

The Police Advocate

By CPL. E. G. FORREST

This article deals with a subject of much importance to members of the Force, as well as any peace officers who may find themselves in the role of prosecutor in lower Courts.

THE prosecutor who is also a peace officer, is not a rarity. Ninety-four* per cent of criminal cases are disposed of in Courts presided over by Justices of the Peace, Police and Stipendiary Magistrates. In the majority of these Courts, apart from metropolitan areas, the prosecutor's role is filled by the peace officer.

The police advocate appears by leave of the Court; it is a matter of judicial discretion and common practice. There is no positive law to dispute the appearance alone, although the procedure has been criticized. A conviction would not be upset on the sole ground that a peace officer conducted the prosecution. (*R. v. Cruitt*, 50 C.C.C. 143). No doubt the policy would change should any unfairness be shown by the police in such instances.

A heavy onus rests upon the police prosecutor and he is in a situation of extreme delicacy. In many cases he will call Crown witnesses who are fellow members of the parent organization. He should strive to be completely impartial and objective in presenting the facts. Any feelings of prejudice or animosity toward the defendant should be scrupulously avoided. The matter is put succinctly in *Boucher v. The Queen*, 20 C.R. 8, Rand, J., in the Supreme Court of Canada:

*Note: Quoted by John G. Diefenbaker, Q.C., M.P., at a panel discussion, "Inequalities of the Criminal Law", at the 37th Annual Meeting of the Canadian Bar Assoc., reported in Vol. 34, No. 3, *The Canadian Bar Review*, Mar. '56, p. 271.

"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 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."

The Canadian Bar Association at its Fifth Annual Meeting, Ottawa, Sept. 22, 1920, adopted a number of Canons of Legal Ethics, one of which states:

"When engaged as a public prosecutor his primary duty is not to convict but to see that justice is done; to that end he should withhold no facts tending to prove either the guilt or innocence of the accused."

The Crown prosecutor has a duty not to withhold any facts which tend to indicate innocence. However, it is up to him what witnesses he will call to "unfold the narrative". (*R. v. Lemay* (No. 2) 100 C.C.C. 365). It is not incumbent upon him to call a witness who is unfavorable to the prosecution, and is in fact, a defence witness. To discharge his duty properly he should inform the defence of the existence of such a witness. (*R. v. Thursfield* (1838) 8 C. & P. 268).