



NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

**DRINKING AND DRIVING / IMPAIRED DRIVING OFFENCES:
PENALTY FOR
SECOND AND SUBSEQUENT CONVICTIONS**

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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.

SENTENCING OF PERSONS CONVICTED OF A SECOND OR SUBSEQUENT DRINKING AND DRIVING OFFENCE

Where a person is charged with an offence under Section 253(a) or (b), or Section 254(5) of the Criminal Code and that person has previously been convicted of an offence or offences set out in Section 255(4) of the Criminal Code, the Crown Attorney must, absent exceptional circumstances, proceed by way of the second offence provisions of the Criminal Code as set out in Section 727 and seek at least the minimum punishment of fourteen days imprisonment when the charged offence occurred within **five** years of the date of sentence for a previous offence.

Where the charge is the **third** or subsequent offence committed within **ten** years of the date of sentence for any prior drinking and driving offence, the Crown Attorney must, absent exceptional circumstances, proceed by way of the subsequent offence provisions and seek at least the minimum punishment of ninety days imprisonment.

“Exceptional circumstances” cannot be defined in absolute terms but they are those circumstances wherein the overall public interest is demonstrably better served by a different approach. The exceptional circumstances should be noted in the prosecution file, and in appropriate cases, they should also be placed on the record in court. Examples of the public interest factors which may be considered in determining whether exceptional circumstances exist are the following:

- the physical health, mental health or infirmity of the accused
- a victim who will be particularly traumatized and potentially re-victimized by testifying in court
- the victim strongly opposes incarceration for the accused
- significant problems of proof, even though a reasonable prospect of conviction exists.

It may also be appropriate for Crown Attorneys to serve a Notice of Intention to Seek Greater Punishment due to a previous conviction even if outside the five-year period. The circumstances of the current offence and the offender are relevant to this decision. Generally, the existence of any of the following circumstances will mandate the seeking of an increased penalty:

- a death or serious injury, or extraordinary property damage
- a blood alcohol level of more than 160 mg. alcohol in 100 ml. of blood, or other evidence of a high degree of impairment
- previous incarceration for driving offences.

The following matters relating to the record should also be considered:

- the circumstances of the previous incidents, including the extent of impairment, any injuries or property damage and the nature of the driving

- the pattern of the previous convictions, including the sentencing dates and any “gaps” in the record
- the sentences previously imposed and the effectiveness of any treatment programs or probation orders

PRACTICE NOTE

The policy of the PPS in regard to the sentencing of recidivist impaired drivers reflects repeated dicta of appellate courts that, generally, deterrence is to be the paramount consideration in the sentencing of such drivers [see, for example, R.v.MacEachern (1990), 96 N.S.R.(2d) 68 (N.S.C.A.).

The effectiveness of the stated approach to sentencing is dependent upon Crown Attorneys having reliable information in a timely fashion. Chief Crown Attorneys should assist police forces in their jurisdictions in establishing case preparation processes which include, prior to first appearance for impaired driving offences, a thorough check for prior convictions under the Criminal Code and relevant provincial legislation. It is also important to know whether or not there are any outstanding charges for similar offences. Because most offences involving drinking and driving are considered to be indictable until an election is made by the Crown, police agencies should be encouraged to utilize the fingerprinting provisions of the Identification of Criminals Act upon the arrest of impaired drivers.

Protocols in regard to drinking and driving offences should also include timely service upon the accused of a Notice of Intention to Seek Greater Punishment.

Crown Attorneys, when reviewing a drinking and driving case, should be satisfied that they have all relevant information in regard to the background of the accused before the accused enters a plea to a charge. Particular care should be taken when there is an indication that the accused wishes to enter a plea on first appearance and a thorough record review has not been completed. Similarly, details of previous convictions should be available before the prosecutor determines the position to be taken on sentence. Previous convictions for dangerous driving or criminal negligence should be reviewed to ascertain whether or not alcohol was involved.