NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

REPORTING FABRICATION OF EVIDENCE BY A POLICE OFFICER

NATURE OF DOCUMENT: PRACTICE NOTE

FIRST ISSUED: November 22, 2012

LAST SUBSTANTIVE REVISION:

EDITED / DISTRIBUTED: November 22, 2012

NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

PRACTICE NOTE

Reporting Fabrication of Evidence by a Police Officer

In those rare instances wherein a Crown Attorney concludes that a police officer has lied, fabricated evidence, abetted perjury, or has otherwise intentionally misled the court (or has attempted to do so), the Crown Attorney will bring the matter to the attention of his or her Chief Crown Attorney. If the Chief Crown Attorney agrees that the allegation of such misconduct is well founded, the Chief Crown Attorney will report the matter to appropriate police officials. The police officials, pursuant to their protocols, will ensure that any required investigation is promptly conducted.

Crown Attorneys must avoid investigating the matter themselves. They should, however, immediately order transcripts of the evidence in question, and prepare an outline of the circumstances giving rise to their concerns.

If the police misconduct referred to above becomes apparent prior to the case being presented in court, a similar approach should be taken. Crown Attorneys are, of course, precluded by law and by the Nova Scotia Barristers' Society Code of Ethics from presenting evidence tainted by dishonesty.

Crown Attorneys and Chief Crown Attorneys should assess the matter very carefully before concluding that a police officer has lied or intentionally misled the court. Like any other witnesses, police officers may honestly differ in their perception and recollection of events, and their choice of words when giving evidence may create an unintended impression. Comments by a judge that the evidence of an officer is not accepted, or that it is not reliable or that it does not fit with other evidence does not necessarily mean that the officer was dishonest. If the presiding judge states that the officer has lied, this will be of great concern, but even that sort of judicial comment may not be conclusive. In the case of *R. v. Nicholas Ebanks*, for instance, an Ontario homicide case, the trial judge, in excluding wiretap evidence essential to the prosecution case, stated on four occasions that the affiant for the wiretap showed "reckless disregard for the truth" and "intentionally mis-stated or omitted material facts" in order to mislead the judge hearing the wiretap application. The Crown Attorney did not share the view of the trial judge, and the Ontario Court of Appeal agreed that the findings of the trial judge were not supported by the evidence (2009 ONCA 851).