



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

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POLICY

Criminal harassment may consist of a series of separate offences. Where that is the case, both a charge of criminal harassment and charges arising from the separate offences may be appropriate. The decision on which charges to prosecute should ensure that the criminal conduct of the accused is appropriately reflected and that an adequate sentencing range is provided to the court.

The victim's safety should always be a priority given the intimidating and volatile nature of this offence. Particular attention should be paid to issues such as bail, victim notification and sentencing.

Criminal harassment often involves persistent behaviour over a period of time, and it causes victims to fear for their safety or the safety of persons known to them. Such 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. No case of criminal harassment should be considered for alternative measures without consultation with the victim.

Given the nature of these cases, Crown Counsel should request an early trial date and should consider the importance of an early trial date in assessing any adjournment application.

Crown Counsel or support staff should ensure the victim is aware of available victim assistance programs.

The processing of Reports to Crown Counsel must be expedited, as unnecessary delay increases the emotional stress and intimidation experienced by the victim.

DISCUSSION

Section 264 of the *Criminal Code* is aimed at the unlawful and unjustifiable interference with the victim's enjoyment of life and peace of mind. The conduct must cause the victim to "reasonably fear, in all the circumstances, for their safety or the safety of anyone known to them". "Safety" has been judicially interpreted to include psychological, emotional and physical well being.

Incidents of criminal harassment are generally of an ongoing nature as opposed to other related criminal offences (for example, assault) which, by definition, involve a completed criminal act before the investigation and prosecution process begins. While the harassment may not include an explicit threat, the cumulative effect of the prohibited activity, whether it is phone calls, letters or watching and besetting, generates a growing climate of fear that can eventually emotionally debilitate the victim.

The majority of these cases involve victims who have at one time been involved in a relationship with the accused. Where this is the case, the Ministry's policy on Spouse Assault should be consulted (see SPO 1). The harassment usually involves repeated incidents of following, communicating (directly or indirectly) or watching and besetting. Where there is a history of violence, Crown Counsel should consider approving counts relating to serious incidents which occurred in the past.

Some factors to consider in deciding whether the evidence supports a charge of criminal harassment are:

- whether the victim has been required to alter her or his lifestyle or choice of action because of the accused's conduct;
- the history of any prior relationship between the victim and the accused, in particular, things such as past incidents of abusive/violent behaviour directed towards the victim; criminal convictions for offences of violence against the victim; prior complaints made by the victim to the police;
- any words uttered by the accused during the course of the conduct in question;
- whether there is any direct evidence that the accused had actual knowledge as to the harassing nature of his or her course of conduct or, alternatively, was reckless as to the effect of the impugned conduct on the victim;
- the nature of the place or location and the time of day when the conduct occurred, including whether the victim was isolated or alone, recognizing that fear can be caused or heightened depending on where and when the conduct occur;
- evidence of others (for example, victim's family members, friends or co-workers) who may have been involved.

Independent evidence should always be sought to support the victim's evidence. This is especially significant where there is a prior relationship between the accused and the victim.

Bail Considerations

Given the nature of this offence, it is essential that bail conditions be imposed to ensure the protection of the victim. If the accused is not in custody at the time the charges are approved, and the accused has not been released by the police on appropriate conditions, Crown Counsel approving such charges should request a warrant for the accused to ensure that, if the accused is not to be detained, appropriate release conditions are imposed to protect the victim and the public, preserve the integrity of the witnesses' evidence, and ensure the accused's attendance in court.

If an accused is released from custody on a bail order with a reporting condition, community corrections should notify the complainant of the release and bail terms. If there is no reporting condition on the accused's bail order, Crown Counsel or support staff should notify the complainant of release and bail terms.

Conditions such as firearms and weapons prohibitions, no contact orders, area restrictions, reporting conditions and drug or alcohol prohibitions may be appropriate. In many, if not most, criminal harassment cases, these conditions are necessary to prevent the continuation of the offence or the commission of other offences.