



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

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SUBJECT: Standards of Conduct - Conflict of Interest		CROSS-REFERENCE: ADH 1 CON 1 MED 1

POLICY

This policy sets standards of conduct for Crown Counsel and articulated students. These standards are outlined below and they supplement the standards in Policy Directive 5.4 of the BC Public Service Agency (attached as appendix A) which are applicable to all persons appointed under the *Public Service Act*:

- 1. Where Crown Counsel is assigned to a case involving an accused, victim, or material witness who is a relative, friend, or anyone else in respect of whom there is an objectively reasonable perception of a conflict of interest, Crown Counsel should disqualify themselves from participating in that case and, where the matter is before the Court when the conflict becomes apparent, notify the defence and the Court.**
- 2. Crown Counsel who are employees of the Branch must not engage in work as defence counsel for persons charged with an offence under any enactment. Practice in other areas of the law, regardless of whether there is remuneration, by Crown Counsel who are employees of the Branch is strongly discouraged, in view of the onerous duties of Crown Counsel and in order to avoid conflicts of interest; however, such practice is allowed as long as Crown Counsel adhere strictly to the following requirements:**
 - a) No use may be made of Criminal Justice Branch premises, services, equipment, information or supplies in the conduct of such practice.**
 - b) No work relating to such practice should detract from the ability to properly carry out duties as Crown Counsel.**
 - c) Any Crown Counsel engaging in such practice must disclose that fact to Regional Crown Counsel or their Director and review periodically with that person the scope of such practice and any potential for conflict or inability to properly carry out duties as Crown Counsel.**
 - d) If Regional Crown Counsel or a Director are concerned about any issue arising from the above, the matter should be referred to the ADAG for review.**

- e) In reviewing each situation to determine whether an actual, perceived or potential conflict of interest exists, Regional Crown Counsel or a Director may refer the matter to the Law Society for advice.
 - f) It is the responsibility of Crown Counsel to ensure that conflicts and perceptions of conflict are avoided.
3. Recognizing the importance of Crown Counsel's involvement in the community, whether enhancing the public's understanding of the criminal justice system or otherwise, volunteer work in the community not involving the practice of law is encouraged.
 4. When Crown Counsel speaks publicly as a private citizen or on behalf of an organization which is not the Criminal Justice Branch (such as the Canadian Bar Association), Crown Counsel must make it clear that his or her statements are not being made as Crown Counsel.
 5. 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*.
 6. Crown Counsel who are considering seeking public office must obtain prior written approval from the Deputy Attorney General in accordance with Public Service Directive 4.5 setting out the Terms and Conditions of employment for Legal Counsel. Regional Crown Counsel or a Director will seek this approval through the Assistant Deputy Attorney General.
 7. The standards of conduct concerning the need to avoid conflict of interest in exercising a prosecutorial function apply to ad hoc counsel in their role as Crown Counsel (see policy ADH 1).
 8. If Crown Counsel have any concerns about any of these issues and what course of action to take, they should consult their manager. This includes Regional Crown Counsel or their Director.

Policy Directive 5.4 of the B.C. Public Service Agency includes the following standards of conduct which apply to all persons appointed under the *Public Service Act*:

1. Employees who fail to comply with these standards may be subject to disciplinary action up to and including dismissal.
2. The Government of British Columbia believes that the highest standards of conduct among public service employees are essential to maintain and enhance the public's trust and confidence in the public service.

- 3. The honesty and integrity of the public service demands that the impartiality of employees, in the conduct of their duties, be above suspicion. Employees' conduct should instill confidence and trust and must not bring the public service into disrepute.**
- 4. 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:
 - a) the employee's ability to act in the public interest could be impaired; or**
 - b) 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 public service.******
- 5. While the government recognizes the right of 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 public service duties. Upon appointment to the 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.**
- 6. Employees who find themselves in an actual, perceived or potential conflict of interest must disclose the matter to the designated ministry contact, their supervisor or manager. Employees who fail to disclose may be subject to disciplinary action up to and including dismissal.**
- 7. Confidential information that employees receive through their employment must not be divulged to anyone other than persons who are authorized to receive the information. Employees who are in doubt as to whether certain information is confidential must ask the appropriate authority before disclosing it. Caution and discretion in handling confidential information extends to disclosure made inside and outside of government and continues to apply after the employment relationship ceases.**
- 8. 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.**
- 9. Public service employees are free to comment on public issues but must exercise caution to ensure, that by doing so, they do not jeopardize the perception of impartiality in the performance of their duties. For this reason, care should be taken in making comments or entering into public debate regarding their ministry policies. Public service employees must not use their position in government to lend weight to the public expression of their personal opinions.**

DISCUSSION

Policy Directive 5.4 of the B.C. Public Service Agency entitled “Standards of Conduct for Public Service Employees” (appendix A) applies to all persons appointed under the *Public Service Act*. Therefore, it applies to all employees of the Criminal Justice Branch. This policy sets out additional standards of conduct for Crown Counsel and articulated students, which are outlined on pages 1 and 2.

The professional conduct handbook of the Law Society of British Columbia addresses, in chapter six, rule 7.1 to 7.9, conflict of interest where government lawyers transfer into or out of government service.

When Crown Counsel is approached to speak about an issue as a private citizen or on behalf of an organization which is not the Criminal Justice Branch, Crown Counsel should be aware that it may be their status as Crown Counsel which has motivated the request. In certain situations it may be impossible to separate the statement being made from the status as Crown Counsel, even though Crown Counsel attempt to clarify that his or her statements are not being made as Crown Counsel.

In all matters involving statements by Crown Counsel to the public or the media, the Branch Communications Council is available to provide advice or assistance if requested.

APPENDIX A

Standards of Conduct for Public Service Employees Policy Directive 5.4

Objective	The objective of this policy directive is to describe the standards of conduct required of all employees.
Application and Scope	This policy directive applies to all persons appointed under the <i>Public Service Act</i> .
Principles	The Government of British Columbia believes that the highest standards of conduct among public service employees are essential to maintain and enhance the public's trust and confidence in the public service.
Mandatory Requirements	
General	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. Employees should contact their ministry personnel office for advice and assistance on the interpretation or application of this policy directive.
Loyalty	<p>Public service employees have a duty of loyalty to the government as their employer. The duty of loyalty, committed to in the Oath of Employment, requires public service employees, irrespective of political preferences or affiliations, to serve the government of the day to the best of their ability.</p> <p>The honesty and integrity of the public service demands that the impartiality of employees, in the conduct of their duties, be above suspicion. Employees' conduct should instil confidence and trust and must not bring the public service into disrepute.</p>
Confidentiality	<p>Confidential information that employees receive through their employment must not be divulged to anyone other than persons who are authorized to receive the information. Employees who are in doubt as to whether certain information is confidential must ask the appropriate authority before disclosing it. Caution and discretion in handling confidential information extends to disclosure made inside and outside of government and continues to apply after the employment relationship ceases.</p> <p>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 of this policy directive for</p>

	<p>details.</p>
Public Comments	<p>Public service employees are free to comment on public issues but must exercise caution to ensure, that by doing so, they do not jeopardize the perception of impartiality in the performance of their duties. For this reason, care should be taken in making comments or entering into public debate regarding their ministry policies. Public service employees must not use their position in government to lend weight to the public expression of their personal opinions.</p>
Political Activity	<p>Public service employees are free to participate in political activities including belonging to a political party, supporting a candidate for elected office and actively seeking elected office. Employees' political activities, however, must be clearly separated from activities related to their employment.</p> <p>If engaging in political activities, employees must be able to 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.</p> <p>Partisan politics at the local, provincial or national levels are not to be introduced into the workplace. This does not apply to informal private discussions among co-workers.</p>
Service to the Public	<p>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 while respecting the legislative framework within which service to the public is provided.</p>
Workplace Behaviour	<p>The conduct and language of public service employees in the workplace must meet acceptable social standards and must contribute to a positive work environment. An employee's conduct must not compromise the integrity of the public service.</p> <p>All public service employees have the right to expect, and the responsibility to create, a workplace where all employees are safe. Violence in the workplace is unacceptable and will not be tolerated. Violence includes any attempted or actual exercise by any person, including another worker, of any physical force so as to cause injury to a worker and includes any express threat of violence.</p> <p>Employees must report any incident of violence directed towards themselves or their co-workers. Any employee hearing a threat, including a threat to a co-worker, must report that threat if he or she has reasonable cause to believe that the threat is serious. Any incident or threat of violence in the workplace must be addressed immediately.</p> <p>Employees are to treat each other in the workplace with respect and</p>

dignity and must not engage in discrimination or harassment based on any of the prohibited grounds covered 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. Employees and supervisors should refer to Personnel Management Policy Directive 3.1, Human Rights in the Workplace - Discrimination and Harassment, for additional information on appropriate workplace behaviour.

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 public service.

While the government recognizes the right of 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 public service duties. Upon appointment to the 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 with questions regarding interpretation of the policy may discuss them with the designated ministry contact. Employees who find themselves in an actual, perceived or potential conflict of interest must disclose the matter to the designated ministry contact, their supervisor or manager. Employees who fail to disclose may be subject to disciplinary action up to and including dismissal.

Examples of conflicts of interest include, but are not limited to, the following:

- an employee uses government property or the employee's position, office or government affiliation to pursue personal interests;
- 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 requests or accepts from an individual, corporation or organization, directly or indirectly, a personal gift or benefit that arises out of their employment in the 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.
- an employee solicits or accepts gifts, donations or free services for work-related leisure activities other than in situations outlined above.

Allegations of Wrongdoing

Employees have a duty to report any situation 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 directive.

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;
- other employees must report, in writing, to their deputy minister who will acknowledge receipt of the submission, investigate the matter and respond in writing within 30 days after receiving the employee's submission. Where an allegation involves the deputy minister, the employee must forward the allegation to the Deputy Minister to the Premier.

Employees must report a safety hazard or unsafe condition or act in accordance with the provisions of the WCB Occupational Health and

Safety Regulations.

Where an employee believes that the matter has not been resolved by the deputy minister, the employee may then refer the allegation to the appropriate authority. If the employee decides to pursue the matter further then:

- allegations of illegal activity must be referred to the police;
- allegations of a misuse of public funds must 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 Water, Land and Air Protection.

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 and Minister Responsible for Treaty negotiations. In the case of affidavits required for use in arbitrations or other proceedings related to employee relations, the Labour Relations Branch, 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 to be treated as subject to solicitor/client privilege and is, therefore, confidential. Such an opinion is not to be released to persons outside the public service without prior written approval by the Legal Services Branch and/or the Criminal Justice Branch, Ministry of Attorney General and Minister Responsible for Treaty Negotiations.

Working Relationships

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

	<p>provided that the deputy minister is satisfied that sufficient safeguards are in place to ensure that the Employer's interests are not compromised.</p>
Personnel Decisions	<p>Employees are to disqualify themselves as participants in personnel decisions when their objectivity would be compromised for any reason or a benefit or perceived benefit could accrue to them.</p> <p>For example, employees are not to participate in staffing actions involving direct relatives or persons living in the same household.</p>
Outside Remunerative and Volunteer Work	<p>Employees may engage in remunerative employment with another Employer, carry on a business, receive remuneration from public funds for activities outside their position or engage in volunteer activities provided it does not:</p> <ul style="list-style-type: none"> • interfere with the performance of their duties as a 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 to which they have access by virtue of their public service employment; and • gain an advantage that is derived from their employment as a public service employee. <p>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.</p>
Responsibilities	
Ministries	<p>Deputy Ministers are responsible for:</p> <ul style="list-style-type: none"> • ensuring that the provisions of this policy directive are met; • ensuring that employees are advised of the required standards of conduct and understand the consequences of non-compliance; • designating a ministry contact for matters related to standards of conduct; • ensuring that all possible breaches of the policy directive are thoroughly investigated;

- based on the results of an investigation, ensuring that appropriate action is taken;
- ensuring that confidential information is handled with caution and discretion;
- waiving the provision on working relationships under the circumstances indicated; and
- delegating authority and responsibility, where applicable, to apply this policy directive within their organization.

Supervisors and managers are responsible for:

- advising staff on standards of conduct issues;
- ensuring that confidential information is handled with caution and discretion; and
- assisting staff in the resolution of conflicts of interest.

Employees are responsible for:

- fulfilling their assigned duties and responsibilities, objectively and loyally, regardless of the party or persons in power and regardless of their personal opinions;
- disclosing and resolving conflicts of interest situations in which they find themselves;
- maintaining appropriate workplace behaviour; and
- checking with their designated ministry contact, supervisor, manager or personnel advisor when they are uncertain about any aspect of this policy directive, including:
 - the appropriateness of receiving outside remuneration,
 - potential, perceived or actual conflicts of interest, and
 - releasing any information that may be confidential.

Legislative Authorities

Public Service Act

Human Rights Code

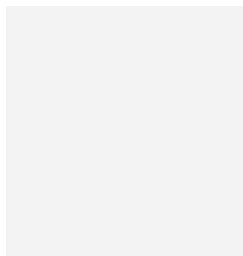
Freedom of Information and Protection of Privacy Act

Workers Compensation Act

Occupational Health and Safety Regulations

Other Authorities and References

- B.C. Government and Service Employees' Union Master Agreement, Article 1.8, Article 32



- Nurses Master and Component Agreements, Article 30
- The Professional Employees Association Master and Subsidiary Agreements, Article 36
- Personnel Management Policy, Human Rights in the Workplace - Discrimination and Sexual Harassment

Cancellations

Personnel Management Policies and Procedures Manual, Directive 1.3, Standards of Conduct

Effective Date

September 22, 2003
Administered by the Policy and Programs Branch

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