

SUBJECT: IMMUNITY FROM PROSECUTION

POLICY

The granting of immunity from prosecution is an extraordinary exercise of prosecutorial discretion by Crown prosecutors. Immunity may be granted to an informer in return for providing information to assist an investigation by the police or to a witness in return for giving evidence at trial. Only the Attorney General through Crown prosecutors, not police agencies, is entitled to confer immunity from prosecution.

Those who have violated the law should be held accountable for their crimes. However, some crimes can only be proved by the testimony of witnesses who are implicated in the same crime or in some other criminal activity. Emphasis by investigating agencies on the investigation of the upper echelons of criminal organizations, for example, has heightened the need to rely on the evidence or assistance of co-operating accomplices, or other persons with outstanding charges, to prove offences.

"Immunity" includes all forms of prosecutorial consideration that can be granted in return for information or testimony, including:

- the reduction or staying of charges of the informer/witness or others (family or friends)
- an agreement by the Crown to a less severe sentence
- an agreement concerning judicial interim release
- relocation, the provision of a new identity or securing employment, except when arranged in accordance with regulated witness protection programs
- payment of money (lump sum, relocation expenses, monthly allowances)
- payment of reward money
- special privileges while in custody.

If a prosecutor receives a request for immunity that he/she believes should be considered, the prosecutor must consult with the Regional Crown and obtain his or her approval to grant immunity. If the request is for complete immunity from prosecution (withdrawal of charges) or for an agreement to a less severe sentence, and the Regional Crown approves of a decision to grant such immunity, the matter must be referred to Head Office for final approval. Whether or not immunity is granted, all discussions relating to the issue must be documented and ultimately disclosed.

Immunity should be granted only where:

1. the evidence or information is crucial to the prosecution of a serious charge and the overriding public interest requires it;
2. there is no other viable means to obtain the information or evidence, or it is not practicable, because of a significant risk to public safety, for the police to simply continue their investigation;
3. the value of the information or evidence outweighs any risk to public safety or any erosion of public confidence in the administration of justice which may result from the granting of immunity; and
4. the evidence or information offered by the informer or witness relates to criminal involvement of the accused that is more serious than or, in exceptional cases is at least as serious as, the criminal involvement of the informer or witness.