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

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SUBJECT: <b>Special Prosecutors</b>		CROSS-REFERENCE: <b>CHA 1</b>

### **POLICY**

**The Assistant Deputy Attorney General (ADAG) is empowered to appoint a Special Prosecutor in cases where the ADAG considers that such an appointment is in the public interest.<sup>[1]</sup>**

**The ADAG considers the need to maintain public confidence in the administration of criminal justice as the paramount consideration in deciding whether the appointment of a Special Prosecutor is required in the public interest, taking into account any significant potential for real or perceived improper influence in the administration of criminal justice.**

**Any case which Crown Counsel believes warrants consideration of the appointment of a Special Prosecutor, and any request for the appointment of a Special Prosecutor received from members of the public or an investigative agency, should be referred immediately to the appropriate Regional Crown Counsel or Director who will discuss the matter with the ADAG.**

**Cases in which the appointment of a Special Prosecutor may be considered include matters involving any of the following individuals, regardless of their identified role (i.e. witness, victim or accused):**

- 1. A Cabinet Minister or other Member of the Legislative Assembly of British Columbia;**
- 2. A sitting Justice or Judge of the British Columbia Court of Appeal, Supreme Court or Provincial Court;**
- 3. An employee of the Criminal Justice Branch;**
- 4. A public official in a senior position of authority;**
- 5. A police officer in a senior position of authority;**

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<sup>[1]</sup> Under section 7 of the *Crown Counsel Act*, [RSBC 1996] Chapter 87, the ADAG is the only official who has the authority to appoint a Special Prosecutor.

6. **Any other individual with a close personal, professional or business relationship with any of the above, which could reasonably and objectively give rise to a significant potential for real or perceived improper influence in the administration of criminal justice.**

### **ANNOUNCEMENT OF APPOINTMENT AND DECISIONS OF SPECIAL PROSECUTORS**

**The Criminal Justice Branch will only release a public announcement related to the appointment or decision of a Special Prosecutor when:**

**The Special Prosecutor has reviewed and approved the content of the announcement to be released and in the opinion of the Special Prosecutor, the announcement will not adversely impact any ongoing investigation, the prosecution of any case, or the administration of criminal justice; and**

- **A charge or charges approved by the Special Prosecutor have been sworn and are, or were before the Court; or**
- **In the judgment of the Branch, the matter is already in the public domain; or**
- **In the judgment of the Branch, the circumstances of the case require an announcement in order to maintain public confidence in the administration of justice.**

**The Branch will consider a matter in the public domain when the investigative agency has publicly disclosed the existence of the investigation, the individual subject to investigation has publicly acknowledged the existence of the investigation, or other circumstances have resulted in the investigation already being a matter of public knowledge.**

**In all other cases, the Branch will not make any public announcement or statement, and will neither confirm nor deny any police investigation or appointment of a Special Prosecutor.**

### **FURTHER INFORMATION**

On June 27, 1991, the *Crown Counsel Act* received Royal Assent and came into force. The *Crown Counsel Act* was the culmination of a process which commenced in November 1990 when Commissioner Stephen Owen submitted his Discretion to Prosecute Inquiry Report to government. Commissioner Owen concluded that while criminal justice in British Columbia is administered with integrity, professionalism and public confidence, nevertheless the system itself was vulnerable. Owen then recommended a process to allow for the appointment of Special Prosecutors to strengthen the independence of prosecutorial decision-making from real or perceived improper influence.

With the passing of the *Crown Counsel Act*, legislation was enacted to provide a more open justice system, one which balanced the need for Branch independence with accountability to the public and the Legislature through the Attorney General (AG). For the first time, the function and responsibilities of the Criminal Justice Branch and the roles of the Assistant Deputy

Attorney General (ADAG) and Crown Counsel were clearly defined and legislation governed the relationship between the Criminal Justice Branch and the AG.

Under section 5 of the *Crown Counsel Act*, the AG or Deputy Attorney General (DAG) can intervene to direct the ADAG with respect to a specific prosecution or appeal only if such direction is in writing and is published in the *British Columbia Gazette*. Similarly, under section 6, a directive from the AG or DAG concerning Criminal Justice Branch policy on approval or conduct of prosecutions must be given in writing to the ADAG who has the discretion to require publication of the directive in the *Gazette*. Similar provisions exist with respect to directives relating to the Branch's administration.

Yet even with all these safeguards, cases can arise in which the public may still question the integrity of prosecutorial decision-making. For cases in which the ADAG considers that there could be significant potential for real or perceived improper influence in the administration of criminal justice, section 7 of the *Crown Counsel Act* authorizes the ADAG to appoint a lawyer from the private Bar as a Special Prosecutor to carry out a defined mandate with respect to the approval and conduct of a specific prosecution.

Under section 7(4) of the *Crown Counsel Act*, if the AG or DAG or ADAG gives a direction to a Special Prosecutor in respect of any matter within the mandate of the Special Prosecutor, that direction must be given in writing and be published in the *Gazette*.

In 2010, at the request of the AG, Stephen Owen, QC conducted a review of the Special Prosecutor system. In his review, Mr. Owen recognized that due to the independence, objectivity and expertise of the prosecutors employed by the Branch, Special Prosecutors should only be appointed in exceptional cases. He noted that such appointments "should be limited to very few cases and as a specific precaution in highly sensitive situations."

#### Appointment of Special Prosecutors

Special Prosecutors are appointed from a list of senior lawyers. All lawyers on the Special Prosecutors list have been jointly approved by the DAG and the ADAG, after the Law Society of British Columbia has been consulted (with the consent of the candidate) regarding Law Society records relating to the aspects of the professional background of the candidate which are within the mandate of the Law Society. Candidates are appointed to the list of available Special Prosecutors for a period of five years, and may be re-appointed every five years, after the review process has been renewed.

This approval process ensures a consistent high standard is applied to those sensitive cases which are referred to the Special Prosecutor.

#### Functions of Special Prosecutors

Applying Branch policies, including the policy on Charge Assessments Guidelines (CHA 1), Special Prosecutors carry out the charge assessment and, where there is a decision to prosecute, are ordinarily responsible for the conduct of the ensuing prosecution and any subsequent appeal.