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 firmly and pressed to its legitimate strength but it must also be done fairly.

The role of prosecutor excludes any notion of winning or losing; [his/her] function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.

Perspectives on Professional Discipline
Regional Seminar
The Prosecuting Counsel Perspective

Toronto, Ontario
June 17, 2014

Typical Functions/Role

• Investigation Stage
  - consulting
  - prosecutorial viability opinions

• Pre-hearing
  - disclosure
  - preparing memo for Chair
  - presenting client’s case

Typical Functions/Roles

• Hearing
  - interviewing witnesses
  - reviewing and mastering evidence
  - presenting case (findings/Order)

• Post-hearing
  - reviewing Decision and Reasons
  - appeal

Top 5 Challenges for Prosecutors

1. Learning the profession
   • scope of practice
   • standards
   • practice environment
   • culture
Top 5 Challenges for Prosecutors

2. Learning about your client
   a) Processes
      • instructions from Whom?
      • how do they do things?
      • division of labour
      • how do they interpret the legislation?

b) Culture of the organization
   • How actively do they participate in legal decisions?
   • What non-legal considerations influence decisions?
   • What are their expectations?

3. Defence counsel
   • “dabble” in the area
   • taking advantage of lay panel
   • last-minute
   • “demonizing” the regulator
Top 5 Challenges for Prosecutors

4. Unrepresented Registrants/Members
   • from cooperative to combative
   • time and $$$ for your client
   • get LOTS of latitude
   • generally don’t know the law

Top 5 Challenges for Prosecutors

5. Lay Panels
   • different levels of training
   • fear
     - of being appealed
     - of asking questions/looking foolish
   • conduct during the hearing
   • written reasons

Assessing the Case

• Do I have everything?
• How much detail?
• Expert opinion?
• Two part test:
  - Seriousness of allegations
  - Can the allegations be proven
Drafting Allegations

- Read the definitions of misconduct
- Break them down - can it all be proven?
  - “that is relevant to the practice”
  - “knew or ought to have known”
- Read the standards/guidelines
- Different characterizations of same conduct
- Format

Disclosure

- *Stinchcombe* standard
- “Relevant”
  - to prosecution
  - to defence
- Balance with privacy interests
- Ongoing

Pre-Hearings

- Backing position
- Not for litigating the case
- Additional investigation?
- Chance for both sides to hear other
- Pushing for dates
- Important role of Chair