

PROVINCE OF ONTARIO
MINISTRY OF ATTORNEY GENERAL

CROWN POLICY MANUAL

March 21, 2005

CHARGE SCREENING

PRINCIPLES

The decision to continue or terminate a prosecution can be one of the most difficult for Crown counsel to make. The community relies upon Crown counsel to vigorously pursue provable charges while protecting individuals from the serious repercussions of a criminal charge where there is no reasonable prospect of conviction. Every charge must be screened in accordance with the charge screening standards of “reasonable prospect of conviction” and “public interest” as outlined in this policy and in Memoranda issued by the Assistant Deputy Attorney General (Criminal Law Division). Further background information about charge screening may be obtained from “Report of the Attorney General’s Advisory Committee on Charge Screening Disclosure and Resolution Discussions (the Martin Committee Report)”.

Crown counsel are to screen every charge as soon as practicable after the charge arrives at the Crown’s office and prior to setting a date for preliminary hearing or trial. The Crown Attorney in each jurisdiction is to set up a protocol for all charges to be screened.

The obligation to screen a charge is ongoing as new information is received by Crown counsel in preparation for and during the conduct of bail hearings, pre-trials, preliminary hearings, trials and appeals.

Reasonable Prospect of Conviction: When considering whether or not to continue the prosecution of a charge the first step is to determine if there is a reasonable prospect of conviction. This test must be applied to all cases. If the Crown determines there is no reasonable prospect of conviction, at any stage of the proceeding, then the prosecution of that charge must be discontinued.

The threshold test of “reasonable prospect of conviction” is objective. This standard is higher than a “prima facie” case that merely requires that there is

evidence whereby a reasonable jury, properly instructed, could convict. On the other hand, the standard does not require "a probability of conviction," that is, a conclusion that a conviction is more likely than not.

Public Interest: If there is a reasonable prospect of conviction, then Crown counsel must consider whether it is in the public interest to discontinue the prosecution, notwithstanding the existence of a reasonable prospect of conviction. The public interest factors must only be considered after the threshold test, a reasonable prospect of conviction has been met. No public interest, however compelling, can warrant the prosecution of an individual if there is no reasonable prospect of conviction.

Scope of Policy: All cases, including child abuse, sexual assaults and spouse/partner offences, must be screened in accordance with the "reasonable prospect of conviction" and "public interest" standards. The personal, professional or "political" consequences of a screening decision should never affect Crown counsel's judgment. Nor should stereotypes about certain categories of witnesses such as child witnesses, witnesses with mental disabilities and complainants of spouse/partner abuse or sexual offences, affect Crown counsel's judgment. Since this is an area of discretion where reasonable people will differ, it is always advisable to consult with experienced colleagues when faced with a difficult charge screening decision. Crown counsel will be supported by the Ministry when they make difficult judgment calls in the proper exercise of their discretion.