

## Domestic Violence Prosecutions

The Criminal Justice Branch (Branch) has policies in place that guide the work of Crown Counsel on prosecutions involving domestic violence.<sup>1</sup> Branch policy recognizes that domestic violence is a very serious and complex problem, and that it requires a pro-active, coordinated, and vigorous response. The policies also emphasize the need for particular attention to be paid to high-risk cases, so that when criminal charges are approved, best efforts are made to put processes in place that protect the complainant and the complainant's family from future harm.

### Police Investigations

The police are responsible for investigating allegations of domestic violence. They do so independent of the Branch, in accordance with a provincial policy on *Violence Against Women in Relationships*.<sup>2</sup> Crown Counsel do not have authority to direct or supervise police in their investigations.

Once police have conducted an investigation, they may forward a Report to Crown Counsel to the Branch for charge assessment. The Report to Crown Counsel is reviewed by a prosecutor in accordance with the Branch's policy on charge assessment, and a decision is made on whether charges should be approved.

### Charge Assessment

The Charge Assessment Guidelines applied by the Criminal Justice Branch in reviewing all Reports to Crown Counsel are established by Branch policy, available online.<sup>3</sup>

The charge assessment standard continues to apply throughout the prosecution. Where the standard for continuing a prosecution is no longer met, Crown Counsel must stay (terminate) the charges.

Where charges are not approved, Crown Counsel are available to meet with the complainant to explain the reasons for the decision when requested.

### Judicial Interim Release (Bail)

Bail on a domestic violence case can be set by police or by a court, depending on the circumstances. The *Criminal Code* of Canada contains the rules that govern bail. Persons who are charged with domestic violence are constitutionally entitled to be released from custody

unless Crown Counsel is able to justify, in accordance with the law, that their continued detention is warranted. To do so, Crown Counsel must be able to show that detention is necessary to:

- make sure the accused person attends court;
- protect the complainant or other members of the public; or
- maintain public confidence in the administration of justice.

When someone is released on bail for a domestic violence offence, police and Crown Counsel will seek conditions of bail that are intended to protect the complainant and other members of the public from future harm. This will likely include terms that the accused not contact the complainant, not go to the complainant's residence or place of work, and not be in possession of firearms or other weapons. Very often, the bail order will also include reporting conditions for the purpose of supervision by Community Corrections personnel.

Crown Counsel are provided with a list of standardized protective terms and conditions that they should consider requesting as terms of bail.

A person who is subject to a bail order and does not comply with the terms of the order can be charged with a breach of bail and prosecuted. Complainants on domestic violence cases who have concerns that an accused may be breaching a bail condition are encouraged to report their concerns to police for possible action, including investigation for breach of bail.

## Trial and Sentencing

A person who is charged with a domestic violence offence has the right to obtain legal counsel and to receive full disclosure of all relevant evidence in the possession of the Crown. This process may take some time. Once disclosure has occurred, the alleged offender has a choice of pleading guilty to the offence, or having a trial.

If the accused chooses to have a trial, which requires that the Crown prove the offence by having witnesses testify, the Crown Counsel office will contact the complainant and witnesses to tell them of the trial date and, where appropriate, arrange for a pre-trial interview. Complainants are encouraged to stay in touch with police and the Crown Counsel office to ensure that their contact information remains up to date.

Where the accused pleads guilty, or is found guilty after a trial, the matter will be set for sentencing. Although Crown Counsel and defence counsel (or the offender) will make submissions on what the sentence should consist of, it is up to the judge to make the final decision. Generally, judges have considerable latitude in deciding what sentence should be imposed. They will consider a number of different factors at sentencing, including (but not limited to):

- the background of the offender;
- the harm suffered by the victim;
- the need to denounce the offender's conduct;
- deterrence of the offender and others who may be like-minded;
- rehabilitation of the offender;
- reparations for harm done; and
- where necessary, the need to separate the offender from society.

A victim of domestic violence is entitled to submit a Victim Impact Statement to the court for consideration at sentencing.<sup>4</sup> Victims can also obtain assistance with understanding the court process from a Victim Service Worker.<sup>5</sup>

A sentence for domestic violence may come in different forms, including a conditional sentence or a probation order that contains terms and conditions which govern the offender's behaviour in the community. A person who is subject to a conditional sentence or probation and does not comply with the terms of the order can be charged with a breach and prosecuted. Complainants on domestic violence cases who have concerns that an accused may be breaching a condition of his or her order are encouraged to report their concerns to police for possible action, including investigation for breaching a court order.

## Appeals

Occasionally, the verdict on a domestic violence case will be appealed to a higher court. Both the offender and the Crown have rights to appeal under the *Criminal Code*. The test for an appeal by the Crown is relatively high. An appellate court will not overturn an acquittal for a domestic violence offence unless the Crown can show that a legal error was made by the trial judge, and that it affected the result. A sentence will not be changed unless the Crown can establish that the sentence was clearly unreasonable, within the context of the case as a whole. The mere fact that the sentence imposed in a case is different from, or less than, the sentence sought by Crown Counsel does not mean that there is a legal basis for an appeal.

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<sup>1</sup> Branch policies can be found here: [www2.gov.bc.ca/gov/content/justice/criminal-justice/bc-prosecution-service/crown-counsel-policy-manual](http://www2.gov.bc.ca/gov/content/justice/criminal-justice/bc-prosecution-service/crown-counsel-policy-manual). Policies that will be relevant to a domestic prosecution file include Spousal Violence (SPO 1), Charge Assessment Guidelines (CHA 1), and sometimes Sexual Offences against Adults (SEX 1).

<sup>2</sup> This policy is available to the public on the internet: [www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/victims-of-crime/vs-info-for-professionals/info-resources/vawir.pdf](http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/victims-of-crime/vs-info-for-professionals/info-resources/vawir.pdf)

<sup>3</sup> Charge Assessment Guidelines (CHA 1) [www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1-charge-assessment-guidelines.pdf](http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1-charge-assessment-guidelines.pdf)

<sup>4</sup> More information on Victim Impact Statements is available here: [www2.gov.bc.ca/gov/content/justice/criminal-justice/bc-prosecution-service/victim-impact-statements](http://www2.gov.bc.ca/gov/content/justice/criminal-justice/bc-prosecution-service/victim-impact-statements)

<sup>5</sup> Other forms of support are also available to victims of crime in British Columbia. More information is available here: [www.pssg.gov.bc.ca/victimservices/](http://www.pssg.gov.bc.ca/victimservices/)