

Statement from the Alberta Crown Prosecution Service - Coutts 2022 prosecution – Update #3

ACPS Statement

The ongoing prosecution of four men charged in relation to alleged events on February 13, 2022 near the Coutts border has prompted much public commentary and questions about the charges, bail, and the prosecution. While it is not appropriate to comment on matters before the court, general information about the process is being provided to help increase public knowledge about the criminal justice process.

Criminal Code charges:

On February 14, 2022, the RCMP charged four men with offences under the *Criminal Code* including:

- Conspiracy to commit murder (against all four accused)
- Possession of a weapon (against all four accused)
- Uttering threats (against one accused)
- Mischief to property (against all four accused)
- Possession of a prohibited/restricted loaded firearm (against one accused)
- Possession of an explosive substance (against one accused)

None of the charges listed above are offences under the federal *Emergencies Act* or Alberta's *Public Health Act*.

Police conduct independent investigations and lay charges when they have reasonable grounds to do so. They are not directed by elected officials, Crown prosecutors or any other outside influence.

A trial was initially scheduled for June 2023. The trial did not proceed on this date as the trial was adjourned. A new trial date of May 27, 2024 has been scheduled.

On February 6, 2024, guilty pleas were entered by two of the accused persons as follows:

- Mr. Lysak entered a guilty plea to possession of a firearm in an unauthorized place. He received a sentence of three years jail which was satisfied by time already served. He also received a 10-year weapon prohibition, was ordered to provide DNA, and to forfeit a handgun and other firearms to another firearms owner with a valid Possession and Acquisition license (PAL).
- Mr. Morin entered a guilty plea to conspiring to traffic firearms. He received a 3.25 year jail sentence which was satisfied by time already served and additional time spent in segregation, a 10-year weapon prohibition, was ordered to provide DNA, and to transfer firearms to another firearms owner with a valid Possession and Acquisition license (PAL).

Bail hearing process:

After an arrest is made, an accused is entitled to a bail hearing. For most charges, a Crown prosecutor must demonstrate why the detention of an accused person is justified.

However, for the most serious of *Criminal Code* charges, including conspiracy to commit murder, the accused person must demonstrate why they should not be detained. This is the situation with the four individuals accused in the Coutts matter.

In the Coutts matter, the accused individuals have access to defence lawyers who provide them with legal advice and represent them in bail hearings and other court proceedings.

An accused person who has been denied bail may request bail review hearings. At these hearings, an accused person has the opportunity to demonstrate to a Justice in King's Bench why they should no longer be detained.

The denial or granting of bail is a judicial decision and is not subject to the control or influence of the Government of Alberta. As a result, neither the Premier nor any representative of the Government of Alberta can interfere with judicial decisions.

Rules for bail are set out by the *Criminal Code* and only the Parliament of Canada has the right to make or amend criminal law.

Plea Negotiation Process

An accused person may give up their constitutional right to a trial and plead guilty to the offence(s). Crown prosecutors must ensure that an accused person pleads guilty only to offences that reflect the provable facts. Where appropriate, Crown prosecutors may decide to consent to a guilty plea from the accused person to some, but not all of the offences. Further, Crown prosecutors may agree to a guilty plea to other offence(s) based on the sufficiency of the evidence, the provable circumstances of a particular case, or some other appropriate reason consistent with the public interest. In deciding to consent to a guilty plea in any particular case, Crown prosecutors must consider:

1. The sufficiency of the evidence of the accused person's guilt;
2. The public interest factors in the Decision to Prosecute Guideline;
3. Any specific guidelines or protocols relating to the type of offence for which the accused person has been charged; and
4. The appropriateness of the sentencing options that would be available should the accused person plead guilty.

Criminal Prosecution:

Once police have independently determined there are reasonable grounds to lay charges, the file moves to the Alberta Crown Prosecution Service (ACPS) where a Crown prosecutor is assigned to the file. At the request of the police investigator, prosecutors may provide pre-charge advice during the course of the investigation, but they do not direct the police.

The Crown prosecutor assigned will assess the file including all the admissible evidence. When the charges have a reasonable likelihood of conviction and are in the public interest, the prosecution proceeds. The Crown prosecutor continually reviews the file to ensure it continues to meet this standard. If at any time it does not, charges may be stayed, withdrawn or downgraded. The assessment of the file and decisions about the prosecution are made independently from government, elected officials, the public, and any other outside influence. Prosecutors follow the ACPS Code of Conduct, the Decision to Prosecute Guideline, and the Law Society of Alberta rules.

In the Coutts matter, Crown prosecutors have continually assessed the file to ensure it continues to meet the standard for prosecution.

August 6, 2024 Update

On August 2, 2024 a jury convicted Mr. Olienick of possession of an explosive substance, possession of a weapon, and mischief over \$5,000. Mr. Olienick was found not guilty of conspiracy to commit murder.

On August 2, 2024 a jury found Mr. Carbert guilty of possession of a weapon and mischief over \$5,000. Mr. Carbert was found not guilty of conspiracy to commit murder.

It is expected a date for sentencing will be determined on August 12, 2024.

As Mr. Olienick and Mr. Carbert remain before the court, no additional comment will be provided on those matters.

This bulletin will be updated as necessary as these matters proceed.