



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

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SUBJECT: Professional Organizations – Charges Against Members		CROSS-REFERENCE: ALT 1 SPE 1

POLICY

Where it is in the public interest, the Criminal Justice Branch will notify professional organizations, employers and other groups that charges against their members or employees have been proposed in a Report to Crown Counsel.

The rationale behind this policy is to protect vulnerable persons and persons relying on trust relationships. This policy applies to:

- **bodies which regulate professionals (e.g. the Law Society, the College of Physicians and Surgeons, the College of Teachers)**
- **employers of persons who are not subject to regulation by licensing bodies and
 - **have access to children, the elderly, or other vulnerable persons (e.g. health care workers, janitors); or**
 - **hold a position of trust (e.g. bookkeepers, financial advisors)****
- **volunteer groups (e.g. Scouts Canada, Big Brothers, coaches of young persons)**
- **other organizations where disclosure may be in the public interest (e.g. the clergy)**

Notification should occur where the public interest is paramount to the privacy interest of the member or employee. Crown Counsel should follow the procedure on page 2.

Public interest factors include:

- **the relevance of the charge to vulnerable persons (notification is appropriate where the offence is designated under the *Criminal Records Review Act* - see appendix A);**

- **the relevance of the charge to the protection of persons relying on a trust relationship**
- **the number and nature of any previous convictions**
- **whether there is a history of violence, including the circumstances of the charge under consideration**
- **indicia of alcohol or drug abuse, including a high breathalyzer reading**
- **whether the offence was committed in the presence of a vulnerable person**
- **concerns raised by the investigator**
- **indicia of mental illness**
- **significant concerns about breach of professional ethics**

DISCUSSION

The rationale for this policy includes:

1. the public interest in assisting professional organizations or employers to make timely and informed decisions about membership or employment where vulnerable persons may be at risk; and,
2. the need to avoid a separate and independent investigation by the professional organization or employer which might have a deleterious effect on an ongoing prosecution, for example, by the interviewing of key Crown witnesses.

Procedure

1. Charge assessment Crown Counsel should identify cases where it appears that notification is appropriate under this policy.
2. The Report to Crown Counsel and supporting documents (including witness statements, psychiatric or expert reports, details of the accused's date of birth and professional occupation, and a copy of the Information), should be forwarded to Administrative Crown Counsel.
3. Administrative Crown Counsel should review the matter and forward to Regional or Deputy Regional Crown Counsel the material described above, in addition to information on any publication ban.
4. Regional or Deputy Regional Crown Counsel should forward the material to the Director of Policy and Legislation.

5. The Headquarters office will make the decision as to whether to provide notification, and additional information may be disclosed. More generous disclosure will normally be made to those professional organizations responsible for investigating allegations involving children or other vulnerable persons as victims or allegations of abuse of trust of a professional position.

Where Charges Not Approved

Even where Crown Counsel do not approve charges, the circumstances of the case may require notification in the public interest, for example, where there are allegations involving children or other vulnerable person as victims, or allegations of abuse of trust.

Notification done in these circumstances is consistent with the provisions of the *Freedom of Information and Protection of Privacy Act*.

Alternative Measures

Where there has been a decision by Crown Counsel to refer a case for alternative measures consideration, this policy applies and notification to the professional organization or employer should be considered. Where an alternative measures agreement is concluded, the consent of the candidate to a notification is required by law (section 717.4 *Criminal Code*).

Therefore, where Crown Counsel concludes that notification may be appropriate, the procedure described on page 2 should be expedited so that the necessary documentation (including a copy of the alternative measures referral) is provided to the Director of Policy and Legislation as soon as possible. Where there is a decision to notify, the Headquarters office will send a letter to the alternative measures co-ordinator asking that the candidate consent in writing to the notification. This will ensure that notification need not await the outcome of the alternative measures process.

Where the alternative measures candidate has consented, the Headquarters office should send a copy of the notification and the consent to the local Crown Counsel office. Where local Crown Counsel has received an alternative measures form from the contractor for final approval in these circumstances and there is not a copy of the notification and the consent on file, Crown Counsel should contact the Headquarters office for clarification before proceeding further.

If the candidate has not consented to the notification, the Headquarters office should advise local Crown Counsel who should decide whether it is in the public interest to (a) prosecute and notify under this policy in order to protect vulnerable persons or persons relying on trust relationships or, (b) proceed with the alternative measures process, recognizing that notification will not be available if the alternative measures agreement is concluded.

General

1. Any information provided under this policy will be given on the understanding that it may be shared with the member or employee, and that the information may be used by the organization or employer to respond in an appropriate fashion to protect those persons potentially affected by the conduct of the member or employee.
2. The Crown Counsel office involved will be advised by the Headquarters office of the decision.
3. Where a professional organization or employer requests information in addition to that already provided pursuant to the above, it should be asked to contact the appropriate Crown Counsel office. The Crown Counsel office should consult with the Director of Policy and Legislation or designate regarding disclosure.
4. If Crown Counsel receive a request for information from an adjudicator under the *Criminal Records Review Act*, that request should be referred to the Director of Policy and Legislation or designate.
5. Where there is a ban on publication and information not in the public domain is requested by the professional organization or employer, that entity should be advised to seek direction from the court concerning what, if any, information can be released by the Branch without violating the ban.
6. A list of the governing bodies covered by the *Criminal Records Review Act* is attached as appendix B.

APPENDIX A
Criminal Records Review Act
SCHEDULE 1
(Section 1, definition of "relevant offences")

RELEVANT OFFENCES

1. The following sections of the *Criminal Code* are designated as relevant offences:

Sec. #	Offence	Sec.#	Offence
151	Sexual interference	239	Attempt to commit murder
152	Invitation to sexual touching	240	Accessory after fact to murder
153	Sexual exploitation	242	Neglect to obtain assistance in child birth
155	Incest		
159	Anal intercourse	243	Concealing body of child
160	Bestiality	244	Causing bodily harm with intent
161	Order of prohibition	245	Administering noxious thing
163.1	Child pornography	246	Overcoming resistance to commission of offence
170	Parent or guardian procuring sexual activity	264	Criminal harassment
171	Householder permitting sexual activity	264.1	Uttering threats
172	Corrupting children	266	Assault
173(1)	Indecent acts	267	Assault with a weapon or causing bodily harm
173(2)	Exposure		
177	Trespassing at night	268	Aggravated assault
179	Vagrancy	269	Unlawfully causing bodily harm
212(1)	Procuring a person for purposes of prostitution	271	Sexual assault
212(2)	Living off avails of child prostitution	272	Sexual assault with a weapon, threats to a third party or causing bodily harm
212(4)	Attempting to obtain the sexual services of a child	273	Aggravated sexual assault
215	Duties of persons to provide necessities	273.3	Removal of child from Canada
218	Abandoning child	279	Kidnapping/forcible confinement
220	Causing death by criminal negligence	279.1	Hostage taking
221	Causing bodily harm by criminal negligence	280	Abduction of person under sixteen
		281	Abduction of person under fourteen
229	Murder	282	Abduction in contravention of custody order
235	Punishment for murder	283	Abduction
236	Punishment for manslaughter	372	False messages/indecent telephone calls/ harassing telephone calls
237	Punishment for infanticide		
238	Killing unborn child in act of birth	810	Where injury or damage feared
		810.1	Where fear of sexual offence

2. The following sections of the *Food and Drugs Act (Canada)* are designated as relevant offences:

39	Trafficking in controlled drug	48	Trafficking in restricted drug
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3. The following section of the *Controlled Drug and Substances Act* is designated as a relevant offence:

5	Trafficking
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APPENDIX B**Governing Bodies covered by the *Criminal Records Review Act***

Listed below are the governing bodies covered by this legislation. An individual who is registered by a governing body listed below is covered by the CRRA regardless of whether they work with children.

College of Physicians & Surgeons of BC
BC College of Chiropractors
College of Psychologists of BC
College of Dental Surgeons of BC
College of Dental Hygienists of BC
Registered Nurses Association of BC
Board of Examiners in Optometry
College of Massage Therapists
BC Association of Podiatrists
Registered Psychiatric Nurses Assoc. of BC
College of Licensed Practical Nurses of BC
College of Physical Therapists of BC
Board of Registration for Social Workers
College of Denturists of BC
College of Opticians of BC
Assoc. of Naturopathic Physicians of BC
BC College of Midwives
BC College of Teachers