



POLICY STATEMENT

The imposition of conditional sentences frequently does not reflect the denunciation and deterrence that is warranted where serious offences result in serious consequences for victims. Therefore, special attention must be given to any serious case where a conditional sentence may be granted.

Guidance is provided to Crown Attorneys to assist in their decisions with respect to conditional sentences. The main points of this policy are:

1. Crown Attorneys are instructed that, generally, a conditional sentence should not be recommended in:
 - (i) cases involving death or serious bodily harm,
 - (ii) sexual offences where the victim has suffered psychological or physical harm, or
 - (iii) sexual offences against children;
2. Where the Crown Attorney is considering recommending a conditional sentence in relation to a case involving death or serious bodily harm, a case conference must be held.
3. Where the Crown Attorney is considering recommending a conditional sentence in relation to cases involving sexual offences where the victim has suffered psychological or physical harm, or sexual offences against children, a case conference should be held.
4. In those exceptional cases where it has been agreed at a case conference that the Crown Attorney will recommend a conditional sentence in one of the above situations, the Assistant Deputy Attorney General must be given advance notice of the sentencing date.

PRINCIPLES

In considering the Crown position with regard to a conditional sentence, Crown Attorneys should be guided by the following principles:

- a) Generally, Crown Attorneys should not recommend the granting of a conditional sentence (either as part of a plea arrangement or as a submission on sentencing or appeal) in:
 - cases involving death or serious bodily harm,
 - sexual offences where the victim has suffered psychological or physical harm, or

- sexual offences against children.

However, a case may involve exceptional circumstances that would justify a recommendation of a conditional sentence. “Exceptional circumstances” is difficult to define as there will be unusual and unforeseeable situations that will arise. However, some factors which may be considered would include:

- The victim will be particularly traumatized and potentially re-victimized by testifying in court.
- The physical health, mental health or special infirmity of the accused, victim or a witness.
- The views of the victim.
- The exigencies of the case (i.e. difficulties with proof) may permit a Crown Attorney to recommend a conditional sentence in order to obtain a conviction even though a conditional sentence would not normally be appropriate. This is a difficult judgment call and a case conference will often be of assistance in determining whether this course is justified.
- A Crown Attorney is not required to argue that a conditional sentence is inappropriate in the face of clear authority to the contrary.

b) A Crown Attorney should not advocate or agree to the granting of a conditional sentence where the offender poses an ongoing threat to society. In *R. v. Proulx*¹, the Supreme Court of Canada stated that an offender who is a risk to the safety of the community is statutorily disentitled to a conditional sentence. The trial judge is required to consider the risk posed by the specific offender by taking into account:

- the risk of the offender re-offending , and
- the gravity of the damage that could ensue in the event of re-offence. If, for example, the risk is minimal but the potential damage that could be caused is significant, then the statutory prerequisite may very well not be satisfied.

c) Where appellate courts have held that the proper sentence for a particular type of offence is a penitentiary sentence, the accused is not eligible for a conditional sentence because he/she does not satisfy one of the statutory prerequisites. It would, of course, be inappropriate for a Crown Attorney to agree to recommend a conditional sentence in these circumstances. Furthermore, the imposition of a conditional sentence in the face of a justified request for a penitentiary sentence may well reflect an error in principle permitting a Crown appeal².

d) Crown Attorneys are reminded that aggravating factors are often present in a case which allows it to be distinguished from other cases where conditional sentences have been granted.

¹ [2000] 1 SCR 61 at paragraphs 69 to 76.

² *R. v. Hogg*, [2004] M.J. No. 252 (Man. C.A.) at paragraph 9.

PROCEDURE

Crown Attorneys are directed as follows:

1. Case Conferences - Winnipeg

In Winnipeg, a case conference must be held prior to confirmation of the Crown position where the Crown is considering recommending a conditional sentence in cases involving death or serious bodily harm. In cases involving sexual offences where the victim has suffered psychological or physical harm, or sexual offences against children, a case conference should be held.

Although not required by this policy, a case conference will also be appropriate in any serious or high-profile matter where the Crown assigned to the case believes he/she could benefit from the guidance and expertise that can be provided.

The procedure to be followed in arranging a case conference is:

The Crown Attorney assigned to the case should consult with his/her Supervising Senior Crown to determine whether a case conference is appropriate.

The Crown Attorney should contact the Assistant to the Director of Winnipeg Prosecutions who will confirm attendees and arrange a suitable meeting time and place.

The purpose of the case conference is to ensure information-sharing, common understanding and support of the "Crown position".

The assigned Crown(s), appropriate Supervising Senior Crown and Directors will meet to discuss the case. Other Senior Crowns may also be invited to participate in these case conferences to share their expertise.

The assigned Crown(s) should provide any materials relevant to the discussion (facts, summary of evidence, case law, etc.) to the Assistant to the Director of Winnipeg Prosecutions in advance for distribution to the group.

2. Case Conferences – Regions

In regional offices, it is expected that something akin to a case conference should occur as well. Crown Attorneys are expected to meet with their Senior Supervising Crown to discuss the Crown position where the Crown is considering recommending a conditional sentence in any of the situations enumerated above. Of course, meetings with the Senior Supervising Crown are not restricted to these situations. Crown Attorneys are encouraged to meet with their Senior Supervising Crown any time they feel that discussion of a case would be of benefit.

3. Notice to the Assistant Deputy Attorney General

In those exceptional cases where it has been agreed at a case conference that the Crown Attorney will recommend a conditional sentence in a situation to which this policy applies, the Assistant Deputy Attorney General (ADAG) must be alerted in advance of

the sentencing date. Immediately upon determining that a conditional sentence will be recommended, the Crown Attorney with conduct of the case must notify his/her Senior Supervising Crown. The Senior Supervising Crown must bring the case to the attention of the Assistant to the ADAG by way of an e-mail summary as soon as possible and, in any event, by the Friday prior to the sentencing date.

RATIONALE:

The granting of conditional sentences frequently does not reflect the denunciation and deterrence that is warranted where serious offences result in serious consequences for victims. Therefore, it is important that the position taken by the Crown with respect to sentence be thoroughly considered and approved by way of a case conference. It is also essential that senior management be advised in advance of these cases so that it is able to respond should controversy arise in a particular case.