



CRIMINAL JUSTICE BRANCH, MINISTRY OF JUSTICE
CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: 55000-00 1380-00	EFFECTIVE DATE: December 20, 2016	POLICY CODE: STA 1
SUBJECT: Standards of Conduct - Conflict of Interest and Protection of Confidential Information		CROSS-REFERENCE: ADH 1 MED 1 POL 1 SPE 1

POLICY

This policy sets standards of conduct for Crown Counsel and others employed, designated, or retained by the Criminal Justice Branch (the “Branch”). It confirms or supplements, without limiting, the standards outlined in the Law Society of British Columbia’s *Code of Professional Conduct for British Columbia* and the *Standards of Conduct for Public Service Employees*, which applies to all persons appointed under the *Public Service Act*, and is attached as [Appendix A](#).

The standards contained in this policy, unless specifically stated otherwise, apply to all employees of the Branch, including lawyers, articled students and, with any necessary modifications, administrative staff. These standards also apply to *ad hoc* counsel who are designated under the *Crown Counsel Act*, R.S.B.C 1996, c. 87, to carry out the role of Crown Counsel (see *Ad Hoc* Counsel (ADH 1)).

Failure to comply with this policy may result in disciplinary action up to and including dismissal or termination of any designation made under the *Crown Counsel Act*.

Legal, Professional, and Ethical Duties

In order to maintain and enhance the public’s trust and confidence in the public service, all persons covered by this policy must demonstrate the highest standards of conduct; their honesty, integrity, and impartiality in conduct of their duties must be above suspicion; and, their conduct must not bring the public service or the administration of justice into disrepute.

When acting as Crown Counsel, a lawyer has a special duty to be firm, but fair. Rand J. summarized this special duty in *Boucher v. The Queen*:

It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength but it must also be done fairly. 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.

Crown Counsel and *ad hoc* counsel must conduct themselves in a manner consistent with all of their legal, professional, and ethical duties, including those they owe as members of the Law Society of British Columbia, as agents of the Attorney General, and as public servants. Administrative staff play an important role in the fulfillment of those legal, professional, and ethical duties.

Avoiding Conflicts of Interest

Everyone covered by this policy must avoid conflicts of interest and objectively reasonable perceptions of conflict of interest.

A conflict of interest occurs when a person's private affairs, professional obligations, or financial interests are in conflict, or could result in a reasonable perception of conflict, with that person's duties or responsibilities in such a way that:

- a) their ability to act in the public interest could be impaired; or
- b) their actions or conduct could undermine or compromise:
 - the public's confidence in the ability of Crown Counsel, *ad hoc* counsel, or administrative staff to discharge their responsibilities; or,
 - the trust that the public places in the Branch or the public service.

Protecting Confidential Information

Everyone covered by this policy must protect and not misuse confidential information.

Confidential information received through employment with the Branch or while carrying out the functions of Crown Counsel must not be disclosed to anyone other than persons who are legally authorized to receive it and must not be used for the purpose of furthering any private interest, or as a means of making personal gain. Disclosing information to someone for an unauthorized purpose or accessing information for a purpose that is not legitimately work related is strictly prohibited.

The duty to protect and not misuse confidential information continues after a person's employment relationship with the Branch has come to an end, or a designation as *ad hoc* counsel ceases.

Avoiding Personal Conflicts

If a person covered by this policy learns of a case in respect of which there is or could be an objectively reasonable perception that they have a conflict of interest, the person must immediately advise their Regional Crown Counsel, Director, or their respective deputy, or an immediate supervisor so that steps can be taken to prevent, address, or remedy it as circumstances dictate.

When a Crown Counsel or *ad hoc* counsel is assigned to a case involving an investigator, accused, victim, or material witness who is a relative, personal friend, or anyone else in respect of whom an objectively reasonable perception of a conflict of interest could arise, that Crown Counsel or *ad hoc* counsel should disqualify himself or herself from participating in the case. If the matter is before the court when the basis for the conflict becomes apparent, the defence and the court should be advised.

When a Crown Counsel or *ad hoc* counsel is disqualified on account of actual, perceived, or potential conflict of interest, the case should be assigned to a Crown Counsel in another office, a Crown Counsel in another Region or Directorate, or another *ad hoc* counsel, or as otherwise determined appropriate by the Regional Crown Counsel, Director, or their respective deputy. In these circumstances, the case should not be assigned to any Crown Counsel or *ad hoc* counsel whose relationship with the disqualified Crown Counsel or *ad hoc* counsel could give rise to an objectively reasonable perception of a conflict of interest.

If issues of actual, perceived, or potential conflict of interest arise, Regional Crown Counsel, a Director, or their respective deputy, may at their discretion consult with the Assistant Deputy Attorney General (ADAG) as to whether appointment of a Special Prosecutor in accordance with Branch policy Special Prosecutors (SPE 1) might be necessary and appropriate.

Avoiding Conflicts Arising Through the Outside Activities

Branch employees must not engage in any outside work, paid or unpaid, that involves or relates to defending anyone charged with an offence under any enactment.

In view of the onerous duties of Crown Counsel, and the necessity of avoiding conflicts of interest and reasonable perceptions of conflict of interest, Crown Counsel who are employees of the Branch and wish to carry on the practice of law, paid or unpaid, in other areas of the law unrelated to defending persons charged with offences are strongly discouraged from doing so; but such practice is allowed as long as Crown Counsel adhere strictly to the following requirements:

- a) In the conduct of such practice, no use may be made of Branch premises, services, equipment, supplies, or information, in hard copy or electronic form;
- b) Work relating to such practice must not detract in any way from Crown Counsel's ability or capacity to properly carry out the duties of Crown Counsel;

- c) Any Crown Counsel engaging in such practice must: notify Regional Crown Counsel, Director, or their respective deputy; periodically review with them the scope of such practice; and, disclose any potential basis for a conflict of interest or a reasonable perception of a conflict of interest, or any inability or incapacity to properly carry out the duties of Crown Counsel as a result of such practice; and,
- d) Any issue or concern arising from any of the foregoing may be referred to the ADAG for review.

Avoiding Conflicts Arising Through Other Outside Activities

The Branch recognizes the importance of Branch employees' involvement in the community, whether by enhancing the public's understanding of the criminal justice system or otherwise. For that reason, the Branch encourages volunteer work in the community not involving the practice of law.

When any employee of the Branch speaks publicly as a private citizen or on behalf of an organization which is not the Branch, they must make clear that they are not authorized to and do not speak on behalf of the Branch. Crown Counsel should recognize that the very fact of being Crown Counsel may be the motivation behind an invitation for Crown Counsel to speak publicly. As such, in certain circumstances it may be practically impossible to separate the statement being made from the fact that the speaker is also Crown Counsel. In those circumstances, Crown Counsel should generally refrain from making public statements.

The Branch recognizes that a Director of the British Columbia Crown Counsel Association or designate may speak publicly on the Association's behalf as the exclusive bargaining agent for all Crown Counsel under section 4.1 of the *Crown Counsel Act*.

In all matters involving statements by Branch employees to the public or the media, the Branch Communications Council is available to provide advice or assistance if requested (Media – Guidelines for Crown Counsel – Communications (MED 1)).

Branch employees who are considering seeking public office must obtain prior written approval from the Deputy Attorney General in accordance with the *Standards of Conduct for Public Service Employees*, attached as Appendix A. Branch employees wanting such approval should notify Regional Crown Counsel, a Director, or their respective deputy, who will forward a request for approval on their behalf through the ADAG.

Avoiding Conflicts in Transferring between Private Practice and Crown Practice

The *Code of Professional Conduct for British Columbia* provides:

Unless the former client consents, a lawyer must not act against a former client in:

- (a) *the same matter,*
- (b) *any related matter, or*

(c) any other matter, if the lawyer has relevant confidential information arising from the representation of the former client that may reasonably affect the former client.

When transferring from or to private practice, Crown Counsel and administrative staff must avoid conflicts of interest and must take all reasonable measures to prevent the misuse or improper disclosure of confidential information.

The following guidelines apply whenever a lawyer or articled student who was formerly engaged in defending persons charged with offences or, with necessary modifications, an administrative staff person who formerly worked for a firm or lawyer engaged in defending persons charged with offences, (collectively, “Former Defence Counsel”) is to be employed by the Branch. Before any Former Defence Counsel may commence employment with the Branch, Regional Crown Counsel, a Director, or their respective deputy, must take all reasonable measures to ensure that the following guidelines are applied and enforced.

For the purposes of these guidelines, “prosecution” includes an appeal from conviction, acquittal, or sentence.

Guidelines:

1. Former Defence Counsel must, without disclosing client confidences, take reasonable measures to identify every case in which the Former Defence Counsel represented an accused person in any prosecution conducted by or on behalf of the Branch.
2. Former Defence Counsel should have no involvement in the prosecution of any former client.
3. Former Defence Counsel should not discuss with anyone else in the Branch any information received through representation of any former client.
4. No one else in the Branch should knowingly discuss with Former Defence Counsel the prosecution of any former client of the Former Defence Counsel.
5. Former Defence Counsel should not access any electronic or physical prosecution files relating to any former client of the Former Defence Counsel.
6. If operationally feasible to do so, Former Defence Counsel’s office or work station should be located away from the offices or work stations of anyone involved in the prosecution of any former client of the Former Defence Counsel.
7. If operationally feasible to do so, Former Defence Counsel should use junior counsel, articled students, or administrative staff different from those working on the prosecution of any former client of the Former Defence Counsel.

Avoiding Conflicts Regarding Agencies of Government or Entities Connected to the Branch

In any case in which there could be an objectively reasonable perception of a conflict of interest in a charge assessment decision by the Branch because the potential accused is an agency of government or has some other significant connection to the Branch, such as a contractual relationship, the case should be referred to Regional Crown Counsel, a Director, or their respective deputy, who may refer the file to the ADAG to consider whether to appoint a special prosecutor (Special Prosecutors (SPE 1). If the case falls short of the need to appoint a Special Prosecutor, Regional Crown Counsel, a Director, or their respective deputy, may consult with the ADAG in deciding:

- a. whether to obtain an opinion on charge assessment from *ad hoc* counsel (*Ad Hoc* Counsel (ADH 1)) or from Crown Counsel with the Public Prosecution Service of Canada, or Crown Counsel from another province or territory; and,
- b. whether it would be appropriate for Crown Counsel in the office, Region, or Directorate that would ordinarily have conduct of the prosecution to review the charge assessment opinion, conclude a charge assessment decision, and then handle any prosecution that might result.

APPENDIX A
British Columbia Public Service Agency – Standards of Conduct

Standards of Conduct for Public Service Employees

This policy statement applies to all persons and organizations covered by the *Public Service Act*. The policy statement supports the core policy objective that “public service employees exhibit the highest standards of conduct.”

Employees will exhibit the highest standards of conduct. Their conduct must instill confidence and trust and not bring the BC Public Service into disrepute. The honesty and integrity of the BC Public Service demands the impartiality of employees in the conduct of their duties.

The requirement to comply with these standards of conduct is a condition of employment. Employees who fail to comply with these standards may be subject to disciplinary action up to and including dismissal.

Loyalty

Public service employees have a duty of loyalty to the government as their employer. They must act honestly and in good faith and place the interests of the employer ahead of their own private interests. The duty committed to in the oath of employment requires BC Public Service employees to serve the government of the day to the best of their ability

Confidentiality

Confidential information, in any form, that employees receive through their employment must not be disclosed, released, or transmitted to anyone other than persons who are authorized to receive the information. Employees with care or control of personal or sensitive information, electronic media, or devices must handle and dispose of these appropriately. Employees who are in doubt as to whether certain information is confidential must ask the appropriate authority before disclosing, releasing, or transmitting it.

The proper handling and protection of confidential information is applicable both within and outside of government and continues to apply after the employment relationship ends.

Confidential information that employees receive through their employment must not be used by an employee for the purpose of furthering any private interest, or as a means of making personal gains. (See the Conflicts of Interest section within this policy for details.)

Public Comments

BC Public Service employees may comment on public issues but must not engage in any activity or speak publicly where this could be perceived as an official act or representation (unless authorized to do so).

Employees must not jeopardize the perception of impartiality in the performance of their duties through making public comments or entering into public debate regarding ministry policies. BC Public Service employees must not use their position in government to lend weight to the public expression of their personal opinions.

Political Activity

BC Public Service employees may participate in political activities including membership in a political party, supporting a candidate for elected office, or seeking elected office. Employees' political activities, however, must be clearly separated from activities related to their employment.

If engaging in political activities, employees must remain impartial and retain the perception of impartiality in relation to their duties and responsibilities. Employees must not engage in political activities during working hours or use government facilities, equipment, or resources in support of these activities.

Partisan politics are not to be introduced into the workplace; however, informal private discussions among co-workers are acceptable.

Service to the Public

BC Public Service employees must provide service to the public in a manner that is courteous, professional, equitable, efficient, and effective. Employees must be sensitive and responsive to the changing needs, expectations, and rights of a diverse public in the proper performance of their duties.

Workplace Behaviour

Employees are to treat each other with respect and dignity and must not engage in discriminatory conduct prohibited by the *Human Rights Code*. The prohibited grounds are race, colour, ancestry, place of origin, religion, family status, marital status, physical disability, mental disability, sex, sexual orientation, age, political belief or conviction of a criminal or summary offence unrelated to the individual's employment.

Further, the conduct of BC Public Service employees in the workplace must meet acceptable social standards and must contribute to a positive work environment. Bullying or any other inappropriate conduct compromising the integrity of the BC Public Service will not be tolerated.

All employees may expect and have the responsibility to contribute to a safe workplace. Violence in the workplace is unacceptable. Violence is any use of physical force on an individual that causes or could cause injury and includes an attempt or threatened use of force.

Employees must report any incident of violence. Any employee who becomes aware of a threat must report that threat if there is reasonable cause to believe that the threat poses a risk of injury. Any incident or threat of violence in the workplace must be addressed immediately.

Employees must report a safety hazard or unsafe condition or act in accordance with the provisions of the WorkSafeBC Occupational Health and Safety Regulations.

Conflicts of Interest

A conflict of interest occurs when an employee's private affairs or financial interests are in conflict, or could result in a perception of conflict, with the employee's duties or responsibilities in such a way that:

- The employee's ability to act in the public interest could be impaired; or
- The employee's actions or conduct could undermine or compromise
 - The public's confidence in the employee's ability to discharge work responsibilities or
 - The trust that the public places in the BC Public Service.

While the Government recognizes the right of BC Public Service employees to be involved in activities as citizens of the community, conflict must not exist between employees' private interests and the discharge of their BC Public Service duties. Upon appointment to the BC Public Service, employees must arrange their private affairs in a manner that will prevent conflicts of interest, or the perception of conflicts of interest, from arising. Employees who find themselves in an actual, perceived, or potential conflict of interest must disclose the matter to their supervisor, manager, or ethics advisor. Examples of conflicts of interest include, but are not limited to, the following:

- An employee uses government property or equipment or the employee's position, office, or government affiliation to pursue personal interests or the interests of another organization;
- An employee is in a situation where the employee is under obligation to a person who might benefit from or seek to gain special consideration or favour;
- An employee, in the performance of official duties, gives preferential treatment to an individual, corporation, or organization, including a non-profit organization, in which the employee, or a relative or friend of the employee, has an interest, financial or otherwise;
- An employee benefits from, or is reasonably perceived by the public to have benefited from, the use of information acquired solely by reason of the employee's employment;
- An employee benefits from, or is reasonably perceived by the public to have benefited from, a government transaction over which the employee can influence decisions (for example, investments, sales, purchases, borrowing, grants, contracts, regulatory or discretionary approvals, appointments);
- An employee accepts from an individual, corporation, or organization, directly or indirectly, a personal gift or benefit that arises out of employment in the BC Public Service, other than:

- The exchange of hospitality between persons doing business together;
- Tokens exchanged as part of protocol;
- The normal presentation of gifts to persons participating in public functions; or
- The normal exchange of gifts between friends; or
- An employee accepts gifts, donations, or free services for work-related leisure activities other than in situations outlined above.

The following four criteria, when taken together, are intended to guide the judgment of employees who are considering the acceptance of a gift:

- The benefit is of nominal value;
- The exchange creates no obligation;
- Reciprocation is easy; and
- It occurs infrequently.

Employees will not solicit a gift, benefit, or service on behalf of themselves or other employees.

Allegations of Wrongdoing

Employees have a duty to report any situation relevant to the BC Public Service that they believe contravenes the law, misuses public funds or assets, or represents a danger to public health and safety or a significant danger to the environment. Employees can expect such matters to be treated in confidence, unless disclosure of information is authorized or required by law (for example, the *Freedom of Information and Protection of Privacy Act*). Employees will not be subject to discipline or reprisal for bringing forward to a Deputy Minister, in good faith, allegations of wrongdoing in accordance with this policy statement.

Employees must report their allegations or concerns as follows:

- Members of the BCGEU must report in accordance with Article 32.13;
- PEA members must report in accordance with Article 36.12; or
- Other employees must report in writing to their Deputy Minister or other executive member of the ministry, who will acknowledge receipt of the submission and have the matter reviewed and responded to in writing within 30 days of receiving the employee's submission. Where an allegation involves a Deputy Minister, the employee must forward the allegation to the Deputy Minister to the Premier.

These reporting requirements are in addition to an employee's obligation to report to the Comptroller General as outlined in Section 33.2 of the *Financial Administration Act*.

Where an employee believes that the matter requires a resolution and it has not been reasonably resolved by the ministry, the employee may then refer the allegation to the appropriate authority.

If the employee decides to pursue the matter further then:

- Allegations of criminal activity are to be referred to the police;
- Allegations of a misuse of public funds are to be referred to the Auditor General;
- Allegations of a danger to public health must be brought to the attention of health authorities; and
- Allegations of a significant danger to the environment must be brought to the attention of the Deputy Minister, Ministry of Environment.

Legal Proceedings

Employees must not sign affidavits relating to facts that have come to their knowledge in the course of their duties for use in court proceedings unless the affidavit has been prepared by a lawyer acting for government in that proceeding or unless it has been approved by a ministry solicitor in the Legal Services Branch, Ministry of Attorney General. In the case of affidavits required for use in arbitrations or other proceedings related to employee relations, the Labour Relations Branch of the BC Public Service Agency will obtain any necessary approvals. Employees are obliged to cooperate with lawyers defending the Crown's interest during legal proceedings. A written opinion prepared on behalf of government by any legal counsel is privileged and is, therefore, not to be released without prior approval of the Legal Services branch.

Working Relationships

Employees involved in a personal relationship outside work which compromises objectivity, or the perception of objectivity, should avoid being placed in a direct reporting relationship to one another. For example, employees who are direct relatives or who permanently reside together may not be employed in situations where:

- A reporting relationship exists where one employee has influence, input, or decision-making power over the other employee's performance evaluation, salary, premiums, special permissions, conditions of work, and similar matters; or
- The working relationship affords an opportunity for collusion between the two employees that would have a detrimental effect on the Employer's interest.

The above restriction on working relationships may be waived provided that the deputy minister is satisfied that sufficient safeguards are in place to ensure that the Employer's interests are not compromised.

Human Resource Decisions

Employees are to disqualify themselves as participants in human resource decisions when their objectivity would be compromised for any reason or a benefit or perceived benefit could accrue to them. For example, employees are not to participate in staffing actions involving direct relatives or persons living in the same household.

Outside Remunerative and Volunteer Work

Employees may hold jobs outside government, carry on a business, receive remuneration from public funds for activities outside their position, or engage in volunteer activities provided it does not:

- interfere with the performance of their duties as a BC Public Service employee;
- bring the government into disrepute;
- represent a conflict of interest or create the reasonable perception of a conflict of interest;
- appear to be an official act or to represent government opinion or policy;
- involve the unauthorized use of work time or government premises, services, equipment, or supplies; or
- gain an advantage that is derived from their employment with the BC Public Service.

Employees who are appointed as directors or officers of Crown corporations are not to receive any additional remuneration beyond the reimbursement of appropriate travel expenses except as approved by the Lieutenant Governor in Council.

Responsibilities

Agency Head

- Provide timely advice to managers and designated contacts respecting the application of this policy statement including guidance on an appropriate employer response to transgressions of the policy statement; and
- Coordinate the development of awareness, training, and communication programs in support of this policy statement.

Deputy Ministers

- Advise employees of the required standards of conduct and the consequences of non-compliance;
- Designate a ministry contact for matters related to standards of conduct;
- Promote a work environment that is free of discrimination;

- Deal with breaches of this policy statement in a timely manner, taking the appropriate action based upon the facts and circumstances;
- Waive the provision on working relationships under the circumstances indicated; and
- Delegate authority and responsibility, where applicable, to apply this policy statement within their organization.

Line Managers

- Advise staff on standards of conduct issues;
- Engage the ministry-designated contact as may be appropriate in the circumstances; and
- Contribute to a work environment that is free of discrimination.

Employees

- Objectively and loyally fulfill their assigned duties and responsibilities, regardless of the party or persons in power and regardless of their personal opinions;
- Disclose and resolve conflicts of interest or potential conflict of interest situations in which they find themselves;
- Maintain appropriate workplace behavior;
- Avoid engaging in discriminatory conduct or comment; and
- Check with their supervisor or manager when they are uncertain about any aspect of this policy statement.