



Policy:

**Immunity from Prosecution – Witnesses & Informants**

Policy Code:

**IMM 2**

Effective Date:

March 1, 2018

Cross-references:

[DIS 1](#) [INC 1](#)

The granting of immunity from prosecution is an extraordinary exercise of prosecutorial discretion by Crown Counsel. Immunity may be granted to an informant in return for providing information to assist an investigation by the police or to a witness in return for giving evidence at trial.

“Immunity” includes all forms of prosecutorial consideration that can be granted in return for information or testimony, including the reduction or staying of charges, an agreement by Crown Counsel to a less severe sentence, or an agreement concerning judicial interim release.

The decision to grant immunity should be made by a Regional Crown Counsel, Director, or their respective deputy. The Assistant Deputy Attorney General and the Manager of the Informer Witness Registry must be advised of the decision.

Immunity should be granted only where the following conditions are met:

- the evidence or information is crucial to the prosecution of a serious charge and the overriding public interest requires it
- there is no other viable means to obtain the information or evidence, or it is not practicable, because of a significant risk to public safety, for the police to simply continue their investigation
- the value of the information or evidence outweighs any risk to public safety or lessening of public confidence in the administration of justice which may result from the granting of immunity
- the information or evidence offered by the informant or witness relates to criminal involvement of the accused that is more serious than, or in exceptional cases is at least as serious as, the criminal involvement of the informant or witness

Crown Counsel should not grant complete immunity from criminal responsibility to an informer or witness unless it is absolutely necessary to obtain the required information or evidence. The granting of a limited form of immunity is generally preferred (an example of limited immunity is where Crown Counsel recommends a less severe sentence than might otherwise be appropriate in return for the cooperation of the informant or witness).

Since immunity is granted in one case for the purpose of advancing another, it should not be granted unless the following conditions are met:

- a senior member of the police department or detachment concerned requests it in writing, including an explanation of why the information or evidence is necessary and why the value of that information or evidence outweighs any risk to public safety or lessening of public confidence in the administration of justice which may result
- Crown Counsel receives from the police full disclosure of the offences from which immunity is sought and of all other known or suspected criminal activity in which the informant or witness is involved
- in the case where charges against the informant or witness arise from other jurisdictions, Crown Counsel and the other police agencies responsible for those charges have been consulted by the police investigators requesting immunity and have provided their written consent to it

All grants of immunity, and any other benefits conferred in return for testimony or information, should be clearly defined and documented.

### **Procedure**

Under the [Crown Counsel Act](#), Crown Counsel have the sole responsibility to make all prosecutorial decisions, including whether to grant immunity in order to secure information or evidence.

Crown Counsel should bear in mind the potential effect that a grant of immunity may have on the weight to be given to a witness' evidence.

Crown Counsel assessing the reliability of the information or evidence offered may consider the factors described in the policy *In-Custody Informer Witnesses* ([INC 1](#)).

### **Informer Witness Registry**

When Crown Counsel first learns of an offer of information or evidence by an informant or witness, Crown Counsel must inform the Manager of the Informer Witness Registry.

At the same time, Crown Counsel may ascertain whether the Registry contains any relevant history concerning the informant and, if so, consider that history before proceeding.

### **Negotiating with a Prospective Witness with Respect to a Grant of Immunity**

When a witness is to give evidence for the Crown in return for a grant of immunity, they must enter into a written immunity agreement with the Crown. Crown Counsel should make every effort to ensure that the witness has the assistance of independent counsel before entering into any agreement. Crown Counsel should not negotiate directly with the witness. It is preferable that the negotiation should be handled by a Regional Crown Counsel, Director, or their respective deputy.

### **Documenting the Agreement**

Conditions of a grant of immunity must be in writing and signed by the informant or witness and a Regional Crown Counsel, Director, or their respective deputy.

Crown Counsel should not grant immunity in exchange for testimony unless as part of any immunity agreement the witness provides a full statement that could ultimately meet the admissibility criteria of necessity and reliability, should the witness later prove to be uncooperative. Any agreement must include as conditions that the witness:

- has had the opportunity to obtain independent legal advice
- confirms the substantial truth of the full statement previously provided
- will tell the entire truth to the police, Crown Counsel, and the court
- will testify at all proceedings in relation to any matter arising from the information which they provided
- will testify truthfully at all times
- will not withhold evidence of their involvement in any matters referred to in their evidence or statements
- will not expect or receive further benefits from the Crown than those documented in the agreement
- sign the agreement along with their legal counsel

## Tracking the Witness

After completing an agreement with a witness, Crown Counsel should ask the police handling the case to keep Crown Counsel advised of the status of the witness, payments made, and agreements to relocate, so that Crown Counsel can make appropriate disclosure to defence counsel before trial (*Disclosure (DIS 1)*).

## Witness Testimony

If the witness testifies, the immunity agreement must be disclosed to the defence, and it should be entered in court as an exhibit.

After the witness testifies, Crown Counsel must provide the Manager of the Informer Witness Registry with a copy of the immunity agreement and details of the testimony given by the witness, including the date and location of it, the name of the presiding judge, the judge's comments, if any, about the witness, including transcripts if available, and Crown Counsel's assessment of the testimony of the witness.