



Fiscal Responsibility, Accountability and Prosecutorial Independence

The Role of Prosecutors' Associations in Canada

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OVERVIEW

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- ▶ The Canadian Context
- ▶ Who is Responsible?
- ▶ Fiscal Management and Transparency in Ontario
- ▶ The Role of Prosecutors' Associations
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WHY IS THIS IMPORTANT?

- ▶ PUBLIC CONFIDENCE IN THE PROPER ADMINISTRATION OF CRIMINAL JUSTICE
- ▶ The public expects their governments to use funds wisely and efficiently, for the betterment of all society
- ▶ At the same time, they also expect a healthy, robust and principled criminal justice system
- ▶ This goal can only be achieved where prosecutors have the resources necessary to carry out the unfettered exercise of our discretion.
- ▶ When decisions on what or how to prosecute are hampered by financial constraints, then there is an increased risk of losing the confidence of the public.

THE CANADIAN CONTEXT

- ▶ A BRIEF GEOGRAPHY/CIVICS LESSON
- ▶ CRIMINAL LAW IS LARGELY ADMINISTERED BY EACH OF THE PROVINCIAL GOVERNMENTS
- ▶ EACH PROVINCIAL GOVERNMENT HAS A MINISTRY OF THE ATTORNEY GENERAL, OR MINISTER OF JUSTICE
- ▶ THE PROSECUTORS IN EACH PROVINCE EACH HAVE THEIR OWN PROSECUTORS ASSOCIATION (COMPLETELY INDEPENDENT FROM GOVERNMENT). MEMBERSHIP IN THESE ASSOCIATIONS LARGELY EXCLUDES ANY MANAGEMENT CROWNS
- ▶ THE PROVINCIAL ASSOCIATIONS ALL BELONG TO AN UMBRELLA GROUP, THE CANADIAN ASSOCIATION OF CROWN COUNSEL

WHO IS RESPONSIBLE?

- ▶ Who is responsible for the management of financial matters in the Canadian Criminal Justice System?
- ▶ HINT: IT IS NOT THE FRONT LINE PROSECUTORS
- ▶ The Ontario Example



FISCAL MANAGEMENT AND TRANSPARENCY

- ▶ Public Budget Process
- ▶ Public Sector Salary Disclosure Act, aka, “SUNSHINE LIST”
- ▶ Open Procurement Processes
- ▶ Operational Reviews
- ▶ Management of Resources at the Local Level

The Role of Prosecutors Associations

- ▶ Given that direct financial decision making is NOT made by our front line prosecutors (our members), then what role is there for us?
- ▶ It is critically important that Associations advocate on two fronts which impact government finances: Salary/Benefits of prosecutors and Criminal Justice System Resourcing

SALARY / BENEFITS

- ▶ IMPORTANCE OF SALARY AND BENEFITS IN MAINTAINING INDEPENDENCE AND ATTRACTING HIGH QUALITY LAWYERS

VS

- ▶ MAINTAINING PUBLIC RESPECT AND CONFIDENCE (ie, we can't be seen as greedy, self-interested when the rest of society is expected to bear hard times)
- ▶ HOW DO WE FIND THE BALANCE?

THE COLLECTIVE BARGAINING MODEL

- ▶ In Ontario, and in several other provinces, Crown Attorneys Associations have fought for the right to a collective bargaining process to determine salaries, benefits, working conditions
- ▶ By its nature, this a ‘give and take’ process which forces both sides to be reasonable and responsive to the economic realities of the day. The goal is to come to an agreement on these issues that both the government and its prosecutors can be satisfied with.
- ▶ Example: The Ontario Framework Negotiations of 2010
- ▶ If an agreement is not reached, then each side can make its case before a completely independent, neutral third party arbitrator, who will consider our unique role and responsibilities, use appropriate comparator groups, and other public interest concerns.
- ▶ The arbitrator makes an evidence-based decision which is binding on both parties.

RESOURCE ADVOCACY

- ▶ SHE WHO SHOUTS LOUDEST GETS RESULTS
- ▶ In tough economic times, every sector reliant on government funding will be clamouring for their piece of the pie. In Canada, the most attention typically goes to the health and education sectors.
- ▶ If we do not make our concerns strongly voiced and heard, then the justice sector will face cuts. In my view, the primary role of Associations in this case is to push back against under-resourcing and ensure that those areas that are critical to the proper exercise of our duties are properly funded.
- ▶ If not, we will fail at our core duties and public confidence will be undermined or lost. It is critically important that we frame our advocacy that way.

A CANADIAN EXAMPLE

- ▶ THE SLOW STEADY EFFECT OF UNDER-RESOURCING
- ▶ THE ONTARIO CROWN ATTORNEYS ASSOCIATION RESPONSE
 - ▶ Attempts to Influence Budgets
 - ▶ Meetings and Submissions to Key Political Figures
 - ▶ Ensuring Resources are Being Assigned Appropriately (FOI)
- ▶ THE CATALYST R. v. JORDAN - SUPREME COURT OF CANADA, 2016
- ▶ ENGAGING THE MEDIA
- ▶ RESULTS

FISCAL RESPONSIBILITY WITHIN ASSOCIATIONS

- ▶ IMPORTANCE OF HAVING A FINANCIALLY SOUND, TRANSPARENT ORGANIZATION
 - ▶ Membership Dues, Financial Reserves, Incorporation, Financial Policy, Spending Controls, Annual Audits