



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: 57450-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: MOT 1.1
SUBJECT: <i>Motor Vehicle Act and Criminal Code Driving Offences – Sentencing – Prohibition Orders</i>		CROSS-REFERENCE: Practice Bulletin

POLICY

Where an accused is being sentenced for driving offences under the *Criminal Code* or under section 95, 102, 224 or 226(1) of the *Motor Vehicle Act* and a prohibition from driving under section 98 of the *Motor Vehicle Act* is appropriate with regard to the enumerated factors in that section, Crown Counsel should ask the court to make an order of prohibition under section 98, in addition to any other prohibition from driving which the court may impose under either Act.

The rationale for this policy is that a conviction for driving while prohibited contrary to section 98 of the *Motor Vehicle Act* will allow the court to impose a jail term for a first offence where appropriate and will bring a mandatory jail term for a second offence.

Crown Counsel should submit to the court that the public interest requires a prohibition of at least 12 months as consistent with the intent of the Legislature in section 99 of the *Motor Vehicle Act* and with the intent of Parliament in section 259(1) of the *Criminal Code*, both of which provide a 12 month prohibition from driving.

DISCUSSION

Under the decision of the Supreme Court of Canada in R. v. Pontes, (1995) 100 C.C.C. (3d) 353, Crown Counsel may not seek and the court may not order a sentence of incarceration for a person convicted of driving while prohibited contrary to section 99 of the *Motor Vehicle Act*, as that provision has been held to be an offence of absolute liability. See the Practice Bulletin entitled Prohibited Driving Contrary to Section 102 *Motor Vehicle Act* Where the Prohibition Occurred Under Section 99 – Sentence.

However, if the court imposes a prohibition from driving under section 98 of the *Motor Vehicle Act* and the subject is convicted of driving while prohibited contrary to the section 98 prohibition, jail is available for a first offence and mandatory for a second offence.