



Policy: Special Prosecutors		
Policy Code: SPE 1	Effective Date: December 18, 2023	Cross-references: PRI 1

Only the Assistant Deputy Attorney General (ADAG) is legally authorized to appoint a Special Prosecutor and only if the ADAG considers it is in the public interest to do so.¹ The paramount consideration in determining the public interest is the need to maintain public confidence in the administration of criminal justice, having regard to any significant potential for real or perceived improper influence in the administration of criminal justice.

Any case that may warrant consideration of the appointment of a Special Prosecutor should be referred to the appropriate Regional Crown Counsel or Director, who will discuss the matter with the ADAG.

Appointment of a Special Prosecutor may be appropriate in any potential prosecution in which a complainant, accused, victim, or witness is:

- a cabinet minister or other member of the Legislative Assembly of British Columbia
- a sitting justice or judge
- an employee of the BC Prosecution Service (BCPS)
- a public official in a senior position of authority
- a police officer in a senior position of authority
- any other individual whose close personal, professional, or business relationship with any of the above categories of persons, could reasonably give rise to a significant potential for real or perceived improper influence in the administration of criminal justice

¹ Crown Counsel Act [RSBC 1996] Chapter 87, Section 7

Appointment of Special Prosecutors and Public Announcements

Special Prosecutors are appointed from a list of senior lawyers in private practice. All Special Prosecutors have been jointly approved by the Deputy Attorney General (DAG) and the ADAG, after consultation with the Law Society of British Columbia. Candidates are generally included on the list for a term of five years and may be re-appointed.

The BCPS will consider announcing the appointment or decision of a Special Prosecutor to enhance public confidence in the administration of justice. The Special Prosecutor must approve the timing and content of the announcement and confirm that the announcement will not adversely affect any ongoing investigation, the prosecution of any case, or the administration of justice. A public announcement also requires one of the following circumstances to apply:

- the Special Prosecutor has approved a charge and an Information has been sworn
- in the judgment of the BCPS, the circumstances of the case require an announcement in order to maintain public confidence in the administration of justice
- in the judgment of the BCPS, the matter is already in the public domain

In all other cases, the BCPS will not comment on the initiation or existence of any police investigation or appointment of a Special Prosecutor.

Prosecutorial Independence

Special Prosecutors make their decisions on prosecution files independently, outside the immediate supervisory authority of the Attorney General (AG), DAG, or ADAG. However, Special Prosecutors exercise prosecutorial discretion in a manner that is guided by and consistent with the established policies of the BCPS.

The AG, DAG, or ADAG are legally entitled to give a direction to a special prosecutor in respect of any matter within the mandate of the special prosecutor, but that direction must be given in writing and must be published in the BC Gazette.²

The decision of a Special Prosecutor with respect to any matter within their mandate is final, but a decision not to approve a prosecution may be appealed by the police or investigating agency. Their Chief Constable, Officer in Charge of a detachment or a more senior officer of the RCMP, or the head of the investigative agency should make a written request for a meeting with the Special Prosecutor, outlining in writing their concerns with the charge assessment decision. If after meeting with the Special Prosecutor and discussing

² Section 7(4), *Crown Counsel Act*

their concerns, the relevant police or investigative agency representative remains unsatisfied with the outcome, they may request in writing a formal review by the ADAG.

If upon exhaustion of this process the relevant police or investigative agency representative remains unsatisfied and decides to swear an Information, it is expected that the relevant police or investigative agency representative would notify the ADAG in advance of the Information being sworn. When an Information has been sworn in these circumstances, the *Private Prosecutions* ([PRI 1](#)) policy applies.