



CRIMINAL JUSTICE BRANCH, MINISTRY OF JUSTICE
CROWN COUNSEL POLICY MANUAL

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SUBJECT: Ad Hoc Counsel		CROSS-REFERENCE: SPE 1 STA 1

POLICY

Legal counsel in private practice (ad hoc counsel) are retained on an ad hoc basis under various circumstances, most notably:

- 1. To provide Crown Counsel services when no employee Crown Counsel is available.**
- 2. To make, or advise upon, charge approval decisions and to prosecute cases in respect of which a real or apprehended conflict of interest arises.**
- 3. To allow the Branch, in exceptional circumstances, to benefit from the particular expertise, skill, or knowledge of members of the defence bar in specialized areas or sensitive matters.**

The provisions concerning the need to avoid conflict of interest in exercising a prosecutorial function, in the Branch policy entitled Standards of Conduct – Conflict of Interest - STA 1, apply to ad hoc counsel in their role as Crown Counsel.

DISCUSSION

Eligibility

- 1. Counsel must have the authority to practice law in British Columbia under the *Legal Profession Act*.**
- 2. In determining whether to retain an ad hoc counsel, Administrative Crown Counsel must have confidence in the skills, abilities, and judgment of ad hoc counsel and be satisfied that ad hoc counsel has appropriate knowledge of the criminal law, procedure and Branch policy.**
- 3. Ad hoc counsel should have experience in criminal cases which corresponds to the duties for which they are retained.**

Criteria for Selecting Ad Hoc Counsel

1. Demonstrated competence in the practice of criminal law which includes a good working knowledge of substantive law and procedures as well as demonstrated ability in the conduct of trials, examination and cross-examination of witnesses, making of legal arguments and submissions, and speaking to sentence.
2. Demonstrated sound judgment in the conduct of criminal cases, e.g., making tactical decisions in the course of a trial, recognizing the strengths and weaknesses in any particular case.
3. Recognized as a lawyer who maintains high ethical standards.
4. Enjoys the respect of colleagues and the judiciary.
5. Recognized as a lawyer with a good work ethic.
6. Will review and follow Branch policies relevant to the retainer.
7. Has performed previous ad hoc duties, if any, in an efficient and competent manner.

Ad Hoc Counsel Appointments – Considerations

1. The criminal bar is a relatively small one. It is generally well known amongst members of the defence bar that the Criminal Justice Branch retains ad hoc Crown Counsel from time to time. Similarly, Administrative Crown Counsel are generally aware of those lawyers who are interested and qualified.
2. Any qualified lawyer in private practice who wishes to perform ad hoc counsel work should inform Administrative Crown Counsel of their interest.
3. There are ad hoc counsel whose performance is of such high calibre that Administrative Crown Counsel will select them whenever they are available. In addition, some lawyers are more willing to travel to the work, so they may be retained more frequently.
4. In many smaller communities, primarily outside the Lower Mainland, there may be few qualified counsel willing to perform ad hoc counsel responsibilities, which results in only a limited number of lawyers being retained on a recurring basis.
5. In addition to special prosecutions for which only the Assistant Deputy Attorney General has authority to appoint under the *Crown Counsel Act*, some cases require very experienced and talented senior ad hoc counsel to be assigned (for example, where there is a conflict or unavailability of senior employee Crown Counsel). Regional Crown Counsel retain the flexibility in these cases to retain a lawyer in

whom they have the utmost confidence in their ability to do a good job in difficult circumstances. The number of qualified lawyers in this category is necessarily limited.

The procedure for retaining ad hoc counsel and use of standard retainer letters and billing guide is described in a Management Services Bulletin entitled “Ad Hoc Retainer Process”, a copy of which is available from Business Managers, Regional Operations.