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<p>CHAPTER IV – CHAPITRE IV : Pre-trial, Trial, and Appeal Matters Questions avant le procès, pendant le procès et en appel</p>	<p>Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p>	

SENTENCING AND PLEA RESOLUTION

1. Introduction

The Crown Prosecutor exercises significant discretion, particularly in matters relating to sentencing and plea resolution. The purpose of this Policy is to ensure that the Crown Prosecutor acts in the public interest when exercising discretion in relation to those matters.

2. Sentencing

2.1 Previous Convictions

Where the Crown Prosecutor is aware that the accused has been convicted previously of a criminal offence, the Crown Prosecutor shall introduce a record of the accused person's criminal history at sentencing.

Where a previous conviction is dated or unrelated to the offence for which the accused is to be sentenced, the Crown Prosecutor may make representations to the court regarding the relevance of the previous conviction.

2.2 Victim Impact Statements and Pre-sentence Reports

Where a Victim Impact Statement or a Pre-sentence Report has been filed with the court, the Crown Prosecutor shall take into consideration its contents in any submission he or she makes on sentence.

2.3 Victim Surcharges

Pursuant to section 737 of the *Criminal Code*, any person who is convicted or discharged of an offence under the *Criminal Code* or the *Controlled Drugs and Substances Act* is required to pay a victim surcharge, unless the court waives the surcharge. The *Victims Services Act* provides for the payment of a victim surcharge where a person is convicted of an offence under provincial legislation.

The Crown Prosecutor shall be mindful of the possibility of a victim surcharge and shall, where appropriate, request that the court consider ordering a victim surcharge.

2.4 No Reference to Appeal

The Crown Prosecutor shall not indicate to a sentencing judge that an appeal will or will not be initiated in respect of any particular sentence.

2.5 Reference to Mitigating Factors

The Crown Prosecutor may acknowledge the existence of mitigating factors but should not assume or appear to assume the role of counsel for the accused.

2.6 Proof of Aggravating Circumstances

The Crown Prosecutor shall bring to the court's attention any aggravating circumstances.

Where the Crown Prosecutor alleges the existence of an aggravating circumstance and the accused disputes the allegation, the Crown Prosecutor bears the burden of proving the allegation beyond a reasonable doubt.

2.7 Orders

The Crown Prosecutor shall, where appropriate, seek one or more of the following orders:

- (a) a restitution order or a restitution condition in a probation order or conditional sentence order;
- (b) a firearms prohibition order;
- (c) a DNA order;
- (d) an order under the *Sex Offender Information Registration Act*, and
- (e) any other order required in the circumstances of the case.

2.8 Dangerous and Long-term Offenders

Where the Crown Prosecutor believes that it may be appropriate to seek a dangerous or long-term offender designation, the Crown Prosecutor shall consult with the High Risk Violent Offender Counsel. For more information see Policy 40, High Risk Offenders.

2.9 Aboriginal Offenders

The Crown Prosecutor shall take into account the aboriginal status of an offender in any submission he or she makes on sentence, including whether to request a mandatory minimum sentence.

2.9.1 Sentencing Circles

In certain circumstances, an aboriginal offender may propose that a sentencing circle be held. Where the Crown Prosecutor must determine whether to consent to a sentencing circle, the Crown Prosecutor shall consider each of the following factors:

- (a) the willingness of the offender to participate in a sentencing circle;
- (b) the suitability of the offender for a sentencing circle;
- (c) the willingness of the victim to participate in a sentencing circle;
- (d) the willingness of a suitable community to participate in a sentencing circle and to implement its recommendations;
- (e) whether the offender has deep roots in a suitable community;
- (f) whether the offence, in all of the circumstances, is one that requires the imposition of a term of imprisonment; and

(g) any other relevant factors.

3. Plea Resolution

Plea resolution discussions are an essential part of the criminal justice system. When properly conducted, they provide a form of dispute resolution that can benefit all of the participants in the justice system, including victims, witnesses, the accused, counsel, police, and the public.

Subject to this Policy, the Crown Prosecutor may enter into a plea resolution agreement as an appropriate exercise of his or her prosecutorial discretion.

3.1 General Principles Governing Plea Resolution Agreements

The Crown Prosecutor shall not enter into a plea resolution agreement unless each of the following criteria is met:

- (a) it is in the public interest to do so;
- (b) the charges to which the accused will plead guilty and the sentence the Crown Prosecutor will propose reflect the gravity of the provable offences;
- (c) the charge for which a guilty plea is accepted meets the usual charge approval standard, which requires that there is a reasonable prospect of conviction and a prosecution is in the public interest;
- (d) the accused has been provided with such disclosure as is available at the stage of the proceeding at which the plea resolution agreement is made and in accordance with Policy 22, Disclosure; and
- (e) the accused is prepared to accept, at sentencing, legal and factual guilt in relation to the proposed guilty plea.

3.1.1 Other Relevant Considerations

In determining the appropriateness of a plea resolution agreement, the Crown Prosecutor shall consider the relevant portions of those Policies that relate to particular criminal conduct (see Policy 12, Proceeds of Crime and Offence-related Property; Policy 43, Firearms; Policy 40, High Risk Offenders; Policy 44, Impaired Driving; and Policy 45, Intimate Partner Abuse).

The Crown Prosecutor shall, where possible, consider any known concerns of the victim and the police before entering into a plea resolution agreement.

3.1.2 Expediency

The Crown Prosecutor shall not enter into a plea resolution agreement solely or largely for reasons of expediency, but he or she may consider the need to make effective use of limited resources.

3.1.3 Unrepresented Accused Persons

The Crown Prosecutor shall exercise caution in undertaking plea resolution discussions with an unrepresented accused person. The Crown Prosecutor shall encourage the accused to seek the advice of counsel to assist in any plea resolution discussions.

Where the accused declines to seek the advice of counsel and wishes to undertake plea resolution discussions, the Crown Prosecutor shall arrange for a third person to be present during the discussions or conduct the discussions in writing, unless neither course of action can reasonably be taken.

3.1.4 Reasons

Where the Crown Prosecutor enters into a plea resolution agreement, the Crown Prosecutor shall note in the file the particulars of, and reasons for, the agreement.

3.1.5 Disagreement With Respect to a Plea Resolution Agreement

Where the Crown Prosecutor strongly disagrees with an agreement reached by a Crown Prosecutor who previously had carriage of the file, the Crown Prosecutor shall consult with the Regional Director, or the Director of Specialized Prosecutions, as the case may be, to determine the appropriate course of action.

3.2 Permitted Plea Resolution Agreements

Provided that the Crown Prosecutor otherwise adheres to this Policy, the Crown Prosecutor may agree, as part of a plea resolution agreement, to do any one or more of the following things:

- (a) accept a guilty plea to an offence as a summary conviction offence where the accused was charged with the offence as an indictable offence;
- (b) withdraw a charge that is closely related to a charge to which the accused will plead guilty, where the charges arise from the same circumstances;
- (c) withdraw a charge after the accused has entered into a recognizance, commonly referred to as a "peace bond", where the charges arise from the same circumstances;
- (d) withdraw a charge after the accused completes an alternative measures program (for more information, refer to Policy 9, Alternative Measures);
- (e) not oppose an appropriate sentence recommendation by the accused that has been disclosed in advance;
- (f) make specific recommendations to the court as to the terms, length and conditions of the sentence;
- (g) participate in a joint recommendation with the accused as to the terms, length and conditions of the sentence; and
- (h) acknowledge that a guilty plea is a mitigating factor on sentence.

3.3. Prohibited Plea Resolution Agreements

The Crown Prosecutor shall not agree, as part of a plea resolution agreement, to do any of the following things:

- (a) withhold relevant, provable facts at sentencing;
- (b) withhold a record of the criminal history of the accused at sentencing;
- (c) withhold filing a Notice of Intention to seek a greater punishment that has been served on the accused;
- (d) accept a proposal that the court not consider the imposition of a mandatory sentence, mandatory order, or reporting requirement;
- (e) accept a proposal that the court not impose a discretionary order, including a restitution order, where such an order is appropriate in the circumstances; or
- (f) not appeal the sentence the court imposes.

3.4 Plea Resolution Agreements Requiring Consent

The Crown Prosecutor shall obtain the consent of the Regional Director or the Director of Specialized Prosecutions, as the case may be, before entering into a plea resolution agreement where the matter involves any of the following:

- (a) death;
- (b) loss of potential forfeiture of proceeds of crime or offence-related property;
- (c) a criminal organization;
- (d) a charge against a public figure;
- (e) a charge against a person involved in the administration of justice; or
- (f) a charge that has attracted, or is likely to attract, significant media attention.

3.5 Repudiation of a Plea Resolution Agreement

In rare circumstances, it may be appropriate to repudiate a plea resolution agreement. No plea resolution agreement shall be repudiated unless the Regional Director, the Director of Specialized Prosecutions, or the Director of Public Prosecutions determines that the repudiation is appropriate.

Where the Crown Prosecutor wishes to repudiate a plea resolution agreement, the Crown Prosecutor shall consult with the Regional Director or the Director of Specialized Prosecutions to obtain his or her consent to the repudiation and to determine the appropriate course of action.

Where the Regional Director, the Director of Specialized Prosecutions, or the Director of Public Prosecutions becomes aware of a plea resolution agreement that may not be appropriate, he or she shall determine whether it would be appropriate to repudiate the agreement. Where such a determination is to be made, the Regional Director, the Director of Specialized Prosecutions, or Director of Public Prosecutions shall consider each of the following factors:

- (a) whether the agreement would bring the administration of justice into disrepute;
- (b) whether repudiation of the agreement would affect the fairness of the trial or otherwise prejudice the accused; and
- (c) whether repudiation of the agreement would involve prosecutorial misconduct, improper motive, or bad faith, and thereby undermine the integrity of the judicial process.

Where the Regional Director, the Director of Specialized Prosecutions, or the Director of Public Prosecutions determines that a plea resolution agreement should be repudiated, he or she should repudiate the agreement or so direct the Crown Prosecutor.

3.6 Proceeds of Crime and Offence-related Property

Where a matter has or may have a proceeds of crime or offence-related property component, the Crown Prosecutor shall not negotiate a plea resolution agreement until he or she has consulted with the Proceeds of Crime Counsel, unless doing so is impractical.

Where the Crown Prosecutor does not consult with the Proceeds of Crime Counsel prior to entering into a plea resolution agreement, he or she shall take into account beforehand the impact such action will have on recovering proceeds of crime or offence-related property. The Crown Prosecutor shall advise the Proceeds of Crime Counsel of any action taken as soon as practicable.

4. Related Documents

Policy 9	Alternative Measures
Policy 11	Pre-charge Screening
Policy 12	Proceeds of Crime and Offence-related Property
Policy 22	Disclosure
Policy 33	Victims
Policy 40	High Risk Offenders
Policy 43	Firearms
Policy 44	Impaired Driving
Policy 45	Intimate Partner Abuse