



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

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POLICY

The Criminal Justice Branch has responsibility under the *Crown Counsel Act* for the prosecution of municipal bylaw offences. It is the policy of the Branch to allow those prosecutions to be conducted by a lawyer acting for the municipality (a “municipal prosecutor”) in compliance with Branch policies, including the policy on Charge Assessment Guidelines (CHA 1).

The Branch retains its supervisory responsibility over the prosecution of municipal bylaw offences, including the right to intervene or assist in the public interest. Regional or Deputy Regional Crown Counsel should be consulted.

Generally, the private prosecution of such offences by someone other than a municipal prosecutor will not be allowed to proceed. The preferred process is described below.

DISCUSSION

Since July 1, 1997, the Criminal Justice Branch has allowed the municipalities to handle the prosecution of municipal bylaw offences.

Acting as an agent of the informant, a municipal prosecutor is responsible to the Municipal Solicitor and may handle prosecutions and launch appeals. By-law enforcement officers, as informants, may also handle prosecutions in some cases.

The prosecution of municipal bylaw offences is subject to relevant Criminal Justice Branch policies, including the policy on Charge Assessment Guidelines (CHA 1) which outlines the two-part charge assessment standard which must be met in order for a prosecution to proceed:

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

The Branch policy on Charge Assessment – Social Regulatory Offences (CHA 1.2) also has application in that, generally speaking, prosecutions should be initiated only where alternate methods to enforce compliance have been tried and failed, where the offender has demonstrated a willful or repeated non-compliance, or where the public interest otherwise requires prosecution in order to protect the integrity of the regulatory scheme.

While the Branch retains its supervisory responsibility, including the right to intervene or assist in the public interest, it is anticipated that interventions by Crown Counsel will take place very infrequently.

Crown Counsel may assist where necessary, for instance, where it is appropriate to direct a stay of proceedings.

The Criminal Justice Branch allows municipal prosecutors to handle any prosecution of a provincial statute offence for failure to comply with an order of the court made on conviction for a bylaw offence, for example, a prosecution under section 267.1(3) of the *Local Government Act*.

Private Prosecutions

As outlined in the Branch policy on Private Prosecutions – PRI 1, generally a private prosecution will not be allowed to proceed.

The following process is preferred where a private informant, other than a municipal prosecutor, swears an Information alleging a municipal bylaw offence:

1. The municipal prosecutor will obtain a copy of the Information and any particulars placed before the Justice of the Peace and ordinarily request the appropriate agency to conduct an investigation or to consider whether an investigation is warranted.
2. If a hearing has been held by the Justice of the Peace to determine whether process should issue, the municipal prosecutor will ordinarily obtain a transcript of that hearing.
3. The municipal prosecutor will review all relevant information and consider whether prosecution is warranted.
4. If the municipal prosecutor concludes that prosecution is warranted, the informant should be asked to consent to the municipal prosecutor acting as agent of that informant and taking over conduct of the prosecution.

If the informant does not so consent, the municipal prosecutor should request Crown Counsel to intervene. If so requested, Crown Counsel should consider whether to conduct the prosecution or direct a stay of proceedings, depending on whether the charge assessment standard in Branch policy CHA 1 is met.

5. If the municipal prosecutor concludes that prosecution is not warranted, the municipal prosecutor should request Crown Counsel to review the matter. Crown Counsel should direct a stay of proceedings if the charge assessment standard in Branch policy CHA 1 is not met. If that standard is met, Crown Counsel should take over the prosecution and conduct it unless the municipal prosecutor decides to initiate the procedure outlined in paragraph 4.

General

Section 2(a) of the *Crown Counsel Act* states that “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...”

Municipal bylaw offences are included in the above by the definition of “offence” in section 1 of the *Crown Counsel Act* and by the definition of “enactment” and “regulation” in section 1 of the *Interpretation Act* (BC).

See the Practice Bulletin entitled “Municipal Bylaw Prosecutions – Authority of Municipal Prosecutors – Private Prosecutions of Bylaw Offences”.