



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

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SUBJECT: Resolution Discussions and Stays of Proceedings	CROSS-REFERENCE: APP 1 CHA 1 CHA 1.1 DIS 1 IMM 2 VIC 1	

POLICY

Resolution discussions are essential to the proper functioning of the justice system in British Columbia and “when properly conducted, benefit not only the accused, but also victims, witnesses, counsel, and the administration of justice generally”.¹

Resolution discussions often result in a guilty plea or admissions by the accused as to facts which otherwise would have to be proven. The early resolution of criminal charges reduces stress and inconvenience to victims and witnesses and results in a more efficient justice system where trials are either not necessary or are shorter due to the focusing of the proceedings on those facts which are clearly in issue.

Crown Counsel are encouraged to initiate resolution discussions, and in so doing they should:

- 1. make full disclosure to the accused, appropriate to the stage of the proceeding, in accordance with the Branch policy on Disclosure – DIS 1.**
- 2. accept a plea of guilty only to charges which continue to meet the charge assessment standard in policy CHA 1.**
- 3. ensure that the accused accepts legal and factual guilt in relation to the proposed guilty plea.**
- 4. ensure that the offence(s) to which the accused pleads guilty appropriately reflect the provable criminal conduct of the accused and provide an adequate sentencing range given all of the circumstances.**

¹ Report of the Attorney General’s Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions, Martin, G. Arthur, Hon., Ontario, 1993

5. in order to assist the court in determining a fit sentence, ensure that the court is advised of all relevant information, including any aggravating circumstances, (for example, use of a weapon) that the Crown is able to prove.
6. recognize that generally a plea of guilty is a mitigating factor on sentence, especially where the accused pleads guilty at the earliest opportunity.
7. provide the court with the Crown's submission concerning the appropriate range of sentence and a recommendation as to where within that range the principles of sentence are best met.
8. agree to present a joint submission as to the exact length of sentence or amount of monetary fine only where satisfied that a joint submission is appropriate in the public interest and, in particular, will not bring the administration of justice into disrepute. Crown Counsel should advise the court of the factors and principled analysis underlying the joint submission so that the basis of the decision to agree to a joint submission is readily understood by the court and members of the public.
9. refrain from entering into any arrangement which purports to fetter the discretion of the Attorney General to commence an appeal unless the written approval of the Assistant Deputy Attorney General to such an arrangement is obtained in advance (see policy APP 1).

Further, where criminal activity has resulted in the laying of multiple charges, although there may be a substantial likelihood of conviction on a particular charge, Crown Counsel may direct a stay of proceedings on that charge and accept a plea to a reduced number of charges or to included offences as long as Crown Counsel ensures that the offences to which the accused pleads guilty appropriately reflect the criminal conduct of the accused and provide an adequate sentencing range given all of the circumstances.

During the course of resolution discussions, Crown Counsel must act in the public interest at all times to ensure that the integrity of the criminal justice system is protected and nothing is done to bring the administration of justice into disrepute.

Information to Victims and Police

In cases involving serious injury or severe psychological harm, where it is practicable and before concluding a resolution discussion or directing a stay of proceedings, Crown Counsel should inform the victim, or the victim's family, and the police or other investigative agency of the proposed resolution and provide an opportunity for any concerns to be expressed to Crown Counsel. Crown Counsel should not conclude resolution discussions in such cases where the victim, or the victim's family, or police indicate a desire to seek a review of the proposed resolution – this will ensure that the Regional or Deputy Regional Crown Counsel are not placed in the position of having to repudiate a concluded resolution agreement if it is found that the agreement is not appropriate.

For the cases listed below, Crown Counsel should consult with Regional or Deputy Regional Crown Counsel before concluding any resolution discussion or directing a stay of proceedings. Also, Crown Counsel should discuss any proposed result of a resolution discussion with the victim, or the victim's family, and the police or other investigative agency, and advise them that any concerns they express will be made known to and considered by Regional or Deputy Regional Crown Counsel:

- (a) where the charge alleges that a person is responsible for a death; and
- (b) for any serious charge about which there has been, or about which objective factors support the conclusion that there is likely to be, significant public concern with respect to the administration of justice.

While Crown Counsel should consider any concerns expressed by the victim, the victim's family, or the police or other investigative agency, the decision as to the appropriate charge or disposition rests with the Criminal Justice Branch in accordance with this policy.

Repudiation

Repudiation of any resolution agreement should be extremely rare. Repudiation should be considered only where Regional Crown Counsel and the Assistant Deputy Attorney General are satisfied that the resolution agreement would bring the administration of justice into disrepute. If that test is met, the decision on whether to repudiate should take into account the extent to which the accused could be restored to their original position and whether repudiation would likely bring the administration of justice into disrepute.

Unrepresented Accused

In general, Crown Counsel should exercise caution in undertaking negotiations with an unrepresented accused (this does not include providing an Initial Sentencing Position document to the accused). Crown Counsel should encourage the accused to seek the advice of counsel to assist in any resolution discussions. However, if the accused declines to seek the advice of counsel and wishes to undertake resolution discussions, Crown Counsel should arrange for a third person to be present during the discussions or conduct the discussions in writing, unless that cannot reasonably be done. Crown Counsel should ensure that a record of the discussions is kept on the file.

DISCUSSION

Resolution discussions include all discussions between Crown Counsel and defence counsel as to the charges laid and their possible disposition. Such discussions are beneficial because they allow Crown Counsel to consider information known only to the defence concerning the strength of the Crown's case, taking into account that the Branch charge assessment guidelines continue to apply throughout the course of the prosecution.

Subject to the policy considerations discussed above, examples of resolution discussions may include:

- reducing a charge to a lesser or included offence
- withdrawing or staying other charges
- agreeing not to proceed on a charge or agreeing to stay or withdraw charges against other accused persons
- agreeing to reduce multiple charges to one all-inclusive “global” charge
- agreeing to withdraw a charge or direct a stay of proceedings on certain counts and proceed on other counts, and to rely on the material facts that supported the withdrawn or stayed counts as aggravating factors for sentencing purposes on the counts which proceed
- agreeing to dispose of the case at a specified future date if, on the record, the accused is prepared to waive the right to a trial within a reasonable time
- agreeing to the waiver of charges in accordance with the policy on waivers
- recommending a certain range of sentence or a specific sentence

In all cases, Crown Counsel should note in the Crown file the reasons for every stay of proceedings in order to allow compliance with section 15(4) of the *Freedom of Information and Protection of Privacy Act* which states as follows:

The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute:

- a) *to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or*
- b) *to any other member of the public, if the fact of the investigation was made public.*