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CRIMINAL JUSTICE BRANCH, MINISTRY OF JUSTICE  
**CROWN COUNSEL POLICY MANUAL**

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ARCS/ORCS FILE NUMBER:	EFFECTIVE DATE: <b>November 30, 2015</b>	POLICY CODE: <b>POL 1</b>
SUBJECT: <b>Police – Allegations Against Peace Officers</b>		CROSS-REFERENCE: <b>ADH 1 CHA 1 CON 1 DIS 1 DIS 1.1 LEG 1 RES 1 SPE 1 STA 1 VIC 1</b>

### **POLICY**

This policy applies to any allegation that an offence has been committed by an “officer”, as defined under Part 1 or 7.1 of the *Police Act*, which includes any provincial constable, special provincial constable, designated constable, municipal constable, special municipal constable, auxiliary constable or enforcement officer, appointed under the *Police Act*, or any member of the Royal Canadian Mounted Police.

The purpose of this policy is to ensure that all referrals for charge assessment and all assignments to conduct prosecutions of matters falling under this policy are made in a manner that will ensure that no objectively reasonable perception of a conflict of interest will arise by reason of Crown Counsel’s personal, professional, or physical proximity or connection to, or relationship with, an officer. For matters falling under this policy, the paramount consideration in deciding who should make the charge assessment decision and conduct any ensuing prosecution is the need to maintain public confidence in the administration of criminal justice.

This policy supplements and expands upon the existing Branch policy on Standards of Conduct – Conflict of Interest (STA 1), which specifically disqualifies Crown Counsel from acting in any case:

**involving an accused, victim, or material witness who is a relative, friend, or anyone else in respect of whom there is an objectively reasonable perception of a conflict of interest.**

## Charge Assessment

### *Reports Received from the Independent Investigations Office (IIO) or the Office of the Police Complaints Commissioner (OPCC)*

When the Branch receives a report from the IIO alleging that an officer may have committed an offence, or a report from the OPCC under section 111 of the *Police Act*, the Deputy Director, Legal Operations (DDLO) will cause a file to be opened in JUSTIN in accordance with the ordinary file opening procedures of the Branch.

The DDLO may refer the file to the Assistant Deputy Attorney General (ADAG) to consider whether to appoint a special prosecutor or *ad hoc* counsel.

In most cases Crown Counsel from within the Branch will conduct the charge assessment and any ensuing prosecution.

In some cases, as outlined in the Branch policy on Special Prosecutors (SPE 1), it may be appropriate for the ADAG to appoint a special prosecutor under section 7 of the *Crown Counsel Act* to make the charge assessment decision and conduct any ensuing prosecution. Under that policy, the ADAG:

is empowered to appoint a special prosecutor in cases where the ADAG believes there is a significant potential for real or perceived improper influence in prosecutorial decision-making.

In other cases, it may be appropriate, under the Branch policy on *Ad Hoc* Counsel (ADH 1), to appoint *ad hoc* counsel to make the charge assessment decision and conduct any ensuing prosecution.

In deciding whether to appoint a special prosecutor or *ad hoc* counsel, relevant factors include the nature and extent of any personal or professional relationship or connection between the officer and any Crown Counsel, in one or more regions, or any other senior member of the Branch.

Unless a special prosecutor or *ad hoc* counsel is appointed, the DDLO will make the charge assessment decision or refer the file for charge assessment to a Regional Crown Counsel, Director, or their respective Deputies, or other senior Crown Counsel, who works in an office that is not part of the Region where the officer is or has been employed.

### *Reports to Crown Counsel Received Directly from the Police or Other Investigative Agencies:*

When the Branch receives a Report to Crown Counsel (RTCC) directly from the police or another investigative agency alleging that an officer has committed an offence, the report should be received or entered in JUSTIN by the office that receives it, in accordance with the ordinary file opening procedures of the Branch. The receiving office should then refer the file forthwith to the DDLO.

The DDLO may refer the file to the ADAG to consider whether to appoint a special prosecutor or *ad hoc* counsel, in which case the same policies and factors referred to above will apply.

Unless a special prosecutor or *ad hoc* counsel is appointed, the DDLO will make the charge assessment decision or refer the file for charge assessment to a Regional Crown Counsel, Director, or their respective Deputies, or other senior Crown Counsel. The counsel who conducts the charge assessment must be someone in an office that is not part of the Region where the officer is or has been employed, unless the DDLO, the Regional Crown Counsel for that Region, and the counsel receiving the referral are all satisfied that there is no personal, professional, or physical proximity or connection to, or relationship with, the officer that could give rise to any objectively reasonable perception of a conflict of interest.

#### Review by the ADAG of a “No-Charge” Decision

When there has been a “no-charge” decision, other than by a special prosecutor, in respect of a file falling under this policy, and the ADAG concludes that there is a reasonable basis for that decision to be reviewed in the public interest, including the need to maintain public confidence in the administration of justice, the ADAG will conduct a review or refer the file to senior Crown Counsel, an *ad hoc* counsel under Branch policy *Ad hoc* Counsel (ADH 1), or a special prosecutor under section 7 of the *Crown Counsel Act* to conduct the review. The standard of review is whether the exercise of prosecutorial discretion was reasonable, taking into account the guidelines in all relevant Branch policies, including the policy on Charge Assessment Guidelines (CHA 1).

#### Conduct of the Prosecution

When no special prosecutor or *ad hoc* counsel has been appointed, the conduct of a prosecution against an officer should be assigned to Crown Counsel who works in an office that is not part of the Region where the officer is or has been employed, unless the DDLO, the Regional Crown Counsel for that Region, and the counsel receiving the referral are all satisfied that there is no personal, professional, or physical proximity or connection to, or relationship with, the officer that could give rise to any objectively reasonable perception of a conflict of interest.

#### Exception for Urgent Matters

In circumstances of particular urgency or impracticability, Crown Counsel in an office that is part of the Region where the officer is or has been employed may be required to take immediate action on a matter falling under this policy. In those circumstances, the Branch policy on Standards of Conduct – Conflict of Interest (STA 1) still applies and the Crown Counsel acting on the matter must be someone who has no personal or professional connection to, or relationship with, the officer that could give rise to any objectively reasonable perception of a conflict of interest.

**General**

All charge assessment decisions on matters falling under this policy should be made in writing and completed as expeditiously as reasonably possible.

RTCCs involving allegations falling under this policy must meet the requirements set out in the Branch policy on Charge Assessment Guidelines (CHA 1) and the prevailing standards for disclosure between police and the Branch. In order to make a properly informed charge assessment decision, Crown Counsel may need to request additional information from the investigating agency. If the investigating agency fails or refuses, without reasonable explanation, to respond to such a request within 30 days, the file should be returned to the investigating agency along with a written advisory that a charge assessment decision cannot and will not be made until the requested information is received.

Should Crown Counsel be aware that a police agency has conducted an internal investigation related to the circumstances of a prosecution being conducted by Crown Counsel, all information, including witness statements, compiled by the internal investigation should be requested from the investigating agency. Any information obtained from the internal investigation that is relevant to the prosecution and not privileged or confidential should be disclosed to the defence as soon as possible (see Disclosure DIS 1).

When the ADAG determines that it is in the public interest to release a public statement about a decision in a case falling under this policy, the statement should include a summary of the material facts and the reasons for the decision, so long as it would not compromise the fair trial rights of any accused to do so. Any significant delay in reaching a decision should be explained in the public statement. The identity of any potential accused will be released if it is already in the public domain.

When Crown Counsel receives a complaint of alleged misconduct against an officer, the complainant should be referred to the appropriate police agency. When an allegation of misconduct against an officer arises during a court proceeding and appears to have some basis in fact, Crown Counsel should refer the matter to the appropriate police agency and recommend that an investigation into the misconduct be undertaken.