



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

FOREWORD

Fair and effective prosecutions are essential to the rule of law. The justice system is enhanced by well developed policy guidelines which assist Crown Counsel in the difficult decisions which they must make in the public interest.

The Criminal Justice Branch Performance Plan 2002/03 – 2004/05 has an objective that policies should be “necessary, relevant and written in a consistent manner”. The policies in this manual have been updated and revised to include only necessary statements of policy, eliminate repetition and provide broader, less restrictive guidelines on the exercise of prosecutorial discretion where possible. The policies take into account the changing environment that renders prosecutorial duties increasingly complex and challenging.

The Policies and Procedure Subcommittee of Branch Management Committee, consisting of a number of very experienced Crown Counsel, and also Branch Management Committee itself, have reviewed every revised policy in detail. This process has ensured that the Branch policies are as relevant as possible to the needs of Crown Counsel.

I wish to thank all persons who assisted in the preparation of this manual. The number of policies has been reduced from 117 to 66, a sure indicator of a successful enterprise. As public documents, these concise, well written policies will assist not only Crown Counsel but also the public in understanding how prosecutorial services are provided in the public interest.

I am pleased to present this revised policy manual in support of the vitally important work of Crown Counsel.

November 18, 2005

Robert W. G. Gillen, Q.C.



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
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PREFACE

The Crown Counsel Policy Manual is designed to assist Crown Counsel in the application of Criminal Justice Branch policy.

Branch Policies contain guidelines for the exercise of prosecutorial discretion. The words “Crown Counsel should” mean that Crown Counsel should ordinarily follow the policy guideline, but it is recognized that the public interest may require a decision to be made as an exception to such a policy guideline. This will occur only after discussion with Administrative Crown Counsel or Regional or Deputy Regional Crown Counsel, as circumstances dictate.

Some policy statements contain mandatory directions, for example those using the word “must”. They constitute directions of the Assistant Deputy Attorney General under section 4(3) of the *Crown Counsel Act*.

The words “Regional or Deputy Regional Crown Counsel” are deemed to include Directors and Deputy Directors of CASP and Directors of Headquarters, as appropriate in the context.

The Branch’s Statement of Purpose and Principles and Vision Statement are integral parts of the Policy Manual. Those statements should be regarded as the foundation documents which guide all members of the Criminal Justice Branch when carrying out their duties and responsibilities.

The Policy Manual does not have the status of law. It does not in any way override the *Criminal Code*, *Charter of Rights and Freedoms* or any other applicable legislation, and it is not intended to provide legal advice to members of the public or create any rights enforceable at law in any legal proceeding.



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INTRODUCTION

History of the Criminal Justice Branch:

Over three decades ago, the Criminal Justice Branch was created following the decision of the provincial government that the administration of justice should become an integrated system.

Prior to April 1, 1974, prosecutions in many Provincial Courts, including Vancouver, Victoria, Kelowna, Kamloops and Prince George, were conducted by lawyers hired by the municipalities.

In many other locations in the province, Provincial Court prosecutions were conducted by police prosecutors, or the police determined when a lawyer was necessary in Provincial Court and made arrangements to have a lawyer retained. Cases in the County and Supreme Courts were conducted by lawyers, usually from the private Bar, who were specifically retained by the then Director of Criminal Law to prosecute the assize or session. All reports on the outcome of cases prosecuted in County or Supreme Court were given to the Director of Criminal Law in Victoria.

On April 1, 1974, the inauguration of the Criminal Justice Branch created a decentralized prosecution service with consistent prosecution standards throughout the province.

In the late 1970s and early 1980s, a process evolved by which Crown Counsel approve charges before they are laid. Normally, there is a two-part test: first, whether there is a substantial likelihood of conviction and, if so, whether a prosecution is required in the public interest.

Following the Discretion to Prosecute Inquiry held by Inquiry Commissioner Stephen Owen in 1990, the provincial government passed the *Crown Counsel Act* in 1991. The Act sets out the functions and responsibilities of Crown Counsel, the Branch and the Assistant Deputy Attorney General, and it addresses the relationship between the Attorney General and the Branch.

As of 2005, the Criminal Justice Branch had 751 full-time equivalent positions consisting of 413 Crown Counsel and 338 administrative staff. Branch personnel were located in 39 offices in 5 regions across the province and also at the Criminal Appeals and Special Prosecutions Unit (CASP) and the Headquarters office.

Mandate of the Criminal Justice Branch:

The *Crown Counsel Act* affords significant prosecutorial independence to the Branch and, at the same time, balances that independence with accountability. The mandate of the Branch is set out in Section 2 of the *Crown Counsel Act*, where it states:

The Branch has the following functions and responsibilities:

- (a) to approve and conduct, on behalf of the Crown, all prosecutions of offences in British Columbia;
- (b) to initiate and conduct, on behalf of the Crown, all appeals and other proceedings in respect of any prosecution of an offence in British Columbia;
- (c) to conduct, on behalf of the Crown, any appeal or other proceeding in respect of a prosecution of an offence, in which the Crown is named as a respondent;
- (d) to advise the government on all criminal law matters;
- (e) to develop policies and procedures in respect of the administration of criminal justice in British Columbia;
- (f) to provide liaison with the media and affected members of the public on all matters respecting approval and conduct of prosecutions of offences or related appeals;
- (g) any other function or responsibility assigned to the Branch by the Attorney General.

Section 3 of the Act outlines the responsibilities of the Assistant Deputy Attorney General (ADAG):

- (1) The ADAG is charged with the administration of the Branch and with carrying out the functions and responsibilities of the Branch under section 2.
- (2) The ADAG is designated, for purposes of section 2 of the *Criminal Code*, as a lawful deputy of the Attorney General.

The responsibilities of Crown counsel are stated in section 4 of the Act:

- (1) The ADAG may designate as “Crown Counsel” any individual or class of individual who is lawfully entitled to practise law in British Columbia.
- (2) Each Crown Counsel is authorized to represent the Crown before all courts in relation to the prosecution of offences.
- (3) Subject to the directions of the ADAG or another Crown Counsel designated by the ADAG, each Crown Counsel is authorized to:
 - (a) examine all relevant information and documents and, following the examination, to approve for prosecution any offence or offences that he or she considers appropriate,
 - (b) conduct the prosecutions approved, and
 - (c) supervise prosecutions of offences that are being initiated or conducted by individuals

who are not Crown Counsel and, if the interests of justice require, to intervene and to conduct those prosecutions.

- (4) The Attorney General may establish an appeal process under which law enforcement officials may appeal the determination of any Crown Counsel or special prosecutor not to approve a prosecution.

The *Crown Counsel Act* also governs the relationship between the Branch and government through the Attorney General. It requires that directions on specific prosecutions must be in writing and published in the B.C. Gazette. There are analogous provisions for policy and administrative directions. The act also provides for the appointment of special prosecutors by the Assistant Deputy Attorney General when it is necessary in the public interest.

Role of Crown Counsel:

The role of Crown Counsel as set out in *R. v. Boucher* (1954), 110 CCC 263 (SCC) was recently endorsed in *R. v. Brown*, 2001 BCCA 14. The B.C. Court of Appeal quoted two passages from *Boucher* dealing with the special role of the prosecutor:

At 267, Mr. Justice Taschereau said:

The position held by counsel for the Crown is not that of a lawyer in civil litigation. His functions are quasi-judicial. His duty is not so much to obtain a conviction as to assist the judge and the jury in ensuring that the fullest possible justice is done. His conduct before the Court must always be characterized by moderation and impartiality. He will have properly performed his duty and will be beyond all reproach if, eschewing any appeal to passion, and employing a dignified manner suited to his function, he presents the evidence to the jury without going beyond what it discloses.

At 270, Mr. Justice Rand said:

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.

In *R. v. Logiacco* (1984), 11 CCC (3d) 374 (Ont CA), Mr. Justice Cory stated:

...[T]he role of the Crown Attorney in the administration of justice is of critical importance to the courts and to the community. The Crown prosecutor must proceed courageously in the face of threats and attempts at intimidation. He must see that all

matters deserving of prosecution are brought to trial and prosecuted with diligence and dispatch. He must be industrious to ensure that all the arduous preparation has been completed before the matter is brought before the court. He must be of absolute integrity, above all suspicion of unfair compromise or favouritism. The Crown prosecutor must be a symbol of fairness, prompt to make all reasonable disclosures and yet scrupulous in attention to the welfare and safety of witnesses. Much is expected of the Crown prosecutor by the courts. The community looks upon the Crown prosecutor as a symbol of authority and as a spokesman for the community in criminal matters...

Great trust is placed in the Crown prosecutor by the courts and by the public. Heavy obligations are imposed upon him in his quasi-judicial role. To be worthy of the trust and reliance which is placed in his office, he must conduct himself with becoming dignity and fairness.

The foregoing passages are examples of the high standards the Courts have of Crown prosecutors. The obligations of Crown Counsel and the dignity expected of that office are exceptional.

The independence of Crown Counsel is balanced with measures of accountability. Principled charge assessment decisions are assured when Crown Counsel experienced in assessing evidence exercise discretion in accordance with Branch public policies when reviewing the available evidence and applicable law.

Relationship of the Branch with other Justice Agencies:

Police:

The independence of the investigative and prosecutorial functions has been acknowledged as an important aspect of the administration of justice. In particular, the police must be free to conduct investigations and to form their own theories and opinions about who committed the offence which has been alleged. The police have a unique and well recognized role. Historically, the notion that the police make decisions about who, what, and how to investigate, free from government interference, can be traced back over one thousand years. Recently, the Supreme Court of Canada has confirmed that principle.¹

Crown Counsel exercise a role which is distinct from the investigation in order that their objectivity is not, and is not seen to be, compromised, so that they can properly discharge their quasi judicial roles in making an objective and principled decision on the initiation or conduct of a prosecution.

At the same time, there is no question that cooperation between the police and Crown Counsel is absolutely essential to the proper administration of justice.

¹ R. v. Campbell [1999] 1 S.C.R. 565 at paras.27-34; R. v. Regan [2002] supra at 62-91

Police and prosecutors are in a symbiotic relationship. Evidence gathered by the police during the investigative stage is the lifeblood of a prosecution. If it is anaemic or tainted, no amount of forensic brilliance can save the prosecution. Conversely, an incompetent prosecutor can render the most probing and meticulous police investigation impotent. For the criminal justice system to fully realize its goal of apprehending, convicting and sentencing the guilty (but not the innocent) by means of a process that complies with the Charter of Rights and Freedoms, police and prosecutors must have an effective working relationship².

When a police officer lays an Information, he or she must swear on oath that there are reasonable grounds to believe and that the officer does in fact believe, an offence has been committed.

The Criminal Justice Branch recognizes that the police have the authority to lay an Information; however, Crown Counsel have the ultimate authority to direct a stay of proceedings. Therefore, it is expected that the police will lay an Information only after the approval of charges by Crown Counsel, or, if charges are not approved, upon exhaustion of an appeal of that decision by the police (see policy CHA 1).

Recognizing that the charge assessment responsibility of Crown Counsel and the investigative responsibility of the police are mutually independent, cooperation and effective communication between Crown Counsel and the police are essential to the proper administration of justice. In serious cases, or those of significant public interest, Crown Counsel discuss with the police, where practicable, their intention to not approve a charge recommended by the police (a “no charge” decision) or to direct a stay of proceedings, and also resolution discussions.

Judiciary:

The principle of judicial independence is fundamental to the justice system. The courts are completely independent from all other branches of government, including the Criminal Justice Branch. All Crown Counsel recognize the need to maintain judicial independence and to act appropriately in their contact with the judiciary.

Branch Policies:

Branch Policies provide guidelines to Crown Counsel exercising the prosecution function, and as public documents, assist the public in understanding how prosecutorial services are provided in the public interest.

The Index of the Policy Manual lists policies by policy code, title and the effective date of the policy.

² Pearson, John, *The Prosecutor's Role at the Investigative Stage from an Ontario Perspective*, a paper presented at the June 2000 Annual Conference of the Federal Prosecution Service, p.4.



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ARCS/ORCS FILE NUMBER: 56560-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: ABD 1
SUBJECT: Abduction of Children - Section 282 and 283 <i>Criminal Code</i>		CROSS-REFERENCE: EXT 1 Practice Directive #4

POLICY

Children have the right to security, stability and continuity in their lives.

The purpose of these *Criminal Code* provisions is to prevent one parent from unilaterally taking exclusive possession of a child. The legislation is designed to ensure that parents obtain the Court's permission before one parent's right to possession is made paramount over the other parent's rights.

The *Criminal Code* requires the consent of the Attorney General for a prosecution under section 283 (child abduction whether or not there is a custody order), and that may be given by Administrative Crown Counsel, Deputy Regional Crown Counsel or Regional Crown Counsel (see Practice Directive #4).

Administrative Crown Counsel should be consulted on charge assessment for an alleged offence under s.282 of the *Criminal Code* (child abduction in contravention of a custody order).

On charge assessment for alleged offences under s.282 or s.283, factors to be considered in deciding whether a prosecution is in the public interest include:

Factors in Favour of Prosecution

1. A child has been taken from a situation where there has been some degree of permanency, contrary to a settled (written or otherwise), ongoing arrangement.
2. The offending parent has taken the child while there are outstanding court proceedings.
3. The offending parent has taken the child surreptitiously and disappeared.

4. The person is attempting to take, or has taken, the child out of the province.
5. There are reasonable and probable grounds to believe the child has been taken in contravention of a foreign custody order.
6. The offending party has repeatedly breached section 282 or 283.
7. There is a possibility the child is in danger and the provisions of the *Child, Family and Community Service Act* are either inadequate or inappropriate.
8. There are reasonable grounds to believe that the offending party is incapable of looking after the child (for example, due to substance abuse or diminished capacity).

Factors Against Prosecution

1. A parent has taken a child away from the matrimonial home during the course of a recent marital break up or separation, and the issue of custody should be resolved by agreement, through counsel or in family court.
2. The offending parent is merely late in returning a child from an access visit.
3. There are conflicting court orders.
4. The guardianship, parenthood, possession or charge of the child may be subject to applicable legislation such as: s.29 *Corrections Act*, s.27 *Family Relations Act*, s.32 *Child, Family and Community Service Act*.
5. A less onerous civil remedy is available and would be more appropriate in the circumstances.

DISCUSSION

The purpose of these provisions of the *Criminal Code* is to prevent one parent from unilaterally taking exclusive possession of the child and to encourage the parties to attend court and abide by court orders to resolve initial and ongoing custody and access issues.

An offence lies under s.282 where a parent has been deprived of a right of access (R. v. Petropoulos (1990) 59 CCC (3d) 393 BCCA).

Extradition of a parent may be possible from some countries, but an extradition order will not in itself result in the return of the child. Therefore, any consideration of extradition proceedings must involve an analysis of the public interest factors in prosecuting the parent and the effect on the welfare of the child. See policy EXT 1.

Crown Counsel can advise the complainant parent to consider the use of civil procedures through the Hague Convention relating to international child abduction. The complainant may be advised to contact the appropriate lawyer at the Legal Services Branch in Victoria. It should be noted that, for certain countries, a decision to prosecute under the *Criminal Code* could prevent the return of the child through Hague Convention procedures.



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ARCS/ORCS FILE NUMBER: 1070-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: ADH 1
SUBJECT: Ad Hoc Counsel		CROSS-REFERENCE: SPE 1 STA 1

POLICY

Legal counsel in private practice (ad hoc counsel) are retained on an ad hoc basis under various circumstances, most notably:

- 1. To provide Crown Counsel services when no employee Crown Counsel is available.**
- 2. To make, or advise upon, charge approval decisions and to prosecute cases in respect of which a real or apprehended conflict of interest arises.**
- 3. To allow the Branch, in exceptional circumstances, to benefit from the particular expertise, skill, or knowledge of members of the defence bar in specialized areas or sensitive matters.**

The provisions concerning the need to avoid conflict of interest in exercising a prosecutorial function, in the Branch policy entitled “Standards of Conduct – Conflict of Interest” STA 1, apply to ad hoc counsel in their role as Crown Counsel.

DISCUSSION

Eligibility

- 1. Counsel must have the authority to practice law in British Columbia under the *Legal Profession Act*.**
- 2. In determining whether to retain an ad hoc counsel, Administrative Crown Counsel must have confidence in the skills, abilities, and judgment of ad hoc counsel and be satisfied that ad hoc counsel has appropriate knowledge of the criminal law, procedure and Branch policy.**
- 3. Ad hoc counsel should have experience in criminal cases which corresponds to the**

duties for which they are retained.

Criteria for Selecting Ad Hoc Counsel

1. Demonstrated competence in the practice of criminal law which includes a good working knowledge of substantive law and procedures as well as demonstrated ability in the conduct of trials, examination and cross-examination of witnesses, making of legal arguments and submissions, and speaking to sentence.
2. Demonstrated sound judgment in the conduct of criminal cases, e.g., making tactical decisions in the course of a trial, recognizing the strengths and weaknesses in any particular case.
3. Recognized as a lawyer who maintains high ethical standards.
4. Enjoys the respect of colleagues and the judiciary.
5. Recognized as a lawyer with a good work ethic.
6. Will review and follow Branch policies relevant to the retainer.
7. Has performed previous ad hoc duties, if any, in an efficient and competent manner.

Ad Hoc Counsel Appointments - Considerations

1. The criminal bar is a relatively small one. It is generally well known amongst members of the defence bar that the Criminal Justice Branch retains ad hoc Crown Counsel from time to time. Similarly, Administrative Crown Counsel are generally aware of those lawyers who are interested and qualified.
2. Any qualified lawyer in private practice who wishes to perform ad hoc counsel work should inform Administrative Crown Counsel of their interest.
3. There are ad hoc counsel whose performance is of such high calibre that Administrative Crown Counsel will select them whenever they are available. In addition, some lawyers are more willing to travel to the work, so they may be retained more frequently.
4. In many smaller communities, primarily outside the Lower Mainland, there may be few qualified counsel willing to perform ad hoc counsel responsibilities, which results in only a limited number of lawyers being retained on a recurring basis.
5. In addition to special prosecutions for which only the Assistant Deputy Attorney General has authority to appoint under the *Crown Counsel Act*, some cases require very experienced and talented senior ad hoc counsel to be assigned (for example,

where there is a conflict or unavailability of senior employee Crown Counsel). Regional Crown Counsel retain the flexibility in these cases to retain a lawyer in whom they have the utmost confidence in their ability to do a good job in difficult circumstances. The number of qualified lawyers in this category is necessarily limited.

The procedure for retaining ad hoc counsel and use of standard retainer letters and billing guide is described in a Management Services Bulletin entitled "Ad Hoc Retainer Process", a copy of which is available from Managers of Administrative Services.



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ARCS/ORCS FILE NUMBER: 55360-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: ALT 1
SUBJECT: Alternative Measures for Adult Offenders		CROSS-REFERENCE: CHI 1 CRI 1 HAT 1 SEX 1 SPO 1 PRO 1 YOU 1.4

POLICY

The Criminal Justice Branch supports the use of alternative measures programs, and recognizes that they are often the most appropriate and effective way for offenders to accept responsibility for their criminal conduct and to address harm done to the community. This includes programs based on restorative justice principles, such as family group conferencing, community accountability panels and victim/offender reconciliation processes.

The Branch is committed to alternative measures programs which recognize the traditional values and customs of aboriginal communities and have been authorized under section 717 of the *Criminal Code*.

Prior to recommending alternative measures, Crown Counsel should be satisfied that there is a substantial likelihood of conviction. If so, the public interest factors outlined in the charge assessment policy (CHA 1) and the suitability of the candidate for alternative measures should be considered.

The application of this policy is a continuing one. Notwithstanding a determination that alternative measures are not initially suitable, upon receipt of new information it may be appropriate to reassess the decision regarding alternative measures.

In considering alternative measures in a particular case, Crown Counsel should take into account the following factors:

- whether the use of alternative measures would result in an increased risk of danger to the public
- any recent and relevant criminal record or record of alternative measures for the subject

- whether a weapon was used in the commission of the offence
- the vulnerability of any victim and any significant difference in the ages of the offender and the victim
- whether the offence was a breach of trust
- the need to maintain public confidence in the administration of justice

In addition, the following criteria apply to the use of alternative measures for four different categories of offences (see appendix A):

Category 4 Offences

All first time offenders who would otherwise be charged with an offence listed in Category 4 should be presumed suitable for alternative measures and should be referred for alternative measures consideration unless, upon considering the particular circumstances of the offence and the offender, it is clear that alternative measures would be “inconsistent with the protection of society”, and would not be “appropriate, having regard to the needs of the (offender) and the interests of society and of the victim”.

Category 3 Offences

First time offenders who would otherwise be charged with an offence listed in Category 3 are eligible for alternative measures and should be referred for alternative measures consideration if, upon considering the particular circumstances of the offence and the offender, it appears that alternative measures may not be “inconsistent with the protection of society”, and may be “appropriate, having regard to the needs of the (offender) and the interests of society and of the victim”.

Category 2 Offences

With the approval of Regional or Deputy Regional Crown Counsel, offenders who would otherwise be charged with an offence listed in Category 2 may be referred for alternative measures consideration if exceptional circumstances suggest that alternative measures may not be “inconsistent with the protection of society”, and may be “appropriate, having regard to the needs of the (offender) and the interests of society and of the victim”.

Category 1 Offences

The offences of first and second degree murder, conspiracy to commit murder, attempted murder and manslaughter must not be considered for alternative measures. An offender who would otherwise be charged with another offence included in Category 1, may, in rare circumstances, and with the written consent of the Assistant Deputy Attorney General, be referred for alternative measures consideration and then approved for alternative measures by Regional Crown Counsel.

After consultation with the local police, Regional Crown Counsel, in consultation with the Assistant Deputy Attorney General, may provide written direction to Crown Counsel that for certain offences included in Categories 3 or 4, alternative measures should not be used, absent exceptional circumstances. This direction will normally be given when Regional Crown Counsel is satisfied that there is a demonstrated need in the local community to prosecute those offences.

In addition to the provisions of this policy, separate Branch policies provide guidance on the use of alternative measures in the following circumstances:

- **child abuse – physical and sexual (see CHI 1)**
- **criminal harassment (see CRI 1)**
- **hate motivated offences and hate propaganda (see HAT 1)**
- **sexual assault (see SEX 1)**
- **spouse assault (see SPO 1)**

Section 717(4) of the *Criminal Code* states that the original offence can be prosecuted if there is total or substantial failure to comply with the intrinsic conditions of the alternative measures process. Prosecutors should bear in mind the public interest portion of the charge assessment standard when considering whether or not to proceed with charges for the original offence, particularly in circumstances where there has been partial compliance as contemplated by section 717(4)(b) of the *Criminal Code*.

A caution letter may be used in lieu of prosecution where the offence is relatively minor and the offender has had no previous convictions, alternative measures or caution letters. The use of a caution letter should be appropriate having regard to the needs of the offender and the interests of society and the victim. A sample caution letter is attached as appendix B.

DISCUSSION

Referrals

Referrals for alternative measures consideration must be consistent with the program of alternative measures authorized by the Attorney General pursuant to section 717(1)(a) of the *Criminal Code*. Specifically, referrals must be made to the Corrections Branch or an agency contracted by them for the purpose of providing alternative measures services (a “Contractor”).

Alternative Measures Report

The Corrections Branch or Contractor will then provide Crown Counsel with a report (the Alternative Measures Form) respecting the person’s suitability for alternative measures. If alternative measures are recommended, the report will include an alternative measures plan.

Crown Counsel must ensure that the Alternative Measures Form includes confirmation that the legal pre-conditions have been met. The form should also provide details respecting the suitability of the offender for alternative measures, the victim’s views respecting the use of alternative measures, and any specific alternative measures terms and conditions recommended. It should also confirm that the offender has been advised that the original offence may be prosecuted if there is non-compliance with the terms and conditions of the alternative measures and that, if before the court on a subsequent offence, their alternative measures record may be introduced into evidence or be included in a pre-sentence report (during the time periods allowed by the *Criminal Code*).

APPENDIX A

EXAMPLES OF CASE TYPES

CATEGORY 1	CATEGORY 2	CATEGORY 3	CATEGORY 4
<ul style="list-style-type: none"> • ARSON, with disregard for human life • ASSAULT, Aggravated • ASSAULT, Sexual, with a Weapon, or threats to third parties, or Causing Bodily Harm, or Aggravated Sexual Assault • BREAK & ENTER, or Unlawfully in a Dwelling House, involving injury, or attempted violence • BRIBERY • CONFINEMENT, Unlawful • CONSPIRACY to Commit Murder • COUNTERFEITING • DRIVING, Impaired or Dangerous, causing death or bodily harm • ESCAPE, involving violence • EXPLOSIVE, use of, likely to cause bodily harm or death • EXTORTION • FIREARM, used in the commission of an offence • HARASSMENT, Criminal • HATE Propaganda offences • HOSTAGE Taking • KIDNAPPING • MANSLAUGHTER • MISCHIEF, Causing danger to life • MURDER, Attempted • MURDER, First and Second Degree • NEGLIGENCE, Criminal • OBSTRUCTING Justice • PERJURY • PORNOGRAPHY, Possession or making involving children • PRISON Breach • PROSTITUTION, Living on the Avails of, Procuring etc. (S. 212) • ROBBERY • SABOTAGE • SEXUAL OFFENCES involving , breach of trust and/or children • SEXUAL SERVICES of children, Obtaining or Attempting to Obtain (s. 212(4)) 	<ul style="list-style-type: none"> • ABDUCTION, (Parental) • ARSON (except as noted in Cat. 1) • ASSAULT Causing Bodily Harm • ASSAULT a Peace Officer • ASSAULT, Sexual (except as noted in Cat. 1) • ASSAULT, Spousal (except Aggravated Assaults in Cat. 1) • ASSAULT with a Weapon • BREACH of probation or other court order • BREAK & ENTER of a Dwelling House • CHILD ABUSE (except when there is a Cat. 1 offence) • CONCEALED Weapon • CONTEMPT, Criminal • DRIVING, Dangerous, Impaired or Over .08 • DRIVING, Involving high speed chase • DRIVING While Disqualified (S. 259) • ESCAPING Custody (non-violent) • EXPLOSIVE Substance, Possession • FTA, or Unlawfully at Large • FIREARMS, Careless use, storage or pointing • FORGERY, (Possession of forged currency or passports) • HATE bias offences (except as noted in Cat. 1) • INDECENT Act (targeting children) • MISCHIEF, Public • THEFT, PSP, FORGERY, FRAUD, FALSE PRETENCES, Uttering, Unlawful use of a Credit Card, Unauthorized Use of a Computer, (involving public funds, public documents, internal theft, a scheme of organized criminal activity, a position of trust or a vulnerable victim) • UTTERING Threats, to cause death or bodily harm • WEAPON, Possession, Dangerous to the Public Peace, or of a Prohibited or Restricted Weapon 	<ul style="list-style-type: none"> • ASSAULT, S. 266 (except VAWIR, as noted in Cat. 2) • BREAK & ENTER, NOT a dwelling house • COMPUTER, Unauthorized use of a (except as noted in Cat. 2, "Theft") • FORGERY, Fraud, False Pretences, Uttering, or Unlawful use of a Credit Card, in amounts over \$5,000 (except as noted in Cat. 2, "Theft") • INDECENT Act (except as noted in Cat. 2, offences targeting children) • MISCHIEF OVER \$5000 • POSSESSION of INSTRUMENTS, house or car breaking • PSP OVER \$5,000 (except as noted in Cat. 2, "Theft") • PROSTITUTION, Communicating for the Purposes of, (except demonstrated nuisance in the community, in which case the matter should be dealt with as a Cat. 2 offence) • TAKE Auto Without Consent • THEFT OVER \$5,000, (except as noted in Cat. 2 "Theft") • TRESPASS at night 	<ul style="list-style-type: none"> • DISTURBANCE, Causing a • FALSE Pretences, Uttering, Unlawful use of a Credit Card, where the amounts involved are UNDER \$5,000 (except as noted in Cat. 2) • MISCHIEF UNDER \$5000 • PSP UNDER \$5,000 (except as noted in Cat. 2) • THEFT UNDER \$5,000 (except as noted in Cat. 2)

APPENDIX B

CAUTION LETTER

[Date]

[Name of Offender]

[Address]

[City/Province/PC]

Dear [_____]:

**Re: [Name of Offender]
[Offence]
[Date of Offence]
[Police File Number]**

Our office has received a police report alleging that you have committed the above noted offence(s). We have reviewed the reported circumstances and have decided not to proceed with criminal charges and a prosecution of this matter. However, a copy of this letter will be kept in our office.

In view of this Ministry's responsibility to the public, you must understand that if further reports are received alleging other offences, this letter will be considered in determining whether we proceed with a prosecution.

Yours truly,

[Name]

Crown Counsel



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

ARCS/ORCS FILE NUMBER: 56010-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: APP 1
SUBJECT: Appeals by Crown to the Court of Appeal and Supreme Court of Canada		CROSS-REFERENCE: MED 1 ENV1

POLICY

This policy outlines the minimum requirements that must be met before an appeal to the Court of Appeal or Supreme Court of Canada will be approved. The fact that the criteria are met does not necessarily mean that an appeal will be initiated. Cases meeting the requirements will be considered on their own merits by the Director, CASP or designated Court of Appeal Crown Counsel.

This policy recognizes that not every unfavourable result can or should be appealed and that the appeal process is onerous for both the Crown and the accused/respondent. This policy recognizes the value of finality in the administration of criminal justice and, to that end, generally discourages a second litigation of issues which a trial court has already decided.

Subject to the policy entitled Environmental Prosecutions ([ENV 1](#)), all Crown appeals to the Court of Appeal and Supreme Court of Canada are to be approved by the Director of Criminal Appeals and Special Prosecutions (CASP) or the designated Court of Appeal Crown Counsel.

Appeal Against Acquittal to the Court of Appeal

No appeal against acquittal or judicial stay of proceedings will be approved unless:

- 1. it involves a question of law alone (s.676(1)(a));**
- 2. a reasonable argument can be made that the verdict would not necessarily have been the same if the error in law had not been made ([Vezeau v. The Queen](#) (1976) 28 CCC (2d) 81 (SCC)); and**

3. the public interest requires an appeal.

In deciding whether the public interest requires an appeal, some of the factors that may be considered include:

- **whether public safety concerns, taking into account the seriousness of the offence and the circumstances of the offender, warrant a reconsideration of the case**
- **whether the issue raised by the case is one of general importance and no similar case is under appeal**
- **whether there are conflicting judgments on the question of law to be appealed**
- **whether it is likely that an appeal, if taken, would be successful**
- **whether there exists a proper record upon which to litigate the question of law**

The application of and weight to be given to these and other factors will depend on the circumstances of each case.

Appeal Against Sentence to the Court of Appeal

No appeal against sentence will be approved unless:

1. **the sentence imposed in the trial court is either illegal or unfit¹; and**
2. (a) **the proposed appeal involves a serious offence or relates to an offender who constitutes a serious threat to the community;**
(b) the proposed appeal raises an important question of general application concerning the principles of sentencing; or
(c) the public interest in the proper administration of justice requires that the sentence be appealed.

¹ Generally, a sentence will only be considered unfit if it is clearly below the acceptable range of sentence and not merely at the low end of the acceptable range (**R. v. Shropshire** (1995) 102 CCC (3d) 193 (S.C.C.); **R. v. C.A.M.** (1996) 105 CCC (3d) 32 (SCC)). Accordingly, a successful appeal should lead to a significant increase in the length of the sentence or a significant alteration to the manner in which the sentence is to be served.

Appeals by Crown to the Court of Appeal and Supreme Court of Canada	Page 3 of 7	APP 1
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Procedure to Request an Appeal

- 1. All requests for appeal from acquittal or sentence should be in the standard form ([copies attached](#)). It is imperative that all information identified on the Fact Sheet be provided with the appeal request.**
- 2. Administrative Crown Counsel should be advised of all requests by trial Crown Counsel for a Crown appeal, and all requests must be approved by Regional or Deputy Regional Crown Counsel before being forwarded to the Director, CASP.**
- 3. Time is of the essence. The Crown appeal request form must be submitted to the Director of CASP well in advance of the expiration of the 30 day time limit for filing the Notice of Appeal and serving the accused/respondent.**
- 4. The requesting office should order all necessary transcripts on an expedited basis, including transcripts of reasons for judgment, reasons for sentence, significant rulings during the trial, and portions of the judge's charge relevant to the grounds of appeal. The appeal request form should be forwarded immediately and transcripts as soon as possible.**
- 5. Where Regional Crown Counsel and the Director, CASP, disagree about whether an appeal or application for leave to appeal should be taken to either the Court of Appeal or the Supreme Court of Canada, the matter must be referred for resolution to the Assistant Deputy Attorney General (ADAG) at the earliest opportunity prior to the expiration of the appeal period.**
- 6. CASP may request Regional Crown Counsel to provide counsel to conduct an appeal. Crown Counsel attached to a Region or at Headquarters may request to be given conduct of an appeal after consultation with Regional or Deputy Regional Crown Counsel or the pertinent Director at Headquarters, respectively. The request is to be made to the Director, CASP.**
- 7. Subject to the policy entitled Environmental Prosecutions ([ENV 1](#)) and in the absence of a specific arrangement under the last paragraph, the Criminal Appeals office will have conduct of all appeals to the British Columbia Court of Appeal and Supreme Court of Canada.**

Additional Considerations in Relation to Crown and Defence Appeals

- 1. If there is a media enquiry concerning an acquittal or sentence, Crown Counsel should indicate that decisions concerning whether to appeal are made following a complete review of the case. Crown Counsel should not outline their recommendation regarding appeal or make any public pronouncement regarding the likelihood of a Crown appeal being taken from an acquittal or**

Appeals by Crown to the Court of Appeal and Supreme Court of Canada	Page 4 of 7	APP 1
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- sentence. See the policy entitled **Media – Guidelines for Crown Counsel – Communications** ([MED 1](#)).
2. **Crown Counsel should refrain from making any representations about positions the Crown will take in response to a defence appeal or any interlocutory application connected to an appeal, including an application for bail pending appeal.**
 3. **Crown Counsel should refrain from entering into any arrangement which purports to fetter the discretion of the Attorney General to commence an appeal unless the written approval of the ADAG to such an arrangement is obtained in advance.**

Interventions in the Court of Appeal and the Supreme Court of Canada

Recommendations to the ADAG about whether or not the Attorney General of British Columbia should intervene in appeals to be heard in the Court of Appeal or Supreme Court of Canada will be made following consultation between the Director, Legal Services and the Director, CASP, or his or her designate.

DISCUSSION

The 30 day time limit for sentence appeals runs from the date of sentence.

The 30 day time limit for appeals from acquittal runs from the date of the acquittal and not from the date of sentence. (For example, where a verdict of acquittal is directed by the trial judge at the close of the Crown's case on the charged offence, but the trial continues on a lesser and included offence, the 30 day appeal period runs from the date of the directed verdict of acquittal.)

Criminal Appeals staff may have relatively little information about the file and therefore may require assistance. When Criminal Appeals staff seek information from a local Crown Counsel office with respect to a case, it is incumbent upon the local office to obtain the required information rather than direct the Criminal Appeals staff elsewhere.

FACT SHEET - CROWN APPEAL AGAINST SENTENCE

1. Name of accused.
2. Lower Court registry number and location.
3. Place of sentencing.
4. Name of judge.
5. Of what was accused convicted and what sentence was imposed. **A copy of the endorsed Information or Indictment to be attached.**
6. Plea at trial.
7. Whether a jury trial.
8. Length of trial, give dates.
9. Place and date of reasons for conviction.
10. Place and date of reasons for sentence. **Transcript of Reasons for Sentence must be forwarded to criminal appeals office as soon as possible.**
11. Attach a statement of the facts as found by the trial judge for the purpose of sentence.
 - (a) If accused convicted after trial, where are the facts as stated by the court? (e.g.) Judge's reasons for conviction; Judge's reasons for sentence.
 - (b) If accused convicted upon guilty plea, give the date the facts were read in. Did accused deny any of the facts read in by Crown? What facts denied? Did Crown then prove those facts?
12. If accused in custody, place of incarceration.
13. Where can the accused be served with the Notice of Appeal? Provide most recent known address and place of employment and known previous addresses.
14. Where the accused is not in custody give the name, detachment and telephone number of the officer who will arrange service of the Notice of Appeal on the accused.
15. Outline basis of appeal against sentence.
16. What was the Crown's position on sentence?
17. What cases were cited by the Crown and defence on sentence.
18. Were any witnesses called on sentence? Give names, by whom called, purpose.
19. List documents placed before judge on sentence: **(Copies to be attached)**
 - (a) criminal record; (YES/NO)
 - (b) pre-sentence reports; (YES/NO)
 - (c) character letter; (YES/NO)
 - (d) psychiatric/psychologist reports; (YES/NO)
 - (e) Victim Impact Statements; (YES/NO)
 - (e) other. (YES/NO)
20. Was any portion of the facts contained in the documents on sentencing denied by the accused? What was denied?
21. Did the accused admit additional convictions to those on the record sheet or in the pre-sentence report? If so, what were those admissions?

Appeals by Crown to the Court of Appeal and Supreme Court of Canada	Page 6 of 7	APP 1
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22. Were there co-accused - whether tried with the accused or separately? Indicate any circumstances which would justify any disparity between the co-accused's sentence and this sentence.
23. How much time did accused spend in custody prior to sentence? Did any portion of this time result from other sentences?
24. Names of all Crown Counsel involved.
25. Names and telephone numbers of all Court Reporters (Court Recording Service) involved in the trial and sentencing.
26. Names, addresses and telephone numbers of any victims who require notification.

FACT SHEET**CROWN APPEAL AGAINST ACQUITTAL - JUDICIAL STAY OF PROCEEDINGS**

1. Name of accused.
2. Lower Court registry number
3. Lower Court registry location.
4. Place of acquittal or stay of proceedings.
5. Name of judge.
6. Offence of which accused acquitted or on which stay of proceedings entered and section of *Criminal Code* of offence.
A copy of the endorsed Information or Indictment to be attached.
7. Plea at trial.
8. Whether a jury trial.
9. Length of trial (give dates).
10. Place and date of acquittal or stay of proceedings.
Transcript of Reasons for Acquittal or Stay of Proceedings to be forwarded to Criminal Appeals office as soon as possible.
11. If trial by judge without a jury, attach a statement of the facts as found by the trial judge upon which acquittal or stay of proceedings based.
12. If accused in custody, place of incarceration.
13. Where can the accused be served with the Notice of Appeal? Provide most recent known address and place of employment and known previous addresses.
14. Where the accused is not in custody give the name, detachment and telephone number of the officer who will arrange service of the Notice of Appeal on the accused.
15. What error(s) of law alone would form the basis for this appeal?
16. Explain why the verdict in this case would have been different if the error(s) in law had not occurred.
17. What position did the Crown take at trial on the issues forming the basis for the appeal.
18. What cases were cited by the Crown and defence on the issues.
19. Provide any additional information which would assist in determining if this is a case requiring a Crown appeal.
20. Names of all Crown Counsel involved.
21. Names and telephone numbers of all Court Reporters (or Court Recording Service) involved in the trial.
22. Name, address and phone numbers of defence counsel at trial.
23. Names, addresses and telephone numbers of any victims who require notification.



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

ARCS/ORCS FILE NUMBER: 56010-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: APP 1.1
SUBJECT: Appeals by Crown of Summary Conviction Matters		CROSS-REFERENCE:

POLICY

This policy outlines the minimum requirements that must be met before an appeal to the Supreme Court of British Columbia will be approved. The fact that the criteria are met does not necessarily mean that an appeal will be initiated. Cases meeting the requirements will be considered for approval by Regional or Deputy Regional Crown Counsel after a recommendation by Administrative Crown Counsel.

This policy recognizes that not every unfavourable result can or should be appealed and that the appeal process is onerous for both the Crown and the accused/respondent. This policy recognizes the value of finality in the administration of criminal justice and, to that end, generally discourages a second litigation of issues which a trial court has already decided.

Appeal Against Acquittal to the Supreme Court of British Columbia

No appeal against acquittal or judicial stay of proceedings will be approved unless:

- 1. it involves a question of law, a question of jurisdiction, or the decision is unreasonable and unsupported by the evidence;**
- 2. a reasonable argument can be made that the verdict would not necessarily have been the same if the error had not been made; and**
- 3. the public interest requires an appeal.**

In deciding whether the public interest requires an appeal, some of the factors that may be considered include:

- whether public interest concerns, taking into account the nature of the offence and the circumstances of the offender, warrant a reconsideration of the case**

- whether the issue raised by the case is one of general importance and no similar case is under appeal
- whether the proper administration of justice in the particular region or locale requires that an appeal be launched
- whether there are conflicting judgments on the question of law to be appealed
- whether the alleged error, although not of general application, is determinative of a case that is of some special or local importance
- whether it is likely that an appeal, if taken, would be successful
- whether there exists a proper record upon which to litigate a question of law

The application of and weight to be given to these and other factors will depend on the circumstances of each case.

Appeal Against Sentence to the Supreme Court of British Columbia

No appeal against sentence will be approved unless:

1. the sentence imposed in the trial court is either illegal or unfit¹; and
2. (a) the proposed appeal raises an important question of general application concerning the principles of sentencing; or
 - (b) the proper administration of justice in the particular region or locale requires that the sentence be appealed.

Appeal Procedure

All recommendations for sentence or acquittal appeals should be in the standard form (copies attached). These forms must be submitted well in advance of the expiration of the 30 day time limit for serving the accused. A trial prosecutor may wish to complete a draft Notice of Appeal (presently Form 4, Summary Conviction Appeal Rules 1997). The 30 day limit for appeals from acquittal runs from the day of acquittal and the 30 day limit for sentence appeals from day of sentence.

¹ Generally, a sentence will only be considered unfit if it is clearly below the acceptable range of sentence and not merely at the low end of the acceptable range (**R. v. Shropshire** (1995) 102 CCC (3d) 193 (S.C.C.); **R. v. C.A.M.** (1996) 105 CCC (3d) 32 (SCC)). Accordingly, a successful appeal should lead to a significant increase in the length of the sentence or a significant alteration to the manner in which the sentence is to be served.

FACT SHEET - CROWN APPEAL AGAINST SENTENCE

1. Name of accused.
2. Place of sentencing.
3. Court file number.
4. Name of judge.
5. Offence(s) of which accused convicted. **A copy of Information to be attached.**
6. Plea at trial.
7. Length of trial (give dates).
8. Place and date of reasons for conviction.
9. Place and date of reasons for sentence.
Transcript of Reasons for Sentence must be forwarded to Deputy Regional Crown Counsel or designate as soon as possible.
10. Sentence imposed.
11. Attach a statement of facts as found by the trial judge for the purpose of sentence.
 - (a) If accused convicted after trial where are the facts as stated by the Court? (e.g.)
Judge's reasons for conviction; Judge's reasons for sentence.
12. If accused in custody, place of incarceration.
13. **Where can the accused be served with the Notice of Appeal?**
Provide most recent known address and place of employment and known previous addresses.
14. Where the accused is not in custody, give the name, detachment and phone number of the officer who will arrange service of the Notice of Appeal on the accused.
15. Outline basis of appeal against sentence.
16. What was the Crown's position on sentence?
17. What cases were cited by the Crown and defence on sentence? If feasible, provide copies or list of citations.
18. Were any witnesses called on sentence? Give names, by whom called, purpose.
19. List documents placed before judge on sentence: **(Copies to be attached)**
 - (a) criminal record; (YES/NO)
 - (b) pre-sentence report; (YES/NO)
 - (c) character letter; (YES/NO)
 - (d) psychiatric/psychologist reports; (YES/NO)
 - (e) Victim Impact Statements; (YES/NO)
 - (f) Other. (YES/NO)
20. Was any portion of the facts contained in the documents listed above denied by the accused? What was denied?
21. Were there co-accused - whether tried with the accused or separately? Indicate any circumstances which would justify any disparity between the co-accused's sentence and this sentence.

22. Did the accused admit additional convictions to those on the record sheet or in the pre-sentence report? If so, what were those admissions?
23. How much time did accused spend in custody prior to sentence? Did any portion of this time result from other sentences?
24. Names of all Crown Counsel involved.
25. Names and telephone numbers of all Court Recording Services involved in the trial and sentencing.

FACT SHEET
CROWN APPEAL AGAINST ACQUITTAL OR JUDICIAL STAY

1. Name of accused.
2. Place of acquittal or stay of proceedings.
3. Court file number.
4. Name of Judge.
5. Offence(s) of which accused acquitted and Criminal Code section number (or other statute section). A copy of the Information to be attached.
6. Plea at trial.
7. Length of trial, give dates.
8. Place and date of acquittal or stay of proceedings.
Transcript of Reasons for Acquittal or Stay of Proceedings to be forwarded to Criminal Appeals office as soon as possible.
9. Attached a statement of the facts as found by the trial judge upon which acquittal or stay of proceedings based.
10. If accused in custody, place of incarceration.
11. Where can accused be served with the Notice Appeal? Provide most recent known address and place of employment and known previous addresses.
12. Where the accused is not in custody give the name, detachment and telephone number of the officer who will arrange service of the Notice of Appeal on the accused.
13. What error(s) of law alone would form the basis for this appeal?
14. Explain why the verdict in this case would have been different if the error(s) in law had not occurred.
15. What position did the Crown take at trial on the issues forming the basis for the appeal.
16. What cases were cited by the Crown and defence on the issues. **Provide copies or citations, if possible.**
17. Provide any additional information which would assist in determining if this is a case requiring a Crown appeal.
18. Names of all Crown Counsel involved.
19. Names and telephone numbers of all Court Recording Services involved in the trial and sentencing.



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

ARCS/ORCS FILE NUMBER: 55680-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: BAI 1
SUBJECT: Bail Estreatments		CROSS-REFERENCE:

POLICY

In exercising discretion on whether to pursue estreatment proceedings, Crown Counsel should consider the following factors:

- **the need to protect the integrity of the justice system**
- **the seriousness of the charge**
- **whether estreatment is practical in the circumstances of the particular case**
- **the degree of fault of any surety in the accused's failure to comply with the order and any efforts made by that surety to render the accused**



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

ARCS/ORCS FILE NUMBER: 57380-00	EFFECTIVE DATE: September 15, 2004	POLICY CODE: BIG 1
SUBJECT: Bigamy and Polygamy		CROSS-REFERENCE:

POLICY

Bigamy

The decision to approve a charge of bigamy should be made on a case by case basis. Charges of bigamy are generally discouraged where no significant harm has occurred. Relevant factors include:

- **the financial, emotional and social harm caused to the legal spouse, the subsequent spouse and any children of either relationship**
- **the vulnerability of the spouse entering the invalid marriage**
- **the accused's motive**
- **the extent of the deception (including with respect to government officials, documents and programs) and the degree of effort required to rectify the matter**

If a Report to Crown Counsel alleging bigamy is received, Regional or Deputy Regional Crown Counsel should be consulted before a charging decision is made.

Polygamy

In light of the various constitutional issues which may arise, if a Report to Crown Counsel alleging polygamy is received, Administrative Crown Counsel should refer the file, together with any recommendation, to Regional Crown Counsel, who in turn should consult with the Assistant Deputy Attorney General before a charging decision is made.

DISCUSSION

The offence of bigamy involves a deception that results in the falsification of state records and may involve financial, emotional or social harm to the legal spouse, the subsequent spouse and any children of either relationship.

Crown Counsel should give careful consideration to charge assessment on any Reports to Crown Counsel which allege that offences other than polygamy have been committed against persons in polygamous situations.



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

ARCS/ORCS FILE NUMBER: 55100-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: CHA 1
SUBJECT: Charge Assessment Guidelines		CROSS-REFERENCE: ABD 1 CHA 1.1 CHA 1.2 CHI 1 DIS 1 ELD 1 HAT 1 RES 1 SPO 1

POLICY

Under the *Crown Counsel Act*, Crown Counsel have the responsibility of making a charge assessment decision which determines whether or not a prosecution will proceed.

In discharging that charge assessment responsibility, Crown Counsel must fairly, independently, and objectively examine the available evidence in order to determine:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether a prosecution is required in the public interest.

A substantial likelihood of conviction exists where Crown Counsel is satisfied there is a strong, solid case of substance to present to the Court.

Once Crown Counsel is satisfied that there is a substantial likelihood of conviction (the evidentiary test), Crown Counsel must determine whether the public interest requires a prosecution by considering the particular circumstances of each case and the legitimate concerns of the local community. Public interest factors include those outlined below.

Exceptional circumstances may require that a prosecution proceed even though the usual evidentiary test is not satisfied. Such circumstances will most often arise in cases of high risk violent or dangerous offenders or where public safety concerns are of paramount consideration. In these cases, charging decisions must be approved by Regional or Deputy Regional Crown Counsel and the evidentiary test is whether Crown Counsel is satisfied that there is a reasonable prospect of conviction.

The requirement to meet the two-part charge assessment standard, consisting of the evidentiary test and the public interest test, continues throughout the prosecution.

For the cases listed below, Crown Counsel should discuss the charge assessment decision with Regional or Deputy Regional Crown Counsel before any decision is made:

- 1. where the allegation is that a person is responsible for a death; and**
- 2. for any serious allegation about which there has been, or is likely to be, significant public concern with respect to the administration of justice.**

DISCUSSION

Introduction

The decision to initiate or continue a prosecution is one of the most important duties of Crown Counsel. The *Crown Counsel Act* authorizes Crown Counsel, under the direction of the Assistant Deputy Attorney General, to “examine all relevant information and documents and, following the examination, to approve for prosecution any offence or offences that he or she considers appropriate” (section 4(3)(a)).

The independence of this function is confirmed by section 5 of the Act. Any intervention by the Attorney General with respect to the approval or conduct of a prosecution “must be given in writing to the Assistant Deputy Attorney General and published in the *Gazette*.”

The independence of Crown Counsel must also be balanced with measures of accountability. Principled charge assessment decisions are assured when Crown Counsel experienced in assessing evidence exercise discretion in accordance with Branch public policies when reviewing the available evidence and applicable law.

During the charge assessment process, Crown Counsel does not have the benefit of hearing the testimony of Crown witnesses, either in direct or cross-examination, nor the defence evidence, if any. During the course of a preliminary hearing, when preparing for trial, or during trial, the Crown’s case may be materially different than at the charge assessment stage. The requirement to meet the charge assessment standard continues throughout the prosecution.

The Criminal Justice Branch recognizes that the police have the authority to lay an Information; however, Crown Counsel have the ultimate authority to direct a stay of proceedings. Therefore, it is expected that the police will lay an Information only after the approval of charges by Crown Counsel, or, if charges are not approved, upon exhaustion of an appeal of that decision by the police (see policy CHA 1.1).

Recognizing that the charge assessment responsibility of Crown Counsel and the investigative responsibility of the police are mutually independent, cooperation and effective communication between Crown Counsel and the police are essential to the proper administration of justice. In serious cases, or those of significant public interest, Crown Counsel discuss with the police, where practicable, their intention to not approve a charge recommended by the police (a “no charge” decision) or to direct a stay of proceedings.

Evidentiary Test – Substantial Likelihood of Conviction

Subject to the exception described below, the usual evidentiary test to be satisfied is whether there is a substantial likelihood of conviction.

A substantial likelihood of conviction exists where Crown Counsel is satisfied there is a strong, solid case of substance to present to the Court. In determining whether this standard is satisfied, Crown Counsel must determine:

1. what material evidence is likely to be admissible;
2. the weight likely to be given to the admissible evidence; and
3. the likelihood that viable, not speculative, defences will succeed.

Evidentiary Test in Exceptional Cases

Exceptional circumstances may require that a prosecution proceed even though the usual evidentiary test described above is not satisfied. Such circumstances will most often arise in cases of high risk violent or dangerous offenders or where public safety concerns are of paramount consideration. Such charging decisions must be approved by Regional or Deputy Regional Crown Counsel.

The evidentiary test in such cases is whether Crown Counsel is satisfied that there is a reasonable prospect of conviction. This test is higher than that of a prima facie case. A weighing of admissible evidence and viable defenses is not required. Crown Counsel should consider:

1. what material evidence is arguably admissible;
2. whether that evidence is reasonably capable of belief; and
3. whether that evidence is overborne by any incontrovertible defence.

Public Interest Test

It has never been the rule that all criminal offences which meet the evidentiary test must automatically be prosecuted. Sir Hartley Shawcross, Q.C., former Attorney General of England (later Lord Shawcross), outlined the public interest principle:

It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution. Indeed, the very first regulations under which the Director of Public Prosecutions worked provided that he should ...prosecute, amongst other cases: “wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest.” That is still the dominant consideration.¹

¹ U.K., H.C. Debates, vol. 483, col. 681, (29 January 1951).

Once Crown Counsel is satisfied that the evidentiary test is met, Crown Counsel must determine whether the public interest requires a prosecution. Hard and fast rules cannot be imposed as the public interest is determined by the particular circumstances of each case and the legitimate concerns of the local community. In making this assessment, the factors which Crown Counsel will consider include the following:

1. Public Interest Factors in Favour of Prosecution

It is generally in the public interest to proceed with a prosecution where the following factors exist or are alleged:

- (a) the allegations are serious in nature;
- (b) a conviction is likely to result in a significant sentence;
- (c) considerable harm was caused to a victim;
- (d) the use, or threatened use, of a weapon;
- (e) the victim was a vulnerable person, including children, elders, spouses and common law partners (see policies ABD 1, CHI 1, ELD 1 AND SPO 1);
- (f) the alleged offender has relevant previous convictions or alternative measures;
- (g) the alleged offender was in a position of authority or trust;
- (h) the alleged offender's degree of culpability is significant in relation to other parties;
- (i) there is evidence of premeditation;
- (j) the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor (see policy HAT 1);
- (k) there is a significant difference between the actual or mental ages of the alleged offender and the victim;
- (l) the alleged offender committed the offence while under an order of the Court;
- (m) there are grounds for believing that the offence is likely to be continued or repeated;
- (n) the offence, although not serious in itself, is widespread in the area where it was committed;
- (o) the need to protect the integrity and security of the justice system and its personnel;
- (p) the offence is a terrorism offence;
- (q) the offence was committed for the benefit of, at the direction of or in association with a criminal organization.

2. Public Interest Factors Against Prosecution

It may not be in the public interest to proceed with a prosecution where the following factors exist or are alleged:

- (a) a conviction is likely to result in a very small or insignificant penalty;
- (b) there is a likelihood of achieving the desired result without a prosecution by the Criminal Justice Branch. This could require an assessment of the availability and efficacy of any alternatives to such a prosecution, including alternative measures, non-criminal processes or a prosecution by the Federal Prosecution Service. Crown Counsel need not conclude, in advance, that a prosecution must proceed in the public interest if a referral for an alternative measure is not acceptable. Information with respect to the suitability of a candidate for diversion or alternative measure is a factor to be taken into consideration by Crown Counsel in reaching a final charge assessment decision;
- (c) the offence was committed as a result of a genuine mistake or misunderstanding (factors which must be balanced against the seriousness of the offence);
- (d) the loss or harm can be described as minor and was the result of a single incident, particularly if caused by misjudgment;
- (e) the offence is of a trivial or technical nature or the law is obsolete or obscure.

3. Additional Factors to be Considered in the Public Interest

- (a) the youth, age, intelligence, physical health, mental health, and other personal circumstances of a witness or victim;
- (b) the personal circumstances of the accused, including his or her criminal record;
- (c) the length and expense of a prosecution when considered in relation to the social benefit to be gained by it;
- (d) the time which has elapsed since the offence was committed;
- (e) the need to maintain public confidence in the administration of justice.

PROCEDURE / PRACTICE

In all cases, in applying the charge assessment standard, the important obligations of Crown Counsel are to:

1. make the charge assessment decision in a timely manner, recognizing the need to expedite the decision where an accused is in custody, where a Report to Crown Counsel requests a warrant, or where the charge involves violence;
2. record the reasons for any charge assessment decision which differs from the recommendation of the police in the Report to Crown Counsel;

3. where appropriate, communicate with those affected, including the police, so that they understand the reasons for the charge assessment decision; and
4. consider whether proceeding by indictment after the expiry of a limitation period could constitute an abuse of process based on any failure by Crown Counsel or the police to act in a timely manner.

Report to Crown Counsel

In order that Crown Counsel may appropriately apply the charge assessment standard, the Report to Crown Counsel (RTCC) should provide an accurate and detailed statement of the available evidence. The following are the basic requirements for every RTCC whether the information is provided electronically or not:

1. a comprehensive description of the evidence supporting each element of the suggested charge(s);
2. where the evidence of a civilian witness is necessary to prove an essential element of the charge (except for minor offences), a copy of that person's written statement;
3. necessary evidence check sheets;
4. copies of all documents required to prove the charge(s);
5. a detailed summary or written copy of the accused's statement(s), if any;
6. the accused's criminal record, if any; and
7. an indexed and organized report for complex cases.

If the RTCC does not comply with these standards it may be returned to the investigator with a request outlining the requirement to be met.



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

ARCS/ORCS FILE NUMBER: 55100-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: CHA 1.1
SUBJECT: Charge Assessment Decision – Police Appeal		CROSS-REFERENCE: CHA 1 PRI 1

POLICY

Where the police disagree with a charge assessment decision, they should discuss their concerns with the Crown Counsel who made the decision and then follow the appeal procedure outlined below if not satisfied with that discussion.

APPEAL PROCEDURE

After discussing their concerns with the Crown Counsel who made the decision and if not satisfied with that discussion, the police should contact Administrative Crown Counsel as the first step in appealing a charge assessment decision.

If the matter is not resolved following a discussion with Administrative Crown Counsel, and a Chief Constable, Officer in Charge of a detachment or more senior officer of the RCMP disagrees with the charge assessment decision, Regional Crown Counsel may be asked to review the decision and respond to the police.

If a Chief Constable, Officer in Charge of a detachment or more senior officer of the RCMP disagrees with the decision of Regional Crown Counsel, the Assistant Deputy Attorney General may be asked to conduct a further review of the charge assessment decision and respond to the police.

If upon exhaustion of this appeal process the police decide to swear an Information, it is anticipated that it would be sworn by, or on behalf of, a Chief Constable or the Assistant Commissioner of the RCMP, as the case may be, and that the Assistant Deputy Attorney General would be notified in advance of the Information being sworn.

Where an Information has been sworn by the police contrary to a charge assessment decision by Crown Counsel without exhaustion of the appeal process outlined above, the Private Prosecutions policy applies (see policy PRI 1).



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

ARCS/ORCS FILE NUMBER: 55100-00	EFFECTIVE DATE: September 15, 2004	POLICY CODE: CHA 1.2
SUBJECT: Charge Assessment – Social Regulatory Offences		CROSS-REFERENCE: CHA 1 ELD 1 ENV 1 SEX 2

POLICY

Restraint should be exercised in proceeding with charges of a social regulatory nature. Generally speaking, prosecutions should be initiated only where alternate methods to enforce compliance have been tried and have failed, where the offender has demonstrated a wilful or repeated non-compliance with the social regulatory statute or where the public interest otherwise requires prosecution in order to protect the integrity of the regulatory scheme.

Examples of social regulatory statutes which would be subject to this policy are: the *Private Investigators and Security Agencies Act*, *Business Corporations Act*, *Social Service Tax Act*, *Home Owner Grant Act*, and *Motion Picture Act*. In addition, this policy may have application to offences under the *Criminal Code* and other federal statutes which are primarily social regulatory in nature, for example, certain provisions of the *Criminal Code* concerning the licensing and regulation of firearms and gaming.

Certain locations may experience an inordinate number of liquor or other minor offences of a disruptive nature to the general peace of the community. Where such a location is identified by the police in a Report to Crown Counsel, the public interest may require prosecution.

When it is necessary in the public interest to commence a prosecution for a social regulatory infraction, Crown Counsel should bring the circumstances of any attempts to achieve compliance to the attention of the court at sentencing.

The public interest requires that certain matters be exempted from the application of this policy, including: offences involving motor vehicles (except under the *Motor Dealer Act*); offences under environmental legislation (see ENV 1), the *Family Relations Act*, the *Health Act* (see SEX 2), the *Securities Act*, and the *Employment and Assistance Act*; the more serious offences under provincial tax legislation, such as the *Tobacco Tax Act*; and violations of the *Trade Practices Act* involving elderly people as victims (see ELD 1).

DISCUSSION

Many provincial statutes establish social regulatory schemes relating to the conduct of people and businesses which anticipate that persons who are affected by the legislation will act in an honest, forthright and compliant manner. Some provincial statutes, such as the *Medical Practitioners Act*, regulate professional groups and establish rules for their orderly conduct. As noted above, the *Criminal Code* contains some provisions which are social regulatory or administrative in nature.

Situations to which this policy applies include:

- where persons violate a regulatory scheme under which they are licensed or qualified
- where unlicensed persons practice or do business outside of the scheme without lawful authority
- where persons violate regulatory schemes of general application for which no licence is required



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

ARCS/ORCS FILE NUMBER: 55100-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: CHA 2
SUBJECT: Charge Precedents		CROSS-REFERENCE:

POLICY

Standard charge precedents for *Criminal Code* and other federal and provincial statute offences are available through JUSTIN. These precedents, rather than local office charging precedents, are normally to be used to ensure consistency throughout the province and to ensure that the wording of the charge is based on the legislation in force at the time that the offence was committed.

DISCUSSION

Where Crown Counsel staff cannot find a charge precedent on JUSTIN, they should contact Headquarters for assistance. Where there is no precedent, Headquarters can request that one be created.

Where there is a charge precedent in JUSTIN, it is imperative to use that precedent unless, in the opinion of Crown Counsel, it is either incorrect at law or fundamentally in need of improvement to the extent that it should be altered throughout the province. If that is the case, Headquarters should be requested to make a revision.

In all cases where it is the opinion of Crown Counsel that a precedent should be revised or created, Crown Counsel should prepare a draft wording to be provided to Headquarters staff.

In unique circumstances where Crown Counsel need to create a specialized charge wording as a one time requirement, that can be done through JUSTIN without altering the standard charge precedent. Headquarters staff can provide assistance on the wording.

In situations where JUSTIN is not available, Crown Counsel staff should assess whether it is feasible to wait until JUSTIN is available or whether it is necessary to produce the Information manually. The JUSTIN Business Continuity Checklist (on the Branch intranet site at Admin | Systems | JUSTIN) outlines the procedure to be followed in the latter case, including that Crown Counsel should advise the local court registry.



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

ARCS/ORCS FILE NUMBER: 56620-00(Physical) 56670-00 (Sexual)	EFFECTIVE DATE: November 18, 2005	POLICY CODE: CHI 1
SUBJECT: Children and Vulnerable Youth – Crimes Against		CROSS-REFERENCE: ALT 1 CHA 1 DIS 1 RES 1

POLICY

General Principles

Prosecution of physical, sexual and exploitative crimes against children and vulnerable youth should be pursued whenever the evidentiary test under policy CHA 1 is met. Any decision not to proceed for reasons other than sufficiency of evidence must be approved by Regional or Deputy Regional Crown Counsel and the reasons for the decision recorded.

Under the *Crown Counsel Act*, Crown Counsel are responsible for the decision to prosecute. The charge assessment policy requires Crown Counsel to examine the case at each stage of the prosecution and decide whether the case should proceed. This cannot be determined solely by the wishes of the child or youth victim or their parents or guardians.

All child and youth victims and witnesses should be advised of available specialized victims' services either directly or through their caregiver.

Alternatives to Prosecution

Sexual offences against children and vulnerable youth may be referred for alternative measures only in rare circumstances, by Regional Crown Counsel and with the consent of the Assistant Deputy Attorney General. Cases involving other than sexual offences may be referred for alternative measures only in exceptional circumstances and after consultation with Regional Crown Counsel or designate. In all cases, alternative measures should be approved only if the following conditions are met:

- 1. The victim has been consulted and the victim's views considered;**
- 2. The victim has been made aware of available victim assistance programs;**
- 3. There is no apparent history of violence or sexual offences;**

4. If requested, the offender must agree to complete a suitable program of treatment or intervention approved by a probation officer; and
5. The offence must not have been of such a serious nature as to threaten the safety or tolerance of the community.

While an alternative measures referral may be considered at any stage of the proceeding, in some cases it may be advisable to approve a charge and have conditions of release in place including no contact with the child or youth before making the referral.

Conditions of Bail or Recognizance to Protect Child and Youth Victims and Witnesses

A warrant should be sought whenever it is necessary to protect the victim child or youth or other potential victims by seeking a detention order or conditions of release, such as those listed below. This prevents the accused from interfering with the integrity of the prosecution or committing further offences against the victim or other children or youths.

Where the detained accused presents a danger to the victim, a witness or other children or youths, Crown Counsel should consider seeking a detention order with a “no contact” order pursuant to s. 515(12) of the Criminal Code requiring the accused, while in custody, to abstain from communicating, directly or indirectly, with the victim.

Where an accused has been arrested and then released by the police on a promise to appear or recognizance with conditions, Crown Counsel should review the conditions to ensure that they are adequate to protect the victim and the public and are enforceable, and then, if necessary, request a warrant and an amendment of the conditions under sections 499(4), 503(2.3) or 512 of the Criminal Code. See “Discussion” concerning possible conditions of release.

Where there is a decision not to lay a charge, to direct a stay of proceedings or where there is an acquittal, Crown Counsel should consider the availability of a recognizance under section 810 or 810.1 of the *Criminal Code*, which can include supervision and counselling conditions administered by the Corrections Branch.

Where the offence is of a sexual nature, relevant risk factors should be communicated to the court to ensure protection of the public.

Preparation for Hearing

Administrative Crown Counsel should ensure that the procedures in their offices provide for:

1. early identification and assignment of the case.
2. wherever possible, assignment of the case to Crown Counsel who has received specialized training.

3. **early identification and notice to the victim of accommodations available under section 486.**
4. **vertical Prosecution - every effort should be made to have these cases handled by the same Crown Counsel from beginning to end. As long as a positive rapport has developed with the child or youth, that Crown Counsel should remain with the case until final disposition.**
5. **priority in scheduling to ensure that the case moves expeditiously through the criminal justice system.**

Crown Counsel should consider applying, at the first instance, for an order under section 486 of the *Criminal Code*, directing that the identity of a complainant or a witness and any information that could disclose the identity of the complainant or witness shall not be published in any document or broadcast in any way.

Crown Counsel must inform the child or youth witness and the parent or guardian about the accommodations available under section 486 of the *Criminal Code*, unless impracticable to do so. Crown Counsel should make an application for an order where appropriate, taking into account all relevant factors, including whether the witness requests one of the accommodations. The court can make an order:

- **for the exclusion of the public**
- **for a support person**
- **for the child or youth to give testimony from a different room or behind a screen or other device**
- **for cross examination by appointed counsel (where the accused is unrepresented)**

Crown Counsel should consider whether presentation of evidence by videotape, as provided by section 715.1 of the *Criminal Code*, is appropriate. Utilization of such a procedure does not preclude the child or youth witness from having to testify.

When dealing with victims reluctant to participate in the criminal process, Crown Counsel should attempt to ascertain the reasons for their reluctance to testify and develop strategies to address the reluctance. Crown Counsel should make known to victims and their parents or guardians, any victim services programs or other agencies known to Crown Counsel which may be able to assist the victim.

Crown Counsel should bear in mind that the social worker and parent or guardian need information about the criminal proceedings in order to effectively protect and support the child or youth. Therefore, the social worker and parent or guardian should be advised of any charges laid, conditions of release, adjournment, change of plea or stay of proceedings, and that Crown Counsel is available to provide appropriate information about the case.

Sentencing

Victims should be given the opportunity to provide victim impact information.

Section 718.2 of the Criminal Code provides that the abuse of a child and abuse by person in a position of trust or authority are aggravating factors on sentencing. Any aggravating factors should be brought to the attention of the court.

Where probation is appropriate, Crown Counsel should seek conditions which will protect the victim. They may include a “no contact” and reporting requirement, as well as successful completion of an assaultive behaviour, parenting or sexual offender treatment program.

Crown Counsel should consider whether a restitution order is appropriate under section 738(1) of the *Criminal Code*.

Where it is necessary to protect the public, Crown Counsel should apply for an order prohibiting the offender from doing various acts pursuant to Section 161 of the *Criminal Code*, where the offender is convicted of a sexual offence, including pornography offences, and the child is under 14.

DISCUSSION

This policy has been revised in the new format and made consistent with other branch policies and recent legislation. A further substantive review of this policy is underway.

Conditions of Release

In addition to the usual, appropriate conditions of release, Crown Counsel should consider the following:

- a prohibition from being in the presence of children under 14 unless accompanied by a responsible adult
- conditions similar to those outlined in section 161, including:
 - a prohibition from attending a public park or public swimming area where persons under the age of 14 years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground or community centre
 - a prohibition from using a computer system for the purpose of communicating with persons under the age of 14 years



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

ARCS/ORCS FILE NUMBER: 56740-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: CIV 1
SUBJECT: Civil Disobedience and Contempt of Related Court Orders		CROSS-REFERENCE:

POLICY

All charge assessment decisions relating to acts of civil disobedience and decisions to prosecute contempt of related court orders, should immediately be brought to the attention of Regional Crown Counsel who should consult with the Director, Legal Services about the appropriate action to be taken.

Acts of civil disobedience, including conduct involving public demonstrations, may come into conflict with the law and obstruct or interfere with the rights of others. The use of criminal sanctions in these situations is generally not appropriate. Charges under the *Criminal Code* against demonstrators may be appropriate in the following circumstances:

- **conduct involving violence resulting in physical harm or assaults with a reasonable apprehension of physical injury**
- **conduct causing serious property damage or where there is property damage and a reasonable apprehension of further serious property damage**
- **conduct involving an assault on a peace officer**
- **conduct where the public interest clearly requires a prosecution, for instance, where the safety of emergency personnel, police or other persons is jeopardized**

When Crown Counsel are consulted, they should encourage the police to exercise discretion in selecting an appropriate response for each case based on its unique facts, while ensuring that the general public is not unduly inconvenienced. Where prosecution under the *Criminal Code* does not appear to be appropriate, Crown Counsel should consider the following guidelines in determining an appropriate response to a situation involving civil disobedience:

1. Where an act of civil disobedience affects only a small number of individuals, those individuals may be advised to seek legal advice regarding the availability of a civil injunction.
2. In the event that civil disobedience continues after an injunction is granted, the party obtaining the injunction should be encouraged to proceed with civil contempt proceedings in the court in which the injunction was obtained.
3. Subject to paragraphs 4 and 5, Crown Counsel should not become involved in civil contempt proceedings commenced pursuant to Rule 56 of the Supreme Court Rules or where the conduct is "in facie" during civil proceedings, other than to provide advice to the Legal Services Branch of the Ministry of Attorney General.
4. Crown Counsel should intervene on behalf of the Attorney General in civil contempt proceedings where the contempt is criminal in nature. This will usually occur where the conduct disobeying the court order tends to bring the administration of justice into public ridicule or scorn or otherwise interferes with the proper administration of justice.
5. Where the court is concerned that a contempt is criminal in nature and invites the Attorney General to participate in or assume the prosecution of the contempt, where there is a substantial likelihood that the contempt can be proven, and where it is in the public interest to prosecute, Crown Counsel may prosecute the contempt with the approval of Regional Crown Counsel.
6. Civil contempt proceedings are more expedient and more effective than lengthy criminal proceedings under section 127 of the *Criminal Code*. As a result prosecutions under section 127 for disobeying an injunction are discouraged.
7. In cases where there are reasonable grounds to believe that injunctive relief would not be granted or would be ineffective, it is preferable to proceed with charges under provincial or federal statutes rather than the *Criminal Code* (e.g. under sections 6 and 14 of the *Highways Act*).

Occupation of Offices and other Premises

In addition to the factors outlined above, where protestors occupy and refuse to leave private or public offices or other residential or business premises, Crown Counsel should consider the following factors in deciding whether the public interest requires a prosecution:

- whether the public is normally invited to the premises
- whether there is a major security risk as a result of the occupation

- whether the occupation interferes not only with the business but also with a larger group of the general public
- whether the occupation endangers the building, goods or persons
- whether the initial entry was unlawful
- any aggravated conduct during the occupation
- whether in the presence of the police, there has been a clear revocation of any right to be on the premises by the person in charge of the premises, accompanied by a clear demand to leave
- whether there has been a clear explanation by the police to the protestors that they are breaking the law and that they must comply with the demand to vacate the premises and that a failure to do so may result in arrest and criminal charges
- whether the dispute is not likely to be resolved
- whether there is a previous history of similar conduct by the protestors or an associated group
- whether there is any indication that the protestors plan to repeat their behaviour
- whether there is a major impact on the owner or occupier of the premises or members of the general public, and whether they wish a prosecution
- the conduct of the protestors during and following any arrests

DISCUSSION

Criminal Code charges commonly considered under this policy include assault, mischief and obstruction of a highway under section 423(1)(g).

Section 9 of the *Criminal Code* preserves the common law power of punishing for criminal contempt of court. Rule 56 of the Supreme Court Rules governs civil contempt proceedings.

Crown Counsel may conduct contempt proceedings where the contempt is committed “in facie” during the course of a criminal proceeding or where it is “ex facie” and relates to a criminal proceeding.

The Supreme Court has jurisdiction to try all forms of criminal contempt. The jurisdiction of the Provincial Court is limited to contempt "in facie" (see s. 484 CCC and s. 46 of the *Offence Act*).

In appropriate cases, where a large sector of the public is affected by demonstrators and the demonstration affects public property such as highways or waterways, the Legal Services Branch of the Ministry of Attorney General may bring an application for an injunction.

It is the character and nature of the conduct that determines whether a contempt is civil or criminal; the nature of the proceedings is irrelevant. A civil contempt involves a breach of a court order and the dispute remains between the parties in the action. In a criminal contempt, the issues transcend the dispute between parties and involves the public interest in the proper administration of justice. A criminal contempt often involves a mass disobedience of a court order which tends to bring the administration of justice into disrepute or scorn (United Nurses of Alberta v. Alberta Attorney General [1992] 89 D.L.R. 4th 609 (S.C.C.)).

Crown Counsel should be aware that police have the power of arrest to prevent the continuation of an offence under a provincial statute (Moore v. The Queen (1978) 43 CCC (2d) 83). Also, under the *Criminal Code* and under the common law, the police have the power to arrest for a breach of the peace.



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL

CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: (case specific)	EFFECTIVE DATE: September 15, 2004	POLICY CODE: COM 1
SUBJECT: Complaints and Enquiries Relating to Specific Prosecutions		CROSS-REFERENCE: CHA 1 CHA 1.1 LEG 1.1 MED 1

POLICY

An important responsibility of the Criminal Justice Branch is to provide prompt and substantive responses to complaints and enquiries in order to enhance public confidence in the criminal justice system.

If a complaint is received concerning specific prosecutions, including the conduct of Crown Counsel, the following complaint procedure applies.

PROCEDURE

- A. Concerning complaints made to Crown Counsel offices with respect to specific prosecutions, including the conduct of Crown Counsel:
1. The complaint should be referred to Administrative Crown Counsel. If the complaint involves a serious issue, Administrative Crown Counsel should report to Regional Crown Counsel. In all other cases, Administrative Crown Counsel should attempt to resolve the complaint.

In all cases where a complaint is received in writing, any Crown Counsel who is the subject of the complaint should receive a copy of the complaint letter, and any subsequent review should include a discussion with that Crown Counsel.
 2. Where Administrative Crown Counsel refers the complaint to Regional Crown Counsel:
 - (a) Regional Crown Counsel should determine whether the complaint requires that a response be given by the Assistant Deputy Attorney General. If so, Regional Crown Counsel should ensure that a report and draft reply are prepared in accordance with the Guidelines below and forwarded to the Assistant Deputy Attorney General.

- (b) In appropriate cases, Regional Crown Counsel may wish to delegate to Deputy Regional Crown Counsel or to Administrative Crown Counsel the responsibility of further investigating the complaint and replying directly to the complainant. In such case, a copy of any written reply should be sent to Regional Crown Counsel.
 3. If an individual Crown Counsel is the focus of a complaint, he or she should receive a copy of any written reply.
- B. Where the office of the Assistant Deputy Attorney General requests a report from Regional Crown Counsel regarding a letter written to the Attorney General, the Deputy Attorney General, or the Assistant Deputy Attorney General:
 1. Regional Crown Counsel or Deputy Regional Crown Counsel should obtain a report from Crown Counsel handling the case or from Administrative Crown Counsel and should prepare a report for the Assistant Deputy Attorney General.
 2. If a draft reply is requested, it should be prepared in accordance with the [Guidelines](#) below.
 3. The Assistant Deputy Attorney General will ensure that Regional Crown Counsel is sent a copy of the final reply signed by the Assistant Deputy Attorney General, the Deputy Attorney General, or the Attorney General, as the case may be.
 4. If an individual Crown Counsel is the focus of a complaint, he or she should receive a copy of any written reply.
- C. Where the office of the Assistant Deputy Attorney General requests Regional Crown Counsel to reply directly to a complaint or enquiry, Regional Crown Counsel or Deputy Regional Crown Counsel should send a written reply to the complainant, or meet with, or telephone the complainant, as appropriate. Regional or Deputy Regional Crown Counsel should then send a copy of the written reply or a report on the meeting or telephone call to the Assistant Deputy Attorney General.

Crown Counsel Act

- 2 The Branch has the following functions and responsibilities:
 - (f) to provide liaison with the media and affected members of the public on all matters respecting approval and conduct of prosecutions of offences or related appeals;

Freedom of Information and Protection of Privacy Act

- 15(4). The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute
- (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or
 - (b) to any other member of the public, if the fact of the investigation was made public.

Victims of Crime Act

- 6 (1) Subject to the *Young Offenders Act* (Canada) and insofar as this does not prejudice an investigation or prosecution of an offence, justice system personnel must arrange, on request, for a victim to obtain information on the following matters relating to the offence:
- (c) the reasons why a decision was made respecting charges.

Guidelines**I. DRAFTING OF REPLIES**

1. Identify each issue raised in the letter.
2. Ascertain the central or overriding concern.
3. Ensure that the reply is focused on the central or overriding concern and responds to the other issues raised by the correspondent.
4. Attempt to explain without arguing – show compassion and understanding of the correspondent's position – emphasize balance and perspective.
5. If a matter is still before the court, it is generally inappropriate to comment on the issue.
6. Be helpful – go out of the way to identify appropriate remedies, options, and referrals to other agencies.
7. When reporting the fact of a conviction, state the conviction date, sentence date if different, and full details of any sentence imposed. Note the court location and level of court. However, be aware of the restrictions on the release of the name of any young person charged with an offence.

8. As appropriate, indicate that the complainant may contact a Regional or Deputy Regional Crown Counsel or some other person. Include the name, address and telephone number.
9. It may be appropriate, in the final paragraph, to thank the person for writing and express the hope that the comments of the writer will prove helpful.
10. Consider carefully the nature of the intended recipient and simplify phrases and legal terminology accordingly.

II. EDITING YOUR DRAFT

1. Review your draft against the guidelines above.
2. Consider whether any recommendations should be made about changes in policy, procedure, or the law. If so, prepare a separate memo.

Assistance in drafting a letter may be requested from the Correspondence Unit at Headquarters.

III. COMPLAINTS ABOUT POLICE CONDUCT

Where a letter contains a complaint about police conduct as well as Criminal Justice Branch issues, the draft reply should advise the correspondent that complaints about police conduct may be referred as follows:

1. Complaints about RCMP Members should be directed to the Officer in Charge of the RCMP Detachment involved.

[Note that addresses for British Columbia RCMP offices are on line at:
http://www.rcmp-grc.gc.ca/bc/index_e.htm]

In the event that complainants are not satisfied with the way their complaint is handled at the detachment level, they have the option of filing a formal complaint with the RCMP Public Complaints Commission. The Commission is a civilian body, independent of the RCMP, and has jurisdiction to investigate complaints against RCMP members. It is located at:

Public Complaints Commission
Suite 102, 7337-137 Street
Surrey BC V3W 1A4

Telephone: 604 501-4080 and
(toll-free at 1-800-665-6878 outside the Lower Mainland area)
Facsimile: 604 501-4095

2. Complaints About City (Municipal) Police should be directed to the Chief Constable of the police force involved.

[Note that addresses for British Columbia Municipal Police are on line at:
http://www.pssg.gov.bc.ca/police_services/police_forces.htm]

In the event complainants are not satisfied with the way in which the Chief Constable addresses their concerns, the complainant may contact the Office of the Police Complaint Commissioner. The Office of the Police Complaint Commissioner provides independent civilian oversight of the citizen complaint process. It is located at:

Office of the Police Complaint Commissioner
Suite 900, 1111 Melville Street
Vancouver BC V6E 3V6

Telephone: 604 660-2385
Facsimile: 604 660-1223

IV. UNINVESTIGATED COMPLAINTS

Where a complainant alleges that an offence has been committed and there has not been a Report to Crown Counsel, the complainant should be advised to write directly to the appropriate police force. Crown Counsel do not give advice to the public on hypothetical facts.



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

ARCS/ORCS FILE NUMBER: 55100-00	EFFECTIVE DATE: September 15, 2004	POLICY CODE: CON 1
SUBJECT: Conflict of Interest – Including Prosecutions Against the Crown (R. v. R.)		CROSS-REFERENCE: SPE 1 STA 1

Policy

Generally, local Crown Counsel should handle all prosecution functions, including charge assessment, unless there is a compelling reason not to do so.

In any case where there could be an objectively reasonable perception of a conflict of interest in the Criminal Justice Branch making a charge assessment decision, the matter should be referred to Regional Crown Counsel who may consult with the Assistant Deputy Attorney General in deciding:

- a) whether to obtain an opinion on charge assessment from ad hoc counsel or from Crown Counsel in another province or region; and
- b) whether it would be appropriate for local Crown Counsel to review the aforementioned opinion, conclude a charge assessment decision, and then handle any prosecution which may result.

Discussion

This policy has application where there could be a perception of a conflict of interest in the Criminal Justice Branch making a charge assessment decision because the potential accused is an agency of government (R. v. R.) or there is some connection between the potential accused and the Criminal Justice Branch, and the case falls short of the need for a special prosecutor (see SPE 1).



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

ARCS/ORCS FILE NUMBER: 57700-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: CRI 1
SUBJECT: Criminal Harassment		CROSS-REFERENCE: ALT 1 RES 1 SPO 1 VIC 1

POLICY

Criminal harassment may consist of a series of separate offences. Where that is the case, both a charge of criminal harassment and charges arising from the separate offences should be prosecuted, unless the criminal conduct of the accused is appropriately reflected in a significant charge based on one or more of the offences constituting the harassment and an adequate sentencing range is provided to the court on that charge.

The victim's safety should always be a priority given the intimidating and volatile nature of this offence. Particular attention should be paid to issues such as bail, victim notification and sentencing.

The use of alternative measures in cases of criminal harassment is generally not appropriate. Criminal harassment is not an isolated occurrence but involves persistent behaviour over a period of time. Alternative measures should be considered only in exceptional circumstances. If Administrative Crown Counsel believe such circumstances exist, the written consent of the Assistant Deputy Attorney General must be obtained and Regional Crown Counsel must approve the alternative measures. No case of criminal harassment should be considered for alternative measures without consultation with the victim.

Crown Counsel should request early trial dates and should oppose adjournment applications where warranted.

Crown Counsel or support staff should ensure the victim is aware of available victim assistance programs.

The processing of Reports to Crown Counsel must be expedited, as unnecessary delay increases the emotional stress and intimidation experienced by the victim.

DISCUSSION

Section 264 of the *Criminal Code* is aimed at the unlawful and unjustifiable interference with the victim's enjoyment of life and peace of mind. The conduct must cause the victim to "reasonably fear, in all the circumstances, for their safety or the safety of anyone known to them". "Safety" has been judicially interpreted to include psychological, emotional and physical well being.

Incidents of criminal harassment are generally of an ongoing nature as opposed to other related criminal offences (for example, assault) which, by definition, involve a completed criminal act before the investigation and prosecution process begins. While the harassment may not include an explicit threat, the cumulative effect of the prohibited activity, whether it is phone calls, letters or watching and besetting, generates a growing climate of fear that can eventually emotionally debilitate the victim.

The majority of these cases involve female victims who have at one time been involved in a relationship with the accused. Where this is the case, the Ministry's policy on Spouse Assault should be consulted (see SPO 1). The harassment usually involves repeated incidents of following, communicating (directly or indirectly) or watching and besetting. Where there is a history of violence, Crown Counsel should consider approving counts relating to serious incidents which occurred in the past.

Some factors to consider in deciding whether the evidence supports a charge of criminal harassment are:

- whether the victim has been required to alter her or his lifestyle or choice of action because of the accused's conduct
- the history of any prior relationship between the victim and the accused, in particular, things such as past incidents of abusive/violent behaviour directed towards the victim; criminal convictions for offences of violence against the victim; prior complaints made by the victim to the police
- any words uttered by the accused during the course of the conduct in question
- the physical stature and gender of the victim vis-à-vis the accused
- whether there is any direct evidence that the accused had actual knowledge as to the harassing nature of his or her course of conduct or, alternatively, was reckless as to the effect of the impugned conduct on the victim
- the nature of the place or location and the time of day when the conduct occurred, recognizing that fear can be caused or heightened depending on where and when the conduct occur
- whether the victim was alone or in a small group
- evidence of others (for example, victim's family members, friends or co-workers) who may have been involved

Independent evidence should always be sought to support the victim's evidence. This is especially significant where there is a prior relationship between the accused and the victim.

Bail Considerations

Given the nature of this offence, it is essential that bail conditions be imposed to ensure the protection of the victim. If the accused is not in custody at the time the charges are approved, and the accused has not been released by the police on appropriate conditions, Crown Counsel approving such charges should request a warrant for the accused to ensure that, if the accused is not to be detained, appropriate release conditions are imposed to protect the victim and the public, preserve the integrity of the witnesses' evidence, and ensure the accused's attendance in court.

If an accused is released from custody on a bail order with a reporting condition, community corrections should notify the complainant of the release and bail terms. If there is no reporting condition on the accused's bail order, Crown Counsel or support staff should notify the complainant of release and bail terms.

Conditions such as firearms and weapons prohibitions, no contact orders, area restrictions, reporting conditions and drug or alcohol prohibitions may be appropriate. In many, if not most, criminal harassment cases, these conditions are necessary to prevent the continuation of the offence or the commission of other offences.



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

ARCS/ORCS FILE NUMBER:	EFFECTIVE DATE:	POLICY CODE:
58100-00	February 23, 2004	DAN 1
SUBJECT:		CROSS-REFERENCE:
Dangerous Offender and Long Term Offender Applications		Practice Bulletin #23 Practice Directive #4

POLICY

A priority of the Criminal Justice Branch is to protect the community from high-risk, sexual and violent offenders by making dangerous offender and long term offender applications in appropriate cases. The protection of the public is the paramount concern.

All Crown Counsel are responsible for identifying potential dangerous or long term offender applications, commencing with charge assessment for serious personal injury offences as defined by section 752.

A dangerous offender application should be commenced where an offender meets one of the definitions of dangerous offender contained in s.753 of the *Criminal Code*, there is no reasonable possibility of eventual control of the risk in the community, and the public would not be adequately protected by a determinate sentence followed by a long term supervision order.

A long term offender application may be commenced where the criteria in section 753.1 are satisfied, there is a reasonable possibility of the offender's eventual control in the community and the public will be adequately protected by a determinate sentence and a long term supervision order.

The dangerous offender criteria do not limit applications to sexual offenders. Crown Counsel should also consider serious personal injury offences involving violence without a sexual component.

The possibility of instituting a dangerous offender application should not be used to encourage a guilty plea in exchange for an agreement that Crown Counsel will not seek an assessment remand under section 752.1.

Where defence counsel indicates that an accused might be willing to plead guilty in exchange for an agreement that the Crown initiate a long-term offender rather than dangerous offender application, Crown Counsel should not commit to any position on sentence until an assessment report has been completed and reviewed by Regional Crown Counsel in consultation with the Assistant Deputy Attorney General. In exceptional cases, Crown Counsel may conclude on the basis of prior assessments or an opinion from a psychiatrist retained by the Criminal Justice Branch and the accused's history that a guilty plea in exchange for an agreement that the Crown will initiate a long term offender application would be appropriate. In such cases, Crown Counsel should not commit to any position on sentence without first consulting Regional Crown Counsel.

Pursuant to section 754, the consent of the Attorney General is required to commence a dangerous offender or long term offender application: Regional or Deputy Regional Crown Counsel provide the consent to apply for an assessment remand under section 752.1. The Assistant Deputy Attorney General provides the consent to commence an application. (see Practice Directive #4).

Upon receipt of an assessment report, Regional or Deputy Regional Crown Counsel should assess the evidence as to whether there is a reasonable likelihood that the accused may be declared either a dangerous offender or long-term offender and consider whether to seek the consent of the Assistant Deputy Attorney General to the appropriate application.

Following receipt of the Consent of the Attorney General to a dangerous offender application, where it appears that the evidence no longer supports such a designation, Crown Counsel must consult with Regional Crown Counsel and the Assistant Deputy Attorney General before a position is taken with respect to a long term offender designation or a determinate sentence.

DISCUSSION

Flagging Potential Applications

Where Crown Counsel determine that the accused is a potential dangerous or long term offender, they should call the manager of the High Risk Offenders Identification Program at Vancouver Headquarters (604 660-3918). The manager of that program may be able to provide relevant material such as Reports to Crown Counsel, Pre Sentence Reports, Reasons for Judgment, psychological assessments and the Corrections history of the accused, for subsequent review by trial Crown Counsel. The file should be flagged as a potential dangerous or long term offender application.

Guidelines

In order to identify cases for flagging, Crown Counsel should consider sections 752, 752.1, 753 and 753.1 and the following guidelines:

1. Section 752.1 provides that where an offender is convicted of a serious personal injury offence (defined in s.752) or an offence referred to in paragraph 753.1(2) (the long term offender definition), the Court may remand the offender for the preparation of an assessment report where the Court is of the opinion there are reasonable grounds to believe the offender *might* be found to be a dangerous or long-term offender.
2. The protection of the public is the paramount concern. The Supreme Court of Canada in R. v. Lyons affirmed that the primary purpose of the dangerous offender legislation is the protection of the public. This was reaffirmed in R. v. Johnson in the same Court.
3. Where the offender meets one of the definitions of dangerous offender contained in sections 753 (a) and (b) but there is a reasonable possibility of eventual control in the community, and the public threat can be reduced to an acceptable level through a determinate sentence or a determinate sentence and a long term supervision order, an offender is not a dangerous offender (R. v. Johnson).
4. Crown Counsel should consider all available assessments in determining whether the accused is a dangerous offender. The Corrections history will often include: past psychological assessments; whether the offender has been offered, completed, failed or refused treatment; and the offender's parole history including any violations or denial of parole.

Request for Review by Regional or Deputy Regional Crown Counsel

As soon as there is an indication of a guilty plea, or after a finding of guilt, Crown Counsel should request Regional or Deputy Regional Crown Counsel to review the matter and determine whether to seek an assessment remand under s.752.1.

In seeking the review by Regional or Deputy Regional Crown Counsel, Crown Counsel should provide a memorandum which:

- summarizes the history and circumstances of the convictions before the Court on which the application is based
- outlines all admissible relevant past conduct
- sets out the recommendation of Crown Counsel as to why the offender may be a dangerous or long term offender
- provides the opinion of Crown Counsel on the appropriate determinate sentence
- includes copies of any Victim Impact Statement (VIS), criminal record, facts of any outstanding charges, and a copy of the Information or Indictment

Where possible, Crown Counsel should prepare this information before plea or a finding of guilt.

Decision to Make Application for an Order Remanding the Offender for Assessment

Regional or Deputy Regional Crown Counsel will review the information provided by Crown Counsel and decide whether to make the application for an assessment remand. If a decision is made not to make the application, reasons should be recorded in the file, the file should be archived, and a copy of the reasons sent to the Manager of the High Risk Offenders Identification Program.

Regional or Deputy Regional Crown Counsel can provide the consent of the Attorney General for an application for an assessment remand under section 752.1. Under section 754, Defence counsel must be given seven days notice of the grounds for the application under s.754. Where the consent has been obtained in advance, Crown Counsel may indicate an intention to make an application for an assessment remand on the date of conviction.

The Consent of the Attorney General signed by Regional or Deputy Regional Crown Counsel should be filed with the Court at the commencement of the Crown's application. Evidence may need to be called, including previous psychiatric assessments and any criminal history, to satisfy the Court that there are reasonable grounds to believe that the offender might be found to be a dangerous offender or a long term offender.

The Forensic Psychiatric Services Commission (FPSC) provides a service to the Courts in obtaining an assessment by a psychiatrist or psychologist from a rotational list of psychiatrists and psychologists trained by FPSC to conduct assessments. The clerk of the Court sends the assessment remand to FPSC which commences the assessment process.

The Manager of the High Risk Offenders Identification Program will send the offender's entire Corrections file to FPSC, obtained from Correctional Service Canada and provincial Corrections. Crown Counsel are responsible for supplying a binder containing the circumstances of the index offence, the offender's criminal history and any other information they wish the assigned expert to review in preparing their assessment, to the Dangerous Offender Hearing Co-ordinator at the Forensic Psychiatric Hospital, 604 524-7716. Crown Counsel should advise defence counsel of any material they have forwarded.

Receipt of Assessment Report

The Assistant Deputy Attorney General provides the consent of the Attorney General to commence a dangerous or long-term offender application, as the lawful deputy of the Attorney General pursuant to s.3(2) of the *Crown Counsel Act*. Defence counsel must be given seven days notice of the application for a finding of dangerous offender.

Upon receipt of the assessment report, Regional or Deputy Regional Crown Counsel should assess the evidence as to whether there is a reasonable likelihood that the accused may be declared a dangerous or long term offender and consider whether to seek the consent of the

Assistant Deputy Attorney General to the appropriate application.

If Crown Counsel has strong concerns about the Court ordered assessment report they may make application under section 752.1 for a further assessment remand or request an opinion from a psychiatrist retained by the Criminal Justice Branch with the approval of Regional or Deputy Regional Crown Counsel.

Application for Consent of the Assistant Deputy Attorney General

Where Regional or Deputy Regional Crown Counsel decide to seek the consent of the Assistant Deputy Attorney General, each application for the consent should be in a tabbed binder and should include the following:

- an index
- the memorandum of Crown Counsel requesting a review by Regional or Deputy Regional Crown Counsel
- a memorandum containing the opinion of Regional or Deputy Regional Crown Counsel;
- the Court-ordered assessment
- any other relevant assessments or reports not included in the Court-ordered assessment
- a draft Consent of the Attorney General (Note: the substantive provisions of the *Criminal Code* that were in force on the date of each predicate offence must be cited in the notice, Consent and application.)

The application should be sent directly to the Assistant Deputy Attorney General. The signed Consent, if provided, will be returned by the Assistant Deputy Attorney General to Regional Crown Counsel. The Consent of the Attorney General, as provided by the Assistant Deputy Attorney General, should be filed with the Court at the commencement of the Crown's application.

Determinate Sentence

If the Court orders a determinate sentence or a determinate sentence to be followed by a period of long term community supervision, Crown Counsel, having regard to the principles expressed in R. v. Zinck, (2003), 171 CCC 3d 1 (SCC), should consider asking the Court to make an order under section 743.6 that the portion of the sentence that must be served before the offender may be released on full parole is one half of the sentence or ten years, whichever is less.



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

ARCS/ORCS FILE NUMBER: 55580-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: DIP 1
SUBJECT: Diplomatic and Consular Immunity		CROSS-REFERENCE:

POLICY

Where Crown Counsel is advised that diplomatic or consular immunity is at issue, the charge assessment process should be carried out as soon as possible, the appropriate charge laid (if any), and then the procedure below followed in order to determine whether immunity exists.

It is the Branch position (supported by the Department of Foreign Affairs and International Trade) that the immunity enjoyed by consular officers is restricted to acts which constitute part of the consular function or are necessary to the carrying out of that function.

DISCUSSION

The *Foreign Missions and International Organizations Act* sets out levels of immunity for various categories of diplomatic personnel attached to diplomatic missions or embassies in Ottawa and to consular posts in Vancouver.

In respect to diplomatic missions or embassies in Ottawa, there are varying degrees of immunity provided depending on the category of employment, with "diplomatic agents" enjoying full immunity from prosecution and from giving evidence.

In respect to consular posts, Schedule II to the Act sets out the Vienna Convention on Consular Relations. Article 43 of that Convention states that "consular officers and consular employees shall not be amenable to the jurisdiction ... in respect to acts performed in the exercise of consular functions".

It is the Branch position (supported by the Department of Foreign Affairs and International Trade) that the words "acts performed in the exercise of consular functions" restrict the immunity enjoyed by consular officers to acts which constitute part of the consular function

or in the circumstances of the particular case are necessary to the carrying out of that function. It is not enough that the acts take place during a time that a consular function is being performed. For instance, even though a consular officer may be driving to an official function, it is not necessary to the consular function to drive a motor vehicle while impaired by alcohol or to drive a motor vehicle without due care and attention or to commit other offences such as disobeying a traffic control device or illegal parking.

Consular officers are bound by Article 55 of the Vienna Convention to obey the law. Honorary consular officers do not fall within the definition of "consular officer" under the Vienna Convention and do not enjoy any degree of immunity.

Article 44(3) of the Vienna Convention on Consular Relations states that the members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto.

Procedure where Immunity at Issue

1. The Department of Foreign Affairs and International Trade ("Foreign Affairs") has requested that, in all cases involving an accused who claims any degree of immunity, the police investigation and charge assessment process should be carried out in the usual manner, without regard to the issue of immunity, and the appropriate charge laid (if any). The procedure outlined below should then be followed to determine whether immunity applies.
2. Immediately upon receipt of a Report to Crown Counsel, Crown Counsel should consult the Director, Legal Services who will contact Foreign Affairs with the identity of the accused. This provides notice to Foreign Affairs that there is a Report to Crown Counsel undergoing the charge assessment process and allows that department to respond to any enquiries from the state which employs the accused.
3. As soon as a charge is sworn, Crown Counsel should send to the Director, Legal Services, a copy of the Information and the narrative portion of the Report to Crown Counsel. The Director, Legal Services will send that information to the Director of the Diplomatic Corps Services of Foreign Affairs with a request for their advice as to the exact category of appointment and any immunity enjoyed. Foreign Affairs may advise as to whether any disciplinary action will be undertaken through the diplomatic process.
4. The police should be encouraged to complete their investigation as soon as possible. Upon receipt of a Report to Crown Counsel, Crown Counsel should conclude the charge assessment process as soon as possible and ensure that there is a reasonable time between the swearing of the charge and first appearance or, if there has been an arrest, that the case is remanded to allow the issue of immunity to be reviewed.

5. The Director, Legal Services should notify the provincial Protocol Office responsible for intergovernmental relations that a charge has been laid.
6. Even where there is immunity, Foreign Affairs may ask the other country to waive it. Where a waiver of immunity is refused by the other country, Foreign Affairs may request the removal of the accused from Canada where the offence is of a serious nature or initiate other disciplinary action.
7. Where immunity is established, a stay of proceedings should be directed.



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

ARCS/ORCS FILE NUMBER: 55620-00	EFFECTIVE DATE: November 22, 2004	POLICY CODE: DIR 1
SUBJECT: Direct Indictment		CROSS-REFERENCE:

POLICY

Under section 577 of the *Criminal Code*, it is the Deputy Attorney General who personally provides the requisite consent in writing to an indictment being preferred where a preliminary inquiry has not been held or an accused has been discharged after preliminary inquiry.

Crown Counsel wishing to proceed by direct indictment should first request the approval of Administrative Crown Counsel. If Administrative Crown Counsel approves, Crown Counsel should prepare a written request to Regional Crown Counsel including:

- a copy of the Information
- a copy of the Report to Crown Counsel
- a precise outline of the evidence on each count (consider using a chart to outline the evidence in complex cases)
- a memorandum summarizing the history and status of the prosecution and the factors in support of direct indictment
- a draft of the indictment to be preferred by Crown Counsel if consent is granted (the consent will be prepared at Headquarters)

If Regional Crown Counsel approves the request, the material should be forwarded by Regional Crown Counsel to the Assistant Deputy Attorney General for review. Regional Crown Counsel should provide his or her opinion that each count on the draft indictment meets the charge assessment standard. The Deputy Attorney General must be satisfied not only that the consent is appropriate and consistent with this policy, but also that each count meets the charge assessment standard.

If the request is approved by the Assistant Deputy Attorney General, the Deputy Attorney General will be asked to sign a consent under s. 577. Consent will be given when it is in the public interest, including the circumstances outlined below.

DISCUSSION

Examples of circumstances where it is in the public interest to give consent include the following:

1. Where there is significant danger of harm to a witness, whether psychological or physical. This includes cases where the witnesses are children and it can be demonstrated that they would likely suffer trauma if forced to participate in multiple judicial proceedings.
2. Where the public interest requires a solution to serious logistical problems such as an absconding co-accused or a complex case involving numerous witnesses and lengthy testimony or international complications.
3. Where it is likely that a preliminary inquiry would cause such delay that the trial process would become impossible or result in a successful application for a judicial stay of proceedings under the *Charter of Rights and Freedoms*.
4. Where a judge at a preliminary inquiry has made a decision which is clearly unreasonable in that it is either not supported by the evidence or based on a clear error in law and results in a failure to commit on a particular charge which the public interest requires to be prosecuted.
5. Where the Crown has led evidence at the preliminary inquiry and has been unsuccessful in obtaining admissions of fact from the accused for the purposes of the preliminary inquiry on easily proven matters, and the cost of a full preliminary inquiry would be substantial and unreasonable.
6. Where after a full preliminary inquiry, the committal order may be invalid due to procedural error.
7. Where the Crown erred in failing to call important available evidence at a preliminary inquiry resulting in a discharge on a serious matter and where the evidence is still available for trial.
8. Where significant new evidence has become available after a discharge at preliminary inquiry and the public interest requires a trial (for instance, where similar fact evidence arises linking the charge to a subsequent charge or DNA evidence now supports a substantial likelihood of conviction).
9. Where significant new evidence becomes available after committal on a lesser charge and the public interest requires a prosecution on a more serious charge.

10. Where significant new evidence from an additional complainant becomes available after committal and, taking into account the law on similar fact and severance, it is in the public interest that a trial be conducted on all charges together by direct indictment and not be delayed for a preliminary inquiry on the new complaint. Consideration must be given, *inter alia*, to trial delay issues and factor #1 described above.
11. To protect the identity of an informant.
12. Where the public interest requires an expedited trial date for reasons such as: serious health problems of an accused or an essential witness; the likelihood that hostile Crown witnesses will change their evidence in the near future; or similar developments of an urgent nature.
13. To protect ongoing police investigations, operations and security where the requirement for such protection is of importance and can be significantly demonstrated.
14. Where a major case involving substantial civil disobedience poses significant problems of court room security, including the safety of the public and those involved in the administration of justice.

Where the Crown proceeds by direct indictment, the accused will not have a preliminary inquiry; however, it should be noted that the accused receives full disclosure through the regular Crown disclosure process. In some cases, the accused may have received additional disclosure through a co-accused having had a preliminary inquiry or trial or through the accused having had an extradition hearing.



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

ARCS/ORCS FILE NUMBER: 55340-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: DIS 1
SUBJECT: Disclosure		CROSS-REFERENCE: Practice Bulletin #15 Practice Bulletin #56 Practice Bulletin #63

POLICY

Crown Counsel must be fully cognizant of their legal obligation regarding disclosure to the accused under Stinchcombe v. The Queen.

Full, frank, and fair disclosure is essential to protect the constitutional right of an accused person to a fair trial.

Crown Counsel should err on the side of inclusion when determining whether information is relevant and must be disclosed to an accused.

Crown Counsel should ensure that disclosure is made in a timely manner so that the prosecution can proceed without unreasonable delay. Disclosure is an obligation which continues throughout the prosecution.

DISCUSSION

In Stinchcombe v. The Queen [1991] 3 S.C.R. 326, the Supreme Court of Canada confirmed that Crown Counsel has a duty to disclose all relevant information in their possession to the accused, whether inculpatory or exculpatory, as soon as it becomes available. Crown Counsel may exercise a discretion to refuse to disclose information that is privileged or clearly irrelevant. Disclosure of relevant information may be delayed in order to protect witnesses and ongoing investigations, but that information must be disclosed before trial. Relevant information must be disclosed whether or not Crown Counsel intends to introduce it in evidence - that includes all information of reasonably possible use to the defence in making full answer and defence.

Therefore, with certain exceptions, the results of police investigations which have led to the laying of charges are not exclusively the property of the Crown, and Crown Counsel has a duty to make disclosure to the accused under Stinchcombe to ensure that justice is done.

Full disclosure ensures fairness in the criminal process. As the Supreme Court of Canada has noted, “full and fair disclosure is a fundamental aspect of the Crown’s duty to serve the Court as a faithful public agent, entrusted not with winning or losing trials but rather seeing that justice is served.” R. v. O’Connor [1995] 4 S.C.R. 411, and R. v. Taillefer and R. v. Duguay [2003] 3 S.C.R. 307.

Disclosure permits the accused to know the case to be met and facilitates full answer and defence. In addition, proper disclosure encourages the resolution of facts in issue in advance of the preliminary hearing or trial and also encourages the entering of guilty pleas in appropriate cases at an early stage of the proceedings.

Crown Counsel have both a legal obligation and a professional responsibility to disclose to an accused person all information in the possession or control of the Crown that is not clearly irrelevant or privileged. In every case where Crown Counsel exercises discretion with respect to disclosure, that exercise of discretion is subject to review by the court.

The professional duty of disclosure on Crown Counsel is set out in the *Professional Conduct Handbook*, Chapter 1, s. 1(2):

When engaged as a Crown prosecutor, a lawyer’s primary duty is not to seek a conviction but to see that justice is done; to that end the lawyer should make timely disclosure to the defence of all facts and known witnesses whether tending to show guilt or innocence, or that would affect the punishment of the accused.

Examples of Material that is Generally Disclosed

The following are examples of what Crown Counsel must generally provide to the defence in every case where available and regardless of whether the Crown intends to use the information or adduce it at trial. It is not intended to be an exhaustive list of what must be disclosed. Crown Counsel must exercise judgment to determine the manner and degree of disclosure that is necessary and appropriate in a particular case. In particular, Crown Counsel must ensure that any editing of materials disclosed is restricted to only those individual pieces of information that are either irrelevant or privileged.

Where available, the accused should generally be provided with the following:

1. A copy of the charging document.
2. Narrative of the circumstances surrounding the offence.
3. Copies of all notes made by members of the investigative agency relating to the offence.
4. Copies of all written statements made by persons with relevant information relating to the offence charged. If no written statements were made, any notes taken or made by investigators present or conducting interviews of these persons should be disclosed. If no

notes were taken, the accused should be provided with a will-say summarizing the anticipated evidence of these persons.

5. Copies of, or an appropriate opportunity to privately view and listen to, any audio or videotaped of statements made by any witnesses. The nature and circumstances of the case and of the witness statement will guide Crown Counsel in determining which of these alternatives is most appropriate and the scope of any undertakings that should be obtained to protect legitimate privacy interests.
6. Copies of all written, audio or videotaped statements made by the accused to a person in authority including any notes taken or made by the person in authority or the investigative agency with respect to the statements.
7. Particulars of the criminal record of the accused and, if appropriate, any co-accused.
8. Copies of any expert reports relating to the offence, except to the extent that they contain irrelevant or privileged information, whether helpful to the Crown or not. Crown Counsel should be mindful of the notice provisions set out in s. 657.3 of the *Criminal Code* if an expert is to be called as a witness or his or her report is to be tendered as evidence.
9. Copies of all relevant documents, photographs, and audio or videotapes of anything other than a statement of a person, whether or not Crown Counsel intends to introduce them as exhibits in court.
10. Copies of any search warrants relied on by the Crown, the Informations in support, and a list of any items seized pursuant to the warrants.
11. An appropriate opportunity to inspect any items seized or acquired during the investigation of the offence that are relevant to the charges against the accused.
12. If intercepted private communications will be tendered, a copy of the judicial authorization or written consent under which private communications were intercepted. Crown Counsel should also consult Practice Bulletin #15 on Disclosure of Intercepted Private Communications.
13. Similar fact evidence that Crown Counsel intends to rely on at trial.
14. Particulars of any procedures used to identify the accused outside of court, and any information that may bear on the reliability of identification evidence relied on by the Crown.
15. Upon request, information about the criminal records of material Crown or defence witnesses relevant to credibility. Crown Counsel's obligation to check the criminal record of a witness and provide this information to the defence is limited to material

witnesses whose credibility is in issue. Crown Counsel should also consult Practice Bulletin #56 on Disclosure of Criminal Record Information of Crown Witnesses.

16. Any information in the possession or control of Crown Counsel that the defence may use to impeach the credibility of a Crown witness in respect of the facts in issue in a case. This would include any prior inconsistent statements or subsequent recantations, the particulars of any benefit or advantage discussed with, promised to, or received by a proposed Crown witness, or any other information known by Crown Counsel to be relevant to the reliability or credibility of the witness.
17. Any additional relevant information received or materially inconsistent statements made by a witness during an interview by Crown Counsel in preparation for trial. In this situation, the police will generally take a new statement from the witness and disclosure will be made. If inconsistencies are minor or if there is insufficient time before a trial, Crown Counsel may provide a letter to defence counsel or make disclosure verbally.

Practice Bulletin regarding Exceptions to Disclosure

Practice Bulletin #63 on Disclosure – Exceptions to the General Rules of Disclosure of all Relevant Material, provides advice on the categories of material that are not subject to disclosure or are subject to delayed or limited disclosure.



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

ARCS/ORCS FILE NUMBER: 55340-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: DIS 1.1
SUBJECT: Disclosure of Information to Parties other than the Accused		CROSS-REFERENCE: CHI 1 DIS 1 FRE 1 MED 1 PRO 1 VIC 2

POLICY

Subject to this policy and the requirements of the *Freedom of Information and Protection of Privacy Act*, Criminal Justice Branch files are generally confidential in order to:

- ensure that there is no prejudice to ongoing prosecutions
- protect public safety, including the safety of witnesses or other individuals involved in prosecutions
- protect third party privacy interests
- satisfy privilege or public interest immunity where it applies

Requests for release of information should be in writing and, except for applications under the *Freedom of Information and Protection of Privacy Act*, should state the reasons for seeking the information.

Information Created by Law Enforcement Agencies

Information provided by law enforcement agencies, including information in a Report to Crown Counsel, is provided to Crown Counsel for the limited purpose of prosecution, and it belongs to those agencies.

Where Crown Counsel is requested by a person other than the accused or defence counsel to provide a record of information relating to a prosecution (including evidence) which has originated with the police or another law enforcement agency, the request should be referred to that agency. This does not apply to records created by the Criminal Justice Branch (such as memoranda to file).

Information Regarding Witnesses

Crown Counsel should not release information concerning the identity or location of a witness or a witness statement, unless the request for the information is in the public interest and:

- **there is no ban on publication which would prohibit the release;**
- **the witness consents to the release;**
- **there would be no prejudice to the prosecution;**
- **there is no other means by which the information can be obtained by the person requesting it; and**
- **Regional or Deputy Regional Crown Counsel is consulted if the witness has requested or is in need of protection.**

Examples of situations where release may be in the public interest, subject to the above, include requests by Government agencies, Crown Corporations, or bodies which regulate professionals, especially where the request relates to a statutory mandate.

Civil Litigation

Crown Counsel should consult the Director, Policy and Legislation or designate when information is requested for the purposes of civil litigation, including where the provincial government is involved as a potential litigant. Where a request for information for the purposes of civil litigation is made by an application under the *Freedom of Information and Protection of Privacy Act*, the Headquarters lawyer responsible should consult the Director, Policy and Legislation. Issues relating to privilege or public interest immunity may arise in the case of copies of Reports to Crown Counsel, opinions concerning charge assessment, witness statements, Crown Counsel work product, or medical, technical or scientific reports.

Requests by Victims' Assistance Organizations

Branch policy VIC 2 applies to requests by victims' assistance organizations for information on behalf of victims.

Requests by the Crime Victim Assistance Program (Ministry of Public Safety and Solicitor General)

On request by the Crime Victim Assistance Program, Crown Counsel should provide an objective explanation of the reasons for the outcome of a prosecution. That explanation

should take into account that the information provided may be considered by the program in its adjudication on the merits of the victim's application for assistance.

Requests under the *Child, Family and Community Service Act*

Under section 96 of the *Child, Family and Community Service Act*, Crown Counsel have a responsibility to provide information to delegates of the Director (child protection workers) which is requested for the purpose of child protection. Requests for information under this Act should be referred to Administrative Crown Counsel. Further advice is provided under "Discussion".

Research Requests

Access to Crown Counsel files for research purposes should not be granted unless a research agreement has been approved by the Assistant Deputy Attorney General in accordance with s.35 of the *Freedom of Information and Protection of Privacy Act*.

DISCUSSION

Generally, the release of information is governed by this policy, the requirements of the *Freedom of Information and Protection of Privacy Act*, and Crown Counsel's responsibilities relating under the *Criminal Code* (deleted) to the protection of informants, witnesses and third parties.

The *Freedom of Information and Protection of Privacy Act* does not apply to ongoing prosecutions.

Investigative agencies, other organizations, and parties both within and outside government may request information from Crown Counsel files for a variety of purposes. It is recognized that Crown Counsel have a professional responsibility to protect confidential and privileged information, but it must also be recognized that organizations and agencies may have valid interests in obtaining information.

The Requirement to Provide Reasons for a Decision not to Prosecute

Section 15(4) of the *Freedom of Information and Protection of Privacy Act* provides that:

The Head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute;

- i. to a person who knew of, and was significantly interested in the investigation, including a victim or a relative, or friend of a victim; or*
- ii. to any other member of the public, if the fact, of the investigation was made public.*

Under the above-noted provision, Crown Counsel are required to provide reasons for a decision not to prosecute to any person who knew of or was significantly interested in the investigation or to any other member of the public after the investigation has been made public. The following guidelines apply:

1. Crown Counsel should take care to provide reasons which have a minimal impact on the privacy interests of third parties and do not breach any legal requirements.
2. Only summaries or extracts of police reports or other sensitive documents should be made public.
3. Legal opinions, charge assessment opinions, work product and other internal or potentially privileged documents should not be made public.
4. Information concerning young persons may be disclosed only to those persons who are authorized under the *Youth Criminal Justice Act* to have access to records concerning young persons (see sections 110 – 129).
5. The responsibility for making announcements in high profile cases should be determined by the Assistant Deputy Attorney General in consultation with Regional Crown Counsel and the Communications Counsel.

Requests under the *Child, Family and Community Service Act*

By arrangement between the Criminal Justice Branch and the Director, Family and Child Services, the standard request letter exempts the following material from the request: any information which is protected from disclosure by the *Criminal Code* or *Youth Criminal Justice Act*, inter-office correspondence, legal opinions, and reports or records which can be obtained directly from the author of the report or record.

Where a child protection worker or their counsel is requesting information from a Crown Counsel file which originated with another “public body” as defined by the *Child, Family and Community Service Act* (incorporating the definition from the *Freedom of Information and Protection of Privacy Act*), the child protection worker or their counsel should obtain the information directly from the public body that created it.

A municipal police force is a “public body”; however, the RCMP is not. Therefore, where the information is contained in records which originated with the RCMP, Crown Counsel are under an obligation to provide that information to the child protection worker or their counsel, subject to the exemptions noted above.

Information Sharing Protocols with Justice Partner Agencies

The Criminal Justice Branch is a party to or is directly affected by a number of information-sharing agreements/arrangements with other agencies, branches, ministries or other

organizations. If Crown Counsel require information about any of these protocols, they may contact the Information and Privacy Coordinator Crown Counsel at Headquarters. Included in these agreements/arrangements are the following:

- Agreement between the Government of Canada and the Government of the Province of British Columbia (for information sharing for law enforcement purposes), July, 1983.
- Memorandum of Understanding on information sharing concerning offenders, November, 1997 between the Government of Canada and the Government of the Province of British Columbia.
- Section 96 of the *Child, Family and Community Service Act* – memorandum from Hal Yacowar dated May 7, 2002 advising Crown Counsel of the requirements to provide information to the “Director” for child protection purposes under the Act.
- The Inter-Ministerial Coordination Services for Adults with a Mental Disorder or Mental Handicap Involved in the Criminal Justice System: a protocol for the sharing of information across ministries and agencies, September, 1995, between the Ministries of Health, Social Services (now the Ministry of Human Resources and the Ministry of Child and Family Development) and Attorney General.
- Protocols for the Inter-Ministerial Coordination of Services for Persons with a Mental Disorder, November, 1992 between the ministries of Attorney General, Health and Social Services (now the Ministry of Human Resources and the Ministry of Child and Family Development).
- Electronic Access Agreement (CORNET), February, 2005 between the Corrections Branch, Ministry for Children and Family Development and the Criminal Justice Branch.
- Electronic Access Agreement (JUSTIN), February, 2005, between the Court Services Branch, Criminal Justice Branch, the Corrections Branch, Youth Services Division (now the Ministry for Children and Family Development).



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

ARCS/ORCS FILE NUMBER: 56640-00 125-20/TPRA	EFFECTIVE DATE: September 15, 2004	POLICY CODE: ELD 1
SUBJECT: Elder Abuse – Offences Against Elders		CROSS-REFERENCE: CHA 1 CHA 1.2

POLICY

When deciding whether to approve charges arising from an allegation of elder abuse, Crown Counsel should take into account that the policy on Charge Assessment Guidelines (CHA 1) states that it is generally in the public interest to proceed with a prosecution where the victim is a vulnerable person.

Crown Counsel or support staff should make reasonable efforts to advise the victim of available victim assistance programs.

Aggravating circumstances under s.718.2 of the *Criminal Code* should be considered in submissions on sentence.

When Crown Counsel makes a decision that charges should not be laid following a review of a Report to Crown Counsel from the police alleging abuse of an elder, the file should be returned to the police with a reminder that the police should inform the designated agency in the local community if they have concerns about the safety or health of the elder, and that, if the elder appears to be incapable, the police may consult the Public Guardian and Trustee at 604 775-0202.

DISCUSSION

This policy recognizes the potential vulnerability of elderly people. Elder abuse can consist of anything from physical assault and unlawful confinement to verbal abuse, trade practice offences, or fraud. Elder abuse, like child abuse, is not always obvious to the casual observer. Family ties often make reporting difficult for elderly victims when the source of the abuse is within the family.

Even where charges are not approved, there may be legitimate concerns about the safety or health of the elder. The Public Guardian and Trustee has organized protocols by which a designated agency in each community (such as Mental Health or Continuing Care) will receive reports from the police and other agencies about elders for whom there are safety or health concerns. Also, the Public Guardian and Trustee will receive reports about elders who appear to be incapable.

Concerning *Trade Practice Act* offences, the social regulatory charge assessment policy (CHA 1.2) need not apply in cases where a scheme has been developed to target elderly people in violation of the *Trade Practice Act*. This means that in appropriate circumstances, charges can be laid without the necessity of first warning the alleged offender(s).



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

ARCS/ORCS FILE NUMBER: 56860-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: ENV 1
SUBJECT: Environmental Prosecutions		CROSS-REFERENCE: CHA 1 CHA 1.2

POLICY

Reports to Crown Counsel on environmental offences and complicated or sensitive forestry related prosecutions under the *Criminal Code* should be forwarded for charge assessment to designated environmental Crown Counsel who have expertise in those matters. The procedure on page 2 should be followed.

The Branch policy on charge assessment guidelines (CHA 1), rather than the policy on social regulatory – provincial statute offences (CHA 1.2), is to be applied to environmental offences. In applying the charge assessment standard, Crown Counsel should keep in mind the importance of both the general legislative scheme to protect the environment and the overarching principle of general deterrence. The public interest test for prosecution is generally met where one or more of the following factors apply:

- **other methods of enforcement have proven ineffective in relation to previous offences, or there is reason to believe that other enforcement methods will not be effective**
- **the accused is a repeat offender**
- **the action of the offender was wilful, or fell significantly below the standard of due diligence**
- **there is more than minimal damage to the environment, or there is substantial potential for damage to the environment**
- **there is a significant non-compliance with environmental legislation, regulations or standards**
- **the lives or safety of persons were endangered**
- **the public interest in the maintenance of environmental values otherwise requires a prosecution**

DISCUSSION

Environmental Prosecution Procedure

This policy applies to all prosecutions of environmental and forestry related offences under the provisions of various provincial statutes, primarily the *Waste Management Act*, *Wildlife Act*, *Forest Act*, *Forest Practices Code Act* and *Water Act*, as well as the federal and provincial *Fisheries Acts*.

All environmental prosecution files should be forwarded for charge assessment to the designated environmental Crown Counsel for that area. They should consult with Regional Crown Counsel and the Director, Legal Services or designate in significant, sensitive or particularly complicated cases. Cases which in the opinion of designated environmental Crown Counsel do not require their involvement may be referred to the Crown Counsel office closest to the location of the offence for prosecution, in which case the designated environmental Crown Counsel will be available to provide advice and assistance.

Designated environmental Crown Counsel will generally have conduct of all appeals to the Supreme Court of British Columbia arising out of environmental cases. Decisions with respect to Crown appeal requests to the Supreme Court of British Columbia in environmental matters will be made following consultation between Regional Crown Counsel and the Director, Legal Services or designate, and policy APP 1.1 applies.

Decisions with respect to Crown appeal requests to the Court of Appeal in environmental cases will be made following consultation between Regional Crown Counsel, the Director, Legal Services or designate, and the Director of Criminal Appeals and Special Prosecutions. Generally, appeals to the Court of Appeal will be conducted by the Director, Legal Services or designate. Decisions with respect to a possible Crown appeal, or application for leave to appeal, to the Supreme Court of Canada in an environmental case, and on the assignment of conduct in such cases, will be made following consultation between Regional Crown Counsel, the Director, Legal Services or designate, and the Director of Criminal Appeals and Special Prosecutions. In determining whether a Crown appeal should be taken to the Court of Appeal or Supreme Court of Canada, policy APP 1 applies.

Any disagreement about whether a Crown appeal or application for leave to appeal should be undertaken will be resolved by the Assistant Deputy Attorney General.

Forest Practices Code Act

Provincial forestry legislation establishes schemes which provide a double tiered system of remedies and sanctions contemplating that the majority of violations will be dealt with by way of administrative remedy, and that only the more serious matters will be dealt with by way of prosecution. Additionally, the schemes place the primary focus for compliance on holders of licences or other tenures, rather than on the individuals or employees working in the forests. Restraint should be exercised in prosecuting those who do not have the primary responsibility to ensure that forestry standards are met.



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

ARCS/ORCS FILE NUMBER: 56880-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: EUT 1
SUBJECT: Euthanasia and Assisted Suicide		CROSS-REFERENCE: CHA 1

POLICY

These guidelines apply in cases where a Report to Crown Counsel reveals that a person, motivated by compassion for another person, participated in causing that person's death.

Given the complex nature of the legal issues and the evolution of palliative care, charging decisions will be made on a case-by-case basis following an examination of the facts and circumstances of each case.

Crown Counsel should consider the factors outlined below. They are consistent with the policy on Charge Assessment Guidelines (CHA 1) which provides that a prosecution will proceed only where there is a substantial likelihood of conviction and where prosecution is required in the public interest.

The charge assessment decision should be made by Regional Crown Counsel in consultation with the Director, Policy and Legislation.

DISCUSSION

Substantial Likelihood of Conviction

In considering whether there is a substantial likelihood of conviction, Crown Counsel must assess the conduct of the person involved in a death. For the purposes of this policy, this conduct, and the resulting legal consequences, are divided into four categories.

"Active euthanasia" means intentionally terminating early, for compassionate reasons, the life of a person who is terminally ill or whose suffering is unbearable. This conduct is culpable homicide under section 222 of the *Criminal Code* and may constitute the offences of murder, manslaughter or criminal negligence causing death.

"Assisted suicide" means advising, encouraging or assisting another person to perform an act that intentionally brings about his or her own death. This conduct is an offence of either counselling or aiding suicide under section 241 of the *Criminal Code*.

"Palliative care" means a qualified medical practitioner, or a person acting under the general supervision of a qualified medical practitioner, administering medication or other treatment to a terminally ill patient with the intention of relieving pain or suffering even though this may hasten death. This conduct, when provided or administered according to accepted ethical medical standards, is not subject to criminal prosecution.

"Withholding or withdrawing treatment" means a qualified medical practitioner, with consent by or on behalf of the patient, discontinuing or not intervening with medical procedures to prolong life beyond its natural length. This conduct, when provided or administered according to accepted ethical medical standards, is not subject to criminal prosecution.

The factors to be considered by Crown Counsel in characterizing the conduct of the person involved in a death include:

1. The provable intention of the person who caused, accelerated, counselled or assisted the death, recognizing the criminal intents necessary for murder and counselling or aiding suicide.
2. Where the conduct involves a physician and a patient, the position of the Canadian Medical Association and expert medical opinions as to generally recognized and accepted ethical medical practices:

...there are conditions of ill health and impending inevitable death where an order...by the attending doctor of "no resuscitation" is appropriate and ethically acceptable.¹

...an ethical physician "will allow death to occur with dignity and comfort when death of the body appears to be inevitable [and] may support the body when clinical death of the brain has occurred, but need not prolong life by unusual or heroic means".²

The withholding or withdrawal of inappropriate, futile or unwanted medical treatment and the provision of compassionate palliative care, even when that shortens life, is considered good and ethical medical practice.³

1 Canadian Medical Association publication, "Canadian Physicians and Euthanasia", 1993, p.5.

2 Canadian Medical Association publication, "Canadian Physicians and Euthanasia", 1993, at p. 19 quoting from the Canadian Medical Association: Code of Ethics, CMA, Ottawa, 1990: Items 18 and 19

3 Canadian Medical Association publication, "Canadian Physicians and Euthanasia", 1993, p. 20

3. Whether, with reference to the following considerations, the acts of a qualified medical practitioner, or a person acting under the general supervision of a qualified medical practitioner, constitute "palliative care":
- a) as stated by Mr. Justice Sopinka, in Rodriguez v. British Columbia (Attorney-General), 1994 85 CCC(3rd) 15 at page 78:

The administration of drugs designed for pain control in dosages which the physician knows will hasten death constitutes active contribution to death by any standard. However, the distinction drawn here is one based upon intention - in the case of palliative care the intention is to ease pain, which has the effect of hastening death, while in the case of assisted suicide, the intention is undeniably to cause death. The Law Reform Commission, although it recommended the continued criminal prohibition of both euthanasia and assisted suicide, stated, at p. 70 of the Working paper, that a doctor should never refuse palliative care to a terminally ill person only because it may hasten death. In my view, distinctions based upon intent are important, and in fact form the basis of our criminal law. While factually the distinction may, at times, be difficult to draw, legally it is clear...
 - b) whether the patient was terminally ill and near death with no hope of recovery;
 - c) whether the patient's condition was associated with severe and unrelenting suffering;
 - d) whether accepted ethical medical practices were followed; and
 - e) whether the patient was participating in a palliative care program or palliative care treatment plan.
4. Whether, with reference to the following consideration, the acts of a qualified medical practitioner constitute "withholding or withdrawing treatment":
- a) under the common law, a physician must accept the patient's instructions to refuse or discontinue medical treatment although such treatment may well prolong life. Canadian courts have recognized this right, see Malette v. Shulman, (1990) 72 O.R.(2nd) 417 (Ont. C.A.). As stated by Sopinka, J. in Rodriguez, supra:

To continue to treat the patient when the patient has withdrawn consent to that treatment constitutes battery (Ciarlariello and Nancy B., supra.) The doctor is therefore not required to make a choice which will result in the patient's death as he would be if he chose to assist a suicide or to perform active euthanasia. (at page 34)
 - b) where the deceased refused treatment or revoked consent to the treatment, whether such refusal or revocation was fully informed and freely done. This will include consideration of whether:
 - i) the patient clearly understood his or her medical condition and that it may result in death if treatment was discontinued or not engaged;

- ii) the patient was mentally incompetent, depressed, or otherwise vulnerable;
 - iii) the patient's refusal of treatment or revocation of consent and the act of withholding or withdrawing treatment occurred contemporaneously;
 - iv) the patient was informed and understood his or her ongoing right to reconsider the refusal or revocation of consent;
 - v) there is any evidence the patient reconsidered his or her initial refusal or revocation of consent;
 - vi) anyone pressured the patient to refuse treatment or revoke consent to the treatment, and
 - vii) accepted ethical medical practices were followed.
- c) where the deceased was unable to refuse treatment or revoke consent to treatment, consideration of whether:
- i) there were instructions given to the qualified medical practitioner by another person or entity authorized to refuse treatment or revoke consent to treatment on behalf of the patient, for example, the existence of a court order or power of attorney for health care;
 - ii) there was evidence that withholding or withdrawal of treatment was what the patient would have requested had he or she been able to refuse treatment or revoke consent to treatment; and
 - iii) accepted ethical medical practices were followed.

Public Interest

If Crown Counsel has determined that there is a substantial likelihood of conviction, then Crown Counsel must determine whether the public interest requires a prosecution. In determining the public interest, the specific factors to be considered include, but are not restricted to, the various public interest factors outlined in the general charge assessment policy (CHA 1) and the following:

1. the importance of supporting proper professional and ethical standards within the health care professions;
2. society's interest in the protection of vulnerable persons; and
3. society's interest in protecting the sanctity of human life, recognizing this does not require life to be preserved at all costs.



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

ARCS/ORCS FILE NUMBER: 55500-00	EFFECTIVE DATE: May 20, 2003	POLICY CODE: EXT 1
SUBJECT: Extradition and Mutual Legal Assistance		CROSS-REFERENCE: ABD 1

POLICY

When considering whether British Columbia should request the Government of Canada to apply to another country for the extradition of an accused or convicted fugitive, Crown Counsel should consult with Regional or Deputy Regional Crown Counsel. Relevant factors include the following:

- whether the return of the fugitive can be achieved through some alternative process (such as voluntary return or deportation)
- whether the Crown has a strong case to support extradition
- whether the circumstances of the case and the public interest warrant the initiation of extradition proceedings
- whether the Crown would be seeking a relatively substantial jail sentence, usually penitentiary time

Once a preliminary decision has been made to proceed, Crown Counsel should consult with the Headquarters lawyer responsible for extradition who can advise on the treaty requirements. This will assist Regional or Deputy Regional Crown Counsel in making a final decision as to whether an application should be prepared. The procedure outlined below should be followed.

DISCUSSION

1. Extradition involves the surrender by one country, at the request of another, of a person who is accused or has been convicted of a crime committed within the jurisdiction of the requesting country.

2. Extradition is usually achieved pursuant to the terms of a treaty between Canada and the other country. For Commonwealth countries there may be no treaty and, if so, the United Kingdom legislation applies. It may be possible to obtain the return of an accused or convicted person from a country when there is no applicable treaty or legislation.
3. There are a number of different kinds of treaties, each with its own requirements as to the substance and form of the extradition application. The Headquarters lawyer can provide a copy of any applicable treaty or relevant legislation and provide advice on the requirements.

a) Location of the Fugitive

An extradition application cannot be made unless a location where the fugitive can be arrested has been confirmed by the police. While an exact address is not necessary, it is necessary that the fugitive can be arrested somewhere within a specific country which will determine the extradition requirements.

b) Whether Extradition Possible from the Country where the Fugitive Located

- i) The Headquarters lawyer can confirm whether there is a treaty or applicable legislation which will allow extradition and if not, whether the federal Justice Department will make an inquiry as to whether the requested state would consider a request for the return of the fugitive. For some countries, extradition will not be possible.
- ii) If there is a treaty or applicable legislation, the Headquarters lawyer can determine whether the act committed by the fugitive (which violates an offence against a law of Canada) also violates an extraditable offence against the law of the other country, so that the principle of "dual criminality" is met.

c) Whether Provisional Warrant Required

Once it is established that extradition is possible (and Regional or Deputy Regional Crown Counsel has made a decision to proceed), a provisional warrant application may be appropriate if there is an urgent need to arrest the fugitive immediately to prevent his leaving the other country. The Headquarters lawyer will provide Crown Counsel with the application form and advice as to its completion and transmittal by Crown Counsel to the Federal Justice Department, International Assistance Group, in Ottawa. That office makes all applications at the request of British Columbia.

4. Extradition Application – Procedure

- a) **Deadline:** The treaty or legislation will require that the extradition materials be completed within a certain period of time after the arrest of a fugitive on a provisional warrant, usually 45 or 60 days. If no provisional warrant has been executed, Crown Counsel may prepare the extradition materials in due course and the fugitive will be arrested at the time of the application.
- b) The Headquarters lawyer will provide Crown Counsel with checklists, along with a recent precedent, if necessary, and will be available to advise on the drafting of the materials. Extradition generally requires an Affidavit of Law and affidavits of the witnesses to prove the case on a standard analogous to that for committal at preliminary hearing.
- c) Crown Counsel should provide the Headquarters lawyer with unsworn drafts of the affidavits for review prior to swearing. This obviates the need for re-swearing where the materials require amendment.
- d) Crown Counsel should send the sworn affidavit and other materials comprising the application package, to the Headquarters lawyer who will forward British Columbia's request to the federal Justice Department that the extradition application proceed.
- e) Crown Counsel should provide the Headquarters lawyer with one extra copy of the application materials for the Headquarters' file.
- f) As part of the request for extradition, the Province of British Columbia must undertake to comply with the “Rule of Specialty” or similar rule, as applicable. The rule usually requires an undertaking not to prosecute the fugitive for any offences committed prior to his return to Canada other than the offences for which the extradition application is made.
- g) At the request of the Federal Justice Department, communication to and from the International Assistance Group will normally be made through the Headquarters lawyer. Canada retains a lawyer in the other country to conduct the extradition hearing before a court in that place.

5. Return of the Fugitive

When the fugitive is ready for return, the Federal Justice Department will contact the investigating officer and advise as to the time and procedure for travelling to the requested state (at the cost of the police department) and returning the fugitive in custody to the location in British Columbia where the trial will be conducted. Following the return of the fugitive, a first appearance and bail hearing will occur as the British Columbia court will then have jurisdiction on the information or indictment.

Extradition from Canada to Other Countries

The Federal Justice Department handles all applications by other countries for the return of fugitives from Canada to those other countries. British Columbia has no role to play in extraditions from Canada to other countries.

Sometimes a police department in another country will ask the police in British Columbia to arrest a fugitive on the strength of a warrant issued in that country. It is important to advise the police that a person cannot be arrested in Canada for the purpose of extradition to another country without that other country first having made an application for extradition to Canada resulting in the issuance of an extradition warrant by a B.C. Supreme Court Justice under the *Extradition Act* (of Canada).

If there is a warrant under some other Canadian legislation such as the *Immigration Act* or if the accused has committed offences in British Columbia, the local police may be able to effect an arrest, but that arrest does not hold the fugitive for extradition purposes.

Mutual Legal Assistance

Under Mutual Legal Assistance treaties with other countries and under enabling federal legislation, both Crown Counsel and the police are “competent authorities” for the purpose of making requests to the International Assistance Group of the Department of Justice for assistance from other countries.

In British Columbia, Crown Counsel make requests for assistance where evidence is required after a charge has been laid. Police make requests for assistance at the investigation stage.

Investigation is a police function and Crown Counsel are not in a position to provide advice on every case where the police, as competent authorities, may wish to seek assistance from other countries for investigative purposes. This does not mean that in certain high profile cases Crown Counsel will not become involved in advising the police about the general nature of the evidence which may be required, however, applications for assistance must be made by the police directly to the International Assistance Group and Crown Counsel should not sign them off.

The Department of Justice, not the Criminal Justice Branch, handles requests from other countries for mutual legal assistance.



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

ARCS/ORCS FILE NUMBER: 57970-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: FIR 1
SUBJECT: Firearms - Mandatory Minimum Sentences – Consecutive Sentences – Notice of Greater Penalty		CROSS-REFERENCE: RES 1

POLICY

Whenever the charge assessment standard is met for one of the offences listed below, unless exceptional circumstances exist, that offence should be charged and Crown Counsel should not accept a guilty plea to a lesser offence so that the accused can avoid the mandatory minimum jail term. Crown Counsel should ensure that the charge alleges that a firearm was used in the commission of the offence, so that the mandatory minimum sentence of four years imprisonment will be imposed on conviction.

1. Criminal negligence causing death (section 220)
2. Manslaughter (section 236)
3. Attempted murder (section 239)
4. Discharging a firearm with intent (section 244)
5. Sexual assault with a weapon (section 272)
6. Aggravated sexual assault (section 273(2))
7. Kidnapping (section 279(1))
8. Hostage taking (section 279.1(2))
9. Robbery (section 344)
10. Extortion (section 346(1.1))

The above offences are specifically excluded from section 85(1) of the *Criminal Code* which creates an offence of using a firearm in the commission of an indictable offence and requires that the sentence for that offence be consecutive to any sentence imposed for another offence arising out of the same event or series of events.

Unless exceptional circumstances exist, where there is a substantial likelihood of conviction for an indictable offence not listed above as well as for an offence under section 85, both charges should be prosecuted and, where applicable, the notice of greater penalty should be given under section 85(3) so that the mandatory consecutive jail term is imposed by the court on conviction for the section 85 offence.

Any decision based on exceptional circumstances must first be approved by Regional or Deputy Regional Crown Counsel.

DISCUSSION

On a charge of murder, Crown Counsel should particularize on the Information and on the Indictment that a firearm was used in the commission of the offence of murder. If a conviction for manslaughter results, Crown Counsel would then have recourse to the mandatory minimum sentence of four years under section 236.

Where a stay of proceedings is directed on a section 85 charge, the reasons should be noted in the prosecution file.

Notice of Greater Penalty for Firearms Offences

In order for there to be application of the increased mandatory minimum sentence for subsequent offences, Crown Counsel must give notice to the accused person of the Crown's intention to seek such a sentence. Specifically with respect to firearms, section 85(3)(c) mandates an increased mandatory minimum sentence for second or subsequent convictions of offences contrary to section 85. Further, sections 92(3)(b) and 92(3)(c) mandate minimum sentences for second and subsequent convictions, respectively, of offences contrary to section 92(1).

Section 86(3)(a)(ii) increases the potential sentence for an offence contrary to section 86(1) to five years without setting out a minimum. Section 109(3) dealing with the duration of a prohibition order following conviction and application of section 109, mandates a lifetime prohibition order in circumstances involving a second or subsequent conviction.

In all such circumstances, application of those provisions requires a notice pursuant to section 727(1) of the intention of the Crown to seek a greater punishment by reason of the earlier conviction.



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

ARCS/ORCS FILE NUMBER: 56320-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: FRE 1
SUBJECT: French Trials and Bilingual Trials		CROSS-REFERENCE:

POLICY

The Criminal Justice Branch recognizes the right to a French language trial or a bilingual trial under sections 530 to 533 of the *Criminal Code*. It is nearly always in the best interests of justice for an accused to be tried under the *Criminal Code* in the official language of Canada that is the language of the accused.

A denial of an application for a French language trial or a bilingual trial will be the exception, and any decision to oppose an application for such a trial should be made by Regional or Deputy Regional Crown Counsel in consultation with the Director, Legal Services.

DISCUSSION

In R. v. Beaulac 1999 1 S.C.R. 768, the Supreme Court of Canada held as follows:

The “language of the accused” is very personal in nature; it is an important part of his cultural identity. Under s. 530 of the Code, an accused must be afforded the right to make a choice between the two official languages based on his subjective ties with the language itself and to freely assert which official language is his own language. An accused’s own language, for the purposes of s. 530(1) and (4), is either official language to which that person has a sufficient connection. It does not have to be the dominant language. If the accused has sufficient knowledge of an official language to instruct counsel, he will be able to assert that that language is his language, regardless of his ability to speak the other official language. The Crown may challenge the assertion made, but it will have the onus of showing that the assertion is unfounded.

PROCEDURE

1. Under section 530 the Court can order either a French trial or a bilingual trial

In a bilingual trial, the questions are posed and answered in the official language of the witness. By contrast, in a French trial, all questions of an Anglophone witness are posed in French and translated out loud to the witness, with the response translated into French.

Therefore, where the majority of Crown witnesses are Anglophones, Crown Counsel should request a bilingual trial. Such an order will permit witnesses to be examined in English rather than through an interpreter.

2. Mandatory order under section 530(1)

Where the accused makes an application for a French trial or a bilingual trial within the time limits provided by section 530(1), the granting of the order is mandatory.

Section 530(2) provides that where the language of the accused is not one of the official languages of Canada, the accused may apply for a trial before a trier of fact who speaks the official language of Canada in which the accused can best give testimony, or if the circumstances warrant, before trier of fact who speaks both official languages of Canada.

3. Discretionary order under section 530(4)

Section 530(4) provides that where an accused fails to apply within the time required under (1) for a mandatory order, the trial judge may, if satisfied that it is in the best interests of justice, make an order for either a French trial or a bilingual trial.

4. Where the court has made an order – first appearance/election

When an accused person is granted a French or bilingual trial, Crown Counsel should request that the presiding Provincial Court judge adjourn the matter for approximately three weeks in order to fix a date for trial.

Crown Counsel should contact the Director, Legal Services in order to coordinate the assignment of a bilingual prosecutor and the fixing of a hearing date.

The assigned bilingual Crown Counsel will contact the local Crown Counsel office and arrange to have the appropriate CCFM documents filed.

The assigned bilingual Crown Counsel will then contact the local Judicial Case Manager to arrange for the scheduling of a trial date.

5. Fix Date

At the accused's next appearance, local Crown Counsel will attend for the setting of a trial date.

6. Interim Appearance

An interim appearance date in the originating jurisdiction should be set one week before the trial date to confirm the matter is proceeding, as Crown Counsel and court staff may be traveling from other parts of the province to attend on the trial date.

7. File Transfer

As soon as an order is made under section 530, the local Crown Counsel office should send the file to the Director, Legal Services and keep a copy of the file.

8. Translation

In the interest of ensuring a fair trial, there may be a need to have certain key documents translated (e.g. complainants' or witnesses' statements) as part of the disclosure process. The Director, Legal Services should be consulted prior to any decision on this point.

Location of Hearings

Jury Trial

By order of the Associate Chief Justice of the Supreme Court of British Columbia, all trials in the province requiring a French speaking or bilingual jury are to be held in New Westminster. Applications for a French speaking or bilingual jury trial to be held other than in New Westminster may be made to the Associate Chief Justice.

Preliminary Inquiries and Non-Jury Trials (both Provincial and Supreme Court

French and bilingual hearings will be held in the community where the charges arise unless a change of venue is ordered.

Notification of Witnesses

Notification of witnesses is the responsibility of the Crown Counsel office at the originating location.

Change of Venue

Crown Counsel should note that section 531 of the *Criminal Code* allows for an automatic change of venue where it is established that a French or bilingual trial cannot be conveniently held in the territorial division where the offence would otherwise be tried.

Other Proceedings Under the *Criminal Code* and Trials Involving Provincial Statute Offences

Crown Counsel take a practical approach to the availability of French and bilingual hearings in proceedings which are not trials under the *Criminal Code*. Where the court indicates that such a hearing is in the best interests of justice, a bilingual prosecutor will be assigned. Examples of such situations may include Informations charging both *Criminal Code* and provincial statute offences (e.g. *Motor Vehicle Act*) and applications under section 745.6 of the *Criminal Code* for a reduction in the period of parole ineligibility on a life sentence. The Director, Legal Services should be consulted prior to any decision on this point.



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

ARCS/ORCS FILE NUMBER: 57110-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: HAT 1
SUBJECT: Hate Motivated Offences and Hate Propaganda		CROSS-REFERENCE: ALT 1 CHA 1 VIC 1 Practice Directive #4

POLICY

Cases in which criminal activity is motivated by bigotry and intolerance for others are regarded as serious matters.

Where Crown Counsel concludes, after consultation with Regional or Deputy Regional Crown Counsel, that there is a reasonable likelihood that the court will make a determination on sentencing that an offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor, Crown Counsel should lead the evidence necessary to prove the motivation beyond a reasonable doubt and, if that evidence is admitted, take the position on sentencing that the motivation must be treated as an aggravating factor under section 718.2(a)(i) of the *Criminal Code*.

In almost all cases where offences are motivated by bias, prejudice or hate as described above, the public interest factors outlined in the policy on Charge Assessment Guidelines (CHA 1) apply in favour of prosecution.

The policy on Alternative Measures for Adult Offenders (ALT 1) provides that alternative measures referrals for hate motivated offences should be made only in exceptional circumstances and after consultation with Regional or Deputy Regional Crown Counsel. ALT 1 also provides that referrals for hate propaganda offences should be made only in rare circumstances and with the written consent of the Assistant Deputy Attorney General. In both cases the following conditions must be met on a referral:

1. Identifiable individual victims should be consulted and their wishes considered;
2. The offender should have no history of related offences or violence;
3. The offender should accept responsibility for the act or omission that forms the basis of the alleged offence; and

4. The offence must not have been of such a serious nature as to threaten the safety of the community.

Before a charge is laid under any of the hate propaganda offence provisions in sections 318 or 319 of the *Criminal Code*, Administrative Crown Counsel should review the charge assessment decision and provide a recommendation to Regional or Deputy Regional Crown Counsel.

Under Practice Directive #4, it is the Assistant Deputy Attorney General who provides the requisite consent of the Attorney General to prosecutions for advocating genocide under section 318 and for wilfully promoting hatred against an identifiable group under section 319(2).

DISCUSSION

Hate Motivated Offences

Hate motivated offences differ from other crimes because they are committed with the purpose of harming and terrifying not only a particular victim, but the entire group to which the victim belongs.

Section 718.2(a)(i) of the *Criminal Code*, which was introduced as a response to public concerns regarding hate motivated offences, states that a court shall take into consideration that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor, as an aggravating factor on sentencing. Generally, this provision applies to offences against the person and property. Assaults based on perceived sexual orientation or mischief to property, such as spray painting, are examples of offences in which the above factors should be considered by the court.

The preferred view of the law is that section 718.2 does not apply to the hate propaganda offences (Sections 318, 319, 320, 320.1) as they exist as discrete offences with their own sentencing parameters. As well, there are fewer identifiable groups mentioned within the Hate Propaganda provisions. A recent amendment to the *Criminal Code* brought into effect section 430(4.1), mischief to religious property, which has a different set of identifiable groups from sections 718.2 and the Hate Propaganda sections but arguably would be subject to section 718.2.

In 1996, the B.C. Hate Crime Team was created. The Hate Crime Team's provincial mandate is to ensure the effective identification, investigation and prosecution of hate motivated offences. The Hate Crime Team includes members of the Ministry of Attorney General and Ministry Responsible for Treaty Negotiations (Crown Counsel, Policy and Legislation), Ministry of Public Safety and Solicitor General (Policy and Legislation, Police Services), Ministry of Community, Aboriginal and Women's Services, the Royal Canadian Mounted Police serving as the provincial police force and

the Vancouver Police Department representing municipal police forces. The role of the Crown Counsel on the team is to provide legal advice, information and support to police and Crown Counsel in the province on hate motivated cases. The role of the police and Crown Counsel on the team in tracking hate motivated offences is central to the team's mandate.

Crown Counsel are requested to advise Crown Counsel on the Hate Crime Team of the existence and outcome of hate motivated cases in their regions. The Hate Crime Team has developed a database in an attempt to monitor all charges of hate motivated offences in the province. Resultant case law is made available to Crown Counsel in the province.

Hate Propaganda

Hate propaganda offences are set out in sections 318 and 319 of the *Criminal Code*. Section 318 creates an offence where an accused is advocating or promoting genocide against an identifiable group. An "identifiable group" is defined in section 318(4) as any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation. Section 319(1) creates an offence for everyone who communicates statements in any public place which incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace. Section 319(2) creates an offence for communicating statements, other than in private conversation, which willfully promote hatred against an identifiable group. Prosecutions under sections 318 and 319(2) require the consent of the Attorney General.

Sections 320 and 320.1 require the consent of the Assistant Deputy Attorney General before the commencement of proceedings. These "*in rem*" provisions provide for the removal of hate propaganda written material pursuant to section 320, or, pursuant to section 320.1, of hate propaganda that is stored on and made available to the public, including via the internet, through a computer system that is within the jurisdiction of the court. In section 320.1 the burden of proof on the Crown is on the balance of probabilities.

Not all incidents of bigotry and intolerance for others constitute criminal offences. There are other avenues that may be taken to deal with such matters in cases where the charge assessment standard is not met under policy CHA 1.

The *Human Rights Code* R.S.B.C. 1996, c.210, prohibits discriminatory practices in the context of publications, employment, residential tenancy, and the use of public facilities.

Section 7 of the *Human Rights Code* prohibits the publication, issue or display of discriminatory material in the form of statements, publications, notices, signs, symbols, emblems or other representations the expression of which indicate discrimination or an intention to discriminate against a person or a group or class of persons, or that is likely to expose them to hatred or contempt because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, or age of that person, or that group or class of persons. It does not apply to a private conversation or to a communication intended to be private.

The *Human Rights Code* does not contain an offence provision and the *Offence Act* does not apply. However, the Code does provide a means of redress for those persons who are discriminated against contrary to the Code.

The Civil Rights Protection Act R.S.B.C. 1996, c.49, also exists as a remedy. The Act has yet to be tested, despite being in force since 1981. The Director, Legal Services should be consulted before any charges are considered for approval under this Act.

Cases under s.319(2):

R. v. Harding (1998) O.J. No. 2603, affirmed in Ontario Court of Appeal, 160 CCC (3d) 225; 48 C.R. (5th) 1 – Anti-Muslim hate propaganda.

R. v. Nicholson July 11, 2002, Merritt Registry, 10621, B.C. Prov. Ct. – first prosecution in Canada of hate propaganda distributed on the internet.



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

ARCS/ORCS FILE NUMBER: 57600-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: IMM 1
SUBJECT: Immoral Theatrical Performances		CROSS-REFERENCE: CHA 1.2

POLICY

When a Report to Crown Counsel recommends a charge under Section 167 of the *Criminal Code*, Crown Counsel should, where appropriate, contact the area Liquor Inspector to determine whether the matter can be regulated through enforcement of the terms and conditions of the liquor licence.

It is Branch policy to consider effective alternatives to prosecution under the *Criminal Code* where there is a social regulatory enforcement scheme available. The Branch policy on Charge Assessment– Social Regulatory Offences (CHA 1.2) has application.

Of particular concern are immoral theatrical performances involving young persons or involving coercion or non-consensual violence, simulated or real, in a sexual context. In those circumstances, prosecution under the *Criminal Code* should be considered.

DISCUSSION

Enforcement of terms and conditions of liquor licence

The police do regular walk-through inspections on behalf of the Liquor Control and Licensing Branch and provide written reports to Liquor Inspectors re contraventions of the liquor licence, including acts by exotic dancers or strippers.

If the police have provided a Report to Crown Counsel recommending charges, Crown Counsel may wish to ask the investigating officer whether the liquor inspector has been involved.

To obtain the telephone number for the area Liquor Inspector, Crown Counsel may call the Liquor Control and Licensing Branch Headquarters in Victoria at 250 387 1254.

Attached as [appendix A](#) is a copy of page 17 of the Liquor-Primary Licence, Terms and Conditions which describes those acts by strippers or exotic dancers which would contravene the licence.

The terms and conditions of the liquor licence are set by the General Manager of the Liquor Control and Licensing Branch under Section 50 of the *Liquor Control and Licensing Act*. Enforcement action includes the service of a contravention notice by the Liquor Inspector and then either voluntary compliance or further enforcement action consisting of an administrative hearing with monetary penalties (minimum \$5,000.00 to a maximum \$7,000.00) or a range of licence suspensions, or both.

Prosecutions under Section 167 where social regulatory enforcement is not appropriate

Section 167(1) of the *Criminal Code* provides: “Every one commits an offence who, being the lessee, manager, agent or person in charge of a theatre, presents or gives or allows to be presented or given therein an immoral, indecent or obscene performance, entertainment or representation.”

In Regina v Mara, (1997) 2 S.C.R. 630, the Supreme Court of Canada held that “a performance is indecent if the social harm engendered by the performance, having reference to the circumstances in which it took place, is such that the community would not tolerate it taking place.” The Court also held that:

“indecent, unlike obscenity, entails an assessment of the surrounding circumstances in applying the community standards test”;

“the relevant social harm to be considered pursuant to Section 167 is the attitudinal harm on those watching the performance as perceived by the community as a whole”;

“the conduct in issue in this case in the context in which it takes place is harmful to society in many ways. It degrades and dehumanizes women and publicly portrays them in a servile and humiliating manner, as sexual objects with a loss of their dignity. It dehumanizes and desensitizes sexuality and is incompatible with the recognition of the dignity and equality of each human being. It predisposes persons to act in an anti-social manner, as if the treatment of women in this way is socially acceptable and is normal conduct, and as if we live in a society without any moral values.”

What the community will tolerate will vary with the surrounding circumstances and context, including the place in which the performance occurs and the composition of the audience. Relevant factors could include the forewarning of the public as to the nature of the performance, the conditions of admission and the size of the audience.

The question of whether a performance is immoral, indecent or obscene, so as to violate Section 167, is a question of law. Listed below are some examples of performances which would be subject to the circumstances and context test:

1. Sexual acts where there is audience participation in the sense of physical contact between the spectator and the performer, e.g. lap-dancing.
2. Live sex acts on stage, i.e. acts of oral/genital, genital/genital, genital/anal or oral/anal contact or insertion.
3. Sex acts that are simulated but are so realistic that a reasonable observer could not determine that they are simulated.
4. Where objects are ejected from the anus or vagina of the performer into the audience.
5. Where the performance involves insertions of any object into the vagina or anus.
6. Real or simulated sex acts involving consensual violence.

APPENDIX A

- draws are limited to meat draws, 50/50 tickets, raffles, or other draws specified by the general manager
- prizes do not include liquor or tokens redeemable for liquor
- winners are not required to be present to collect prizes, and
- proceeds and prizes are disbursed according to Gaming Policy and Enforcement Branch rules.
- Offer pari-mutuel (off-track) betting, if approved by Teletheatre B.C. and provided:
 - the betting area, including the area in which patrons line up to place their bets, is located outside the licensed area of your establishment
 - where the betting area shares a common wall with your licensed area, the wall, doors and other openings are designed and constructed according to approved specifications
 - any openings directly between the betting area and your licensed area are clearly marked with signs indicating that liquor may not be taken into the betting area, and
 - where the betting area is directly accessible from your licensed area, you provide adequate staff during the hours it is in operation to ensure that patrons do not enter or remain in the betting area with liquor.

Performances by Strippers or Exotic Dancers

A stripper is an entertainer who strips off clothing during a performance; an exotic dancer is a performer who does not necessarily strip clothing during a performance. (Belly dancers are not considered strippers or exotic dancers.)

If you are offering performances by exotic dancers/strippers:

- The entertainers must be at least nineteen years of age and must wear appropriate clothing while walking through the audience, both before and after performances. This clothing must not be part of their stage costume.
- Performances must be confined to the stage or other approved areas (these areas will be noted on your liquor licence). No performing is allowed in the audience area.
- Animals may not form part of a performance, and are not permitted as entertainment except as approved by the general manager.
- The exotic dancers/strippers may not act as

servers or hold any other employment position in your establishment while they are also working for you as entertainers.

Exotic dancers/strippers may not:

- engage in live, realistic or simulated sex acts, or in any acts involving coercion or violence, either simulated or real
- insert any object into, or extract any object from, the vagina or anus
- urinate or defecate while performing
- touch, share food and beverages, or pass objects to members of the audience
- touch or share food and beverages with other performers
- consume liquor immediately prior to a performance, during a performance or between performances
- dance/perform on table tops or other areas outside the approved areas





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

ARCS/ORCS FILE NUMBER: 55580-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: IMM 2
SUBJECT: Immunity from Prosecution – Witnesses & Informants		CROSS-REFERENCE: CHA 1 DIS 1 INC 1 RES 1 Practice Bulletin #64

POLICY

The granting of immunity from prosecution is an extraordinary exercise of prosecutorial discretion by Crown Counsel. Immunity may be granted to an informant in return for providing information to assist an investigation by the police or to a witness in return for giving evidence at trial.

“Immunity” includes all forms of prosecutorial consideration that can be granted in return for information or testimony, including the reduction or staying of charges, an agreement by Crown Counsel to a less severe sentence or an agreement concerning judicial interim release.

The decision to grant immunity should be made by Regional or Deputy Regional Crown Counsel, and the Assistant Deputy Attorney General should be advised.

Immunity should be granted only where:

1. the evidence or information is crucial to the prosecution of a serious charge and the overriding public interest requires it;
2. there is no other viable means to obtain the information or evidence, or it is not practicable, because of a significant risk to public safety, for the police to simply continue their investigation;
3. the value of the information or evidence outweighs any risk to public safety or lessening of public confidence in the administration of justice which may result from the granting of immunity; and
4. the evidence or information offered by the informant or witness relates to criminal involvement of the accused that is more serious than or, in exceptional cases is at least as serious as, the criminal involvement of the informant or witness.

Crown Counsel should avoid granting complete immunity from criminal responsibility to an informer or witness unless it is absolutely necessary to obtain the required information or evidence. The granting of a limited form of immunity is generally preferred (an example of limited immunity is where Crown Counsel recommends a less severe sentence than might otherwise be appropriate in return for the cooperation of the informant or witness).

Since immunity is granted in one case for the purpose of advancing another, it should not be granted unless:

- 1. a senior member of the police department or detachment concerned requests it in writing, including an explanation of why the information or evidence is necessary and why the value of that information or evidence outweighs any risk to public safety or lessening of public confidence in the administration of justice which may result;**
- 2. Crown Counsel receives from the police full disclosure of the offences from which immunity is sought and of all other known or suspected criminal activity in which the informant or witness is involved; and**
- 3. in the case where charges against the informant or witness arise from other jurisdictions, Crown Counsel and the other police agencies responsible for those charges have been consulted by the police investigators requesting immunity and have provided their written consent to it;**

All grants of immunity, and any other benefits conferred in return for testimony or information, should be clearly defined and documented.

DISCUSSION

Under the *Crown Counsel Act*, Crown Counsel have the sole responsibility to make all prosecutorial decisions, including whether to grant immunity in order to secure information or evidence.

Crown Counsel should bear in mind the potential effect that a grant of immunity may have on the weight to be given to a witness' evidence.

Where Crown Counsel wish to assess the reliability of the information or evidence offered, Crown Counsel may consider the factors described in the policy on in-custody informers (INC 1).

Procedure

Informer Witness Registry

When Crown Counsel first learns of an offer of information or evidence by an informant or witness, Crown Counsel should provide pertinent information to the Informer Witness Registry (see Practice Bulletin #64).

At the same time, Crown Counsel may ascertain whether the registry contains any relevant history concerning the informant.

Negotiating with a Prospective Witness with Respect to a Grant of Immunity

When a witness is to give evidence for the Crown in return for a grant of immunity, he or she must enter into a written immunity agreement with Crown Counsel. Crown Counsel should make every effort to ensure that the witness has the assistance of counsel before entering into any agreement. Crown Counsel should avoid negotiating directly with the witness. It is preferable that the negotiation should be handled by a Crown Counsel other than the Crown Counsel who has conduct of the preliminary inquiry or trial.

Documenting the Agreement

Conditions of a grant of immunity should be in writing and signed by the informant and Regional or Deputy Regional Crown Counsel.

Crown Counsel should not agree to immunity in exchange for testimony unless the witness signs a written statement or will-say of the witness' evidence. Recommended conditions in any agreement involving testimony include that the informant:

- a) confirm the substantial truth of the will-say provided
- b) shall tell the entire truth to the police, Crown Counsel and the court
- c) shall testify at all proceedings in relation to any matter arising from the information which they provided
- d) shall testify truthfully at all times
- e) shall not withhold evidence of his or her involvement in any matters referred to in his or her evidence or statements
- f) shall expect no further benefits than those documented in the agreement

If the witness testifies, the immunity agreement must be disclosed to defence, and it should be entered in court as an exhibit.

Tracking the Informant

After completing an agreement with a witness, Crown Counsel should ask the police handling the case to keep Crown Counsel advised of the status of the witness, payments made, and agreements to relocate, so that Crown Counsel can make appropriate disclosure to defence counsel before trial (see policy DIS 1).



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

ARCS/ORCS FILE NUMBER:	EFFECTIVE DATE: November 18, 2005	POLICY CODE: INC 1
SUBJECT: In-Custody Informer Witnesses		CROSS-REFERENCE: DIS 1 IMM 2 Practice Bulletin #64

POLICY

The purpose of this policy is to avoid miscarriages of justice in cases involving in-custody informer witnesses.

Crown Counsel should not present the evidence of an in-custody informer witness unless a thorough investigation satisfies an In-Custody Informer Witness Committee that independent confirmatory evidence addresses the reliability concerns that arise with this category of witness.

An In-Custody Informer Witness Committee (“the Committee”) consists of three Crown Counsel members of Branch Management Committee, including one designated by the Assistant Deputy Attorney General as a standing member and the Regional Crown Counsel from the region where the case is being tried.

The public interest requires that an in-custody informer witness should not be permitted to testify unless the charges are serious.

Before making a decision to present the evidence of an in-custody informer witness, Crown Counsel should consider the risks to the safety of the informer.

If there is any significant change of circumstances throughout the course of the prosecution, Crown Counsel should request Regional Crown Counsel to have the matter re-assessed by the Committee.

Even after approval by the Committee, trial Crown Counsel may exercise discretion in deciding not to call the evidence of an in-custody informer witness.

When in-custody informer witnesses testify, Crown Counsel should disclose to defence counsel all information relevant to credibility (see the policy on Disclosure - DIS 1, particularly if informer privilege arises).

Whether or not a proposed in-custody informer witness does testify, Crown Counsel must forward the informer's identity and the case information to the Informer Witness Registry (see Practice Bulletin #64).

See below for factors to consider when assessing the reliability of an in-custody informer witness.

DISCUSSION

While in custody and awaiting trial, accused persons sometimes confess to other inmates. Some inmates, referred to in this policy as "in-custody inmate witnesses", will inform authorities of these confessions.

Unfortunately, some inmates falsely report confessions, particularly in high-profile cases. These inmates show remarkable skill at acquiring and presenting what appears to be compelling evidence from the accused. What motivates these inmates to fabricate evidence against others is not always easy to discern. For example, by becoming a witness, an inmate may engineer a transfer to a more desirable institution, or obtain a more lenient sentence by reason of the inmate's cooperation with authorities.

Enquiries, studies and reports have repeatedly found that in-custody informers figured prominently in cases of wrongful conviction. (See Kaufman: Sophonow Inquiry; Heads of Prosecutions Report on the Prevention of Miscarriage of Justice; The Innocence Project).

Because of these risks, Crown Counsel should presume that the evidence of in-custody informer witnesses is unreliable unless other evidence confirms the evidence of the witness and clearly addresses concerns about reliability. Only an In-Custody Informer Witness Committee may permit Crown Counsel to present an in-custody informer's evidence to a court.

PROCEDURE

When Crown Counsel first learns of an offer of evidence from an in-custody informer witness, Crown Counsel should report the details of the file and the witness to the Informer Witness Registry, whether or not Crown Counsel intends to call the witness at trial (see Practice Bulletin #64).

In order to assess the reliability of an in-custody informer witness' evidence, Crown Counsel should request the police to conduct a thorough investigation of the witness and the evidence offered. Crown Counsel should check the Informer Witness Registry for any history concerning the witness.

If Crown Counsel decides to interview the witness, an investigating police officer should attend.

If Crown Counsel is satisfied that the witness should testify, then all information should be forwarded to Regional Crown Counsel who will refer the information to an In-Custody Informer Witness Committee for decision.

Where a witness seeks consideration for testimony, see the policy on Immunity Agreements - IMM2.

Factors to Consider when Assessing the Reliability of an In-Custody Informer Witness

1. Motives of Informant

What motives does the informant have to present the information offered?

- what does the informant say motivated cooperation with authorities?
- what motives do the staff of the custodial institution(s) involved (if any) believe the informant has, and why?
- what tactical advantages can this informant make of cooperation with police now?
- exactly what consideration or remuneration does this informant expect?
- what benefits has this informant sought or received in the past or the present for information? From police? Corrections? Other sources?
- what benefits have been offered to this informant in the past or present?
- what safety measures have been requested/offered/received in connection with this testimony?

What pressure, if any, have the police placed on the informant to follow through in court with the evidence?

2. How the Informant Obtained the Information

What are the circumstances under which the informant obtained the information of interest?

- when, where and how it was made?
- how much detail?
- do Correctional records establish that these events could have occurred?

3. How the Informant Disclosed the Information to Authorities

Under what circumstances did the informant reveal the confession to authorities?

- which authorities?
- what records did they make?
- did police give a public mischief warning before taking any statement from the informant?
- did the police use any leading questions during any interview?
- did the informant ever give contradictory information?

What pressures, if any, have the authorities placed on the informant to follow through in court with the evidence?

4. Opportunity to Concoct / Collude

What access did the informant have to sources of information: media reports, accused's particulars; witnesses to the offence; any information investigators may have released?

What was the timing of the disclosures to the authorities, relative to news reports and disclosure of particulars?

5. Confirmation

What evidence is there that confirms the informant's evidence? "Confirmation" must be independent of the informant, and support the view that he is telling the truth about inculpatory aspects of the statement. It does not need to corroborate the key details. See R. v. Kehler [2004] 1 S.C.R. 328. However, one in-custody informant generally cannot confirm another.

Has the informant undergone a polygraph examination?

Does the informant have an alibi for this offence?

6. Corroboration

Did the informant's information lead to discovery of evidence known only to the perpetrator?

Does the alleged confession match information held back until after the informant provided it?

7. Character of Informant

What is the informant's character:

- re honesty: are there any convictions for false pretences, fraud, perjury etc.?
- generally: length of criminal record, or history of disreputable conduct, or good character evidence, reasons for current incarceration, or other background?
- what medical/psychiatric reports are available to Crown Counsel or police?
- are Correctional Services Canada records available?

This part of the assessment is not complete until all available databases have been checked: JUSTIN, CPIC, PIRS, Provincial or National Registries of Informants.

8. Previous Disclosures by the Informant

- has this informant previously claimed to have information useful to the authorities (police or Corrections)?
- what requests has the informant made for consideration for providing information, a statement or evidence?
- what consideration or advantage has the informant been offered or given in the past for information?
- how reliable was the information that the informant gave in the past?
- has the informant testified in court? What assessment of the evidence given is available and what comments, if any, did the judge make?

9. Agent of the State

Was the informant an agent of the state? If so, the evidence obtained may be excluded by virtue of s. 7. See R. v. Broyles, [1991] 3 S.C.R. 595.

- what relationship existed between informant and accused?
- what relationships existed between informant and authorities prior to offer of testimony?
- did police solicit information from this informant?
- did police approach the informant before the informant received the alleged confession/information?
- what arrangements led to the informant being with the accused? Did the authorities have anything to do with it?

10. Safety

What safety measures are appropriate, if the informant testifies?
Are they available?



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

ARCS/ORCS FILE NUMBER: 56100-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: INT 1
SUBJECT: Intermittent Sentences		CROSS-REFERENCE:

POLICY

Crown Counsel should consider the following factors in determining whether to support an intermittent sentence:

- 1. An intermittent sentence may be inappropriate if the offender has recently served a sentence for a similar offence.**
- 2. Offenders with a history of violence, sexual offences, escape, unlawfully at large, breaches of probation/recognizance/conditional sentences, and failing to appear, are generally unsuitable candidates for intermittent sentences.**

If the offender makes a claim of employment or enrolment in an educational program, Crown Counsel should consider whether to take the position that the offender should provide confirmation to the court.

RCMP facilities: If the court is considering an intermittent sentence in an RCMP jurisdiction, Crown Counsel should refer to appendix A and advise the court if the local RCMP detachment is unable to accommodate an intermittent sentence.

If necessary, Crown Counsel should be prepared to assist the court by consulting with the Officer in Charge of the detachment and the local probation office as to a possible alternative for service of the intermittent sentence.

DISCUSSION

Some smaller RCMP detachments have inadequate facilities to accommodate the prisoner's needs, as outlined in appendix A.

Crown Counsel is often the only representative of the executive arm of government in the courtroom and, although arguably this is an administrative matter, it is important to assist the court in the efficient administration of justice.

APPENDIX A

The [attached list](#) of RCMP detachments should be read as follows:

1. Those detachments which are able to accommodate intermittent prisoners are shown in **BOLD**.
2. Those detachments which are able to accommodate a limited number of intermittent prisoners have been UNDERLINED.
3. Those detachments which are unable to accommodate intermittent prisoners are shown in *ITALICS*.
4. Those detachments that have amalgamated and/or changed names have been **highlighted**.

Intermittent Sentencing Utilizing RCMP Detachment Cell Blocks

POLICE CODES Southeast District		POLICE CODES North District		POLICE CODES Lower Mainland District		POLICE CODES Island District	
101	<u>Armstrong Prov.</u>	201	<u>Alexis Creek Prov.</u>	703	<u>Agassiz Prov.</u>	802	<u>West Shore Prov.</u>
102	<u>Enderby Prov.</u>	202	<u>Anahim Lake Prov.</u>	704	<u>Burnaby Mun.</u>	803	<u>(N. Cowichan/Duncan) Duncan Prov.</u>
103	<u>Falkland Prov.</u>	216	<u>100 Mile House Prov.</u>	705	<u>Boston Bar Prov.</u>	804	<u>N. Cowichan/Duncan (North Cowichan Mun.)</u>
104	<u>Kelowna Prov.</u>	218	<u>Valemount Prov.</u>	706	<u>Chilliwack Prov.</u>	805	<u>Gabriola Island Prov.</u>
105	<u>Kelowna Mun.</u>	219	<u>Williams Lake Prov.</u>	707	<u>Chilliwack Mun.</u>	806	<u>Saltspring Island Prov.</u>
106	<u>Keremeos Prov.</u>	221	<u>Williams Lake Mun.</u>	709	<u>Coquitlam Prov.</u>	807	<u>Ladysmith Prov.</u>
107	<u>Lumby Prov.</u>	501	<u>Burns Lake Prov.</u>	710	<u>Coquitlam Mun.</u>	808	<u>Lake Cowichan Prov.</u>
109	<u>Oliver Prov.</u>	502	<u>Chetwynd Prov.</u>	711	<u>Coquitlam Dist Mun (Port Coquitlam Mun.)</u>	809	<u>Nanaimo Prov.</u>
110	<u>Osoyoos Prov.</u>	503	<u>Dawson Creek Prov.</u>	712	<u>Ridge Meadows Prov.</u>	810	<u>Nanaimo Mun.</u>
111	<u>Penticton Prov.</u>	504	<u>Dawson Creek Mun.</u>	713	<u>Ridge Meadows (Maple Ridge Mun.)</u>	811	<u>Outer Gulf Islands Prov.</u>
112	<u>Penticton Mun.</u>	505	<u>Fort Nelson Prov.</u>	714	<u>Hope Prov.</u>	812	<u>Shawnigan Lake Prov.</u>
113	<u>Princeton Prov.</u>	506	<u>Fort St. James Prov.</u>	715	<u>Sunshine Coast Prov. (Gibsons Landing)</u>	813	<u>Sidney/North Saanich (Sidney Prov.)</u>
114	<u>Revelstoke Prov.</u>	507	<u>Fort St. John Prov.</u>	716	<u>Langley City Mun.</u>	814	<u>Sidney/North Saanich (Sidney Mun.)</u>
115	<u>Salmon Arm Prov.</u>	508	<u>Fort St. John Mun.</u>	717	<u>Langley Township Mun.</u>	815	<u>Sooke Prov.</u>
116	<u>Salmon Arm Mun.</u>	509	<u>Fraser Lake Prov.</u>	718	<u>Mission Prov.</u>	820	<u>Sidney/North Saanich (North Saanich Mun.)</u>
117	<u>Sicamous Prov.</u>	510	<u>Hudson Hope Prov.</u>	719	<u>Mission Mun.</u>	821	<u>West Shore (Colwood Mun.)</u>
118	<u>Vernon Prov.</u>	511	<u>Mackenzie Prov.</u>	720	<u>North Van. City Mun.</u>	822	<u>West Shore (WestView Royal Mun.)</u>
119	<u>Vernon Mun.</u>	512	<u>McBride Prov.</u>	721	<u>North Van. Dist. Mun.</u>	823	<u>West Shore (Langford Mun.)</u>
121	<u>Summerland Mun.</u>	513	<u>Prince George Prov.</u>	722	<u>Richmond Mun.</u>	824	<u>Ladysmith Mun.</u>
124	<u>Revelstoke Mun.</u>	514	<u>Quesnel Prov.</u>	723	<u>Sunshine Coast Prov. (Sechelt Prov.)</u>	827	<u>Sooke Mun.</u>
125	<u>Coldstream Mun.</u>	515	<u>Quesnel Mun.</u>	724	<u>Squamish Prov.</u>	901	<u>Alert Bay Prov.</u>
126	<u>Spallumcheen Mun.</u>	517	<u>Vanderhoof Prov.</u>	725	<u>Squamish Mun.</u>	902	<u>Campbell River Prov.</u>
127	<u>Lake Country Mun.</u>	518	<u>Wells Prov.</u>	726	<u>Surrey Mun.</u>	903	<u>Campbell River Mun.</u>
203	<u>Ashcroft Prov.</u>	521	<u>Prince George Mun.</u>	727	<u>University Det. Prov.</u>	904	<u>Comox Mun.</u>
204	<u>Barriere Prov.</u>	522	<u>Mackenzie Mun.</u>	729	<u>White Rock Mun.</u>	905	<u>Comox Valley Prov.</u>
206	<u>Chase Prov.</u>	524	<u>Tumbler Ridge Prov.</u>	737	<u>Pemberton Prov.</u>	906	<u>Courtenay Mun.</u>
207	<u>Clearwater Prov.</u>	525	<u>Tsay Keh Dene Prove.</u>	738	<u>Whistler Prov.</u>	907	<u>Nootka Sound (Gold River) Prov.</u>
208	<u>Clinton Prov.</u>	526	<u>Takla Landing Prov.</u>	739	<u>Surrey Prov.</u>	908	<u>Oceanside Prov. (Parksville)</u>
209	<u>T'Kumlups Prov.</u>	601	<u>Atlin Prov.</u>	741	<u>Ridge Meadows (Pitt Meadows Mun.)</u>	909	<u>Port Alberni Prov.</u>

continued ...

Intermittent Sentencing Utilizing RCMP Detachment Cell Blocks

210	Kamloops Mun.	602	<i>Bella Coola Prov.</i>	742	<i>Bowen Island Prov.</i>	910	<i>Port Alberni Mun.</i>
211	<u>Lillooet Prov.</u>	604	<u>New Hazelton Prov.</u>	743	Sunshine Coast Mun. (Sechelt Mun.)	911	<i>Port Alice Prov.</i>
212	<u>Logan Lake Prov.</u>	605	<i>Houston Prov.</i>	745	<u>Hope Mun.</u>	912	<u>Port Hardy Prov.</u>
213	<i>Lytton Prov.</i>	606	<u>Kitimat Prov.</u>	747	Whistler Mun.	913	<u>Port McNeill Prov.</u>
214	<u>Merritt Prov.</u>	607	<u>Kitimat Mun.</u>	748	North Vancouver Prov.	914	<u>Powell River Prov.</u>
215	<u>Merritt Mun.</u>	608	<u>Masset Prov.</u>			915	<u>Powell River Mun.</u>
301	<u>Castletar Prov.</u>	610	<u>Prince Rupert Prov.</u>			916	<i>Quadra Island Prov.</i>
302	<u>Cranbrook Prov.</u>	611	<u>Prince Rupert Mun.</u>			917	<i>Sayward Prov.</i>
303	<u>Cranbrook Mun.</u>	612	<u>Queen Charlotte City Prov.</u>			919	<i>Tofino Prov.</i>
305	<u>Creston Prov.</u>	613	Smithers Prov.			920	<i>Uchuelet Prov.</i>
306	<i>Fernie Prov.</i>	614	<i>Stewart Prov.</i>			922	Oceanside Det. (Parkville Mun.)
309	<u>Golden/Field Prov.</u>	615	<u>Dease Lake Prov.</u>			924	<i>Texada Island Prov.</i>
310	Boundary Det. (Grand Forks Prov.)	616	Terrace Prov.			925	Oceanside Det. (Qualicum Beach Mun.)
311	<u>Columbia Valley Prov.</u>	617	Terrace Mun.				
312	<i>Kaslo Prov.</i>	619	<i>Granisle Prov.</i>				
313	<u>Kimberly Prov.</u>	620	<i>Bella Bella Prov.</i>				
314	<u>Kimberly Mun.</u>	621	<i>Lisims/Nass Valley Prov.</i>				
315	<i>Midway Prov.</i>	622	Smithers Mun.				
316	<u>Nakusp Prov.</u>						
317	<u>Nelson Prov.</u>						
318	Slocan Lake Prov. (New Denver)						
321	<i>Salmo Prov.</i>						
322	<u>Elk Valley Prov. (Sparwood)</u>						
323	<u>Trail and Greater Dist. Prov.</u>						
324	<u>Trail Mun.</u>						
327	<u>Castlegar Mun.</u>						
329	<i>Elkford Prov.</i>						

1. Detachments able to accommodate prisoners given intermittent sentences in **BOLD**
2. Detachments able to accommodate a limited number of intermittent prisoners given intermittent sentences UNDERLINED
3. Detachments not able to accommodate prisoners given intermittent sentences in *ITALICS*
4. Those detachments which have amalgamated or had name changes have been highlighted.



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

ARCS/ORCS FILE NUMBER: 57480-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: JUS 1
SUBJECT: Justice of the Peace Court – Crown Counsel Responsibilities		CROSS-REFERENCE: APP 1.1

POLICY

While Crown Counsel do not generally prosecute in Justice of the Peace Court, Crown Counsel should be prepared to give advice and carry out appeals or petitions as necessary when police officers report concerns with rulings of Justices of the Peace.

DISCUSSION

The Criminal Justice Branch is responsible for the general supervision of the violation ticket process and charges prosecuted in Justice of the Peace Court, even though, in most cases, Crown Counsel do not appear in that court and do not exercise a direct charge assessment function on matters before that court. Generally, police officers act as prosecutors in that court.

Crown Counsel occasionally appear in Justice of the Peace Court to assist on complex legal issues or where the accused is represented by defence counsel.

Matters on which Crown Counsel give advice and consider whether to appeal (subject to the policy on Appeals by Crown on Summary Conviction Matters - APP 1.1) or whether to file a petition under the *Judicial Review Procedure Act*, include sentences and errors of law involving authorized wordings, jurisdictional issues and other matters in respect of violation tickets.

The *Provincial Court Act* limits matters which can be heard in Justice of the Peace court and provides that some matters may be transferred to a judge for hearing, on the order of a judge, as follows:

Exclusive jurisdiction of judge

2.1 In the Provincial Court of British Columbia, only a judge may

- (a) commit for contempt of court,
- (b) hear a matter for which notice under section 8 of the *Constitutional Question Act* is required,

- (c) hear a matter that involves a determination of aboriginal or treaty rights or claims,
- (d) hear a matter arising under the *Canadian Charter of Rights and Freedoms* for which notice under section 8 of the *Constitutional Question Act* is not required, and
- (e) preside over the trial of a person charged with an offence for which, on conviction, the person is liable to be sentenced to a term of imprisonment.

Jurisdiction of justice

31 (1) Subject to section 2.1, if a justice is hearing

- (a) a case or matter, or
- (b) a case or matter within a class of cases or matters

for which the justice is designated to act by the chief judge under section 11 (1), the justice may exercise all the powers and jurisdiction of the court under an enactment respecting the case or matter.

(2) A justice may under the *Young Offenders Act (Canada)*, *Young Offenders (British Columbia) Act*, *Child, Family and Community Service Act*, *Family Relations Act* and *Small Claims Act* do all necessary acts and deal with all matters preliminary to a hearing and grant adjournments.

(3) If, in the course of a hearing before a justice, the justice cites a person for contempt of court, the justice must issue a summons referred to in section 27 of the *Offence Act* in respect of the citation as if it were a charge in respect of an offence and refer the citation to a judge for determination.

(4) If, in the course of a hearing before a justice on an information or claim, a matter arises that is, under section 2.1 (b) to (d), within the exclusive jurisdiction of a judge, the justice must terminate the hearing and refer the information, claim or application to be heard as a new trial by a judge.

(5) If a matter is assigned to be heard by a justice, before the commencement of the hearing, a party to the matter may apply to a judge for an order that the matter be heard by a judge.

(6) In making an order under subsection (5), the judge must consider the factors the judge considers relevant including, without limitation, the following factors:

- (a) the complexity of the factual and legal issues involved in the matter;
- (b) the proposed length of the trial of the matter;
- (c) the severity of the potential outcomes or consequences of the matter;
- (d) the public interest in the outcome of the matter.



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

ARCS/ORCS FILE NUMBER: 55820-00 (and issue specific)	EFFECTIVE DATE: November 18, 2005	POLICY CODE: LEG 1
SUBJECT: Legal Advice to the Police		CROSS-REFERENCE: CHA 1 POL 1

POLICY

Statement of Principle

The purpose of providing legal advice to the police is to: (1) aid in the gathering of evidence in a manner which is respectful of *Charter* rights and other legal principles, in order to enhance the likelihood that such evidence will be admitted at any trial; (2) identify to the police any additional evidence needed to address charge assessment; and (3) present the best possible case should a trial ensue.

Scope of Advice - General

It is appropriate for Crown Counsel to provide legal advice to the police on specific current or potential investigations and prosecutions and also advice on Branch policy. Generally speaking advice of this type will be provided by Crown Counsel in the local office or regional office serving the investigating agency seeking the advice.

It is appropriate for Crown Counsel to provide legal advice concerning general police investigative practices which are not specific to a particular prosecution but are likely to affect the admissibility of evidence in future prosecutions. Where the request is made to a local Crown Counsel office and it can be readily addressed, Administrative Crown Counsel should provide the advice sought. Where the advice cannot be readily provided or has province-wide implications, it should be referred to Regional or Deputy Regional Crown Counsel for consideration or referral to the appropriate Branch specialized unit or resource person.

It is not appropriate for Crown Counsel to provide legal advice to police concerning issues of civil liability. Further, it is not appropriate for Crown Counsel to provide legal advice to police concerning allegations of unlawful police conduct, with the following exceptions:

1. where Crown Counsel exercises charge review responsibilities regarding allegations against police officers pursuant to policy POL 1.

2. where the lawfulness of police conduct is a factor in the exercise of Crown Counsel's charge assessment responsibilities in respect to a subject of an investigation by the police.

RCMP members making inquiries related to issues of civil liability or unlawful police conduct which is not related to a charge assessment by Crown Counsel, should be referred to the RCMP counsel in the Department of Justice. Members of municipal forces making inquiries in the same circumstances should be referred to their municipal legal counsel.

Applications for Judicially Authorized Investigative Procedures

When requested by police, providing advice regarding the preparation of applications for judicially authorized investigative steps such as DNA warrants or one-party consent interceptions is appropriate since it advances the goal of ensuring that the evidence is admissible at trial. The extent to which Crown Counsel should assist in the preparation of such applications will turn on such matters as the availability of resources, the nature and complexity of the investigative step being proposed and the seriousness of the offence under investigation. When providing assistance, Crown Counsel should not draft the materials in support of the application, but rather should review what has been drafted by the police in order to ensure that it sets out the relevant facts supporting the application fully and clearly meets the statutory criteria for authorizing the investigative step.

Crown Counsel's role as agent for the purpose of applications to intercept communication pursuant to Section 185 of the *Criminal Code* is of course required by statute and necessarily involves a careful review of the affidavit in support of the application and the proposed terms and conditions of the authorization.

Charge Assessment Without a Report to Crown Counsel

Occasionally Crown Counsel may be asked to consider whether a charge would be approved without the submission of a Report to Crown Counsel. Generally speaking, Crown Counsel should decline to provide an opinion applying the charge assessment standard in the absence of a Report to Crown Counsel which permits a full review of the case.

However, in some cases it may be appropriate to provide a preliminary opinion on the viability of a prosecution prior to the submission of a Report to Crown Counsel. It will generally not be appropriate to provide this type of advice in serious or complex cases. An opinion should generally not be given on cases in which the likelihood of conviction is highly dependant upon credibility, because careful scrutiny of witness statements is required in those circumstances. Crown Counsel should be confident that he or she is receiving all information necessary to provide the opinion. In every case, Crown Counsel should confirm with the investigator that the advice provided does not constitute a charge assessment decision.

Police Training

Crown Counsel may be asked to participate in police training. In responding to these requests Crown Counsel should assume that police members will have been fully trained on basic legal principles and concepts relating to criminal investigations. Crown Counsel are encouraged to contribute to police training by providing guidance on emerging issues and developing areas of the law and in respect to investigative procedures as they apply to criminal prosecutions.

Requests for such participation by a policing agency should be directed to the Administrative Crown Counsel who will determine whether the request can be met bearing in mind available resources and expertise.

DISCUSSION

Guidelines

In considering whether to provide legal advice to the police, Crown Counsel should take into account the following:

1. Upon being asked for legal advice, Crown Counsel should ascertain, from the police officer making the request, whether any other Crown Counsel have already been consulted. The practice of obtaining advice from multiple Crown Counsel on the same issue, should be discouraged.
2. The request for advice should be necessary to pursue the investigation, and the information should not be reasonably available within the police agency involved.
3. The resources should be available within the Crown Counsel office involved to respond within a time frame appropriate to the investigation.
4. The expertise appropriate to respond to the inquiry should be available within the Crown Counsel office involved or otherwise readily obtainable.
5. Requests to Crown Counsel for advice which are beyond his or her level of knowledge or expertise, should be referred to the Administrative Crown Counsel for consideration and further referral if appropriate.
6. Where the investigation or prosecution is complex and involves a specialized area of practice such as commercial crime, organized crime or proceeds of crime, or a specialized investigative technique such as interception of communication, Crown Counsel should seek assistance from the appropriate Criminal Justice Branch specialized unit or resource person.

7. All information necessary to consider and give the appropriate advice should be provided and, where circumstances permit, the information should be provided in writing and include audio, video or electronic materials.
8. In providing legal advice, Crown Counsel should emphasize that the police are free to accept or reject the advice.
9. Where a request for legal advice is made, Crown Counsel should make a record of the information provided and the advice given with appropriate police reference. In some circumstances it will be advisable to subsequently confirm in writing with police the advice given.
10. Mindful of the fact that all Crown Counsel files may ultimately be subject to disclosure to members of the public, Crown Counsel should ensure that the content of the advice given is in a form suitable for public inspection.
11. Where advice is provided to the police on an investigation that subsequently becomes a prosecution, it is possible that the Crown Counsel providing the advice may become a witness and would not be able to prosecute charges arising from the investigation. This should be kept in mind when determining who will give the police advice at the investigatory stage.
12. Crown Counsel should be mindful of the risk of being inadvertently drawn into the investigatory process in a manner which may lead to an actual or perceived loss of objectivity.¹

General

Police and prosecutors are in a symbiotic relationship. Evidence gathered by the police during the investigative stage is the lifeblood of a prosecution. If it is anaemic or tainted, no amount of forensic brilliance can save the prosecution. Conversely, an incompetent prosecutor can render the most probing and meticulous police investigation impotent. For the criminal justice system to fully realize its goal of apprehending, convicting and sentencing the guilty (but not the innocent) by means of a process that complies with the Charter of Rights and Freedoms, police and prosecutors must have an effective working relationship.²

The relationship between Crown Counsel and the police is one of mutual independence. The police have absolute control over the investigation of a criminal offence, and Crown Counsel have absolute control over the prosecution of that offence. This relationship is not only practical (i.e.: the police are trained investigators, and the Crown are trained advocates), but soundly based upon historic principle.

¹ R. v. Regan [2002] 1 S.C.R. 297

² Pearson, John, *The Prosecutor's Role at the Investigative Stage from an Ontario Perspective*, a paper presented at the June 2000 Annual Conference of the Federal Prosecution Service, p.4.

Crown Counsel have a unique and well recognized role. Crown Counsel are not only advocates, but “Ministers of Justice,” whose obligation is not just to secure a conviction, but to place all available evidence before the court in a fair fashion. As stated by the Honourable G. Arthur Martin, part of Crown Counsel’s role as a Minister of Justice is to serve as a “check” upon the power of the police:

The mutual independence of Crown counsel and the police has many advantages ...separating the investigative and prosecutorial powers of the state is an important safeguard against the misuse of both. Such separation of power, by inserting a level of independent review between the investigation and any prosecution that may ensue, also helps to ensure that both investigations and prosecutions are conducted more thoroughly, and thus more fairly³

Police also have a unique and well recognized role. Historically, the notion that the police make decisions about who, what, and how to investigate, free from government interference, can be traced back over 1000 years. More recently, the Supreme Court of Canada has endorsed the concept⁴. Crown Counsel must therefore exercise caution when providing advice to police regarding their investigations. Crown Counsel must not dictate to, or purport to direct the police during the investigative stage. When legal advice during an investigation is provided to the police at their request, the police may accept or reject the advice as they see fit.

After a Report to Crown Counsel is submitted, Crown Counsel has a duty, pursuant to s. 4(3) of the *Crown Counsel Act*, to examine the report, and approve for prosecution any offence or offences that he or she considers appropriate. To carry out this duty, Crown Counsel commonly liaise with the police regarding further investigation that could be done to bring an investigation to the point where the charge assessment standard might be met. Given that a file at this stage is still at the investigatory stage, Crown Counsel should take care, in their communications with police, not to require or direct that further investigation be done. Rather, suggestions may be made, following which the police may or may not continue their investigation, and resubmit the file for charge assessment.

However, once an Information is sworn, conduct of the case shifts to Crown Counsel and, in furtherance of Crown Counsel’s obligation to continuously evaluate whether the prosecution continues to meet the charge assessment standard, it is appropriate for Crown Counsel to request that any further investigation necessary to sustain or strengthen the prosecution be undertaken. Such requests also enable Crown Counsel to ensure that all relevant evidence is disclosed to defence counsel and ultimately brought before the court.

³ *The Martin Report*, *supra*, p.39.

⁴ *R. v. Campbell* [1999] 1 S.C.R. 565 at paras.27-34; *R. v. Regan* [2002] *supra* at 62-91

Privilege

Advice given by Crown Counsel to the police may be subject to privilege, including solicitor/client privilege.

R. v. Campbell clearly establishes that a solicitor client relationship is capable of arising between Crown Counsel and police. Whether it does so under a particular set of circumstances must be assessed on a case by case basis having regard to the nature of the relationship, the subject matter of the advice and the circumstances under which it is sought and rendered. Unfortunately, Campbell does not provide guidance on how this framework should be applied to take account of the competing public interest factors that may complicate the relationship between police and provincial Crown Counsel.

Traditionally, whether a solicitor/client relationship is created depends upon the following factor: whether there is a communication between solicitor and client which entails the seeking or giving of legal advice and which is intended to be confidential between the parties.

As a general rule, there is an expectation by both Crown and police that information provided to Crown Counsel that is relevant to the case will be provided to the defence subject to any reason to limit or delay such disclosure (Stinchcombe). On occasion however, notwithstanding this, the police may wish to preserve confidentiality through solicitor/client privilege. When this occurs two options are present. Firstly, the police may choose to seek the advice from legal counsel within their organization. Alternatively, if the police wish to obtain the legal advice from Crown Counsel, Crown Counsel may provide advice on the understanding that, if Crown Counsel concludes that the communication should properly be disclosed, and the police decline to waive solicitor/client privilege, the matter may have to be referred to the Court for resolution or the prosecution may be discontinued at the instance of the Crown. Where these circumstances arise, Region or Deputy Regional Crown Counsel should be consulted.



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

ARCS/ORCS FILE NUMBER: (Issue specific)	EFFECTIVE DATE: September 15, 2004	POLICY CODE: LEG 1.1
SUBJECT: Legal Advice to the Public		CROSS-REFERENCE: CHA 1.2 COM 1 VIC 1

POLICY

Where members of the public ask Crown Counsel for legal advice, they should be advised to consult a private lawyer or an investigative agency, as appropriate.

It would be inappropriate for Crown Counsel to provide an opinion to a member of the public on whether a set of facts described by that person, hypothetical or otherwise, would constitute an offence.

DISCUSSION

The decision to prosecute involves the exercise of discretion by Crown Counsel after reviewing a Report to Crown Counsel from the police or another investigative agency. The courts have held that the exercise of prosecutorial discretion is an independent, quasi-judicial function.

Providing an opinion to a member of the public based on allegations which have not been investigated by the police or another investigative agency, could create a conflict with any subsequent prosecutorial decision made on the basis of a Report to Crown Counsel. There could be liability concerns for Crown Counsel.

In carrying out their duties under the *Crown Counsel Act*, Crown Counsel represent the interests of society as a whole, not the interests of any specific individual. Crown Counsel are not employed as lawyers in civil litigation for the purpose of providing advice to individual persons.

In some cases, it may be helpful to direct a member of the public to the relevant statutory provision, along with the advice that a private lawyer or an investigative agency be consulted as appropriate.



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

ARCS/ORCS FILE NUMBER: 56340-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: MED 1
SUBJECT: Media - Guidelines for Crown Counsel - Communications		CROSS-REFERENCE: DIS 1.1

POLICY

Crown Counsel may respond directly to media enquiries on questions about the status of a prosecution or appeal. Crown Counsel may also provide general information to the media about the operation of the criminal justice process, such as the correct terminology for the various stages of that process, in order to enhance the public's level of understanding. However, where an enquiry concerns the handling of a prosecution, the evidence adduced, or other significant issues, Crown Counsel should consult with Regional Crown Counsel and the Communications Council so that an appropriate response may be prepared.

When Crown Counsel becomes aware that a case is likely to attract significant media attention, Crown Counsel should advise Regional Crown Counsel and the Communications Council as far in advance as possible.

If there is a media enquiry concerning an acquittal or sentence, Crown Counsel should indicate that decisions concerning whether to appeal are made following a complete review of the case. Crown Counsel should not outline their recommendation regarding appeal or make any public pronouncement regarding the likelihood of a Crown appeal being taken from an acquittal or sentence.

All requests to Crown Counsel for comment or enquiries relating to substantive issues involving Branch policies or law reform, including the implications of court decisions which have broad ramifications for the Branch, should be referred to the Communications Council who will prepare a response in consultation with the appropriate member of Branch Management Committee.

DISCUSSION

Section 2(f) of the *Crown Counsel Act* states that the Criminal Justice Branch has the responsibility "to provide liaison with the media and affected members of the public on all matters respecting approval and conduct of prosecutions of offences or related appeals".

The obligation of the justice system to inform the public is an essential ingredient of a fair and equitable justice system. Public confidence in the administration of justice depends on access to full and accurate information on court proceedings. By providing appropriate information, the Branch can help ensure that citizens have a fair opportunity to determine whether the justice system is functioning effectively.

The Branch Communications Counsel is responsible for establishing the Branch's media and public information priorities and is available to assist Crown Counsel in dealing with media issues. The Communication Counsel acts as the Branch's spokesperson in appropriate cases and develops communications plans for major cases, including the preparation of briefing notes and media statements.



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

ARCS/ORCS FILE NUMBER: 57270-00 57400-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: MOT 1
SUBJECT: Motor Vehicle Fatality Cases		CROSS-REFERENCE: RES 1 VIC 1

POLICY

All Reports to Crown Counsel regarding persons responsible for motor vehicle related deaths should be referred to Administrative Crown Counsel who should obtain the approval of Regional or Deputy Regional Crown Counsel on any charge assessment decision under the *Criminal Code* or *Motor Vehicle Act* (including violation ticket offences).

Crown Counsel should be assigned to the prosecution at the earliest opportunity and reasonable efforts should be made to ensure that the same Crown Counsel conducts the preliminary inquiry or trial.

Crown Counsel should, where possible, ensure the deceased's family has been given information regarding available victim assistance programs and the availability of the *Crime Victim Assistance Act*.

DISCUSSION

There is a potential for res judicata problems in issuing violation tickets for *Motor Vehicle Act* offences where there is a possibility that *Criminal Code* charges may also be laid. Under the violation ticket process, the accused can pay the fine amount indicated on the ticket or fail to dispute the ticket and be deemed guilty before a charge assessment decision can be concluded on a potential *Criminal Code* charge, creating a possible defence of res judicata.



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

ARCS/ORCS FILE NUMBER: 57450-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: MOT 1.1
SUBJECT: <i>Motor Vehicle Act and Criminal Code Driving Offences – Sentencing – Prohibition Orders</i>		CROSS-REFERENCE: Practice Bulletin #12

POLICY

Where an accused is being sentenced for driving offences under the *Criminal Code* or under section 95, 102, 224 or 226(1) of the *Motor Vehicle Act* and a prohibition from driving under section 98 of the *Motor Vehicle Act* is appropriate with regard to the enumerated factors in that section, Crown Counsel should ask the court to make an order of prohibition under section 98, in addition to any other prohibition from driving which the court may impose under either Act.

The rationale for this policy is that a conviction for driving while prohibited contrary to section 98 of the *Motor Vehicle Act* will allow the court to impose a jail term for a first offence where appropriate and will bring a mandatory jail term for a second offence.

Crown Counsel should submit to the court that the public interest requires a prohibition of at least 12 months as consistent with the intent of the Legislature in section 99 of the *Motor Vehicle Act* and with the intent of Parliament in section 259(1) of the *Criminal Code*, both of which provide a 12 month prohibition from driving.

DISCUSSION

Under the decision of the Supreme Court of Canada in R. v. Pontes, (1995) 100 C.C.C. (3d) 353, Crown Counsel may not seek and the court may not order a sentence of incarceration for a person convicted of driving while prohibited contrary to section 99 of the *Motor Vehicle Act*, as that provision has been held to be an offence of absolute liability.

However, if the court imposes a prohibition from driving under section 98 of the *Motor Vehicle Act* and the subject is convicted of driving while prohibited contrary to the section 98 prohibition, jail is available for a first offence and mandatory for a second offence.



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

ARCS/ORCS FILE NUMBER: 57280-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: MOT 1.2
SUBJECT: Motor Vehicles – Impaired Driving and Related Offences – Notice to Seek Greater Penalty		CROSS-REFERENCE: RES 1

POLICY

If the accused is charged with an offence under section 253 or 254 of the *Criminal Code* and it can be proven that the accused was previously convicted of an offence under either of those sections within the three years immediately preceding the date of the offence before the court, Crown Counsel should proceed by way of notice of intention to seek a greater penalty under section 727 of the *Criminal Code*, in order to have a sentence of imprisonment imposed.

If Crown Counsel believes there are special or compelling considerations and Administrative Crown Counsel agrees, the approval of Regional or Deputy Regional Crown Counsel should be obtained before departing from the policy described in the first paragraph.

In cases where there is no previous conviction within the three years immediately preceding the date of the offence before the court, Crown Counsel should exercise discretion on a case by case basis in determining whether to proceed by way of notice of intention to seek greater penalty. Factors to be considered in that determination include the following:

- **the number of all previous convictions for similar offences and the time span of those convictions**
- **past sentences and their effect upon the offender**
- **the circumstances of the present offence including the degree of impairment of the ability to drive, whether there was a motor vehicle accident involved, whether the safety of passengers or others was at risk, and the nature of the driving or care or control of the motor vehicle**

Motor Vehicles – Impaired Driving and Related Offences – Notice to Seek Greater Penalty	Page 2 of 2	MOT 1.2
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- **evidence that the concentration of alcohol in the blood of the accused at the time when the offence was committed exceeded 160 milligrams of alcohol in 100 millilitres of blood (an aggravating factor on sentence under section 255.1)**
- **whether the present offence involves a fatality, significant accident or personal injury caused by the accused**
- **the length of any prohibition from driving likely to result**
- **the offender’s personal circumstances including employment, age, health, any dependents, and the attitude of the offender towards the offence and any alcohol treatment programs which may be appropriate**

In every prosecution for an offence under section 253 or 254 of the *Criminal Code*, including those cases where notice to seek greater penalty has not been served, all previous convictions for impaired driving and related offences should be drawn to the attention of the court for the purpose of sentencing.

DISCUSSION

Section 255 of the *Criminal Code* provides minimum sentences of imprisonment for second and subsequent impaired driving and related offences (under sections 253 and 254). To require the use of these greater punishment provisions, Crown Counsel must prove that the accused was notified, before plea, of the Crown’s intention to seek a greater penalty by reason of a previous conviction. Crown Counsel must also prove the fact of the previous conviction if it is not admitted by the accused.

Section 82(4) of the *Youth Criminal Justice Act* precludes the use of convictions pursuant to that Act as previous convictions for the purpose of seeking a greater penalty.



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 s.174 of the *Criminal Code*.

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.

Nudity	Page 2 of 2	NUD 1
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In considering a charge under s.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.



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

ARCS/ORCS FILE NUMBER: 57600-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: OBS 1
SUBJECT: Obscenity – Section 163 of the <i>Criminal Code</i>		CROSS-REFERENCE: CHA 1.2

Policy

Prosecution is generally appropriate in the public interest for the following categories of obscene material:

- 1. sexually oriented material involving violence, coercion, compulsion, force, bodily harm or threats or fear of bodily harm, or other similar acts**
- 2. sexually oriented material involving young persons**
- 3. material involving acts of bestiality**
- 4. sexually explicit material in which one person is represented as the parent, child, brother, sister, grandparent or grandchild of the other person involved in the same sexual act**
- 5. sexually explicit material involving excreta**
- 6. material representing acts of necrophilia**

The categories listed above are not exhaustive and prosecutions may be considered in other cases depending on the degree of sexual explicitness and the potential harm caused by it.

Subject to the above, the social regulatory policy (CHA 1.2) has general application. Crown Counsel should consider whether alternative methods to enforce compliance have been tried and have failed, or whether there is some indication that the offender has demonstrated wilful or repeated non-compliance. It may not be appropriate for the social regulatory policy to apply where sexually explicit materials have been made available to young persons.

For the purposes of these guidelines "sexually oriented" includes not only graphic representations of human sexual activity, but also lascivious or salacious representations of human nudity.

The Director, Legal Services or designate is available for consultation and should be advised of all prosecutions for obscenity.

If materials have been approved by the Director of Film Classification, prosecutions for obscenity should not proceed without first consulting Regional Crown Counsel and the Director, Legal Services.

Discussion

The key test is what the community would tolerate others being exposed to on the basis of the harm that may come from such exposure. Prosecutions for obscenity should not proceed if the material is for bona fide academic, scientific or medical study, is for the public benefit, or is a serious artistic or literary endeavour.

This policy relates to both pictorial and textual material.

Definition of Obscenity

The Supreme Court of Canada in R. v. Butler, 1992, 70 C.C.C. (3d), p. 129 ruled that:

1. Section 163(5) provides the exclusive definition of what is obscene under the *Criminal Code* as "any publication a dominant characteristic of which is the undue exploitation of sex or sex plus crime, horror, cruelty or violence".
2. In applying the above mentioned statutory definition the court divided pornography into these categories:
 - a) explicit sex with violence;
 - b) explicit sex without violence but which subjects people to treatment that is degrading or dehumanizing;
 - c) explicit sex without violence that is neither degrading nor dehumanizing.(Note: violence in this context includes threats of violence.)
3. Whether pornographic material falls within the definition of "obscene" requires a determination of what the community would tolerate others being exposed to on the basis of the harm that may come from such exposure. Harm in this context means that it predisposes persons to act in an antisocial manner. The stronger the inference of a risk of harm, the less likelihood of tolerance.

4. Explicit sex coupled with violence is specifically mentioned in section 163(8) and will almost always constitute undue exploitation of sex. Explicit sex without violence which is degrading or dehumanizing may constitute undue exploitation if the risk of harm is substantial. Explicit sex which is not violent or degrading or dehumanizing is generally tolerated by society and will not qualify as the undue exploitation of sex unless it employs children in its production.
5. A work which contains sexually explicit material that by itself would constitute the undue exploitation of sex will not be obscene if the sexually explicit material, when viewed in the context of the whole work, would be tolerated by the community as a whole. The artistic merit of the work is a factor to consider when applying the community standards test.
6. Section 163 while a breach of the section 2(b) of the *Canadian Charter of Rights and Freedoms* is however a reasonable limit prescribed by law within the meaning of Section 1 of the *Charter*. The objective of section 163 is of sufficient importance to warrant overriding freedom of expression.
7. The definition of obscenity in section 163(8) meets the proportionality test. While a direct link between obscenity and harm to society may be difficult, if not impossible to establish, it is reasonable to presume that exposure to images bears a causal relationship to changes in attitudes and beliefs.
8. The section can also meet the minimal impairment test. The impugned provision does not proscribe sexually explicit erotica without violence that is not degrading or dehumanizing. Further, materials which have scientific, artistic or literary merit are not captured by the provision.
9. There is a balance between the effect of the limiting measure and the legislation objective. The infringement of freedoms of expression is confined to a measure designed to inhibit the distribution of sexually explicit materials accompanied by violence and those without violence that are degrading or dehumanizing. This expression lies far from the core of the guarantee of freedom of expression and appeals only to the most base aspect of individual fulfillment and is primarily economically motivated.

The Supreme Court of Canada in R. v. Mara (1997) 1 15 C.C.C. (3d) 539 ruled that “indecenty, unlike obscenity, entails an assessment of the surrounding circumstances in applying the community standards test”. Therefore, pornographic material is either obscene or not, depending on the factors outlined by the Supreme Court of Canada in R. v. Butler (above). The context is irrelevant to the definition of obscenity, including the location of production and the intended audience.

Knowledge

Section 163(2) applies to persons who “knowingly, without lawful justification or excuse” sell or exhibit obscene material. In R. v. Jorgensen, [1995] 4 S.C.R. 55, the Supreme Court of Canada confirmed that the Crown must prove that the accused had knowledge of all aspects of the actus reus of this offence. Therefore the Crown must prove that the seller of the material was aware of the relevant facts that made the material obscene. This does not necessarily mean that the Crown must prove that the accused has seen the material. Relevant evidence may include:

- statements made by the accused person
- continued dissemination of materials after being warned by police
- non-compliance with judicial determinations
- non-compliance with in rem proceedings under s.164 of the Code
- outstanding charges
- condition of the material and location at the time of seizure
- the nature of the material itself
- evidence of some form of clandestine activity
- non-compliance with requirements to excise portions of a film to meet appropriate approval standards



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

ARCS/ORCS FILE NUMBER: 57580-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: PER 1
SUBJECT: Perjury		CROSS-REFERENCE:

POLICY

Regional or Deputy Regional Crown Counsel should be consulted on all charge assessment decisions on allegations of perjury.

If it becomes apparent to Crown Counsel during the course of a criminal trial that a witness may have committed perjury, Regional or Deputy Regional Crown Counsel should be consulted prior to referring the matter to the police for their decision as to whether an investigation is warranted.

If, in the course of a criminal trial or other proceeding, a Judge raises the issue of perjury with respect to a particular witness, the matter should be referred to Regional or Deputy Regional Crown Counsel as soon as possible.

If an allegation of perjury arises in the context of a civil matter, the factors to be considered in deciding whether a prosecution is in the public interest include the following:

- **whether the outcome of the civil proceeding was materially affected by the alleged perjury**
- **whether the civil proceeding has been completed and all avenues of appeal which would allow the allegation of perjury to be addressed within the confines of that litigation, have been explored**
- **whether the complaint of perjury was made at the earliest reasonable opportunity and whether there is any suggestion of mala fides in the making of the complaint**

DISCUSSION

It must be kept in mind that on a prosecution for perjury, the Crown has to prove an intent to mislead. A witness who may be mistaken or confused, and provides a false statement within that context, is not necessarily guilty of perjury. The burden on the Crown to prove perjury beyond a reasonable doubt is a difficult one, particularly when the allegation arises from a civil case.

Section 131 of the *Criminal Code* defines the offence of perjury and applies to testimony under oath or solemn affirmation, as well as verbal or written statements made by way of affidavit, solemn declaration or deposition.

To sustain a conviction for perjury, the Crown must prove three elements:

1. that the statement was false;
2. that at the time the statement was made, the accused knew the statement to be false; and
3. that the accused made the statement with the intent to mislead.

With respect to the second element, perjury can include, in the appropriate circumstances, a deliberate failure of recollection (Wolf v. The Queen, (1974), 17 C.C.C. (2d) 425 (S.C.C.)).

The third element, the intent to mislead, can be inferred from the circumstances as a whole in the absence of other evidence as to intention,. See R. v. Calder, (1960), 129 C.C.C. 202 (S.C.C.).

A prosecution for perjury requires corroboration if the evidence relied upon by the Crown to prove that the statement was false, consists of only one witness. Pursuant to s.133 of the *Criminal Code*, no person shall be convicted of perjury on the evidence of one witness alone, unless the evidence of that witness is corroborated in a material particular.

In R. v. Thind, (1991), 64 C.C.C. (3d) 301, the British Columbia Court of Appeal explained the requirement for corroboration as follows:

To tip the balance sufficiently against the accused, the Crown...must produce evidence from witness No. 2 that is in contradiction to what has been sworn to by the accused... The evidence of witness No. 2 need not confirm the evidence of witness No. 1, but it must be in contradiction to some part, not necessarily all, of what has been sworn by the accused (p. 307 – emphasis added).

The mischief sought to be addressed by the need for corroboration is the risk of wrongful conviction. Its practical effect is that prosecutions for perjury can be difficult. Investigations can be time-consuming and resource intensive, particularly if the allegation arises in the context of a civil matter involving voluminous affidavit material. Perjury alleged to have occurred during the course of a deposition, examination-for-discovery or trial, will require that a transcript be produced.



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

ARCS/ORCS FILE NUMBER: 55820-15	EFFECTIVE DATE: November 18, 2005	POLICY CODE: POL 1
SUBJECT: Police – Allegations Against Peace Officers		CROSS-REFERENCE: ADH 1 CON 1 DIS 1 LEG 1

POLICY

In order to ensure that there is no perception of a conflict of interest and to maintain public confidence in the administration of criminal justice, the charge assessment decision on an allegation against a peace officer must be made by either Regional Crown Counsel or the Director, Legal Services.

Regional Crown Counsel should make the charge assessment decision unless concerned that there could be an objectively reasonable perception of a conflict of interest or that the maintenance of public confidence in the administration of justice requires that the decision should be made at Headquarters. In either case, the matter should be referred to the Director, Legal Services for a charge assessment decision, pursuant to the procedure set out below.

PROCEDURE

When a Report to Crown Counsel is received containing allegations that a peace officer has committed a criminal offence, regardless of whether the offence allegedly occurred in the course of duty or not, the following procedure is to be followed:

1. The Report to Crown Counsel should be forwarded to the Administrative Crown Counsel in the location where the offence allegedly occurred.
2. The Administrative Crown Counsel should forward the file to Regional Crown Counsel.
3. Regional Crown Counsel should review the file and make the charge assessment decision, unless the matter is referred to the Director, Legal Services for one of the reasons described above. In that case, the file should be accompanied by a memorandum containing a brief recital of the relevant facts sufficient to carry out an assessment without reference to the police file. Regional Crown Counsel should

include a recommendation for the consideration of the Director, Legal Services, unless the referral was made because of a concern about conflict of interest. The following headings should be used:

RE:	Accused	Alleged Offence:
	Complainant:	Offence Date
	Region:	Offence Location:
	RCC Completion Date:	On or Off Duty:
	Recommendation:	

4. The Director, Legal Services will make a decision with respect to laying a charge and communicate that decision to Regional Crown Counsel. If there is any difference between a recommendation of Regional Crown Counsel and the decision of the Director, Legal Services, the matter will be referred to the Assistant Deputy Attorney General.
5. The final decision should be communicated to Administrative Crown Counsel who should notify the police.
6. When Regional Crown Counsel makes the charge assessment decision, a report should be sent to the Director, Legal Services.
7. If criminal charges are approved, Crown Counsel should be designated by Regional Crown Counsel, on consideration of the following:
 - (i) whether the officer is presently, or was formerly, employed in the jurisdiction where the offence occurred and is thus known to local Crown Counsel;
 - (ii) whether the allegation concerns an offence in the course of duty or duty-related activities, regardless of locality; and
 - (iii) whether the offence is of a particularly serious nature, or has considerable public profile.

Regional Crown Counsel should consider the appropriateness of requesting Crown Counsel from outside the local jurisdiction to prosecute the case, or retaining ad hoc counsel from the private bar (see ADH 1).
8. Where there is an allegation that the actions of a peace officer have caused the death of another person, the Director, Legal Services will provide a copy of the material to the Assistant Deputy Attorney General.

Should Crown Counsel be aware that a police agency has conducted an internal investigation related to the circumstances of a prosecution being conducted by Crown Counsel, all information, including witness statements, compiled by the internal investigation should be obtained. Any information obtained from the internal investigation that is relevant to the related case should be disclosed to the defence as soon as possible (see DIS 1).

Police – Allegations Against Peace Officers	Page 3 of 3	POL 1
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When there is an allegation of misconduct against a peace officer by any individual, the complainant should be referred to the appropriate police detachment. Where an allegation of apparent substance first arises during a court proceeding, Crown Counsel should recommend to the appropriate police agency that an investigation into the misconduct be undertaken.



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

ARCS/ORCS FILE NUMBER: 55340-00	EFFECTIVE DATE: November 22, 2004	POLICY CODE: PRE 1
SUBJECT: Preliminary Inquiries		CROSS-REFERENCE: CHA 1 DIR 1

POLICY

Where the accused does not request a preliminary inquiry, Crown Counsel should not request one unless it is required by exceptional circumstances. It is expected that this will occur rarely.

Before requesting a preliminary inquiry in such cases, Crown Counsel should consult with Regional or Deputy Regional Crown Counsel and consider all alternatives to a preliminary inquiry, such as preserving the evidence of an ill, aged, transient or potentially recanting witness by means of a statement which meets the requirements for admissibility set out in Regina. v. B. (K. G.) [1993] 1 S.C.R. 740. Further, Crown Counsel should not request a preliminary inquiry where deficiencies in relation to the investigation, particularly in regard to the taking of witness statements, can reasonably be remedied by means other than a preliminary inquiry.

In exercising discretion on whether to request a preliminary inquiry, Crown Counsel should also consider whether a trial can be set for an earlier date than a preliminary inquiry and whether there is a delay factor (Askov) in proceeding with a preliminary inquiry.

Where a preliminary inquiry has been requested, Crown Counsel should conduct the preliminary inquiry in as efficient a manner as possible while still calling sufficient evidence to ensure that the preliminary inquiry is of value in the conduct of the trial. Crown Counsel are encouraged to conduct an efficient and focused preliminary inquiry while recognizing that considerable flexibility is necessary in order to deal with the unique circumstances of individual cases.

Where the statement of issues and witnesses provided by defence counsel under section 536.3 of the *Criminal Code* is not, in the opinion of Crown Counsel, sufficiently focused on the relevant issues and essential witnesses, Crown Counsel should engage in discussions with defence counsel to seek an agreement to limit the scope of the preliminary inquiry.

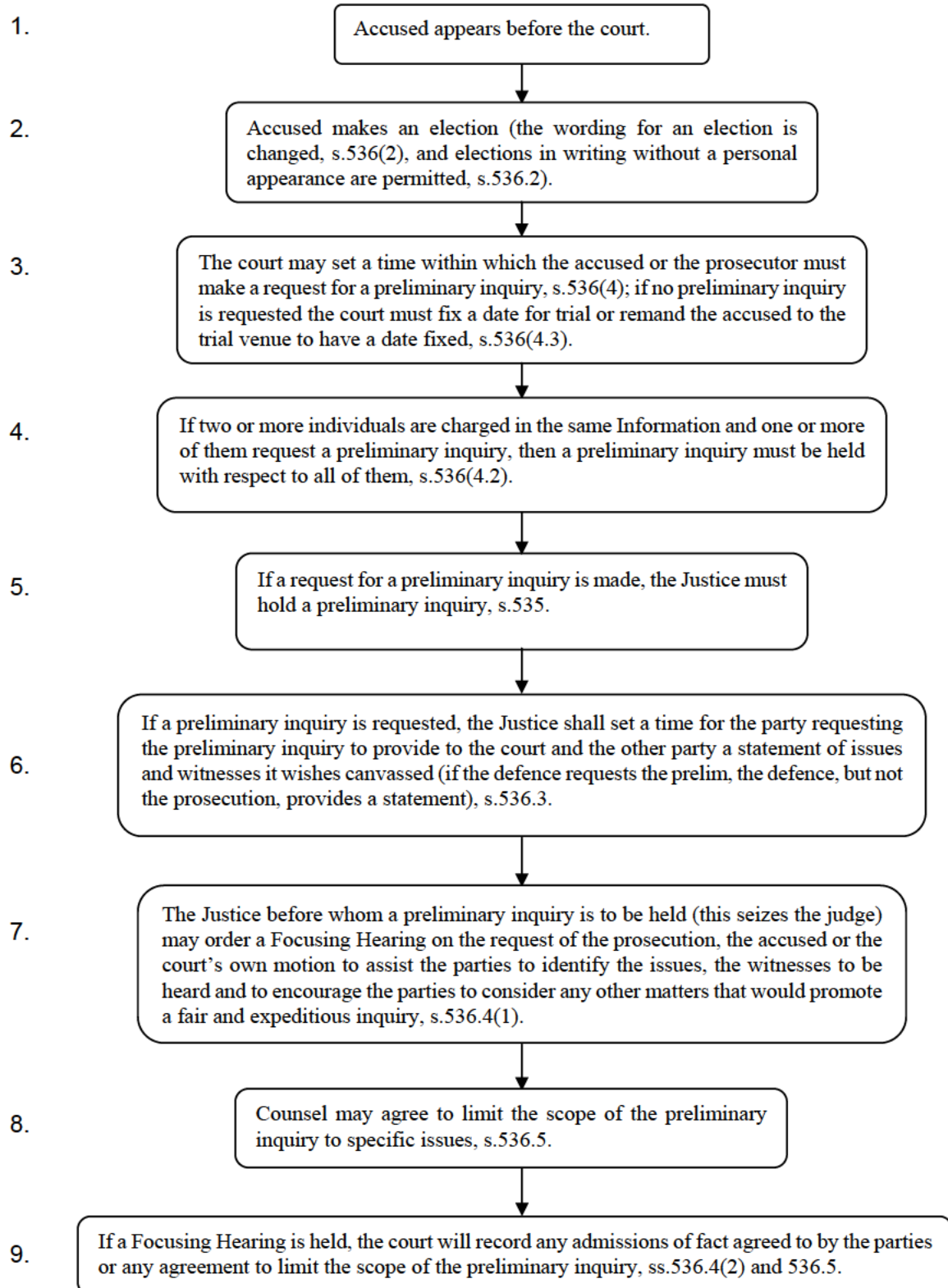
If discussions with defence counsel are not successful in limiting the scope of the preliminary inquiry, Crown Counsel should request a focusing hearing pursuant to section 536.4.

Crown Counsel must assess the evidence during and at the end of a preliminary inquiry, consistent with the policy on Charge Assessment (CHA 1). Where there is a committal, the committal report should include an assessment of the Crown's case and recommendations regarding trial.

DISCUSSION

A "New Preliminary Inquiry Procedure Flowchart" describing the procedures under Bill C-15A, which came into effect on June 1, 2004, is attached as appendix A.

APPENDIX A NEW PRELIMINARY INQUIRY PROCEDURE FLOWCHART



New Preliminary Inquiry Flowchart
Page 2

10.

If a Focusing Hearing is not held, the parties must file any agreement to limit the scope of the preliminary inquiry, s.536.5.



11.

If counsel agree to limit the scope of the preliminary inquiry, the Justice, without recording evidence on any other issues, may order the accused to stand trial after a limited preliminary inquiry, s.549(1.1).



12.

On a preliminary inquiry the Justice may receive any evidence they consider “credible and trustworthy” in the circumstances of the case - this is the same test required for show causes under s.518(1)(e) - provided counsel has given the other party reasonable notice of his intention to tender such evidence, unless the court otherwise orders, and subject to an application by the other party to require a person to attend for examination or cross-examination, s.540(7)– (9).
N.B. Evidence admitted under subsection 540(7) cannot be read in at a subsequent trial.



13.

The committal process remains the same following both limited and regular preliminary inquiries.



14.

Where no preliminary inquiry is held, an indictment may be preferred on the original, or any included, charge in the information and may be combined with any charges available under the current rules from a regular, or limited, preliminary inquiry, s.574(1)-(1.2).



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

ARCS/ORCS FILE NUMBER: 55340-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: PRI 1
SUBJECT: Private Prosecutions		CROSS-REFERENCE: CHA 1 CHA 1.1 ADH 1 SPE 1

POLICY

Generally, Branch policy does not permit a private prosecution to proceed. Crown Counsel will usually take conduct of the prosecution or direct a stay of proceedings after making a charge assessment decision.

When Crown Counsel receives notice of a process hearing for a private prosecution under section 507.1(3) of the *Criminal Code*, Crown Counsel should consider the guidelines below on whether to attend the hearing in order to carry out the functions enumerated in that provision.

It is the intent of Parliament that the justice system should not be burdened with vexatious litigation and that innocent persons should be protected from the stigma of having to appear in court wherever possible.

The right of the Attorney General to appear at a process hearing for a private prosecution is an indication of the useful role that Crown Counsel can play in assisting the Court, as recognized by Parliament.

Crown Counsel should generally appear at the hearing in order to hear the evidence of the informant.

After hearing the evidence of the informant, if it appears to Crown Counsel that there is not a reasonable prospect that process will issue (ie. there is not a prima facie case consisting of some evidence on all essential elements of the charge) and that the participation of Crown Counsel will assist the Court in determining that issue, then Crown Counsel should participate in the hearing, which may include cross-examining the informant and any witnesses called by the informant, calling witnesses, presenting evidence and making submissions, as appropriate.

Also, in the situation described above, where it appears to Crown Counsel that all of the relevant evidence is not before the Court, consideration should be given to seeking an adjournment of the hearing in order to have a police investigation conducted in order to

identify additional evidence and bring it before the Court.

If it appears to Crown Counsel that process is likely to issue (bearing in mind the very low threshold of a prima facie case), Crown Counsel should seek an adjournment of the hearing in order to have the allegation of the informant investigated by the police or other investigative agency. This is to allow Crown Counsel to be in a position to conclude a charge assessment decision promptly if process issues on the conclusion of the hearing.

Given the limited role that Crown Counsel can play in cases where it appears that process is likely to issue, the participation of Crown Counsel in the process hearing beyond requesting an adjournment should be limited, unless some further assistance is required by the Court. In this situation, Crown Counsel should bear in mind the need to ensure that the objectivity and impartiality of any subsequent charge assessment decision is not put at risk by Crown Counsel having taken a position on the merits of the allegation at the process hearing.

Where a process hearing has concluded with the issuance of process (including where the Court has declined a request for an adjournment by Crown Counsel), Crown Counsel should consult with Regional or Deputy Regional Crown Counsel and, unless directed otherwise, should follow the procedure below regarding requesting an investigation and making a charge assessment decision.

Where it has been decided that Crown Counsel will not attend the hearing, the Court should be advised.

Where appropriate, Regional Crown Counsel should consult with the Assistant Deputy Attorney General as to whether this policy should be applied by outside counsel or a special prosecutor (under policies ADH 1 or SPE 1, respectively).

Where a peace officer is charged on a private information, Crown Counsel should ensure that the relevant police force is notified as soon as notice of the process hearing is received.

DISCUSSION

Procedure Where Section 507.1 Process Hearing on a Private Prosecution Has Resulted in the Issuance of Process

1. Where a section 507.1 process hearing on a private prosecution has concluded with the issuance of process and Crown Counsel has not already requested an investigation and made a charge assessment decision, Crown Counsel should obtain a copy of the Information and particulars placed before the judge or justice including statements, documents and photographs, and should consider whether to request the police to interview the informant.

2. Crown Counsel should obtain a transcript of the process hearing.
3. If an investigation has not already been conducted, Crown Counsel should request the police or the appropriate investigative agency to conduct an investigation or to consider whether an investigation is warranted.
4. All material and the result of any investigation should be reviewed and the usual charge assessment standard applied under the charge assessment policy CHA 1.
5. Crown Counsel should consult with Regional Crown Counsel on completion of the charge assessment process and a decision should be made as to whether the charge will be prosecuted by Crown Counsel or a stay of proceedings will be directed, or otherwise.
6. The informant should be advised of the charge assessment decision as soon as possible.

Attendance by Crown Counsel at Process Hearings on Private Prosecutions

Section 507.1 of the *Criminal Code* requires a justice who receives an Information laid by a private informant to refer it to a provincial court judge or a designated justice who shall consider whether to compel the appearance of the accused to answer the charge on the Information. Subsection (3)(a) requires that the judge or designated justice may issue a summons or a warrant only if he or she has heard and considered the allegations of the informant and the evidence of witnesses.

Subsection (3)(d) provides that the judge or designated justice may issue process only if he or she “has given the Attorney General an opportunity to attend the hearing under paragraph (a) and to cross-examine and call witnesses and to present any relevant evidence at the hearing.”

Subsection (5) provides that, if the judge or designated justice does not issue process to compel the appearance of the accused on the Information, and the informant has not commenced proceedings to compel process within six months, the Information is deemed never to have been laid.

These provisions provide a judicial screening process so that the justice system is not burdened with vexatious litigation and innocent persons are protected from the stigma of having to appear in court on such matters.

At the process hearing, Crown Counsel, as an officer of the Court, assists the Court in its determination as to whether a case for issuing process is made out (ie. whether there is a *prima facie* case) by cross examining the informant or the informant’s witnesses, calling witnesses, presenting any relevant evidence or making submissions.

The role of Crown Counsel at the process hearing is separate from the subsequent role of Crown Counsel in the independent and impartial exercise of prosecutorial discretion on making the decision as to whether to approve a charge and proceed with a prosecution.

Section 2 of the *Crown Counsel Act* provides:

The Branch has the following functions and responsibilities:

- (a) to approve and conduct, on behalf of the Crown, all prosecutions of offences in British Columbia;

Section 4(3) of the *Crown Counsel Act* provides:

Subject to the directions of the ADAG or another Crown counsel designated by the ADAG, each Crown counsel is authorized to:

- (a) examine all relevant information and documents and, following the examination, to approve for prosecution any offence or offences that he or she considers appropriate...

General

The relationship between the private citizen, as prosecutor, and the Attorney General, who has exclusive authority to represent the public in court, has been described as follows:

The right of a private citizen to lay an Information, and the right and duty of the Attorney General to supervise criminal prosecutions are both fundamental parts of our criminal justice system.

The right of a citizen to institute a prosecution for a breach of the law has been called a valuable constitutional safeguard against inertia or partiality on the part of authority.

The *Owen Report* (Discretion to Prosecute Inquiry) states that the major importance of private prosecution “is that it places into public view the decision-making process. If charges are to be stayed or withdrawn, then this will be done in public.” Consistent with this policy, the *Owen Report* also recommended (Recommendation #2):

That the prosecution of an indictable offence should not be left in private hands. Where a private prosecution has been initiated, the Crown should intervene to take over the conduct of it. The Crown should then apply its standard charge approval criteria and process to determine whether the prosecution should be stayed or continued. This is necessary to ensure that a single standard of charge approval is applied and that prosecutorial power is exercised only in the public interest.



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

ARCS/ORCS FILE NUMBER: 55880-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: PRO 1
SUBJECT: Professional Organizations – Charges Against Members		CROSS-REFERENCE: ALT 1 SPE 1

POLICY

Where it is in the public interest, the Criminal Justice Branch will notify professional organizations, employers and other groups that charges against their members or employees have been proposed in a Report to Crown Counsel.

The rationale behind this policy is to protect vulnerable persons and persons relying on trust relationships. This policy applies to:

- **bodies which regulate professionals (e.g. the Law Society, the College of Physicians and Surgeons, the College of Teachers)**
- **employers of persons who are not subject to regulation by licensing bodies and**
 - **have access to children, the elderly, or other vulnerable persons (e.g. health care workers, janitors); or**
 - **hold a position of trust (e.g. bookkeepers, financial advisors)**
- **volunteer groups (e.g. Scouts Canada, Big Brothers, coaches of young persons)**
- **other organizations where disclosure may be in the public interest (e.g. the clergy)**

Notification should occur where the public interest is paramount to the privacy interest of the member or employee. Crown Counsel should follow the procedure on page 2.

Public interest factors include:

- **the relevance of the charge to vulnerable persons (notification is appropriate where the offence is designated under the *Criminal Records Review Act* - see appendix A);**

- **the relevance of the charge to the protection of persons relying on a trust relationship**
- **the number and nature of any previous convictions**
- **whether there is a history of violence, including the circumstances of the charge under consideration**
- **indicia of alcohol or drug abuse, including a high breathalyzer reading**
- **whether the offence was committed in the presence of a vulnerable person**
- **concerns raised by the investigator**
- **indicia of mental illness**
- **significant concerns about breach of professional ethics**

DISCUSSION

The rationale for this policy includes:

1. the public interest in assisting professional organizations or employers to make timely and informed decisions about membership or employment where vulnerable persons may be at risk; and,
2. the need to avoid a separate and independent investigation by the professional organization or employer which might have a deleterious effect on an ongoing prosecution, for example, by the interviewing of key Crown witnesses.

Procedure

1. Charge assessment Crown Counsel should identify cases where it appears that notification is appropriate under this policy.
2. The Report to Crown Counsel and supporting documents (including witness statements, psychiatric or expert reports, details of the accused's date of birth and professional occupation, and a copy of the Information), should be forwarded to Administrative Crown Counsel.
3. Administrative Crown Counsel should review the matter and forward to Regional or Deputy Regional Crown Counsel the material described above, in addition to information on any publication ban.
4. Regional or Deputy Regional Crown Counsel should forward the material to the Director of Policy and Legislation.

5. The Headquarters office will make the decision as to whether to provide notification, and additional information may be disclosed. More generous disclosure will normally be made to those professional organizations responsible for investigating allegations involving children or other vulnerable persons as victims or allegations of abuse of trust of a professional position.

Where Charges Not Approved

Even where Crown Counsel do not approve charges, the circumstances of the case may require notification in the public interest, for example, where there are allegations involving children or other vulnerable person as victims, or allegations of abuse of trust.

Notification done in these circumstances is consistent with the provisions of the *Freedom of Information and Protection of Privacy Act*.

Alternative Measures

Where there has been a decision by Crown Counsel to refer a case for alternative measures consideration, this policy applies and notification to the professional organization or employer should be considered. Where an alternative measures agreement is concluded, the consent of the candidate to a notification is required by law (section 717.4 *Criminal Code*).

Therefore, where Crown Counsel concludes that notification may be appropriate, the procedure described on page 2 should be expedited so that the necessary documentation (including a copy of the alternative measures referral) is provided to the Director of Policy and Legislation as soon as possible. Where there is a decision to notify, the Headquarters office will send a letter to the alternative measures co-ordinator asking that the candidate consent in writing to the notification. This will ensure that notification need not await the outcome of the alternative measures process.

Where the alternative measures candidate has consented, the Headquarters office should send a copy of the notification and the consent to the local Crown Counsel office. Where local Crown Counsel has received an alternative measures form from the contractor for final approval in these circumstances and there is not a copy of the notification and the consent on file, Crown Counsel should contact the Headquarters office for clarification before proceeding further.

If the candidate has not consented to the notification, the Headquarters office should advise local Crown Counsel who should decide whether it is in the public interest to (a) prosecute and notify under this policy in order to protect vulnerable persons or persons relying on trust relationships or, (b) proceed with the alternative measures process, recognizing that notification will not be available if the alternative measures agreement is concluded.

General

1. Any information provided under this policy will be given on the understanding that it may be shared with the member or employee, and that the information may be used by the organization or employer to respond in an appropriate fashion to protect those persons potentially affected by the conduct of the member or employee.
2. The Crown Counsel office involved will be advised by the Headquarters office of the decision.
3. Where a professional organization or employer requests information in addition to that already provided pursuant to the above, it should be asked to contact the appropriate Crown Counsel office. The Crown Counsel office should consult with the Director of Policy and Legislation or designate regarding disclosure.
4. If Crown Counsel receive a request for information from an adjudicator under the *Criminal Records Review Act*, that request should be referred to the Director of Policy and Legislation or designate.
5. Where there is a ban on publication and information not in the public domain is requested by the professional organization or employer, that entity should be advised to seek direction from the court concerning what, if any, information can be released by the Branch without violating the ban.
6. A list of the governing bodies covered by the *Criminal Records Review Act* is attached as appendix B.

APPENDIX A
Criminal Records Review Act
SCHEDULE 1
(Section 1, definition of "relevant offences")

RELEVANT OFFENCES

1. The following sections of the *Criminal Code* are designated as relevant offences:

Sec. #	Offence	Sec.#	Offence
151	Sexual interference	239	Attempt to commit murder
152	Invitation to sexual touching	240	Accessory after fact to murder
153	Sexual exploitation	242	Neglect to obtain assistance in child birth
155	Incest		
159	Anal intercourse	243	Concealing body of child
160	Bestiality	244	Causing bodily harm with intent
161	Order of prohibition	245	Administering noxious thing
163.1	Child pornography	246	Overcoming resistance to commission of offence
170	Parent or guardian procuring sexual activity	264	Criminal harassment
171	Householder permitting sexual activity	264.1	Uttering threats
172	Corrupting children	266	Assault
173(1)	Indecent acts	267	Assault with a weapon or causing bodily harm
173(2)	Exposure		
177	Trespassing at night	268	Aggravated assault
179	Vagrancy	269	Unlawfully causing bodily harm
212(1)	Procuring a person for purposes of prostitution	271	Sexual assault
212(2)	Living off avails of child prostitution	272	Sexual assault with a weapon, threats to a third party or causing bodily harm
212(4)	Attempting to obtain the sexual services of a child	273	Aggravated sexual assault
215	Duties of persons to provide necessities	273.3	Removal of child from Canada
218	Abandoning child	279	Kidnapping/forcible confinement
220	Causing death by criminal negligence	279.1	Hostage taking
221	Causing bodily harm by criminal negligence	280	Abduction of person under sixteen
		281	Abduction of person under fourteen
229	Murder	282	Abduction in contravention of custody order
235	Punishment for murder	283	Abduction
236	Punishment for manslaughter	372	False messages/indecent telephone calls/ harassing telephone calls
237	Punishment for infanticide		
238	Killing unborn child in act of birth	810	Where injury or damage feared
		810.1	Where fear of sexual offence

2. The following sections of the *Food and Drugs Act (Canada)* are designated as relevant offences:

39	Trafficking in controlled drug	48	Trafficking in restricted drug
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3. The following section of the *Controlled Drug and Substances Act* is designated as a relevant offence:

5	Trafficking		
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APPENDIX B**Governing Bodies covered by the *Criminal Records Review Act***

Listed below are the governing bodies covered by this legislation. An individual who is registered by a governing body listed below is covered by the CRRA regardless of whether they work with children.

College of Physicians & Surgeons of BC
BC College of Chiropractors
College of Psychologists of BC
College of Dental Surgeons of BC
College of Dental Hygienists of BC
Registered Nurses Association of BC
Board of Examiners in Optometry
College of Massage Therapists
BC Association of Podiatrists
Registered Psychiatric Nurses Assoc. of BC
College of Licensed Practical Nurses of BC
College of Physical Therapists of BC
Board of Registration for Social Workers
College of Denturists of BC
College of Opticians of BC
Assoc. of Naturopathic Physicians of BC
BC College of Midwives
BC College of Teachers



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

ARCS/ORCS FILE NUMBER: 59000-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: PRO 2
SUBJECT: Prosecutorial Responsibility for Federal Statutes – Major/Minor Agreement		CROSS-REFERENCE: ENV 1 Practice Directive #1

POLICY

The Criminal Justice Branch is responsible for prosecutions under the *Criminal Code*.

The federal Department of Justice is responsible for prosecutions under all other federal statutes, unless a provincial investigating agency has provided a report to Crown Counsel, in which case the Criminal Justice Branch is responsible (e.g. under the federal *Fisheries Act* or the *Migratory Birds Convention Act*).

Notwithstanding the above, where on one Information or Indictment there are charges which are a Criminal Justice Branch responsibility and charges which are a Department of Justice responsibility, the prosecutorial authority with responsibility for the more significant offences will assume conduct (including charge assessment) of the whole prosecution, as set out in the Major/Minor Agreement attached as appendix A (which does not apply to the *Firearms Act* – see Practice Directive #1).

DISCUSSION

R. v. Sacobie and Paul (1979), 51 CCC (2d) 430 (N.B.C.A.); affd. (1983), 1 CCC (3d) 446 (SCC) sets out the rule as to when provincial Crown Counsel may conduct prosecutions for offences under federal statutes other than the *Criminal Code*:

- if an Information is laid on behalf of the Government of Canada and counsel appears on behalf of the Attorney General of Canada, the federal Crown has exclusive legislative jurisdiction
- if an Information is laid by the federal government and counsel for the provincial Attorney General appears, and counsel for the Attorney General of Canada does not appear, the provincial Crown has the exclusive right to prosecute

Prosecutorial Responsibility for Federal Statutes – Major/Minor Agreement	Page 2 of 7	PRO 2
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- if an information is laid by anyone other than on behalf of the federal government, the provincial Crown may appear, as the *Criminal Code* requires, to conduct the prosecution

Provincial firearms officers provide Reports to Crown Counsel to the Department of Justice for *Firearms Act* offences which are the sole responsibility of the Department of Justice.

Attached as appendix B is a precedent for a letter of authorization under the Major/Minor agreement.

APPENDIX A

MAJOR/MINOR AGREEMENT

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

- and -

THE ATTORNEY GENERAL OF BRITISH COLUMBIA

WHEREAS the Attorney General of Canada (DOJ) and the Attorney General of British Columbia (CJB) have authority to conduct certain proceedings under the definition of "Attorney General" in the *Criminal Code*,

AND WHEREAS it is in the public interest that such authority is delegated from one to the other in certain circumstances, the parties agree:

I. Standing Authorization for those combinations of offences for which one specified party should ordinarily handle the prosecution.

Subject to Part VII of this agreement, where on one information or indictment there are multiple charges arising out of related circumstances which fall under the exclusive prosecutorial authority of each of the parties to this agreement, and those charges are limited to one of the combinations in Appendix I, standing authorization to prosecute is granted by one party to the other as set out in Appendix I.

For the purpose of this Part and Part II, "multiple charges arising out of related circumstances" means offences arising out of the same factual pattern and bearing some relationship to one another, for example where identical witnesses are involved or offences result from the same search warrant – a mere temporal connection is not enough.

II. Authorizations in specific cases (on major/minor analysis)

Subject to Part VII of this agreement, where on one information or indictment there are multiple charges arising out of related circumstances which fall under the exclusive prosecutorial authority of each of the parties to this agreement, and

Part I does not apply, the party with responsibility for the prosecution of the more significant charge or charges will, on request, receive authorization from the other party to conduct the prosecution on all of the charges on the information or indictment.

Authorization is required in each case and may be oral or in writing.

Prosecutorial Responsibility for Federal Statutes – Major/Minor Agreement	Page 4 of 7	PRO 2
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APPENDIX A, cont'd.

III. Standing Authorization for Ancillary Matters

Subject to Part VII of this agreement, where an authorization is made under Part I or II, the authorized party has standing authorization to prosecute or conduct all ancillary matters relating to or arising out of the authorized matter. Ancillary matters include prosecutions under sections 117.01 (possession of weapon while prohibited), 145(2), (3), (4), (5) and (5.1) (various offences involving failure to appear and failure to comply with conditions of release), 733.1 (breach of probation), 811 (breach of recognizance(s), hearings under section 742.6 (breach of conditional sentence order) and providing consent of the Attorney General to the transfer of probation orders and conditional sentence orders under sections 733 and 742.5 respectively, all under the *Criminal Code*.

DOJ has standing authorization to prosecute ancillary matters (as defined above) relating to or arising out of offences which DOJ has authority to prosecute under the definition of "Attorney General" in the *Criminal Code*.

IV. Application of This Agreement

All authorizations granted under this agreement include the charge assessment analysis and the decision to prosecute, such analysis to be conducted in accordance with the charge assessment policy of the authorized party.

Authorizations given by either party to the other under this agreement extend to the conduct of preliminary inquiries, appeals (subject to Part VI), judicial interim release proceedings, prerogative writ applications and any other proceedings relating to or arising out of the authorized matter.

Where there is a severance of counts on an information or indictment on a matter delegated under this agreement, the effect of which is that the original information or indictment, or a consequent information or indictment, contains only counts over which one party to this agreement has exclusive authority to prosecute, that party will conduct the prosecution.

V. Exception To This Agreement

Firearms Act offences are not covered by this agreement and remain the exclusive responsibility of DOJ.

Prosecutorial Responsibility for Federal Statutes – Major/Minor Agreement	Page 5 of 7	PRO 2
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APPENDIX A, cont'd.

VI Appeals

Before initiating an appeal on a matter delegated under this agreement, the party that would have conduct of the appeal should consult with the other party. Any disagreement regarding the decision to appeal should be referred to the heads of both parties for resolution.

VII General

Each party retains ultimate control over matters delegated under this agreement, which shall include the ability to obtain information and the authority to supervise directly or assume conduct of a delegated matter notwithstanding any other provision of this agreement. The parties reserve the right to decline conduct of a matter under this agreement in appropriate circumstances.

Where a matter is delegated by CJB to DOJ under this agreement, the Attorney General of Canada and his agents are designated as Crown Counsel pursuant to Section 4(1) of the *Crown Counsel Act*.

Signed by:



Assistant Deputy Attorney General
Criminal Justice Branch, Ministry of Attorney General of British Columbia

at Victoria, British Columbia on the 21st day of July, 2005.



On behalf of the Attorney General of Canada

at VANCOUVER on the 21st day of July, 2005.

APPENDIX A, cont'd.**MAJOR/MINOR AGREEMENT****APPENDIX I**

This Appendix provides standing authorization to prosecute those combinations of provincial and federal offences, set out in the chart below, for which one party, as specified, will conduct the prosecution (subject to Part VII of this agreement).

Offences under the <i>Criminal Code</i> (which are the prosecutorial responsibility of the Province)	Offences under the <i>Controlled Drugs and Substances Act</i> (which are the prosecutorial responsibility of the Federal Government)	Party provided with standing authorization to prosecute when the offences are on the same Information
<i>Any Criminal Code driving offence</i>	Possession	CJB
<i>Criminal Code driving offences not causing bodily harm or death</i>	Any offence other than possession	DOJ
<i>Criminal Code driving offences causing bodily harm or death</i>	Any offence	CJB
Assault or obstruct peace officer	Possession	CJB
Assault or obstruct peace officer	Any offence other than possession	DOJ
Theft of hydro	Production of a controlled substance	DOJ
Mischief	Production of a controlled substance	DOJ
Theft or possession of stolen property	Possession	CJB
Theft or possession of stolen property	Any offence other than possession	DOJ
Possession of a prohibited or restricted weapon	Possession	CJB
Possession of a prohibited or restricted weapon	Any offence other than possession	DOJ

Prosecutorial Responsibility for Federal Statutes – Major/Minor Agreement	Page 7 of 7	PRO 2
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APPENDIX B

**PRECEDENT FOR AUTHORIZATION LETTER
UNDER MAJOR/MINOR AGREEMENT**

RE: R. v. Full Name of Accused

Information/Indictment # _____

Pursuant to the Major/Minor Agreement between The Attorney General of Canada and The Attorney General of British Columbia signed on _____ date _____, _____, you are authorized to conduct the above-noted prosecution on all of the charges on the Information/Indictment.

Take note that under the Major/Minor Agreement, you are authorized to prosecute or conduct all ancillary matters as set out in that agreement.

(authorizing party signs)



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

ARCS/ORCS FILE NUMBER: 55060-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: REC 1
SUBJECT: Recognizances to Keep the Peace – Section 810 <i>Criminal Code</i>		CROSS-REFERENCE: CRI 1 SPO 1

POLICY

In deciding whether to make an application for a peace bond (recognizance) under section 810 of the *Criminal Code*, Crown Counsel should consider whether there is a reasonable likelihood of a recognizance being ordered.

Given concerns for the safety of complainants, a warrant for the arrest of the defendant, as opposed to a summons, should ordinarily be sought to ensure that appropriate release conditions are imposed.

On an application for a peace bond, a judge or justice is required to consider whether it is desirable to order a prohibition from the possession of firearms or other weapons pursuant to section 810(3.1). Crown Counsel should ensure that the court considers that provision.

Crown Counsel should oppose the imposition of a peace bond on the complainant (mutual peace bonds) unless the complainant has received independent legal advice and wishes to proceed in that manner.

DISCUSSION

Section 810 provides that a court may order a peace bond if the court is satisfied that there are reasonable grounds for the fears of the complainant.

While it is part of the *Criminal Code*, section 810 does not create a criminal offence, and no conviction or sentence results from a successful application. Section 810 provides a preventative remedy designed to enable the court to bind persons to keep the peace.

On occasion, the court or defence counsel will suggest that both parties be bound by peace bonds. It is important to remember that while the accused comes to court with notice of that which he or she faces, the complainant does not. It would be inappropriate for a complainant to attend court as a witness and, without notice, leave the courtroom bound by a court order. If such a prospect arises and the complainant indicates a desire to proceed in that manner, Crown Counsel should ensure that the complainant obtains independent legal advice.

Section 810 is enforced by application of section 811, which creates the hybrid offence of breach of recognizance. No equivalent provision exists with respect to a common law peace bond, and there are difficulties with its enforcement. Provided that the threshold test is met, Crown Counsel should proceed under section 810 rather than request that the court resort to its common law authority.



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

ARCS/ORCS FILE NUMBER: 55000-00 56220-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: RES 1
SUBJECT: Resolution Discussions		CROSS-REFERENCE: APP 1 CHA 1 DIS 1 IMM 2 VIC 1

POLICY

Resolution discussions are essential to the proper functioning of the justice system in British Columbia and “when properly conducted, benefit not only the accused, but also victims, witnesses, counsel, and the administration of justice generally”.¹

Resolution discussions often result in a guilty plea or admissions by the accused as to facts which otherwise would have to be proven. The earlier resolution of criminal charges reduces stress and inconvenience to victims and witnesses and results in a more efficient justice system where trials are either not necessary or are shorter due to the focusing of the proceedings on those facts which are clearly in issue.

Crown Counsel are encouraged to initiate resolution discussions, and in so doing they should:

- 1. accept a plea of guilty only to charges which continue to meet the charge assessment standard in policy CHA 1.**
- 2. ensure that the offence(s) to which the accused pleads guilty appropriately reflect the provable criminal conduct of the accused and provide an adequate sentencing range given all of the circumstances.**
- 3. ensure that the court is advised of all relevant information, including aggravating circumstances, which the Crown is able to prove.**
- 4. recognize that generally a plea of guilty is a mitigating factor on sentence, especially where the accused pleads guilty at the earliest opportunity.**
- 5. provide the court with the Crown’s submission concerning the appropriate range of sentence and a recommendation as to where within that range the principles of sentence are best met.**

¹ Report of the Attorney General’s Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions, Martin, G. Arthur, Hon., Ontario, 1993.

6. **not agree to present a joint submission as to the exact length of sentence or amount of monetary fine unless satisfied that exceptional circumstances exist requiring a joint submission in the public interest and that a joint submission will not bring the administration of justice into disrepute. Crown Counsel should advise the court of the factors and principled analysis underlying the joint submission so that the involvement of Crown Counsel is readily understood by the court and members of the public.**
7. **refrain from entering into any arrangement which purports to fetter the discretion of the Attorney General to commence an appeal unless the written approval of the Assistant Deputy Attorney General to such an arrangement is obtained in advance (see policy APP 1).**

Further, where criminal activity has resulted in the laying of multiple charges, although there may be a substantial likelihood of conviction on a particular charge, Crown Counsel may direct a stay of proceedings on that charge and accept a plea to a reduced number of charges, as long as Crown Counsel ensures that the offences to which the accused pleads guilty appropriately reflect the criminal conduct of the accused and provide an adequate sentencing range given all of the circumstances.

During the course of resolution discussions, Crown Counsel must act in the public interest at all times to ensure that the integrity of the criminal justice system is protected and nothing is done to bring the administration of justice into disrepute.

In cases involving serious injury or severe psychological harm, where it is practicable and before concluding a resolution discussion, Crown Counsel should inform the victim or the victim's family of the proposed resolution and provide an opportunity for any concerns to be expressed to Crown Counsel. Crown Counsel should not conclude resolution discussions in such cases where the victim or the victim's family indicate a desire to seek a review of the proposed resolution – this will ensure that the Regional or Deputy Regional Crown Counsel are not placed in the position of having to repudiate a concluded resolution agreement if it is found that the agreement is not appropriate.

For the cases listed below, Crown Counsel should consult with Regional or Deputy Regional Crown Counsel before concluding any resolution discussion. Also, Crown Counsel should discuss any proposed result of a resolution discussion with the victim or the victim's family and advise them that any concerns they express will be made known to and considered by Regional or Deputy Regional Crown Counsel:

- (a) **where the charge alleges that a person is responsible for a death; and**
- (b) **for any serious charge about which there has been, or is likely to be, significant public concern with respect to the administration of justice.**

While Crown Counsel should consider any concerns expressed by the victim or the victim's family, the decision as to the appropriate charge or disposition rests with the Criminal Justice Branch in accordance with this policy.

Repudiation

Repudiation of any resolution agreement should be extremely rare. Repudiation should be considered only where Regional Crown Counsel and the Assistant Deputy Attorney General are satisfied that the resolution agreement would bring the administration of justice into disrepute. If that test is met, the decision on whether to repudiate should take into account the extent to which the accused could be restored to their original position and whether repudiation would likely bring the administration of justice into disrepute.

Unrepresented Accused

In general, Crown Counsel should not initiate negotiations with an unrepresented accused (this does not include providing an Initial Sentencing Position document to the accused). Crown Counsel should encourage the accused to seek the advice of counsel to assist in any resolution discussions. If the accused declines to seek the advice of counsel and wishes to undertake resolution discussions, where practicable Crown Counsel should arrange for a third person to be present during the discussions or conduct the discussions in writing. Crown Counsel should ensure that a record of the discussions is kept on the file.

DISCUSSION

Resolution discussions include all discussions between Crown Counsel and defence counsel as to the charges laid and their possible disposition. Such discussions are beneficial because they allow Crown Counsel to consider information known only to the defence concerning the strength of the Crown's case, taking into account that the Branch charge assessment guidelines continue to apply throughout the course of the prosecution.

Subject to the policy considerations discussed above, examples of resolution discussions may include:

- reducing a charge to a lesser or included offence
- withdrawing or staying other charges
- agreeing not to proceed on a charge or agreeing to stay or withdraw charges against other accused persons
- agreeing to reduce multiple charges to one all-inclusive "global" charge
- agreeing to direct a stay of proceedings on certain counts and proceed on other counts, and to rely on the material facts that supported the stayed counts as aggravating factors for sentencing purposes on the counts which proceed

- agreeing to dispose of the case at a specified future date if, on the record, the accused is prepared to waive the right to a trial within a reasonable time
- agreeing to the waiver of charges in accordance with the policy on waivers
- recommending a certain range of sentence or a specific sentence

Recognizing that the charge assessment responsibility of Crown Counsel and the investigative responsibility of the police are mutually independent, cooperation and effective communication between Crown Counsel and the police are essential to the proper administration of justice. In serious cases, or those of significant public interest, Crown Counsel discuss resolution discussions with the police, where practicable.

In all cases, Crown Counsel should note in the Crown file the reasons for every stay of proceedings in order to allow compliance with section 15(4) of the *Freedom of Information and Protection of Privacy Act* which states as follows:

The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute:

- a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or*
- b) to any other member of the public, if the fact of the investigation was made public.*



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

ARCS/ORCS FILE NUMBER: 56660-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: SEX 1
SUBJECT: Sexual Offences		CROSS-REFERENCE: ALT 1 CHA 1 DAN 1 DIS 1 RES 1

POLICY

General Principles

In cases where the evidentiary test under policy CHA 1 is met, it will generally be in the public interest to prosecute sexual offences.

Under the *Crown Counsel Act*, Crown Counsel are responsible for the decision to prosecute. The charge assessment policy requires Crown Counsel to examine the case at each stage of the prosecution and decide whether there is a substantial likelihood of conviction and, if so, whether prosecution is required in the public interest. This cannot be determined solely by the wishes of the complainant.

All victims of sexual offences should be advised of available specialized victims' services.

Alternatives to Prosecution

Sexual assault cases involving a weapon, threats to a third party, bodily harm, aggravated assault or a breach of trust may be referred for alternative measures only in rare circumstances by Regional Crown Counsel and with the consent of the Assistant Deputy Attorney General. All other cases may be referred for alternative measures only in exceptional circumstances and after consultation with Regional Crown Counsel or their designate (see ALT 1). In all cases, alternative measures should be approved only if the following conditions are met:

- 1. the victim has been consulted and the victim's views considered;**
- 2. the victim has been made aware of available victim assistance programs;**
- 3. there is no apparent history of violence or sexual offences;**
- 4. if requested, the offender must agree to complete a suitable program of treatment or intervention approved by a probation officer; and**

5. the offence must not have been of such a serious nature as to threaten the safety or tolerance of the community.

While an alternative measures referral may be considered at any stage of the proceeding, in some cases it may be advisable to approve a charge and have conditions of release in place including no contact with the complainant before making the referral.

Conditions of Bail or Recognizance to Protect the Complainant of Sexual Crimes

A warrant should be sought whenever it is necessary to protect the victim or other potential victims by seeking a detention order or conditions of release, such as those listed below. This prevents the accused from interfering with the integrity of the prosecution or committing further offences against the victim or other potential victims.

Where the detained accused presents a danger to the victim, a witness or other members of the public, Crown Counsel should consider seeking a detention order with a “no contact” order pursuant to s. 515(12) of the Criminal Code requiring the accused, while in custody, to abstain from communicating, directly or indirectly, with the victim.

Where an accused has been arrested and then released by the police on a promise to appear or recognizance with conditions, Crown Counsel should review the conditions to ensure that they are adequate to protect the victim and the public and are enforceable, and then, if necessary, request a warrant and an amendment of the conditions under sections 499(4), 503(2.3) or 512 of the Criminal Code. See “Discussion” concerning possible conditions of release.

Where there is a decision not to lay a charge, a stay of proceedings becomes necessary, or there is an acquittal, Crown Counsel should consider whether the safety of a victim or other persons at risk including potential victims generally, requires an application for a recognizance under s.810 or s.810.2 of the *Criminal Code*, which can include supervision conditions administered by the Corrections Branch.

Relevant risk factors should be communicated to the court to ensure protection of the public.

Preparation for Hearing

Administrative Crown Counsel should ensure that the procedures in their offices provide for:

1. early identification and assignment of the case;
2. wherever possible, assignment to Crown Counsel who has received specialized training;
3. early identification and notice to the victim of accommodations available under the Criminal Code, including section 486;

4. vertical prosecution - every effort should be made to have these cases handled by the same Crown Counsel from beginning to end. As long as a positive rapport has developed with the victim, that Crown Counsel should remain with the case until final disposition at trial; and
5. priority in scheduling to ensure that the case moves expeditiously through the criminal justice system.

Crown Counsel should consider applying, at the first instance, for an order under section 486 of the *Criminal Code*, directing that the identity of a complainant or a witness and any information that could disclose the identity of the complainant or witness shall not be published in any document or broadcast in any way.

Crown Counsel must inform the complainant or witness about the accommodations available under section 486 of the *Criminal Code*, unless impracticable to do so. Crown Counsel should make an application for an order where appropriate, taking into account all relevant factors, including whether the complainant or witness requests one of the accommodations. The court can make an order:

- for the exclusion of the public
- for a support person
- for the witness to give testimony from a different room or behind a screen or other device
- for cross examination by appointed counsel (where the accused is unrepresented)

Crown Counsel should also consider whether presentation of a mentally or physically handicapped complainant's evidence by videotape, as provided by section 715.2 of the *Criminal Code*, is appropriate. Utilization of such a procedure does not preclude the witness from having to testify.

When dealing with victims reluctant to participate in the criminal process, Crown Counsel should attempt to ascertain the reasons for the reluctance to testify and develop strategies to address the reluctance. For a sexual assault complainant, a criminal trial is very challenging. Crown Counsel should make known to victims, any victim services programs or other agencies known to Crown Counsel which may be able to assist the victim.

Sentencing

Victims should be given the opportunity to provide victim impact information.

Section 718.2 of the *Criminal Code* provides that the abuse of a spouse and abuse by person in a position of trust or authority are aggravating factors on sentencing. Any aggravating factors should be brought to the attention of the court.

Where community supervision is appropriate, Crown Counsel should seek conditions which will protect the victim. They may include a “no contact” and reporting requirement, as well as successful completion of an assaultive behaviour, or sexual offender treatment program.

Crown Counsel should consider whether a restitution order is appropriate under section 738(1) of the *Criminal Code*.

Crown Counsel should consider Dangerous Offender and Long Term Offender Applications, where appropriate (see DAN 1).

Breach of Court Orders

As a breach of a court order is an identified risk factor for re-offending, Crown Counsel should consider laying charges for breaches of bail and probation. Also, applications for revocation of bail and of conditional sentence orders should be considered.

DISCUSSION

This policy has been revised in the new format and made consistent with other branch policies and recent legislation. A further substantive review of this policy is underway.

Conditions of Release May Include the Following

- no contact condition
- area restriction
- Weapons and firearms prohibition
- reporting condition
- drug and alcohol prohibition
- any other condition which is necessary to ensure the safety and security of the victim or a witness



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

ARCS/ORCS FILE NUMBER: 57140-01	EFFECTIVE DATE: November 18, 2005	POLICY CODE: SEX 2
SUBJECT: Sexually Transmitted Diseases		CROSS-REFERENCE: CHA 1

POLICY

Where a charge is proposed involving the possible transmission of a sexually transmitted disease, including the HIV virus, the decision should be reviewed by Regional or Deputy Regional Crown Counsel. The Director, Legal Services should be advised of any decision to charge.

Where a medical health officer has not been involved, Crown Counsel should ensure that the matter is reported to the appropriate medical health officer as soon as possible.

Where a charge is approved involving the possible transmission of a sexually transmitted disease, Crown Counsel or support staff should ensure that the victim is aware of available victim assistance programs.

Where a person is convicted of an offence involving the possible transmission of a sexually transmitted disease, Crown Counsel should seek a pre-sentence report and a report from the local medical health officer to assist in the formulation of an appropriate position on sentence.

DISCUSSION

Duty to disclose condition to sexual partners – aggravated assault

On a charge of aggravated assault where the accused tested positive for the HIV virus, the Supreme Court of Canada in Regina v. Cuerrier (1998) 127 CCC (3d) 1 ruled that:

1. An accused who knows that he is HIV positive has a duty to disclose that fact to prospective sexual partners before engaging in unprotected sexual intercourse. Failure to disclose will amount to fraud vitiating consent.

2. Consent in sexual matters will be vitiated only where the deception creates a significant risk of serious bodily harm.
3. The Crown will be required to prove beyond a reasonable doubt that the complainant would have refused to engage in unprotected sex with the accused if he or she had been advised of the fact that the accused was infected.
4. This standard is sufficient to encompass not only the risk of HIV infection but also other sexually transmitted diseases which constitute a significant risk of serious bodily harm.

Duty on Crown Counsel to provide a report to medical health officer

Section 2 of the *Health Act Communicable Disease Regulation* requires that where a person knows or suspects that another person is suffering from certain communicable diseases, he or she shall, without delay, make a report to the medical health officer.

Power of medical health officer to order enforceable conditions under *Health Act*

Section 11(1) and (2) of the *Health Act* provide as follows:

11(1) If a medical health officer has reasonable grounds to believe that

- (a) a person has a reportable communicable disease or is infected with an agent that is capable of causing a reportable communicable disease, and
- (b) the person is likely to willfully, carelessly or because of mental incompetence, expose others to the disease or the agent,

the medical health officer may order the person to do one or more of the following:

- (c) comply with reasonable conditions the medical health officer considers desirable for preventing the exposure of other persons to the disease or agent,
 - (d) take or continue medical tests or treatment for the purpose of identifying or controlling the disease or agent,
 - (e) place himself in isolation, modified isolation or quarantine as set out in the order.
- (2) Despite any other provision of this Act or of another enactment, an information charging a person with contravention of an order made under subsection (1) may only be laid
- (a) by a medical health officer, a deputy medical health officer or an assistant medical health officer, and
 - (b) with the prior approval of the Provincial health officer.

Possible offences

Depending on the facts, possible offences involving communicable diseases might include offences under the *Health Act* or *Criminal Code* offences such as aggravated assault, aggravated sexual assault, criminal negligence causing bodily harm, unlawfully causing bodily harm, or threatening.



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ARCS/ORCS FILE NUMBER: 125-20/CCAC	EFFECTIVE DATE: November 18, 2005	POLICY CODE: SPE 1
SUBJECT: Special Prosecutors		CROSS-REFERENCE: CHA 1 PRO 1

Policy

The Assistant Deputy Attorney General (ADAG) is empowered to appoint a special prosecutor in cases where the ADAG believes there is a significant potential for real or perceived improper influence in prosecutorial decision-making.

Above all other considerations, the ADAG regards the need to maintain public confidence in the administration of criminal justice as the paramount consideration in deciding whether a case requires the appointment of a special prosecutor.

Any case which Crown Counsel believes warrants consideration of the appointment of a special prosecutor, and any request for the appointment of a special prosecutor received from members of the public or the police, should be referred immediately to Regional Crown Counsel who will discuss the matter with the ADAG.

Discussion

On June 27, 1991, the *Crown Counsel Act* received Royal Assent and came into force. The *Crown Counsel Act* was the culmination of a process which commenced in November 1990 when Commissioner Stephen Owen submitted his Discretion to Prosecute Inquiry Report to government. Commissioner Owen concluded that while criminal justice in British Columbia is administered with integrity, professionalism and public confidence, nevertheless the system itself was vulnerable. Owen then recommended a process to allow for the appointment of special prosecutors to strengthen the independence of prosecutorial decision-making from real or perceived improper influence.

With the passing of the *Crown Counsel Act*, legislation was enacted to provide a more open justice system, one which balanced the need for Branch independence with accountability to the public and the legislature through the Attorney General. For the first time, the function and responsibilities of the Criminal Justice Branch and the roles of the Assistant Deputy Attorney General (ADAG) and Crown Counsel were clearly defined and legislation governed the relationship between the Criminal Justice Branch and the Attorney General.

Under section 5 of the *Crown Counsel Act*, the Attorney General (AG) or Deputy Attorney General (DAG) can intervene to direct the ADAG with respect to a specific prosecution or appeal only if such direction is in writing and is published in the *British Columbia Gazette*. Similarly, under section 6, a directive from the AG or DAG concerning Criminal Justice Branch policy on approval or conduct of prosecutions must be given in writing to the ADAG who has a discretion to require publication of the direction in the *Gazette*. Similar provisions exist with respect to directives relating to the Branch's administration.

Yet even with all these safeguards, cases can arise in which the public may still question the integrity of prosecutorial decision-making. For cases in which the ADAG forms the view that there could be significant potential for real or perceived improper influence in the administration of criminal justice, section 7 of the *Crown Counsel Act* authorizes the ADAG to appoint a lawyer from the private Bar as a special prosecutor to carry out a defined mandate with respect to the approval and conduct of a specific prosecution.

Under section 7(4) of the *Crown Counsel Act*, if the AG or DAG or ADAG gives a direction to a special prosecutor in respect of any matter within the mandate of the special prosecutor, that direction must be given in writing and be published in the *Gazette*.

Appointment of Special Prosecutors

Special prosecutors are appointed on a case-by-case basis by the ADAG from a list of senior and experienced practitioners from the private Bar. Most special prosecutors are appointed in cases involving Cabinet Ministers and other senior public or Ministry officials, senior police officers, or persons in close proximity to them. Only the ADAG has the authority, under the Act, to appoint a special prosecutor. All counsel on the special prosecutors list have been jointly approved by the President of the Law Society, the DAG and the ADAG. This joint approval process ensures a consistent high standard is applied to those sensitive cases which are referred to the special prosecutor.

Functions of Special Prosecutors

Applying Branch policies, including the policy on Charge Assessments Guidelines (CHA 1), special prosecutors carry out the charge assessment and, where there is a decision to prosecute, are ordinarily responsible for the conduct of the ensuing prosecution and any subsequent appeal. Special prosecutors also make the decision as to whether to notify professional organizations, employers or other groups that charges against their members or employees have been proposed in a Report to Crown Counsel, pursuant to the policy entitled Professional Organizations – Charges Against Members (PRO 1). (Any notification will be done by the Headquarters Office).

The Branch facilitates responses to the media or other interested parties concerning decisions made by special prosecutors.



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CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: 56680-00	EFFECTIVE DATE: May 1, 2003	POLICY CODE: SPO 1
SUBJECT: Spouse Assault		CROSS-REFERENCE: ALT 1 CHA 1 VIC 1

POLICY

Charge Assessment and Alternatives to Prosecution

Under the *Crown Counsel Act*, Crown Counsel are responsible for the decision to prosecute. The charge assessment policy requires Crown Counsel to examine the case at each stage of the prosecution and decide whether there is a substantial likelihood of conviction and, if so, whether prosecution is required in the public interest. This cannot be determined solely by the victim's wishes.

Where there is a decision not to lay a charge or where a stay of proceedings becomes necessary, Crown Counsel should consider whether the safety of a victim or a child requires an application for a recognizance under s.810 of the *Criminal Code* which can include counselling and supervision conditions administered by the Corrections Branch. In some cases it may be appropriate to proceed with a charge of breaching a court order under the *Family Relations Act*.

Mutual recognizances are generally inappropriate and mutual charges arising out of the same incident should generally not be approved.

Where a review of the risk factors outlined below indicates a low risk of future violence and the offence is not of a serious nature, Crown Counsel may refer a case for alternative measures consideration. Crown Counsel should make the final decision on whether to approve alternative measures after careful consideration of the probation officer's risk assessment report.

While an alternative measures referral may be considered at any stage of the proceeding, in some cases it may be advisable to approve a charge and have conditions of release in place before making the referral.

Reluctant Witnesses

When dealing with reluctant witnesses, Crown Counsel should try to ascertain the reasons for the reluctance to testify. If a witness has been subjected to threats or interference, Crown Counsel should refer the matter to the police for investigation.

Where Crown Counsel is unable to confirm that the victim will testify, Crown Counsel should consider whether any other evidence would meet the charge assessment standard, such as independent corroborative evidence or a prior oral or written statement of the victim.

Victims should be personally served with a subpoena to testify. Crown Counsel should not apply for a material witness warrant for a victim who has failed to appear – unless there is some likelihood the victim will testify and the circumstances of the case are severe, including the need to protect children or others. Crown Counsel should request that the police make all reasonable efforts to alleviate any hardship on the victim in the execution of a warrant.

Protection of Victims

Crown Counsel should have particular regard for the safety of victims and children and should handle spousal assault matters expeditiously to avoid exposing victims to intimidation or abuse.

All victims should be advised of the availability of victims' services.

Timely information should be provided to the victim about any charges laid, release conditions or other developments in the case. This information should be provided by Crown Counsel, support staff or victim services upon request, or in any case where there are particular concerns about safety.

Bail

An unendorsed warrant should be sought whenever it is necessary to protect the victim by seeking a detention order or conditions of release, such as those listed below.

Where the accused presents a danger to the victim or a witness, Crown Counsel should consider seeking a detention order and a “no contact” order pursuant to s. 515(12) of the *Criminal Code* requiring the accused to abstain from communicating, directly or indirectly, with the victim. Relevant risk factors are set out below.

Where an accused has been arrested and then released by the police on a promise to appear or recognizance with conditions, Crown Counsel should review the conditions to ensure that they are adequate to protect the victim and are enforceable, and then, if necessary, request a warrant and an amendment of the conditions under sections 499(4), 503(2.3) or 512 of the *Criminal Code*.

If the victim requests removal of a “no contact” condition, Crown Counsel should seek further information from sources such as the victim, bail supervisor or investigator. If there is a history of abuse or indicators that the victim may be at risk, it is generally not appropriate for Crown Counsel to consent to a review of the bail conditions.

Sentencing

Victims are to be given the opportunity to provide victim impact information.

Section 718.2 of the *Criminal Code* provides that abuse of one’s spouse, common law partner or child is an aggravating factor on sentencing. Where probation is appropriate, Crown Counsel should seek conditions which will protect the victim. They may include a “no contact” and reporting requirement, as well as successful completion of an assaultive behaviour program.

Breach of Court Orders

As a breach of a court order is an identified risk factor for future violence, Crown Counsel should consider laying charges for breaches of bail and probation. Also, applications for revocation of bail and of conditional sentence orders should be considered.

DISCUSSION

Victims

The prosecution of spousal assault cases often involves a reluctant victim or witness, as complex factors may affect the victim’s willingness to co-operate with the criminal justice system. Crown Counsel should be aware that the accused may exert inappropriate influence at any stage of the court process, and that victims often minimize the severity, or deny the existence, of violence in the relationship. The involvement of victims’ services may assist victims to continue through the court process.

Recognized Risk Factors (especially two or more):

- a history of violence within or outside the relationship, including sex offences
- a history of breach of court orders
- recent threats of suicide
- escalating violence
- substance abuse
- recent relationship problems (separation, divorce or conflict)
- recent employment problems
- the use or threatened use of weapons, or death threats
- extreme minimization/denial

Possible Conditions of Release:

- no contact condition
- area restriction
- weapons and firearms prohibition
- reporting condition
- drug and alcohol prohibition
- any other condition which is necessary to ensure the safety and security of the victim or a witness



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

ARCS/ORCS FILE NUMBER: 55000-00 1380-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: STA 1
SUBJECT: Standards of Conduct - Conflict of Interest		CROSS-REFERENCE: ADH 1 CON 1 MED 1

POLICY

This policy sets standards of conduct for Crown Counsel and articulated students. These standards are outlined below and they supplement the standards in Policy Directive 5.4 of the BC Public Service Agency (attached as appendix A) which are applicable to all persons appointed under the *Public Service Act*:

- 1. Where Crown Counsel is assigned to a case involving an accused, victim, or material witness who is a relative, friend, or anyone else in respect of whom there is an objectively reasonable perception of a conflict of interest, Crown Counsel should disqualify themselves from participating in that case and, where the matter is before the Court when the conflict becomes apparent, notify the defence and the Court.**
- 2. Crown Counsel who are employees of the Branch must not engage in work as defence counsel for persons charged with an offence under any enactment. Practice in other areas of the law, regardless of whether there is remuneration, by Crown Counsel who are employees of the Branch is strongly discouraged, in view of the onerous duties of Crown Counsel and in order to avoid conflicts of interest; however, such practice is allowed as long as Crown Counsel adhere strictly to the following requirements:**
 - a) No use may be made of Criminal Justice Branch premises, services, equipment, information or supplies in the conduct of such practice.**
 - b) No work relating to such practice should detract from the ability to properly carry out duties as Crown Counsel.**
 - c) Any Crown Counsel engaging in such practice must disclose that fact to Regional Crown Counsel or their Director and review periodically with that person the scope of such practice and any potential for conflict or inability to properly carry out duties as Crown Counsel.**
 - d) If Regional Crown Counsel or a Director are concerned about any issue arising from the above, the matter should be referred to the ADAG for review.**

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- e) In reviewing each situation to determine whether an actual, perceived or potential conflict of interest exists, Regional Crown Counsel or a Director may refer the matter to the Law Society for advice.
 - f) It is the responsibility of Crown Counsel to ensure that conflicts and perceptions of conflict are avoided.
3. Recognizing the importance of Crown Counsel’s involvement in the community, whether enhancing the public’s understanding of the criminal justice system or otherwise, volunteer work in the community not involving the practice of law is encouraged.
 4. When Crown Counsel speaks publicly as a private citizen or on behalf of an organization which is not the Criminal Justice Branch (such as the Canadian Bar Association), Crown Counsel must make it clear that his or her statements are not being made as Crown Counsel.
 5. The Branch recognizes that a Director of the British Columbia Crown Counsel Association or designate may speak publicly on the Association’s behalf as the exclusive bargaining agent for all Crown Counsel under section 4.1 of the *Crown Counsel Act*.
 6. Crown Counsel who are considering seeking public office must obtain prior written approval from the Deputy Attorney General in accordance with Public Service Directive 4.5 setting out the Terms and Conditions of employment for Legal Counsel. Regional Crown Counsel or a Director will seek this approval through the Assistant Deputy Attorney General.
 7. The standards of conduct concerning the need to avoid conflict of interest in exercising a prosecutorial function apply to ad hoc counsel in their role as Crown Counsel (see policy ADH 1).
 8. If Crown Counsel have any concerns about any of these issues and what course of action to take, they should consult their manager. For Crown Counsel, this includes Regional Crown Counsel or their Director.

Policy Directive 5.4 of the B.C. Public Service Agency includes the following standards of conduct which apply to all persons appointed under the *Public Service Act*:

1. Employees who fail to comply with these standards may be subject to disciplinary action up to and including dismissal.
2. The Government of British Columbia believes that the highest standards of conduct among public service employees are essential to maintain and enhance the public’s trust and confidence in the public service.

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- 3. The honesty and integrity of the public service demands that the impartiality of employees, in the conduct of their duties, be above suspicion. Employees' conduct should instill confidence and trust and must not bring the public service into disrepute.**
 - 4. A conflict of interest occurs when an employee's private affairs or financial interests are in conflict, or could result in a perception of conflict, with the employee's duties or responsibilities in such a way that:
 - a) the employee's ability to act in the public interest could be impaired; or**
 - b) the employee's actions or conduct could undermine or compromise:
 - the public's confidence in the employee's ability to discharge work responsibilities; or**
 - the trust that the public places in the public service.******
- 5. While the government recognizes the right of public service employees to be involved in activities as citizens of the community, conflict must not exist between employees' private interests and the discharge of their public service duties. Upon appointment to the public service, employees must arrange their private affairs in a manner that will prevent conflicts of interest, or the perception of conflicts of interest, from arising.**
 - 6. Employees who find themselves in an actual, perceived or potential conflict of interest must disclose the matter to the designated ministry contact, their supervisor or manager. Employees who fail to disclose may be subject to disciplinary action up to and including dismissal.**
 - 7. Confidential information that employees receive through their employment must not be divulged to anyone other than persons who are authorized to receive the information. Employees who are in doubt as to whether certain information is confidential must ask the appropriate authority before disclosing it. Caution and discretion in handling confidential information extends to disclosure made inside and outside of government and continues to apply after the employment relationship ceases.**
 - 8. Confidential information that employees receive through their employment must not be used by an employee for the purpose of furthering any private interest, or as a means of making personal gains.**
 - 9. Public service employees are free to comment on public issues but must exercise caution to ensure, that by doing so, they do not jeopardize the perception of impartiality in the performance of their duties. For this reason, care should be taken in making comments or entering into public debate regarding their ministry policies. Public service employees must not use their position in government to lend weight to the public expression of their personal opinions.**

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DISCUSSION

Policy Directive 5.4 of the B.C. Public Service Agency entitled “Standards of Conduct for Public Service Employees” (appendix A) applies to all persons appointed under the *Public Service Act*. Therefore, it applies to all employees of the Criminal Justice Branch. This policy sets out additional standards of conduct for Crown Counsel and articulated students, which are outlined on pages 1 and 2.

The professional conduct handbook of the Law Society of British Columbia addresses, in chapter six, rule 7.1 to 7.9, conflict of interest where government lawyers transfer into or out of government service.

When Crown Counsel is approached to speak about an issue as a private citizen or on behalf of an organization which is not the Criminal Justice Branch, Crown Counsel should be aware that it may be their status as Crown Counsel which has motivated the request. In certain situations it may be impossible to separate the statement being made from the status as Crown Counsel, even though Crown Counsel attempt to clarify that his or her statements are not being made as Crown Counsel.

In all matters involving statements by Crown Counsel to the public or the media, the Branch Communications Counsel is available to provide advice or assistance if requested.

APPENDIX A

Standards of Conduct for Public Service Employees Policy Directive 5.4

Objective	The objective of this policy directive is to describe the standards of conduct required of all employees.
Application and Scope	This policy directive applies to all persons appointed under the Public Service Act .
Principles	The Government of British Columbia believes that the highest standards of conduct among public service employees are essential to maintain and enhance the public's trust and confidence in the public service.
Mandatory Requirements	
General	The requirement to comply with these standards of conduct is a condition of employment. Employees who fail to comply with these standards may be subject to disciplinary action up to and including dismissal. Employees should contact their ministry personnel office for advice and assistance on the interpretation or application of this policy directive.
Loyalty	<p>Public service employees have a duty of loyalty to the government as their employer. The duty of loyalty, committed to in the Oath of Employment, requires public service employees, irrespective of political preferences or affiliations, to serve the government of the day to the best of their ability.</p> <p>The honesty and integrity of the public service demands that the impartiality of employees, in the conduct of their duties, be above suspicion. Employees' conduct should instil confidence and trust and must not bring the public service into disrepute.</p>
Confidentiality	<p>Confidential information that employees receive through their employment must not be divulged to anyone other than persons who are authorized to receive the information. Employees who are in doubt as to whether certain information is confidential must ask the appropriate authority before disclosing it. Caution and discretion in handling confidential information extends to disclosure made inside and outside of government and continues to apply after the employment relationship ceases.</p> <p>Confidential information that employees receive through their employment must not be used by an employee for the purpose of furthering any private interest, or as a means of making personal</p>

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	gains. See the Conflicts of Interest section of this policy directive for details.
Public Comments	Public service employees are free to comment on public issues but must exercise caution to ensure, that by doing so, they do not jeopardize the perception of impartiality in the performance of their duties. For this reason, care should be taken in making comments or entering into public debate regarding their ministry policies. Public service employees must not use their position in government to lend weight to the public expression of their personal opinions.
Political Activity	<p>Public service employees are free to participate in political activities including belonging to a political party, supporting a candidate for elected office and actively seeking elected office. Employees' political activities, however, must be clearly separated from activities related to their employment.</p> <p>If engaging in political activities, employees must be able to retain the perception of impartiality in relation to their duties and responsibilities. Employees must not engage in political activities during working hours or use government facilities, equipment or resources in support of these activities.</p> <p>Partisan politics at the local, provincial or national levels are not to be introduced into the workplace. This does not apply to informal private discussions among co-workers.</p>
Service to the Public	Public service employees must provide service to the public in a manner that is courteous, professional, equitable, efficient and effective. Employees must be sensitive and responsive to the changing needs, expectations and rights of a diverse public while respecting the legislative framework within which service to the public is provided.
Workplace Behaviour	<p>The conduct and language of public service employees in the workplace must meet acceptable social standards and must contribute to a positive work environment. An employee's conduct must not compromise the integrity of the public service.</p> <p>All public service employees have the right to expect, and the responsibility to create, a workplace where all employees are safe. Violence in the workplace is unacceptable and will not be tolerated. Violence includes any attempted or actual exercise by any person, including another worker, of any physical force so as to cause injury to a worker and includes any express threat of violence.</p> <p>Employees must report any incident of violence directed towards themselves or their co-workers. Any employee hearing a threat, including a threat to a co-worker, must report that threat if he or she has reasonable cause to believe that the threat is serious. Any incident or threat of violence in the workplace must be addressed immediately.</p>

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Employees are to treat each other in the workplace with respect and dignity and must not engage in discrimination or harassment based on any of the prohibited grounds covered by the [Human Rights Code](#). The prohibited grounds are race, colour, ancestry, place of origin, religion, family status, marital status, physical disability, mental disability, sex, sexual orientation, age, political belief or conviction of a criminal or summary offence unrelated to the individual's employment. Employees and supervisors should refer to Personnel Management Policy Directive 3.1, Human Rights in the Workplace - Discrimination and Harassment, for additional information on appropriate workplace behaviour.

Conflicts of Interest

A conflict of interest occurs when an employee's private affairs or financial interests are in conflict, or could result in a perception of conflict, with the employee's duties or responsibilities in such a way that:

- the employee's ability to act in the public interest could be impaired; or
- the employee's actions or conduct could undermine or compromise:
 - the public's confidence in the employee's ability to discharge work responsibilities, or
 - the trust that the public places in the public service.

While the government recognizes the right of public service employees to be involved in activities as citizens of the community, conflict must not exist between employees' private interests and the discharge of their public service duties. Upon appointment to the public service, employees must arrange their private affairs in a manner that will prevent conflicts of interest, or the perception of conflicts of interest, from arising.

Employees with questions regarding interpretation of the policy may discuss them with the designated ministry contact. Employees who find themselves in an actual, perceived or potential conflict of interest must disclose the matter to the designated ministry contact, their supervisor or manager. Employees who fail to disclose may be subject to disciplinary action up to and including dismissal.

Examples of conflicts of interest include, but are not limited to, the following:

- an employee uses government property or the employee's position, office or government affiliation to pursue personal interests;
- an employee is in a situation where the employee is under obligation to a person who might benefit from or seek to gain special

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consideration or favour;

- an employee, in the performance of official duties, gives preferential treatment to an individual, corporation or organization, including a non-profit organization, in which the employee, or a relative or friend of the employee, has an interest, financial or otherwise;
- an employee benefits from, or is reasonably perceived by the public to have benefited from, the use of information acquired solely by reason of the employee's employment;
- an employee benefits from, or is reasonably perceived by the public to have benefited from, a government transaction over which the employee can influence decisions (for example, investments, sales, purchases, borrowing, grants, contracts, regulatory or discretionary approvals, appointments);
- an employee requests or accepts from an individual, corporation or organization, directly or indirectly, a personal gift or benefit that arises out of their employment in the public service, other than:
 - the exchange of hospitality between persons doing business together,
 - tokens exchanged as part of protocol,
 - the normal presentation of gifts to persons participating in public functions, or
 - the normal exchange of gifts between friends.
- an employee solicits or accepts gifts, donations or free services for work-related leisure activities other than in situations outlined above.

Allegations of Wrongdoing

Employees have a duty to report any situation that they believe contravenes the law, misuses public funds or assets, or represents a danger to public health and safety or a significant danger to the environment. Employees can expect such matters to be treated in confidence, unless disclosure of information is authorized or required by law (for example, the Freedom of Information and Protection of Privacy Act). Employees will not be subject to discipline or reprisal for bringing forward to a deputy minister, in good faith, allegations of wrongdoing in accordance with this policy directive.

Employees must report their allegations or concerns as follows:

- members of the BCGEU must report in accordance with Article 32.13;
- PEA members must report in accordance with Article 36.12;
- other employees must report, in writing, to their deputy minister who will acknowledge receipt of the submission, investigate the matter and respond in writing within 30 days after receiving the employee's submission. Where an allegation involves the deputy minister, the employee must forward the allegation to the Deputy Minister to the Premier.

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	<p>Employees must report a safety hazard or unsafe condition or act in accordance with the provisions of the WCB Occupational Health and Safety Regulations.</p> <p>Where an employee believes that the matter has not been resolved by the deputy minister, the employee may then refer the allegation to the appropriate authority. If the employee decides to pursue the matter further then:</p> <ul style="list-style-type: none"> • allegations of illegal activity must be referred to the police; • allegations of a misuse of public funds must be referred to the Auditor General; • allegations of a danger to public health must be brought to the attention of health authorities; and • allegations of a significant danger to the environment must be brought to the attention of the Deputy Minister, Ministry of Water, Land and Air Protection.
Legal Proceedings	<p>Employees must not sign affidavits relating to facts that have come to their knowledge in the course of their duties for use in court proceedings unless the affidavit has been prepared by a lawyer acting for government in that proceeding or unless it has been approved by a ministry solicitor in the Legal Services Branch, Ministry of Attorney General and Minister Responsible for Treaty negotiations. In the case of affidavits required for use in arbitrations or other proceedings related to employee relations, the Labour Relations Branch, BC Public Service Agency, will obtain any necessary approvals. Employees are obliged to cooperate with lawyers defending the Crown's interest during legal proceedings.</p> <p>A written opinion prepared on behalf of government by any legal counsel is to be treated as subject to solicitor/client privilege and is, therefore, confidential. Such an opinion is not to be released to persons outside the public service without prior written approval by the Legal Services Branch and/or the Criminal Justice Branch, Ministry of Attorney General and Minister Responsible for Treaty Negotiations.</p>
Working Relationships	<p>Employees who are direct relatives or who permanently reside together may not be employed in situations where:</p> <ul style="list-style-type: none"> • a reporting relationship exists where one employee has influence, input or decision-making power over the other employee's performance evaluation, salary, premiums, special permissions, conditions of work and similar matters; or • the working relationship affords an opportunity for collusion between the two employees that would have a detrimental effect on the Employer's interest. <p>The above restriction on working relationships may be waived</p>

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	provided that the deputy minister is satisfied that sufficient safeguards are in place to ensure that the Employer's interests are not compromised.
Personnel Decisions	<p>Employees are to disqualify themselves as participants in personnel decisions when their objectivity would be compromised for any reason or a benefit or perceived benefit could accrue to them.</p> <p>For example, employees are not to participate in staffing actions involving direct relatives or persons living in the same household.</p>
Outside Remunerative and Volunteer Work	<p>Employees may engage in remunerative employment with another Employer, carry on a business, receive remuneration from public funds for activities outside their position or engage in volunteer activities provided it does not:</p> <ul style="list-style-type: none"> • interfere with the performance of their duties as a public service employee; • bring the government into disrepute; • represent a conflict of interest or create the reasonable perception of a conflict of interest; • appear to be an official act or to represent government opinion or policy; • involve the unauthorized use of work time or government premises, services, equipment or supplies to which they have access by virtue of their public service employment; and • gain an advantage that is derived from their employment as a public service employee. <p>Employees who are appointed as directors or officers of Crown corporations are not to receive any additional remuneration beyond the reimbursement of appropriate travel expenses except as approved by the Lieutenant Governor in Council.</p>
Responsibilities	
Ministries	<p>Deputy Ministers are responsible for:</p> <ul style="list-style-type: none"> • ensuring that the provisions of this policy directive are met; • ensuring that employees are advised of the required standards of conduct and understand the consequences of non-compliance; • designating a ministry contact for matters related to standards of conduct; • ensuring that all possible breaches of the policy directive are thoroughly investigated; • based on the results of an investigation, ensuring that appropriate

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action is taken;

- ensuring that confidential information is handled with caution and discretion;
- waiving the provision on working relationships under the circumstances indicated; and
- delegating authority and responsibility, where applicable, to apply this policy directive within their organization.

Supervisors and managers are responsible for:

- advising staff on standards of conduct issues;
- ensuring that confidential information is handled with caution and discretion; and
- assisting staff in the resolution of conflicts of interest.

Employees are responsible for:

- fulfilling their assigned duties and responsibilities, objectively and loyally, regardless of the party or persons in power and regardless of their personal opinions;
- disclosing and resolving conflicts of interest situations in which they find themselves;
- maintaining appropriate workplace behaviour; and
- checking with their designated ministry contact, supervisor, manager or personnel advisor when they are uncertain about any aspect of this policy directive, including:
 - the appropriateness of receiving outside remuneration,
 - potential, perceived or actual conflicts of interest, and
 - releasing any information that may be confidential.

Legislative Authorities

[Public Service Act](#)

[Human Rights Code](#)

[Freedom of Information and Protection of Privacy Act](#)

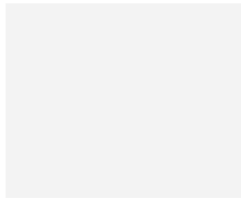
[Workers Compensation Act](#)

Occupational Health and Safety Regulations

Other Authorities and References

- B.C. Government and Service Employees' Union Master Agreement, Article 1.8, Article 32
- Nurses Master and Component Agreements, Article 30

Standards of Conduct – Conflict of Interest	Page 12 of 12	STA 1
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- The Professional Employees Association Master and Subsidiary Agreements, Article 36
- Personnel Management Policy, Human Rights in the Workplace - [Discrimination](#) and Sexual Harassment

Cancellations

Personnel Management Policies and Procedures Manual, Directive 1.3, Standards of Conduct

Effective Date

September 22, 2003
Administered by the Policy and Programs Branch

□

□



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

ARCS/ORCS FILE NUMBER: 56160-00	EFFECTIVE DATE: March 15, 2004	POLICY CODE: TRA 1
SUBJECT: Transfer (Interprovincial) of Probation Orders and Conditional Sentence Orders		CROSS-REFERENCE: Practice Directive #4

Policy

The requisite consent of the Attorney General to the inter-provincial transfer of a probation order under section 733 of the *Criminal Code* or a conditional sentence order under section 742.5, may be given by every Crown Counsel (see Practice Directive #4). The probation officer should provide the necessary documents to Crown Counsel (see below).

Discussion

Practice Directive #4 describes the authority of every Crown Counsel to give “the consent of the Attorney General” for certain provisions which include sections 733 and 742.5.

Procedure / Practice

The local probation officer has the responsibility for preparing the following documents, as appropriate, and providing them to Crown Counsel:

1. a form entitled “[Transfer of Probation Order](#)” or “[Transfer of a Conditional Sentence Order](#)” (see attached) which will provide the consent of the Attorney General when signed by Crown Counsel as “Agent of the Attorney General”;
2. a letter setting out where the accused is to reside, the name of the supervising probation officer in that place, and the name and address of the court of equivalent jurisdiction in the other province; and
3. a copy of the existing probation order or conditional sentence order.

The probation officer will take the signed transfer document and make the application before the applicable judge. When the order has been made, the court administrator will transmit the documentation to the court in the other province.

Transfer (Interprovincial) of Probation Orders and Conditional Sentence Orders	Page 2 of 3	TRA 1
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TRANSFER OF PROBATION ORDER

CONSENT OF THE ATTORNEY GENERAL OF BRITISH COLUMBIA:

I hereby consent to the Probation Order made by the _____ on the _____ day of _____, _____ at _____ in the Province of British Columbia, against _____, a copy of which is annexed hereto, being transferred to _____ in the Province of _____.

DATED this _____ day of _____, _____, at the _____ in the Province of British Columbia.

Agent of the Attorney General

BEFORE

) On the _____ day of
)
) _____, _____
)
)

ORDER

UPON THE APPLICATION OF _____, Probation Officer, and with the foregoing consent of the Attorney General of British Columbia, the Probation Order made in the _____ in the Province of British Columbia, is hereby transferred to the _____ in the Province of _____.

Judge or Justice

Transfer (Interprovincial) of Probation Orders and Conditional Sentence Orders	Page 3 of 3	TRA 1
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Section 742.5(1)

CANADA
PROVINCE OF BRITISH COLUMBIA

TRANSFER OF A CONDITIONAL SENTENCE ORDER

CONSENT OF THE ATTORNEY GENERAL
OF BRITISH COLUMBIA

I hereby consent to the Conditional Sentence Order made by the _____
 _____ on the
 _____ day of _____, _____ at _____ in the Province of British
 Columbia, against _____, a copy of which is annexed hereto, being
 transferred to _____ in the Territorial Division of
 _____. DATED this _____ day of _____, _____, at the
 _____ in the Province of British Columbia.

Agent of the Attorney General

BEFORE _____) On the _____ day of
 _____) _____,
 _____) _____

ORDER

UPON THE APPLICATION of Prosecutor and with the foregoing consent of the Attorney General of
 British Columbia, the Conditional Sentence Order made in the _____
 _____ in the Province of
 British Columbia is hereby transferred to the _____ in the
 Territorial Division of _____.

JUDGE

ATTACHED:

YES NO

- Change of Personal Information form.
- Written permission of the supervisor to re-locate to another Province or Territory.



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

ARCS/ORCS FILE NUMBER: 56300-00	EFFECTIVE DATE: September 15, 2004	POLICY CODE: TRI 1
SUBJECT: Trial Without Jury – Section 469 Offences (e.g. Murder) – Consent of Attorney General		CROSS-REFERENCE: Practice Directive #4

POLICY

It is Regional or Deputy Regional Crown Counsel who provides the requisite consent of the Attorney General to trial without jury (by judge alone) for murder and other offences listed in section 469 of the *Criminal Code* (see Practice Directive #4).

Trial by jury allows public participation in the trial process and enhances public confidence in the administration of justice; however, in appropriate cases, trial by judge alone may lead to a more efficient and orderly trial process.

The advantages of trial by judge alone in certain cases include:

- elimination of the need for complex jury instructions and resulting appeals, especially where there are difficult legal issues, for example involving mental disorder
- reduction in the number of mistrials arising from pre-verdict publicity or the inadvertent leading of prejudicial evidence
- a more efficient trial process which allows the admission of voir dire evidence without the necessity to repeat it and provides more flexibility in adjournments to accommodate the attendance of witnesses
- the availability of Reasons for Judgment explaining the verdict

In deciding whether to seek the consent of the Attorney General, Crown Counsel should consider the above-mentioned factors on a case-by-case basis and keep in mind the presumption in favour of trial by jury except where trial by judge alone will provide a greater benefit to the administration of justice.

When Crown Counsel is faced with an application by the accused for a change of venue with respect to an offence listed in section 469, consideration should be given to whether the consent of the Attorney General to trial by judge alone would address the concerns about the ability of the accused to have a fair trial in the community where the offence is alleged to have taken place.

Trial Without Jury – Section 469 Offences (e.g. Murder) – Consent of Attorney General	Page 2 of 2	TRI 1
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DISCUSSION

A change of venue may be ordered where there has been undue or untimely publicity surrounding the commission of the offence for which the accused is being tried, resulting in a reasonable probability of partiality or prejudice against the accused on the part of prospective jurors notwithstanding the various mechanisms which exist to protect the accused's right to a fair trial.



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

ARCS/ORCS FILE NUMBER: 125-20/VCR1	EFFECTIVE DATE: May 20, 2003	POLICY CODE: VIC 1
SUBJECT: Victims of Crime		CROSS-REFERENCE: DIS 1 RES 1

POLICY

Providing assistance to victims of crime is an important function of justice system personnel. Crown Counsel or support staff should ensure that victims are made aware of available community and police-based victim assistance programs.

Depending on the circumstances of the case, Crown Counsel prepare victims for court and provide such information as appropriate about the prosecution to victims and their families. In very serious cases, Crown Counsel are encouraged to meet with victims and their families to assist them to better understand the prosecution process.

DISCUSSION

1. *Victims of Crime Act* Obligations

Victim Impact Statements

Under section 4 of the *Victims of Crime Act*, Crown Counsel must ensure that victims have a reasonable opportunity to have the impact of the offence brought to the attention of the Court. The victim should be sent a victim impact package for completion of a Victim Impact Statement.

Only information which is admissible under the rules that apply in sentencing hearings should be presented to the court. Examples are: tendering a Victim Impact Statement or other similar document, reading from or summarizing that document, or presenting the testimony of the victim or other witnesses.

Where a victim wishes to submit a Victim Impact Statement or other victim impact information and that statement or information is not available by the time of sentencing, Crown Counsel may advise the Court of the situation, and where appropriate, apply for an adjournment.

Providing Information to Victims on Request

Subject to the *Youth Criminal Justice Act* and the requirement not to prejudice an investigation or prosecution, where a victim provides a request, Sections 6(1) (e) and (f) of the *Victims of Crime Act* impose a continuing responsibility to update the victim on court events likely to affect the final disposition, sentence or bail status of the accused, as well as the outcome of each of those court events.

Where there are particular concerns for the safety of the victim or there is a request by the victim for ongoing information, Crown Counsel should take reasonable steps to ensure that the victim is notified, either directly by administrative support staff or through a victim assistance program, of any changes in the course of the prosecution, any future court dates, and any bail conditions.

Information to be released is restricted to that outlined in s. 6(b), (c), (e) and (f) of the *Victims of Crime Act* and information which would not be apparent from the Court appearance reason on the court list.

Where there is an appeal to the Court of Appeal, a copy of the request noted above should be sent to the Branch Criminal Appeals and Special Prosecutions office and the victim or designate notified of the appeal.

If the accused is found not criminally responsible by reason of mental disorder (unless the accused is discharged absolutely), a copy of the request noted above should be forwarded along with the required report to Crown Counsel, Review Board.

Providing Information to the Victim about the *Victims of Crime Act*

Police are designated as having the primary responsibility under s.5 of the *Victims of Crime Act* which requires that justice system personnel must offer a victim general information concerning the structure and operations of the justice system, Victims Services, the *Freedom of Information and Protection of Privacy Act*, the *Criminal Injuries Compensation Act* and the *Victims of Crime Act*.

If aware that a victim has not been offered the required information, Crown Counsel or support staff will provide the standard written information prepared by the Ministry of Attorney General for that purpose.

Definition of Victim

“Victim” is defined by section 1 of the *Victims of Crime Act*. The Criminal Justice Branch interprets this definition as follows: “victim” is any individual who, as a result of an offence pursuant to a provincial or federal statute has suffered:

- actual or threatened physical contact

- an adverse emotional impact
- a threat to their physical, emotional, psychological or financial integrity
- an economic loss

The definition includes the spouse, sibling, child or parent of the victim, or persons who in fact (although not in law), stand in such relationships to the victim, and who suffer significant emotional trauma as a result of the offence being committed against the victim.

2. General

Applications for Production of Records Relating to a Victim

Where there has been an application by the defence for production of a record relating to a victim or witness and the victim or witness requests the opportunity to retain a lawyer, Crown Counsel will, where necessary, apply for an adjournment to facilitate that request. Further, in appropriate cases, Crown Counsel will refer the victim to the local office of the Legal Services Society.

The Ministry of Attorney General will fund independent legal advice and representation for all complainants and witnesses in sexual offence cases where an application is made under section 278.3 of the *Criminal Code*, regardless of the financial status of that person.

Assistance to Victims on Appeal to the Court of Appeal

As soon as practicable after the decision has been made by the Criminal Appeals and Special Prosecutions office (hereinafter called CASP) to launch an appeal, or after CASP receives the appellant's Notice of Appeal, the following apply where there has been a written request by the victim for information pursuant to section 6 of the *Victims of Crime Act*:

1. CASP will, if appropriate, contact the victim to determine the extent of the victim's interest in receiving information or attending proceedings.
2. CASP should notify the victim of the date of any application for bail pending appeal to enable the victim to provide any comments relating to bail.
3. CASP will notify the victim of the outcome of any bail application, and if appropriate, provide a copy of the order.
4. CASP will notify the victim of the date of the appeal and of any appearance that is likely to result in a final disposition of the appeal or a change in the appellant's bail status, driving privileges or obligation to adhere to the terms

of a probation order. In addition, where a new trial is ordered, CASP will notify the victim of this fact and provide the victim with a means of contacting a Crown Counsel office in the region where the new trial will be prosecuted.

Questions relating to eligibility for parole or temporary absences, or any other corrections-related matters, should be referred to the local parole or probation office or the institution where the offender is imprisoned.

Where personnel from police-based or specialized community-based victim assistance programs have provided services to victims, the CASP office where appropriate and with written authorization from the victim to do so, will provide information directly to the police-based or specialized community-based victim assistance program.



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

ARCS/ORCS FILE NUMBER: 125-20/VCR1	EFFECTIVE DATE: November 18, 2005	POLICY CODE: VIC 2
SUBJECT: Victim Assistance Programs – Providing Information to		CROSS-REFERENCE: : DIS 1.1 VIC 1 Practice Bulletin # 65

POLICY

Victim assistance programs play a significant role in offering a positive service to victims. Crown Counsel should make themselves aware of the local programs which are available.

The Branch encourages co-operation with victim assistance programs and recognizes the importance of providing them with information which is necessary to assist the victim, subject to any restrictions under the *Youth Criminal Justice Act* or under court orders of non-publication.

Generally, the consent of the victim given to a victim assistance program should be sufficient for Crown Counsel to provide information to the program; however, if there is any uncertainty about the matter, Crown Counsel should consider obtaining an assurance that written consent has been given. Generally the victim assistance program will obtain that written consent; however, where Crown Counsel wish to expedite the matter, the consent form attached as appendix A may be used.

With the agreement of the victim, Crown Counsel may provide a victim assistance program with the victim's contact information.

Criminal Justice Branch files are confidential, and personnel from victim assistance programs should not be given direct access to Branch files. Except for the victim's own statement (which can be given with consent of the victim), Reports to Crown Counsel should not be given to victim assistance programs or anyone else providing assistance to victims, and all persons making requests for copies of Reports to Crown Counsel should be directed to the police or Headquarters (see policy DIS 1.1).

DISCUSSION

The Branch Intranet site, as well as the Internet, contains a list of victim assistance programs in British Columbia.

Once a prosecution has concluded, including any appeals, the *Freedom of Information and Protection of Privacy Act* applies to requests for information contained in Crown Counsel files. See the Practice Bulletin #65.

APPENDIX A



REQUEST FOR VICTIM ASSISTANCE

Ministry of Attorney General

Case: R. v. _____ File Number: _____ Crown Counsel Office Location: _____ Phone: _____ Fax: _____
Victim Serving Agency: _____ Phone: _____ Fax: _____

I, _____, am requesting my contact information be
(name of requester)
 provided to _____
(a victim service organization)

I, _____, also consent to Crown Counsel providing
(name of requester)
 information to _____ that is relevant to providing victim assistance.
(victim service organization)

VICTIM CONTACT INFORMATION*
Name of Victim: _____ Name of Parent or Guardian: _____ Address: _____ Phone Number(s): _____ Alternate contact: (optional) _____ Phone: _____ Notes: _____

**I understand that I must advise the above Victim Service Agency of any change in my address or phone number in order to continue to receive the information requested above.*

I confirm that I am not receiving the above service from another Victim Service Agency and that should I begin to do so, I will immediately advise the Victim Serving Agency listed above.

(signature of victim)

(date)



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

ARCS/ORCS FILE NUMBER: 56420-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: WAI 1
SUBJECT: Waiver of Criminal Charges Within Province		CROSS-REFERENCE: APP 1 APP 1.1 WAI 1.1

POLICY

Administrative Crown Counsel or delegate in the Crown Counsel office where the charge originated should have a Request for Waiver form signed by the accused, indicating an intention to plead guilty, before deciding whether to approve waiver of a charge to another location within the province.

Waiver should not be approved unless the accused has some valid connection with the location to which the charge is proposed to be waived, for instance, where the accused is in custody at that location, lives at or near that location, or wants to dispose of other charges arising from that location. This is to prevent accused persons from requesting waiver to avoid media attention or select a particular court before which to enter a guilty plea.

Waiver should not be approved if the public interest requires that the prosecution remain in the community where the offence was committed.

Where the accused has outstanding charges in different locations within the Province, waiver may not be appropriate unless the accused agrees to waive all of the charges.

PROCEDURE

“Receiving Crown Counsel” means Crown Counsel in the location to which the charge may be waived for guilty plea.

“Sending Crown Counsel” means Crown Counsel in the office where the charge originated.

Accused in Custody

Where the accused is in custody, Crown Counsel must take all reasonable steps to ensure that the matter is dealt with as promptly as possible.

Request for Waiver by the Accused

When the accused requests waiver, the accused must sign a Request for Waiver form and deliver it to Crown Counsel. Office personnel in the receiving Crown Counsel office or assisting Court Registry staff, should do the following:

1. Obtain current addresses (mailing and residential) and phone numbers, as well as the date of birth of the accused. If possible, a fax number, e-mail address, place of employment and any aliases used by the accused should also be obtained.
2. Check the CPIC, JUSTIN and PCF (CORNET) systems for outstanding charges. It is desirable that all outstanding charges should be dealt with at the same time. Where charges to which the accused has not signed a Request for Waiver are identified, a remand may be necessary so that the accused can consider whether an amended Request for Waiver form will be signed indicating an intention to plead guilty to the additional charges.
3. Obtain a court date from the Court Registry at the receiving location. The date for that court appearance should allow enough time for the waiver process to be completed, including approval of the waiver by Administrative Crown Counsel or delegate in the sending Crown Counsel office, taking into account time factors such as whether the accused is in custody.
4. Transmit the Request for Waiver form, containing the above information, to the sending Crown Counsel office.

Approval of Waiver by Sending Crown Counsel

1. It is the responsibility of sending Administrative Crown Counsel or delegate to review the Request for Waiver form and other information sent by receiving Crown Counsel, and then make the decision as to whether to approve waiver according to the guidelines in this policy.
2. If sending Crown Counsel decides not to approve waiver, they should promptly advise the receiving Crown Counsel office and the accused.
3. The file materials should be provided to the receiving location at least one week before the proposed appearance date.
4. Sending Crown Counsel should ensure that the file sent to the receiving location includes a current criminal record and that the file material adequately sets out the circumstances of the offence.

5. Sending Crown Counsel should ensure that:
 - the requirements of the *Victims of Crime Act* have been met
 - approval of waiver is made conditional upon the accused supplying fingerprints and photographs to the police, if appropriate
 - all CCFM (Criminal Case Flow Management) forms which have been completed are included
 - where a failure to appear charge is waived, the circumstances and consequences of the non appearance are described
6. Sending Crown Counsel should determine whether there are any outstanding warrants for the accused and ensure they are properly dealt with prior to waiver.
7. Sending Crown Counsel should ensure that the accused has a scheduled appearance date in the sending location for a time after the scheduled appearance date in the receiving location, to allow a warrant to be obtained in the sending location if the accused fails to appear at the receiving location. That appearance date should be cancelled once the accused has appeared in the receiving location.

Procedure to be Followed by Receiving Crown Counsel After Consent to Waiver

1. If the accused fails to appear at the receiving location, the Crown file and the Court Registry file should be returned to the sending location.
2. Where the accused appears as scheduled at the receiving location, receiving Crown Counsel should ensure that the sending Crown Counsel office is advised.
3. Having appeared at the receiving location, if the accused subsequently fails to appear, receiving Crown Counsel should request a warrant and should ensure that the Crown Counsel file and the Court Registry file are returned to the sending location, with the warrant.
4. If the accused appears at the receiving location but refuses to plead guilty, receiving Crown Counsel should request that a date be fixed for the accused to appear in custody or on appropriate bail conditions at the sending location, and the above files should be returned to that location. Three weeks should be allowed for that court appearance unless the accused is remanded in custody.
5. Where requested, Crown Counsel should advise sending Crown Counsel of the disposition of the charge.
6. Where an accused is in custody, receiving Crown Counsel is responsible for arranging the attendance of the accused.

Responsibility for Making Prosecutorial Decisions

Any unusual circumstances or considerations, and any position that sending Crown Counsel wants receiving Crown Counsel to consider, should be outlined in writing.

Where any agreement has been reached between sending Crown Counsel and the accused, sending Crown Counsel must make it clear to the accused that the agreement is conditional upon acceptance by receiving Crown Counsel (this may include the Initial Sentencing Position – ISP). A memorandum confirming and describing any agreement should be sent with the file.

Except for cases clearly falling within the rule in Kienapple, receiving Crown Counsel must not stay, withdraw or accept pleas to lesser offences without the approval of sending Crown Counsel.

If receiving Crown Counsel does not want to accept the waiver or Initial Sentencing Position, and sending Crown Counsel still wants the matter to proceed in the receiving location, the matter should be referred to the respective Regional or Deputy Regional Crown Counsel for those locations, for resolution.

Where a sentence imposed on a waived charge appears markedly unfit, receiving Crown Counsel should consider an appeal and should communicate this consideration to sending Crown Counsel who should make the decision whether or not to recommend appeal of the sentence (see policies APP 1 and APP 1.1).



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

ARCS/ORCS FILE NUMBER: 55340-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: WAI 1.1
SUBJECT: Waiver of Criminal Charges Between Provinces		CROSS-REFERENCE: WAI 1 Practice Directive #4

POLICY

When the Attorney General of another province has consented to waive charges to British Columbia under section 478(3) of the *Criminal Code*, Crown Counsel in British Columbia have exclusive conduct of the case, including decisions regarding appeal. Crown Counsel in British Columbia may consult Crown Counsel in the sending jurisdiction.

When Crown Counsel in British Columbia are considering a request to waive charges to another province under section 478(3) of the *Criminal Code*, the following considerations apply:

- 1. Waiver should not be approved unless the accused has some valid connection with the location to which the charge is proposed to be waived, for instance, where the accused is in custody at that location, lives at or near that location, or wants to dispose of other charges arising from that location. This is to discourage accused persons from requesting waiver to avoid media attention or select a particular court before which to enter a guilty plea.**
- 2. Waiver should not be approved if there is a need to keep the prosecution in the community where the offence was committed.**
- 3. Where the accused has outstanding charges in different locations within the Province, waiver may not be appropriate unless the accused agrees to waive all of the charges.**

DISCUSSION

Heads of Prosecution in 2002 agreed that:

When a charge is waived from one province to another, Crown Counsel in the receiving jurisdiction has exclusive conduct of the case, including any decision whether an appeal should be taken. Crown Counsel in the receiving jurisdiction may consult Crown Counsel in the sending jurisdiction.

Under section 478(3) of the Criminal Code, the waiver of a charge to another province requires the consent of the Attorney General of the sending jurisdiction and a guilty plea by the accused. Under Practice Directive #4, the consent of the Attorney General may be given by any Crown Counsel.

PROCEDURE

The following applies to a request from an accused to waive BC charges to another province:

1. When a request for waiver is received, it should be forwarded to the Crown Counsel office where the charge originates. Provincial statute offences (e.g. *Motor Vehicle Act*) cannot be transferred outside of BC.
2. A check should be conducted via JUSTIN to determine if the accused has any additional charges outstanding in BC for which the accused has not signed a Request for Waiver. If there are other outstanding charges, the Crown Counsel office where those charges are located should be contacted to see if they have received a Request for Waiver. If not, the accused should be contacted and advised of the additional charges.
3. After waiver, the file should be brought forward by the sending Crown Counsel office to ensure that a final disposition has occurred.



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

ARCS/ORCS FILE NUMBER: 1120-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: WIT 1
SUBJECT: Witness Fees – Expert and Professional		CROSS-REFERENCE:

POLICY

It is the policy of the Criminal Justice Branch to obtain expert and professional witnesses when an opinion on testimony is required from a source recognized as having a particular expertise or skill by reason of education, training or experience.

Where Crown Counsel concludes that an expert or professional witness is necessary and the cost factor is significant, approval should be obtained from Administrative Crown Counsel or Deputy Regional Crown Counsel.

Approval must be obtained from the Assistant Deputy Attorney General to pay an hourly rate in excess of the Fee Schedules or to pay any incidental expense not allowed by the Billing Guidelines.

Rates and Billing Guidelines:

Medical Expert Witnesses

Rates, guidelines and billing procedures for medical expert witnesses are outlined in Management Services Bulletin 02-04 (attached herein as appendix A).

Non-Medical Expert Witnesses

Rates, guidelines and billing procedures for non-medical expert witnesses are outlined in Management Services Bulletin 03-03 (attached herein as [appendix B](#)).

Enquiries regarding billing guidelines on the classification of an expert witness should be directed to the applicable regional Manager, Administrative Services.

APPENDIX A

MEDICAL-LEGAL MATTERS

GOVERNMENT EXPERT WITNESS FEES

Effective April 1, 2002, the following fees and guidelines apply to all ministries, boards and agencies of the Government of the Province of British Columbia

The Legal Services Society has also agreed to the same rate increases, however, although Legal Services agrees to these new rates for Legal Aid cases, they do not acknowledge the Medical Expert Witness Billing Guidelines. Therefore, it is advised that physicians working on LSS funded cases obtain prior agreement from defense counsel as to exactly when they will be called as an expert witness, to avoid any wasted unpaid time.

Preparation and Court Time (Per Hour):

- G.P.	166.00
- Specialist	194.00

Travel Time (Per Hour):

- G.P.	94.00
- Specialist	110.00

"General Practitioner", means a Physician who is not a specialist.

"Specialist" means a Physician who is a certificant or fellow of the Royal College of Physicians and Surgeons of Canada.

BILLING GUIDELINES -

1. Travel to Court

- a) Time starts when the Physician leaves home, office or hospital to go to Court.
- b) Time ends when the Physician arrives at the Court or Crown Counsel office or otherwise begins direct work on the case.
- c) If work on the case does not start until the day after travel, then travel time ends upon arrival at the hotel or at 1800 hours, whichever is later.

2. Return Travel

- a) Time starts at the end of Court proceedings or when no other services (e.g. discussions) are required from the physician.
- b) Time ends when the Physician arrives at home, office, hospital, etc.
- c) If the Physician is unable to return home the same day, then travel time ends at 1800 hours on the day that work on the case is finished and restarts the next morning at 0900 hours or upon leaving the hotel, whichever is earlier.
- d) If the Court schedule and travel arrangements are such that a physician is required to stay away from home over a weekend, then travel time up to 8 hours per day is billed for the weekend days, to the extent that the physician's time is not occupied with the case work over the weekend.

MEDICAL-LEGAL MATTERS – Continued

3. Court Time

- a) Court time includes all relevant professional activities, including preparation, interviews, discussions, testimony, listening to other testimony and associated waiting time.
- b) Court time starts when the physician arrives at the Court or Crown Counsel office or at 0900 hours if he/she had already traveled away from home on a prior day.
- c) Court time ends when Court ends or no other services are required, but continues to 1800 hours if further services are required next day, if the Physician has traveled out of town.
- d) Time for preparation work prior to arrival or during evenings or weekends is billed in addition to the above and for the actual time spent.
- e) If lunch is primarily social, then a one-hour lunch break is not billable, but time for a working lunch is billable.
- f) In the event that out of town travel is necessary, in respect of single day trips only, and where the combination of Court/preparation and travel are less than 8 billing hours, the balance up to 8 hours shall be billed as Court/preparation time.
- g) Where physicians are testifying in their home community, Court time shall be compensated at a minimum of 4 hours for the morning session and 4 hours for the afternoon session. Any Court time spent in excess of 4 hours in either the morning or afternoon session shall be paid at the appropriate fee.

4. Cancellations

- a) A cancellation is defined as a situation where the physician is informed that a previously arranged Court appearance is no longer required or is to be rescheduled for any reason including testimony not needed, Court scheduling changes and adjournments.
- b) Where the physician is given 48 hours (2 working days) notice of cancellation of a Court appearance, no compensation is payable.
- c) Where the cancellation notice is received less than 48 hours (2 working days) prior to scheduled Court appearance, the physician will be paid the lesser of:
 - i) the estimated fees otherwise payable if the physician had attended the Court (travel time and Court time); or
 - ii) 1) 8 hours Court time if cancellation occurs on the actual day of the arranged appearance; and
2) 6 hours Court time for any day cancelled with less than 24 hours notice;
and
3) 4 hours Court time for any day cancelled with between 24 and 48 hours notice.

5. Expenses

Expenses related to expert witness billing shall be in accordance with the rates established for "Group 2" (public service) employees. Such expenses may be claimed where the physician is required to attend court at a location more than 32km from his/her residence or where unusual road conditions exist which, for example, requires travel by ferry.

6. General

- a) In cases of uncertainty as to interpretation of the above guidelines, or where unusual circumstances or large amounts of time are expected to be required (especially regarding preparation activities), the Physician and Crown Counsel should clarify their expectations as early as possible.
- b) In the case of accused persons who are assessed by the Forensic Psychiatric Services Commission, activities conducted by the psychiatrist as part of their employment by the Commission are not billable to Crown Counsel. Specifically, preparation of an initial report to Court is provided by the Commission, but subsequent review of such reports, related discussion and other preparatory activities are billable to Crown Counsel.

OCTOBER 2002

**MINISTRY OF ATTORNEY GENERAL
CRIMINAL JUSTICE BRANCH
BILLING AND REPORTING GUIDE FOR A MEDICAL EXPERT WITNESS**

1. General

The following guidelines are to assist you and your accounting personnel in the preparation of invoices for payment.

2. Submission of Invoice

Invoices must be submitted within 30 days of providing the service. For matters extending over 30 days, interim invoices are required every 30 days. Upon completion of the work covered by your retainer, the final invoice should be marked "Final Bill"

Each invoice must include an invoice number.

3. Taxes

Goods and Services Tax

Physician's providing goods or services which would normally be taxable under GST legislation will not be entitled to reimbursement of the GST portion of travel costs. The GST portion can be recovered from Canada Customs and Revenue Agency through "input tax credits".

For the purposes of your tax records, we certify that the services to be provided by you are for the use of, and are being purchased by, the Province of British Columbia with Crown funds, and are therefore not subject to the Goods and Services Tax.

Provincial Sales Tax

The *7.5% Provincial Sales Tax* applies to physician services. Consequently, the tax will apply to the services provided by you. The tax also applies to any travel time billed on your accounts.

4. Exclusions

The following charges will not be honoured:

- (a) charges at a higher rate than indicated in the agreement between the Province and the BCMA;
- (b) any preparation time not explicitly authorized in the letter;
- (c) charges either by way of hourly fees or by way of disbursement for services performed by researchers, librarians, secretaries, administrative assistants, computer operators, bookkeepers or word processing operators; examples of secretarial or clerical tasks include assembling materials and documents, calling to determine addresses and phone numbers, and preparing invoices.
- (d) charges for opening and closing a file;
- (e) charges for business lunches and meetings including costs for witnesses;
- (f) hourly charges for assistants performing assistant work, unless explicit written approval of the Administrative Crown Counsel who signed the letter is obtained in advance. Without limiting the generality of the foregoing, assistants are not permitted to charge for typing, clerical and secretarial work.

5. Overhead Items

Overhead items such as equipment and maintenance costs shall not be billed.

6. Other Disbursements

Photocopies may be billed as a disbursement at 15 cents per page.

The cost of long distance calls and long distance fax line charges, courier services and postage are to be billed as disbursements. Original receipts are required to be submitted.

The cost of computer research will be reimbursed if such disbursement is supported by a receipt and authorized in advance.

7. Billing Guidelines**1.1 Travel to Court:**

- a) time starts when the physician leaves home, office or hospital to go to Court;
- b) time ends when the physician arrives at the Court or Crown Counsel office or otherwise begins direct work on the case;

- c) if work on the case does not start until the day after travel, then travel time ends upon arrival at the hotel or at 1800 hours, whichever is later.

1.2 Return Travel:

- a) time starts at the end of Court proceedings or when no other services (e.g. discussions) are required from the physician;
- b) time ends when the physician arrives at home, office, hospital, etc;
- c) if the physician is unable to return home the same day, then travel time ends at 1800 hours on the day that work on the case is finished and restarts the next morning at 0900 hours or upon leaving the hotel, whichever is earlier;
- d) if the Court schedule and travel arrangements are such that a physician is required to stay away from home over a weekend, then travel time up to 8 hours per day is billed for the week-end days, to the extent that the physician's time is not occupied with the case work over the week-end;

1.3 Court Time:

- a) Court time includes all relevant professional activities, including preparation, interviews, discussions, testimony, listening to other testimony and associated waiting time;
- b) Court time starts when the physician arrives at the Court or Crown Counsel office, or at 0900 hours if he/she had already travelled away from home on a prior day;
- c) Court time ends when Court ends or no other services are required, but continues to 1800 hours if further services are required the next day, if the physician has travelled out of town;
- d) time for preparation work prior to arrival or during evenings or week-ends is billed in addition to the above and for the actual time spent;
- e) if lunch is primarily social, then a one hour lunch break is not billable, but time for a working lunch is billable;
- f) in the event out of town travel is necessary, in respect of single day trips only, and where the combination of Court/preparation and travel are less than 8 billing hours, the balance up to 8 hours shall be billed as Court/preparation time;
- g) where physicians are testifying in their home community, Court time shall be compensated at a minimum of 4 hours for the morning session and 4 hours for the afternoon session. Any Court time spent in excess of 4 hours in either period shall be paid at the appropriate fee.

1.4 Cancellations:

- a) a cancellation is defined as a situation where the physician is informed that a previously arranged Court appearance is no longer required or is to be rescheduled for any reason including testimony not needed, Court scheduling changes and adjournments;

- b) where the physician is given 48 hours (2 working days) notice of cancellation of a Court appearance, no compensation is payable;
- c) where the cancellation notice is received less than 48 hours (2 working days) prior to scheduled Court appearance, the physician will be paid the lesser of:
 - i) the estimated fees otherwise payable if the physician had attended Court (travel time and Court time); or
 - ii)
 - A) 8 hours Court time if cancellation occurs on the actual day of the arranged appearance; and
 - B) 6 hours Court time for any day cancelled with less than 24 hours notice; and
 - C) 4 hours Court time for any day cancelled with between 24 and 48 hours notice.

1.5 Expenses:

Expenses related to expert witness billing shall be in accordance with the rates established for “Group II” (public service) employees. Such expenses may be claimed where the physician is required to attend Court at a location more than 32 kilometres from his/her residence or where unusual road conditions exist which, for example, requires ferry travel.

1.6 General

- a) in cases of uncertainty as to interpretation of the above guidelines, or where unusual circumstances or large amounts of time are expected to be required (especially regarding preparation activities), the physician and Crown Counsel should clarify their expectations as early as possible;
- b) in the case of accused persons who are assessed by the Forensic Psychiatric Services Commission, activities conducted by the psychiatrist as part of their employment by the Commission are not billable to Crown Counsel. Specifically, preparation of an initial report to Court is provided by the Commission, but subsequent review of such reports, related discussion and other preparatory activities are billable to Crown Counsel.

8. **Reimbursement of travel expenses**

Expenses incurred while on official travel status may be claimed as above. Travel status is defined as being outside a 32 kilometre radius from the physician’s work location.

Proof of expenses must be submitted with the exception of mileage and meal allowances which are reimbursed on a per diem basis. Only expenses listed in this Billing Guide are allowable. Expenses which exceed the maximum allowances require prior written approval from the Administrative Crown Counsel and will require additional approval by the appropriate level of authority.

9. Mode of travel

When determining the travel mode, transportation costs will be reimbursed at the lesser of:

- the distance allowance of a private motor vehicle (using provincial map distances), plus transportation toll charges, if any (with receipt), or
- the designated commercial carrier(s) part of the trip.

10. Mileage

Physicians may charge the current government allowance per kilometre as listed in the appendix. In addition, physicians shall have adequate insurance coverage with a minimum of \$2,000,000 third party liability coverage to their private vehicles. Proof of insurance must be provided if requested.

11. Air travel

The passenger copy of the air ticket and a paid receipt is required. Airport Improvement fees may be claimed. Business or first class travel is prohibited in all circumstances.

12. Meals

While on travel status, physicians may claim reimbursement for meals based on the limits outlined in the appendix.

The following guidance is provided on a partial day status:

1. On the day of departure, if travel begins:
 - after 7 a.m., breakfast cannot be claimed
 - after 12 noon, breakfast and lunch cannot be claimed
 - after 6 p.m., no meals can be claimed
2. On the day of return, if travel status terminates:
 - prior to 7 a.m., no meals can be claimed
 - prior to 12 noon, breakfast can be claimed
 - prior to 6 p.m., breakfast and lunch may be claimed
 - after 6 p.m. , all meals can be claimed

These amounts are intended to cover miscellaneous out-of-pocket travel expenses such as gratuities, portage, dry cleaning and personal telephone calls.

13. Accommodation

Physicians may claim reimbursement for hotel accommodation, subject to the limits outlined in the [appendix](#) (next page).

Use of hotel phone lines for computer on-line connections is not a reimbursable expense.

Physicians on travel status who stay in non-commercial lodging shall be entitled to claim \$30 per night as a lodging allowance except where the lodging is supplied by Government. A physician submitting a lodging allowance claim shall not be entitled to reimbursement for commercial lodging costs for the same period.

14. Miscellaneous Travel Expenses Transportation toll charges

Miscellaneous expenses including transportation toll charges, parking, ferry fares, bus, taxi or airporter costs and business telephone calls will be reimbursed on production of receipts.

Billing Guide

Travel Allowance Amounts – Group II

(As at April 1, 2002)

1. Mileage

Forty-three cents (.43) per kilometre of travel (for physicians recognized to be on travel status only).

2. Meals

Full day allowance:	\$44.50
Breakfast only:	\$22.00
Lunch only:	\$22.00
Dinner only:	\$28.50
Breakfast and lunch only:	\$30.00
Lunch and dinner only:	\$36.50
Breakfast and dinner only:	\$36.50

3. Accommodation

Winter rates (October 1 to April 30)

- \$80 plus taxes for Greater Vancouver
- \$70 plus taxes for Greater Victoria
- \$80 plus taxes for Whistler
- \$65 plus taxes for all other areas of British Columbia

Summer rates (May 1 to September 30)

- \$115 plus taxes for Greater Vancouver
- \$95 plus taxes for Greater Victoria
- \$65 plus taxes for Whistler
- \$70 plus taxes for all other areas of British Columbia

Clause:

These allowances are according to government financial policy and procedures as at April 1, 2002 and are subject to change. If there is a discrepancy between this Guide and government policies and procedures, the latter will apply.

APPENDIX B

NON-MEDICAL EXPERT WITNESS FEE SCHEDULE

Effective April 1, 2003

EXPERT	PREPARATION & COURT TIME / HR.	TRAVEL TIME / HR.
SPECIALIST (e.g. A professional recognized in a field, i.e. an engineer with special qualifications, forensic accountant, etc.)	\$194.00	\$116.00
PROFESSIONAL (e.g. Chartered Accountant and Engineer)	\$144.00	\$84.00
MISC. PROFESSIONAL (e.g. Dentist, Veterinarian, Forensic Anthropologist, etc.)	\$126.00	\$70.00
CERTIFIED GENERAL ACCOUNTANT, CERTIFIED MANAGEMENT ACCOUNTANT	\$95.00	\$55.00
PSYCHOLOGIST	L1 - \$97.00 L2 - \$114.00	\$69.00
TECHNICAL EXPERTS (e.g. Document Examiner, Registered Nurse, Biologist, Zoologist, Physiotherapist, Fire Consultant, Motor Vehicle Reconstructionist, Play Therapist, Counsellor, Analyst, etc.)	\$75.00	\$45.00
OTHER TECHNICIANS (e.g. Mechanic, Lab Technician (simple reporting of facts; no analysis required), Environment Technician, etc.)	\$50.00	\$30.00

NON-MEDICAL EXPERT BILLING GUIDELINES**1.1 Travel to Court**

- a) Time begins when the expert leaves home or place of work to go to court.
- b) Time ends when the expert arrives at the Court or Crown Counsel Office or otherwise begins direct work on the case.
- c) If work on the case does not start until the day after travel, then travel time ends upon arrival at the hotel or at 1800 hours, whichever is later.

1.2 Expenses

Expenses related to expert witness billing shall be in accordance with the rates established for [‘Group 2’ \(public service\) employees](#). Such expenses may be claimed when the expert witness is required to attend court at a location more than 32 km from his/her residence or where unusual road conditions exist which, for example, requires travel by ferry.

1.3 Return Travel

- a) Time ends when the expert arrives at home or place of work.
- b) If the expert is unable to return home the same day, then travel time ends at 1800 hours on the day that work on the case is finished and restarts the next morning at 0900 hours or upon leaving the hotel, whichever is earlier.
- d) If the court schedule and travel arrangements are such that an expert is required to stay away from home over a weekend, then travel time up to 8 hours per day is billed for the weekend days, to the extent that the expert’s time is not occupied with the case work over the weekend.

1.4 Court Time

- a) Court time includes all relevant expert or professional activities, including preparation, interviews, discussions, testimony, listening to other testimony and associated waiting time.
- b) Court time starts when the expert arrives at the Court or Crown Counsel Office, or at 0900 hours if he/she had already traveled away from home on a prior day.

- c) Court time ends when Court ends or no other services are required, but continues to 1800 hours if further services are required the next day, if the expert has traveled from out of town.
- d) Time for preparation work prior to arrival or during evenings or weekends is billed in addition to the above and for the actual time spent.
- e) If lunch is primarily social, then a one-hour lunch break is not billable, but time for a working lunch is billable.
- f) Where expert witnesses are testifying in their home community, they are paid by their hourly rate for Court time as defined in Section A. FEES.

1.5 Cancellations

- a) A cancellation is defined as a situation where the expert is informed that a previously arranged Court appearance is no longer required or is to be rescheduled for any reason including testimony not needed, Court scheduling changes and Court adjournments.

Where the cancellation notice is received less than 24 hours (1 working day) prior to the scheduled court appearance, the expert will be paid for two hours of court time.

EXPENSES FOR NON-MEDICAL EXPERT WITNESSES

The following are allowable expenses for expert witnesses. All expenses must be paid by the expert witness – expenses cannot be direct billed to the Ministry except in unusual circumstances. Original receipts must be submitted with the expense claim (when receipts are required) but photocopies of receipts will be accepted if the contractor requires the original for another purpose (e.g. to claim for GST credits).

TRAVEL EXPENSES

The expert witnesses must be outside where their headquarters are (32 kilometres from where they ordinarily perform their duties) to be eligible to claim travel, meal and accommodation expenses.

1. Meal allowances: Effective April 1, 2003 the following meal allowances can be claimed which must not exceed \$44.50 per day (receipts are not required):

Breakfast only	\$22.00	Cannot claim if travel starts after 7AM or ends before 7AM
Lunch only	\$22.00	Cannot claim if travel starts after 12 noon or ends before 12 noon
Dinner only	\$28.50	Cannot claim if travel starts after 6PM or ends before 6PM
B & L only	\$30.00	See above
B & D only	\$36.50	See above
L & D only	\$36.50	See above
Full day	\$44.50	

2. Mileage Rates When Using Private Vehicle: Effective April 1, 2003 the private mileage allowance is \$0.44 per kilometer (receipts are not required). This rate can be claimed when using a private vehicle for travel. It is intended to cover costs of gas, depreciation, and maintenance.

3. Taxi and Parking: Taxi and parking charges will be reimbursed if receipts/copies of receipts are provided. Tips identified separately on taxi receipts cannot be claimed.

4. Car Rentals: Avis Rent a Car Systems, Inc., Best Choice Auto Rentals, Budget Rent a Car of Canada, Ltd., Enterprise Rent A Car BC, Hertz Canada Ltd., National Car Rental Inc., Ron Ridley Rentals Ltd. and Thrifty Canada Ltd. are to be used. Other rental firms are to be used only when these firms cannot supply vehicles. Contractors and non-employees should ask for the government rate. Master Standing Offer rates are published on the Internet at:

www.pc.gov.bc.ca/travel/carpage.htm

(NB – not all locations are covered under MSO.) Receipts/copies of receipts are required.

PAI (personal accident insurance) will not be reimbursed.

CDW/LDW (collision/loss damage waiver) will be reimbursed only when renting from one of the above companies located outside BC, or when renting from any other firm (both in and outside BC).

5. Accommodation:

a) Hotel/motel (Receipt/copy of receipt and proof of payment required.) The maximum amounts that may be claimed for hotel/motel are:

Summer (May 1 to September 30):

- \$115 plus tax in Vancouver area (Burnaby, Delta, Coquitlam, New Westminster, North Van., Port Coquitlam, Richmond, Surrey, Vancouver, West Van. and White Rock);
- \$95 plus tax in Victoria area (Colwood, Esquimalt, Langford, Metchosin, Oak Bay, Saanich, Saanich Peninsula, Sidney and Victoria);
- \$65 plus tax in Whistler area (Gondola area, Alta Vista, Village centre, White Gold, Nesters, Mons and Alpine Meadows); and

- \$70 plus tax in all other areas of the province.

Winter (October 1 to April 30):

- \$80 plus tax in Vancouver area;
- \$70 plus tax in Victoria area;
- \$80 plus tax in Whistler area; and
- \$65 plus tax in all other areas of the province.

These limits may be exceeded in *exceptional circumstances* if prior Executive Financial Officer approval is obtained. Only the single government rate will be reimbursed. The “number in party” identified on the receipt must show only one person. Hotels offering discounts for government employees and contractors are published on the Internet at:

www.pc.gov.bc.ca/travel/Hotels/AccommodationListing/

b) Private Lodging (receipts are not required): \$30 per night may be claimed when private lodging is arranged (e.g. staying with friends).

6. Airfare: Economy airfare only will be reimbursed. Receipts/copies of receipts and proof of payment are required.

7. Miscellaneous Travel Expenses: Laundry gratuities, portage and personal phone calls cannot be claimed. Ferry charges and highway tolls can be claimed if supported by an original receipt. Other miscellaneous expenses incurred when traveling (e.g. courier and photocopying charges) can also be claimed if supported by a receipt/copy of receipt.

8. Out-of-Province Travel: When BC expert witnesses are required to travel out-of-province, a Travel Authorization form approved in advance by the Executive Financial Officer must accompany the expense claim.

OTHER EXPENSES

1. Business Expenses (e.g. all costs associated with meetings, including business and guest meals): Claims for business expenses must be accompanied by an approved Business Expense Approval form (which should be completed by the ministry, not the contractor).

2. GST: GST paid by the expert witness will not be reimbursed if the expert witness has a mechanism to claim input tax credits from Revenue Canada (i.e., the expert witness has a GST registration number and his/her livelihood is from contracting). In these cases, when travel receipts are submitted for reimbursement, they must be adjusted to deduct GST. GST paid by expert witnesses will be reimbursed if the expert witness does not have a mechanism to claim input tax credits.

3. Miscellaneous Expenses (e.g. business telephone/ fax calls, newspapers, etc.): Miscellaneous expenses will be paid if supported by original receipts and in our opinion are necessarily incurred by you in providing the service. Contact the Trial Counsel **before** incurring any miscellaneous expenses.

Expert Witness Initials: ____



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

ARCS/ORCS FILE NUMBER: 58500-00	EFFECTIVE DATE: April 1, 2003	POLICY CODE: YOU 1
SUBJECT: <i>Youth Criminal Justice Act – Serious Violent Offences</i>		CROSS-REFERENCE: RES 1 YOU 1.1

POLICY

A serious violent offence determination under s.42(9) of the *Youth Criminal Justice Act* impacts sentence availability in both the case at bar and any future prosecutions against the young person.

Crown Counsel are strongly encouraged to apply for serious violent offence determinations in respect of offences committed by young persons that cause or attempt to cause any hurt or injury, whether physical or psychological, that interferes in a substantial way with the physical or psychological integrity, health or wellbeing of the complainant.

There may be exceptional cases which meet the above criteria but where an application for a serious violent offence determination is not in the public interest. Crown Counsel should discuss with Administrative Crown Counsel any decision not to make an application. Factors to consider include whether a deferred custody and supervision sentence is the most appropriate sentence in the circumstances of the case and whether the possibility of the young offender committing another offence which meets the criteria, is remote.

DISCUSSION

Serious offence determinations prevent a deferred custody and supervision sentence in the case at bar and permit, where other prerequisites are met, an intensive rehabilitative and supervision sentence. Future applications for an adult sentence for presumptive (B) offences are possible only for young persons with a history of prior serious violent offence determinations under s.42(9).

An application for a serious violent offence determination must be made after the conviction is recorded but before sentence is imposed. There is no statutory obligation to give notice of the application.

A “serious violent offence” is defined in the *Youth Criminal Justice Act* in s. 2 as “an offence in commission of which a young person causes or attempts to cause serious bodily harm”. The Supreme Court of Canada defined the term “serious bodily harm” in relation to then s. 264.1(1)(a) of the *Criminal Code* in R. v. McCraw (1991), 66 C.C.C. (3d) 517 as follows:

in summary, the meaning of “serious bodily harm” for the purposes of this section is any hurt or injury, whether physical or psychological, that interferes in a substantial way with the physical or psychological integrity, health or wellbeing of the complainant.

Although “bodily harm” is not defined in the *Youth Criminal Justice Act*, s. 2 of the *Criminal Code* defines it as “any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature.”

Incidents that result in actual serious bodily harm are likely to involve medical treatment of the complainant. Common indicators of serious psychological harm include counselling, therapeutic intervention, sleep disturbances, weight changes, persistent fears, and missed work or school. Where the young person attempts to cause serious bodily harm, the issue will normally be the amount of physical harm that would have occurred if the attempt had been successful.



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

ARCS/ORCS FILE NUMBER: 58500-00	EFFECTIVE DATE: April 1, 2003	POLICY CODE: YOU 1.1
SUBJECT: <i>Youth Criminal Justice Act – Adult Sentences</i>		CROSS-REFERENCE: YOU 1

POLICY

For all eligible offence categories (presumptive (a), presumptive (b), and eligible non-presumptive offences), Crown Counsel should seek an adult sentence whenever a youth sentence is not adequate to protect the public and hold the young person accountable for his or her actions.

Regional or Deputy Regional Crown Counsel should be consulted on any decision to seek an adult sentence for a non-presumptive offence or to consent to a youth sentence on a presumptive offence.

DISCUSSION

Guidelines

In deciding whether to seek an adult sentence or consent to an application for a youth sentence, Crown Counsel should consider protection of the public and the availability of resources in addition to the statutory factors which the court will consider under s. 72(1) of the *Youth Criminal Justice Act*. Crown Counsel should pay particular attention to premeditation, the use of violence and the response of the youth to previous intervention in assessing the need to protect the public.

Eligibility

Adult sentences are available for presumptive (a) offences, presumptive (b) offences and some non-presumptive offences. The court can impose an adult sentence only where the young person is 14 years of age before the offence date and where an adult would be liable to imprisonment for more than two years on the same charge.

Presumptive (a) offences are murder, attempted murder, manslaughter and aggravated sexual assault. An adult sentence must be imposed for a presumptive (a) offence unless the young person successfully applies for a youth sentence. There is no requirement for Crown Counsel to make an application for an adult sentence on a presumptive (a) offence.

Presumptive (b) offences are “serious violent offences” where the youth has been convicted of at least two serious violent offences in different proceedings before the date of the offence at bar. Prior serious violent offence determinations are shown on CPIC records and JUSTIN Accused History Reports. Once Crown Counsel has proven that an offence is a presumptive (b) offence, an adult sentence must be imposed unless the young person successfully applies for a youth sentence.

Applications for youth sentences may be made by the young person for presumptive (a) and (b) offences.

To seek an adult sentence on a non-presumptive offence, Crown Counsel must apply for an adult sentence and satisfy the court that a youth sentence “would not have sufficient length to hold the young person accountable for his or her offending behaviour” [s. 72(1)(b)].

Procedural Alerts

Notice: Several adult sentence procedures require notice to the young person or the court before plea. These are detailed in the Adult Sentence material on the Branch Intranet. All notices apply automatically to convictions on included offences [s. 69].

Reports: If the court orders a medical or psychological assessment report under s. 34(1) to assist in determining whether to impose an adult or youth sentence, Crown Counsel should request a court order to disclose the report to the youth court worker. In the absence of a disclosure order, the youth court worker is not permitted to review a copy of the assessment [s. 119(6)].



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

ARCS/ORCS FILE NUMBER: 58500-00	EFFECTIVE DATE: April 1, 2003	POLICY CODE: YOU 1.2
SUBJECT: <i>Youth Criminal Justice Act – Continuation of Custody Hearings</i>		CROSS-REFERENCE:

POLICY

Applications to seek a continuation of custody order under s. 98 or s. 104 of the *Youth Criminal Justice Act* to detain a young person in custody beyond his or her normal supervision release date should be based on the risk the youth poses to the public as exemplified by the statutory factors enumerated in the *Youth Criminal Justice Act* and the paramount need to protect the public.

The Manager, High Risk Offenders Identification Program, should be advised of any application for continuation of custody of a young offender.

DISCUSSION

Legislative framework

The *Youth Criminal Justice Act* requires that all custodial sentences include a supervision component. An application can be brought before the Youth Justice Court for an order that young persons continue in custody beyond their release to supervision dates. Applications are governed by s. 98 for all custody and supervision sentences except murder, attempted murder, manslaughter, aggravated sexual assault and intensive rehabilitative custody and supervision order sentences which are governed by s. 104.

The statutory tests under ss. 98 and 104 are slightly different. Under s. 104, the Youth Justice Court must be satisfied that there are reasonable grounds to believe that the young person is likely to commit an offence causing the death of, or serious bodily harm to, another person before the expiry of the youth sentence the young person is then serving. Under s. 98, the court must be satisfied on reasonable grounds that the young person is likely to commit a serious violent offence before the expiry of the youth sentence and that conditions that would be imposed on the youth if he or she were to serve a portion of the youth sentence in the community would not be adequate to prevent the commission of that offence.

Under both sections the court “shall take into consideration any factor that is relevant to the case of the young person, including

1. Evidence of a pattern of persistent violent behaviour and, in particular,
 - a) the number of offences committed by the young person that caused physical or psychological harm to any other person;
 - b) the young person’s difficulties in controlling violent impulses to the point of endangering the safety of any other person;
 - c) the use of weapons in the commission of any offence;
 - d) explicit threats of violence;
 - e) behaviour of a brutal nature associated with the commission of any offence; and
 - f) a substantial degree of indifference on the part of the young person as to the reasonably foreseeable consequences, to other persons, of the young person’s behaviour.
2. Psychiatric or psychological evidence that a physical or mental illness or disorder of the young person is of such a nature that the young person is likely to commit, before the expiry of the young sentence the young person is then serving, an offence causing the death of or serious harm to another person.
3. Reliable information that satisfies the youth justice court that the young person is planning to commit, before the expiry of the youth sentence the young person is then serving, an offence causing the death of or serious harm to another person.
4. The availability of supervision programs in the community that would offer adequate protection to the public from the risk that the young person might otherwise present until the expiry of the youth sentence the young person is then serving.

Two additional factors must be considered under s. 98

1. Whether the young person is more likely to re-offend if he or she serves a youth sentence entirely in custody without the benefits of serving a portion of the youth sentence in the community under supervision.
2. Evidence of a pattern of committing serious violent offences while he or she was serving a portion of a youth sentence in the community under supervision.

File Continuity

Continuation of custody applications are viewed very seriously by the Branch. All continuation of custody hearings should occur before the original sentencing judge in the original trial location. Wherever possible, the original prosecutor should make the application. The use of video links is encouraged to facilitate these applications. In exceptional cases Crown Counsel may consider conducting the hearing in a different location if there are no concerns about file continuity, local transparency or the return of the young person to the community where the offence occurred.

Timelines

The Criminal Justice Branch has indicated to the Ministry of Children and Family Development that applications for continuation of custody orders should be forwarded to Crown Counsel at least four months before the expiration of the custody portion of the sentence, to permit timely preparation of the application material and completion of the hearing before the scheduled release date.



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

ARCS/ORCS FILE NUMBER: 58500-00	EFFECTIVE DATE: April 1, 2003	POLICY CODE: YOU 1.3
SUBJECT: <i>Youth Criminal Justice Act – Conferencing</i>		CROSS-REFERENCE:

POLICY

Crown Counsel must attend any judicially attended court conference.

Crown Counsel may attend any judicially ordered (non-court) conference or non-judicial conference.

Crown Counsel should retain a traditional prosecutorial role in any conference they attend and should not generally call, facilitate or organize conferences.

Crown Counsel should not participate in restorative justice conferences involving the victim and the young person.

DISCUSSION

Overview

The *Youth Criminal Justice Act* permits a Youth Justice Court, a prosecutor and certain other individuals to convene conferences for the purpose of making a decision under the Act. Although there is no restriction on the mandate of the conference under the Act, s. 19(2) provides that conferences may be called to give advice on extrajudicial measures, bail conditions, sentences, sentence reviews and reintegration plans. Conferences can be characterized as:

- judicially attended court conferences (such as a sentencing circle) that are judicial proceedings with a record of proceedings and attendance by the young person, judge, Crown Counsel, defence counsel and court staff;
- judicially ordered (non-court) conferences (such as an integrated case management conference to explore living arrangements for a youth that take place as a result of an order of the court, but are not a court proceeding, with a report submitted back to the court); or

- non-judicial conferences (such as a conference called by police or Crown Counsel to explore an extrajudicial measure).

Crown Counsel Participation

The Branch distinguishes between mandatory and voluntary Crown Counsel participation in conferences. The Branch has advised the Office of the Chief Judge that Crown Counsel are required to participate in judicially attended court conferences, but are not required to participate in judicially ordered (non-court) conferences or non-judicial conferences. The Branch supports Crown Counsel who wish to participate voluntarily in any conference except a restorative justice conference involving the young person and the victim.

Role of Crown Counsel

The role of Crown Counsel in any conference must be consistent with their adversarial role as counsel for the prosecution with interests that may be significantly different from those of the police, the victim or interest groups. Crown Counsel are generally not trained in conferencing methodology or facilitation and the Criminal Justice Branch lacks facilities for conferencing. Consequently Crown Counsel should not generally call conferences under s. 19, assume any responsibility for facilitating or planning conferences, or arrange the attendance of non-prosecution witnesses at any conference.



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

ARCS/ORCS FILE NUMBER: 58520-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: YOU 1.4
SUBJECT: <i>Youth Criminal Justice Act – Extrajudicial Measures</i>		CROSS-REFERENCE: ALT 1 CHI 1 CRI 1 HAT 1 SEX 1 SPO 1

POLICY

Section 4(a) of the *Youth Criminal Justice Act* states that “extrajudicial measures are often the most appropriate and effective way to address youth crime”.

A decision to use an extrajudicial sanction under the *Youth Criminal Justice Act* for a Category 3 or 4 offence may be made by any Crown Counsel. With the approval of Regional or Deputy Regional Crown Counsel, Crown Counsel may use an extrajudicial sanction for a category 2 offence. Extrajudicial sanctions should be used for category 1 offences only in rare circumstances and require the written consent of the Assistant Deputy Attorney General. The above categories are attached as [appendix A](#).

Part I of the *Youth Criminal Justice Act* sets out the statutory scheme with respect to extrajudicial measures. Sections 4 and 5 contain a declaration of principles and objectives for extrajudicial measures including warnings, cautions and extrajudicial sanctions. Section 10 governs the use of extrajudicial sanctions.

In addition to the provisions of the *Youth Criminal Justice Act* and this policy, separate Branch policies provide guidance on the use of extrajudicial (alternative) measures in the following circumstances:

- child abuse - physical and sexual (see CHI 1)
- criminal harassment (see CRI 1)
- hate motivated offences and hate propaganda (see HAT 1)
- sexual assault (see SEX 1)
- spouse assault (see SPO 1)

The Branch is committed to the use of extrajudicial measures which recognize the traditional values and customs of aboriginal communities and have been authorized under section 10 of the *Youth Criminal Justice Act*.

DISCUSSION

As a matter of policy, youth diversion has been common practice in British Columbia since the late 1970's. The proclamation of the *Young Offenders Act* in 1984 provided the first statutory authority for "alternative measures" for youth. The Act defined "alternative measures" to mean "other than judicial proceedings".

The *Youth Criminal Justice Act*, which replaced the *Young Offenders Act* in 2003, contains a statutory scheme for extrajudicial measures, including warnings, cautions and extrajudicial sanctions. A statement of principles and objectives is provided.

The "Extrajudicial Measures, Principles and Objectives" policy of the Ministry of Children and Family Development which describes the extrajudicial sanctions program which that ministry offers for youths under the *Youth Criminal Justice Act* can be found on the Branch Intranet site.

APPENDIX A

EXAMPLES OF CASE TYPES (Jan 23, 1998)

CATEGORY 1	CATEGORY 2	CATEGORY 3	CATEGORY 4
<ul style="list-style-type: none"> • ARSON, with disregard for human life • ASSAULT, Aggravated • ASSAULT, Sexual, with a Weapon, or threats to third parties, or Causing Bodily Harm, or Aggravated Sexual Assault • BREAK & ENTER, or Unlawfully in a Dwelling House, involving injury, or attempted violence • BRIBERY • CONFINEMENT, Unlawful • CONSPIRACY to Commit Murder • COUNTERFEITING • DRIVING, Impaired or Dangerous, causing death or bodily harm • ESCAPE, involving violence • EXPLOSIVE, use of, likely to cause bodily harm or death • EXTORTION • FIREARM, used in the commission of an offence • HARASSMENT, Criminal • HATE Propaganda offences • HOSTAGE Taking • KIDNAPPING • MANSLAUGHTER • MISCHIEF, Causing danger to life • MURDER, Attempted • MURDER, First and Second Degree • OBSTRUCTING Justice • PERJURY • PORNOGRAPHY, Possession or making involving children • PRISON Breach • PROSTITUTION, Living on the Avails of, Procuring etc. (S. 212) • ROBBERY • SABOTAGE • SEXUAL OFFENCES involving , breach of trust and/or children • SEXUAL SERVICES of children, Obtaining or Attempting to Obtain (s. 212(4)) 	<ul style="list-style-type: none"> • ABDUCTION, (Parental) • ARSON (except as noted in Cat. 1) • ASSAULT Causing Bodily Harm • ASSAULT a Peace Officer • ASSAULT, Sexual (except as noted in Cat. 1) • ASSAULT, Spousal (except Aggravated Assaults in Cat. 1) • ASSAULT with a Weapon • BREACH of probation or other court order • BREAK & ENTER of a Dwelling House • CHILD ABUSE (except when there is a Cat. 1 offence) • CONCEALED Weapon • CONTEMPT, Criminal • DRIVING, Dangerous, Impaired or Over .08 • DRIVING, Involving high speed chase • DRIVING While Disqualified (S. 259) • ESCAPING Custody (non-violent) • EXPLOSIVE Substance, Possession • FTA, or Unlawfully at Large • FIREARMS, Careless use, storage or pointing • FORGERY, (Possession of forged currency or passports) • HATE bias offences (except as noted in Cat. 1) • INDECENT Act (targeting children) • MISCHIEF, Public • THEFT, PSP, FORGERY, FRAUD, FALSE PRETENCES, Uttering, Unlawful use of a Credit Card, Unauthorized Use of a Computer, (involving public funds, public documents, internal theft, a scheme of organized criminal activity, a position of trust or a vulnerable victim) • UTTERING Threats, to cause death or bodily harm • WEAPON, Possession, Dangerous to the Public Peace, or of a Prohibited or Restricted Weapon 	<ul style="list-style-type: none"> • ASSAULT, S. 266 (except VAWIR, as noted in Cat. 2) • BREAK & ENTER, NOT a dwelling house • COMPUTER, Unauthorized use of a (except as noted in Cat. 2, "Theft") • FORGERY, Fraud, False Pretences, Uttering, or Unlawful use of a Credit Card, in amounts over \$5,000 (except as noted in Cat. 2, "Theft") • INDECENT Act (except as noted in Cat. 2, offences targeting children) • MISCHIEF OVER \$5000 • POSSESSION of INSTRUMENTS, house or car breaking • PSP OVER \$5,000 (except as noted in Cat. 2, "Theft") • PROSTITUTION, Communicating for the Purposes of, except demonstrated nuisance in the community, in which case the matter should be dealt with as a Cat. 2 offence) • TAKE Auto Without Consent • THEFT OVER \$5,000, (except as noted in Cat. 2 "Theft") • TRESPASS at night 	<ul style="list-style-type: none"> • DISTURBANCE, Causing a • FALSE Pretences, Uttering, Unlawful use of a Credit Card, where the amounts involved are UNDER \$5,000 (except as noted in Cat. 2) • MISCHIEF UNDER \$5000 • PSP UNDER \$5,000 (except as noted in Cat. 2) • THEFT UNDER \$5,000 (except as noted in Cat. 2)

CROWN COUNSEL ACT

[RSBC 1996] CHAPTER 87

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Definitions

1 In this Act:

"ADAG" means the Assistant Deputy Attorney General, Criminal Justice Branch;

"Branch" means the Criminal Justice Branch of the Ministry of Attorney General;

"offence" means an offence

(a) under the *Criminal Code* or any other enactment of Canada with respect to which the Attorney General of British Columbia may initiate and conduct a prosecution, and

(b) under an enactment of British Columbia.

Functions and responsibilities of the Criminal Justice Branch

2 The Branch has the following functions and responsibilities:

(a) to approve and conduct, on behalf of the Crown, all prosecutions of offences in British Columbia;

(b) to initiate and conduct, on behalf of the Crown, all appeals and other proceedings in respect of any prosecution of an offence in British Columbia;

(c) to conduct, on behalf of the Crown, any appeal or other proceeding in respect of a prosecution of an offence, in which the Crown is named as a respondent;

(d) to advise the government on all criminal law matters;

(e) to develop policies and procedures in respect of the administration of criminal justice in British Columbia;

(f) to provide liaison with the media and affected members of the public on all matters respecting approval and conduct of prosecutions of offences or related appeals;

(g) any other function or responsibility assigned to the Branch by the Attorney General.

Assistant Deputy Attorney General

3 (1) The ADAG is charged with the administration of the Branch and with carrying out the functions and responsibilities of the Branch under section 2.

(2) The ADAG is designated, for purposes of section 2 of the *Criminal Code*, as a lawful deputy of the Attorney General.

Responsibilities of Crown counsel

4 (1) The ADAG may designate as "Crown counsel" any individual or class of individual who is lawfully entitled to practise law in British Columbia.

(2) Each Crown counsel is authorized to represent the Crown before all courts in relation to the prosecution of offences.

(3) Subject to the directions of the ADAG or another Crown counsel designated by the ADAG, each Crown counsel is authorized to

(a) examine all relevant information and documents and, following the examination, to approve for prosecution any offence or offences that he or she considers appropriate,

(b) conduct the prosecutions approved, and

(c) supervise prosecutions of offences that are being initiated or conducted by individuals who are not Crown counsel and, if the interests of justice require, to intervene and to conduct those prosecutions.

(4) The Attorney General may establish an appeal process under which law enforcement officials may appeal the determination of any Crown counsel or special prosecutor not to approve a prosecution.

British Columbia Crown Counsel Association Agreement

4.1 (1) In this section:

"BCCCA" means the British Columbia Crown Counsel Association, a society incorporated under the *Society Act*;

"Crown counsel" means an individual described in section 4 (1) who is an "employee" as defined in section 1 of the *Public Service Act* but does not include

- (a) the Assistant Deputy Attorney General,
- (b) the Director, Special Justice Programs,
- (c) the Executive Director, Criminal Justice Branch,
- (d) the Regional Crown counsel,
- (e) the Deputy Regional Crown counsel,
- (f) the Director, Criminal Appeals,
- (g) the Director, Legal Services,
- (h) the Communications Officer,
- (i) the Director, Policy and Legislation,
- (j) the Deputy Director, Commercial Crime,
- (k) the Deputy Director, Criminal Appeals, and
- (l) the persons in other positions specified by agreement of the employer and the BCCCA;

"employer" means the government represented by the BC Public Service Agency.

(2) The BCCCA is the exclusive bargaining agent for all Crown counsel and is authorized to enter into agreements with the employer which must include all matters affecting wages or salary, hours of work and other working conditions, except the following:

- (a) the principle of merit and its application in the appointment and promotion of employees, subject to section 4 (3) of the *Public Service Act*;
- (b) a matter included under the *Public Sector Pension Plans Act*;
- (c) the organization, establishment or administration of the ministries and branches of the government, except the effect of reductions in establishment of employees, which must be negotiated by the parties;
- (d) the application of the system of classification of positions or job evaluation under the *Public Service Act*;
- (e) the procedures and methods of training or retraining of all employees not affected by section 15 of the *Public Service Labour Relations Act*, other than training programs administered with a branch or ministry that apply to one occupational group only.

(3) The employer and the BCCCA must bargain collectively in good faith and make every reasonable effort to conclude agreements referred to in subsection (2).

Directions from Attorney General on specific prosecutions

5 If the Attorney General or Deputy Attorney General gives the ADAG a direction with respect to the approval or conduct of any specific prosecution or appeal, that direction must be

- (a) given in writing to the ADAG, and
- (b) published in the Gazette.

Policy directive from Attorney General

6 (1) If the Attorney General or Deputy Attorney General wishes to issue a directive respecting the Criminal Justice Branch policy on the approval or conduct of prosecutions, that directive must be given in writing to the ADAG and, in the discretion of the ADAG, may be published in the Gazette.

(2) If the Attorney General or Deputy Attorney General wishes to issue a directive respecting the administration of the Branch, that directive must, if requested by the ADAG, be given in writing and may, in the discretion of the ADAG, be published in the Gazette.

Special prosecutors

7 (1) If the ADAG considers it is in the public interest, he or she may appoint a lawyer, who is not employed in the Ministry of Attorney General, as a special prosecutor.

(2) A special prosecutor must carry out his or her mandate, as set out in writing by the ADAG, and in particular must

- (a) examine all relevant information and documents and report to the ADAG with respect to the approval and conduct of any specific prosecution, and
- (b) carry out any other responsibilities respecting the initiation and conduct of a specific prosecution.

(3) If the ADAG appoints a special prosecutor, the ADAG must advise the Deputy Attorney General

- (a) that a special prosecutor has been appointed, and
- (b) the name of the special prosecutor.

(4) If, after a special prosecutor receives the mandate under subsection (2), the Attorney General, Deputy Attorney General or ADAG gives a direction to a special prosecutor in respect of any matter within the mandate of the special prosecutor, that direction must be given in writing and be published in the Gazette.

(5) Subject to the mandate given to the special prosecutor by the ADAG or to a directive referred to in subsection (4), the decision of a special prosecutor with respect to any matter within his or her mandate is final, but a decision not to approve a prosecution may be appealed by a law enforcement officer under the process established by section 4 (4).

Delay in publication

8 (1) The Attorney General, Deputy Attorney General or ADAG may direct publication in the Gazette of those matters referred to in section 5 or 7 be delayed if to do so would be in the interests of the administration of justice.

(2) A delay under subsection (1) must not extend beyond the completion of the prosecution or matter or any related prosecution or matter.
