



NOVASCOTIA
PUBLIC PROSECUTION SERVICE

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RESOLUTION OF IMPAIRED DRIVING OFFENCES

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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.

RESOLUTION OF IMPAIRED DRIVING OFFENCES - NO PLEAS TO MVA CHARGES

Driving a motor vehicle while impaired by alcohol or other substances is a very serious criminal offence and is a prevalent threat to public safety. Accordingly, when there is a realistic prospect of convicting an accused charged with impaired driving, "over 80", or any other criminal charge relating to the impaired operation of a motor vehicle, the public interest requires prosecution of these charges. It is not appropriate to accept a guilty plea to a Motor Vehicle Act charge in order to resolve such cases.

If the evidence in a case involving impaired driving (or any similar offence) appears to be weak, the prosecutor is expected to work with the investigating officer to ensure that all available evidence has been obtained and disclosed, and that the case is legally sound. Current scientific evidence supports the inherent accuracy and reliability of readings obtained from Data Master instruments and other approved blood alcohol testing devices. A reading showing that the driver of a motor vehicle had a blood alcohol level greater than 80 mg. is evidence capable of supporting a prosecution. When readings are lower than 100 mg., the prosecutor should consider whether or not the evidence of a toxicologist is necessary to establish the blood alcohol level at the time of the offence. In considering the need for expert evidence, the prosecutor must be mindful of recent law relating to the availability of the presumption that the results of the analysis represent the blood alcohol level at the time of driving (or care and control), and the limited availability of "evidence to the contrary" defences. It may also be helpful to consult with a toxicologist in order to determine whether or not expert evidence is necessary or would strengthen the case.

As noted in the PPS Policy entitled "The Decision to Prosecute", in order to proceed to trial it is not essential that a conviction be a certainty. What is required is "a realistic prospect of conviction", as defined in that Policy. It is not appropriate to accept a plea to a Motor Vehicle Act charge or other Provincial offence in order to avoid the possibility of an acquittal on the impaired driving charge, or to avoid a lengthy trial, or to avoid a novel *Charter* argument. If, however, the evidence does not provide a realistic prospect of conviction, or if there are insurmountable legal or *Charter* issues, the charge should be withdrawn. Detailed reasons for withdrawing the charge should be recorded in the Crown file.

If a prosecutor is of the view that extraordinary circumstances exist which might support a deviation from the approach outlined above, the prosecutor must consult with his or her Chief Crown Attorney before taking any action which does not comply with the above-stated approach. It is anticipated that such instances will very rarely occur.