



NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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**PUBLIC NUDITY
- CRIMINAL CODE s.174**

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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.

CHARGES OF PUBLIC NUDITY – CRIMINAL CODE SECTION 174

Section 174 of the Criminal Code provides that everyone who, without lawful excuse, is nude in a public place is guilty of an offence punishable on summary procedure. This Section also states that no proceedings may be commenced under this provision without the consent of the Attorney General. In Nova Scotia, “Attorney General” includes the DPP and, generally, it is the DPP who must consent to such proceedings. The purpose of this policy document is to help clarify the principles governing the granting or denial of this consent, and to establish the basic procedure for dealing with cases which require this consent.

Consideration of alternatives.

Before seeking the consent of the DPP to proceed under Section 174, prosecutors should first review the alleged criminal conduct to determine whether or not the matter can appropriately be addressed through prosecution under provisions which do not require the consent of the DPP. When it is clear that an appropriate alternative exists, that course should be followed. If, for example, the alleged conduct has a sexual context and is viewed by a person less than fourteen years old, Section 173 of the Criminal Code should be utilized. If there is uncertainty in regard to the efficacy of particular charges, or if it is the view of the prosecutor that proceedings under Section 174 may be appropriate, the case should be referred to the Chief Crown Attorney.

Evidential assessment by the Chief Crown Attorney.

If the Chief Crown Attorney concludes that proceedings under Section 174 may be appropriate, the Chief Crown Attorney shall determine whether or not the evidential threshold for a charge under Section 174 is met. As established in the Policy on The Decision to Prosecute, this involves a determination of whether or not there is sufficient evidence to provide a realistic prospect of conviction should the case proceed to trial. It should be noted that consideration of the evidential threshold includes an assessment of whether or not any defences plainly open to the accused can be overcome. Certain nude persons, e.g. models posing for bona fide artists, may have a lawful excuse for being nude. If satisfied that the evidential threshold is met, the Chief Crown Attorney will forward the matter to the DPP for consideration

Assessment of the Public Interest by the DPP.

In exercising discretion to grant or deny consent, the DPP will determine, on a case by case basis, whether or not the public interest is best served by proceeding. The assessment of the public interest usually involves the balancing of many factors. The

nature of those factors, and their relative importance, will vary in every case.

Some of the factors which are routinely considered, and which are not unique to cases involving public nudity, are these:

- the availability of alternatives to prosecution;
- the prevalence of the alleged offence in the community;
- any history of unlawful conduct by the alleged offender;
- the sentencing options available upon a finding of guilt; and
- the apparent gravity or triviality of the incident.

Various other factors, some of which are peculiar to cases of public nudity, may also be considered. This would include such matters as the reaction of bystanders or the sensibility of the owners of nearby property. The DPP, however, is required to maintain the broadest possible perspective, and to make decisions in the **public** interest.

In exercising the discretion granted in Section 174, the DPP must also be guided by the jurisprudence relating to charges of public nudity, and precedents in Nova Scotia and elsewhere involving the exercise of this discretion. Those precedents clearly demonstrate that the DPP should show great restraint in the granting of consent to proceeding under these provisions. Generally, citizens ought not to face the serious sanction of a criminal conviction unless the alleged conduct amounts to aggressive exhibitionism.

The principles emerging from jurisprudence and precedents which are pertinent to the granting or denial of consent by the DPP may be summarized as follows:

- consent will usually **not** be granted when the nudity occurs at an isolated or secluded location;
- consent will usually **not** be granted unless a warning has been given to the alleged offender by police or an authorized enforcement agency, and there is blatant or repeated disregard of such a warning;
- consent will usually be granted in instances of aggressive exhibitionism;
- consent will usually be granted when nudity is accompanied by lewd behaviour or indecent acts involving the alleged offender, or others (assuming that the matter cannot be adequately addressed through prosecution under other provisions).