



NOVASCOTIA  
PUBLIC PROSECUTION SERVICE

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**IMMUNITY FROM PROSECUTION**

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**NOTE:**

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE "**WORDS & PHRASES**" SECTION OF THIS PART OF THE MANUAL.

## **INTRODUCTION**

Immunity from prosecution refers to any agreement by the Crown to refrain from prosecuting someone for a crime or crimes, or to terminate a prosecution (including appeals) in return for providing testimony or other valuable information, co-operation or assistance. Certain crimes can only be proven by the testimony of those who are implicated in the same crime or some other criminal activity, and who seek immunity from prosecution in exchange for their testimony and/or cooperation with the police. Immunity from prosecution is only provided where the information or cooperation is of such value that it is clearly in the public interest not to hold the person accountable for criminal activity. A grant of immunity by the Crown is an extraordinary exercise of prosecutorial discretion. A decision as to whether immunity from prosecution should be granted is one to be made solely by the Attorney General, through the Director of Public Prosecutions (DPP), and not by the police.

## **TYPES OF IMMUNITY**

There are various mechanisms by which the Crown can confer immunity under Canadian criminal law:

Pursuant to s.579 of the Criminal Code, the DPP or his or her delegate has the statutory power to stay existing criminal proceedings in appropriate cases. If the Crown wishes to recommence the prosecution, the Crown must notify the clerk of the court of the recommencement of the stayed proceedings within one year from the date of entry of the stay. Crown counsel must be conscious of this time limitation in drafting immunity agreements, particularly where the terms of the agreement require that the information provider do something or refrain from doing something during that period.

The DPP is also entitled to provide an assurance of immunity against future prosecution for crimes that the information provider is known to have already committed, but for which no charges have yet been laid.

When negotiating an immunity arrangement, Crown Counsel should avoid agreeing to complete immunity from criminal responsibility unless it is absolutely necessary in order to obtain the required testimony, information, assistance or cooperation. The granting of a limited form of immunity is generally preferred.

Crown Counsel should explore the following potential, and non-exhaustive, terms of any immunity agreement:

- a. dropping charges;
- b. reducing charges;

- c. dropping or reducing the charges of others, such as family members or friends;
- d. agreeing to a lesser sentence;
- e. the timing of dealing with outstanding charges;
- f. the resolution of pending applications for the return of offence-related property or proceeds of crime;
- g. reward money, and\
- h. the circumstances under which the agreement could be cancelled.

### **CRITERIA GOVERNING A GRANT OF IMMUNITY**

In 1992, the Law Reform Commission of Canada produced Working Paper Number 64 dealing with immunity from prosecution. This represented one of the most comprehensive reviews of this subject and provided prosecution services with sound guidance with respect to when immunity from prosecution should be granted. The criteria identified in this policy statement are largely drawn from this work of the Law Reform Commission of Canada.

In deciding whether to grant immunity from prosecution, the Crown should consider:

- the gravity of involvement of the person proposed to be immunized in any crime to which the evidence, information, cooperation, assistance or other benefit relates, and the degree of that person's guilt in comparison to the guilt of any person whose prosecution would be aided by the evidence, information, cooperation, assistance or other benefit;
- the number of occasions in which and the circumstances in which the person proposed to be immunized has received immunity in the past;
- the criminal history of the person proposed to be immunized;
- the gravity of the crime(s) to which the immunity agreement would relate;
- where evidence or information is involved, whether there are other indicators tending to confirm that that evidence or information is true;
- whether the goal of public protection would be better served by the obtaining of the proposed evidence, information, cooperation, assistance or other benefit, or by the conviction of the person proposed to be immunized;

- the interests of any victims;
- whether other persons and, in particular, the police agree or oppose the provision of immunity to the person proposed to be immunized and, if so, their reasons;
- whether it is possible to obtain the evidence or information in another manner which does not involve the granting of immunity.

## **PROCEDURE**

Since immunity is granted in one case for the purpose of advancing another, it should not be granted unless a senior member of the police department or detachment concerned requests it in writing. That communication should include an explanation of why the information or evidence is necessary and why the value of that information or evidence outweighs any risk to public safety or lessening of public confidence in the administration of justice which may result from the grant of immunity.

A Crown Attorney wishing to advance a request for a grant of immunity from prosecution should first consult with her/his Chief Crown Attorney and obtain their approval to proceed. A written request for consideration of immunity should then be forwarded to the Deputy Director of Public Prosecutions, and be accompanied by a draft immunity agreement. All grants of immunity must be clearly defined and fully documented. The agreement must spell out the circumstances under which the agreement could be terminated. Precedents for immunity agreements are available either from the Chief Crown Attorney or the Deputy Director of Public Prosecutions.

Best practice involves ensuring that a person being considered for immunity from prosecution is fully apprised of their rights and obligations pursuant to a proposed immunity agreement, through access to legal counsel. It is essential that the person proposed to be immunized has had the benefit of legal advice when considering entering into an immunity agreement with the DPP.

Crown Counsel should be aware of certain matters that arise in immunity agreement negotiations between the investigators and the information-provider including circumstances prompting relocation or witness protection provision of a new identity; payments of money; and assistance in securing employment. These are matters which are the subject of a separate agreement, as they are matters over which Crown Counsel does not exercise control. These conditions do not form part of the Immunity Agreement signed off by the DPP and the information-provider.

## **JURISDICTIONAL CONSIDERATIONS**

The DPP's authority to stay proceedings does not include the power to stay proceedings conducted by other provincial prosecution services, or the Public Prosecution Service of Canada (PPSC). Accordingly, the agreement must be worded carefully so as to make the extent of the immunity clear and unambiguous. Counsel for the information-provider should be referred to the PPSC if his or her client desires immunity from offenses prosecuted by the PPSC on behalf of the Attorney General of Canada.

## **BREACHES OF AGREEMENTS**

It may become necessary to seek a remedy against a person previously granted immunity where that person:

- withdraws promised cooperation with the Crown
- fails to testify truthfully
- has willfully or recklessly misled the investigating agency or Crown Counsel about material facts concerning the case including factors relevant to that person's reliability and credibility as a witness; or
- has sought immunity by conduct amounting to a fraud or an obstruction of justice.

Any such remedial action to be taken requires the prior approval of the Director of Public Prosecutions.

## **DISCLOSURE OF THE IMMUNITY AGREEMENT**

In all cases where a Crown witness testifies under an immunity agreement, Crown Counsel will provide the agreement to the Defence as part of its pre-trial disclosure obligation, and seek to file the agreement with the Court as an exhibit when the person testifies.