



*Manitoba
Department of Justice
Prosecutions*

Guideline No: 2:FIR:1

*Subject: Prosecution of Offences Involving Firearms
Date: July 2020*

POLICY STATEMENT:

The primary focus of this policy is protection of the public. Liberal access to firearms is a factor in violent crime, accidents and suicide. The effects of easy access to firearms are well documented both in Canada and in other countries. The magnitude of violence that can result from the criminal use of firearms and the public's perception of that violence must be kept in mind when handling cases involving the use of firearms. This will ensure that Crown Attorneys' responsibility to protect the public in such cases will be met.

Crown Attorneys must be aware of the various special provisions of the Criminal Code with respect to firearms. The intention of these provisions is to afford protection to the public and instill confidence in the criminal justice system's handling of such cases.

SPECIAL PROVISIONS OF THE *CRIMINAL CODE* WITH RESPECT TO FIREARMS

In any bail hearing for an offence involving violence, attempted violence, threatened violence, criminal harassment or the illicit possession or use of firearms, Crown Attorneys must consider whether to seek a condition that the accused be prohibited from using or possessing any firearm, ammunition, explosive substance or other weapon and that the accused surrender any firearms licence and registration certificates issued to him/her. This may be an appropriate term of bail for many types of charges, particularly intimate partner violence (IPV) assault cases where there is often a risk that violence will continue.

PEACE BONDS, PREVENTATIVE PROHIBITION AND LIMITED ACCESS ORDERS

Where a criminal prosecution is not feasible or no criminal act has occurred, but where concerns about public safety exist, Crown Attorneys should consider, in consultation with the police, whether a court order prohibiting an individual from possessing firearms should be sought. Such orders might include the following:

- a) preventative prohibition orders (s.111 , s.117.05)
- b) peace bonds (s.810, 810.01, 810.1, 810.2)
- c) limitations on access orders (s.117.011)

MANDATORY MINIMUM SENTENCES

Note that for certain offences (s. 95, 96, 102) the existence of a mandatory minimum sentence depends upon the Crown electing to proceed by indictment. Crown Attorneys must consider proceeding by indictment where the facts, prior record of the accused and other relevant factors suggest that a sentence of at least one year is called for.

The mandatory minimums sentences for section 95 offences of three years for a first offence and five years for a second or subsequent offence were struck down as unconstitutional by the Supreme Court: *R. v. Nur*, [2015] 1 SCR 773. Nevertheless, Crowns should be mindful of the Court's comments that most cases within the range of conduct captured by section 95(1) may well merit a sentence of three years or more: *Nur* at para. 82. A first offender whose conduct falls within the middle of the offence range can attract a sentence of three years: *R. v. Kennedy*, 2016 MBCA 5.

CHARGES UNDER SECTION 85 OF THE CRIMINAL CODE

Section 85(1) of the Criminal Code makes it an offence to use a firearm in the commission of an indictable offence and requires the judge to impose a sentence of at least one year consecutive to the sentence imposed on the substantive offence. Section 85(2) creates a similar offence for the use of an imitation firearm in the commission of an indictable offence. A charge under one of these subsections should be considered whenever the facts indicate that a firearm or an imitation firearm was used in the commission of the offence.

PLEA NEGOTIATIONS

The resolution of firearms offences should be premised on providing the greatest possible protection to the public. By providing for mandatory minimum sentences and minimum consecutive sentences for certain firearms offences, Parliament has confirmed the gravity of these offences and expressed the need to deter and denounce those particular offences. All Crown Attorneys must be aware of the import of the Mandatory Minimum Sentence policy in the context of Firearms offences (4: SEN: 2).

Where a Crown Attorney is considering departure from proceeding with a mandatory minimum sentence or accepting a plea to an alternative charge to avoid a mandatory minimum penalty they should do so only after having consulted with their Supervising Senior Crown Attorney.

PROHIBITION ORDERS AT SENTENCING

In addition to seeking the mandatory prohibitions provided in s.109, Crown Attorneys should seek discretionary prohibitions under s.110 where they have concerns regarding the safety of the victim or the public at large.

The Youth Criminal Justice Act provides for specific weapons prohibitions for young offenders (s. 51).

FORFEITURE OF FIREARMS

Crown Attorneys are expected to bring to the Court's attention the provisions of the Criminal Code, which require the forfeiture of weapons upon sentencing.

LIFTING OF PROHIBITION ORDER

Crown Attorneys must oppose the lifting of any prohibition order where they have concerns regarding the safety of any person. Even if a prohibition order is lifted, Crown Attorneys are expected to advocate for very strict terms and conditions for the possession of those weapons, consistent with section 113 of the Criminal Code and the case law interpreting that provision

RATIONALE:

Protection of the public must be the focus of the Department's Firearms Policy. The Criminal Code provides means through which individuals who present a risk to the public can be denied access to firearms and it provides for increased penalties for those who use firearms in a criminal manner. In order to extend as much protection to the public as possible, Crown Attorneys should make full use of these provisions.