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CHAPTER V – CHAPITRE V : Witnesses and Victims Témoins et victimes	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.	

WITNESSES

1. Introduction

Witnesses should be treated with courtesy, compassion, and respect. The Crown Prosecutor shall provide appropriate information and support to witnesses as the circumstances require. The Crown Prosecutor shall ensure that any interaction he or she has with a witness, does not amount to altering, subverting, suppressing, or tainting the witness' evidence.

2. Scope of the Policy

This Policy provides specific guidance to the Crown Prosecutor in the treatment and support of witnesses, including those witnesses who are victims. It also outlines the policy for conducting pre-trial interviews with witnesses.

It does not apply to deciding whether to engage an expert witness, which is discussed in Policy 37, Expert Witnesses. It also does not apply to the return of witnesses, which is discussed in Policy 36, Out-of-Province Witnesses.

3. Provision of Information and Support to Witnesses

3.1 Role of the Crown Prosecutor

The Crown Prosecutor should ordinarily speak with the witness prior to his or her testimony, in order to

- (a) explain the role of the witness, Crown Prosecutor, and defence counsel;
- (b) explain the trial process;
- (c) assess the witness' reliability;
- (d) instruct the witness to testify truthfully;
- (e) ensure that the witness has been given the opportunity to review his or her statement before testifying; and
- (f) attempt to answer any questions the witness may have.

3.2 Aids to Trial Testimony

The *Criminal Code* provides measures that can be used in particular cases to increase the comfort and security of witnesses. It is the responsibility of the Crown Prosecutor to consider whether any of these measures are available and appropriate in a given case, and to seek to rely on them accordingly. Such measures include the following:

- (a) services of a support person;
- (b) use of a screen or closed circuit television;
- (c) use of pre-recorded video evidence;
- (d) use of affidavit evidence;
- (e) *in camera* proceedings;
- (f) an order banning publication that might identify the witness; and
- (g) an order preventing personal cross-examination of the witness by the accused.

3.2.1 Other Considerations

The Crown Prosecutor may encounter witnesses whose circumstances require special consideration or accommodation, as, for example, where the witness' physical ability or language capacity is limited. Such situations require the Crown Prosecutor to plan ahead in order to eliminate barriers that might impede the witness' participation in court proceedings.

3.3 Witnesses Who Are Victims

The Crown Prosecutor shall ordinarily speak with a witness who is a victim prior to his or her testimony and shall bear in mind that a witness who is a victim may have concerns particular to that class of witnesses. Where a witness who is a victim expresses such concerns, the Crown Prosecutor shall endeavor to provide information sufficient to resolve the witness' concerns.

3.3.1 Victim Services Program

Prior to speaking to the Crown Prosecutor, a victim will often speak to an employee of the Victims Services Program of the Department of Public Safety, who can provide information to the victim about the court proceedings and the role of victims in such proceedings.

Where the victim has not spoken with an employee of the Victim Services Program prior to speaking with the Crown Prosecutor, the Crown Prosecutor should advise the victim of the availability of the Victims Services Program and any other victims' services provided by the police or the community, where applicable, as early in the process as possible. For more information see Policy 33, Victims.

3.3.2 Considerations Respecting Certain Witnesses Who Are Victims

While the needs and circumstances of each victim are unique, following are some general considerations the Crown Prosecutor should bear in mind in certain cases.

3.3.2.1 Victims of Intimate Partner Violence

Where the offence is one involving intimate partner violence, victims often request that a prosecution be discontinued, recant their allegations, refuse to testify, or fail to appear for trial. For more information see Policy 45, Intimate Partner Violence and the *New Brunswick Woman Abuse Protocols*.

3.3.1.2 Child Victims

Where the victim is a child, communication and protection take on special importance. The Crown Prosecutor shall consider using special measures to communicate with a child in a manner that helps ensure that the child understands what is being said. For example, the Crown Prosecutor shall seek to use language appropriate to the maturity of the child, and shall consider conducting interviews with the child in a place and manner most likely to achieve the child's comfort and security. The Crown Prosecutor shall always adopt practices that maximize, not only the safety of a child victim, but also the child's perception of safety. Any interview with a child shall be in the presence of another adult. For more information, see the *New Brunswick Child Victims of Abuse and Neglect Protocols*.

3.3.1.3 Victims of Sexual Offences

Where the offense is one that violates the victim's sexual integrity, the Crown Prosecutor should expect that the victim will find his or her involvement in the proceedings to be particularly difficult, and that the impact of the offence on the victim may be severe and pervasive. The Crown Prosecutor shall attempt to ascertain the victim's needs and respond accordingly. Such measures shall include steps to ensure that the victim is kept well-informed about the progress of the case, and about the types of issues that may arise that will be of particular interest to him or her, such as an application to introduce evidence of prior sexual activity, or for access to his or her medical or other personal records.

3.3.1.4 Victims of Violent Offences

In the case of a violent offence, the victim often harbours a legitimate sense of violation that is more pronounced than is commonly found in cases of property offences. The Crown Prosecutor should be sensitive to a victim's sense of vulnerability in these cases, and should consider appropriate measures to enhance security and comfort. Such measures could include steps to ensure that the victim is kept well-informed about the progress of the case, and about the types of issues that may arise that will be of particular interest to him or her, such as an application for access to his or her medical or other personal records.

4. Pre-trial Witness Interviews

The Crown Prosecutor may conduct a pre-trial interview with the witness where the Crown Prosecutor determines that it will enable him or her to reach a better informed decision about any aspect of the case, including for the purpose of assisting the Crown Prosecutor in making the decision to prosecute, assessing the reliability of the witness' evidence, or better understanding complex evidence.

Where the Crown Prosecutor conducts a pre-trial interview to assess the reliability of the witness' evidence, the witness may be asked about the content of the witness' statement or other issues that relate to reliability. This may include taking the witness through the statement, asking questions to clarify evidence, probing the witness' account, and assessing the witness' character.

A pre-trial interview may take place at any stage of the proceedings, including prior to any charges being laid, until the witness starts to give evidence at trial. A Crown Prosecutor shall not conduct a pre-trial interview as part of an investigation by the police or investigative agency or to otherwise gather evidence.

Before or during the pre-trial interview, the Crown Prosecutor shall provide the witness with a copy of any statement the witness has previously provided. Where the witness has participated in a visually recorded interview, he or she shall be given an opportunity to view the recording, if practicable.

Where, during the pre-trial interview, the witness provides information not previously disclosed that, in the opinion of the Crown Prosecutor, could affect the duty of disclosure, the Crown Prosecutor should request that the police take a statement, and shall disclose any new information to the accused.

4.1 Persons Involved in the Pre-trial Witness Interview

Where appropriate a Crown Prosecutor shall conduct a pre-trial interview of the witness in the presence of an appropriate third party. The third party may be a police officer involved in the investigation, provided the presence of that third party will not, in the opinion of the Crown Prosecutor, taint the evidence of either the witness or the third party.

The presence of a third party will be particularly important where the witness is

- (a) a child;
- (b) the victim of intimate partner violence;
- (c) the victim of a violent offence;
- (d) the victim of a sexual offence; or
- (e) a witness with a mental disorder.

The Crown Prosecutor shall not conduct a pre-trial interview on the witness in the presence of another witness where there is a risk that the evidence may become tainted.

4.2 Conduct of the Crown Prosecutor in the Pre-trial Witness Interview

The Crown Prosecutor shall not counsel the witness to alter, subvert, or suppress any evidence, or otherwise taint the witness' evidence.

The Crown Prosecutor shall always assume the identity of the accused is at issue unless the defence specifically admits it on the record. The Crown Prosecutor shall never prompt or coach the witness by offering clues or hints about the identity of the accused, including showing an isolated photograph or image of an accused during the pre-trial interview.

5. Disclosure of Witness Information

5.1 Withholding Witness Information

In some circumstances, as set out in Policy 22, Disclosure, it is appropriate for the Crown Prosecutor to withhold information, which may include the name, location, telephone number, and fax number of a person who has provided a statement to the police or other investigative agency.

In such circumstances, where the accused requests the witness' information for the purpose of conducting a pre-trial interview, the Crown Prosecutor shall

- (a) advise the accused that the witness will be contacted and advised of the request; and
- (b) contact the witness to advise him or her of the request.

The Crown Prosecutor shall advise the witness that he or she has the right to consent to or decline such an interview. Under no circumstances shall the Crown Prosecutor discourage the witness from consenting to such an interview. The Crown Prosecutor shall also advise the witness of his or her rights and obligations as a witness.

Where the witness elects not to consent to such an interview, the Crown Prosecutor shall advise the accused.

Where a witness consents to such an interview, the Crown Prosecutor shall advise the accused and provide the witness with the contact information of the accused or the accused person's counsel.

6. Related Documents

Policy 22 Disclosure
Policy 33 Victims
Policy 36 Out-of-Province Witnesses
Policy 37 Expert Witnesses
Policy 40 High Risk Offenders
Policy 45 Intimate Partner Violence
New Brunswick Woman Abuse Protocols
New Brunswick Child Victims of Abuse and Neglect Protocols