



*Manitoba
Department of Justice
Prosecutions*

Guideline No. 2:PRO:1.1

Policy Directive

*Subject: Prosecution of Police Officers
Date: March 2020*

POLICY STATEMENT:

The purpose of this policy is to ensure public confidence in the administration of justice by mandating enhanced procedures where the prosecution of police officers is concerned. Manitoba Prosecution Service Crown Attorneys zealously guard against actual or perceived conflict in all cases. Further measures to augment process and procedure where a police officer is alleged to have committed an offence will enhance confidence with respect to the impartiality, effectiveness and fairness of the proceedings.

Criminal Code and Provincial Act prosecutions of police officers who are alleged to have committed an offence will most often be conducted by Manitoba Prosecution Service Crown Attorneys. Manitoba Prosecution Service Crown Attorneys are the most experienced and trained prosecutors of Criminal Code and Provincial Act offences in Manitoba and are charged with prosecuting serious cases regardless of the position of the accused in the community. This would normally include police officers.

It must be recognized however that there may be cases where the overall circumstances surrounding the commission of the offence or the person(s) involved might give rise to an informed public having reasonable concern about the overall fairness of the prosecution if conducted by Provincial Crown Attorneys. The likelihood of a perception of concern is related to the real or perceived closeness of the professional, personal, or in some cases, the geographic connection between the accused police officer and the Crown Attorney with conduct of the prosecution.

Where it is proposed that criminal charges be laid against a police officer, whether on active duty at the time of the incident or not, decisions related to the prosecution must be seen to be made on a principled basis by Crown Attorneys with no personal connection to the accused person. Normally this public confidence can be assured through prosecution by a provincial Crown Attorney from a geographically separate area of the province who has no previous association with the accused or officers who may have been witnesses to the offence. In addition, the Crown Attorney with conduct of the case shall not have had a history of regular, ongoing involvement with the police office with whom the accused has been employed.

However, there may be some cases that the criteria of a geographic separation will not apply. This may occur in instances where a specialized area of knowledge and experience within Manitoba Prosecution Service may be required. This may dictate a need for a senior prosecutor in the category of a Manitoba Prosecution Service General Counsel, to assume conduct.

Some examples of a specialized area of knowledge and experience may be, but not limited to sexual, criminal organization, firearm or child abuse cases.

If there has been an assessment by the appropriate Director that General Counsel are to be assigned, there must be consultation with and approval granted by the Executive Director for this to occur.

In these circumstances, there will be a requirement for a mandatory case conference, with review by senior prosecutors prior to any final determination regarding possible charges or resolution of a prosecution. The membership of the case conference review committee must include at minimum: the Executive Director and the Director of Regional Prosecutions or Director of Winnipeg Prosecutions as is appropriate.

In some circumstances, the nature of the offence or the position of the officer(s) may result in a determination that independent counsel should be appointed in order to ensure that the informed public will have confidence that the prosecution will be fair and unbiased in perception as well as practice. Where it is determined that independent counsel is required, the decision regarding the counsel to be employed will be guided by the Policy Directive on *Appointment of Independent Counsel* [Guideline No. 5:COU:1]. The options will include private practitioners from within Manitoba, Crown Counsel from other Provinces, or private bar lawyers from another jurisdiction in very rare circumstances.

An act or omission by a peace officer in the course of duty can be the basis for an Inquest being called. The same considerations which apply to peace officers who are charged with criminal or quasi-criminal offences, may apply in these situations as well. Decisions as to who is appointed as counsel to an Inquest involving peace officer acts or omissions is also guided by the *Appointment of Independent Counsel* [Guideline No. 5:COU:1].

Investigations by the Independent Investigation Unit (IIU)

The Province of Manitoba has legislated an Independent Investigation Unit (IIU) whose mandate is to investigate all cases where a death or serious injury has occurred as a result of a police officer's actions. In addition, the Province of Manitoba requires the IIU to investigate other serious allegations that are set in regulations under the enabling legislation. For all other complaints about unlawful acts by an on or off-duty police officer, the IIU must be notified and will have the option of assuming conduct of the investigation, monitoring it, or permitting the police service of jurisdiction to retain the conduct of the investigation.

Investigations that are conducted by the IIU will ultimately be reviewed by the Civilian Director to consider the laying of an Information as a result of the investigation. Where the Director has considered the laying of an Information, or, in exigent circumstances, has laid an Information, the

particulars of the allegation shall be referred to Manitoba Prosecution Service for review. The review shall be for the purpose of determining whether the facts and circumstances support possible prosecution pursuant to the charging guidelines in the *Laying and Staying of Charges*. (Guideline No. 2:INF:1.1)

It is recognized that serious allegations of police officer misconduct are often highly contentious due to the role of police officers in society, the harmful impact to the victim or community, and the nature of the offence. Where cases from the IIU are referred for charge assessment and it is determined that Manitoba Prosecution Service will review the case, a twostep process will be employed in order to ensure public confidence. In addition to the requirements that the reviewing Crown Attorney have no previous association as well as in some cases, geographic separation from the affected officer(s), the allegations must also be the subject of a case conference with review by senior prosecutors prior to any final determination regarding possible charges. The membership of the case conference review committee must include at minimum: the Director of Regional Prosecutions or Director of Winnipeg Prosecutions as is appropriate, General Counsel, the Supervising Senior Crown Attorney or designate from the region or unit of the reviewing prosecutor, and the Crown Attorney(s) who conducted the initial review.

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In these circumstances, there will be a requirement for a mandatory case conference, with review by senior prosecutors prior to any final determination regarding possible charges or resolution of a prosecution. The membership of the case conference review committee must include at minimum: the Executive Director and the Director of Regional Prosecutions or Director of Winnipeg Prosecutions as is appropriate.

If an allegation has been referred to independent counsel the case conference review will not be required as the final determination regarding possible charges is obliged to be made by the outside counsel pursuant to Crown Policy Guideline No. 5:COU:1 *Appointment of Independent Counsel*, which was adopted verbatim from page 108 of the Taman Inquiry. They indicate the following: “*Independent prosecutors should not consult with Department of Justice officials before making decisions but may secure legal assistance from Department of Justice officials who have special expertise in the area being prosecuted ...*” It is to be highlighted that the fact that a matter has been reviewed internally for a determination of charges does not preclude the matter from being referred to independent counsel at any later stage of the proceedings where it is deemed appropriate.

RATIONALE

The special circumstances involved in the investigation of possible serious police officer misconduct have been recognized by the Province of Manitoba through the enactment of legislation that has created the Independent Investigation Unit. Additional process and procedure in the review and prosecution of alleged offences where police officers may be involved will ensure the informed public has confidence in the administration of the justice system.