



Crown Counsel Policy Manual – Introduction

Effective Date:

March 1, 2018

Purpose

Independent, fair, and effective prosecutions are essential to the rule of law. The justice system is enhanced by well-developed policy guidelines, which assist Crown Counsel in the difficult decisions that they must make in the public interest.

The Crown Counsel Policy Manual provides both general and situation-specific guidance to Crown Counsel in the exercise of their duties, including on fundamental prosecution considerations such as charge assessment, alternative measures, and resolution discussions.

The policies are public documents. Publication of them advances the goal of transparency. It helps to explain how prosecution services are delivered and how prosecutors exercise their constitutional independence in the public interest on individual cases.

The Crown Counsel Policy Manual does not have the status of law. It does not in any way override the *Criminal Code*, *Canadian Charter of Rights and Freedoms* or any other applicable legislation and it is not intended to provide legal advice to members of the public or create any rights enforceable at law in any legal proceeding.

Meaning of Phrases

The BC Prosecution Service is the Criminal Justice Branch of the Ministry of Attorney General (also known as “the Branch”). These terms may be used interchangeably throughout the Crown Counsel Policy Manual. Further, any reference to policy in this manual is a reference to the policy of the BC Prosecution Service, unless otherwise specifically noted.

Within the Crown Counsel Policy Manual, there is also an important distinction to be drawn between the words “should” and “must”:

“Crown Counsel should” means that Crown Counsel will ordinarily follow the policy guidelines, unless they determine the interests of justice require a decision inconsistent with that policy guideline.

“Crown Counsel must” constitutes a direction of the Assistant Deputy Attorney General (ADAG) under section 4(3) of the *Crown Counsel Act*.

Vision, Mission, and Values

The Branch’s Vision, Mission, and Values are integral to the formation and interpretation of Branch policy. They provide the foundation that guides all members of the Branch in the execution of their duties and responsibilities.

Mandate of the Branch

Under the *Crown Counsel Act*, R.S.B.C. 1996, c.87, the Branch is responsible for approving and conducting, on behalf of the Crown, all criminal and regulatory prosecutions and appeals that do not fall within the jurisdiction of the Government of Canada. The Branch is administered by the Assistant Deputy Attorney General (the "ADAG"), who is designated under section 3(2) as the Attorney General’s lawful deputy for purposes of the *Criminal Code*. In turn, the ADAG designates or appoints Crown Counsel, *ad hoc* legal counsel, and special prosecutors to approve and conduct prosecutions and appeals, on behalf of the Crown.

The *Crown Counsel Act* also governs the relationship between the Branch and government through the Attorney General and provides the Branch with significant independence in the exercise of its mandate. It requires that any directions from the Attorney General on either Branch policy or on specific prosecutions be in writing, which may be published in the BC Gazette. At the same time, it balances that independence with accountability.

Role of Crown Counsel

Crown Counsel have been described by the courts as “ministers of justice.” Their functions have been described as “*quasi-judicial*.” Crown Counsel must exercise their discretion fairly, impartially, in good faith, and in accordance with the highest ethical standards. Political, personal, and private considerations must not affect the manner in which prosecutors proceed. The role and function of Crown Counsel in our justice system has been described by the courts in the following terms:

The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.

(R v Boucher (1954), 110 CCC 263 (SCC) at 270, Rand J.)

The role of the Crown Attorney in the administration of justice is of critical importance to the courts and to the community. The Crown prosecutor must proceed courageously in the face of threats and attempts at intimidation ... The Crown prosecutor must be a symbol of fairness, prompt to make all reasonable disclosures and yet scrupulous in attention to the welfare and safety of witnesses. Much is expected of the Crown prosecutor by the courts. The community looks upon the Crown prosecutor as a symbol of authority and as a spokesman for the community in criminal matters ... Great trust is placed in the Crown prosecutor by the courts and by the public.

(R v Logiacco (1984), 11 CCC (3d) 374 (Ont CA), per Cory JA)

Rule of Law

In delivering its prosecution services, the Branch is governed by and adheres to the rule of law. The rule of law assumes, and in fact constitutionally requires, that in applying the law judges and juries in criminal matters will conduct impartial assessments of the evidence before them, including testimony that is provided by witnesses, and that all persons are equal before the law. In carrying out their role as *quasi*-judicial ministers of justice, Crown Counsel are duty bound to remain aware of and respect both principles and apply them diligently without favour, prejudice, or bias. In particular, Crown Counsel will assess the strength of each case on the assumption that the judge or judge and jury will also act in accordance with these principles.

Balancing Policy and Prosecutorial Discretion

The primary purpose of policy is to assist Crown Counsel in their decision-making on fundamental issues. Specific policies reflect appropriate public interest considerations and provide a framework for the exercise of discretion. Crown Counsel seek further advice and approval when appropriate. Policies also reflect the jurisprudence governing the extent and proper exercise of prosecutorial discretion.

Even very senior Crown Counsel will seek the counsel of colleagues and, when required by policy, the approval of supervisors. The legal landscape is ever-changing: legislation and jurisprudence, technology, court rules, and procedures. Referring to policy can be particularly helpful in unfamiliar areas of practice or procedure.

Prosecutorial discretion has a constitutional and historical context. It is only exercised within the framework of our legal traditions and jurisprudence. As designated agents of the Attorney General, Crown Counsel serve within a greater justice system and apply their expertise within the confines of the precedents that have been passed down by centuries of legal jurisprudence.

The Attorney General is ultimately responsible for all prosecutions in the province, and must fulfill this constitutional role in an independent and judicial manner. The Attorney General delegates this function to Crown Counsel, who exercise the prosecution function on the Attorney General's behalf. The Attorney General superintends this function and remains, in turn, accountable to the Legislature for all exercises of prosecutorial authority.

Crown Counsel are independent in the sense that they exercise the same independent discretion that is inherent in the role of the Attorney General. As the Attorney General's agents, however, Crown Counsel cannot irrevocably bind the Attorney General by the exercise of their discretion.

Policy provides for accountability to the Attorney General and a consistent and principled application of prosecutorial discretion. Ultimately its goal is to enhance public confidence in the justice system.

On the other hand, the proper exercise of prosecutorial discretion neither requires nor countenances the slavish application of policy to every decision. Policy provides guidance, but it cannot and should not dictate the result in every case. Crown Counsel need to make decisions that fit the unique circumstances of each case.

Policies may require the consideration of specific public interest factors or require that specified senior members of the Branch are consulted or give approval in appropriate situations. However, policy should not completely fetter Crown Counsel's exercise of prosecutorial discretion. Maintaining the independence of the role of minister of justice is important. For this reason, very few policies contain mandatory directives. Where they do, they normally leave room for the consideration of exceptional factors to ensure that the exercise of discretion can properly take account of all the factors affecting a specific case. Even where the policies do not explicitly provide for it, it is always open to Crown Counsel to seek consent of the ADAG to depart from policy if, in the exercise of their prosecutorial discretion, Crown Counsel consider it necessary to ensure a just result.