

**SUBJECT: DRIVING OFFENCES - SECOND AND
SUBSEQUENT CONVICTION
(ss. 253, 254, 255, 259 and those listed in section s. 259)**

POLICY

1. For the purposes of this policy, a "related conviction" is a prior conviction for a driving offence contrary to s.253, 254, 255, 259, those other offences listed in s. 259, and/or their predecessor offences in the *Criminal Code*. However, such prior convictions are not necessarily "related convictions" for all purposes. For example, past driving while disqualified convictions are related for the purposes of determining the mandatory minimum driving prohibition, but are not related when determining the mandatory minimum jail term for a new drinking and driving offence. So, in each case refer to the circumstances and the relevant *Criminal Code* sections.
2. Subject to the cases's particular circumstances, the Prosecutor shall proceed by way of **second conviction** in every case that falls within the following circumstances:
 - a) if the offender has a related conviction within five years of the date of the present offence;
 - b) if the offender does not have a related conviction within five years of the date of the present offence but has two related convictions within ten years of the date of the present offence;
 - c) if the offender has one related conviction, no matter how long ago, and that conviction involved the offender causing bodily harm or death; or
 - d) if the offender has one related conviction, no matter how long ago, and the current charge involves causing bodily harm or death.
3. Subject to the cases's particular circumstances, the Prosecutor shall proceed by way of **subsequent conviction** in the following circumstances:
 - a) if the offender has two or more related convictions within five years of the date of the present offence;
 - b) if the offender has three or more related convictions within ten

years of the date of the present offence;

- c) if the offender has two related convictions, no matter how long ago, with one or both involving the offender causing bodily harm or death; or
 - d) if the offender has two related convictions, no matter how long ago, and the current charge involves causing bodily harm or death.
- 4. Subject to the particular circumstances; in any case where an offender has four previous, related convictions, but falls outside the above categories, then no matter how dated they are the Prosecutor shall proceed by way of subsequent conviction.
- 5. Where the particular circumstances warrant it, the Prosecutor can proceed less strictly than set out above, but only after consulting with and obtaining the approval of Head Office. The decision whether to seek Head Office approval must be informed by all of the circumstances surrounding the case, including the items set out in item 6 below and the relevant sentencing principles and objectives expressed in Part XXIII of the *Criminal Code*. The Prosecutor's duty to assess is ongoing and must include the consideration of relevant details that emerge even after the notice to seek greater punishment is filed. Head Office will apply the same approach in deciding whether to grant approval.
- 6. Where the particular circumstances warrant it and in all situations not addressed in the above permutations, and where the *Criminal Code* allows, the Prosecutor has discretion to decide whether to seek greater punishment against the offender. Whether to exercise the discretion to proceed by way of second or subsequent conviction shall be determined by considering all of the circumstances surrounding the case including the following:
 - a) the number of all previous related convictions, the number of other *Criminal Code* driving convictions, and the time span of those convictions;
 - b) past sentences and their effect on the offender;
 - c) whether the accused has already been incarcerated for a previous related conviction;
 - d) whether during or after the commission of the current offence, the accused attempted to flee from the police;

- e) whether the current offence involves dangerous driving, boating or flying as the case may be;
- f) evidence that the blood alcohol reading exceeds 160 mgs of alcohol in 100 mls of blood (an aggravating factor at time of sentence under Section 255.1 of the *Criminal Code*);
- g) the circumstances of the present offence including the degree of impairment of the ability to drive, whether there was a motor vehicle accident involved, whether the safety of passengers or others was at risk and the nature of the driving or care or control of the motor vehicle;
- h) the offender's personal circumstances including employment, age, health, any dependants, the attitude of the offender towards the offence, and the attitude of the offender towards any treatment program which may be appropriate; as well as
- i) The relevant principles and objectives expressed in Part XXIII of the *Criminal Code*.

The Prosecutor shall only exercise the discretion to proceed more strictly than set out above after consulting with the Regional Crown Prosecutor for the area and obtaining his/her approval. In determining the issue, the Regional Crown Prosecutor will be guided by the same approach set out above.

7. This directive does not apply to the sentencing of a young offender pursuant to the *Youth Criminal Justice Act*. Section 82(4) of the *Youth Criminal Justice Act* precludes the use of convictions pursuant to the YCJA as previous convictions for the purpose of proceeding against a person as a second or subsequent offender.