

EDUCATING/ENGAGING NEW COUNCILS ABOUT LICENSING ENFORCEMENT ISSUES

A PROSECUTOR'S PERSPECTIVE

AMCTO 2019 Municipal Licensing and Law Enforcement Forum

Stuart Huxley, Senior Legal Counsel, Ottawa

Stuart.Huxley@Ottawa.ca

May 24, 2019 @ Mississauga

***The content of this presentation is for general information purposes only and shall not be construed in any way as legal advice. The content and views are those of the presenter and may not necessarily be those of the City of Ottawa or AMCTO.**



BOUCHER V. THE QUEEN, [1954] SCC

The Role of the Prosecutor:

“It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength but it must also be done fairly. The role of prosecutor excludes any notion 'of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.”

Source: <https://www.canlii.org/en/ca/scc/doc/1954/1954canlii3/1954canlii3.pdf>

KRIEGER V. LAW SOCIETY OF ALBERTA, [2002] 3 SCR 372

Paragraph 32 of its decision:

“...The quasi-judicial function of the Attorney General cannot be subjected to interference from parties who are not as competent to consider the various factors involved in making a decision to prosecute. To subject such decisions to political interference, or to judicial supervision, could erode the integrity of our system of prosecution. Clearly drawn constitutional lines are necessary in areas subject to such grave potential conflict.”

Source: Krieger v. Law Society of Alberta, [2002] 3 SCR 372, 2002 SCC 65 (CanLII), <<http://canlii.ca/t/51rs>>

RULES OF PROFESSIONAL CONDUCT (LAWYERS)

Duty as Prosecutor

5.1-3 When acting as a prosecutor, a lawyer shall act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

Commentary

[1] When engaged as a prosecutor, the lawyer's prime duty is not to seek to convict but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power and must act fairly and dispassionately. The prosecutor should not do anything that might prevent the accused from being represented by counsel or communicating with counsel and, to the extent required by law and accepted practice, should make timely disclosure to defence counsel or directly to an unrepresented accused of all relevant and known facts and witnesses, whether tending to show guilt or innocence.

Source – Law Society of Ontario: Rules of Professional Conduct

<https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/complete-rules-of-professional-conduct>

PARALEGAL RULES OF CONDUCT

Duty as Prosecutor

(5.1) When acting as a prosecutor, a paralegal shall act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

Source: Law Society of Ontario, Paralegal Rules of Conduct

<https://lso.ca/about-lso/legislation-rules/paralegal-rules-of-conduct>

MOU WITH MAG

No political intervention

2.1.7: The entire justice process, from the laying of charges through to final disposition of appeals, shall continue to operate independently and free from political intervention.

Prosecutorial Standards

...prosecutors' exercise of discretion is not influenced by any person or body including:

- members of council,
- policing and other enforcement agencies,
- and municipal financial officers.

PROVINCIAL OFFENCES ACT – CONFLICT OF INTEREST POLICY (OTTAWA)

...

WHEREAS the administration of the Provincial Offences Court by the Municipal Partner pursuant to the Transfer Agreement must be conducted in accordance with fundamental principles of justice, which include judicial and prosecutorial independence, fairness, impartiality, competence and integrity;

...

1.2 No person shall attempt to influence or interfere, either directly or indirectly, financially, politically or otherwise with employees, officers or other persons performing duties under the transfer Agreement.

...

5.1 All elected representatives of the City of Ottawa shall be provided with a copy of this policy following the conduct of a regular or by-election

- <http://ottawa.ca/en/city-hall/your-city-government/policies-and-administrative-structure/provincial-offences-act>

CODE OF CONDUCT FOR MEMBERS OF COUNCIL – OTTAWA

Municipal Act, 2001 Code of conduct

223.2 (1) A municipality shall establish codes of conduct for members of the council of the municipality and of its local boards. 2017, c. 10, Sched. 1, s. 18.

City of Ottawa Code of Conduct for Members of Council

IMPROPER USE OF INFLUENCE

8(2) In the same manner, and as outlined in the *Provincial Offences Act – Conflict of Interest Policy*, Members of Council shall not attempt to influence or interfere, either directly or indirectly, financially, politically or otherwise with employees, officers or other persons performing duties under the *Provincial Offences Act*.

Source: City of Ottawa By-law 2018-400

SAMPLE TEXT OF A RESPONSE 1/2

Dear [Resident]:

I understand from your email of [date] that you are currently subject to a prosecution under the *Provincial Offences Act*. You have requested my intervention in relation to this prosecution matter. At the outset, I wish to be very clear with you that I have not, nor will I intervene in a matter that is before the Courts.

I can advise that pursuant to my obligations under the Code of Conduct for Members of Council, it would be inappropriate and contrary to Section V (Improper Use of Influence), for me to intervene in this matter. Specifically, Subsection 8(2) of the Code of Conduct provides:

8(2) In the same manner, and as outlined in the *Provincial Offences Act – Conflict of Interest Policy*, Members of Council shall not attempt to influence or interfere, either directly or indirectly, financially, politically or otherwise with employees, officers or other persons performing duties under the *Provincial Offences Act*.

Furthermore, it has been confirmed to me the longstanding Canadian legal principal that recognizes the fundamental importance of the separation of politics from the administration of justice. Keystones of Canada's justice system is the independence of both the prosecution function and the judiciary. (**continued**)

SAMPLE RESPONSE CONT. 2/2

I note that all municipal elected representatives recognize the independent function of the court process formally through the Transfer Agreement with the Ontario Ministry of the Attorney General, which downloaded to the City the responsibility over the administration and prosecution of *Provincial Offences Act* matters.

Through such an agreement and through the Municipal Conflict of Interest Policy made in relation to the *Provincial Offences Act*, the City of Ottawa explicitly recognizes the fundamental principle of the independence of both the prosecution and the judiciary. More specifically, the Policy provides that “no person shall attempt to influence or interfere, either directly or indirectly, financially, politically, or otherwise” with the prosecution function.” A copy of the Policy is available at: <https://ottawa.ca/en/city-hall/your-city-government/policies-and-administrative-structure#provincial-offences-act-conflict-interest-policy>

I trust that you will understand that my position as City Councillor precludes me from becoming involved in such prosecution and court matters.

If you have not already done so, you may wish to consider seeking your own independent legal advice on your matter. I am advised that the Law Society of Ontario provides for a legal referral service at <https://lsrs.lsuc.on.ca/lsrs/> In addition, the following weblink from the Ministry of the Attorney General sets out helpful information on the *Provincial Offences Act* process:

<http://www.ontariocourts.ca/ocj/self-represented-parties/guide-for-defendants-in-provincial-offences-cases/guide/>.

OTHER HELPFUL PROSECUTION RESOURCES

- **Ontario: Crown Prosecution Manual -Criminal Law Division – Ministry of the Attorney General**
 - https://files.ontario.ca/books/crown_prosecution_manual_english_0.pdf
- **Public Prosecution Service of Canada Deskbook:**
 - <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/index.html>
- **Law Society Rules of Conduct**
 - <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>
 - <https://lso.ca/about-lso/legislation-rules/paralegal-rules-of-conduct>

