

Policy:

## Immunity Agreements

Policy Code:

**IMM 1**

Effective Date:

January 31, 2025

Cross-references:

[INC 1](#)

Immunity from prosecution may be granted to a suspect, accomplice, accused, or witness in exchange for the person's agreement to give truthful evidence in court.

For the purpose of this policy:

- "witness" will be used, regardless of the person's status, because immunity from prosecution is almost always provided in exchange for an agreement that the person will be a witness for the Crown
- "full immunity" refers to the Crown's agreement not to prosecute the witness for one or more offences
- "limited immunity" refers to all other forms of prosecutorial consideration that may be granted in return for truthful testimony, including accepting a guilty plea to a lesser or included offence, directing a stay of proceedings of a charge or charges, an agreement by Crown Counsel to seek a less severe sentence, or an agreement concerning judicial interim release
- "immunity" refers to both full and limited immunity

## Advice

Granting immunity from prosecution is an extraordinary exercise of prosecutorial discretion. Only a Regional Crown Counsel, Director, or their respective deputy may agree to grant immunity. Before they grant immunity, they should advise the Assistant Deputy Attorney General and the informer witness registry of their decision.

Absent exceptional circumstances, only limited immunity, rather than full immunity should be granted. Immunity should not be granted unless all the following conditions are met:

- a senior member of the investigative agency makes a written request to Crown Counsel for consideration of possible immunity

- the police provide full disclosure of the offence for which immunity is sought, including a non-jeopardy interview (NJI) and a criminal history interview (CHI) of the witness conducted by the police
- Crown Counsel has reviewed and considered all known or suspected criminal activity in which the witness has been involved, as disclosed in the NJI or CHI
- when charges against the witness arise from or offences occur in other territorial divisions within British Columbia, Crown Counsel and the police agencies responsible for the charges in the other territorial divisions have been consulted and have provided their written consent to the granting of immunity
- when charges against the witness arise or offences occur in a location over which another prosecution service has jurisdiction, Crown Counsel has obtained the agreement of a senior representative of that organization and, when appropriate, added an appropriate representative of that organization as a signatory to the immunity agreement
- the witness' evidence is important to the prosecution of a serious charge
- the value of the witness' evidence outweighs the risk to public safety or the possibility of lessening public confidence in the administration of justice which might result from granting immunity
- the witness' evidence relates to criminal involvement of a person that is more serious than, or in exceptional cases is at least as serious as, the criminal involvement of the witness
- granting the witness immunity would not be contrary to the public interest or bring the administration of justice into disrepute

Crown Counsel should consider the effect that a grant of immunity may have on the weight to be given to the witness' evidence. Confirmatory evidence will be required for the trier of fact to be able to rely on the testimony of a witness who has been granted immunity. Crown Counsel assessing the reliability of the evidence offered should consider the factors described in the *In-Custody Informer Witnesses* ([INC 1](#)) policy.

### Informer witness registry

When Crown Counsel first learns of an offer of evidence by a witness in return for immunity, Crown Counsel should consult the informer witness registry to determine whether the witness has been granted immunity in the past. If a witness was granted immunity in the past and testified in court, Crown Counsel should determine whether the witness' evidence was accepted.

### Negotiating with a prospective witness

Immunity negotiations should only be conducted by a Regional Crown Counsel, Director, or their respective deputy. Before engaging in negotiations or entering into an immunity agreement, Regional Crown Counsel, Director, or their respective deputy should ensure the witness has the assistance of independent legal counsel.

### Documenting the agreement

Negotiations for and grants of immunity should be clearly documented. The immunity agreement should be in writing and signed by the witness, the witness' counsel, and a Regional Crown Counsel, Director, or their respective deputy. Any immunity agreement should include express conditions that the witness:

- has had the opportunity to obtain independent legal advice
- confirms the truth of the statements the witness has given to police during the process leading up to the proposed immunity agreement
- will tell the entire truth to the police and Crown Counsel
- will testify truthfully, and not withhold evidence of their involvement, at all proceedings in relation to any matter arising from the information which the witness has provided
- understands and agrees that failure or refusal to cooperate fully and truthfully with the police or the Crown constitutes a repudiation of the agreement and nullifies any grant of immunity, leaving the witness subject to full criminal legal jeopardy and prosecution

After an immunity agreement is signed, Crown Counsel should provide a copy to the informer witness registry.

### Witness testimony

In any proceeding in which the witness testifies, a witness' immunity agreement should be disclosed in a timely way to the defence and entered in court as an exhibit during the witness' testimony.