



November 22, 2022

22-23

BC Prosecution Service announces revised bail policy after directive by AG

Victoria – On November 16, 2022, the Attorney General issued a directive to the Assistant Deputy Attorney General (ADAG) of the BC Prosecution Service (BCPS) to identify and implement amendments to its *Bail – Adults* (BAI 1) policy that could, to the full extent possible under the law, address the risk that repeat violent offenders pose to public safety in British Columbia. The directive was issued pursuant to section 6 of the *Crown Counsel Act*, which gives the Attorney General the authority to issue a directive respecting the policy on the approval or conduct of prosecutions. A copy of the directive is attached to this statement.

As directed, the BCPS is implementing a revised *Bail – Adults* (BAI 1) policy, effective immediately. The revised policy can be seen here:

www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/bai-1.pdf

Key changes

- A new section, entitled “Protecting public safety and maintaining confidence in the administration of justice”, confirms that protection or safety of the public is a matter of concern in relation to repeat offenders, particularly repeat violent offenders
- A mandatory direction from the ADAG to Crown Counsel that they must seek the detention of a repeat violent offender charged with an offence against the person or an offence involving a weapon, unless they are satisfied the risk to public safety can be reduced to an acceptable level by bail conditions
- Advice to Crown Counsel to consider any factors that may weigh in favour of seeking the accused’s detention, including:
 - the accused had outstanding criminal charges alleging an offence against the person or involving a weapon
 - the accused allegedly breached a condition of a recognizance or a weapons prohibition
 - the reverse onus provisions of section 515(6) of the *Criminal Code*

- Previous advice, advising Crown Counsel not to seek detention unless a fit sentence upon conviction would include incarceration, has been removed from the policy.

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To learn more about BC's criminal justice system, visit the British Columbia Prosecution Service website at: gov.bc.ca/prosecutionservice or follow [@bcprosecution](https://twitter.com/bcprosecution) on Twitter.



BRITISH
COLUMBIA

VIA EMAIL

Ref. 634143

November 16, 2022

Mr. Peter Juk, KC
Assistant Deputy Attorney General
BC Prosecution Service
Ministry of Attorney General
Criminal Justice Branch
PO Box 9276 Stn Prov Govt
Victoria BC V8W 9J7
Email: Peter.Juk@gov.bc.ca

Dear Mr. Juk:

You have advised me as follows:

- a) The *Charter of Rights and Freedoms* guarantees that every person charged with an offence has the right not to be denied reasonable bail without just cause.
- b) Under the Federal *Criminal Code*, every person arrested for an offence is entitled to be released by the police or brought before a justice for a bail hearing as soon as possible. The justice decides whether to detain the person in custody or release the person on bail and on what conditions.
- c) Subsection 515(10) of the *Criminal Code* enumerates the only lawful grounds upon which Crown Counsel may seek the detention of an accused person:

515. (10) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

(a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;

(b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and

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- (c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including
- (i) the apparent strength of the prosecution's case,
 - (ii) the gravity of the offence,
 - (iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
 - (iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.
- d) Despite the constitutional right to reasonable bail, the numbers of accused persons denied bail and held in pretrial custody have dramatically increased since the enactment of the *Charter of Rights and Freedoms*. This increase disproportionately affected accused persons from disadvantaged and vulnerable communities. Pre-trial detention tends to increase an accused's risk of future criminalization. It also tends to increase the already unacceptable over-representation of Indigenous persons within the Canadian criminal justice system.
- e) The Federal *Criminal Code* was amended in 2019, imposing on judges and police the requirement to:
- ...give primary consideration to the release of the accused at the earliest reasonable opportunity, on the least onerous conditions that are appropriate in the circumstances...*
- f) The Supreme Court of Canada has confirmed that pretrial release (i.e., bail) is the rule and pretrial detention is the exception and emphasized the obligation on all parties, including Crown Counsel, to act with restraint in all matters affecting bail.
- g) Despite the amendments to the *Criminal Code* and the judgments of the Supreme Court of Canada, the principle of restraint does not preclude Crown Counsel from seeking detention of an accused person under Section 515(10) when it is necessary and appropriate to do so for the protection or safety of the public or to maintain confidence in the administration of justice.

Communities in British Columbia have been dealing with an increase in repeat offending and unprovoked violent stranger attacks. The Province has received recommendations from Dr. Amanda Butler and Mr. Doug LePard that build on work already underway to keep people and communities safe and connect people who have been committing repeat offences with the supports they need to break out of that cycle.

Mr. Peter Juk, KC
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I believe that the public interest requires that I take every step possible under the law to address repeat offending and unprovoked violent stranger attacks to ensure public confidence in the justice system.

Therefore, pursuant to Section 6 of the *Crown Counsel Act*, this letter is my direction to you respecting the Criminal Justice Branch policy entitled *Bail -- Adults (BAI 1)* (the "Policy").

You must:

1. By end of November 18th, identify amendments to the Policy that could, to the full extent possible under the law, address the risk that repeat violent offenders pose to public safety in British Columbia;
2. By end of November 19th, provide me with the revised Policy; and
3. By end of November 22nd, implement the revised Policy

Sincerely,

A handwritten signature in blue ink that reads "Murray Rankin". The signature is written in a cursive, flowing style.

Murray Rankin, KC
Attorney General and
Minister Responsible for Housing

pc: Barbara Carmichael