

Policy:

### Recognizances under Section 810 and Peace Bonds

Policy Code:

**REC 1**

Effective Date:

March 1, 2018

Cross-references:

[CRI 1](#) [IPV 1](#)

A court may dispense preventive justice by issuing either a recognizance under section 810 of the *Criminal Code* or a “common law peace bond.” The latter has been recognized by the Supreme Court of Canada in *R v Parks*, [1992] 2 SCR 871 and *Mackenzie v Martin*, [1954] SCR 361.

When a case involves an allegation of spousal violence, Crown Counsel should consider the policy *Intimate Partner Violence (IPV 1)*. For cases involving criminal harassment, Crown Counsel should refer to the policy *Criminal Harassment (CRI 1)*.

Applications for common law peace bonds should not generally be used as a substitute for section 810 applications, nor should they generally be used as a means for resolving charges under the *Criminal Code* or section 810 applications.

### Recognizances under section 810 of the *Criminal Code*

Section 810 of the *Criminal Code* provides that a court may order a recognizance if it is satisfied that a complainant has current reasonable grounds to fear that a defendant will cause personal injury to him or her or to his or her spouse or common-law partner or child or will damage his or her property (regardless of the date of the precipitating incident(s)). It provides well-defined procedures and legal requirements, including the following:

- procedures that enable a court to cause the parties to appear before it, give notice to a defendant of the nature of the case, and allow a defendant to have a hearing
- a statutory test which must be satisfied before a recognizance may be issued
- maximum periods for which a recognizance may be issued
- the types of conditions that may be added to a recognizance
- obligations on a court to consider making certain conditions
- the ability to commit an accused to prison if they fail to enter into a recognizance

- the ability to prosecute a breach of a recognizance (under section 811)

In deciding whether to make an application for a recognizance under section 810, Crown Counsel should consider whether there is a reasonable likelihood of it being ordered, bearing in mind that reliable hearsay and character evidence may be admissible.

Given concerns for the safety of complainants, a warrant for the arrest of the defendant, as opposed to a summons, should ordinarily be sought to ensure that appropriate release conditions are imposed.

On an application for a section 810 recognizance, a judge or justice is required to consider whether it is desirable to order a prohibition from the possession of firearms or other weapons pursuant to section 810(3.1). Crown Counsel should ensure that the court considers that provision.

While it is part of the *Criminal Code*, section 810 does not create a criminal offence, and no conviction or sentence results from a successful application.

### Common Law Peace Bonds

Judges in statutory courts, like the Provincial Court, possess a common law jurisdiction to promote preventative justice by ordering that a person be bound over to keep the peace in what is often referred to as a “common law peace bond.”

The issuance of a common law peace bond depends on the willingness of a court to exercise its common law jurisdiction in the absence of a prescribed statutory process. The procedures for making an application, the legal test for the court exercising its discretion, the available terms and conditions of the bond, and the enforcement mechanisms are not as clearly defined as they are for applications under section 810 of the *Criminal Code*.

When ordering a common law peace bond, the rules of natural justice apply. This requires the court to advise an acquitted accused in advance that the court intends to impose a bond on the accused and give the accused an opportunity to make submissions. Crown Counsel should ensure that the court considers these requirements.

Complainants participate in court proceedings without expecting to defend themselves against the imposition of a court order. Unlike the accused, they are generally without counsel and have not been given an opportunity to call evidence on their behalf. Crown Counsel should oppose the imposition of a common law peace bond on a complainant (including mutual peace bonds) unless the complainant has had an opportunity to obtain independent legal advice and wishes to proceed in that manner.

A breach of a common law peace bond can be enforced by charging the accused with the hybrid offence of breach of a court order under section 127 of the *Criminal Code*.