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 the Practice Bulletin entitled Informer Witness Registry).

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

Amended December, 2007
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).