



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

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Policy

The Assistant Deputy Attorney General (ADAG) is empowered to appoint a special prosecutor in cases where the ADAG believes there is a significant potential for real or perceived improper influence in prosecutorial decision-making.

Above all other considerations, the ADAG regards the need to maintain public confidence in the administration of criminal justice as the paramount consideration in deciding whether a case requires the appointment of a special prosecutor.

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 the police, should be referred immediately to Regional Crown Counsel who will discuss the matter with the ADAG.

Discussion

On June 27, 1991, the *Crown Counsel Act* received Royal Assent and came into force. The *Crown Counsel Act* was the culmination of a process which commenced in November 1990 when Commissioner Stephen Owen submitted his Discretion to Prosecute Inquiry Report to government. Commissioner Owen concluded that while criminal justice in British Columbia is administered with integrity, professionalism and public confidence, nevertheless the system itself was vulnerable. Owen then recommended a process to allow for the appointment of special prosecutors to strengthen the independence of prosecutorial decision-making from real or perceived improper influence.

With the passing of the *Crown Counsel Act*, legislation was enacted to provide a more open justice system, one which balanced the need for Branch independence with accountability to the public and the legislature through the Attorney General. For the first time, the function and responsibilities of the Criminal Justice Branch and the roles of the Assistant Deputy Attorney General (ADAG) and Crown Counsel were clearly defined and legislation governed the relationship between the Criminal Justice Branch and the Attorney General.

Under section 5 of the *Crown Counsel Act* the Attorney General (AG) or Deputy Attorney General (DAG) can intervene to direct the ADAG with respect to a specific prosecution or appeal only if such direction is in writing and is published in the *British Columbia Gazette*. Similarly, under section 6, a directive from the AG or DAG concerning Criminal Justice Branch policy on approval or conduct of prosecutions must be given in writing to the ADAG who has a discretion to require publication of the direction in the *Gazette*. Similar provisions exist with respect to directives relating to the Branch's administration.

Yet even with all these safeguards, cases can arise in which the public may still question the integrity of prosecutorial decision-making. For cases in which the ADAG forms the view that there could be significant potential for real or perceived improper influence in the administration of criminal justice, section 7 of the *Crown Counsel Act* authorizes the ADAG to appoint a lawyer from the private Bar as a special prosecutor to carry out a defined mandate with respect to the approval and conduct of a specific prosecution.

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

Appointment of Special Prosecutors

Special prosecutors are appointed on a case-by-case basis by the ADAG from a list of senior and experienced practitioners from the private Bar. Most special prosecutors are appointed in cases involving Cabinet Ministers and other senior public or Ministry officials, senior police officers, or persons in close proximity to them. Only the ADAG has the authority, under the Act, to appoint a special prosecutor. All counsel on the special prosecutors list have been jointly approved by the President of the Law Society, the DAG and the ADAG. This joint approval process ensures a consistent high standard is applied to those sensitive cases which are referred to the special prosecutor.

Functions of Special Prosecutors

Applying Branch policies, including the policy on Charge Assessments Guidelines (CHA 1), special prosecutors carry out the charge assessment and, where there is a decision to prosecute, are ordinarily responsible for the conduct of the ensuing prosecution and any subsequent appeal. Special prosecutors also make the decision as to whether to notify professional organizations, employers or other groups that charges against their members or employees have been proposed in a Report to Crown Counsel, pursuant to the policy entitled Professional Organizations – Charges Against Members (PRO 1). (Any notification will be done by the Headquarters Office).

The Branch facilitates responses to the media or other interested parties concerning decisions made by special prosecutors.