



NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

**INVESTIGATION AND PROSECUTION
OF CASES INVOLVING PERSONS WITH
SPECIAL COMMUNICATION NEEDS**

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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.

PROTOCOL FOR INVESTIGATION AND PROSECUTION OF CASES INVOLVING PERSONS WITH SPECIAL COMMUNICATION NEEDS

Statement of Purpose:

This protocol is designed to guide criminal justice officials in the full and comprehensive investigation and prosecution of cases involving persons with special communication needs. Persons with special communication needs are those individuals who, because of age, level of literacy, mental or physical disability are unable, without assistance, to fully access the criminal justice system or understand or be understood by officials thereof.

Abbreviations and Definitions:

"**v/w**" means victim or witness with special communication needs.

"**support person**" means a person who is well-known and trusted by the v/w and may include family, friend or service provider employed by the v/w, group home, institution or government. This person may assist by providing personal and emotional support and in many cases by providing assistance in communicating.

Statement of Principles:

1. All v/w are entitled to full, fair and equal access and participation in the criminal justice system.
2. The effort of criminal justice officials to compensate for the needs of the v/w must be directly proportionate to the needs of the v/w; i.e., the greater the needs, the greater the effort to assist.
3. Every reasonable effort is to be made by criminal justice officials to provide the v/w with an interpreter or special equipment or other assistance as required. (see Appendix A).

Police:

1. Upon receipt of a complaint where either the victim or a witness has special communication needs, the police are to conduct a prompt, detailed and thorough investigation.
2. When, in dealing with a v/w, the police are unable to obtain a statement due to the

special communication needs of the v/w, the police are to:

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- (a) arrange a time and place to conduct an interview;
 - (b) arrange for a support person to be present;
 - (c) if the support person cannot assist with communication, arrange for an interpreter to be present;
 - (d) if necessary, arrange for the use of special equipment or other assistance as required.
3. If appropriate, the support person for a v/w should be permitted to be present during the interview regardless of whether an interpreter is also present.
 4. Regardless of the age of the v/w whenever possible, the interview with the v/w is to be audio-taped and/or video-taped.
 5. The police investigator is to maintain possession of any video-tape or audio-tape of the interview of the v/w.
 6. Any request of the Police by the accused or defence counsel to view the tape is to be referred to the Crown. When authorized by the Crown, the police are to arrange a time and place for the defence counsel and the accused to view the tape.
 7. The police are to keep the v/w and where appropriate, the support person, informed about the progress of the case.
 8. If, at any stage, the investigation is discontinued, the v/w or where appropriate, the support person, is to be promptly informed of that fact and the reasons therefor. In addition, the police are to specify, in the police file, the reason(s) for discontinuing the investigation.
 9. The police officer who commences the investigation involving a v/w is to remain on the case through to its conclusion unless circumstances make it impossible.
 10. Where a person suspected of committing an offence has special communication needs, the police, before conducting an interview with the suspect are to:
 - (a) if appropriate, allow a support person to be present during the interview;
 - (b) take all reasonable steps to ensure that the suspect understands his/her rights and has full opportunity to exercise those rights; and
 - (c) take all reasonable steps to ensure that the suspect and the investigator are able to communicate and understand each other and if they do not, arrange for an interpreter to be present;
 - (d) where a support person or interpreter is present for the interview, the investigator should ask him/her to sign a statement indicating that it appeared to them that the accused understood his/her rights and the questions posed by the investigator.

Crown:

1. When asked by the police for advice as to whether the evidence collected is capable of constituting reasonable and probable grounds for a charge, or, where a charge has been laid, when deciding whether to continue the prosecution, the Crown is to:
 - (a) assess the v/w's ability to communicate their evidence;
 - (b) assess the v/w's understanding of the nature of an oath or solemn affirmation;
 - (c) assess the v/w's understanding of what it means to promise to tell the truth;
 - (d) assess the v/w's statement (which may be written, audio-taped or video-taped) and if the statement is inadequate, request the police re-interview him/her or personally interview the v/w;
 - (e) consider the potential evidence of the v/w in combination with all of the other evidence. (It may not be necessary for the evidence of the v/w to be strong if the other Crown evidence is sufficient); and
 - (f) consider the views of the v/w, and where appropriate, the views of the support person, the police investigator, the social workers or other persons involved with the v/w.
2. Prosecution of cases involving a v/w should be pursued wherever sufficient evidence exists unless public interest considerations dictate otherwise. Where a decision is made not to prosecute, the reasons therefor are to be discussed with the v/w and, where appropriate, the support person. Such discussion should be held before the prosecution is stopped. In addition, the reasons for stopping the prosecution are to be stated in the Crown file.
3. Whenever a charge is laid which involves a v/w, the Crown, as soon as practicable, is to meet with the v/w for the purpose of:
 - (a) get re-acquainted with the v/w;
 - (b) discussing the Court process in a manner appropriate to the abilities of the v/w; and
 - (c) making a preliminary assessment of the v/w's communication abilities and needs.
4. At any meetings between the Crown and the v/w, a support person is to be permitted to attend if so desired by the v/w unless this interferes with the Crown Attorney's preparation of the case. Also, at such meetings, all interpreters or special equipment necessary or other assistance as required to enable the Crown to understand the v/w is to be used.
5. The Public Prosecution Service will place a high priority on ensuring that a Crown Attorney is assigned to a case involving a v/w at the earliest opportunity and remains

with the case until it is concluded.

6. In all cases involving a v/w, the Crown will ensure that the v/w and, where appropriate, his or her support person, is kept informed of the status of the case.
7. In preparing for a Court hearing wherein a v/w is going to testify, the Crown, unless it is inappropriate, will meet with the v/w within a week of the hearing to:
 - (a) get re-acquainted with the v/w;
 - (b) re-discuss the Court process;
 - (c) if possible and appropriate, show the v/w the Courtroom;
 - (d) re-assess the v/w's ability to communicate their evidence;
 - (e) Re-assess the v/w's understanding of the nature of an oath or solemn affirmation;
 - (f) re-assess the v/w's understanding of what it means to promise to tell the truth;
 - (g) review the v/w's anticipated evidence;
 - (h) prepare the v/w for cross-examination. It is important for v/w's to know the truthful answer is always the right answer.
 - (i) prepare the v/w for possible not guilty verdict.
8. On the day of the Court hearing, the Crown is to make reasonable efforts to ensure that the v/w has a private and comfortable place to wait before going into the Courtroom to testify.
9. When a v/w is testifying, the Crown will take every reasonable step to attempt to ensure that the v/w is able to be understood by the presiding judge (jury). Without intending to restrict the intent of the foregoing statement, the Crown is to, where appropriate:
 - (a) make a request for the exclusion of the public [s.486(1) C.C.C.];
 - (b) make a request for non-publication of information which may tend to disclose the identity of the v/w [s.486(3) C.C.C.];
 - (c) make use of interpreters or special equipment or other assistance as required to aid in enabling the v/w to be understood;
 - (d) call an expert witness to explain the special communication needs of the v/w. If the ability of the v/w to testify is challenged, the Crown is to consider calling an expert on the voir dire relating to this issue.
10. The Crown, in cases involving a v/w is to make every reasonable effort to obtain an early Court date.
11. The Crown will ensure that wherever reasonable and appropriate, the concerns of a v/w or his/her support person regarding the accused's release pending trial or views regarding sentencing are communicated to the Court.
12. The Crown will advise victims with special communication needs, in appropriate

cases, of the provisions of the **Compensation for Victims of Crime Act**. The Nova Scotia Criminal Injuries Compensation Board telephone number is 424-4651.

13. Where a sentence has been imposed, the Crown Attorney is to explain the sentence imposed by the Judge to both the victim with special communication needs and the support person.
14. In the event of an appeal, the Crown Attorney conducting the appeal is to advise the victim with special communication needs and the support person of the fact an appeal has been commenced and advise of the outcome once the appeal has been heard.

