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Opinion: making sure charge assessment dialogue is well-informed

Prosecutor-based model works for B.C., minister of justice says



Suzanne Anton is the B.C. Minister of Justice and Attorney General

B.C.'s charge assessment model has been the subject of public commentary recently, particularly within the context of homicide prosecutions. As Minister of Justice and Attorney General, I want to ensure the dialogue is well-informed.

A prosecutor-based charge assessment model is appropriate for B.C., including the standard of a "substantial likelihood of conviction." This model has been in place since the early 1980s. The public can be confident that Crown Counsel apply the model fairly, in a principled manner and that they do so understanding the important public interest in prosecutions for violent offences.

Once police have completed an investigation into an alleged homicide, they submit a report to Crown Counsel to the Criminal Justice Branch for charge assessment.

From fiscal year 2008-09 to 2013-14, the branch received, on average, 107 RTCCs annually for the offences of murder, manslaughter and attempted murder. Ninety-four per cent of these files were approved to court over this time period.

I appreciate this statistic captures only the RTCCs that have been submitted to the Branch. It does not account for investigative files that are not put forward. However, in these latter cases, and in all homicide and violent offence investigations, prosecutors are available to police for legal advice on request. This includes, where appropriate, identifying additional evidence that may be needed for charge assessment. Crown counsel and police appreciate the importance of a constructive working relationship. They have independent roles, but understand the benefit of collaborative assistance in protecting the public.

Whether police lay a criminal charge, as in some provinces, or Crown counsel lay a criminal charge, as in B.C., the prosecutor has a legal obligation to review the investigative file that has been submitted by police and be satisfied that a prosecution should proceed.

Crown counsel are required to conduct charge assessments independently and exercise their discretion free from external influence. The standard they apply is established through Criminal Justice Branch policy. Charges are approved 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 Crown counsel must be absolutely certain of a conviction before a prosecution will proceed. Rather, they must be satisfied, based on the evidence gathered by the investigative agency, that there is a strong case of substance to present to the court.

Criminal Justice Branch policy recognizes there may be “exceptional circumstances” in which a prosecution should proceed, even though it cannot be said there is a substantial likelihood of conviction. This may arise in cases of high risk violent or dangerous offenders or cases in which public safety concerns are paramount. In these circumstances, Crown counsel may approve charges if satisfied there is a “reasonable prospect of conviction”.

Pre-charge assessment respects the constitutionally-entrenched presumption of innocence of accused persons, as well as privacy interests, by further ensuring that charges are not laid and put into the public domain unless the evidence that would likely be admissible in court appropriately supports a prosecution.

Deciding whether a prosecution should be commenced can be legally complex. Crown counsel is well-suited to make this assessment based on their legal training, criminal law experience and their understanding of court process, the rules of evidence and constitutional rights.

Pre-charge assessment supports increased efficiency. It prevents cases from entering the court system that should not be there. Also, under B.C.’s model, submitting a RTCC generally requires that investigators provide disclosure at the same time. This allows Crown counsel to meet its constitutional obligation for disclosure to the defence in a timely way. I understand this can be resource-intensive. The Criminal Justice Branch, police and other investigative agencies actively work together to understand each other’s needs and obligations in managing disclosure, and co-operatively develop related processes.

At government’s request, B.C.’s charge assessment model was reviewed in 2012 by a retired, senior Alberta prosecutor, Gary McCuaig, Q.C. He concluded the prosecutor-based model should remain in place. He also found “no evidence that changing [the B.C. standard] would bring tangible benefits.”

Geoffrey Cowper, the chair of government’s Justice Reform Initiative, agreed with the recommendation. He concluded that “from a systems perspective the approval of charges by police would create unhelpful duplication of effort and would result in a far higher level of stays of proceedings.”

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