



*Manitoba
Department of Justice
Prosecutions*

Guideline No. 5:PRI:1

Policy Directive

*Subject: Private Prosecutions
Date: March 2010*

POLICY STATEMENT:

All private prosecutions are subject to the scrutiny of the Attorney General. In assessing whether a private prosecution should proceed, Crown Attorneys should be guided by the same charging standard that applies to criminal charges initiated by the police. That is:

1. Is there a reasonable likelihood of conviction, and
2. Is it in the public interest to proceed with the prosecution?

PROCEDURE:

Crown Attorneys should be guided by the following considerations:

The Criminal Code

- Section 579(1) authorizes the Crown to enter a stay of proceedings on any criminal charge, including a private prosecution.
- Section 507.1 requires that the Crown be notified of potential private prosecutions. In Winnipeg, the Supervising Senior Crown in the Domestic Violence Unit should be notified of private prosecutions that allege acts of domestic violence. The Supervising Senior Crown in the Youth Unit should be notified of private prosecutions that allege acts by youths. Notice concerning all other private prosecutions arising from Winnipeg should be referred to the Supervising Senior Crown who has been designated for that purpose. In regional offices, notification should be to the Supervising Senior Crown in that area. The Supervising Senior Crown to whom notice is given is expected to consider the merits of the case and make a decision as to whether it is appropriate for the private prosecution to proceed.

Applying the charging standard

- The Crown should not be overzealous in intervening to stay proceedings in private prosecution matters. Allowing a private citizen to bring an allegation of criminal wrongdoing before the court is an important aspect of our legal system. Denial of that opportunity raises access to justice issues.
- The primary concern of the Crown Attorney in evaluating a private prosecution is to assess whether it is either vexatious or without an evidentiary basis that would

support a conviction. In either of these situations, a stay of proceedings is called for.

Options open to the Crown

- Stay of proceedings. This is appropriate where the circumstances of the case do not meet the charging standard.
- Allow the private prosecutor to proceed.
- The Crown takes over the prosecution.
 - a) The Crown would be expected to take over a private prosecution if the case is one where the Crown would normally have prosecuted had the case been brought to its attention earlier. Other reasons would include where the case meets the charging standard and is serious, complex or involves an incident where an indictable offence could be charged.
 - b) There can be situations where the Crown will decide to take over the prosecution but it will be necessary to appoint independent counsel to conduct the prosecution, e.g. where the accused is a police officer. See the policy on Appointment of Independent Counsel (5:COU:1) for guidance as to when an independent prosecutor is required.

Private Prosecutions versus Peace Bonds.

- The Crown is expected to be involved in reviewing potential private prosecutions. That involvement may even extend to taking over the prosecution in some situations. The situation is very different where a private citizen applies to the court for a recognizance under s. 810. The Crown should generally not become involved in that process.

RATIONALE:

As the "guardian of the public interest," it is incumbent on the Attorney General (and the Crown Attorneys who carry out the work of the Attorney General) to oversee the charges that are brought before the courts to ensure that individuals are not harassed by vexatious criminal allegations where there is no reasonable likelihood of conviction.