



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

February 20, 2012

12-02

Criminal Justice Branch – Charge Approval Process

Victoria - On February 8, 2012, the B.C. government announced that Gary McCuaig, QC, has been engaged as “an external expert to review B.C.’s criminal charge assessment process to determine whether it is the most effective model for making prosecution decisions”.

Since then, there has been considerable media attention about prosecutor-based charge assessment as administered by the Criminal Justice Branch. During the course of the public dialogue, inaccurate statements have been made about the charge assessment standard that is applied by prosecutors, its legal basis or the way in which charge approval works in British Columbia. To better inform the public discussion, the Branch has decided to release a few facts about its charge assessment model:

- a prosecutor-based charge assessment process has been in place in British Columbia since the early 1980s
- deciding whether to initiate or continue with a prosecution against someone who is presumed innocent at law until proven guilty is one of Crown Counsel's "core" responsibilities as recognized by the Supreme Court of Canada
- this means that whether police lay a criminal charge or Crown Counsel lay a criminal charge, the prosecutor has a legal obligation to review the investigative file that has been presented by police and be satisfied that a prosecution should proceed
- in British Columbia, Crown Counsel's review of the investigative file is done at the front end of the process through charge assessment, rather than after a charge has been laid by police or another investigative agency and the accused person has already been compelled to appear in court
- when Crown Counsel make charge assessment decisions, they do so independently

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- they exercise their discretion as prosecutors free from external influence. Crown Counsel must be fair in their charging decisions and conduct themselves impartially, without bias for or against the person who is alleged to have committed a crime.
- the Supreme Court of Canada has acknowledged that a prosecution service is entitled to set standards that guide Crown Counsel's exercise of discretion in deciding whether a prosecution should be initiated or continued
- charges are approved by Crown Counsel in British Columbia where there is a substantial likelihood of conviction and a prosecution is required in the public interest
- a "substantial likelihood of conviction" does not mean that Crown Counsel must be absolutely certain of a conviction before a prosecution will proceed
- rather, it means that Crown Counsel must be satisfied, based on the evidence gathered by the investigative agency, that there is a strong, solid case of substance to present to the court
- in deciding whether there is a "substantial likelihood of conviction", Crown Counsel will consider:
 1. what material evidence is likely to be admissible in court;
 2. the weight that will likely be given to the admissible evidence; and
 3. the likelihood that viable, not speculative, defences will succeed
- in the Criminal Justice Branch's fiscal year 2010/11, it received 74,920 Reports to Crown Counsel that recommended charges
- a single Report to Crown Counsel will sometimes recommend charges against more than one person
- in 2010/11, the Branch made a charge assessment decision in relation to 79,668 persons
- charges were approved against 65,985 persons
- 2005 persons were referred for consideration to alternative measures programming in lieu of a formal prosecution
- at the time of the Branch's 2010/11 Annual Report, the matters for 2,257 accused persons remained with the police or other investigative agencies with a request for more information.
- a decision to not approve a charge was made by the Branch in relation to 9,421 persons

- 57% of the Reports to Crown Counsel that were received by the Branch in 2010/11 were processed for charge assessment within 1 full working day of receipt and a decision was made by Crown Counsel
- 71% of the Reports to Crown Counsel were processed for charge assessment within 5 full working days of receipt and a decision was made by Crown Counsel
- within 30 days of receipt, 93% of the Reports to Crown Counsel that were received in 2010/11 had been processed for charge assessment and a decision was made by Crown Counsel
- the Criminal Justice Branch's policy on charge approval is publicly available for review at:
<http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1-ChargeAssessmentGuidelines-2Oct2009.pdf>
- the Branch's Annual Report for 2010/11, which contains the statistics referenced in this Media Statement, is also publicly available and can be found at:
<http://www.ag.gov.bc.ca/prosecution-service/pdf/CJB-AnnualReport-2010-2011.pdf>

The Criminal Justice Branch has already met with Mr. McCuaig, QC, to begin discussing B.C.'s charge assessment process. The Branch will fully co-operate in the review and will provide Mr. McCuaig with whatever assistance and information he requires to engage in a fully informed and comprehensive evaluation.

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