

SUBJECT: PROSECUTIONS - PROCEEDING WITH CHARGES

POLICY

In deciding whether to proceed with a trial or preliminary inquiry, or to instruct that charges be instituted, Crown prosecutors will apply a twofold test:

1. Is there a reasonable likelihood of conviction, and
2. Is it in the public interest to proceed.

The obligation to assess whether a charge meets our prosecutorial standard is a continuing one. As the case moves through the judicial process, the strength of the case may change as the police obtain new evidence. Even after the police investigation is complete, Crown prosecutors may receive additional information that can affect the prosecution so they must continually assess the case to ensure it meets the prosecutorial standard.

A *prima facie* case is not sufficient to justify a preliminary hearing, trial, or, on an opinion file, the laying of charges; there must be a reasonable likelihood of conviction. Determining whether that standard is met requires assessing the sufficiency of the evidence while taking into account such matters as the reliability of the evidence; the admissibility of the evidence; the availability, competence and credibility of witnesses; their likely impression on the trier of fact; the presence or absence of corroborating evidence; and the prospects and anticipated strength of any evidence that is expected to be provided by the investigator(s). Crown prosecutors should also consider any defences that are plainly open to or have been disclosed by the accused, and any other factors which could affect the likelihood of a conviction.

The situation is different at the docket stage when the matter has been commenced by the police. Often prosecutors will not know the sufficiency or true strength of the evidence when it is first presented to them in that situation. Therefore, a charge may proceed through docket even when there are questions or uncertainties as to whether there is a reasonable likelihood of conviction, provided there are reasonable and probable grounds to believe that the offence has been committed. However, where such questions or uncertainties are apparent and the charge does not meet the "reasonable likelihood of conviction" standard, the docket prosecutor shall make efforts to seek clarification by requesting further information or investigation. Upon receiving the results of that request, the docket or assigned prosecutor with carriage of the file must reassess the case against this policy.

If at any stage of the proceedings a prosecutor reviewing the charge concludes that the "reasonable likelihood of conviction" standard is not met, and there is or proves

to be little prospect that standard will be met before either the preliminary inquiry or trial, the prosecutor should withdraw or stay the charge.

If satisfied there is sufficient evidence to justify the institution or continuation of a prosecution, Crown prosecutors must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued.

The factors which may properly be taken into account in deciding whether the public interest requires a prosecution will include:

1. The seriousness or triviality of the alleged offence;
2. Significant mitigating or aggravating circumstances;
3. The age, intelligence, and physical or mental health or infirmity of the accused or witness;
4. The accused's background;
5. The degree of staleness of the alleged offence;
6. The accused's alleged degree of responsibility for the offence;
7. The prosecution's likely effect on public order and morale or on public confidence in the administration of justice;
8. Whether prosecuting would be perceived as counter-productive by, for example:
 - bringing the administration of justice into disrepute,
 - making a "martyr" of an alleged offender, or
 - providing publicity to an alleged hate propagandist;
9. The availability and appropriateness of alternatives to prosecution;
10. The prevalence of the alleged offence in the community and the need for general and specific deterrence;
11. Whether the consequences of a prosecution or conviction would be disproportionately harsh or oppressive;
12. Whether the alleged offence is of considerable public concern;
13. The attitude and interests of the victim of the alleged offence;
14. The anticipated length and expense of a trial, and the resources available to conduct the proceedings;
15. Whether the accused agrees to cooperate in the investigation or prosecution of others, or the extent to which the accused has already done so;
16. The likely sentence in the event of a conviction.
17. The obsolescence or obscurity of the law.

The decision whether to prosecute must NOT be influenced by any of the following:

1. The race, national or ethnic origin, colour, religion, gender, sexual orientation, political associations, activities or beliefs of the accused or any other person involved in the investigation;
2. The prosecutor's personal feelings about the accused or the victim;
3. Possible political advantage or disadvantage to the government or any political group or party;
4. The possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision; or

5. Stereotypes about certain categories of witnesses such as child witnesses, witnesses with mental disabilities and complainants of spouse/partner abuse or sexual offences.