



Policy:

Special Prosecutors

Policy Code:

SPE 1

Effective Date:

March 1, 2018

Cross-references:

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. 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.

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):

- a Cabinet Minister or other Member of the Legislative Assembly of British Columbia
- a sitting Justice or Judge of the British Columbia Court of Appeal, Supreme Court or Provincial Court
- an employee of the BC Prosecution Service
- a public official in a senior position of authority
- a police officer in a senior position of authority

- 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 BC Prosecution Service 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. In addition, the BC Prosecution Service must be satisfied that one of the following conditions applies:

- a charge or charges approved by the Special Prosecutor have been sworn and are, or were before the court
- in the judgment of the BC Prosecution Service, the matter is already in the public domain
- in the judgment of the BC Prosecution Service, the circumstances of the case require an announcement in order to maintain public confidence in the administration of justice

The BC Prosecution Service 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 BC Prosecution Service will not make any public announcement or statement, and will neither confirm nor deny any police investigation or appointment of a Special Prosecutor.

Prosecutorial Independence

Special Prosecutors are appointed from a list of senior lawyers in private practice. All lawyers on the Special Prosecutors list have been jointly approved by the Deputy Attorney General (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.

Special Prosecutors operate independently of the BC Prosecution Service and government. When exercising discretion on a prosecution file, including the decision to approve criminal or regulatory charges and initiate a prosecution, Special Prosecutors must apply the policies of the BC Prosecution Service. However, they apply these policies independent of the BC Prosecution Service, subject only to direction that may be provided by the ADAG, the DAG, or the Attorney General (AG).

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 under any process established by the AG.

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