

Policy:

**Criminal Harassment**

Policy Code:

**CRI 1**

Effective Date:

March 1, 2018

Cross-references:

ALT 1    CHA 1    IPV 1  
REC 1    RES 1    VIC 1  
YOU 1.4

Section 264 of the *Criminal Code* is aimed at unlawful and unjustifiable interference with the victim's enjoyment of life and peace of mind that causes the victim to "reasonably fear, in all the circumstances, for their safety or the safety of anyone known to them." "Safety" has been judicially interpreted to include psychological, emotional, and physical well-being.

Unlike most related criminal offences (for example, assault) which, by definition, involve a completed criminal act before the investigation and prosecution process begins, incidents of criminal harassment are often ongoing. While the harassment does not necessarily include an explicit threat, the cumulative effect of the prohibited activity, whether it is phone calls, letters, watching and besetting, generates a growing climate of fear that can eventually emotionally debilitate the victim.

**Charge Assessment**

The majority of these cases involve victims who have at one time been involved in a relationship with the accused. Where this is the case, the policy *Intimate Partner Violence (IPV 1)* should be consulted. The harassment usually involves repeated incidents of following, communicating (directly or indirectly) or watching and besetting. Where there is a history of violence, Crown Counsel should consider approving counts relating to serious incidents which occurred in the past.

Criminal harassment may also consist of a series of separate offences. Where that is the case, both a charge of criminal harassment and charges arising from the separate offences may be appropriate. The determination of which charges to prosecute should ensure that the criminal conduct of the accused is appropriately reflected and that an adequate sentencing range is provided to the court.

In addition to the usual factors that apply to charge assessment decisions (*Charge Assessment Guidelines (CHA 1)*), the factors to consider in deciding whether the evidence supports a charge of criminal harassment include:

- whether the victim has been required to alter their lifestyle or choice of action because of the accused's conduct
- the history of any prior relationship between the victim and the accused, in particular, things such as past incidents of abusive or violent behaviour directed towards the victim, criminal convictions for offences of violence against the victim and prior complaints about the accused made by the victim to the police
- any words uttered by the accused during the course of the conduct in question
- whether there is any direct evidence that the accused had actual knowledge as to the harassing nature of their course of conduct or, alternatively, was reckless as to the effect of the impugned conduct on the victim
- the nature of the location where and the time of day when the conduct occurred, including whether the victim was isolated or alone, recognizing that fear can be caused or heightened depending on where and when the conduct occurred
- evidence of others (for example, the victim's family members, friends or co-workers) who may have been involved

The charge assessment of Reports to Crown Counsel must be expedited, as unnecessary delay increases the emotional stress and intimidation experienced by the victim.

Where there is a decision not to lay a charge, or where a stay of proceedings becomes appropriate, Crown Counsel should consider whether the safety of a victim or their family requires an application for a recognizance under section 810 of the *Criminal Code*. This consideration should take into account the prospective nature of these applications and that the burden is on the Crown to prove on the balance of probabilities that the victim has reasonable grounds to fear that the accused will cause personal injury to the victim or damage to the property of the victim (*Recognizances under Section 810 and Peace Bonds (REC 1)*).

## Alternative Measures

For criminal harassment offences, the approval of a Regional Crown Counsel, Director, or their respective deputy is required before any referral of a person for alternative measures consideration and before the use of specific alternative measures recommended in an Alternative Measures report. Such approvals may be granted only where exceptional circumstances exist so that the use of Alternative Measures is not inconsistent with the protection of society. No case of

criminal harassment should be considered for alternative measures without consultation with the victim. For further information, see *Alternative Measures for Adult Offenders* (ALT 1), *Youth Criminal Justice Act – Extrajudicial Measures* (YOU 1.4) (for accused young persons), and *Victims of Crime – Providing Assistance and Information to* (VIC 1).

### Bail Considerations

Given the nature of this offence, it is essential that Crown Counsel seek appropriate bail conditions to ensure the protection of the victim. If the accused is not in custody at the time the charges are approved, and the accused has been released by the police without appropriate conditions, Crown Counsel approving such charges should request a warrant to ensure that, as appropriate, the accused is detained or appropriate release conditions may be sought to protect the victim and the public, preserve the integrity of the witnesses' evidence, and ensure the accused's attendance in court.

If an accused is released from custody on a bail order with a reporting condition, community corrections will generally notify the complainant of the release and bail terms. If there is no reporting condition on the accused's bail order, Crown Counsel or administrative staff should notify the complainant of the release and bail terms.

Conditions such as firearms and weapons prohibitions, no contact orders, area restrictions, reporting conditions, and drug or alcohol prohibitions may be appropriate. In many, if not most, criminal harassment cases, these conditions are necessary to prevent the continuation of the offence or the commission of other offences.

### Other Considerations

Given the nature of these cases, Crown Counsel should request an early trial date and should consider the importance of an early trial date in deciding how to respond to any adjournment application.

Crown Counsel should make reasonable efforts to ensure all necessary corroborative evidence is presented at trial.

### Resolution Discussions

The policy *Resolution Discussions and Stays of Proceedings* (RES 1) indicates that where the case involves severe psychological harm, Crown Counsel should inform the victim, or the victim's family, and the police or other investigative agency of the proposed resolution and provide an opportunity for any concerns to be addressed prior to concluding the resolution discussions or stay of proceedings.

## Sentencing

Victims should be given the opportunity to provide a victim impact statement and information pursuant to section 4 of the [Victims of Crime Act](#), and sections 15 and 19 of the [Canadian Victims Bill of Rights](#).

Section 718.2 of the *Criminal Code* provides that abuse of one's spouse, common law partner or child is an aggravating factor on sentencing.

Where probation is appropriate, Crown Counsel should seek conditions which will protect the victim, including a "no contact" and reporting requirement, as well as successful completion of an assaultive behaviour program.

Where there is a relationship between the accused and the victim, Crown Counsel should consider the need for the offender to participate in the program offered by the Corrections Branch entitled the "*Relationship Violence Prevention Program*" and request a Pre-Sentence Report if appropriate (*Intimate Partner Violence (IPV 1)*).

Crown Counsel should consider requesting an order under section 743.21 prohibiting the offender from communicating, directly or indirectly, with any victim or witness during the custodial period of a sentence.

Crown Counsel should consider whether a weapons prohibition is necessary under section 109 or 110 of the *Criminal Code*. Weapons prohibitions should cover the enumerated items in section 109, 110 or 810(3.1) plus imitation firearms.

Crown Counsel should also seek an order under section 114 that any firearms licence be surrendered at the same time that any firearms be forfeited under section 115 (where a prohibition order has been made). While section 116 provides for automatic revocation of licences/registrations upon a prohibition order being made, the fact of a prohibition may take some time to appear on the electronic registration system, and the offender should not be in a position to obtain more firearms under the licence pending its surrender.

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.