



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

- **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.