



*Manitoba  
Department of Justice  
Prosecutions*

*Guideline No: 1:RAG:1*

*Policy Directive*

*Subject: Role of the Attorney General  
Date: August 2017*

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**POLICY STATEMENT:**

The Attorney General holds a protected constitutional role that was historically defined through practice but since the 1980s has been more specifically defined through Supreme Court jurisprudence. There are three important constitutional conventions that govern the office of the Attorney General:

- In the exercise of the prosecution function, the Attorney General acts independently of cabinet.
- In the exercise of the prosecution function, the Attorney General is independent of Parliament and the legislature.
- The police enjoy independence from the Attorney General in the investigation of individual cases and the Attorney General enjoys independence from the police in the prosecution function.

The first of these constitutional principles was most recently reaffirmed by the Supreme Court of Canada in *Krieger v. The Law Society of Alberta*, 2002 SCC 65 at para.3 where the Court unanimously concluded that:

It is a constitutional principle in this country that the Attorneys General must act independently of partisan concerns when exercising their delegated authority to initiate, continue or terminate prosecutions.

The Court explained in *Krieger* that this constitutional doctrine requires the Attorney General to make decisions in accordance with the rule of law since adherence to the rule of law is fundamental to our Constitution and the hallmark of a free society; *Krieger* at para.32.

The second principle of independence from Parliament and the legislature is very closely related to the first and is another means in which independence is preserved. It avoids political pressure being brought on the Attorney General by allowing the Attorney General to refuse to answer any questions in the House regarding a specific prosecution

before the case is completed. The Attorney General may be called upon to explain a decision after a case is finally dealt with.

The third convention relies on two complementary principles of independence; the police enjoy independence from the Attorney General in the investigation of individual cases and the Attorney General enjoys independence from the police in the prosecution function. This convention was recognized by the Supreme Court in *R. v. Regan*, 2002 SCC 12 where LeBel, J. concluded that “the separation of police and Crown roles is a well-established principle of our criminal justice system”; *Regan* at para.71.

In order to avoid any semblance of political interference, all Attorneys General in Canada have instituted institutional safeguards to protect the integrity of prosecution decisions. While the Attorney General stands at the apex of the administration of justice, the daily exercise of prosecutorial discretion is carried out by Crown attorneys. Crown attorneys are required to exercise a quasi-judicial function and meet the obligations set out in *The Crown Attorneys Act* C.C.S.M. C330. The Assistant Deputy Attorney General is charged with the administration of the Manitoba Prosecution Service and has independent authority for the conduct and supervision of all criminal prosecutions. Crown attorneys are supervised through their management and the Attorney General usually chooses not to become involved in individual cases. However, if the Attorney General seeks to be briefed on a pending prosecution that is his or her prerogative. The Attorney General would not be accompanied by any political staff during such a briefing.

Given that the Attorney General chooses not to get involved in individual cases, the Attorney General’s primary role and responsibility in criminal matters is to establish broad policy guidelines for Crown counsel to apply. These are generally supplemented by procedures and guidelines established by the department. Together, such policies, procedures and guidelines make the exercise of prosecutorial discretion more transparent and just. They support consistent decision-making which in turn furthers equal protection and equal benefit of the law.

In fulfilling this function, the Attorney General has endorsed these policies to guide the exercise of discretion by Crown attorneys employed by Manitoba Prosecutions Service. It is understood that these policies will be supplemented by procedures and guidelines developed by Prosecutions to further ensure high-quality and consistent decision-making across the department.