician Interaction in Criminal Proceedings, and Appendix C, Suggested Tariff for Medical-Legal Services. Where possible the Crown Prosecutor should provide a physician with two (2) weeks' notice where he or she is required to attend at trial and one (1) week's notice where he or she is required for a pre-trial interview.

### **3. Disclosure Obligations**

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Subject to specific exceptions detailed in Policy 22, Disclosure, communication between the Crown Prosecutor and an expert is not privileged. Ordinarily, and in accordance with Policy 22, Disclosure, the Crown Prosecutor shall supply the accused with a copy of any written report prepared by an expert. If the Crown Prosecutor intends to call a person as an expert witness, the Crown Prosecutor shall comply with the notice provisions contained in section 657.3 of the *Criminal Code*.

### **4. Limitation on the Number of Expert Witnesses**

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The Crown Prosecutor shall bear in mind that section 7 of the *Canada Evidence Act* limits the number of expert witnesses at trial to five (5) *per* subject. To call more than five (5) expert witnesses concerning a single subject, the Crown Prosecutor must obtain leave of the court.

### **5. Related Documents**

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Policy 22            Disclosure  
Policy 32            Witnesses  
*Interaction Between Lawyers and Physicians in Litigation*