



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: 57560-00	EFFECTIVE DATE: September 15, 2004	POLICY CODE: NUD 1
SUBJECT: Nudity		CROSS-REFERENCE: Practice Directive

POLICY

It is the Assistant Deputy Attorney General who provides the requisite consent of the Attorney General to a prosecution for nudity under section 174 of the *Criminal Code* (see the Practice Directive entitled Consent of the Attorney General).

Factors to be considered in deciding whether a prosecution for nudity is in the public interest include:

- **whether there was an element of aggressive exhibitionism in the act of nudity**
- **whether the act of nudity significantly disturbed adjacent residents or members of the public**
- **whether there was blatant, repeated or wilful non-compliance with, or disobedience of, the law, despite warnings by the police**
- **whether the act of nudity occurred in an isolated or secluded location or in an area commonly known to be frequented by nude sunbathers**

DISCUSSION

If Administrative Crown Counsel recommend a charge of nudity, the matter should be reviewed by Regional or Deputy Regional Crown Counsel and then sent to the Criminal Justice Branch Headquarters office at Vancouver. Headquarters Crown Counsel are available for consultation at telephone: 604 660-1836.

In Maple Ridge (District) v. Meyer (2000) BCJ No. 1154 Prov. Ct, it was held that the municipal by-law prohibiting females over the age of 8 from going topless in parks or swimming pools infringed on the federal criminal law power. Municipalities and private corporations who ask for advice should be encouraged to seek their own legal advice as to their ability to regulate a dress code on their property.

In considering a charge under section 173 of the *Criminal Code* for the commission of an indecent act, Crown Counsel should be aware of R. v. Jacob (1996) 112 CCC (3d) 1, Ont. CA which held that indecency must be evaluated against the community standard of tolerance test and that the court must consider what the community would tolerate others being exposed to on the basis of the degree of harm that may flow from such exposure.