



CRIMINAL JUSTICE BRANCH, MINISTRY OF JUSTICE
CROWN COUNSEL POLICY MANUAL

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SUBJECT: Sexual Offences Against Adults		CROSS-REFERENCE: ALT 1 CHA 1 DAN 1 DIR 1

POLICY

General Principles

In cases where the evidentiary test under Branch policy on Charge Assessment Guidelines (CHA 1) is met, it will generally be in the public interest to prosecute sexual offences.

Under the *Crown Counsel Act*, Crown Counsel are responsible for the decision to prosecute. The charge assessment policy requires Crown Counsel to examine the case at each stage of the prosecution and decide whether there is a substantial likelihood of conviction and, if so, whether prosecution is required in the public interest. This cannot be determined solely by the wishes of the complainant.

All victims of sexual offences should be advised of available specialized victims' services. [VictimLink BC](#) provides information about local victim service programs.

Administrative Procedures

Administrative Crown Counsel should ensure that the procedures in their offices provide for:

1. early identification and assignment of the case;
2. wherever possible, assignment to Crown Counsel who has received specialized training;
3. early identification and notice to the victim of accommodations available under sections 486 to 486.31 and 486.7 of the *Criminal Code*;
4. vertical prosecution – every effort should be made to have these cases handled by the same Crown Counsel from beginning to end. As long as a positive rapport has developed with the victim, that Crown Counsel should remain with the case until final disposition at trial; and
5. priority in scheduling to ensure that the case moves expeditiously through the criminal justice system.

Alternative Measures

Branch policy on Alternative Measures for Adult Offenders (ALT 1) provides that offences of aggravated sexual assault and offences involving the use of a firearm in the commission of an indictable offence for which there is a minimum sentence, including sexual assault with a weapon, must not be considered for alternative measures. Other sexual assault 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. In all cases, the above approvals should be given if the following conditions are met:

1. The victim has been consulted and the victim's views considered.
2. The victim has been made aware of available victim assistance programs.
3. There is no apparent history of violence or sexual offences.
4. The offence must not have been of such a serious nature as to threaten the safety or tolerance of the community.

While an alternative measures referral may be considered at any stage of the proceeding, in some cases it may be advisable to approve a charge and have conditions of release in place including no contact with the complainant before making the referral.

Applications for Recognizances

Where there is a decision not to lay a charge, a stay of proceedings becomes necessary, or there is an acquittal, Crown Counsel should consider whether the safety of a victim or other persons at risk including potential victims generally, requires an application for a recognizance under section 810 or section 810.2 of the *Criminal Code*, which can include supervision conditions administered by the Corrections Branch.

Prosecutions – Early Considerations

Where appropriate, Crown Counsel should consider identifying victims in an information or indictment by their initials as opposed to by their given name.

Crown Counsel should consider applying, at the first instance, including when the charge is laid, for an order under section 486.4 or 486.5 of the *Criminal Code*, directing that the identity of a victim or witness and any information that could disclose the identity of the victim or witness shall not be published in any document or broadcast in any way.

In rare cases, where appropriate, Crown Counsel may also consider applying for an order under section 486.31 of the *Criminal Code*, directing that any information that could identify a witness not be disclosed in the course of the proceedings or an order under 486.7 of the *Criminal Code*, to protect the security of a witness. Prior to making such an application, Crown Counsel should consult with their Regional Crown Counsel, Director or their respective deputy.

Where a victim or witness may have difficulty communicating evidence because of a mental or physical disability, Crown Counsel should consider whether presentation of evidence by videotape, as provided by section 715.2 of the *Criminal Code*, is appropriate. Utilization of such a procedure does not preclude the witness from having to testify.

In cases where there is a significant danger of harm, either psychological or physical, to a victim or witness, and it is reasonable to believe that they would be adversely affected if required to participate in multiple judicial proceedings, Crown Counsel should consider the applicability of the Direct Indictment (DIR 1) policy.

Conditions of Bail or Recognizance to Protect the Complainant of Sexual Crimes

A warrant should be sought whenever it is necessary to protect the victim or other potential victims by seeking a detention order or conditions of release. This prevents the accused from interfering with the integrity of the prosecution or committing further offences against the victim or other potential victims.

Where the detained accused presents a danger to the victim, a witness or other members of the public, Crown Counsel should consider seeking a detention order along with a “no contact” order pursuant to section 515(12) or 516(2) of the *Criminal Code* requiring the accused, while in custody, to abstain from communicating, directly or indirectly, with the victim.

Where an accused has been arrested and then released by the police on a promise to appear or recognizance with conditions, Crown Counsel should review the conditions to ensure that they are adequate to protect the victim and the public and are enforceable, and then, if necessary, request a warrant and an amendment of the conditions under sections 499(4), 503(2.3) or 512 of the *Criminal Code*.

Relevant risk factors should be communicated to the court to ensure protection of the public.

Preparing for and Conducting the Hearing

Sections 13 and 19 of the [Canadian Victims Bill of Rights](#) provide that every victim has the right to request testimonial aids when appearing as a witness in proceedings relating to an offence, through the mechanisms provided by law.

Crown Counsel assigned conduct of the file should identify at the earliest stage in the prosecution, as practicable, witnesses that may require accommodations available under sections 486 to 486.31 and 486.7.

Crown Counsel should inform the witness about the following accommodations that may be available under sections 486 to 486.31 and 486.7 of the *Criminal Code*, unless impracticable to do so:

- for the exclusion of the public or witness out of public view (section 486(1)),
- for a support person (section 486.1),

- for the witness to give testimony from a different room or behind a screen or other device (section 486.2),
- for cross-examination by appointed counsel (where the accused is unrepresented) (section 486.3),
- for the non-disclosure of a witness' identity (section 486.31),
- for an order that the court determines is necessary to protect the security of a witness and is otherwise in the interest of the proper administration of justice (section 486.7).

Crown Counsel should make an application for an order where appropriate, taking into account all relevant factors, including whether the witness requests an accommodation.

When dealing with victims reluctant to participate in the criminal process, Crown Counsel should attempt to ascertain the reasons for the reluctance to testify and develop strategies to address the reluctance. For a sexual assault complainant, a criminal trial is very challenging. Crown Counsel should make known to victims, any victim services programs or other agencies known to Crown Counsel which may be able to assist the victim.

Sentencing

Victims should be given the opportunity to provide victim impact information.

Under section 4 of the *Victims of Crime Act*, Crown Counsel must ensure that every victim is given a reasonable opportunity to have admissible evidence concerning the impact of the offence, as perceived by the victim, presented to the court before sentence is imposed. In addition, sections 15 and 19 of the [Canadian Victims Bill of Rights](#) provide that every victim has the right to present a victim impact statement to the appropriate authorities in the criminal justice system and to have it considered, through the mechanisms provided by law.

Section 718.2 of the *Criminal Code* provides that the abuse of a spouse and abuse by person in a position of trust or authority are aggravating factors on sentencing. Any aggravating factors should be brought to the attention of the court.

Where community supervision is appropriate, Crown Counsel should seek conditions which will protect the victim. They may include a "no contact" and reporting requirement, as well as successful completion of an assaultive behaviour, or sexual offender treatment program.\

Crown Counsel should consider whether a restitution order is appropriate under section 738 or 739 of the *Criminal Code* and take reasonable steps to provide victims with an opportunity to indicate whether they are seeking restitution for their losses and damages.

Crown Counsel should consider the Branch policy on Dangerous Offender and Long Term Offender Applications (DAN 1), where appropriate.

Breach of Court Orders

As a breach of a court order is an identified risk factor for re-offending, Crown Counsel should consider laying charges for breaches of bail and probation. Also, applications for revocation of bail and of conditional sentence orders should be considered.