



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 (i.e. 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.