



Prosecution
Service

BC Prosecution Service

Role, Policies, and Process

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Criminal Justice in Canada

In Canada, the provinces and territories are responsible for the administration of justice.

PROVINCIAL CROWN

- all offences and appeals in BC that arise under Canada's *Criminal Code*
- provincial regulatory offences (ie. motor vehicle)

FEDERAL CROWN

- certain offences under federal legislation, including drug, income tax, fisheries, immigration and customs charges

The BCPS and the Government

- The BC Prosecution Service is part of the Ministry of Attorney General but is at arm's length from government to avoid any potential for real or perceived improper influence.
- The Assistant Deputy Attorney General (ADAG) heads the BC Prosecution Service. The ADAG has the authority for the conduct and supervision of all criminal prosecutions. Crown Counsel act as agents for the Attorney General in the conduct of prosecutions.
- The *Crown Counsel Act* sets out the functions and responsibilities of Crown Counsel, the BCPS and the ADAG.

INVESTIGATION

Police investigate possible crime. If warranted, police or other investigative agencies submit to Crown a Report to Crown Counsel (RCC) for charge assessment.

CHARGE ASSESSMENT

Crown receives RCC – which is then subject to charge assessment:

- Is there a substantial likelihood of conviction?
- Is prosecution required in the public interest?

Crown Counsel can:

- Lay charges;
- Not lay charges;
- Refer person to an alternative measures program; or
- Refer matter back to investigative agency for more information.

PROSECUTION

If charges are laid, Crown Counsel conducts a prosecution against the accused on behalf of the community.

Trials may be held in Provincial Court or the Supreme Court of BC.

The trial will determine if the accused is found:

- not guilty; or
- guilty.

SENTENCING

If the accused is found guilty after a trial, or pleads guilty to charges, a sentence will be imposed.

APEALS

The decision of the judge or jury is final. However, that decision may be appealed. An appeal is a formal request for change to the decision believing an error was made in some important aspect of the trial. Appeals can be initiated:

- from a conviction and/or sentence;
- from an acquittal

Charge Assessment

Crown Counsel assess if and what charges are laid, and against whom.

Crown Counsel can also decide that the accused person should be referred to an alternative measures program rather than go to court.

The BCPS uses a two-part test to assess whether charges are approved:

- there must be a **substantial likelihood of conviction** based on the evidence gathered by the police, and
- a prosecution is required in the **public interest**.

Charge Assessment

Substantial likelihood of conviction

- Requires review and assessment of full disclosure provided by the police
- Requires consideration of the probability of conviction and the objective strength or solidity of the evidence

Public Interest

- Requires consideration of a large number of factors relating to the circumstances of the offence, the accused, any victim, and the administration of justice
- The BCPS Crown Policy Manual is available publicly. CHA1 details these factors.

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Conduct of prosecutions

- Crown Counsel are lawyers, who act as prosecutors on behalf of society as a whole.
- Although one of their responsibilities is to keep victims informed about the process, prosecutors do not act for victims of a crime.
- Crown Counsel's duty is not to obtain a conviction at any cost, but to ensure that the trial process is fair to all, that evidence is presented thoroughly and accurately, and the integrity of the justice process is maintained.

Conduct of prosecutions

Bail

Persons who are charged with an offence are constitutionally entitled to be released from custody unless Crown Counsel is able to justify their continued detention in accordance with the law.

The position that Crown Counsel takes in relation to bail, including whether to seek the detention of the accused, includes careful consideration of the specific circumstances of the case, the background of the accused, and the risk to the public.

Conduct of prosecutions

Bail

Crown Counsel must be able to show that detention is necessary to:

- ensure the accused person attends court;
- ensure the safety or protection of the public, including any victims or witnesses; or,
 - maintain public confidence in the administration of justice.

Crown Counsel usually bears the burden to show that an accused should be detained (or subject to restrictive conditions). However, in certain circumstances and for some serious offences, the accused will bear the burden to show that he or she should be released

Conduct of prosecutions

Trial

- Where an accused pleads 'not guilty', the matter is set for trial.
- At trial, the guilt or innocence of the accused person is determined.
- Crown counsel bears the burden of establishing beyond a reasonable doubt that the accused is guilty of the offences charged.
 - The accused generally does not have to prove or disprove anything.
- Evidence can be physical items, witness testimony, photographs, video or documents but they must adhere to various rules to be admissible in evidence at trial.

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Sentencing

- If the accused pleads guilty or is found guilty after a trial, he or she will be sentenced.
- Crown Counsel make a recommendation on sentence but it is up to the judge to determine the appropriate penalty for the offence.



Under s. 718 of the *Criminal Code*, the fundamental purpose of sentencing is to “protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful, and safe society by imposing sanctions that have one or more of the following objectives: ...

Sentencing

(Objectives of sentencing:)

...

- to denounce unlawful conduct;
- to deter the offender and other persons from committing offences;
 - to separate offenders from society, where necessary;
 - to assist in rehabilitating offenders;
- to provide reparations for harm done to victims or to the community; and,
- to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

Sentencing

The principles of sentencing in the *Criminal Code* include:

- the sentence must be proportionate to the gravity (seriousness) of the offence and the degree of responsibility of the offender;
- a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh (the “totality” principle);
- an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

Sentencing

So, what are the options?

- There are different types of sentences that may be imposed on an offender, individually or sometimes in combination:
 - discharges,
 - fines,
 - community supervision,
 - and imprisonment.

Sentencing

So, what are the options?

The BCPS has a number of policies that address how we formulate a sentencing position in a particular matter:

ALT1, CHI1, IPV1, FIR1, RES1, VUL1...

The Crown Policy Manual has been amended recently in furtherance of the BCPS Indigenous Justice Strategy.



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