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SUBJECT:		**CROSS-REFERENCE:**
Resolution Discussions and Stays of Proceedings		APP 1 CHA 1 DIS 1

POLICY

Resolution discussions are essential to the proper functioning of the justice system in British Columbia and "when properly conducted, benefit not only the accused, but also victims, witnesses, counsel, and the administration of justice generally".[1]

Resolution discussions often result in a guilty plea or admissions by the accused as to facts which otherwise would have to be proven by the Crown. The early resolution of charges reduces stress and inconvenience to victims and witnesses and results in a more efficient justice system where trials are either not necessary or are shorter due to the focusing of the proceedings on those facts which are clearly in issue.

When engaged in resolution discussions, Crown Counsel must act in the public interest at all times to ensure that the integrity of the criminal justice system is protected and nothing is done to bring the administration of justice into disrepute.

Crown Counsel are strongly encouraged to initiate early, principled, and informed resolution discussions. In doing so, they should:

1. **make full disclosure to the accused, appropriate to the stage of the proceeding, in accordance with the Branch policy on Disclosure (DIS 1);**

2. **accept a plea of guilty only to charges which continue to meet the charge assessment standard in policy Charge Assessment Guidelines (CHA 1);**

3. **ensure that the accused accepts legal and factual guilt in relation to the proposed guilty plea;**

[1] Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions, Martin, G. Arthur, Hon., Ontario, 1993

4. **ensure that the offence(s) to which the accused pleads guilty appropriately reflect the provable criminal conduct of the accused and provide an adequate sentencing range given all of the circumstances;**

5. **remain mindful of other Branch policies that might apply to resolution discussions in relation to specific, enumerated offences and ensure that the guidelines embodied within those policies are respected;**

6. **in order to assist the court in determining a fit sentence, ensure that the court is advised of all relevant information, including any aggravating circumstances, (for example, use of a weapon) that the Crown is able to prove;**

7. **recognize that, at law, a plea of guilty is generally considered a mitigating factor on sentence, especially where the accused pleads guilty at the earliest opportunity. The Crown's sentencing position should reflect this principle as follows:**

   (a) before engaging in principled and informed resolution discussions, Crown Counsel should determine the legally appropriate range of sentence for the specific accused if convicted after trial;

   (b) the full benefit of mitigation for an early guilty plea should be incorporated into the Crown's early sentencing position, before fix date or arraignment, to provide appropriate encouragement to resolve cases as early as possible and to reflect the acceptance of responsibility by the accused;

   (c) after fix date or arraignment, as the trial or hearing date approaches, and the work, cost, and impact on witnesses and victims associated with preparing for trial mount, the mitigating effect of the guilty plea lessens and the Crown's position on the range of sentence should approach more closely the legally appropriate after-trial range; and,

   (d) barring exceptional circumstances, or a significant change in circumstances or the strength of the Crown's case, the full benefit offered for an early guilty plea should generally not be offered for a guilty plea that comes on, or very shortly before, the trial or hearing date;

8. **provide the court with the Crown's submission concerning the legally appropriate range of sentence and a recommendation as to where, within that range, the principles of sentence are best met in light of the relevant aggravating and mitigating circumstances, including recognition of any early guilty plea. Depending on the circumstances of the case, the Crown's recommendation on sentence may also take into account section 11(b) of the *Canadian Charter of Rights and Freedoms* and the length of time that the matter has been awaiting trial;**

9. **agree to present a joint submission as to the exact length or form of sentence or amount of monetary fine only where satisfied that a joint submission is appropriate in the public interest and, in particular, will not bring the administration of justice into**

disrepute. Crown Counsel should advise the court of the factors and principled analysis underlying the joint submission so that the basis of the decision to agree to a joint submission is readily understood by the court and members of the public; and,

10. **refrain from entering into any arrangement which purports to fetter the discretion of the Attorney General to commence an appeal unless the written approval of the Assistant Deputy Attorney General to such an arrangement is obtained in advance (see: Branch policy, Appeal by Crown to the Court of Appeal and Supreme Court of Canada (APP 1)).**

Further, where criminal activity has resulted in the laying of multiple charges, although there may be a substantial likelihood of conviction on a particular charge, Crown Counsel may direct a stay of proceedings on that charge and accept a plea to a reduced number of charges or to included offences as long as Crown Counsel ensures that the offences to which the accused pleads guilty appropriately reflect the criminal conduct of the accused and provide an adequate sentencing range given all of the circumstances.

Information to Victims and Police

Under sections 14 and 19(1) of the *Canadian Victims Bill of Rights* and sections 606 (4.1) to 606(4.4) of the *Criminal Code*, every victim has the right to convey their views about decisions to be made by appropriate authorities in the criminal justice system that affect the victim's rights under the *Act*, and to have their views considered, through the mechanisms provided by law.

In cases involving serious injury or severe psychological harm, before concluding a resolution discussion or directing a stay of proceedings, Crown Counsel should take reasonable steps to inform the victim, or the victim's representative, and the police or other investigative agency of the proposed resolution and provide an opportunity for any concerns to be expressed to Crown Counsel. Where the victim, the victim's representative or the investigative agency express a desire to seek a review of the proposed resolution by Regional or Deputy Regional Crown Counsel, Crown Counsel should not conclude resolution discussions until consultation has occurred with Regional or Deputy Regional Crown Counsel. This is so that Regional or Deputy Regional Crown Counsel, are not placed in the position of having to repudiate a concluded resolution agreement if it is later determined that the agreement is not in the public interest.

For the cases listed below, Crown Counsel should consult with Regional or Deputy Regional Crown Counsel, before concluding any resolution discussion or directing a stay of proceedings. Also, Crown Counsel should discuss any proposed result of a resolution discussion with the victim, or the victim's representative, and the police or other investigative agency, and advise them that any concerns they express will be made known to and considered by Regional or Deputy Regional Crown Counsel:

(a) where the charge alleges that the accused is responsible for a death; and

(b) for any serious charge about which there has been, or about which objective factors support the conclusion that there is likely to be, significant public concern with respect to the administration of justice.

While Crown Counsel should consider any concerns expressed by the victim, the victim's family, or the police or other investigative agency, the decision as to the appropriate charge or disposition rests with the Criminal Justice Branch in accordance with this policy.

Repudiation

Repudiation of any concluded resolution agreement should be rare. Repudiation should be considered only where Regional Crown Counsel and the Assistant Deputy Attorney General are satisfied that the resolution agreement would bring the administration of justice into disrepute. If that test is met, the decision on whether to repudiate should take into account the extent to which the accused could be restored to their original position, whether the fact of repudiation might reasonably bring the administration of justice into disrepute, and whether there is a realistic potential for a judicial finding of abuse of process.

Unrepresented Accused

In general, Crown Counsel should exercise caution in undertaking resolution discussions with an unrepresented accused (this does not include providing an Initial Sentencing Position document to the accused). Crown Counsel should encourage the accused to seek the advice of counsel to assist in any resolution discussions. However, if the accused declines to seek the advice of counsel and wishes to undertake resolution discussions, Crown Counsel should arrange for a third person to be present during the discussions or conduct the discussions in writing, unless that cannot reasonably be done. Crown Counsel should ensure that a record of the discussions is kept on the file.

DISCUSSION

Resolution discussions include all discussions between Crown Counsel and defence counsel as to the charges laid and their possible disposition. Such discussions are beneficial because they allow Crown Counsel to consider information known only to the defence concerning the strength of the Crown's case, taking into account that the Branch charge assessment guidelines continue to apply throughout the course of the prosecution.

Subject to the policy considerations discussed above, examples of resolution discussions may include:

- reducing a charge to a lesser or included offence,
- accepting a plea to a different offence as authorized by s.606(4) of the *Criminal Code*,
- withdrawing or staying other charges,
- agreeing not to proceed on a charge or agreeing to stay or withdraw charges against other accused persons,

- agreeing to reduce multiple charges to one all-inclusive "global" charge,
- agreeing to withdraw a charge or direct a stay of proceedings on certain counts and proceed on other counts, and to rely on the material facts that supported the withdrawn or stayed counts as aggravating factors for sentencing purposes on the counts which proceed,
- agreeing to dispose of the case at a specified future date if, on the record, the accused is prepared to waive the right to a trial within a reasonable time,
- agreeing to the waiver of charges in accordance with the policy on waivers,
- recommending a certain range of sentence or a specific sentence.

In all cases, Crown Counsel should note in the Crown file the reasons for every stay of proceedings in order to allow compliance with section 15(4) of the *Freedom of Information and Protection of Privacy Act*, which states as follows:

> *The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute:*
>
> *a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or*
>
> *b) to any other member of the public, if the fact of the investigation was made public.*