

Policy:

## Impaired Driving Prosecutions

Policy Code:

**IMP 1**

Effective Date:

December 18, 2018

Cross-references:

ALT 1 CHA 1 RES 1

This policy covers the various criminal offences prohibiting impaired driving, driving with excessive blood alcohol or drug concentrations, and refusing or failing to comply with demands under the part of the *Criminal Code* dealing with impaired driving offences.

Impaired driving offences are serious and prevalent, and they pose a substantial threat to the safety of the public.

*“Every year, drunk driving leaves a terrible trail of death, injury, heartbreak and destruction. From the point of view of numbers alone, it has a far greater impact on Canadian society than any other crime. In terms of the deaths and serious injuries resulting in hospitalization, drunk driving is clearly the crime which causes the most significant social loss to the country.”*

*R v Bernshaw*, [1995] 1 SCR 254 at para 16

### Impaired Driving Offences Involving Death and Significant Public Concern - Decisions

Crown Counsel should consult with a Regional Crown Counsel, Director, or their respective deputy before making any decision regarding a charge assessment, resolution, or stay of proceedings of an impaired driving offence in the following circumstances:

- when the allegation is that a person is responsible for a death, or
- for any serious allegation about which there has been, or is likely to be, significant public concern with respect to the administration of justice (*Charge Assessment Guidelines* (CHA 1), and *Resolution Discussions and Stays of Proceedings* (RES 1))

### Automatic Roadside Driving Prohibitions (ARP)

Sections 215.41 to 215.51 of the *Motor Vehicle Act* create an administrative Automatic Roadside Driving Prohibition (ARP) scheme (also known as Immediate Roadside Driving Prohibition (IRP)) with significant consequences for a driver who registers a fail or refuses to provide a sample into an approved screening device.

The administrative consequences of the scheme are relevant to the assessment of charges for impaired driving offences.

Accordingly, when the accused has been the subject of an ARP and related consequences, pursuant to the factors described in CHA 1, prosecution of an impaired driving offence will generally not be in the public interest unless there are aggravating factors such as:

- bodily harm or death
- a prior conviction for an impaired driving offence
- an allegation that other *Criminal Code* offences were committed during the same event, including driving while prohibited
- evidence of significant impairment
- any other relevant aggravating factor related to impaired driving enumerated in the *Criminal Code*
- a prior ARP or driving prohibition under section 94.1 of the *Motor Vehicle Act*
- any other aggravating factor relevant to the public interest

### **Alternative Measures – Exceptional Circumstances**

For impaired driving 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 also before the use of specific alternative measures recommended in an alternative measures report. Such approvals may be granted only when exceptional circumstances exist so that the use of alternative measures is not inconsistent with the protection of society (*Alternatives to Prosecutions* (ALT 1)).

### **Resolution**

On a prosecution of an impaired driving offence, Crown Counsel may only accept a guilty plea to a lesser or different offence in substitution if the charge assessment standard in CHA 1 is no longer met for the impaired driving offence, the evidence discloses a substantial likelihood of conviction for the proposed offence, and the proposed resolution is consistent with the public interest.

In considering whether the public interest may be met by a guilty plea to a lesser or different offence, Crown Counsel should consider the following:

- the widespread nature of impaired driving offences and the substantial risk to the safety of the public that is posed by all impaired drivers, regardless of their individual circumstances
- whether the personal circumstances of the accused are exceptional and significantly beyond the ordinary hardship arising from a conviction for an impaired driving offence
- the need to maintain public confidence in the administration of justice

Crown Counsel must record, in the Crown Counsel file, the reasons for not proceeding with the prosecution of an impaired driving offence and for accepting a guilty plea to a lesser or different offence.

When Crown Counsel is considering a resolution in a matter involving serious injury or severe psychological harm, Crown Counsel should take reasonable steps to inform the victim or victim's family as required by the policy on RES 1.

As stated above, when Crown Counsel is considering a resolution of a matter, which alleges that a person is responsible for a death or for any serious charge about which there has been, or is likely to be, significant public concern with respect to the administration of justice, before concluding resolution discussions, Crown Counsel should consult with a Regional Crown Counsel, Director, or their respective deputy (RES 1).

### **Section 224 of the *Motor Vehicle Act***

Crown Counsel should not charge or agree to accept a guilty plea to driving with more than 80 mgs alcohol/100 ml blood under section 224 of the *Motor Vehicle Act*.

### **Previous Convictions**

In every prosecution for an impaired driving offence, including those when a notice to seek greater penalty has not been served, all previous convictions for an impaired driving offence or related offence should be drawn to the attention of the court for the purpose of sentencing.

### **Notice to Seek Greater Penalty**

Crown Counsel should proceed by way of notice of intention to seek greater penalty under section 727 of the *Criminal Code* if the accused is charged with an impaired driving offence and it can be proven that they were previously convicted of a qualifying impaired driving offence within three years of the date of the alleged offence. Section 82(4) of the *Youth Criminal Justice Act* precludes the use of notice to seek greater penalty for young offenders. If

there are special or compelling circumstances, Crown Counsel may depart from this policy after consultation with a Regional Crown Counsel, Director, or their respective deputy.

Crown Counsel may rely on notice of intention to seek greater penalty when the previous conviction is more than three years from the date of the offence. Crown Counsel should consider the following factors:

- the number of prior convictions for impaired driving offences, the time span of those convictions, and past sentences imposed
- the circumstance of the present offence, including the degree of impairment; whether it involved a motor vehicle collision, personal injury or death; the risk to passengers or members of the public; the driving pattern, or the care or control of the vehicle
- a blood alcohol concentration at or in excess of the level identified in the *Criminal Code* as an aggravating factor relating to an impaired driving offence
- the likely length of any driving prohibition
- the offender's personal circumstances; including: employment, age, health, impact on dependents, and attitude towards alleged offence including any alcohol treatment undertaken
- any other relevant aggravating factor related to impaired driving enumerated in the *Criminal Code*