



NOVA SCOTIA  
PUBLIC PROSECUTION SERVICE

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**INTERVIEWING WITNESSES  
(Other than Experts or the Police)**

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PRACTICE NOTE

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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.

## **Interviewing Witnesses<sup>1</sup> (Other than Experts or the Police)**

Proper preparation for trial often requires that victims and other important witnesses be interviewed by the prosecutor. Indeed, establishing an appropriate rapport with vulnerable or sensitive witnesses may be essential to eliciting the information necessary to support a charge. Such interviews, however, must be conducted with great care, and in controlled circumstances. Prior to trial, unnecessary contact with witnesses should be avoided. If casual contact occurs, the case in which the witness is involved cannot be discussed. Prosecutors must always guard against inadvertently influencing the testimony of any witness in a manner which might be considered to be improper.

It is also of the utmost importance that witness interviews be conducted in circumstances which will preclude any allegation that the prosecutor may have improperly influenced the witness. When such allegations arise, it may be necessary to hold a voir dire in order to demonstrate that the prosecutor did not improperly influence the witness. This sort of voir dire usually requires that an independent counsel be retained to examine or cross-examine the prosecutor involved. The prosecutor may also require counsel. This process, besides being inconvenient and embarrassing, may undermine a trial.

Ideally, a Crown Attorney would have an observer present at all witness interviews. This is simply not possible, having regard to the finite police and prosecution resources which are available. Interviews of the following types of witnesses, however, should be conducted with extra care :

- a witness 16 years of age or younger, who is the victim of a crime of violence (including any sexual assault), or who has observed a crime of violence;
- a witness to any serious crime, if that witness is the sole observer of the material events;
- any witness who the Crown Attorney has reason to believe is, or may become, “adverse”, as defined in the *Canada Evidence Act*.

**In regard to the above-noted witnesses, the interview should be conducted in the presence of an appropriate third party, preferably a police officer. That third party should make a record of the interview sufficient to prevent or rebut allegations of impropriety.**

The following additional principles should guide the interview process in regard to all civilian witnesses:

1. The witness should be advised that it is his or her own honest recollection of

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<sup>1</sup> The PPS is grateful to the Ontario Ministry of the Attorney General for making available its Practice Memorandum [2002] No. 11, which was a valuable resource in developing this Note.

events that is important. The memory of the witness may be refreshed by his or her prior statements. If the witness is aware that there is evidence which conflicts with his or her recollection, the witness should be assured that it is his or her own honest and independent recollection that is important, and that he or she is free to disregard the other evidence.

2. Witnesses should be interviewed separately.
3. There should be no suggestion to the witness that the evidence of the witness is expected to conform with the prosecution theory. The prosecutor should avoid leading questions and should not otherwise indicate to the witness that a particular answer is desired.
4. Where the prosecutor believes that a witness may be honestly mistaken, the prosecutor may inquire into the circumstances surrounding the present recollection of the witness.. The prosecutor should not tell the witness that he or she is wrong.
5. If the witness appears to be deliberately untruthful, the prosecutor may properly confront the witness in regard to apparent discrepancies, and may request a clarification or explanation.
6. **Where a witness provides information which differs from previous statements or which is not contained in previous statements, that information, along with the general circumstances in which the information came to light, must be disclosed in accordance with the Public Prosecution Service policy on disclosure.** Where feasible to do so, the new or different information should be reduced to writing or otherwise accurately recorded.
7. Prosecutors should not conduct investigative interviews. If a matter arises during the interview process which requires investigation, the prosecutor should not pursue the matter further at that time but should request that the police conduct whatever investigation may be necessary.