



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

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| ARCS/ORCS FILE NUMBER: 57970-00 | EFFECTIVE DATE: October 12, 2010 | POLICY CODE: FIR 1 |
| SUBJECT: Firearms - Mandatory Minimum Sentences – Consecutive Sentences – Notice of Greater Penalty | | CROSS-REFERENCE: ALT 1 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 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.

Under the policy on Alternative Measures for Adult Offenders – ALT 1, alternative measures must not be considered for the offences of discharging a firearm with intent or using a firearm in the commission of any indictable offence for which there is a minimum sentence, including Section 85 of the *Criminal Code* or any of the ten offences listed on page 1 of this Policy.

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.