



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

ARCS/ORCS FILE NUMBER: 56660-00	EFFECTIVE DATE: October 12, 2010	POLICY CODE: SEX 1
SUBJECT: Sexual Offences Against Adults		CROSS-REFERENCE: ALT 1 CHA 1 CHI 1 DAN 1 DIS 1 RES 1

POLICY

General Principles

In cases where the evidentiary test under policy CHA 1 is met, it will generally be in the public interest to prosecute sexual offences.

Under the *Crown Counsel Act*, Crown Counsel are responsible for the decision to prosecute. The charge assessment policy requires Crown Counsel to examine the case at each stage of the prosecution and decide whether there is a substantial likelihood of conviction and, if so, whether prosecution is required in the public interest. This cannot be determined solely by the wishes of the complainant.

All victims of sexual offences should be advised of available specialized victims' services.

Alternatives to Prosecution

Branch policy ALT 1 provides that offences of aggravated sexual assault and offences involving the use of a firearm in the commission of an indictable offence for which there is a minimum sentence, including sexual assault with a weapon, must not be considered for alternative measures. Other sexual assault offences may be referred for alternative measures and specific alternative measures recommended in an Alternative Measures Report, used only in exceptional circumstances and with the approval of Regional or Deputy Regional Crown Counsel. In all cases, the above approvals should be given if the following conditions are met:

1. The victim has been consulted and the victim's views considered.
2. The victim has been made aware of available victim assistance programs.
3. There is no apparent history of violence or sexual offences.
4. The offence must not have been of such a serious nature as to threaten the safety or tolerance of the community.

While an alternative measures referral may be considered at any stage of the proceeding, in some cases it may be advisable to approve a charge and have conditions of release in place including no contact with the complainant before making the referral.

Conditions of Bail or Recognizance to Protect the Complainant of Sexual Crimes

A warrant should be sought whenever it is necessary to protect the victim or other potential victims by seeking a detention order or conditions of release, such as those listed below. This prevents the accused from interfering with the integrity of the prosecution or committing further offences against the victim or other potential victims.

Where the detained accused presents a danger to the victim, a witness or other members of the public, Crown Counsel should consider seeking a detention order with a “no contact” order pursuant to s. 515(12) of the *Criminal Code* requiring the accused, while in custody, to abstain from communicating, directly or indirectly, with the victim.

Where an accused has been arrested and then released by the police on a promise to appear or recognizance with conditions, Crown Counsel should review the conditions to ensure that they are adequate to protect the victim and the public and are enforceable, and then, if necessary, request a warrant and an amendment of the conditions under sections 499(4), 503(2.3) or 512 of the *Criminal Code*. See “Discussion” concerning possible conditions of release.

Where there is a decision not to lay a charge, a stay of proceedings becomes necessary, or there is an acquittal, Crown Counsel should consider whether the safety of a victim or other persons at risk including potential victims generally, requires an application for a recognizance under s.810 or s.810.2 of the *Criminal Code*, which can include supervision conditions administered by the Corrections Branch.

Relevant risk factors should be communicated to the court to ensure protection of the public.

Preparation for Hearing

Administrative Crown Counsel should ensure that the procedures in their offices provide for:

1. early identification and assignment of the case;
2. wherever possible, assignment to Crown Counsel who has received specialized training;
3. early identification and notice to the victim of accommodations available under the *Criminal Code*, including section 486;
4. vertical prosecution - every effort should be made to have these cases handled by the same Crown Counsel from beginning to end. As long as a positive rapport has

developed with the victim, that Crown Counsel should remain with the case until final disposition at trial; and

5. priority in scheduling to ensure that the case moves expeditiously through the criminal justice system.

Crown Counsel should consider applying, at the first instance, for an order under section 486 of the *Criminal Code*, directing that the identity of a complainant or a witness and any information that could disclose the identity of the complainant or witness shall not be published in any document or broadcast in any way.

Crown Counsel must inform the complainant or witness about the accommodations available under sections 486 to 486.3 inclusive of the *Criminal Code*, unless impracticable to do so. Crown Counsel should make an application for an order where appropriate, taking into account all relevant factors, including whether the complainant or witness requests one of the accommodations. The court can make an order:

- for the exclusion of the public (486(1))
- for a support person (486.1)
- for the witness to give testimony from a different room or behind a screen or other device (486.2)
- for cross examination by appointed counsel (where the accused is unrepresented) (486.3)

Crown Counsel should also consider whether presentation of a mentally or physically handicapped complainant's evidence by videotape, as provided by section 715.2 of the *Criminal Code*, is appropriate. Utilization of such a procedure does not preclude the witness from having to testify.

When dealing with victims reluctant to participate in the criminal process, Crown Counsel should attempt to ascertain the reasons for the reluctance to testify and develop strategies to address the reluctance. For a sexual assault complainant, a criminal trial is very challenging. Crown Counsel should make known to victims, any victim services programs or other agencies known to Crown Counsel which may be able to assist the victim.

Sentencing

Victims should be given the opportunity to provide victim impact information.

Section 718.2 of the *Criminal Code* provides that the abuse of a spouse and abuse by person in a position of trust or authority are aggravating factors on sentencing. Any aggravating factors should be brought to the attention of the court.

Where community supervision is appropriate, Crown Counsel should seek conditions which will protect the victim. They may include a "no contact" and reporting requirement,

as well as successful completion of an assaultive behaviour, or sexual offender treatment program.

Crown Counsel should consider whether a restitution order is appropriate under section 738(1) of the *Criminal Code*.

Crown Counsel should consider Dangerous Offender and Long Term Offender Applications, where appropriate (see DAN 1).

Breach of Court Orders

As a breach of a court order is an identified risk factor for re-offending, Crown Counsel should consider laying charges for breaches of bail and probation. Also, applications for revocation of bail and of conditional sentence orders should be considered.

DISCUSSION

This policy has been revised in the new format and made consistent with other branch policies and recent legislation. A further substantive review of this policy is underway.

Conditions of Release May Include the Following:

- no contact condition
- area restriction
- weapons and firearms prohibition
- reporting condition
- drug and alcohol prohibition
- any other condition which is necessary to ensure the safety and security of the victim or a witness