

# Role of the Crown



## Cross-Over Youth Project

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# *R. v. Boucher*, [1955] SCR 16

It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime.

Counsel have a duty to see that all available legal proof of the facts is presented: it should be done so firmly and pressed to its legitimate strength, but it must also be done fairly. **The role of the prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with a greater personal responsibility.**

It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.



# Crown Policy Manuals

**Crown counsel are not only strong and effective advocates for the prosecution, but also Ministers of Justice with a duty to ensure that the criminal justice system operate all.**

- (Ontario Crown Policy Manual)



**Crown counsel's conduct during criminal litigation should be characterized by "[f]airness, moderation and dignity."**

- (Federal Prosecution Deskbook – PPSC)



# Defence Counsel



## Role of defence counsel is purely adversarial

The CBA explains the role of advocates in adversary proceedings as being "openly and necessarily partisan" and, therefore, "the lawyer is not obliged to assist an adversary or advance matters derogatory to the client's case."

The CBA also explains that when "defending an accused person, the lawyer's duty is to protect the client as far as possible from being convicted..."

- *Code of Professional Conduct*, Chapter IX, commentary 15; commentary 10

## ***R v DiPalma, 2002 CanLII 53217 (ON CA)***

- *[But...]* the appellant seems to be operating under the misapprehension that defence counsel is required to bring forward all evidence and argument suggested by the accused and to obtain approval from the accused before taking any action in the course of trial. **But the proper role of defence counsel is not merely to do the bidding of the accused. Instead, defence counsel is expected and required to exercise independent judgment.**

# Rules of Professional Conduct

## 5.1-3

When **acting as a prosecutor**, a lawyer shall **act for the public and the administration of justice resolutely and honourably** within the limits of the law while treating the tribunal with candor, fairness, courtesy, and respect.

## 5.1-1

When acting as an advocate, a lawyer shall respect the client resolutely and honourably within the limits of the law while treating the tribunal with candor, fairness, courtesy and respect.

## **Commentary [Duty as Defence Counsel]**

...When **defending an accused person**, a lawyer's duty is to **protect the client as far as possible from being convicted**... a lawyer may properly rely on any evidence or defences including so-called technicalities **not known to be false or fraudulent**

**GUILTY**

# Plea Bargaining

**NOT  
GUILTY**

- **Resolution discussions are an essential part of the criminal justice system.**
- In resolution discussions the Prosecutor should attempt to balance the protection of the public, interests of the victim, and the rights of the accused in the framework of the optimal use of limited resources. (*Crown Policy, Ontario*)
- The situations in which the Crown can properly repudiate a plea agreement are very rare. **Repudiation of a plea deal may constitute an abuse of process under section 7 of the Charter if it results in trial unfairness or meets the narrow residual category of abuse that undermines the integrity of the judicial process.** The circumstances surrounding the repudiation of a plea agreement determine whether the decision amounts to an abuse of process: *R. v. Nixon, 2011 SCC 34.*

# Unique Considerations



- **Mental health**
  - Specialized courts; unique considerations
- **Aboriginal persons**
  - Bringing meaning to *Gladue*
- **Young Persons**
  - Vulnerable; presumption of diminished moral culpability

# Interacting With Crown Counsel

- CAS workers have the right to be heard
- You are an invaluable source of information
- Most criminal lawyers do not understand the child welfare system, family court proceedings, or even the significance of terms like “Crown ward” or “society ward”
- Request a meeting
- Or speak to defence counsel
- Express your concerns; tell us what works