



Policy:

**Standards of Conduct for BC Prosecution Service Employees**

Policy Code:

**STA 1**

Effective Date:

December 18, 2023

Cross-references:

[ADH 1](#) [MED 1](#) [SPE 1](#)

All BC Prosecution Service (BCPS) employees are bound by the [Standards of Conduct for Public Service Employees](#). In addition, all Crown Counsel, articulated students, and *ad hoc* counsel are also bound by the Law Society of British Columbia’s *Code of Professional Conduct for British Columbia*. This policy confirms and supplements those standards.

The standards contained in this policy apply to all employees of the BCPS. These standards also apply to *ad hoc* counsel who are designated under the *Crown Counsel Act* to carry out the role of Crown Counsel (*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 BCPS, all persons covered by this policy must demonstrate the highest standards of conduct. Their honesty, integrity, and impartiality in carrying out their duties must be above suspicion and beyond reproach and their conduct must not bring the BC Prosecution Service, 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*, [1955] SCR 16:

*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, articulated students, and *ad hoc* counsel must conduct themselves in a manner consistent with all 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. All BCPS employees and *ad hoc* counsel must perform their work in a manner that is consistent with the fulfillment of those legal, professional, and ethical duties.

### **Protecting Confidential Information**

Everyone covered by this policy must protect and not misuse confidential information. Confidential information received through employment with the BCPS 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 BCPS, or a designation as *ad hoc* counsel, has come to an end.

### **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 public duties or responsibilities in such a way that:

- their ability to act in the public interest could be impaired
- their actions or conduct could undermine or compromise
  - the public's confidence in the ability of Crown Counsel, articulated students, *ad hoc* counsel, or professional staff to discharge their responsibilities
  - the trust that the public places in the BCPS or the public service

## Avoiding Conflicts – Personal

If a Crown Counsel learns of a case in which there is or could be an objectively reasonable perception that they have a conflict of interest, they must immediately advise a Regional Crown Counsel, Director, or their respective deputy so that steps can be taken to prevent, address, or remedy it as circumstances dictate. Other BCPS staff must report such conflicts to their supervisor.

When a Crown Counsel or *ad hoc* counsel is assigned to a case involving an investigator, accused, victim, justice system participant, 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 must immediately identify the actual, perceived, or potential conflict and disqualify themselves 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 from a case on account of actual, perceived, or potential conflict of interest, the case should be reassigned to a Crown Counsel in another office, a Crown Counsel in another region or directorate, or another *ad hoc* counsel, or otherwise as determined to be appropriate by a 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, a Regional Crown Counsel, Director, or their respective deputy, should consider consulting with the Assistant Deputy Attorney General (ADAG) as to whether appointment of a Special Prosecutor in accordance with the *Special Prosecutors* ([SPE 1](#)) policy might be necessary and appropriate.

## Avoiding Conflicts – Outside Activities

BCPS 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.

Crown Counsel who are employees of the BCPS and wish to carry on the practice of law, paid or unpaid, outside of their BCPS work are strongly discouraged from doing so, even in areas of the law unrelated to defending persons charged with offences. However, such practice may be permitted but only if Crown Counsel adhere strictly to the following requirements:

- notify a Regional Crown Counsel, Director, or their respective deputy before commencing any outside work and thereafter, annually review with a Regional Crown Counsel, Director, or their respective deputy the scope of such work

- immediately disclose to a Regional Crown Counsel, Director, or their respective deputy any actual, perceived, or potential conflict of interest or a reasonable perception of a conflict of interest, or any limitation on or impediment to their ability or capacity to properly carry out the duties of Crown Counsel as a result of such outside work
- in the conduct of such outside work, make no use of BCPS or BC government premises, services, equipment, supplies, or information
- ensure that the outside work will not detract in any way from Crown Counsel's ability or capacity to properly carry out the duties of Crown Counsel

Any issue arising from the foregoing should be referred to the Assistant Deputy Attorney General for resolution or decision.

### Avoiding Conflicts – Community Engagement

The BCPS recognizes the importance of its employees' involvement in the community, whether by enhancing the public's understanding of the criminal justice system or otherwise. For that reason, the BCPS supports its personnel doing volunteer work in the community that does not involve the practice of law.

When any employee of the BCPS speaks publicly as a private citizen or on behalf of an outside organization, they must make clear that they are not authorized to and do not speak on behalf of the BCPS. 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 refrain from making public statements.

The BCPS 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 BCPS employees to the public or the media, the Communications Counsel is available to provide advice or assistance if requested (*Media – Guidelines for Crown Counsel* ([MED 1](#))).

BCPS employees considering standing for election to public office should notify a Regional Crown Counsel, Director, or their respective deputy, and ensure compliance with the *Standards of Conduct for Public Service Employees* and contractual conditions of employment.

## Avoiding Conflicts – Former Defence

The Law Society *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 private practice, Crown Counsel, articling students, and professional 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 are administered by the Regional Crown Counsel, Director, or their respective deputy. For the purposes of these guidelines, “prosecution” includes an appeal from conviction, acquittal, or sentence.

These guidelines apply whenever Crown Counsel, articulated students, or professional staff who formerly worked for a firm or lawyer engaged in defending persons charged with offences (“former defence counsel”) is employed by the BCPS:

- former defence counsel must, without disclosing client confidences, take reasonable measures to identify every case in which the former defence counsel represented or was otherwise involved in the defence of an accused person in any prosecution conducted by or on behalf of the BCPS
- former defence counsel must not be involved in any way in the prosecution of any former client
- former defence counsel must not discuss with anyone else in the BCPS any information received through representation of any former client
- BCPS employees must not knowingly discuss with former defence counsel the prosecution of any former client of the former defence counsel
- former defence counsel must not access any electronic or physical prosecution files relating to any former client of the former defence counsel

- where possible, former defence counsel's office or workstation should be located away from the offices or workstations of anyone involved in the prosecution of any former client of the former defence counsel
- former defence counsel should not be assigned files where they would be working directly with counsel or professional staff involved in the prosecution of any former client of the former defence counsel

#### Avoiding Conflicts – Agencies of government or entities connected to the BCPS

In any case in which there could be an objectively reasonable perception of a conflict of interest in a charge assessment decision or a prosecution because the potential accused has a significant connection either to the provincial government or to the BCPS, the case should be referred to a Regional Crown Counsel, Director, or their respective deputy, who may refer the file to the ADAG to consider whether to appoint a special prosecutor ([SPE 1](#)). If it is not deemed necessary to appoint a Special Prosecutor, a Regional Crown Counsel, Director, or their respective deputy, may consult with the ADAG in deciding whether it would be appropriate for Crown Counsel in the office, region, or directorate that would ordinarily have conduct of the prosecution to conduct the charge assessment and conduct any resulting prosecution.