

Policy:

Private Prosecutions

Policy Code:

PRI 1

Effective Date:

March 1, 2018

Cross-references:

ADH 1 CHA 1 CHA 1.2
SPE 1 STA 1

Generally, BC Prosecution Service policy does not permit a private prosecution to proceed. Crown Counsel will usually take conduct of the prosecution or direct a stay of proceedings after making a charge assessment decision. This includes Informations laid under sections 810 and 810.1.

Sections 507.1(3) and (4) of the *Criminal Code* permit the Attorney General (Crown Counsel) to receive reasonable notice of a process hearing; receive a copy of the Information; appear at a section 507.1 process hearing; cross-examine and call witnesses; and present any relevant evidence at the hearing.

Sections 507.1(1) to (8) do not apply to Informations laid under sections 810 or 810.1, pursuant to section 507.1(9).

When Crown Counsel receives a private Information or notice of a process hearing for a private prosecution under section 507.1 of the *Criminal Code*, the following process should be followed:

1. Crown Counsel should:

- review the private Information and any other materials provided by the informant
- review any existing investigatory materials prepared by the police or other investigative agencies relevant to the counts in the private Information
- review any previous related legal actions, complaints or other private Informations sworn, or attempted to be sworn, by the informant
- where appropriate, refer the Information and other materials to the police or other investigative agency, and request that they consider conducting an investigation and preparing a Report to Crown Counsel

2. Once the relevant materials have been received and reviewed, Crown Counsel should determine whether the charge assessment standard in the policy *Charge Assessment Guidelines* (CHA 1) or, where appropriate, *Charge Assessment – Social Regulatory Offences* (CHA 1.2) has been met.
3. Prior to the completion of the charge assessment, Crown Counsel should consult with a Regional Crown Counsel, Director, or their respective deputy about whether the charge will be prosecuted by Crown Counsel, a stay of proceedings will be directed, or otherwise.

Crown Counsel may direct a stay of proceedings at any time after a private Information has been sworn, including before a section 507.1 process hearing (*R v McHale*, 2010 ONCA 361; *R v Olumide*, 2014 ONCA 712). This should be done whenever Crown Counsel has sufficient information to make a complete charge assessment and concludes that the charge assessment standard is not met.

If a process hearing has already been scheduled, Crown Counsel should follow steps 1 to 3 above. Crown Counsel should seek an adjournment of the process hearing if additional time is required to complete these steps.

If steps 1 to 3 set out above have not been completed prior to a scheduled process hearing and the Crown Counsel's application for an adjournment of the process hearing has been dismissed, Crown Counsel should:

- attend the process hearing, observe the testimony of the informant and then renew the adjournment application in order to complete steps 1 to 3 outlined above
- appear at, and participate in, the process hearing, which may include: cross-examining the informant and any witnesses called by the informant, calling witnesses, presenting evidence and making submissions, as appropriate

If process is issued following a section 507.1 process hearing, Crown Counsel should obtain a transcript of the process hearing. If an investigation has not already been conducted, Crown Counsel should refer the Information and other materials to the police or other investigative agency, and request that they consider conducting an investigation and preparing a Report to Crown Counsel. Where an investigation is completed, Crown Counsel should determine whether the charge assessment standard has been met. Crown Counsel should consult with a Regional Crown Counsel, Director, or their respective deputy about whether the charge will be prosecuted by Crown Counsel, a stay of proceedings will be directed, or other actions will be taken.

In all cases, the informant who swore the private Information should be advised of the charge assessment decision as soon as possible.

Crown Counsel should consider whether the policy *Standards of Conduct – Conflict of Interest & Protection of Confidential Information* (STA 1) applies to the potential accused named in a private Information. Where appropriate, Regional Crown Counsel should consult with the Assistant Deputy Attorney General as to whether outside counsel or a special prosecutor should be retained to take conduct of the file (*Ad Hoc Counsel* (ADH 1); *Special Prosecutors* (SPE 1)).