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## CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL **CROWN COUNSEL POLICY MANUAL**

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### History of the Criminal Justice Branch:

Over three decades ago, the Criminal Justice Branch was created following the decision of the provincial government that the administration of justice should become an integrated system.

Prior to April 1, 1974, prosecutions in many Provincial Courts, including Vancouver, Victoria, Kelowna, Kamloops and Prince George, were conducted by lawyers hired by the municipalities.

In many other locations in the province, Provincial Court prosecutions were conducted by police prosecutors, or the police determined when a lawyer was necessary in Provincial Court and made arrangements to have a lawyer retained. Cases in the County and Supreme Courts were conducted by lawyers, usually from the private Bar, who were specifically retained by the then Director of Criminal Law to prosecute the assize or session. All reports on the outcome of cases prosecuted in County or Supreme Court were given to the Director of Criminal Law in Victoria.

On April 1, 1974, the inauguration of the Criminal Justice Branch created a decentralized prosecution service with consistent prosecution standards throughout the province.

In the late 1970s and early 1980s, a process evolved by which Crown Counsel approve charges before they are laid. Normally, there is a two-part test: first, whether there is a substantial likelihood of conviction and, if so, whether a prosecution is required in the public interest.

Following the Discretion to Prosecute Inquiry held by Inquiry Commissioner Stephen Owen in 1990, the provincial government passed the *Crown Counsel Act* in 1991. The Act sets out the functions and responsibilities of Crown Counsel, the Branch and the Assistant Deputy Attorney General, and it addresses the relationship between the Attorney General and the Branch.

As of 2005, the Criminal Justice Branch had 751 full-time equivalent positions consisting of 413 Crown Counsel and 338 administrative staff. Branch personnel were located in 39 offices in 5 regions across the province and also at the Criminal Appeals and Special Prosecutions Unit (CASP) and the Headquarters office.

## Mandate of the Criminal Justice Branch:

The *Crown Counsel Act* affords significant prosecutorial independence to the Branch and, at the same time, balances that independence with accountability. The mandate of the Branch is set out in Section 2 of the *Crown Counsel Act*, where it states:

The Branch has the following functions and responsibilities:

- (a) to approve and conduct, on behalf of the Crown, all prosecutions of offences in British Columbia;
- (b) to initiate and conduct, on behalf of the Crown, all appeals and other proceedings in respect of any prosecution of an offence in British Columbia;
- (c) to conduct, on behalf of the Crown, any appeal or other proceeding in respect of a prosecution of an offence, in which the Crown is named as a respondent;
- (d) to advise the government on all criminal law matters;
- (e) to develop policies and procedures in respect of the administration of criminal justice in British Columbia;
- (f) to provide liaison with the media and affected members of the public on all matters respecting approval and conduct of prosecutions of offences or related appeals;
- (g) any other function or responsibility assigned to the Branch by the Attorney General.

Section 3 of the Act outlines the responsibilities of the Assistant Deputy Attorney General (ADAG):

- (1) The ADAG is charged with the administration of the Branch and with carrying out the functions and responsibilities of the Branch under section 2.
- (2) The ADAG is designated, for purposes of section 2 of the *Criminal Code*, as a lawful deputy of the Attorney General.

The responsibilities of Crown counsel are stated in section 4 of the Act:

- (1) The ADAG may designate as “Crown Counsel” any individual or class of individual who is lawfully entitled to practise law in British Columbia.
- (2) Each Crown Counsel is authorized to represent the Crown before all courts in relation to the prosecution of offences.
- (3) Subject to the directions of the ADAG or another Crown Counsel designated by the ADAG, each Crown Counsel is authorized to:
  - (a) examine all relevant information and documents and, following the examination, to approve for prosecution any offence or offences that he or she considers appropriate,
  - (b) conduct the prosecutions approved, and
  - (c) supervise prosecutions of offences that are being initiated or conducted by individuals

who are not Crown Counsel and, if the interests of justice require, to intervene and to conduct those prosecutions.

- (4) The Attorney General may establish an appeal process under which law enforcement officials may appeal the determination of any Crown Counsel or special prosecutor not to approve a prosecution.

The *Crown Counsel Act* also governs the relationship between the Branch and government through the Attorney General. It requires that directions on specific prosecutions must be in writing and published in the B.C. Gazette. There are analogous provisions for policy and administrative directions. The act also provides for the appointment of special prosecutors by the Assistant Deputy Attorney General when it is necessary in the public interest.

### Role of Crown Counsel:

The role of Crown Counsel as set out in *R. v. Boucher* (1954), 110 CCC 263 (SCC) was recently endorsed in *R. v. Brown*, 2001 BCCA 14. The B.C. Court of Appeal quoted two passages from *Boucher* dealing with the special role of the prosecutor:

At 267, Mr. Justice Taschereau said:

The position held by counsel for the Crown is not that of a lawyer in civil litigation. His functions are quasi-judicial. His duty is not so much to obtain a conviction as to assist the judge and the jury in ensuring that the fullest possible justice is done. His conduct before the Court must always be characterized by moderation and impartiality. He will have properly performed his duty and will be beyond all reproach if, eschewing any appeal to passion, and employing a dignified manner suited to his function, he presents the evidence to the jury without going beyond what it discloses.

At 270, Mr. Justice Rand said:

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.

In *R. v. Logiacco* (1984), 11 CCC (3d) 374 (Ont CA), Mr. Justice Cory stated:

...[T]he role of the Crown Attorney in the administration of justice is of critical importance to the courts and to the community. The Crown prosecutor must proceed courageously in the face of threats and attempts at intimidation. He must see that all

matters deserving of prosecution are brought to trial and prosecuted with diligence and dispatch. He must be industrious to ensure that all the arduous preparation has been completed before the matter is brought before the court. He must be of absolute integrity, above all suspicion of unfair compromise or favouritism. The Crown prosecutor must be a symbol of fairness, prompt to make all reasonable disclosures and yet scrupulous in attention to the welfare and safety of witnesses. Much is expected of the Crown prosecutor by the courts. The community looks upon the Crown prosecutor as a symbol of authority and as a spokesman for the community in criminal matters...

Great trust is placed in the Crown prosecutor by the courts and by the public. Heavy obligations are imposed upon him in his quasi-judicial role. To be worthy of the trust and reliance which is placed in his office, he must conduct himself with becoming dignity and fairness.

The foregoing passages are examples of the high standards the Courts have of Crown prosecutors. The obligations of Crown Counsel and the dignity expected of that office are exceptional.

The independence of Crown Counsel is balanced with measures of accountability. Principled charge assessment decisions are assured when Crown Counsel exercised in assessing evidence exercise discretion in accordance with Branch public policies when reviewing the available evidence and applicable law.

### Relationship of the Branch with other Justice Agencies:

#### Police:

The independence of the investigative and prosecutorial functions has been acknowledged as an important aspect of the administration of justice. In particular, the police must be free to conduct investigations and to form their own theories and opinions about who committed the offence which has been alleged. The police have a unique and well recognized role. Historically, the notion that the police make decisions about who, what, and how to investigate, free from government interference, can be traced back over one thousand years. Recently, the Supreme Court of Canada has confirmed that principle.<sup>1</sup>

Crown Counsel exercise a role which is distinct from the investigation in order that their objectivity is not, and is not seen to be, compromised, so that they can properly discharge their quasi judicial roles in making an objective and principled decision on the initiation or conduct of a prosecution.

At the same time, there is no question that cooperation between the police and Crown Counsel is absolutely essential to the proper administration of justice.

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<sup>1</sup> R. v. Campbell [1999] 1 S.C.R. 565 at paras.27-34; R. v. Regan [2002] supra at 62-91

*Police and prosecutors are in a symbiotic relationship. Evidence gathered by the police during the investigative stage is the lifeblood of a prosecution. If it is anaemic or tainted, no amount of forensic brilliance can save the prosecution. Conversely, an incompetent prosecutor can render the most probing and meticulous police investigation impotent. For the criminal justice system to fully realize its goal of apprehending, convicting and sentencing the guilty (but not the innocent) by means of a process that complies with the Charter of Rights and Freedoms, police and prosecutors must have an effective working relationship<sup>2</sup>.*

When a police officer lays an Information, he or she must swear on oath that there are reasonable grounds to believe and that the officer does in fact believe, an offence has been committed.

The Criminal Justice Branch recognizes that the police have the authority to lay an Information; however, Crown Counsel have the ultimate authority to direct a stay of proceedings. Therefore, it is expected that the police will lay an Information only after the approval of charges by Crown Counsel, or, if charges are not approved, upon exhaustion of an appeal of that decision by the police (see policy CHA 1).

Recognizing that the charge assessment responsibility of Crown Counsel and the investigative responsibility of the police are mutually independent, cooperation and effective communication between Crown Counsel and the police are essential to the proper administration of justice. In serious cases, or those of significant public interest, Crown Counsel discuss with the police, where practicable, their intention to not approve a charge recommended by the police (a “no charge” decision) or to direct a stay of proceedings, and also resolution discussions.

#### Judiciary:

The principle of judicial independence is fundamental to the justice system. The courts are completely independent from all other branches of government, including the Criminal Justice Branch. All Crown Counsel recognize the need to maintain judicial independence and to act appropriately in their contact with the judiciary.

#### Branch Policies:

Branch Policies provide guidelines to Crown Counsel exercising the prosecution function, and as public documents, assist the public in understanding how prosecutorial services are provided in the public interest.

The Index of the Policy Manual lists policies by policy code, title and the effective date of the policy.

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<sup>2</sup> Pearson, John, *The Prosecutor's Role at the Investigative Stage from an Ontario Perspective*, a paper presented at the June 2000 Annual Conference of the Federal Prosecution Service, p.4.