

APPENDIX D – PROTOCOL REGARDING PUBLIC STATEMENTS IN CRIMINAL PROCEEDINGS

**DRAFT, APRIL 1998
("DUBIN COMMITTEE")**

In recent years, there has been a substantial expansion in public and media attention to criminal proceedings. This has led to increased demands for information from counsel, police and public officials regarding cases. There is a need for clear guidelines and education for all involved in the administration of justice to emphasize established and fundamental principles.

It is important that the public, including the media, be informed about cases in which a warrant has been issued or are before the courts. The administration of justice benefits from such public scrutiny. It is also important that an accused's right to a fair trial not be hindered by inappropriate public statements made before the case has concluded. Fair trials are fundamental to a democratic society. Accordingly, it is in the public interest that guidelines be established to ensure that accurate information regarding cases is made public in a timely and appropriate manner without jeopardizing a fair trial or causing public officials, lawyers, and police officers to violate their professional obligations.

I. PURPOSE:

The primary purpose of these guidelines is educational. They are to assist lawyers, police officers and public officials to have a common guideline for public statements regarding cases in which a warrant has been issued or is pending before the courts.

It is acknowledged that nothing in the guidelines:

- a) limits the jurisdiction of the Court, the Attorney General or the public to initiate contempt proceedings in matters covered by the guidelines;
- b) limits the jurisdiction of the Attorney General or Solicitor General or the Law Society of Upper Canada;
- c) limits or interferes with the rights and privileges enjoyed by members of Parliament or the Provincial Legislature.

II. GUIDELINES

The following guidelines have been approved by representatives of the prosecution, defence and police and are provided to assist in responding to press requests for information and press releases.

- a) A lawyer, police officer or public official should not make an extrajudicial statement concerning a criminal matter that is before the courts awaiting trial or appeal, or where a warrant has issued, if it is reasonable to expect that the statement:
 - i) will be disseminated by means of public communication; and
 - ii) will have a substantial likelihood of materially prejudicing the criminal trial.
- b) Without limiting the generality of a), a statement ordinarily is likely to have the effect referred to in a) when it relates to:
 - i) the character, credibility, reputation, criminal record of the accused or of a witness; (great caution should be exercised regarding the dissemination of information regarding other pending charges);
 - ii) the existence or contents of any confession, admission or statement made by the accused or the accused's refusal or failure to make a statement;
 - iii) the possibility of a plea of guilty to the offence charged or to a lesser offence;
 - iv) the performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests;
 - v) opinions concerning guilt or innocence of the accused, the evidence or merits of the case.
- c) Notwithstanding a) and b), a lawyer, police officer or public official may state for public dissemination, without elaboration:
 - i) the general nature of the criminal charge or of the defence, including the fact that the accused is presumed innocent and denies the charge or charges;
 - ii) information already contained in the public record in the proceedings in question that is not the subject of any judicial or statutory publication bans, such as the *Criminal Code* publication bans relating to evidence and exhibits at the bail hearing or the preliminary hearing;
 - iii) the name, age, residence of the accused (in limited circumstances the occupation and family status of the accused) except where such information would identify the victim or complainant in violation of a *Criminal Code* prohibition on such identification;
 - iv) the identity of the victim or complainant where such identification is not prohibited by the *Criminal Code*;
 - v) the fact, time and place of the arrest, the charges, date and place of first court appearance;
 - vi) the identity of the investigative agency and the length of the investigation;

- vii) where the accused has not yet been arrested and a warrant has been issued, any information necessary to aid in the apprehension of that person or to warn the public of any danger the accused is reasonably expected to present, but no more information than is necessary to these two limited purposes;
 - viii) a request for assistance in obtaining evidence and information necessary to the prosecution or the defence.
- d) While a criminal matter is pending trial no lawyer, police officer or public official shall make unsubstantiated out-of-court criticisms of the competence, conduct, advice or motivation of another lawyer, police officer, public official or of the judge involved in the matter.
- e) Notwithstanding d), a lawyer, police officer or public official, may and should communicate reasonable suspicions of professional or judicial misconduct to the Law Society of Upper Canada, to the Canadian Judicial Council, to the Ontario Judicial Council, the Attorney General of Canada, the Attorney General of Ontario, Solicitor Generals, or the appropriate chief of police, for investigation, even though the suspicions may not yet be fully substantiated.

III. THE ADVISORY COMMITTEE

- a) The Advisory Committee will monitor the guidelines, receive and make recommendations for amendments, assist in providing interpretations and explanations of the guidelines when requested, mediate when requested and most important, assist in educating the public, media, lawyers, police and public officials regarding the guidelines and their objectives.
- b) The Advisory Committee will receive requests for assistance or advice from the Attorney General, the Solicitor General, police officers, police boards and police departments.
- c) The Advisory Committee shall be composed of a representative from:
 - Attorney General – Ontario
 - Solicitor General – Ontario
 - Federal Department of Justice
 - Law Society of Upper Canada
 - Press
 - Public (to be appointed by Chief Justice)
 - Police

IV. LIST OF PARTICIPANTS IN PROTOCOL [not listed]