

"Source: *Controlling Criminal Prosecutions: The Attorney General and the Crown Prosecutor, Working Paper 62, 1990.*
Department of Justice Canada. Reproduced with the permission of the Minister of Public Works and Government Services Canada, 2007

Table of Contents

CHAPTER ONE: The Role of the Attorney General	1
I. Introduction	1
II. Historical Sketch	2
III. The Present Role of the Attorney General	8
A. The Attorney General and Parliament	8
B. The Attorney General and Crown Prosecutors	15
C. The Attorney General and Private Prosecutors	17
D. The Attorney General and the Courts	22
E. The Attorney General and the Police	28
CHAPTER TWO: The Need for Reform in the Present Law	33
I. Introduction	33
II. The Structure of the Department of Justice and the Department of the Solicitor General	34
A. The Department of Justice	34
1. Dividing the Offices of Minister of Justice and Attorney General	35
(a) Overview	35
(b) Recommendations	40
2. An Independent Prosecution Service	41
(a) Overview	41
(i) Institutional Arrangements in Other Countries	42
(A) England and Wales	42
(B) The Republic of Ireland	44
(C) State of Victoria, Australia	46
(D) Commonwealth of Australia	47
(E) New Zealand	50
(ii) Independent Canadian Offices	51
(iii) The Need for Change in Canada	52
(b) Recommendations	53
B. The Department of the Solicitor General	59
1. General	59
(a) Overview	59
(b) Recommendations	60
2. Prosecution by Police Officers	61
(a) Overview	61
(b) Recommendation	62
III. The Powers of the Attorney General	63
A. Introduction	63
B. Consent to Prosecutions	67
1. Overview	67
2. Recommendations	68
C. Initiation of Charges	69
1. Crown Prosecutors and the Police	69

(a) Overview	69
(b) Recommendations	73
2. Guidelines for the Initiation of Prosecutions	76
(a) Overview	76
(b) Recommendations	79
D. Control over the Forum of Trial	84
1. Choice of Forum	84
(a) Overview	84
(b) Recommendation	85
2. Section 568 of the <i>Criminal Code</i>	85
(a) Overview	85
(b) Recommendation	85
3. Section 473 of the <i>Criminal Code</i>	86
(a) Overview	86
(b) Recommendation	87
E. Preferred Indictments	89
1. General	89
(a) Overview	89
(b) Recommendations	90
2. The Use of a Preferred Indictment without a Preliminary Inquiry	91
(a) Overview	91
(b) Recommendations	93
3. The Use of a Preferred Indictment after a Discharge at a Preliminary Inquiry	95
(a) Overview	95
(b) Recommendations	96
F. Discontinuation of a Prosecution	99
1. General	99
(a) Overview	99
(b) Recommendations	101
2. Permanent Discontinuances	104
(a) Method and Timing of Permanently Discontinuing a Prosecution	104
(i) Overview	104
(ii) Recommendations	106
(b) Guidelines for Permanently Discontinuing a Prosecution	109
(i) Overview	109
(ii) Recommendation	109
3. Temporary Discontinuances	109
(a) Method and Timing of Temporarily Discontinuing a Prosecution	109
(i) Overview	109
(ii) Recommendations	111
(b) Commencement of New Proceedings	114
(i) Overview	114
(ii) Recommendations	114
CHAPTER THREE: Summary of Recommendations	115

APPENDIX A: Institutional Arrangements in Great Britain 121

APPENDIX B: Distribution of Powers of federal and provincial Ministers
of Justice, Attorneys General, and Solicitors General 124

APPENDIX C: Organizational Structure of the Department of Justice 125

APPENDIX D: Comparison Chart of Director of Public Prosecutions
Arrangements in Other Countries 126