DUTIES AND RESPONSIBILITIES OF CROWN ATTORNEYS

> *"It is not easy to be a prosecutor. It is often a lonely journey. It tests character. It requires inner strength and self-confidence. It requires personal integrity and a solid moral compass. It requires humility and willingness, where appropriate, to recognize mistakes and take appropriate steps to correct them. Prosecutors must be passionate about the issues, but compassionate in their approach, always guided by fairness and common sense."*
>
> - D.A. Bellemare, MSM,Q.C.

Introduction

This section of the Guide Book describes the duties and responsibilities of Crown Attorneys in the provision of legal advice during the conduct of criminal litigation. The terms "Crown Attorney" or "Crown counsel", as used in this part and throughout the Guide Book, are meant to refer to lawyers employed by the Department of Justice and private practice lawyers employed as agents acting on behalf of the Attorney General of Newfoundland and Labrador[1]. Crown Attorneys are often are asked to provide legal advice to departments and agencies within the Government of Newfoundland and Labrador and to law enforcement agencies involved in enforcing the criminal law, most often the Royal Newfoundland Constabulary and the Royal Canadian Mounted Police.

Crown Attorneys are not employed by the departments and agencies to which they provide legal advice. Crown Attorneys are never lawyers for the police. At all times, Crown Attorneys remain representatives of the Minister of Justice as Attorney General[2]. Counsel should be aware that policies of the Attorney General may conflict with those of the departments and agencies. Conflicts could, for example, arise between a department's enforcement policy and the Attorney General's prosecution policy. Crown Attorneys shall at all times, comply with the policies of the Attorney General as set out in this Guide Book. If policies conflict, counsel shall advise the department or agency of the conflict and resolve the matter with the Senior Crown Attorney or if need be, the DPP.[3]

Crown Attorneys should also be careful to avoid a conflict of interest or the appearance of a conflict of interest[4]. An easily identifiable conflict of interest may arise where, for example, counsel prosecutes a former client[5]. However, conflicts of interest may also arise due to the structure or

organization of government. For example, a conflict may arise where there is a recommendation for prosecution by one government department against another government department, both of whom, from time to time, are given legal advice by the Department of Justice. If this occurs, Crown Attorneys should advise the Senior Crown Attorney who will consider whether it would be more appropriate to retain counsel from the private sector, as agent of the Attorney General, to review the evidence, provide advice on the charges, and conduct any resulting prosecution.[6]

Management or Policy Decisions

Crown Attorneys are not responsible for making management or policy decisions for government departments and agencies. Counsel's duty is to give legal advice on criminal law matters. This may include advising investigative agencies about the criminal law issues arising from an investigation, practice, or policy. Counsel have a further responsibility to discuss the public interest implications with a department or agency contemplating a prosecution and to apply the Attorney General's policy, as set out in this Guide Book, regarding those interests.[7]

When advising investigative agencies, Crown Attorneys must always recognize the distinction between the role of the police and the role of the prosecutor in the administration of justice[8]. Given the increasing complexity of law enforcement, counsel may be asked to become involved at the investigative stage. For example, in wiretap and search warrant cases, counsel may be asked to advise and assist the agency that is preparing preliminary documents. Effective management of complex litigation requires pre-charge co-operation between the police and Crown Attorneys. However, the existence of such a relationship does not diminish the desirability of an independent, impartial assessment of both the evidence and public interest considerations when the decision is made as to whether to prosecute[9].

Solicitor-Client Privilege

Legal advice given by Crown counsel to government departments and investigative agencies is protected by solicitor-client privilege[10]. Crown Attorneys may not release the legal opinion, refer to it, or describe it in any fashion to defence counsel[11] or the public unless the privilege has been waived. Crown Attorneys must be conscious of the fact that not everything

they do will be covered by privilege – whether or not the privilege attaches depends on the nature of the relationship, the subject matter of the advice and the circumstances in which it is sought[12].

With law enforcement agencies outside the Government of Newfoundland and Labrador, the privilege rests with the agency. With departments and agencies within the Government, the privilege rests with the Crown in right of the Province of Newfoundland and Labrador. In practical terms, however, decisions concerning privilege, such as waiver, are usually made by the government department or agency which received the advice. In some instances, particularly those in which there is a strong public interest,[13] decisions of this nature should be made in consultation with the Director of Public Prosecutions and the Department of Justice which may have counsel from the Civil Division assigned to advise that department or agency. It must be borne in mind that public interest is a concept quite different from that of public opinion.

Written legal opinions given by Crown Attorneys should, in general, be marked "Solicitor-Client Privileged". This may be helpful in resolving issues such as disclosure.

Obligations during the Conduct of Criminal Litigation

The responsibilities placed on Crown Attorneys as law officers of the Crown flow from the special obligations resting on the office of the Attorney General. As a result, Crown Attorneys are subject to certain ethical obligations which may differ from those of defence counsel.[14] The Crown Attorney occupies a dual role as minister of justice and advocate. There is a tension between these two roles which, at first blush, is difficult to accommodate in the adversarial system. However our constitution has long granted prosecutors a special status distinct from that of a mere opponent at trial.[15]

The Attorney General and his or her agents are vested with very substantial discretionary powers[16]. Public interest considerations require Crown Attorneys to exercise judgment and discretion which go beyond functioning simply as advocates.[17] Counsel appearing for the Attorney General are considered "ministers of justice", more part of the court than proponents of a cause.[18] Fairness, moderation, and dignity should characterize the conduct of Crown Attorneys during criminal litigation.[19] This does not mean that

counsel cannot conduct vigorous and thorough prosecutions[20]. Indeed, vigour and thoroughness are important qualities in Crown Attorneys. Criminal litigation on the part of the Crown, however, should not become a personal contest of skill or professional pre-eminence.[21]

The conduct of criminal litigation is not restricted to the trial in open court. It also encompasses the prosecutorial authority of Crown counsel leading up to trial -- for example, the decision to prosecute, referring an alleged offender to an alternative measures program,[22] disclosure, the right to stay or terminate proceedings, elect the mode of trial, grant immunity to a witness, prefer indictments, join charges and accused, consent to re-elections, and consent to the transfer of charges between jurisdictions. Crown counsel's obligation to ensure the integrity of the prosecution continues throughout the litigation process.[23]

Both in and out of court, Crown Attorneys exercise broad discretionary powers. Courts generally do not interfere with this discretion unless it has been exercised for an oblique motive, offends the right to a fair trial or amounts to an abuse of process. Accordingly, counsel must exercise this discretion fairly, impartially, in good faith and according to the highest ethical standards. This is particularly so where decisions are made outside the public forum, as they often have far greater practical effect on the administration of justice than the public conduct of counsel in court.[24]

In the conduct of criminal prosecutions, Crown Attorneys have many responsibilities. The following are among the most important.

The duty to ensure that the responsibilities of the office of the Director of Public Prosecutions are carried out with integrity and dignity

Crown Attorneys can discharge this duty:

- by complying with applicable rules of ethics established by the Law Society;

- by exercising careful judgment in presenting the case for the Crown, deciding the witnesses to call, and what evidence to tender;

- by acting with moderation, fairness, and impartiality;

- by not discriminating on any basis prohibited by s. 15 of the *Charter*;
- by adequately preparing for each case;
- by not becoming simply an extension of a government department or investigative agency such as the RNC or RCMP;[25] and
- by conducting plea and sentence negotiations in a manner consistent with the policies and procedures set out in this Guide Book.[26]

Preserving judicial independence

Crown Attorneys can discharge this duty:

- by not discussing matters relating to a case with the presiding judge without the participation of defence counsel;
- by not dealing with matters in chambers that should properly be dealt with in open court;
- by avoiding personal or private discussions with a judge in chambers while presenting a case before that judge; and
- by refraining from appearing before a judge on a contentious matter when a personal friendship exists between Crown counsel and the judge.

The duty to be fair and to appear to be fair

Crown Attorneys can discharge this duty:

- by making disclosure in accordance with the policy set out in this Guide Book;[27]
- by bringing all relevant cases and authorities known to counsel to the attention of the court, even if they may be contrary to the Crown's position;
- by not expressing personal opinions on the evidence, including the credibility of witnesses, in court or in public;

- by being conscious of the factors that can lead to wrongful convictions, such as false confessions and mistaken eyewitness identification;

- by carefully guarding against the possibility of being afflicted by "tunnel vision" and of practicing “overzealous” or “overreaching” advocacy[28], through close identification with the investigative agency and/or victim, or through pressure by the media and/or special interest groups or to “shore up” a weak case;

- by remaining open to alternative theories put forward by the defence;

- by not expressing personal opinions on the guilt or innocence of the accused in court or in public;

- by asking relevant and proper questions during the examination of a witness and by not asking questions designed solely to embarrass, insult, abuse, belittle, or demean the witness. Cross examination can be skilful and probing, yet still show respect for the witness;

- by respecting the court, defence counsel, the accused, and the proceedings while vigorously asserting the Crown's position; and

- by never permitting personal interests or partisan political considerations to interfere with the proper exercise of prosecutorial discretion.

Inflammatory Remarks and Conduct

As part of the Crown Attorney’s duty to be fair, counsel are obliged to ensure that any comments made during jury addresses are not inflammatory. Whether an address will be held to be inflammatory is determined by looking at the number and nature of the comments, and the tone of the address. While ultimately, the test (on appeal) is whether the objectionable comments are seen to have deprived the accused of his or her right to a fair trial, Crown Attorneys are held to a higher standard.

As mentioned previously, the Attorney General of Newfoundland and Labrador and his or her agents have very substantial discretionary powers. It must be borne in mind that the opportunity to damage the reputation of the

administration of justice is always present[29]. The consequences of a failure to do so were examined in many respects, in the Lamer Report (2006).

The general principles governing Crown jury addresses have been referred to by Fish J.A. (as he then was) of the Québec Court of Appeal in *R.* v. *Charest* (1990), 76 C.R.(3d) 63:

> The principles which emerge from *Boucher*, *Vallières* and other leading cases ... may be summarized as follows. Crown counsel's duty is not to obtain a conviction, but "to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime" ... The Crown should press fully and firmly every legitimate argument tending to establish guilt, but must be "accurate, fair and dispassionate in conducting the prosecution and in addressing the jury" ... It is improper for Crown counsel to express his or her opinion as to the guilt or innocence of the accused ... or as to the credibility of any witness. Such expressions of opinion are objectionable not only because of their partisan nature, but also because they amount to testimony which likely would be inadmissible even if Crown counsel had been sworn as a witness ... Crown counsel should not advert to any unproven facts, even if they are material and could have been admitted as evidence. Applicable principles of law should be left for the judge to explain; when reference to the law is necessary for the purpose of making an argument, the law should be accurately stated.
>
> The principles are well known. Their application, of course, is a function of the nature and number of comments made in each case, of the specific language used and of the overall tone of counsel's address. The likely effect of any corrective action taken by the trial judge must also be considered. Ultimately, the conclusive test is whether the objectionable comments are seen to have deprived the accused of his right to a fair hearing on the evidence presented at trial. [citations omitted throughout]

The kinds of comments and conduct that have been found to be "inflammatory" (and thus render the trial unfair) can be divided into six categories:

- Expressions of personal opinion

- these include opinions: on issues in the case; on the honesty and integrity of police witnesses; that he or she does not believe the accused; or that the accused is guilty.[30]

- Negative comments about the accused's or a witness's credibility or character
  - Such comments may include excessive reference to the accused's criminal record, native country, likelihood of being a liar, excessive use of sarcasm or exaggeration in referring to the accused or defence witnesses.[31]

- Observations or statements of fact not supported by the evidence
  - These situations tend to be ones in which Crown counsel misstates the evidence in a way which impugns the accused's character.[32]

- Appeals to fear, emotion, prejudice or religious belief
  - These comments are often *in terrorem* arguments in which Crown counsel urges the jury to protect society from the accused, who is portrayed in very unflattering terms.[33]

- Negative comments about the counsel for the accused
  - On occasion, Crown counsel have suggested that defence counsel have used improper tactics, presented illegal evidence or made other comments designed to portray defence counsel as being untrustworthy.[34]

- Inappropriate language, tactics, and conduct in general

  - Characterizations of the accused as a liar, excessive use of sarcasm, ridicule or derision, use of biblical references and irrelevant authority, are proscribed.[35] Inappropriate tactics include:

  - not placing before the court all the circumstances surrounding the obtaining of statements from the accused;

  - eliciting through a friendly witness a remark that is unsupported by any evidence and continuing to press the point in the

presence of the jury during a discussion with the judge;

- in cross-examination of the accused, while professing to test his credibility, bringing various matters before the jury which have no direct relation to the question of the accused's guilt;

- at the conclusion of the evidence given by the accused in his defence, stating in the presence of the jury that the accused will be arrested for perjury;

- improperly presenting evidence to the jury through the device of reading from reports of judgments of the Supreme Court of Canada; and

- raising a "concoction theory" with respect to disclosure for the first time in the closing address[36].

Prevention of Wrongful Convictions

In January 2005, FPT Ministers Responsible for Justice released the Report of the Working Group on the Prevention of Miscarriages of Justice. The Report calls a wrongful conviction "a failure of justice in the most fundamental sense."

> No matter how many cases are successfully prosecuted every day in our courtrooms, wrongful convictions, regardless of how infrequent, are a reminder of the fallibility of the justice system and a stain on its well-deserved positive reputation.
>
> Public confidence in the administration of justice is fostered by demonstrating that participants in the criminal justice system are willing to take action to prevent future miscarriages of justice. It is also important to foster public understanding that fair, independent and impartial police investigations and Crown prosecutions are in the public interest[37].

The Report makes a series of recommendations on what prosecutors can do to prevent wrongful convictions and concludes "everyone involved in the criminal justice system must be constantly on guard against the factors that can contribute to miscarriages of justice." Indeed, the Working Group

believes that individual police officers and prosecutors, individual police forces and prosecution services, and indeed the entire police and prosecution communities, must make the prevention of wrongful convictions a constant priority.

In particular, the Report notes that "tunnel vision" has been identified as a leading cause of wrongful convictions in Canada and in Newfoundland and Labrador (see the Lamer Report (2006)) and is the "antithesis" of the proper role of Crown counsel. "Tunnel vision must be guarded against vigilantly, as it is a trap that can capture even the best police officer or prosecutor."[38]

Many of the Reports' recommendations are reflected throughout this Guide Book. Although both Reports' recommendations are aimed primarily at the most serious of offences, particularly homicides, many of its suggestions have general application.

Mentoring and Guidance

A dynamic criminal law system which is responsive to the needs of the people of Newfoundland and Labrador requires a professional prosecution service. This can only be achieved if all Crown Attorneys, Senior Crown Attorneys and support staff receive proper resources and training. It is the responsibility of the Director of Public Prosecutions to ensure that these are made available. Mentoring is also important so that less experienced and junior Crown Attorneys can access guidance and assistance in carrying out their vital functions. This is especially so in the critical assessment of cases and observing the proper limits of crown advocacy. Senior Crown Attorneys should establish practices within each office to ensure that this is achieved.[39]

Summary References on Crown Attorneys' Duties and Responsibilities

Re: Skogman and The Queen, [1984] 2 S.C.R. 93; 13 C.C.C. (3d) 161 (S.C.C.): Crown counsel are in a different position from the ordinary litigant, for they represent the public interest in the community at large.

Boucher v. The Queen, [1955] S.C.R. 16; 110 C.C.C. 263 (S.C.C.): "It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should

be done so firmly and pressed to its legitimate strength, but it must also be done fairly. The role of the 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 a greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings."

R. v. Stinchcombe, [1991] 3 S.C.R. 326; 68 C.C.C. (3d) 1 (S.C.C): The Crown is under a duty at common law to disclose to the defence all material evidence, whether favourable to the accused or not. Transgressions with respect to this duty constitute a very serious breach of legal ethics.

Lemay v. The King, [1952] 1 S.C.R. 232; 102 C.C.C. 1 (S.C.C.): There is a long established rule that the prosecutor has discretion to determine who are material witnesses, and this discretion will not be interfered with unless it was exercised for an oblique motive.

Cunliffe and Bledsoe v. Law Society of British Columbia (1984), 13 C.C.C. (3d) 560 (B.C.C.A.): It is extremely important to the proper administration of justice that Crown counsel be aware of and fulfil their duty to be fair.

R. v. Lalonde (1971), 5 C.C.C. (2d) 168 (Ont. H.C.): The Crown Attorney must be firm while being fair in prosecuting the accused so that the Court will not be duped by defences which are not thoroughly examined in Court. The criminal law leaves to the Crown Attorney many discretions as to whom and what to prosecute, and the conduct of the Crown's case. Our law does not equate a good and fair Crown Attorney with a weak lawyer.

R v. Sugarman (1935), 25 Cr. App. R. 109: It cannot be too often made plain that the business of counsel for the Crown is fairly and impartially to exhibit all the facts to the jury. The Crown has no interest in procuring a conviction. Its only interest is that the right person should be convicted, that the truth should be known, and that justice should be done.

R. v. Power (1994), 89 C.C.C. (3d) 1 (S.C.C.): The Attorney General reflects through his or her prosecutorial function, the interest of the community to see that justice is properly done. The Attorney General's role in this regard is not only to protect the public, but also to honour and express the community's sense of justice. Accordingly, courts should be careful before they attempt to "second-guess" the prosecutor's motives when he or she makes a decision. Where there is conspicuous evidence of improper

motives or of bad faith or of an act so wrong that it violates the conscience of the community, such that it would genuinely be unfair and indecent to proceed, then and only then should courts intervene to prevent an abuse of process which could bring the administration of justice into disrepute. Cases of this nature will be extremely rare.

CBA Code of Professional Conduct, Chap. VIII, page 29 commentary 7: When engaged as a prosecutor the lawyer's prime duty is not to seek to convict, but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power and must act fairly and dispassionately. He should not do anything which might prevent the accused from being represented by counsel or communicating with counsel and to the extent required by law and accepted practice, he should make timely disclosure to the accused or his counsel (or to the court if the accused is unrepresented) of all relevant facts and witnesses known to him, whether tending towards guilt or innocence. The *CBA Code of Professional Conduct* has been adopted by the Law Society of Newfoundland and Labrador.

---

[1] The policies, procedure and directives set out in the Guide Book apply equally to lawyers in private practice who are employed as agents to act as Crown Attorneys.

[2] See also in this Guide Book materials related to "The Independence of the Attorney General in Criminal Matters". Agencies include law enforcement agencies such as the RCMP and RNC.

[3] See also in this Guide Book materials related to "Relationship between Crown Attorneys and the Police".

[4] Also of relevance in considering the issue of accepting a benefit are subsection 121(1)(c) of the *Criminal Code* (dealing with accepting benefits from persons having dealings with the government), section 122 of the Code (dealing with breach of trust by a public officer). See also the *CBA Code of Professional Conduct* as adopted by the Law Society of Newfoundland and Labrador.

[5] This Guide Book applies equally to lawyers in private practice who are employed as agents to act as Crown Attorneys.

[6] See also in this Guide Book materials related to “Prosecutions by the Crown against the Crown”.

[7] See also in this Guide Book materials related to "The Decision to Prosecute", for a list of public interest considerations and how they relate to the decision to prosecute.

[8] See, materials in this Guide Book on the "Relationship between Crown Attorneys and the Police".

[9] Indeed, the Supreme Court has stressed the importance of Crown Counsel's duty to maintain objectivity: see *R.* v *Regan*, 2002 SCC 12, [2002] 1 S.C.R. 227.

[10] See: *R.* v. *Shirose*, [1999] 1 S.C.R. 565 at 601; *R.* v. *Ovidio Jesus Herrera*, (21 November 1990) (Ont. Ct. G.D.) [unreported]; *Alfred Crompton Amusement Machines Ltd.* v *Commissioners of Customs and Excise, (No. 2)*, [1972] 2 All E.R. 353 at 373-85 (C.A.); *Waterford* v. *Commonwealth of Australia* (1987), 71 A.L.R. 673 (H.C.); *Idziak* v. *Minister of Justice*, [1992] 3 S.C.R. 631; *Canada (Attorney General*) v. *Sander* (1994), 90 C.C.C. (3d) 41 (B.C.C.A.). There may be situations where the privilege must yield: see *R.* v. *Gray* (1993), 79 C.C.C. (3d) 332 (B.C.C.A.); or is effectively waived, as in *R.* v. *Shirose* at 611-615. In the *R.* v. *Trang* series of decisions, 2002 ABQB 390, and again in 2002 ABQB 744, Binder J. held that the standard of proof required to establish Crown solicitor-client privilege is the balance of probabilities, i.e. it is no different than for a private lawyer and client.

[11] See *R. v. Stinchcombe* (1991), 68 C.C.C.(3d) 1 at 9-10 (S.C.C.). For guidance on this issue when involved in a criminal prosecution, also see materials in this Guide Book related to, "Disclosure".

[12] *R.* v. *Shirose*, [1999] 1 S.C.R. 565.

[13] These are sometimes referred to as "high profile" cases.

[14] See also: Marc Rosenberg, *The Ethical Prosecutor*, a paper presented at the 1991 Federal Prosecutors' Conference, and *Re Skogman and The Queen* (1984), 13 C.C.C. (3d) 161 (S.C.C.), which holds that Crown counsel are in a different position from the ordinary litigant, for they represent the public interest in the community at large. See also the section in this Guide Book related specifically to the subject of the "Conduct of Criminal Litigation".

[15] M Proulx & D. Layton, *The Prosecutor*: in Ethics and Canadial Criminal Law.

[16] See *The Ethical Prosecutor*, note 14.

[17] *Re Skogman and The Queen*, note 14.

[18] *Boucher v The Queen* (1954), 110 C.C.C. 263 at 270 (S.C.C.): "It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have 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." See also the the discussion of role of Crown counsel by former Supreme Court Justice Peter de C. Cory, in The Inquiry Regarding Thomas Sophonow (2001), at p.39. See as well the *Lamer Report (2006)* Office of The Queen's Printer NL, for an important application of this principle to three cases in this province.

[19] *Ibid.*

[20] The Supreme Court has said that vigorous Crown advocacy is "a critical element of this country's criminal law mechanism": *R. v. Cook* , [1997] 1 S.C.R. 1113 at para.21; 114 C.C.C. (3d) 481 at 489 (S.C.C.). Note however the comments and recommendations of Commissioner Lamer in his Inquiry pertaining to three cases (*Lamer Report (2006)*) regarding the proper limits of Crown Advocacy and attendant dangers of overzealousness.

[21] *Boucher v The Queen*, [1955] S.C.R. 16 at 23-24; 110 C.C.C. 263 at 270 (S.C.C.); *R.* v. *Savion and Mizrahi* (1980), 52 C.C.C. (2d) 276 at 289 (Ont. C.A.): "By reason of the nature of the adversary system of trial, a Crown prosecutor is an advocate; he is entitled to discharge his duties with industry, skill, and vigour. Indeed, the public is entitled to expect excellence in a Crown prosecutor... But a Crown prosecutor is more than an advocate, he is a public officer engaged in the administration of justice..."

[22] See also in this Guide Book materials related to "Youth Diversion".

[23] See, for example, *R.* v. *Ahluwahlia* (2000), 149 C.C.C.(3d) 193 (Ont. C.A.), where Crown counsel was criticized for having failed to investigate an allegation that a Crown witness had committed perjury at the trial.

[24] See *The Ethical Prosecutor*, note 14. See also: *Cunliffe and Bledsoe* v. *Law Society of British Columbia* (1984), 13 C.C.C. (3d) 560 (B.C.C.A.): It is extremely important to the proper administration of justice that Crown counsel be aware of and fulfill their duty to be fair. See also *Lamer Report (2006),* Office of the Queen's Printer NL.

[25] See also in this Guide Book materials related to "The Independence of the Attorney General in Criminal Matters" and "The Relationship between Crown Attorneys and the Police".

[26] See also in this Guide Book materials related to "Plea Discussions and Agreements" as well as an important discussion of this concept as it has been applied to the policies in this Guide Book related to the "Termination of Proceedings" in **Directive #4** of "Conduct of Criminal Litigation". This procedure was recommended by the *Lamer Report (2006),* Office of the Queen's Printer NL.

[27] See also in this Guide Book materials related to "Disclosure".

[28] "Tunnel vision" has been defined as "the single minded and overly narrow focus on an investigation or prosecutorial theory so as to unreasonably colour the evaluation of information received and one's conduct in response to the information." Ontario. Commission of Proceedings Involving Guy Paul Morin. Toronto: Queen's Printer, 1998, Vol.1, p.601. (The "Kaufman Report.") See also the *Lamer Report (2006)*, Office of The Queen's Printer NL and notes 25 and 37.

[29] See *The Ethical Prosecutor*, note 14.

[30] See, for example: *R.* v. *Michaud*, [1996] 3 S.C.R. 3; *R.* v. *McDonald* (1958), 120 C.C.C. 209 (Ont.C.A.); *R* v. *Murphy* (1981), 43 N.S.R. (2d) 676 (C.A.); *Moubarak* v. *R.; Elzein* v. *R.*, [1982] Que.C.A. 454; *R* v. *B. (R.B.)* (2001), 152 C.C.C. (3d) 437 (B.C.C.A.); *R.* v. *Swietlinski*, [1994] 3 S.C.R. 481.

[31] See, for example: *Pisani* v. *The Queen*, [1971] S.C.R. 738; *Tremblay* v. *The Queen* (1963), 40 C.R. 303 (Que.C.A.); *R* v. *Romeo*, [1991] 1 S.C.R. 86; *R.* v. *Charest* (1990), 76 C.R.(3d) 63 (Que.C.A.); *R.* v. *C. (R.)* (1999), 137 C.C.C. (3d) 87 (B.C.C.A.); *R.* v. *Davis* (1995) 108 W.A.C. 81 (B.C.C.A.); *R.* v. *Sheri* (2004), 185 C.C.C.(3d) 155 (Ont.C.A.).

[32] See, for example: *Grabowski* v. *The Queen*, [1971] S.C.R. 738; *Emkeit* v. *The Queen*, [1974] S.C.R. 133; *R.* v. *Huback* (1966), 48 C.R. 252 (Alta. C.A.); *R.* v. *Sutherland* (1996), 112 C.C.C.(3d) 454 (Sask.C.A.); *R.* v. *Peavoy* (1997), 34 O.R.(3d) 620 (C.A.); *R.* v. *Khan* (1998), 126 C.C.C.(3d) 353 (Man. C.A.).

[33] See, for example: *R.* v. *Labarre* (1978), 45 C.C.C. (2d) 171 (Que.C.A.); *R.* v. *Gratton* (1985), 18 C.C.C.(3d) 462 (Ont.C.A.); *Moubarak*, note 30; *R.* v. *Munroe* (1995), 96 C.C.C.(3d) 431 (Ont. C.A.) aff'd 102 C.C.C.(3d) 383 (S.C.C.); *R.* v. *Pitt* (1996), 109 C.C.C. (3d) 488 (N.B.C.A.), leave to S.C.C. dismissed 112 C.C.C.(3d) vii.

[34] See *Moubarak*, note 30. R. v. *Shchavinsky* (2000), 148 C.C.C. (3d0 400 (Ont.C.A.); *R.* v. *D.(C.)* (2000), 145 C.C.C.(3d) 290 (Ont.C.A.); *R.* v *Siu* (1998), 124 C.C.C. (3d) 301 (B.C.C.A.).

[35] See *R.* v. *Gilling* (1997), 117 C.C.C.(3d) 444 (Ont.C.A.); *Provencher* v. *The Queen* (1955), 114 C.C.C. 100 (S.C.C.); *Richard* v. *The Queen* (1957), 126 C.C.C. 255 (N.B.C.A.); *R* v. *R.R.I.* (1997), 112 C.C.C.(3d) 367 (S.C.C.); [1996] 3 S.C.R. 1124; *R.* v. *Swietlinski*, [1994] 3 S.C.R. 481; *R.* v. *Khan* (1998), 126 C.C.C. (3d) 523 (B.C.C.A.); *R.* v. *Ballony-Reeder* (2001), 153 C.C.C.(3d) 511 (B.C.C.A.) *R v. Drover [2001]N.J. #36(CA)*, *R.v. Bradbury* (2004), 243 Nfld.&P.E.I.R. 1 (NLCA)

[36] See *R.* v. *Gilling* (1997), 117 C.C.C.(3d) 444 (Ont.C.A.); *Provencher* v. *The Queen* (1995), 114 C.C.C. 100 (S.C.C.); *Richard* v. *The Queen* (1960), 126 C.C.C. 255 (N.B.C.A.); *R.* v. *R.R.I.* (1997), 112 C.C.C.(3d) 367 (B.C.C.A.).

[37] FPT Heads of Prosecution Committee, Report of the Working Group on the Prevention of Miscarriages of Justice, 2005, p.2.

[38] FPT Heads of Prosecution Committee, Report of the Working Group on the Prevention of Miscarriages of Justice, 2005, p.36, also see: The *Lamer Report (2006)* Office of the Queen's Printer NL.

[39] See *Lamer Report (2006)*, Office of the Queen's Printer NL at p.328 recommendation #11(e).