Policy:		
Dangerous Offenders and Long-Term Offenders		
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Protecting communities from high-risk sexual and violent offenders is a priority for the BC Prosecution Service (BCPS). One way of doing this is by making dangerous offender or long-term offender applications in appropriate cases.

Part XXIV of the *Criminal Code* provides for a process to identify and sentence dangerous offenders and long-term offenders. For these offenders, the court is provided with significant additional sentencing options in addition to those that would ordinarily apply to the offences for which they have been convicted.

Starting at charge assessment and continuing through to conviction, for any accused charged with a serious personal injury offence as defined by section 752 or with an offence referred to in section 753.1(2)(a), Crown Counsel should consider whether dangerous offender or long-term offender proceedings may be appropriate. If Crown Counsel is satisfied there is a reasonable likelihood the court will find the accused to be a dangerous offender or long-term offender under Part XXIV of the *Criminal Code*, Crown Counsel should bring the file to the attention of a Regional Crown Counsel, Director, or their respective deputy and consult with them about the possibility of commencing a dangerous offender or long-term offender application.

Assessment Process

Upon conviction or anticipated guilty plea of an offender for a designated offence, if Crown Counsel is satisfied there is a reasonable likelihood the court will find the accused to be a dangerous offender or long-term offender under Part XXIV of the *Criminal Code*, Crown Counsel should as soon as practicable:

- contact the high-risk offender identification program (HROIP) team for support in assembling necessary background material
- prepare a memorandum for the Regional Crown Counsel, Director, or their respective deputy seeking their approval to apply for a remand under section 752.1

to have the offender assessed for dangerous or long-term offender proceedings (the Assessment Memorandum)

The Assessment Memorandum should:

- summarize the circumstances of the case
- outline all relevant past conduct
- include Crown Counsel's brief explanation as to why the offender may be a dangerous or long-term offender
- include an opinion as to the appropriate sentence
- attach copies of the Information/indictment, criminal record, victim impact statements, and the details of any outstanding charges
- if the individual identifies as Indigenous, include any available information about the offender's background, community, or unique systemic or background factors

If, after review of the Assessment Memorandum, the Regional Crown Counsel, Director, or their respective deputy approves, Crown Counsel may apply for a remand under section 752.1 to have the offender assessed for dangerous or long-term offender proceedings.

Application Process

After receiving and reviewing the court-ordered assessment report, if Crown Counsel remains satisfied there is a reasonable likelihood the court will find the offender to be a dangerous offender or long-term offender under Part XXIV of the *Criminal Code*, Crown Counsel may seek the approval of the Regional Crown Counsel, a Director, or their respective deputy to apply to the court for a finding that the offender is a dangerous offender under section 753 or a long-term offender under section 753.1 by providing them with the following information and material (the Application Material):

- a memorandum specifically outlining Crown Counsel's opinion that the offender meets the statutory conditions for being found to be a dangerous offender or long-term offender
- the court-ordered assessment report
- any other relevant assessments or reports not included in the court-ordered assessment
- a draft form of consent of the Attorney General

If the Regional Crown Counsel, Director, or their respective deputy is satisfied that there is a reasonable likelihood the court will find the offender to be a dangerous offender or long-term offender under Part XXIV of the *Criminal Code* and that proceeding with an application is required in the public interest, they should seek the approval of the Assistant Deputy Attorney General (ADAG), providing copies of the Assessment Memorandum and the Application Material, along with their own written recommendation.

If the ADAG approves, Crown Counsel may apply to the court for a finding that the offender is a dangerous offender under section 753 or a long-term offender under section 753.1. The required consent of the Attorney General may be provided by the ADAG and should be filed with the court at the commencement of the application.

Designated Offenders – Sentencing Options

On finding that an offender is a long-term offender, the court must impose a determinate sentence and order that the offender be subject to a long-term supervision order for a period not exceeding 10 years.

On finding that an offender is a dangerous offender, the court may impose an indeterminate sentence, a determinate sentence with a long-term supervision order for a period not exceeding 10 years, or a determinate sentence alone.

An indeterminate sentence is only appropriate when there is no reasonable expectation that the offender's risk will be manageable in the community. As noted in *R v Boutilier*,[1] indeterminate detention is "limited to habitual criminals who pose a tremendous risk to public safety".

Where there is a reasonable expectation that the offender's risk may eventually be managed in the community, Crown Counsel should not seek an indeterminate sentence. In those circumstances, Crown Counsel should seek a determinate sentence, with a long-term supervision order to adequately address the risk to the public.

In formulating a sentencing position, Crown Counsel should consider the *Sentencing – Adults* (SEN 1) policy.

Resolution

Crown Counsel must not agree to accept a guilty plea in exchange for not pursuing an assessment under section 752.1, a dangerous offender application under section 753, or a long-term offender application under section 753.1. If an assessment is ordered by the court under section 752.1, Crown Counsel should not agree to a resolution on sentencing

1 *R v Boutilier*, 2017 SCC 64

until after the assessment is completed and Crown Counsel has consulted with and received the approval of the Regional Crown Counsel, Director, or their respective deputy.

Breaches and subsequent Significant Personal Injury (SPI) offences

There is a strong public interest in favour of proceeding with a prosecution of any serious personal injury offence as defined by section 752 or with any offence referred to in section 753.1(2)(a) committed by someone who has been previously found to be a dangerous offender or long-term offender. Any decision not to proceed, except on the grounds of insufficiency of evidence, must be approved by a Regional Crown Counsel, Director, or their respective deputy.

If someone who has been previously found to be a dangerous offender is convicted of a serious personal injury offence as defined in section 752 or a breach of a long-term supervision order under section 753.3, Crown Counsel should consult the Regional Crown Counsel, Director, or their respective deputy about the possibility of seeking an assessment and making an application for an indeterminate sentence under section 753.01. An application for an indeterminate sentence should not be made unless the Regional Crown Counsel, Director, or their respective deputy is satisfied that there is no reasonable expectation that a lesser sentence would adequately protect the public.

Indigenous Persons

Numerous government commissions and reports, as well as the judgments of the Supreme Court of Canada, have recognized that discrimination experienced by Indigenous persons (First Nations, Métis, and Inuit), whether as a result of overtly racist attitudes or culturally inappropriate practices, extends to all parts of the criminal justice system.

The history of colonialism, displacement, and residential schools in Canada has translated into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and higher levels of incarceration for Indigenous persons.[2] The rates of victimization of Indigenous persons, especially for Indigenous women and girls, are also significantly higher than those for non-Indigenous persons.[3]

The continuing consequences of colonialism for Indigenous persons in Canada provide the necessary context for any charge assessment involving an Indigenous person as a victim or potential accused. These consequences "must be remedied by accounting for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views".[4]

2 *R v Ipeelee*, 2012 SCC 13
3 *Victimization of Aboriginal People in Canada, 2014*, Statistics Canada, 2016
4 *Ewert v Canada*, 2018 SCC 30 at paras 57 and 58; *R v Barton*, 2019 SCC 33 at paras 198-200

These circumstances must inform Crown Counsel's approach to any consideration of potential proceedings under Part XXIV of the *Criminal Code* and any step taken during the course of Part XXIV proceedings involving an Indigenous person.

Indigenous Offenders

Section 718.2(e) of the *Criminal Code* requires that "all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of [Indigenous] offenders." This is a remedial provision, designed to address the serious problem of over-representation of Indigenous persons in Canadian prisons and penitentiaries and to encourage restorative approaches to sentencing.[5] It should be given a "fair, large and liberal construction and interpretation." [6]

In considering a potential dangerous offender or long-term offender application with respect to an Indigenous offender, Crown Counsel must apply the principles established in *R v Gladue*[7] and, in particular, consider:

- the unique systemic and background factors that may have played a part in bringing the Indigenous offender before the courts
- the types of sentencing procedures and sanctions that may be appropriate for the offender because of their Indigenous heritage or connection
- unique cultural connections or traditions within the offender's community, which may include an urban Indigenous community
- availability of appropriate rehabilitative programming and community support, regardless of locality
- any other collateral consequences arising from the commission of the offence, the conviction, or the sentence imposed

All these considerations bear on the ultimate question of what is a fit and proper sentence and should be addressed by Crown Counsel in their sentencing submissions.

In dangerous offender or long-term offender proceedings concerning an Indigenous person as an offender, Crown Counsel should:

- ensure that the Court is aware the offender identifies as an Indigenous person

5 *R v Ipeelee*, 2012 SCC 13 at para 59
6 *Interpretation Act*, RSC 1985, c. I-21, s. 12, as amended
7 *R v Gladue* [1999] 1 S.C.R. 688

- not oppose any reasonable request to adjourn proceedings to allow for appropriate materials to be prepared, including the preparation of a Gladue report, or the marshalling of related information or evidence
- request a Gladue report if adequate information concerning the offender, the community, or unique systemic or background factors would not otherwise be available to the court
- consider the contents of a Gladue report or any other related information or evidence submitted concerning the offender, the community, or unique systemic or background factors that may have played a part in bringing the offender before the court

Applying these principles, Crown Counsel should carefully consider the least restrictive sentence that will reasonably manage the Indigenous offender's risk, bearing in mind the need to protect the public.

Indigenous Victims

As stated by the Supreme Court of Canada:

> "*There is no denying that Indigenous people — and in particular Indigenous women, girls, and sex workers — have endured serious injustices, including high rates of sexual violence against women. … [O]ur criminal justice system and all participants within it should take reasonable steps to address systemic biases, prejudices, and stereotypes against Indigenous persons — and in particular Indigenous women and sex workers — head-on.*"[8]

For cases involving Indigenous persons as victims, Crown Counsel should ensure that their positions reflect the gravity of the problem of violence against Indigenous persons in our society, particularly Indigenous women and girls, and the serious injustices they have faced.[9]

8 *R v Barton*, 2019 SCC 33 at paras 198 and 200
9 *R v Barton*, 2019 SCC 33 at para 198