



NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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**STAYING PROCEEDINGS AND
RECOMMENCING STAYED PROCEEDINGS**

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NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE CROWN ATTORNEY MANUAL.

CERTAIN WORDS AND PHRASES (SUCH AS "SHOULD", "MAY" and "MUST") HAVE THE MEANINGS ESTABLISHED IN THE "**WORDS & PHRASES**" SECTION OF THIS PART OF THE MANUAL (SEE THE EXCERPT AT THE END OF THIS DIRECTIVE).

STAYING PROCEEDINGS AND RECOMMENCING STAYED PROCEEDINGS

A) STAYING PROCEEDINGS - Section 579(1)

Subject to the provisions of this policy, the power of the Attorney General to direct a stay of proceedings as outlined in Section 579(1) of the Criminal Code has been delegated to all legal staff of the Public Prosecution Service.

The staying of proceedings is an administrative act involving a direction to the Clerk of the Court by the Attorney General or his agent. By their nature, stays are not subject to control by the courts (the recommencement of proceedings is another matter—see below). Because the Attorney General and his agents exercise their discretion to stay proceedings without judicial supervision or intervention, it is essential that decisions to stay proceedings be made on a principled basis and in a manner which serves the public interest.

Generally, a stay is appropriate when proceedings in regard to a charge are being discontinued and the public interest requires that the prosecutor retain the right to recommence those proceedings within one year (or within such shorter limitation period as may pertain to the charge).

The following are examples of instances in which it may be appropriate to utilize a stay:

- (1) in connection with a program of alternative measures or other restorative justice program in which the accused requires time to complete his/her obligations under the program;
- (2) when an essential witness does not attend court as required or instructed,

and there are reasonable grounds to believe that the witness has been threatened, intimidated or improperly persuaded not to attend court, provided that the stay is entered before the court has ruled (or intimated)

against an adjournment;

- (3) an essential witness is unable to give evidence due to illness, trauma, injury, temporary mental impairment, or other non-permanent circumstance, and there are reasonable grounds to believe that the witness will be able to testify within one year (or within such other shorter limitation period as may pertain to the charge), provided that the stay is entered before the court has ruled (or intimated) against an adjournment;
- (4) as part of a resolution agreement, where there is reason to believe that the withdrawal of a charge (or the offering of no evidence in regard to particular charge) may subsequently lead to a plea of *autrefois acquit* and thus frustrate the resolution agreement.

Note: In some localities, when the prosecutor wishes to permanently terminate proceedings after a trial has begun, rather than seeking leave to withdraw the charge or inviting an acquittal, a practice has developed of entering a stay, accompanied by an undertaking on the record not to recommence proceedings. Although this practice is acceptable as a device to terminate proceedings, it lies outside the area of discretion covered by this policy.

Approval Required

- (1) A stay should not be entered, absent exceptional circumstances, to circumvent a judicial ruling or to avoid an acquittal. [An example of exceptional circumstances may be found in Regina v. Scott (1990), 61 C.C.C. (3rd) 300 wherein a stay was entered in order to prevent the disclosure of the identity of a confidential informant.] If a stay is intended to circumvent a judicial ruling which has been delivered or intimated by the court, the prior approval of the Chief Crown Attorney is required. If a stay is intended to avoid an acquittal, the prior approval of the Director of Public Prosecutions, or his designate, is required.
- (2) In regard to indictable offences (or hybrid offences prosecuted by indictable procedure), Crown Attorneys should not stay proceedings after the accused has pleaded not guilty without the prior approval of the Chief Crown Attorney accountable for the prosecution (unless the stated intention is to permanently terminate proceedings—see Note, above).

Transparency and Accountability

Unless the reason for entering a stay is apparent on the record, prosecutors should state in open court the reasons for entering a stay, except when this would involve disclosure of confidential information.

Any consultation which has occurred in regard to the entering of a stay should be noted in the prosecution file.

Except when a stay is entered in connection with an alternative measures program, prosecutors are required to notify the Chief Crown Attorney that a stay has been entered. This is to be done in writing as soon as is practicable after the stay has been entered, with a brief outline of the circumstances.

(B) RECOMMENCING STAYED PROCEEDINGS - Section 579(2)

The right of the Attorney General to re-commence proceedings pursuant to Section 579(2) has been delegated to **Chief Crown Attorneys**, except that:

- (2) Crown Attorneys may recommence proceedings stayed in connection with an alternative measures program or other restorative justice program;
- (3) Crown Attorneys may recommence summary procedure matters, except
 - (a) where the stay required the prior approval of the Chief Crown Attorney, or
 - (b) it is necessary to seek a warrant for the arrest of the accused on the stayed charge when notice of commencement is delivered to the Clerk of the Court.

The commencement of proceedings is often subject to scrutiny by the courts. It is important that the power to recommence proceedings be exercised judiciously. The following principles are to guide the exercise of this discretion:

Proceedings stayed pursuant to Section 579(1) may be recommended within one year of the stay (or within such shorter limitation period as may pertain to the charge) if:

- (1) it is in the public interest to recommence proceedings;
- (2) recommencing proceedings would not be an abuse of process; and
- (3) recommencing proceedings would not deprive the accused of any right, including the right to a trial within a reasonable time.

Although the power to stay and recommence proceedings has been delegated to Crown Attorneys and Chief Crown Attorneys as set out in this policy, prosecutors are reminded of the need to consult with supervisors in appropriate cases, particularly as indicated in the PPS policy regarding the Decision to Prosecute and the policy regarding Resolution Discussions and Agreements.

Words & Phrases

The following words and phrases appear in the PPS directives, guidelines and policies, and have these meanings:

“should”: indicates that there is a presumption that prosecutors will carry out the task, but recognizes that it may not always be possible or desirable to do so in the particular circumstances of an individual case. Prosecutors must be able to articulate a reasonable basis for departing from the suggested course of action.

“may”: highlights an issue for prosecutors and alerts them to an action or decision which they may or may not take in the exercise of their discretion.

“shall” or “must”: signify an unconditional requirement and usually relate to a legal obligation or procedural necessity. These are few in number.