

OPERATIONAL GUIDELINE

Office of the Fire Commissioner	O.G.# 2007 – RPTCRWN - 01
TITLE: REPORT TO CROWN COUNSEL PROCEDURES	Page 1 of 3

PURPOSE: To ensure a consistent application for the Local Assistants when they file a “Report to Crown Counsel”.

SCOPE: All Local Assistants and Office of the Fire Commissioner personnel.

POLICY: All Reports to Crown Counsel shall be dealt with according to this guideline.

Background:

1. The Criminal Justice Branch has two policies on charge assessment: CHA 1 and CHA 1.2. They are attached in the appendices. The Local Assistants need to read these to understand the Crown’s policies on “social regulatory offences”, which include offences under the *Fire Services Act*. This OFC procedure has no impact on these established Crown policies, and visa versa. They are included for your information only.
2. Once a Report to Crown Counsel is filed, a Crown Counsel uses these policies to make a charge assessment decision which determines whether or not a prosecution will proceed. A Crown Counsel needs available evidence to determine:
 - whether there is a substantial likelihood of conviction; and,
 - whether a prosecution is required in the public interest.
3. The prosecution process can be lengthy (6 months to 1 year) depending on the workload.
4. A charge should not be used as leverage on getting compliance, and that the Local Assistant should exhaust all possible means of getting compliance before filing a Report to Crown Counsel, including by written notices and warning letters to the owner.
5. Crown Counsel indicates the Local Assistant needs to file with their local Crown Counsel Office where the offence takes place in order for the accused and witnesses to be accessible for Court.

Procedure

1. For any Provincial fire order that may lead to an offence, the Local Assistant must make very detailed notes, and if necessary photos, with dates and events, and be able to make available these documents as supporting evidence.

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2. There is no cost to file a Report to Crown Counsel.

3. Report to Crown Counsel is a 4 page duplicate form:
 - Available at the local Crown offices
 - Crown Counsel Offices are located in the following communities: Abbotsford, Atlin, Burnaby, Burns Lake, Campbell River, Castlegar, Chase, Chetwynd, Chilliwack, Clearwater, Courtenay, Cranbrook, Creston, Dawson Creek, Delta/White Rock, Duncan, Fernie/Sparwood, Fort Nelson, Fort St John, Golden, Grand Forks, Houston, Invermere, Kamloops, Kelowna, Kimberley, Kitimat, Langley, Lillooet, Lytton, Mackenzie, Maple Ridge, Masset, Merritt, Nakusp, Nanaimo, Nelson, New Westminster, Oliver, Pemberton, Penticton, Port Alberni, Port Coquitlam, Port Hardy, Powell River, Prince George, Prince Rupert, Princeton, Quesnel, Revelstoke, Richmond, Rossland, Salmon Arm, Sechelt, Smithers, Squamish, Surrey, Terrace, Valemount, Vancouver, North Vancouver, Vanderhoof, Vernon, Victoria (including Western Communities & Sooke), Western Communities, Williams Lake.

4. You may contact your local Crown Counsel for assistance to fill out the Report to Crown Counsel.

5. The following are the fields in the “Report to Crown Counsel”:

Names of Accused:	Owner’s name [same as the original order].
Police Case No.:	Leave empty.
Did the accused make a statement:	Check “yes”, if you have a statement from the owner on their position. Can be correspondence on what they have done and what they have not done. Otherwise, check “no”.
Are all oral statements set out below and are all copies of all written statement attached:	This should be checked “yes”. If you don’t have this paperwork, the chance of Crown taking the case is low. Oral statements can be your inspection notes and details on the sequence of events.

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Are copies of all written statements made by the witness attached:	This should be checked “yes”. Witnesses include the inspector, the tenant, the complainant, the inspector who did the recheck, OFC staff if there is an appeal inspection. You should have a written statement from all witnesses.
Are all exhibits listed:	Exhibits are pictures, reports, anything that shows the condition of the case. There should be exhibits attached.
Was a search warrant used:	Most cases no, check yes if there is one.
Is a copy of search warrant attached:	Most cases no, check yes if there is one.
Complete if accused was arrested or detained:	Should be no for the next 4 boxes.
Is this a young offenders act prosecution:	Should be a no.
Detailed narrative:	If you have outlined the sequence of events in a separate report, you can say “see attached report(s)”.

REFERENCE:

Also see O.G.#

<p><u>(Original copy signed by Richard Simpson)</u> A/Fire Commissioner</p> <p>Date of Issue: June 4, 2007</p>	<p>This O.G. Replaces:</p> <p style="text-align: center;">N/A</p> <p>Issued on:</p>
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CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: 55100-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: CHA 1
SUBJECT: Charge Assessment Guidelines		CROSS-REFERENCE: ABD 1 CHA 1.1 CHA 1.2 CHI 1 DIS 1 ELD 1 HAT 1 RES 1 SPO 1

POLICY

Under the [Crown Counsel Act](#), Crown Counsel have the responsibility of making a charge assessment decision which determines whether or not a prosecution will proceed.

In discharging that charge assessment responsibility, Crown Counsel must fairly, independently, and objectively examine the available evidence in order to determine:

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

A substantial likelihood of conviction exists where Crown Counsel is satisfied there is a strong, solid case of substance to present to the Court.

Once Crown Counsel is satisfied that there is a substantial likelihood of conviction (the evidentiary test), Crown Counsel must determine whether the public interest requires a prosecution by considering the particular circumstances of each case and the legitimate concerns of the local community. Public interest factors include those outlined below.

Exceptional circumstances may require that a prosecution proceed even though the usual evidentiary test is not satisfied. Such circumstances will most often arise in cases of high risk violent or dangerous offenders or where public safety concerns are of paramount consideration. In these cases, charging decisions must be approved by Regional or Deputy Regional Crown Counsel and the evidentiary test is whether Crown Counsel is satisfied that there is a reasonable prospect of conviction.

The requirement to meet the two-part charge assessment standard, consisting of the evidentiary test and the public interest test, continues throughout the prosecution.

For the cases listed below, Crown Counsel should discuss the charge assessment decision with Regional or Deputy Regional Crown Counsel before any decision is made:

- 1. where the allegation is that a person is responsible for a death; and**
- 2. for any serious allegation about which there has been, or is likely to be, significant public concern with respect to the administration of justice.**

DISCUSSION

Introduction

The decision to initiate or continue a prosecution is one of the most important duties of Crown Counsel. The [Crown Counsel Act](#) authorizes Crown Counsel, under the direction of the Assistant Deputy Attorney General, to “examine all relevant information and documents and, following the examination, to approve for prosecution any offence or offences that he or she considers appropriate” (section 4(3)(a)).

The independence of this function is confirmed by section 5 of the Act. Any intervention by the Attorney General with respect to the approval or conduct of a prosecution “must be given in writing to the Assistant Deputy Attorney General and published in the *Gazette*.”

The independence of Crown Counsel must also be balanced with measures of accountability. Principled charge assessment decisions are assured when Crown Counsel experienced in assessing evidence exercise discretion in accordance with Branch public policies when reviewing the available evidence and applicable law.

During the charge assessment process, Crown Counsel does not have the benefit of hearing the testimony of Crown witnesses, either in direct or cross-examination, nor the defence evidence, if any. During the course of a preliminary hearing, when preparing for trial, or during trial, the Crown’s case may be materially different than at the charge assessment stage. The requirement to meet the charge assessment standard continues throughout the prosecution.

The Criminal Justice Branch recognizes that the police have the authority to lay an Information; however, Crown Counsel have the ultimate authority to direct a stay of proceedings. Therefore, it is expected that the police will lay an Information only after the approval of charges by Crown Counsel, or, if charges are not approved, upon exhaustion of an appeal of that decision by the police (see policy [CHA 1.1](#)).

Recognizing that the charge assessment responsibility of Crown Counsel and the investigative responsibility of the police are mutually independent, cooperation and effective communication between Crown Counsel and the police are essential to the proper administration of justice. In serious cases, or those of significant public interest, Crown Counsel discuss with the police, where practicable, their intention to not approve a charge recommended by the police (a “no charge” decision) or to direct a stay of proceedings.

Evidentiary Test – Substantial Likelihood of Conviction

Subject to the exception described below, the usual evidentiary test to be satisfied is whether there is a substantial likelihood of conviction.

A substantial likelihood of conviction exists where Crown Counsel is satisfied there is a strong, solid case of substance to present to the Court. In determining whether this standard is satisfied, Crown Counsel must determine:

1. what material evidence is likely to be admissible;
2. the weight likely to be given to the admissible evidence; and
3. the likelihood that viable, not speculative, defences will succeed.

Evidentiary Test in Exceptional Cases

Exceptional circumstances may require that a prosecution proceed even though the usual evidentiary test described above is not satisfied. Such circumstances will most often arise in cases of high risk violent or dangerous offenders or where public safety concerns are of paramount consideration. Such charging decisions must be approved by Regional or Deputy Regional Crown Counsel.

The evidentiary test in such cases is whether Crown Counsel is satisfied that there is a reasonable prospect of conviction. This test is higher than that of a prima facie case. A weighing of admissible evidence and viable defences is not required. Crown Counsel should consider:

1. what material evidence is arguably admissible;
2. whether that evidence is reasonably capable of belief; and
3. whether that evidence is overborne by any incontrovertible defence.

Public Interest Test

It has never been the rule that all criminal offences which meet the evidentiary test must automatically be prosecuted. Sir Hartley Shawcross, Q.C., former Attorney General of England (later Lord Shawcross), outlined the public interest principle:

*It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution. Indeed, the very first regulations under which the Director of Public Prosecutions worked provided that he should...prosecute, amongst other cases: “wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest.” That is still the dominant consideration.*¹

¹ U.K., H.C. Debates, vol. 483, col. 681, (29 January 1951).

Once Crown Counsel is satisfied that the evidentiary test is met, Crown Counsel must determine whether the public interest requires a prosecution. Hard and fast rules cannot be imposed as the public interest is determined by the particular circumstances of each case and the legitimate concerns of the local community. In making this assessment, the factors which Crown Counsel will consider include the following:

1. Public Interest Factors in Favour of Prosecution

It is generally in the public interest to proceed with a prosecution where the following factors exist or are alleged:

- (a) the allegations are serious in nature;
- (b) a conviction is likely to result in a significant sentence;
- (c) considerable harm was caused to a victim;
- (d) the use, or threatened use, of a weapon;
- (e) the victim was a vulnerable person, including children, elders, spouses and common law partners (see policies [ABD 1](#), [CHI 1](#), [ELD 1](#) and [SPO 1](#));
- (f) the alleged offender has relevant previous convictions or alternative measures;
- (g) the alleged offender was in a position of authority or trust;
- (h) the alleged offender's degree of culpability is significant in relation to other parties;
- (i) there is evidence of premeditation;
- (j) the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor (see policy [HAT 1](#));
- (k) there is a significant difference between the actual or mental ages of the alleged offender and the victim;
- (l) the alleged offender committed the offence while under an order of the Court;
- (m) there are grounds for believing that the offence is likely to be continued or repeated;
- (n) the offence, although not serious in itself, is widespread in the area where it was committed;
- (o) the need to protect the integrity and security of the justice system and its personnel;
- (p) the offence is a terrorism offence;
- (q) the offence was committed for the benefit of, at the direction of or in association with a criminal organization.

2. Public Interest Factors Against Prosecution

It may not be in the public interest to proceed with a prosecution where the following factors exist or are alleged:

- (a) a conviction is likely to result in a very small or insignificant penalty;
- (b) there is a likelihood of achieving the desired result without a prosecution by the Criminal Justice Branch. This could require an assessment of the availability and efficacy of any alternatives to such a prosecution, including alternative measures, non-criminal processes or a prosecution by the Federal Prosecution Service. Crown Counsel need not conclude, in advance, that a prosecution must proceed in the public interest if a referral for an alternative measure is not acceptable. Information with respect to the suitability of a candidate for diversion or alternative measure is a factor to be taken into consideration by Crown Counsel in reaching a final charge assessment decision;
- (c) the offence was committed as a result of a genuine mistake or misunderstanding (factors which must be balanced against the seriousness of the offence);
- (d) the loss or harm can be described as minor and was the result of a single incident, particularly if caused by misjudgement;
- (e) the offence is of a trivial or technical nature or the law is obsolete or obscure.

3. Additional Factors to be Considered in the Public Interest

- (a) the youth, age, intelligence, physical health, mental health, and other personal circumstances of a witness or victim;
- (b) the personal circumstances of the accused, including his or her criminal record;
- (c) the length and expense of a prosecution when considered in relation to the social benefit to be gained by it;
- (d) the time which has elapsed since the offence was committed;
- (e) the need to maintain public confidence in the administration of justice.

PROCEDURE / PRACTICE

In all cases, in applying the charge assessment standard, the important obligations of Crown Counsel are to:

1. make the charge assessment decision in a timely manner, recognizing the need to expedite the decision where an accused is in custody, where a Report to Crown Counsel requests a warrant, or where the charge involves violence;
2. record the reasons for any charge assessment decision which differs from the recommendation of the police in the Report to Crown Counsel;
3. where appropriate, communicate with those affected, including the police, so that they understand the reasons for the charge assessment decision; and
4. consider whether proceeding by indictment after the expiry of a limitation period could constitute an abuse of process based on any failure by Crown Counsel or the police to act in a timely manner.

Report to Crown Counsel

In order that Crown Counsel may appropriately apply the charge assessment standard, the Report to Crown Counsel (RTCC) should provide an accurate and detailed statement of the available evidence. The following are the basic requirements for every RTCC whether the information is provided electronically or not:

1. a comprehensive description of the evidence supporting each element of the suggested charge(s);
2. where the evidence of a civilian witness is necessary to prove an essential element of the charge (except for minor offences), a copy of that person's written statement;
3. necessary evidence check sheets;
4. copies of all documents required to prove the charge(s);
5. a detailed summary or written copy of the accused's statement(s), if any;
6. the accused's criminal record, if any; and
7. an indexed and organized report for complex cases.

If the RTCC does not comply with these standards it may be returned to the investigator with a request outlining the requirement to be met.



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

ARCS/ORCS FILE NUMBER: 55100-00	EFFECTIVE DATE: September 15, 2004	POLICY CODE: CHA 1.2
SUBJECT: Charge Assessment – Social Regulatory Offences		CROSS-REFERENCE: CHA 1 ELD 1 ENV 1 SEX 2

POLICY

Restraint should be exercised in proceeding with charges of a social regulatory nature. Generally speaking, prosecutions should be initiated only where alternate methods to enforce compliance have been tried and have failed, where the offender has demonstrated a wilful or repeated non-compliance with the social regulatory statute or where the public interest otherwise requires prosecution in order to protect the integrity of the regulatory scheme.

Examples of social regulatory statutes which would be subject to this policy are: the [Private Investigators and Security Agencies Act](#), [Business Corporations Act](#), [Social Service Tax Act](#), [Home Owner Grant Act](#), and [Motion Picture Act](#). In addition, this policy may have application to offences under the *Criminal Code* and other federal statutes which are primarily social regulatory in nature, for example, certain provisions of the *Criminal Code* concerning the licensing and regulation of firearms and gaming.

Certain locations may experience an inordinate number of liquor or other minor offences of a disruptive nature to the general peace of the community. Where such a location is identified by the police in a Report to Crown Counsel, the public interest may require prosecution.

When it is necessary in the public interest to commence a prosecution for a social regulatory infraction, Crown Counsel should bring the circumstances of any attempts to achieve compliance to the attention of the court at sentencing.

The public interest requires that certain matters be exempted from the application of this policy, including: offences involving motor vehicles (except under the [Motor Dealer Act](#)); offences under environmental legislation (see [ENV 1](#)), the [Family Relations Act](#), the [Health Act](#) (see [SEX 2](#)), the [Heritage Conservation Act](#), the [Securities Act](#), and the [Employment and Assistance Act](#); the more serious offences under provincial tax legislation, such as the [Tobacco Tax Act](#); and violations of the [Business Practices and Consumer Protection Act](#) involving elderly people as victims (see [ELD 1](#)).

DISCUSSION

Many provincial statutes establish social regulatory schemes relating to the conduct of people and businesses which anticipate that persons who are affected by the legislation will act in an honest, forthright and compliant manner. Some provincial statutes, such as the [Medical Practitioners Act](#), regulate professional groups and establish rules for their orderly conduct. As noted above, the *Criminal Code* contains some provisions which are social regulatory or administrative in nature.

Situations to which this policy applies include:

- where persons violate a regulatory scheme under which they are licensed or qualified
- where unlicensed persons practice or do business outside of the scheme without lawful authority
- where persons violate regulatory schemes of general application for which no licence is required.