



Manitoba
Department of Justice
Prosecutions

Guideline No. 4:SEN:1

Policy Directive

Subject: Sentencing - Establishing the Facts
Date: April 2009

POLICY STATEMENT:

The facts upon which sentence is to be imposed should be clear. To the extent that it is reasonable and useful to do so, Crown Attorneys should have the facts agreed to by the accused before the actual sentence hearing commences. Crown Attorneys should consider the use of an agreed statement of facts in any of the following situations:

- a) Sensitive cases as defined in the Reporting on Sensitive Cases policy (2:REP:1). That is, a case that is likely to attract public attention and includes any case:
 - 1. involving a death as a consequence of alleged criminal conduct;
 - 2. in which a police officer or public official will be or has been charged with committing a criminal act;
 - 3. in which an individual has been killed or seriously injured as a result of police activity (e.g. high-speed chase);
 - 4. involving an issue of Native Rights;
 - 5. likely to be of concern to the Minister of Justice;
 - 6. involving issues which are currently or potentially a matter of substantial public scrutiny; or
 - 7. designated as sensitive by the appropriate Director.
- b) Complex cases, and
- c) Cases where the Crown Attorney has concern that the accused's version of events may change.

PROCEDURE:

Section 606(1.1) of the *Criminal Code* permits a judge to accept a guilty plea from an accused only if, among other things, the judge is satisfied that the accused understands that the plea is an admission of the essential elements of the offence. It is logical that as part of this inquiry there should be an indication from the accused as to exactly what it is that he is admitting. If, during this inquiry, the accused presents a different version of the facts than those alleged by the Crown, then s.724 of the *Criminal Code* applies.

Specifically, when the accused denies the existence of an aggravating factor that goes beyond the essential elements of the charge, the Crown will be put to the strict proof of those facts beyond a reasonable doubt:

s. 724(3)(e) C.C.

R. v. Parenteau (1980), 52 C.C.C. (2d) 188; 4 W.C.B. 340; [1980] M.J. No. 119 (Man. C.A.).

R. v. Gardiner, [1982] 368 S.C.R. 2; 140 D.L.R. (3d) 612; 68 C.C.C. (2d) 477 (S.C.C.).

The Crown is entitled to call evidence to prove aggravating factors:

R. v. Landry (1981), 22 C.R. (3d) 93 (N.S.S.C., A.D.).

If the accused alleges the existence of mitigating factors that are disputed by the Crown, the defence must present evidence and prove these allegations on a balance of probabilities:

s. 724(3)(d) C.C.

R v. Sutherland (2005), 191 Man. R. (2d) 105; 63 W.C.B. (2d) 545; [2005] M.J. No. 35; 2005 MBQB 29 (Man. Q.B.).

RATIONALE:

The judge who sentences the accused or an appeal court that hears a sentence appeal requires a factual basis on which to impose sentence. If the facts upon which the guilty plea is based are not clear, judges cannot properly perform their sentencing function. Crown Attorneys must endeavour to establish the facts on which sentence will be imposed.