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<p>CHAPTER VI – CHAPITRE VI :</p> <p>Particular Proceedings: Specific Offences Procédures particulières : Infractions spécifiques</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 obtenir des plus amples renseignements.</p>	

IMPAIRED OPERATION

1. Introduction

Impaired operation offences are prevalent and pose a significant threat to public safety. The purpose of this Policy is to ensure that the offences under sections 320.14 and 320.15 of the *Criminal Code* are prosecuted fully and effectively to help reduce the incidence of the impaired operation of conveyances.

2. Charge Approval

The usual charge approval standard applies to impaired operation offences. A charge should be approved where there is a reasonable prospect of conviction and a prosecution is in the public interest. Because the commission of an impaired operation offence poses a significant threat to public safety, a prosecution will almost always be in the public interest.

Before approving a charge for an impaired operation offence, in addition to reviewing all the evidence, the Crown Prosecutor shall do the following:

- (a) obtain from the New Brunswick Justice Information System (JIS) and review the accused person's criminal history;
- (b) review any criminal record (ex: CPIC) and Abstract of Driving Record provided by the police; and
- (c) ensure that the accused has been served with a Notice of Intention regarding greater penalty.

The Crown Prosecutor shall approve a charge under section 320.14(1)(b) where the evidence establishes that the accused person consumed alcohol in such a quantity that the concentration in the person's blood was equal to or exceeded 80 mg of alcohol in 100 ml of blood.

The Crown Prosecutor shall approve a charge under section 320.14(1)(d) where the evidence establishes that the concentrations in the person's blood were equal to or exceeded 50 mg of alcohol in 100 ml of blood and at least 2.5 nanograms of THC per milliliter of blood **for instances where alcohol and THC are combined.**

3. Alternative Charging

Where more than one proposed charge under **sections 320.14 and 320.15 meet** the charge approval standard, the following procedure shall be followed:

1. The Crown Prosecutor shall approve all such charges and ensure that they are laid in one Information.
2. Where the accused enters a guilty plea on one of the approved charges, the Crown Prosecutor shall proceed to sentencing as soon as practicable on that charge, and once sentencing has been completed, proceed to withdraw any alternative charges.
3. Where the accused enters a not guilty plea and a trial is held, the Crown Prosecutor shall ask the court to adjudicate on all charges.
4. After trial, where the court finds the accused guilty in respect of more than one charge, the Crown Prosecutor shall ask the court to enter a conviction on the charge that the Crown considers the most aggravating and a conditional judicial stay on each of the remaining charges. Each stay shall be conditional on the final disposition of the charge(s) for which the conviction(s) was/were entered, such that the stay will be lifted if the accused successfully appeals the conviction, but will become permanent if an appeal taken by the accused is dismissed or if the accused does not appeal within the time prescribed for an appeal to be taken.
5. Where the accused appeals the conviction, the Crown Prosecutor shall ensure that the accused is served with a notice advising that, should the appeal be successful, the Crown will seek that a conviction be entered on all the charges that were stayed. The Crown Prosecutor shall ensure that the accused is served with this notice before the date of the appeal hearing or, if that is not possible, at the appeal hearing.
6. If an appeal court quashes the conviction and enters an acquittal, the Crown Prosecutor shall ask the court to enter a conviction on all of the charges that were conditionally stayed, and shall advise the court that the onus is on the accused to establish that a conviction should not be entered.

4. Mandatory Minimum Penalties and Notices of Intention

The *Criminal Code* imposes mandatory minimum penalties for second and subsequent impaired operation offences. A court will not impose such a mandatory minimum penalty unless it is satisfied, by the Crown Prosecutor, that the accused was notified, prior to plea, that a greater penalty would be sought. This requirement applies to both increased mandatory minimum terms of imprisonment (sections 320.19, 320.2 and 320.21) and mandatory minimum orders of prohibition (section 320.24).

4.1 Where Notice of Intention Is to be filed

Where an accused is convicted of a second or subsequent impaired operation offence, the Crown Prosecutor shall, unless in situations described in par. 4.2, file the Notice of Intention and seek a greater penalty where one of the following conditions is met:

- (a) the current offence involves serious injury or death and the sentencing date for the previous conviction is within the fifteen (15) years immediately preceding the date on which the current offence was committed; or
- (b) the current offence does not involve serious injury or death and the sentencing date for the previous conviction is within the five (5) years immediately preceding the date on which the current offence was committed.
- (c) Where exceptional circumstances exist, the Crown Prosecutor may, with the consent of the Regional Director or the Executive Director and note the reasons on file, file the Notice of Intention where the sentencing date for the most recent previous conviction is outside of the relevant period established by (a) or (b).

In determining if exceptional circumstances exist, the Crown Prosecutor shall consider the following factors:

- (i) whether the current offence resulted in death, serious injury, or extraordinary property damage;
- (ii) whether the concentration of alcohol in the accused person's blood exceeded 160 milligrams of alcohol in 100 millilitres of blood;
- (iii) the number of previous convictions for impaired operation offences;
- (iv) the length of time between the current offence and any such previous convictions;
- (v) the pattern of previous convictions, including any "gaps" in the record; and
- (vi) the sentences that have been imposed on the accused for previous impaired operation offences

4.2 Where Notice of Intention is not to be filed

The Crown prosecutor may refrain from filing the Notice of Intention where the sentencing date for a previous conviction is within that relevant period described in par. 4.1 if exceptional circumstances exist in light of the following factors:

- (a) whether the accused has established, to the satisfaction of the Crown Prosecutor, that he or she has significant health problems;
- (b) whether there are other compassionate grounds; and
- (c) where there is a victim, whether the victim strongly opposes the incarceration of the accused.

Before refraining from filling the Notice of Intention, the Crown Prosecutor shall obtain the consent of the Regional Director or the Executive Director, as the case may be, and note the reasons in the file.

4.3 All Prior Convictions to Be Counted

The Crown Prosecutor shall at the very least seek the minimum penalty appropriate to the number of previous impaired operation convictions, regardless of whether a mandatory minimum penalty was imposed on the accused in respect of any such conviction.

5. Sentencing and Plea Resolution

The policies set out in Policy 30, Sentencing and Plea Resolution apply to impaired operation offences, except insofar as they conflict with this section of this Policy.

At sentencing the Crown Prosecutor shall file as an exhibit a record of the relevant criminal history of the accused, regardless of whether the Crown Prosecutor intends to file a Notice of Intention in respect of an intention to seek a greater penalty for a second or subsequent impaired operation offence.

5.1 Plea Resolution

The Crown Prosecutor shall not agree, as part of a plea resolution agreement, to do any of the following:

- (a) refrain from filing a Notice of Intention regarding greater penalty, unless there are exceptional circumstances as described in this Policy;
- (b) refrain from filing a record of the criminal history of the accused; or

- (c) withdraw an impaired operation charge in exchange for a guilty plea in respect of an offence under the *Motor Vehicle Act*.

5.2 Incarceration

Where an accused who has no previous conviction for an impaired operation offence is convicted of an offence under section 320.14 of the *Criminal Code*, the Crown Prosecutor shall consider seeking a short term of incarceration where one of the following conditions is met:

- (a) the concentration of alcohol in the accused person's blood exceeded 160 milligrams of alcohol in 100 millilitres of blood; or
- (b) there are other significant aggravating factors.

5.3 Minimum absolute prohibition period – alcohol ignition interlock program - 320.24(10).

Where aggravating circumstances exist, including but not limited to those listed in subsection 320.22, the Crown Prosecutor shall consider seeking an absolute prohibition period longer than the minimum prescribed in subsection 320.24(10).

6. Forfeiture of Vehicles

In certain circumstances a court may order that a vehicle used in the commission of an indictable impaired operation offence be forfeited to the Crown.

Where the Crown Prosecutor reviews a charge for an indictable impaired operation offence, the Crown Prosecutor shall consult with the Proceeds of Crime Counsel to determine the appropriate course of action.

Where the Crown Prosecutor and the Proceeds of Crime Counsel disagree about whether to seek forfeiture, the matter should be referred to the Regional Director and the Executive Director to determine the appropriate course of action. Where the Regional Director and the Executive Director disagree about whether to seek forfeiture, the matter should then be referred to the Director of Public Prosecutions to determine the appropriate course of action.

Where a determination has been made to seek forfeiture of a vehicle, the Crown Prosecutor shall inform the Proceeds of Crime Counsel of any trial or sentencing dates.

The Crown Prosecutor shall obtain the consent of the Regional Director or the Executive Director, as the case may be, before agreeing not to seek forfeiture of a vehicle as part of a plea resolution agreement. For more information, see Policy 30, Sentencing and Plea Resolution.

7. Delay of sentencing – Treatment program – 320.23

In accordance with section 320.23, there is no "treatment program approved by the province" in New Brunswick. Therefore, the Crown Prosecutor is precluded from consenting to any request to delay sentencing to attend such a program.

8. Release on Undertaking

Where the accused applies to delay in sentencing for any reason, the Crown Prosecutor shall ask the court to release the accused on an undertaking that includes the following conditions:

- (a) the accused surrenders his or her driver's licence;
- (b) the accused is not to operate the conveyance in question;
- (c) the accused is not to consume alcohol, cannabis, any illegal or non-prescribed drugs.

9. Related Document

Policy 11	Pre-charge Screening
Policy 12	Proceeds of Crime and Offence-related Property
Policy 26	Pre-plea Notice Requirements
Policy 30	Sentencing and Plea Resolution

Revised – September 23, 2019