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NOVASCOTIA  
PUBLIC PROSECUTION SERVICE

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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.

## **PROSECUTION OF ASSAULT CHARGES - Section 266(b)**

Although the provisions of section 266(b) of the Criminal Code are a necessary element in the preservation of public order, experience has shown that many occurrences involving assaultive behavior do not meet established charge screening standards. Accordingly, the Public Prosecution Service generally does not prosecute charges of simple assault.

In exercising discretion to prosecute, Crown Attorneys must determine whether or not there is a realistic prospect of conviction if a case proceeds to trial. This determination involves, in part, a preliminary assessment of the evidence available to prove the case. When events erupt quickly or the parties have pre-existing animosity and lack of objectivity, or the incident involves the consumption of alcohol, there is often too little reliable information to support a prosecution.

The assessment of the evidence may include such matters as these:

- the ability and opportunity of witnesses to observe and recall material facts;
- possible biases or self interest of the witnesses;
- the level of consistency or inconsistency among witnesses.

The Crown Attorney, in reviewing a charge to determine whether or not there is a realistic prospect of conviction, also takes into account any obvious defences legitimately available to the potential accused person. Many fact situations do not preclude the usual defences of self defence and consent. This eliminates numerous other charges from further consideration.

Even when a situation provides a realistic prospect of conviction, Crown Attorneys must go on to consider whether or not the public interest is best served by a prosecution. The factors to be considered in assessing the strength of the case and ascertaining the public interest in any particular case are numerous and variable. Some of the relevant factors which often arise in assault cases are these:

- the triviality or gravity of the incident (including the nature of the force applied, and any damage or injury sustained by a participant or bystander);
- the availability and efficacy of any alternatives to prosecution;
- whether or not there was an obvious physical disparity between the participants in the incident;
- whether or not the participants knew each other prior to the incident;
- the likelihood of a repetition of the assaultive behavior.

If, for example, there was pushing or even punching between two adults who were not

strangers, and no injuries resulted, the Crown Attorney will often determine that it is not necessary to bring the full weight of the criminal process to bear upon the situation. Some neighborhood disputes, even when they escalate into physical contact, may be more effectively addressed by mediation rather than prosecution. Other minor disputes might lend themselves to resolution through peace bonds. Occasionally, a hand shake or apology will suffice.

On the other hand, when an incident gives rise to significant injuries, involves “bullying” behavior, or features an unprovoked assault upon a stranger or vulnerable victim, the public interest will usually call for a prosecution and the PPS will pursue such cases.

It should also be noted that the PPS has developed particular policies which address matters of domestic violence, all of which are considered to be serious.

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Just as Crown Attorneys have a discretion as to whether or not any criminal charge will result in a prosecution, the police have discretion as to whether or not a charge will be laid when there are reasonable grounds to believe that an offence has occurred. In Nova Scotia, this discretion of the police is usually exercised prior to any involvement by the PPS in a case. It is not within the mandate of the PPS to supervise the police in the exercise of this discretion. It might be noted, however, that in exercising this discretion, a peace officer may legitimately consider whether or not a charge will survive screening by a Crown Attorney. A peace officer, in the responsible exercise of discretion, may decline to lay a charge because it is unlikely to result in a prosecution. Indeed, it could be considered wasteful to commit valuable investigative and case preparation resources to incidents best resolved through processes that do not involve prosecution.