



---

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

---

ARCS/ORCS FILE NUMBER: <b>58100-00</b>	EFFECTIVE DATE: <b>February 3, 2012</b>	POLICY CODE: <b>DAN 1</b>
SUBJECT: <b>Dangerous Offender and Long Term Offender Applications</b>		CROSS-REFERENCE: <b>Practice Bulletin Practice Directive</b>

## **POLICY**

**A priority of the Criminal Justice Branch is to protect the community from high-risk, sexual and violent offenders by making dangerous offender and long term offender applications in appropriate cases. The protection of the public is the paramount concern.**

**All Crown Counsel are responsible for identifying potential dangerous or long term offender applications, commencing with charge assessment for serious personal injury offences as defined by section 752.**

### **I. FOR A PREDICATE OFFENCE COMMITTED BEFORE JULY 2, 2008**

**A dangerous offender application should be commenced where there is a reasonable likelihood the court will be satisfied that an offender meets one of the definitions of dangerous offender contained in s.753 of the *Criminal Code*, there is no reasonable possibility of eventual control of the risk in the community, and the public would not be adequately protected by a determinate sentence followed by a long term supervision order.**

**A long term offender application may be commenced only where Crown Counsel have sufficient information to determine that there is a reasonable possibility of eventual control of the risk in the community, that the public would be adequately protected by a determinate sentence followed by a long term supervision order and that it is unlikely that further information will become available that might support a dangerous offender application.**

## **II. FOR A PREDICATE OFFENCE COMMITTED ON OR AFTER JULY 2, 2008**

The following three paragraphs take into account that, pursuant to the amendments to the *Criminal Code* effective July 2, 2008, on a finding that an offender is a dangerous offender, the court can impose either an indeterminate sentence, a definite sentence with a long term supervision order or a definite sentence alone.

A dangerous offender application should be commenced whenever there is a reasonable likelihood the court will be satisfied that an offender meets one of the definitions of dangerous offender contained in section 753 of the *Criminal Code*.

Where an offender has been designated a dangerous offender by the Court, Crown Counsel should ask the Court to impose an indeterminate sentence unless there is a reasonable expectation that a lesser measure will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.

Any decision to proceed contrary to the last two paragraphs must have the approval of the Assistant Deputy Attorney General, after Crown Counsel has consulted Regional or Deputy Regional Crown Counsel.

### **Statutory Presumption of Dangerous Offender**

Under section 753(1.1) there is a presumption that the dangerous offender definition is met where the offender has been convicted of a primary designated offence for which it would be appropriate to impose a sentence of imprisonment of two years or more and the offender was convicted previously at least twice of a primary designated offence and was sentenced to at least two years of imprisonment for each of those convictions. In such cases Crown Counsel must:

1. Request Regional or Deputy Regional Crown Counsel to review the case, including the recommendation of Crown Counsel, and decide whether to seek an assessment remand under section 752.1.
2. Once the decision has been made, advise the Court pursuant to section 752.01 as to whether Crown Counsel intends to make an application for an assessment remand, and
3. On receipt of any assessment report, forward it, along with the recommendation of Crown Counsel, to Regional or Deputy Regional Crown Counsel for their decision as to whether a dangerous offender application should be commenced.

In deciding whether to seek an assessment remand under section 752.1 or commence a dangerous offender application, under subparagraphs #1 and #3 above respectively, Regional or Deputy Regional Crown Counsel should rely on the presumption under section 753(1.1) unless it is not in the public interest to do so, taking into account all the circumstances of the case, including:

- the impact on the victim(s)
- all available assessments
- the personal circumstances of the offender, including health and age
- the age of the prior convictions, and
- the circumstances of the prior convictions and of the predicate primary designated offence

### **Breaches and Subsequent Serious Personal Injury Offences**

There are significant public interest factors in favour of proceeding with prosecutions for serious personal injury offences and breaches of long term supervision orders committed after an offender has been designated as a dangerous offender. Any decision not to proceed for reasons other than sufficiency of evidence must be approved by Regional or Deputy Regional Crown Counsel and the reasons for the decision recorded.

Where a person designated as a dangerous offender has subsequently been convicted of either a serious personal injury offence or of a breach of a long term supervision order committed on or after July 2, 2008, Crown Counsel should:

1. Request Regional or Deputy Regional Crown Counsel to review the matter, including the recommendation of Crown Counsel, and to determine whether to seek an assessment remand under section 753.01.
2. On receipt of any assessment report, forward it, along with the recommendation of Crown Counsel, to Regional or Deputy Regional Crown Counsel for their decision as to whether an application for an indeterminate sentence should be made.

An application for an indeterminate sentence should be made unless there is a reasonable expectation that a lesser sentence, with or without a new period of long term supervision, will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.

### **III. FOR ALL PREDICATE OFFENCES, REGARDLESS OF DATE OF COMMISSION**

The dangerous offender criteria do not limit applications to sexual offenders. Crown Counsel should also consider serious personal injury offences involving violence without a sexual component.

The possibility of instituting a dangerous offender application should not be used to encourage a guilty plea in exchange for an agreement that Crown Counsel will not seek an assessment remand under section 752.1.

Where defence counsel indicates that an accused might be willing to plead guilty in exchange for an agreement that the Crown initiate a long-term offender rather than dangerous offender application or not seek an indeterminate sentence on a dangerous offender application, Crown Counsel should not commit to any position on sentence until an assessment report has been completed and reviewed by Regional Crown Counsel. In exceptional cases, Crown Counsel may conclude on the basis of prior assessments or an opinion from a psychiatrist retained by the Criminal Justice Branch and the accused's history that a guilty plea in exchange for an agreement described above would be appropriate. In such cases, Crown Counsel should not commit to any position on sentence without first consulting Regional Crown Counsel.

Pursuant to section 754, the consent of the Attorney General is required to commence a dangerous offender or long term offender application. Prior to seeking such consent, it is necessary for the Crown to seek an assessment remand from the Court under section 752.1 or 753.01. Approval to apply for an assessment remand must be obtained from the Regional or Deputy Regional Crown Counsel.

Upon receipt of an assessment report, Regional or Deputy Regional Crown Counsel should assess the evidence, the recommendation of Crown Counsel and any applicable presumption, as to whether there is a reasonable likelihood that the accused may be declared either a dangerous offender or long-term offender, and consider whether to seek the consent of the Assistant Deputy Attorney General to the appropriate application. The Assistant Deputy Attorney General provides the consent to commence an application. (see the Practice Directive entitled Consent of the Attorney General).

Following receipt of the Consent of the Attorney General to a dangerous offender application, where it appears that the evidence no longer supports such a designation, Crown Counsel must consult with Regional Crown Counsel and the Assistant Deputy Attorney General before a position is taken with respect to a long term offender designation or a determinate sentence.

## DISCUSSION

### Flagging Potential Applications

Where Crown Counsel determine that the accused is a potential dangerous or long term offender, they should call the manager of the High Risk Offenders Identification Program at Vancouver Headquarters (604 660-3918). The manager of that program may be able to provide relevant material such as Reports to Crown Counsel, Pre-sentence Reports, Reasons for Judgment, psychological assessments and the Corrections history of the accused, for subsequent review by trial Crown Counsel. The file should be flagged as a potential dangerous or long term offender application.

### Guidelines

In order to identify cases for flagging, Crown Counsel should consider sections 752, 752.1, 753 and 753.1 and the following guidelines:

1. Section 752.1 provides that where an offender is convicted of a serious personal injury offence (defined in s.752) or an offence referred to in paragraph 753.1(2) (the long term offender definition), the Court shall remand the offender for the preparation of an assessment report where the Court is of the opinion there are reasonable grounds to believe the offender *might* be found to be a dangerous or long-term offender.
2. The protection of the public is the paramount concern. The Supreme Court of Canada in R. v. Lyons affirmed that the primary purpose of the dangerous offender legislation is the protection of the public. This was reaffirmed in R. v. Johnson in the same Court.
3. For a predicate offence committed before July 2, 2008, where the offender meets one of the definitions of dangerous offender contained in sections 753 (a) and (b) but there is a reasonable possibility of eventual control in the community, and the public threat can be reduced to an acceptable level through a determinate sentence or a determinate sentence and a long term supervision order, an offender is not a dangerous offender (R. v. Johnson).
4. Crown Counsel should consider all available assessments in determining whether the accused is a dangerous offender. The Corrections history will often include: past psychological assessments; whether the offender has been offered, completed, failed or refused treatment; and the offender's parole history including any violations or denial of parole.

### Request for Review by Regional or Deputy Regional Crown Counsel

As soon as there is an indication of a guilty plea, or after a finding of guilt, Crown Counsel should request Regional or Deputy Regional Crown Counsel to review the matter and determine

whether to seek an assessment remand under section 752.1 or 753.01. In seeking the review by Regional or Deputy Regional Crown Counsel, Crown Counsel should provide a memorandum which:

- summarizes the history and circumstances of the convictions before the Court on which the application is based
- outlines all admissible relevant past conduct
- sets out the recommendation of Crown Counsel as to why the offender may be a dangerous or long term offender
- provides the opinion of Crown Counsel on the appropriate sentence
- includes copies of any Victim Impact Statement (VIS), criminal record, facts of any outstanding charges, and a copy of the Information or Indictment

Where possible, Crown Counsel should prepare this information before plea or a finding of guilt.

#### Decision to Make Application for an Order Remanding the Offender for Assessment

Regional or Deputy Regional Crown Counsel will review the information provided by Crown Counsel and decide whether to make the application for an assessment remand under section 752.1 or 753.01. If a decision is made not to make the application, reasons should be recorded in the file, the file should be archived, and a copy of the reasons sent to the Manager of the High Risk Offenders Identification Program.

As required by section 752.01, the Court must be advised as to whether Crown Counsel intends to make an application for an assessment remand where the offender has been convicted of a primary designated offence for which it would be appropriate to impose a sentence of imprisonment of two years or more and the offender was convicted previously at least twice of a primary designated offence and was sentenced to at least two years of imprisonment for each of those convictions.

Approval to proceed with an application for an assessment remand under section 752.1 or 753.01 must be obtained from Regional or Deputy Regional Crown Counsel. Where the consent has been obtained in advance, Crown Counsel may indicate an intention to make an application for an assessment remand on the date of conviction.

On the Crown's application for an assessment remand, evidence may need to be called, including previous psychiatric assessments and any criminal history, to satisfy the Court that there are reasonable grounds to believe that the offender might be found to be a dangerous offender or a long term offender.

The Forensic Psychiatric Services Commission (FPSC) provides a service to the Courts in obtaining an assessment by a psychiatrist or psychologist from a rotational list of psychiatrists and psychologists trained by FPSC to conduct assessments. The clerk of the Court sends the assessment remand to FPSC which commences the assessment process.

The Manager of the High Risk Offenders Identification Program will send the offender's entire Corrections file to FPSC, obtained from Correctional Service Canada and provincial Corrections. Crown Counsel are responsible for supplying a binder containing the circumstances of the index offence, the offender's criminal history and any other information they wish the assigned expert to review in preparing their assessment, to the Dangerous Offender Hearing Co-coordinator at the Forensic Psychiatric Hospital, 604 524-7716. Crown Counsel should advise defence counsel of any material they have forwarded.

#### Receipt of Assessment Report

The Assistant Deputy Attorney General provides the consent of the Attorney General to commence a dangerous or long-term offender application, as the lawful deputy of the Attorney General pursuant to section 3(2) of the *Crown Counsel Act*. Defence counsel must be given seven days notice of the application for a finding of dangerous offender.

Upon receipt of the assessment report, Regional or Deputy Regional Crown Counsel should assess the evidence as to whether there is a reasonable likelihood that the court will be satisfied that the offender meets the definition of dangerous offender or long term offender, and consider whether to seek the consent of the Assistant Deputy Attorney General to the appropriate application.

If Crown Counsel has strong concerns about the Court ordered assessment report they may make application under section 752.1 for a further assessment remand or request an opinion from a psychiatrist retained by the Criminal Justice Branch with the approval of Regional or Deputy Regional Crown Counsel.

#### Application for Consent of the Assistant Deputy Attorney General

Where Regional or Deputy Regional Crown Counsel decide to seek the consent of the Assistant Deputy Attorney General, each application for the consent should be in a tabbed binder and should include the following:

- an index
- the memorandum of Crown Counsel requesting a review by Regional or Deputy Regional Crown Counsel
- a memorandum containing the opinion of Regional or Deputy Regional Crown Counsel, including an indication of the specific sentence being sought and the reasons for it
- the Court-ordered assessment
- any other relevant assessments or reports not included in the Court-ordered assessment
- a draft Consent of the Attorney General (Note: the substantive provisions of the *Criminal Code* that were in force on the date of each predicate offence must be cited in the notice, Consent and application.)

The application should be sent directly to the Assistant Deputy Attorney General. The signed Consent, if provided, will be returned by the Assistant Deputy Attorney General to Regional Crown Counsel. The Consent of the Attorney General, as provided by the Assistant Deputy Attorney General, should be filed with the Court at the commencement of the Crown's application.

#### Determinate Sentence

If the Court orders a determinate sentence or a determinate sentence to be followed by a period of long term community supervision, Crown Counsel, having regard to the principles expressed in R. v. Zinck, (2003), 171 CCC 3d 1 (SCC), should consider asking the Court to make an order under section 743.6 that the portion of the sentence that must be served before the offender may be released on full parole is one half of the sentence or ten years, whichever is less.