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<p>CHAPTER VI – CHAPITRE VI : <b>Particular Proceedings: Specific Accused Persons Procédures particulières : Accusés particuliers</b></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>	

## HIGH RISK OFFENDERS

### 1. Introduction

Public Prosecution Services is committed to promoting safe communities by vigorously and fully prosecuting cases. The *Criminal Code* permits the Crown to apply to have a high risk offender, including a high risk serious personal injury offender or recidivist impaired driver, declared a dangerous or long-term offender. Such a designation may impact sentencing, and is aimed at ensuring safe communities and the protection of the public.

Public Prosecution Services has dedicated a Crown Prosecutor as the High Risk Violent Offender Counsel to assist Crown Prosecutors in matters concerning high risk offenders. Where appropriate, the High Risk Violent Offender Counsel will take carriage of a dangerous or long-term offender application.

### 2. Scope of the Policy

This Policy delineates the roles and responsibilities of the various parties, and sets out the practices and procedures, including the method of dispute resolution, for handling matters concerning high risk offenders.

### 3. Dangerous and Long-term Offender Applications

Applications for dangerous and long-term offenders are governed by sections 752 to 761 of the *Criminal Code*.

Dangerous and long-term offender applications should not be advanced in marginal cases. The circumstances must meet the prerequisites in sections 752 to 761, and be accompanied by compelling reasons.

#### 3.1 Dangerous Offender Application Criteria

A dangerous offender application shall be commenced where an offender meets one of the definitions of dangerous offender contained in section 753, there is no reasonable possibility of eventual control of the risk in the community, and the public would not be adequately protected by a determinate sentence followed by a long-term supervision order.

The Crown Prosecutor shall bear in mind that the overriding aim of an indeterminate sentence is not the punishment of the offender but the prevention of future violence. An indeterminate sentence is not an unlimited sentence. The offender faces incarceration only for the period of time that he or she poses a

serious risk to the safety of society. In the interim, he or she is meant to receive treatment that will assist the offender in controlling his or her conduct. To release a dangerous offender who is yet unable to control his or her actions serves neither the interests of the offender nor those of society.

### **3.2 Long-term Offender Application Criteria**

A long-term offender application may be commenced where the criteria in section 753.1 are present:

- (a) it would be appropriate to impose a sentence of imprisonment of two (2) years or more for the offence for which the offender has been convicted;
- (b) there is a substantial risk that the offender will reoffend; and
- (c) there is a reasonable possibility of eventual control of the risk in the community.

### **3.3 Distinguishing Dangerous Offender Criteria from Long-term Offender Criteria**

Following are some factors that should be considered when determining whether dangerous offender criteria or long-term offender criteria exist:

- (a) the nature of the offence and the maximum penalty provided for that offence;
- (b) the age and health of the offender;
- (c) the number of victims and number of offences, past and present;
- (d) the degree of violence of each offence keeping in mind that sexual intercourse with a young child constitutes an act of extreme violence;
- (e) the pattern and time span of the offences, past and present;
- (f) the nature and length of any criminal record of the offender;
- (g) whether a trust situation existed between the offender and the victim;
- (h) premeditation or planning of the crime;
- (i) the community's view of this or similar crimes;
- (j) the ability of the witnesses to tolerate court proceedings;
- (k) the impact of the crime upon the victim;
- (l) the impact of court proceedings upon the victim;
- (m) previous treatment of the offender;
- (n) the availability of previous transcripts and witnesses;
- (o) the psychiatric assessment of the offender, availability of any suitable treatment programs, and the prognosis for successful treatment; and
- (p) any extenuating, mitigating, or aggravating circumstances.

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## 4. Practice and Procedure

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### 4.1 Identification of High Risk Offenders

The Crown Prosecutor shall be mindful of the high risk offender provisions of the *Criminal Code* and seek to identify instances where the provisions may apply. Where the Crown Prosecutor encounters such a situation, he or she shall consult with the High Risk Violent Offender Counsel, unless there are exceptional circumstances, or doing so is impractical.

The High Risk Violent Offender Counsel may already be aware of, and have a file pertaining to, the offender. In such cases, consultation helps ensure the high risk offender records are properly maintained and may also facilitate the Crown Prosecutor's access to relevant information including assessment reports, pre-sentence reports, sentencing decisions, psychological assessments, and an offender's criminal history.

All such information will be useful to assist the Crown Prosecutor and High Risk Violent Offender Counsel in determining whether to recommend applying for an assessment or commencing a dangerous or long-term offender application.

### 4.2 Roles and Responsibilities

Upon consultation, the High Risk Violent Offender Counsel shall determine whether to take carriage of the dangerous or long-term offender application or provide advice and direction to the Crown Prosecutor. Where the High Risk Violent Offender Counsel takes carriage of the dangerous or long-term offender application, the Crown Prosecutor retains carriage of all other aspects of the matter. Where the High Risk Violent Offender Counsel provides advice and direction to the Crown Prosecutor, the Crown Prosecutor is expected to consult with and take direction from the High Risk Violent Offender Counsel in all matters concerning the dangerous or long-term offender application.

#### 4.2.1 Dispute Resolution

Where the Crown Prosecutor and the High Risk Violent Offender Counsel disagree, the Regional Director or the Director of Specialized Prosecutions, as the case may be, shall be consulted in an effort to resolve the matter. Where the Regional Director or the Director of Specialized Prosecutions, as the case may be, supports the view of the Crown Prosecutor and the High Risk Violent Offender Counsel continues to disagree, the High Risk Violent Offender Counsel shall advise the Director of Public Prosecutions.

### 4.3 Obtaining Consent to Proceed With an Application

Where the Crown Prosecutor in consultation with the High Risk Violent Offender Counsel, or the High Risk Violent Offender Counsel, determines that the circumstances warrant applying for a dangerous or long-term offender application, the following steps shall be taken:

1. The Crown Prosecutor or the High Risk Violent Offender Counsel, as the case may be, shall advise the Regional Director or the Director of Specialized Prosecutions, as the case may be.
2. Where, upon consultation with the Regional Director or the Director of Specialized Prosecutions, as the case may be, it is decided that there is a reasonable likelihood that the accused might be declared to be a dangerous or long-term offender, the Crown Prosecutor or the High Risk Violent Offender Counsel, as the case may be, shall prepare a memorandum, in the format outlined in Appendix A, seeking the consent of the Deputy Attorney General to proceed. The memorandum should be well documented and include a detailed outline of the case, a copy of the Information or Indictment, a copy of the assessment report, a summary of available psychiatric evidence, a copy of the criminal history together with a detailed outline of any previous occurrence upon which the Crown would be relying, a statement of the reasons why consent is sought and why a

determinate sentence on the offence would not sufficiently protect society, a draft Consent for the Deputy Attorney General's signature, and a draft Notice of Application.

3. The Regional Director or the Director of Specialized Prosecutions, as the case may be, shall review the memorandum and, if he or she agrees that a dangerous or long-term offender application should be commenced, he or she shall prepare a briefing note for the Director of Public Prosecutions.
4. As soon as possible, before plea or a finding of guilt, an application for remand for assessment shall be prepared and filed with the court.
5. If the Director of Public Prosecutions determines that an application would be appropriate in the circumstances, it will be submitted to the Deputy Attorney General for his or her consideration. If the Deputy Attorney General's consent is granted, the application may proceed.
6. If, following receipt of the Deputy Attorney General's consent, the Crown Prosecutor wishes to enter into a plea resolution agreement concerning a high risk offender designation, he or she shall consult with the High Risk Violent Offender Counsel or the Regional Director or the Director of Specialized Prosecutions, as the case may be, before entering an agreement.
7. If, following receipt of the Deputy Attorney General's consent, it appears that the evidence no longer supports the designation sought, the Crown Prosecutor or High Risk Violent Offender Counsel shall consult with the Regional Director or the Director of Specialized Prosecutions, as the case may be, before a position is taken with respect to either
  - (a) abandoning the application; or
  - (b) if consent had been granted to proceed with a dangerous offender application, seeking instead a long-term offender designation.

If it is decided that one of these routes is appropriate, the Regional Director or the Director of Specialized Prosecutions, as the case may be, will prepare a briefing note for the Director of Public Prosecutions in which the basis for the abandonment of, or change to, the application is explained.

#### **4.4 Impact of Designation on Sentencing**

Once a person has been identified as having a high risk to reoffend, the Crown Prosecutor shall attempt to secure the maximum protection for society by seeking substantial sentences of imprisonment, including indeterminate sentences in those cases where it is established that society cannot otherwise be adequately protected.

### **5. The National Flagging System**

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To assist the Crown Prosecutor and the High Risk Violent Offender Counsel in identifying individuals against whom a dangerous or long-term offender application may be warranted, a national flagging system has been created.

Each province participates by

- (a) appointing a Provincial Coordinator who is responsible for the development of the province's flagging system;
- (b) ensuring that offenders only be flagged on the authority of the Provincial Coordinator;

- (c) maintaining a central file location, so that the material can be accessed quickly, both locally and in other jurisdictions; and
- (d) developing criteria for the flagging of offenders.

Through this system, high risk offenders are identified, and the relevant information pertaining to these individuals is catalogued and shared among Provincial Coordinators.

In New Brunswick, the High Risk Violent Offender Counsel acts as the Provincial Coordinator. The central file location is at the head office of Public Prosecution Services. The High Risk Violent Offender Counsel shall provide information from the national flagging system to the Crown Prosecutor and to law enforcement agencies, upon request, to assist them in making crucial decisions with respect to charging, prosecution strategy, and the commencement of dangerous or long-term offender applications.

## **6. Related Documents**

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None