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IN-CUSTODY INFORMERS

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NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

IN-CUSTODY INFORMERS

A. Introduction

Public inquiries into the wrongful convictions of Thomas Sophonow (Manitoba) and Guy Paul Morin (Ontario) document the dangers of relying on the evidence of in-custody informers. Such witnesses often generate wrongful convictions. The Honourable Peter Cory, Commissioner in the Inquiry Regarding Thomas Sophonow, had this to say about "jailhouse" informers:

> Jailhouse informants comprise the most deceitful and deceptive group of witnesses known to frequent the courts. The more notorious the case, the greater the number of prospective informants. They rush to testify like vultures to rotting flesh or sharks to blood. They are smooth and convincing liars. Whether they seek favours from the authorities, attention or notoriety they are in every instance completely unreliable. It will be seen how frequently they have been a major factor in the conviction of innocent people and how much they tend to corrupt the administration of justice. Usually, their presence as witnesses signals the end of any hope of providing a fair trial.
>
> They must be recognized as a very great danger to our trial system. Steps must be taken to rid the courts of this cancerous corruption of the administration of justice. Perhaps the greater danger flows from their ability to testify falsely in a remarkably convicting manner…Jailhouse informants are a festering sore. They constitute a malignant infection that renders a fair trial impossible. They should, as far as it is possible be excised and removed from our trial process.
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> [Sophonow Inquiry Report, p.63]

This policy document is intended to provide prosecutors with guidance in regard to the use of evidence from witnesses who are characterized as in-custody informers. The content reflects the comments of the Honourable Fred Kaufman, Commissioner for the Commission on Proceedings Involving Guy Paul Morin*. While the evidence of an in-custody informer is admissible in court and can properly form part of the case for the Crown, **it should only be adduced at trial where there are sufficient indicia of reliability and a compelling public interest in doing so.** In addition, the evidence of an in-custody informer must not be adduced without the guidance and approval of the In-Custody Informer Committee ("the Committee") established by this policy document. Accordingly, this policy explores the meaning of "compelling public interest" in this context, including the circumstances in which an in-custody informer's evidence will demonstrate sufficient indicia of reliability that reliance upon it is warranted.

*This document is patterned on the policy re in-custody informers developed by the Ontario Ministry of the Attorney General. The Ontario policy incorporates many specific Morin Commission recommendations.

B. Definitions

For the purposes of this policy document, the following definitions are utilized:

(1) An **"in-custody informer"** is someone who:

(a) allegedly receives one or more statements from an accused

(b) while both are in custody,

(c) where the statements relate to offences that occurred outside of the custodial institution.

The accused need not be in custody for, or charged with, the offences to which the statements relate.

Excluded from this definition are informers who allegedly have direct knowledge of the offence independent of the alleged statements of the accused (even if a portion of their evidence includes a statement made by the accused).

This policy is not intended to address the use of undercover operatives outside the custodial setting, nor to limit the use of the evidence of in-custody informers to advance police investigations. Prosecutors must be sensitive to the distinction between a "true informer," (to which this policy is directed), who approaches the police with existing information and an "agent of the state", as defined in *R. v. Broyles* [1] who is placed in contact with the accused for the specific purpose of obtaining a statement. An agent of the state must not compromise the right of the accused to remain silent. The test set out in *R. v. Broyles* is this: "Would the exchange between the accused and the informer have taken place in the form and manner in which it did take place, but for the intervention of the state or its agent".

(2) **"Consideration"** includes a promise, conferral or undertaking to make "best efforts" regarding any of the following in return for, or in connection with, the in-custody informer's testimony in the criminal proceeding in which the prosecutor intends to call him or her as a witness:

- bail;
- reduction or modification of sentence or charge;
- stay, withdrawal, or dismissal of charges;
- financial assistance or reward;
- amelioration of current or future conditions of incarceration;
- any other leniency or benefit;
- the extension of any of the above to any person connected with the in-custody informer.

"Consideration" does not include measures taken to ensure the safety or security of the in-custody informer or any person connected with

the in-custody informer. Prosecutors should, however, advert to the potential impact of any safety measures taken on the in-custody informer's reliability.

C. Principles to consider in determining whether there is a compelling public interest in relying on the evidence of the in-custody informer

As indicated above, the exercise of prosecutorial discretion to determine whether to rely upon the evidence of an in-custody informer will depend upon an assessment of whether there is a compelling public interest in doing so. The compelling public interest standard is equally applicable to decisions in favour of, or against, adducing the evidence of an in-custody informer. In determining whether such a compelling public interest exists in particular cases, prosecutors must consider these principles:

1. This kind of evidence has, in the past, been shown to be untruthful and has resulted in miscarriages of justice. Some informers, for example, have shown great ingenuity in securing information thought to be inaccessible to them, while others have converted details communicated by the accused in the context of an exculpatory statement into details which purport to prove the making of an inculpatory statement.

2. By definition, in-custody informers are detained by authorities, either awaiting trial or serving a sentence of imprisonment. As a result, they will often seek some consideration for their participation in the Crown's case. The danger of an unscrupulous witness manufacturing evidence for personal benefit is a significant one. Prosecutors should therefore request that the police provide a written record itemizing any consideration that they have promised to or conferred upon the informer, and/or any consideration known to them to have been sought by the in-custody or promised or conferred by other persons in authority such as correctional authorities.

3. In assessing any consideration offered or conferred upon an in-custody informer, prosecutors must be mindful of the potential temptation to enhance or manufacture evidence that necessarily arises whenever testimony is exchanged for benefit. These dangers are relevant to both individual cases and the administration of justice generally.

4. The varying circumstances of individual in-custody informers make it impossible to objectively quantify or rank the value of different forms of consideration. Nevertheless, prosecutors should address the possibility that the hazards associated with in-custody informer evidence may increase with the value of the consideration offered or conferred. In addition, the in-custody informer's reliability will not necessarily be enhanced by the fact that he or she does not appear to have sought or been offered any consideration, since the in-custody informer may be motivated by any number of factors, such as a contemplated future request for consideration, that will not be immediately apparent to the prosecutor.

5. One of the prosecutor's primary concerns in assessing whether there is a compelling public interest in adducing the evidence of an in-custody informer in a particular case will necessarily be the indicia of reliability underlying the in-custody informer's statement. In evaluating reliability, prosecutors should consider the factors set out in section E, *"Assessing the Reliability of an In-Custody Informer as a Witness."* Prosecutors should encourage police to address all of the matters relating to the assessment of reliability of the informer at the earliest opportunity. Prosecutors should be satisfied that the background of the informer has been appropriately investigated by police. "Appropriate" police investigation will generally cover those factors listed as crucial to the assessment of the reliability of an in-custody informer as a witness and a review of any available in-custody informer registry.

6. Prosecutors may consult with the police concerning the feasibility and appropriateness of requesting that the in-custody informer consent to a wiretap of further conversation with the accused. Prosecutors should bear in mind that, in taking this step, the informer will become a state agent.

7. The seriousness of the offence allegedly committed by the accused is generally an important factor to consider in assessing public interest. Gravity alone will not, however, provide sufficient justification for introducing an in-custody informer's evidence. Indeed, the pressures created in serious cases or cases which attract a great deal of public attention may call for heightened scrutiny and increased caution. For example, high profile cases may provide in-custody informers with increased motivation to manufacture evidence as well as easier access to information about the offence.

8. There is a risk that in-custody informers who have received consideration in the past and are reincarcerated in connection with subsequent offences may be motivated to fabricate evidence in exchange for consideration. Prosecutors must bear this risk in mind in assessing the in-custody informer's reliability. In order to discourage this practice, it is advisable to avoid the repeated use of in-custody informers.

9. Only in the most exceptional of cases will It be in the public interest for the Crown to proceed with a prosecution based solely upon the unconfirmed evidence of an in-custody informer. A prosecution must not proceed on this basis without the approval of both the Committee and the Director of Public Prosecutions.

10. As a result of providing information or evidence to the authorities, the personal safety of an in-custody informer is potentially at great risk. The prosecutor must advert to this potential for increased risk in assessing whether or not there is a compelling public interest in adducing an in-custody informer's evidence.

If the prosecutor concludes that there may be a compelling public interest in relying on the evidence of an in-custody informer at trial, the prosecutor must bring the matter to the attention of his or her Chief Crown Attorney who will determine whether the matter should be referred to the Committee for review. The role and operation of the Committee is described below, in Section F.

D. Restrictions on Dealing with In-Custody Informers

(1) Informer Privilege

The Supreme Court of Canada has affirmed the mandatory nature of informer privilege and its fundamental importance to the due administration of justice.[2] In the course of all dealings with in-custody informers, prosecutors must be mindful of the privilege and determine its operation in the context of each prosecution.

If an in-custody informer does not intend to testify or to make his or her statement known to the public, then the statement is protected by informer privilege. Prosecutors must consider the constraints created by this privilege in contemplating the disclosure of any information that could expressly or implicitly reveal the informer's identity.

While, technically, informer privilege belongs to the Crown, the Crown cannot waive the privilege without the informer's consent. The privilege is absolute and cannot be weighed against other competing interests. Once established, neither the police nor the court possesses the discretion to encroach upon the privilege.[3]

The only exception to the absolute nature of the privilege is the "innocence at stake exception." In order for this exception to apply, there must be a basis in the evidence for concluding that disclosure of the informer's identity is necessary to prove the innocence of the accused.[4]

There is also authority for the position that, if the in-custody informer waives privilege and testifies, he or she cannot be compelled to answer questions regarding other involvement with the police, as an informant, unless privilege is waived regarding that activity.[5]

Before disclosing or seeking a waiver in respect of an in-custody informer's statement, the prosecutor should advise the informer that he or she may have a privilege and encourage the informer to seek independent legal advice.

(2) Independent Legal Advice

Prosecutors must ensure that the in-custody informer is aware of the advisability of seeking independent legal advice with respect to the operation and waiver of informer privilege. In many cases in-custody informers will have counsel to assist them in respect of charges they face, or related matters. In such cases it is appropriate for the prosecutor and police to deal with the informer through counsel (to the extent that this is consistent with the informer's wishes). If the in-custody informer does not already have counsel, the prosecutor, with the informer's consent, should try to facilitate access to independent counsel. Where it is proposed that counsel be available to the witness by some special arrangement, the prosecutor should consult with his or her Chief Crown Attorney.

(3) Safety / Security Issues

As stated above, an in-custody informer may face increased safety risks. There may be cases where the degree of risk to the safety of an in-custody informer or an individual connected with the in-custody informer is acute enough that the public interest weighs against adducing the informer's evidence.

(4) Consideration Promised or Conferred

In assessing or agreeing to any promise or conferral of consideration, prosecutors must be mindful of the potential corrupting effect of exchanging testimony for any sort of benefit. The nature of the consideration sought, promised or conferred will inevitably reflect upon the reliability of the in-custody informer and the ultimate determination of whether there is a compelling public interest in adducing his or her evidence.

- No consideration should be offered in relation to future or, as of yet, undiscovered criminality.

- Where an agreement has been reached, any requests for additional consideration either during or after the in-custody informer's testimony at trial should be refused except for those necessarily incidental to consideration already promised or conferred.

- Where the informer is charged with any additional criminal offences prior to the completion of his or her testimony, the prosecutor should reassess the use of the in-custody informer as a witness, whether or not the informer seeks any new consideration. The commission of additional criminal offences may disentitle the in-custody informer to any consideration previously agreed upon, but not yet conferred.

- In circumstances where the in-custody informer is charged with additional criminal offences and/or seeks additional consideration, the prosecutor must notify his or her Chief Crown Attorney who will determine whether or not the In-Custody Informer Committee ought to reconsider the matter.

- If, in the course of proceedings relating to new criminal charges, the in-custody informer seeks additional consideration from the court for past co-operation, the prosecutor should advise the court that the informer was made aware that he or she could not expect additional consideration in relation to future or undiscovered criminality when the original agreement was reached. The presumption against mitigating future sentences in recognition of past cooperation for which the informer has already received consideration is subject to any measures connected with or deemed necessary to protect the in-custody informer's safety.

- Under no circumstances shall the conferral of consideration on an in-custody informer be conditional upon the conviction of the accused.

(5) Negotiating with In-Custody Informers

In negotiating with in-custody informers prior to trial, it is important for prosecutors to keep in mind that any direct contact with an informer may become the subject of some future *voir dire* or other proceeding. Accordingly, a prosecutor dealing with an informer should generally not be the prosecutor anticipated to conduct the prosecution.

E. Assessing the Reliability of the In-Custody Informer as a Witness

In-custody informer evidence requires a rigorous assessment of the informer's general reliability as well as his or her account of the accused's alleged statement. Accordingly, the factors listed in this section must be considered by the prosecutor as part of his or her assessment of compelling public interest prior to submitting the matter to the In-Custody Informer Committee. These factors shall also be considered by the Committee in determining whether or not there is a compelling public interest in calling the informer as a witness. In applying these criteria in individual cases, the prosecutor and the Committee must not only assess each item individually but must also consider the impact of the entire list of factors as a comprehensive group.

(i) The extent to which the statement is confirmed. “Confirmation” of evidence is not synonymous with corroboration. In the context of evidence from an in-custody informer, confirmation is credible evidence or information available to the Crown, independent of the in-custody informer, which significantly supports the position that the in-custody informer is telling the truth regarding the inculpatory aspects of the proposed evidence. Generally, one in-custody informer will not provide confirmation of another.

(ii) The detail contained in the alleged statement. The statement’s reliability will be bolstered or decreased, depending on the degree to which it contains particular or unusual details relating to the offence. The reliability of the statement will also be enhanced where it leads to the discovery of evidence known only to the perpetrator.

(iii) The circumstances under which the alleged statement was made.

(iv) The degree of access that the informer may have had to external sources of information about the offence, such as media reports or the accused’s copy of the Crown brief. The prosecutor should request that police investigate the informer’s access to other sources of information.

(v) The in-custody informer's general character. The informer’s character may be evidenced by his or her criminal record or disreputable, dishonest conduct known to the prosecutor or the police. Conversely, any evidence of good character will also be relevant to the informer’s reliability.

(vi) Any relevant medical or psychiatric reports concerning the in-custody informer obtained by police in the course of their investigation. The prosecutor should ask the police whether they have conducted any

investigation concerning any relevant aspects of the in-custody informer's medical or psychiatric history.

(vii) Any request the informer has made**,** whether agreed to or not**,** for consideration in connection with provision of the statement or an agreement to testify.

(viii) Any consideration, known to the prosecutor, offered to or conferred upon the informer by the authorities. Generally, consideration will be offered or conferred by the prosecutor or police. The prosecutor should request that police provide a written record itemizing any consideration that they have promised to or conferred upon the informer. Police or the prosecutor may be aware of consideration promised or conferred by other persons in authority such as correctional authorities. In such cases, this information should be taken into account in assessing the reliability of in-custody informer evidence.

(ix) Any information known to police or the prosecutor concerning previous efforts by the in-custody informer to trade testimony for consideration.

(x) Whether the informer has in the past given reliable information to police or prosecutors.

(xi) Whether the informer has given evidence in court in the past and any judicial findings in relation to the accuracy and reliability of that evidence.

(xii) Whether the informer has previously claimed to have received statements while in custody.

(xiii) Any safety measures known to the prosecutor that have been requested offered to or received by the informer in connection with his or her testimony.

(xiv) Whether the informer made some written or other record of the words allegedly spoken by the accused and, if so, when the record was made**,** and its availability.

(xv) The circumstances under which the informer's report of the alleged statement was taken. Examples of relevant circumstances would include whether the report was made immediately after the alleged statement and whether the in-custody informer has made more than one effort to exchange the particular statement for consideration.

(xvi) The manner in which the report of the alleged statement was taken by the police. The prosecutor should, for example, consider whether the police made a thorough report of the words allegedly spoken by the accused, and how thoroughly they investigated the circumstances which might suggest opportunity or lack of opportunity by the informer to fabricate a statement.

(xvii) Any other information that may attest to or diminish the credibility of the informer, including the presence or absence of any relationship or association between the accused and the informer.

F. In-Custody Informer Committee

(i) Role of the Committee

The role of the Committee is to provide guidance to the prosecutor and to determine whether or not there is a compelling public interest in relying on the evidence of an in-custody informer. Where the prosecutor is considering the utilization of an in-custody informer, he or she must conduct an independent assessment as to whether there is a compelling public interest in doing so. In some cases, the prosecutor may, as a result of that independent analysis, decide not to include the possible evidence of the in-custody informer in the prosecution case.

In those cases where the prosecutor is of the view that there may be a compelling public interest in relying on the in-custody informer, he or she must bring the matter to the attention of his or her Chief Crown Attorney. The Chief Crown Attorney will determine whether or not consideration of the matter by the Committee is warranted i.e. the Chief Crown Attorney must also agree that there may be a compelling public interest in presenting the informant's evidence to the court.

Where the prosecutor intends to rely upon the evidence of an in-custody informer in order to obtain a committal for trial, the Chief Crown Attorney will determine prior to the commencement of the preliminary inquiry whether the matter should be referred to the Committee for review. If the Committee approves the use of the informer at the preliminary inquiry, the Committee will reassess the use of the informer after the preliminary inquiry.

(ii) Composition of the Committee

The Committee shall be comprised of a Chairperson and four other members. The Chairperson of the Committee shall be a member of the Public Prosecution Service selected by the Director of Public Prosecutions, for a fixed term.

The Committee considering individual cases shall be comprised as follows:

1. The Chairperson;

2. The Chief Crown Attorney of the region where the charge was laid. If this Chief Crown Attorney has carriage of the prosecution, the Chairperson shall select a substitute for this committee member. The substitute shall be a Chief Crown Attorney, the Deputy Director of Public Prosecutions, or a

Senior Crown Counsel;

3. The Chief Crown Attorney of the Appeals Branch, or an experienced member of the Appeals Branch designated by the Chief Crown Attorney of the Appeals Branch;

4. The Chief Crown Attorney of a region or branch other than where the prosecutor with carriage of the case is located, selected by the Chairperson;

5. A Senior Crown Counsel, selected by the Chairperson.

(iii) Materials to be Submitted to the Committee

The prosecutor with carriage of the case shall provide the following written materials to the Committee:

1. A detailed synopsis of the allegations;

2. A summary of the anticipated evidence of the in-custody informer;

3. A summary of all the evidence the Crown proposes to rely upon at trial to assist the Committee in determining the significance of the in-custody informer evidence to the Crown's case;

4. An analysis of the informer's reliability, addressing the reliability indicia set out above, including any confirmatory evidence;

5. Any requests for consideration made by the in-custody informer and any consideration promised or conferred by the authorities in exchange for information or testimony pertaining to the offence (this would include any written agreement, if already in existence);

6. Antecedents of the informer, including:

   - the informer's criminal record,
   - medical or psychiatric reports, where relevant and in possession or control of the Crown,
   - prior history of reliability in dealing with the police and/or the courts, if known;

7. Any other information that the prosecutor believes is relevant to the Committee's review of the case or any further materials requested by the Committee.

In rare cases, exigent circumstances may prevent the prosecutor from providing the Committee with all of the enumerated items (1 through 6). Where exigent circumstances

exist, the prosecutor must bring the matter to the attention the Chairperson of the Committee who will determine the adequacy of available material. The Committee will consider the materials submitted by the prosecutor as enumerated above, and will, unless precluded by exigent circumstances, invite the prosecutor to appear in person before the committee to discuss the issues relevant to the deliberations of the Committee. The prosecutor must not present in court the evidence of an in-custody informer without approval from the Committee.

(iv) The Decision of the Committee

Prosecutorial discretion may only be exercised in favour of adducing the evidence of the in-custody informer where the Committee has determined, by a majority of 4 out of 5 , that there is a compelling public interest in doing so. The Chairperson has a duty to ensure that the Committee acts in accordance with this policy. The deliberations of the Committee underlying its exercise of prosecutorial discretion in individual cases, however, are confidential and will not be disclosed. The position taken by individual committee members will not be disclosed.

Attached to this policy document (as Appendix "A") is a suggested draft memorandum from the Committee to the prosecutor with carriage of the case, informing the prosecutor of the decision of the Committee.

G. Agreements with In-Custody Informers

Prosecutors should ensure that any agreements made with in-custody informers relating to consideration in exchange for information or evidence are fully documented and in clear language. Such agreements are to be in writing and signed by the parties to the agreement.

Any agreement with an informer which involves immunity from prosecution must be in writing and must be signed by the parties to the agreement, and the Director of Public Prosecutions.

In exceptional circumstances, e.g. if the informer is illiterate, the agreement may be documented by having the parties to the agreement record the terms of the agreement on videotape or audiotape.

H. Disclosure Respecting In-Custody Informers as Witnesses

The dangers of using in-custody informers in a prosecution give rise to a heavy onus on the prosecutor to make complete disclosure. Complete disclosure is, of course, subject to informer privilege and safety considerations as set out above. Accordingly, the timing of disclosure is a matter that remains within the sound discretion of the prosecutor and requires careful consideration. The safety of an in-custody informer can be endangered if disclosure is made before authorities can attend to providing for his or her personal security. It will therefore be appropriate to confer with police and correctional authorities prior to making disclosure. Prosecutors may also wish to seek the input of the Chairperson

of the Committee.

Without limiting the extent of the Crown's disclosure obligation, the following is a list of items that the prosecutor should review to ensure disclosure is both full and fair:

1. the criminal record of the in-custody informer including, where reasonably accessible to the police or prosecutor, the factual synopses relating to any convictions;

2. information concerning any new or additional criminal charges laid against the in-custody informer prior to the completion of his or her testimony at trial;

3. any medical or psychiatric reports concerning the in-custody informer where relevant and in possession or control of the Crown;

4. any information in the prosecutors's possession or control respecting the circumstances in which the informer may have previously testified as a Crown witness, including, at a minimum, the date, location and court where the previous testimony was given;

5. any information (including copies of the notes of police officers, corrections personnel or prosecutors who participated in, or were present) relating to negotiations or discussions with the informer, of any of the following matters:

   (a) consideration sought by the informer or any person associated with the informer in exchange for the information or evidence at issue in the present case;

   (b) any offers or promises made by the police or prosecutors to the informer or any person associated with the informer in exchange for the information or evidence at issue in the present case;

   (c) any consideration already conferred upon the informer or person associated with the informer in exchange for the information or evidence at issue in the present case;

   (d) any further consideration requested, offered, promised or received that is necessarily incidental to consideration already promised or conferred, and any additional consideration sought, promised or conferred beyond the scope of the original agreement to provide information or testimony;

6. safety measures requested, offered or promised to the in-custody informer on his or her own behalf or on behalf of another individual, with appropriate precautions taken to ensure that disclosure of the information will not itself jeopardize the safety of the in-custody informer;

7. any written or other record of an agreement respecting consideration for information or evidence of the in-custody informer in the present case;

8. the circumstances under which the in-custody informer and his or her information came to the attention of the authorities.

If the informer will not be called as a Crown witness a disclosure obligation still exists, subject to the informer's privilege. In most cases, the prosecutor, after having first sought police input, will be able to at least disclose the fact that the information exists.

I. Prosecution of Informer for Giving False Statements

Where a prosecutor becomes aware of evidence indicating that an in-custody informer has knowingly, with the intent to mislead, made a false statement in respect of a material fact, the prosecutor must refer the matter to his or her Chief Crown Attorney or, where the Chief Crown Attorney has carriage of the case, to the Deputy Director of Public Prosecutions,
who will in turn refer the matter to an outside police agency for investigation. Where the investigation results in the laying of a charge, the case should be referred to an independent prosecutor for advice and prosecution. The purpose of prosecuting in-custody informers who attempt (even unsuccessfully) to falsely implicate an accused is, amongst other things, to deter like-minded members of the prison population.

J. Other Practice Suggestions.

(1) Prosecutors should instruct the investigating police officers to liaise with custodial officials to help ensure that the placement of informers is such that the risk of inter-witness contamination is minimized.

(2) When the evidence of an in-custody informer is tendered, prosecutors should suggest that the court utilize a strong “Vetrovec” warning (see *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811).

[1] (1991), 68 C.C.C. (3d) 308 (S.C.C.)
[2] *Regina v. Leipert* (1997), 112 C.C.C. (3d) 385 (S.C.C.)
[3] *supra*, at 392-39

[4] *supra* at 394-395
[5] *Regina v. Bisaillon v. Keable* (1983), 7 C.C.C. (3d) 385 (S.C.C.); *R. .v. Jack Heyden and William Vanderheyden*, (September 15, 1997), unreported (Ont.Ct.Gen.Div.); *R. v. Newsome* (November 29, 1996), 33 W.C.B. (2d) 120, [1996] Alta.D.Crim.Conv. 5436-01

CONFIDENTIAL MEMORANDUM

FROM: XXX YYY
Chairperson, In-Custody Informer Committee

TO: AAA BBB
Crown Attorney

RE: R. v. CCC DDD
In-custody informer: EEE FFF

DATE: day/month/year

Please be advised that the In-custody Informer Committee has considered the issue of whether or not a compelling public interest exists for the presentation of the evidence of EEE FFF, an in-custody informer, at the forthcoming trial of CCC DDD.

It is the decision of the Committee that, at this point in time, there is no compelling public interest which would justify the presentation of the evidence of EEE FFF at this trial. Accordingly, the evidence of EEE FFF cannot be presented in court.

c.c. DPP
Chief Crown Attorney

If approving utilization of the informer, the last paragraph would be as follows:

It is the decision of the Committee, based on the information available at this time, that a compelling public interest exists which justifies the presentation of the evidence of EEE FFF at this trial. Accordingly, the evidence of EEE FFF may be presented in court. This is not a direction to utilize that evidence.