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<p>CHAPTER II – CHAPITRE II : The Decision to Prosecute Décision d’engager une poursuites</p>	<p>Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p>	

LEGAL ADVICE TO POLICE

1. Introduction

The purpose of providing legal advice to the police and other investigative agencies is to aid in the gathering of evidence in a manner that respects the *Charter of Rights and Freedoms* and other legal principles, and to identify to the police and other investigative agencies evidence that will be required to conduct the pre-charge screening and present the best possible case should a trial ensue.

2. Responsibility for Investigations

The conduct of any investigation is the sole responsibility of the police or other investigative agency. The police and investigative agencies do not require authorization from the Crown before commencing an investigation, nor can the Crown direct or discontinue an investigation.

The involvement of the Crown Prosecutor during the investigative stage is, with few exceptions, not required as a matter of law. Yet, in practice, given the complexity of the simultaneous application of criminal, evidentiary and constitutional law frequently involved in investigations, timely and effective consultation between the police, other investigative agencies and the Crown Prosecutor is necessary to ensure the proper administration of justice.

3. Consultation and Advice

In most cases it is appropriate for the Crown Prosecutor to provide legal advice to a police officer or other investigative agent upon request. When providing such advice, the Crown Prosecutor should comply with the following provisions:

- (a) be mindful of the risk, and avoid being inadvertently drawn into the investigative process in a manner that leads to an actual or perceived loss of objectivity;
- (b) ask the police officer or investigative agent inquiring whether he or she has already consulted with another Crown Prosecutor respecting the matter, and, if so, discourage the practice of obtaining advice from multiple Crown Prosecutors;
- (c) only provide advice on matters necessary to pursue the investigation, and only provide information that is not reasonably available within the agency involved;
- (d) obtain all the information that is necessary to give appropriate advice, and, where circumstances permit, retain a copy of any information provided to the Crown Prosecutor;

- (e) emphasize that the police officer or investigative agent who sought the advice is free to accept or reject it; and
- (f) in the event that the Crown Prosecutor is requested to attend a crime scene, avoid becoming involved in the chain of possession of seized items.

The Crown Prosecutor shall document any advice given as well as the basis upon which it was given on a Public Prosecution Services Legal Advice Form, a sample of which is included in Appendix A, a copy of which shall be maintained.

Where the advice cannot be readily provided or has province-wide implications, the request should be referred to the Regional Director or the Director of Specialized Prosecutions for consideration or referral to an appropriate Crown Prosecutor. Where the Regional Director or the Director of Specialized Prosecutions must select an appropriate Crown Prosecutor to provide the advice, he or she should be mindful of the possibility that the Crown Prosecutor providing the advice may become a witness in an ensuing trial, and, as such, could not prosecute charges arising from the investigation.

In order to maintain confidentiality and security respecting the identity of a person who is the subject of an investigation, and to ensure the security of an investigation, the Crown Prosecutor shall not reveal the fact of an ongoing investigation, or details of it, other than on a need-to-know basis.

3.1 Warrants

The Attorney General has requested that police and investigative agents consult with the Crown Prosecutor before presenting an Information to Obtain a warrant to the court. This is to ensure the sufficiency of the content in applications for various kinds of warrants. Where the Crown Prosecutor is asked to provide such assistance, he or she shall do so pursuant to Policy 8, Judicial Pre-authorizations.

3.2 Preliminary Opinions

Occasionally, a police officer or another investigative agent will ask the Crown Prosecutor to consider whether a charge would likely be approved without submitting a full report or a court brief. In some cases it may be appropriate for the Crown Prosecutor to provide a preliminary opinion on the viability of a prosecution, but ordinarily, the Crown Prosecutor should decline to provide an opinion in such circumstances, particularly where the potential charge is serious, the case is complex, or the likelihood of conviction is highly dependent upon credibility.

Where a Crown Prosecutor provides a preliminary opinion, he or she should clearly advise the recipient that the advice provided does not constitute a pre-charge screening or charge assessment.

3.3 Case-specific Advice

When providing case-specific advice, the Crown Prosecutor must be careful not to become unduly involved in the investigation. It is inappropriate for the Crown Prosecutor to advise the police or other investigative agencies how to conduct an investigation or whether to continue an investigation. The Crown Prosecutor shall provide case-specific advice only where he or she receives the request in writing, and shall provide the requested advice in writing, unless doing so is impractical.

Case-specific advice provided to the police or other investigative agencies may do the following things:

- (a) touch upon weaknesses in the case;
- (b) speak to potential difficulties with the prosecution of the case, if charges are laid; and
- (c) suggest how to strengthen the case.

3.4 General Advice

Where the Crown Prosecutor provides general advice that does not relate to a particular case, the Crown Prosecutor shall take the following measures:

- (a) clearly advise the police officer or investigative agent that the advice is general in nature and is not meant to apply to a particular investigation;
- (b) limit advice given to matters falling within his or her own expertise and experience; and
- (c) avoid giving the recipient advice in regard to civil liability, which is beyond the mandate of a Crown Prosecutor.

4. Related Documents

Policy 8	Judicial Pre-authorizations
Policy 11	Pre-charge Screening