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<p>CHAPTER VI – CHAPITRE VI :</p> <p>Particular Proceedings: Specific Offences Procédures particulières : Infractions spécifiques</p>	<p>Readers are referred to the list of Related Documents at the end of this Policy for additional information.</p> <p>Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p>	

FIREARMS

1. Introduction

Protection of the public shall be the primary focus of the prosecution of any offence that involves the use or possession of a firearm. At all stages of the prosecution, from judicial interim release to sentencing, the prosecution of a firearm-related offence should be based on the provision of the greatest protection to the public.

2. Judicial Interim Release

The policies set out in Policy 23, Judicial Interim Release, including whether to object to the release of the accused, apply to firearms-related offences, except insofar as those policies conflict with this section of this Policy.

2.1 Release on Conditions

Under subsection 515(4.1) of the *Criminal Code*, where an accused who is charged with certain offences is to be released from custody on conditions, the court will add to the order a condition prohibiting the accused from possessing a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all those things, unless the court considers that such a condition is not required in the interests of the safety of the accused or the safety and security of a victim of the offence or of any other person.

Where the accused is to be released and the offence is a firearm-related offence, the Crown Prosecutor shall propose the following conditions of release, in addition to any other appropriate conditions:

- (a) that the accused be prohibited from possessing a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all those things;
- (b) that the court specify in the order the manner and method by which any things the accused is prohibited from possessing that are in the possession of the accused shall be surrendered, disposed of, detained, stored or dealt with; and
- (c) that the authorizations, licences and registration certificates held by the accused shall be surrendered.

Where the accused is to be released and the alleged offence involves violence, attempted violence or threatened violence, or the alleged offence is criminal harassment, the Crown Prosecutor shall propose the above conditions.

3. Preventative Prohibition Orders and Peace Bonds

In certain circumstances, a person who has not been charged with an offence may be prohibited from possessing a firearm. Under sections 111 and 117.05 of the *Criminal Code*, a peace officer may apply to the court for a preventative firearm prohibition order. Under sections 810 to 810.2 of the *Criminal Code*, a court may impose a preventative firearm prohibition as a condition of a peace bond.

Where the Crown Prosecutor is aware of conduct that raises significant safety concerns but determines that a criminal prosecution in relation to the conduct is not feasible, the Crown Prosecutor shall consider, in consultation with the peace officer, doing one of the following things:

- (a) requesting that the peace officer apply for a preventative firearm prohibition order; or
- (b) seeking a peace bond with a preventative firearm prohibition condition.

Where the safety concerns arise in the context of intimate partner violence, it may be particularly appropriate for the Crown Prosecutor to seek a peace bond with a preventative firearm prohibition condition.

4. Limitation on Access Orders

Under section 117.011 of the *Criminal Code*, where a firearms prohibition order or condition has been imposed on a person, a peace officer or firearms officer may apply for an order imposing restrictions on the possession or use of firearms by a cohabitant or an associate of that person.

The Crown Prosecutor shall, where appropriate, request that the peace officer or firearms officer apply for such an order.

5. Mandatory Minimum Penalties

The *Criminal Code* imposes mandatory minimum penalties for second and subsequent firearm-related offences. A court will not impose such a mandatory minimum penalty unless it is satisfied, by the Crown Prosecutor, that the accused was notified, prior to plea, that a greater penalty would be sought.

Before approving a charge for a firearm-related offence to which a mandatory minimum penalty applies, the Crown Prosecutor shall ensure the following:

- (a) that the charge states that the accused used a firearm while committing the offence, where it is alleged that the accused did so; and
- (b) that the accused has been served with a Notice of Intention advising that a greater penalty will be sought.

Where the accused is convicted of a firearm-related offence to which a mandatory minimum penalty applies, the Crown Prosecutor shall file the Notice of Intention and seek a greater penalty.

6. Plea Resolution

The policies set out in Policy 30, Sentencing and Plea Resolution apply to firearm-related offences, except insofar as those policies conflict with this section of this Policy.

Where an accused is charged with a firearm-related offence, the Crown Prosecutor shall not agree, as part of a plea resolution agreement, to do any of the following:

- (a) refrain from filing a Notice of Intention regarding greater penalty;
- (b) accept a proposal that the court not consider the imposition of a mandatory prohibition order; or
- (c) accept a proposal that the court not impose a discretionary prohibition order, where such an order is appropriate in the circumstances.

The Crown Prosecutor shall not agree, as part of a plea resolution agreement, to withdraw a charge or accept a plea to a lesser included offence relating to a firearm-related offence to which a mandatory minimum penalty applies, unless there are exceptional circumstances. Before withdrawing such a charge or accepting a plea to a lesser included offence, the Crown Prosecutor shall obtain the consent of the Regional Director, or the Director of Specialized Prosecutions, as the case may be, and shall note in the file the particulars of and reasons for the agreement.

7. Mandatory and Discretionary Prohibition Orders

For certain offences, the *Criminal Code* provides for firearm prohibition orders upon sentencing. Section 109 provides for mandatory prohibition orders and section 110 provides for discretionary prohibition orders.

Where an accused is convicted or discharged of an offence set out in section 109, the Crown Prosecutor shall seek a mandatory prohibition order.

Where an accused is convicted or discharged of an offence set out in section 110, and the Crown Prosecutor has concerns about the safety of a victim or the public, the Crown Prosecutor shall seek a discretionary prohibition order.

8. Forfeiture of Firearms

Section 115 of the *Criminal Code* provides for the forfeiture of firearms where a prohibition order is made, and section 491 provides for the forfeiture of firearms where the accused has been convicted of a firearm-related offence.

The Crown Prosecutor shall, where appropriate, bring these provisions to the court's attention.

9. Lifting a Prohibition Order

Under section 113 of the *Criminal Code*, the court may lift a prohibition order on the basis that the person requires a firearm for employment or to hunt for sustenance.

Where a person applies for an order lifting a prohibition order, the Crown Prosecutor shall consider the following:

- (a) whether the person's claim for an exemption should be investigated by the police or other investigative agency; and
- (b) whether witnesses should be cross-examined so that the court is made aware of all of the circumstances of the application.

Where the Crown Prosecutor has concerns about the safety of any person, the Crown Prosecutor shall oppose the lifting of the prohibition order.

Where a prohibition order is to be lifted, the Crown Prosecutor shall propose appropriate conditions regarding the person's possession and use of firearms.

10. Firearms Act Charges

Both the *Criminal Code* and the *Firearms Act* provide for offences relating to the possession of firearms.

Where a person is to be charged in relation to conduct that constitutes an offence under both the *Criminal Code* and the *Firearms Act*, and the offence relates to the provisions of the firearms licensing and registration scheme, the Crown Prosecutor shall recommend to the police or other investigative agency that the charge be laid under the *Firearms Act* rather than the *Criminal Code*.

Without affecting the generality of the above, with respect to the recommendation of charges to police and other investigative agencies the following policies apply:

- (a) where a person is to be charged with possession of a firearm without being the holder of a registration certificate and the person does not have a previous conviction for this offence, the Crown Prosecutor shall recommend that the person be charged under the *Firearms Act*,
- (b) where a person is to be charged with failing to surrender or deliver a licence, registration certificate, or authorization and the licence, registration certificate, or authorization was issued pursuant to the *Firearms Act*, the Crown Prosecutor shall recommend that the person be charged under the *Firearms Act*,
- (c) where a person is to be charged with contravening the conditions of a licence, registration certificate, or authorization issued pursuant to the *Firearms Act*, the Crown Prosecutor shall recommend that the person be charged under the *Firearms Act*, and
- (d) where a person is to be charged with a *Criminal Code* offence and is to be charged in relation to conduct that constitutes an offence under the *Criminal Code* and the *Firearms Act*, and these charges arise from the same fact situation, the Crown Prosecutor may recommend that both charges be laid under the *Criminal Code*.

Where the Crown Prosecutor recommends to a police or other investigative agency that a person be charged under the *Firearms Act*, the Crown Prosecutor shall advise the police or other investigative agency to seek advice, direction, and prosecution services from the appropriate prosecution service. The Crown Prosecutor shall not provide advice, direction, or prosecution services in relation to a *Firearms Act* offence unless directed to do so by the Director of Public Prosecutions.

11. Contact Information

Where an accused is charged with a firearm-related offence, the Crown Prosecutor shall consider contacting a firearms officer.

Chief Firearms Officer
Department of Public Safety
Law Enforcement Division
P.O. Box 6000
Fredericton, NB E3B 1G5
Telephone: (506) 453-3775 or (800) 731-4000, ext. 6000
Fax: (506) 457-3521

12. Related Documents

Policy 23	Judicial Interim Release
Policy 30	Sentencing and Plea Resolution
Policy 45	Intimate Partner Violence