

Policy:

Jurisdiction to Prosecute

Policy Code:

JUR 1

Effective Date:

December 18, 2023

Cross-references:

[APP 1.1](#) [GUI 1](#)

Overview

In Canada, constitutional authority to prosecute flows from the Sovereign directly to the Attorney General (AG) and through the AG to Crown Counsel, as lawful agents of the AG. The Public Prosecution Service of Canada (federal Crown Counsel) conducts prosecutions that fall within federal jurisdiction, while Crown Counsel with the BC Prosecution Service (BCPS) conduct prosecutions that fall within provincial jurisdiction.

As the BCPS policy manual does not have the status of law, this policy does not override or limit any legislation or legal or constitutional rights, including those of Indigenous persons (*Guiding Principles* ([GUI 1](#))).

Federal or Provincial

Public Prosecution Service of Canada (PPSC) has exclusive jurisdiction to prosecute offences under federal statutes apart from the *Criminal Code* (e.g., *Controlled Drugs and Substances Act*, *Income Tax Act*, *Firearms Act*).

The BCPS has exclusive jurisdiction to prosecute offences under provincial statutes (e.g., *Motor Vehicle Act*, *Environmental Management Act*).

Most *Criminal Code* offences are prosecuted by the BCPS. However, the *Criminal Code* provides concurrent jurisdiction for a limited number of offences (section 2.3). By agreement, the BCPS and PPSC have developed protocols for determining which service should take conduct of concurrent jurisdiction offences and of prosecutions in which various offences are alleged, some of which would normally be prosecuted by the PPSC, and some which would normally be prosecuted by the BCPS. In the latter situation, the service with responsibility for the more significant offences will generally assume conduct of the entire prosecution (Appendix A).

Provincial Prosecutions

Authority for Prosecutions

Under the [Crown Counsel Act](#), the BCPS, which is the Criminal Justice Branch of the Ministry of Attorney General, is responsible for approving and conducting, on behalf of the Crown, all criminal and regulatory prosecutions and appeals in BC that do not fall within the jurisdiction of the Government of Canada. This includes all prosecutions of offences established in provincial statutes, except as specifically set out in this policy.

Provincial Violation Tickets

Police officers and enforcement officers, as informants, usually prosecute violation tickets, which are generally tried before a judicial justice (*Offence Act*, section 1, *Provincial Court Act*, section 2.1, BC Provincial Court [Notice to the Profession and Public, NP 16](#)). Crown Counsel occasionally appear as counsel on violation ticket matters to assist with complex legal issues or when otherwise deemed appropriate by a Regional Crown Counsel, Director, their respective deputy, or Administrative Crown Counsel.

Crown Counsel may give advice to police concerning errors of law, including unlawful sentences and jurisdictional errors. Crown Counsel may also initiate or take conduct of violation ticket appeals considering the factors in *Appeals by Crown of Summary Conviction Matters* ([APP 1.1](#)). This may include initiating an appeal, assuming conduct of an appeal as respondent, or assuming conduct of *Judicial Review Procedure Act* petitions.

Bylaw prosecutions

Local governments have statutory authority to prosecute their bylaws (e.g., *Community Charter* section 260). They may also conduct any appeals arising from those prosecutions and prosecutions for failure to comply with court orders made on conviction for bylaw offences. Despite having jurisdiction over prosecutions, the BCPS will not intervene in bylaw prosecutions except when manifestly required in the public interest and only with the consent of a Regional Crown Counsel, Director, or their respective deputy.

Appendix A

MAJOR/MINOR AGREEMENT

BETWEEN:

THE PUBLIC PROSECUTION SERVICE OF CANADA

- and -

THE ATTORNEY GENERAL OF BRITISH COLUMBIA

WHEREAS the Public Prosecution Service of Canada (PPSC) and the Attorney General of British Columbia (AGBC) have authority to conduct certain proceedings under the definition of “Attorney General” in the *Criminal Code*,

AND WHEREAS it is in the public interest that such authority is delegated from one to the other in certain circumstances, the parties agree:

I. Standing Authorization for those combinations of offences for which one specified party should ordinarily handle the prosecution.

Subject to Part VII of this agreement, where on one information or indictment there are multiple charges arising out of related circumstances which fall under the exclusive prosecutorial authority of each of the parties to this agreement, and those charges are limited to one of the combinations in Appendix I, standing authorization to prosecute is granted by one party to the other as set out in Appendix I.

For the purpose of this Part and Part II, “multiple charges arising out of related circumstances” means offences arising out of the same factual pattern and bearing some relationship to one another, for example where identical witnesses are involved or offences result from the same search warrant – a mere temporal connection is not enough.

II. Authorizations in specific cases (on major/minor analysis)

Subject to Part VII of this agreement, where on one information or indictment there are multiple charges arising out of related circumstances which fall under the exclusive prosecutorial authority of each of the parties to this agreement, and Part I does not apply, the party with responsibility for the prosecution of the more significant charge or charges will, on request, receive authorization from the other party to conduct the prosecution on all of the charges on the information or indictment.

Authorization is required in each case and may be oral or in writing.

III. Standing Authorization for Ancillary Matters

Subject to Part VII of this agreement, where an authorization is made under Part I or II, the authorized party has standing authorization to prosecute or conduct all ancillary matters relating to or arising out of the authorized matter. Ancillary matters include prosecutions under sections 117.01 (possession of weapon while prohibited), 145(2), (3), (4), (5) and (5.1) (various offences involving failure to appear and failure to comply with conditions of release), 733.1 (breach of probation), 811 (breach of recognizance(s), hearings under section 742.6 (breach of conditional sentence order) and providing consent of the Attorney General to the transfer of probation orders and conditional sentence orders under sections 733 and 742.5 respectively, all under the *Criminal Code*.

PPSC has standing authorization to prosecute ancillary matters (as defined above) relating to or arising out of offences which PPSC has authority to prosecute under the definition of "Attorney General" in the *Criminal Code*.

IV. Application of This Agreement

All authorizations granted under this agreement include the charge assessment analysis and the decision to prosecute, such analysis to be conducted in accordance with the charge assessment policy of the authorized party.

Authorizations given by either party to the other under this agreement extend to the conduct of preliminary inquiries, appeals (subject to Part VI), judicial interim release proceedings, prerogative writ applications and any other proceedings relating to or arising out of the authorized matter.

Where there is a severance of counts on an information or indictment on a matter delegated under this agreement, the effect of which is that the original information or indictment, or a consequent information or indictment, contains only counts over which one party to this agreement has exclusive authority to prosecute, that party will conduct the prosecution.

V. Exception To This Agreement

Firearms Act offences are not covered by this agreement and remain the exclusive responsibility of PPSC.

VI **Appeals**

Before initiating an appeal on a matter delegated under this agreement, the party that would have conduct of the appeal should consult with the other party. Any disagreement regarding the decision to appeal should be referred to the heads of both parties for resolution.

VII **General**

Each party retains ultimate control over matters delegated under this agreement, which shall include the ability to obtain information and the authority to supervise directly or assume conduct of a delegated matter notwithstanding any other provision of this agreement. The parties reserve the right to decline conduct of a matter under this agreement in appropriate circumstances.

Where a matter is delegated by AGBC to PPSC under this agreement, the federal prosecutors are designated as Crown Counsel pursuant to Section 4(1) of the *Crown Counsel Act*.

Signed by:



Robert W.G. Gillen, QC
Assistant Deputy Attorney General
Criminal Justice Branch
Ministry of Attorney General of British Columbia

at VANCOUVER, British Columbia on the 11th day of MAY, 2007.



Robert A. Prior
Regional Director (BC Region)
Public Prosecution Service of Canada

at Vancouver, British Columbia on the 11th day of May, 2007.

MAJOR/MINOR AGREEMENT**APPENDIX I**

This Appendix provides standing authorization to prosecute those combinations of provincial and federal offences, set out in the chart below, for which one party, as specified, will conduct the prosecution (subject to Part VII of this agreement).

Offences under the <i>Criminal Code</i> (which are the prosecutorial responsibility of the Province)	Offences under the <i>Controlled Drugs and Substances Act</i> (which are the prosecutorial responsibility of the Federal Government)	Party provided with standing authorization to prosecute when the offences are on the same Information
Any <i>Criminal Code</i> driving offence	Possession	AGBC
<i>Criminal Code</i> driving offences not causing bodily harm or death	Any offence other than possession	PPSC
<i>Criminal Code</i> driving offences causing bodily harm or death	Any offence	AGBC
Assault or obstruct peace officer	Possession	AGBC
Assault or obstruct peace officer	Any offence other than possession	PPSC
Theft of hydro	Production of a controlled substance	PPSC
Mischief	Production of a controlled substance	PPSC
Theft or possession of stolen property	Possession	AGBC
Theft or possession of stolen property	Any offence other than possession	PPSC
Possession of a prohibited or restricted weapon	Possession	AGBC
Possession of a prohibited or restricted weapon	Any offence other than possession	PPSC