Policy:		
Recognizances and Peace Bonds		
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The purpose of a recognizance or peace bond is to prevent serious harm by imposing conditions upon a person, which may restrict their movement or behaviour to reduce the risk of them committing a future offence.

A court may dispense preventive justice by ordering a recognizance pursuant to section 83.3, 810, 810.01, 810.011, 810.02, 810.1, or 810.2 of the *Criminal Code* or by issuing a peace bond pursuant to the common law.[1] A court order for a recognizance or peace bond does not result in a conviction or a sentence for a criminal offence and is not a punishment.

Where the alleged defendant is a young person, section 14(2) of the *Youth Criminal Justice Act* gives a youth justice court exclusive jurisdiction to make orders under 83.3, 810, 810.01, 810.011, 810.02, or 810.2 against young persons.

Section 810 Recognizances

For a court to issue a recognizance under section 810 of the *Criminal Code* there must be proof on a balance of probabilities of a current subjective fear that the defendant will cause personal injury to another person, their intimate partner or child, or damage their property and the fear must be objectively reasonable. In deciding whether to make an application for a recognizance under section 810, Crown Counsel should consider all relevant evidence, including reliable hearsay and character evidence.

In applying for a recognizance under section 810, Crown Counsel should consider whether to seek a warrant for the arrest of the defendant, as opposed to a summons, to enable the imposition of appropriate release conditions addressing any concerns for the safety of a complainant or the public.

[1] *R v Parks*, [1992] 2 SCR 871; *Mackenzie v Martin*, [1954] SCR 361

The *Private Prosecutions* (PRI 1) policy applies to any Information sworn under section 810 of the *Criminal Code* by a private informant instead of a police officer.

Where charges have been laid, Crown Counsel may consider resolving them by applying for a section 810 recognizance. Crown Counsel should consult the complainant and consider their views prior to resolving a substantive criminal charge by way of a section 810 recognizance. In such cases, the *Resolution Discussions* (RES 1) policy applies.

Before applying for a recognizance under section 810:

- in any case involving an allegation of intimate partner violence, Crown Counsel should consider the *Intimate Partner Violence* (IPV 1) policy
- in any case involving an allegation of criminal harassment, Crown Counsel should consider the *Criminal Harassment* (CRI 1) policy

Conditions

Crown Counsel should only seek conditions on a recognizance that are reasonably necessary to prevent future offences and protect society. Conditions should not be punitive, nor should they be aimed at achieving denunciation, retribution, rehabilitation, or general deterrence.

Crown Counsel should not seek conditions that, if breached, might tend to criminalize or penalize a defendant's particular life circumstances (e.g., poverty, homelessness, alcohol or drug addiction, mental or physical illness, or disability) unless those conditions are reasonably necessary to secure the good conduct of the defendant.

Conditions that require complete abstinence from alcohol or drugs, banish defendants from their home community, or impose stringent curfews, particularly if there are reasonable alternatives, should be sought only if there is no reasonable alternative for achieving the objectives of preventing future offences or protecting society.

Common Law Peace Bonds

Judges 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."

However, for the reasons below, Crown Counsel should not use applications for common law peace bonds as a substitute for section 810 applications, nor should they generally use them as a means for resolving charges under the *Criminal Code* or section 810 applications.

Section 810 provides well-defined procedures and legal requirements which the common law process does not provide, 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 a defendant to prison if they fail to enter into a recognizance
- the ability to prosecute a breach of a recognizance (under section 811)

By contrast, 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 so clearly defined as they are for applications under section 810 of the *Criminal Code*.

Judges will occasionally consider ordering a common law peace bond of their own motion or at the instance of the defence. When they do, the rules of natural justice apply. For example, 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 of natural justice.

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 indicates a desire to proceed in that manner. Complainants participate in court proceedings without expecting to have 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.

Sections 810.1 and 810.2 of the *Criminal Code*

Section 810.1 of the *Criminal Code* provides that a court may order a recognizance if a person has reasonable grounds to fear that a person will commit a sexual offence in respect of one or more persons who are under the age of 16 years. The application process begins with an Information being laid before a provincial court judge. A youth court justice has no jurisdiction to make an order under section 810.1 (*Youth Criminal Justice Act* section 14(2)).

Section 810.2 of the *Criminal Code* provides that a court may order a recognizance if a person has reasonable grounds to fear that a person will commit a serious personal injury offence, as defined by section 752.

The consent of the Attorney General that is required prior to the section 801.2 application being laid before a provincial court judge may be provided by the Assistant Deputy Attorney General.

Section 810.1 and 810.2 applications are often brought in circumstances where the subject of the application has been held in federal custody until the end of their sentence (a warrant expiry date offender). Crown Counsel should bear in mind that initiating a proceeding upon a person's release from custody risks:

> *A further deprivation of liberty after the completion of a sentence already determined to be proportionate. Without further evidence that the feared conduct will occur (for example, the existence of threats or other violent conduct while in custody) a fear based solely on the offence for which a defendant is serving a sentence will not be sufficient…It would serve as a de facto probation order, not as a prospective tool of preventative justice. … Given the unique circumstances of the peace bond defendant as a person accused of no crime, it is the responsibility of every justice system participant to guard against the deprivation of the defendant's liberty unless absolutely necessary.*[2]

In deciding whether to make a section 810.1 or 810.2 application (including one involving a warrant expiry date offender) Crown Counsel should consider the following factors:

- the likelihood of a feared offence occurring and the nature and seriousness of the anticipated harm, based upon all available information, including any reports or assessments concerning risk for recidivism, correctional program participation, and psychological or psychiatric treatment
- the nature and length of criminal record, including whether offences have been committed shortly after release or while on conditional release, parole, or probation
- any aggravating circumstances involved in previous offending, including degree of planning and premeditation, degree of violence, use of weapons, physical or psychological harm to victim(s), and the vulnerability of the victim(s), including whether a trust relationship existed between the defendant and the victim, such as a child or intimate partner
- the overrepresentation of Indigenous women and girls as victims of violent offences
- the need to maintain public confidence in the administration of justice

[2] *R v Penunsi,* 2019 SCC 30 at paras 63 and 68

Indigenous Persons

Numerous government commissions and reports, as well as the judgments of the Supreme Court of Canada, have recognized that discrimination experienced by Indigenous persons, whether as a result of overtly racist attitudes or culturally-inappropriate practices, extends to all parts of the criminal justice system.

Parliament has recognized an evolving societal consensus that these problems must be remedied by accounting for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views.[3]

The history of colonialism, displacement, and residential schools continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and higher levels of incarceration for Indigenous persons.[4]

The rates of victimization of Indigenous persons, especially for Indigenous women and girls, are also significantly higher than those for non-Indigenous persons.[5] These circumstances must inform the Crown's position in any case involving an Indigenous person.

Crown Counsel should consider the historical factors and current realities facing Indigenous persons when determining whether to apply for a recognizance or to proceed with a charge of breach of recognizance against an Indigenous defendant. In appropriate cases, a recognizance may be an appropriate resolution to protect the public while not criminalizing the defendant.

Crown Counsel should determine whether culturally appropriate resources are available in the community which may reduce or eliminate the need for an application for a recognizance against an Indigenous defendant. If an application is deemed necessary, Crown Counsel should identify Indigenous programs and supports that may assist the individual while subject to conditions.

In deciding whether to make a section 810.1 or 810.2 application (including those involving a warrant expiry date offender) in respect of an Indigenous defendant, in addition to the factors listed above, Crown Counsel should also consider:

- whether bias, racism, or systemic discrimination may have played a part in the defendant initially coming into contact with the criminal justice system or becoming the subject of the recognizance application

[3] *Ewert v Canada*, 2018 SCC 30 at paras 57 and 58; *R v Barton*, 2019 SCC 33 at paras 198 and 200
[4] *R v Ipeelee*, 2012 SCC 13
[5] *Victimization of Aboriginal People in Canada, 2014*, Statistics Canada, 2016

- the overrepresentation of Indigenous persons in federal custody,[6] particularly those detained after they become eligible for parole and beyond their statutory release date[7]
- the overrepresentation of Indigenous persons subject to section 810.2 applications in British Columbia upon release from federal custody at end of sentence
- the need to reduce the overrepresentation of Indigenous persons within the criminal justice system, particularly where *R v Gladue* factors have played a part in the Indigenous person's coming into contact with the criminal justice system

Sections 83.3, 810.01, 810.011, and 810.02

Recognizances under sections 83.3 (prevent terrorist activity), 810.01 (fear of intimidation of a justice system participant or journalist, or a criminal organization offence), 810.011 (fear of terrorism offence), 810.02 (fear of forced marriage or marriage under the age of 16 years) are rarely sought and only in exceptional circumstances. The issue of whether to make an application under any of those sections, whether as the result of a Report to Crown Counsel recommending it, or otherwise, should be referred to a Regional Crown Counsel, Director, or their respective deputy for assessment and decision.

Protective Conditions Regarding Firearms and Other Weapons

In an application for a recognizance pursuant to any of sections 810 through 810.2, Crown Counsel should bring to the court's attention the requirements (under sections 810 (3.1), 810.01 (5), 810.1 (3.03), and 810.2 (5)) that the court must consider whether it is desirable to prohibit the defendant from possessing, among other things, any firearm, ammunition, or other weapon, and if so, how such items in the defendant's possession will be dealt with.

Breaches

When conducting a charge assessment for an alleged breach of the conditions of a recognizance, Crown Counsel should be guided by the considerations which apply to alleged breaches of probation, as set out in *Probation – Adults* (PRO 1).

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[6] Statistics Canada, Data Tables: Visible Minority, 2016 Census; and Public Safety Canada, *2019 Corrections and Conditional Release Statistical Overview*, Catalogue No PSI-3E-PDF (Ottawa: Public Safety Canada Portfolio Corrections Statistics Committee, 2020)

[7] Senate Canada, Human Rights of Federally Sentenced Persons (Final Report) (Ottawa: The Standing Senate Committee on Human Rights, 2021) (Chair: The Honourable Salma Ataullahjan) at 254