



Director of Military Prosecutions

National Defence Headquarters
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DMP Policy Directive

Directive #: 016/17

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Cross Reference: Pre-Charge Screening, Post-Charge Review

Subject: Appointment of Special Prosecutors

APPLICATION OF POLICY

1. This policy applies to the appointment of a Special Prosecutor whenever there is a risk of an actual or perceived conflict of interest in the conduct of military prosecution duties that may adversely impact public confidence in the administration of military justice.
2. INTRODUCTION
3. The appointment of a Special Prosecutor may be considered in certain circumstances where there may be the potential for an actual or perceived conflict of interest should military prosecution duties be conducted by a Regional Military Prosecutor (RMP – also referred to as Prosecutor in this Policy Directive¹) of the Canadian Military Prosecution Service (CMPS). The matter could be referred to a Special Prosecutor in order to avoid an actual or perceived conflict of interest and to maintain public confidence in CMPS and in the administration of military justice.
4. A Special Prosecutor for the purposes of this policy is a Canadian Armed Forces (CAF) officer who is a member of the bar of a province in good standing and who is not a member of the Legal Branch.

STATEMENT OF POLICY

5. The Director of Military Prosecutions (DMP) may appoint a Special Prosecutor who meets the criteria found under section 165.15 of the *National Defence Act (NDA)* which states that the DMP may be “assisted and represented by officers who are barristers or advocates with standing at the bar of a province.”
6. The appointment of a Special Prosecutor at the DMP’s discretion is contingent upon consideration of the specific circumstances of the case. All appointments will be made in writing by the DMP and may be made public on the DMP’s website at <http://www.forces.gc.ca/en/caf-community-legal-services/mil-prosecutions.page>

1 Any reference in this policy to “Regional Military Prosecutor (RMP)”, “Prosecutor”, “Prosecutors”, “Canadian Military Prosecution Service” or “CMPS” shall be deemed to refer to any officer or officers in the course of assisting or representing the Director of Military Prosecutions (DMP) (pursuant to section 165.15 of the National Defence Act).

7. Conflicts of interest of a lesser nature than those requiring the appointment of a Special Prosecutor may be dealt with through the appointment of a legal officer of the Office of the Judge Advocate General (OJAG) who is not a member of CMPS. Such officers may also be appointed by the DMP under section 165.15 of the *NDA*.

PRACTICE/PROCEDURE

8. When assigned to specific prosecution duties, the Prosecutor shall conduct an assessment of the file to determine if there is an actual or perceived conflict of interest. Actual or perceived conflicts of interest arise when the nature of the relationship between the Prosecutor (or the DMP and/or the CMPS), and the accused, complainant or victim is such that it conflicts, or could reasonably be perceived as conflicting, with the Prosecutor's duties and responsibilities in a way that: impairs their ability to act in the public interest; and/or negatively affect the public's confidence in the DMP and CMPS and their ability to discharge their responsibilities.
9. Where a Prosecutor becomes aware of such conflict of interest, the Prosecutor shall notify the appropriate Deputy Director of Military Prosecutions (DDMP).
10. Depending on the nature of the conflict of interest, the DDMP shall assign, or cause to assign, the matter to another Prosecutor, or where it appears that the conflict could be resolved only through the appointment of a Special Prosecutor or another legal officer of the OJAG, refer the matter to the DMP.
11. Should the DMP be directly implicated in the matter, the Assistant Director of Military Prosecutions (ADMP) shall cause a request to the Minister to appoint an acting DMP under section 165.16 of the *NDA*. The acting DMP would then be empowered to appoint a Special Prosecutor under section 165.15 of the *NDA*.

Potential Conflicts of Interest

12. In general matters involving actual or perceived conflicts of interest, cases should be referred as follows:
 - a. matters shall be referred to a Special Prosecutor where the accused is:
 - i. the Judge Advocate General (JAG);
 - ii. a Deputy Judge Advocate General (DJAG) or a member of the Legal Branch who holds the rank of Colonel/Captain(N); or
 - iii. a Military Judge.
 - b. matters shall be referred to a legal officer of the OJAG other than a RMP where the accused is:
 - i. the ADMP;
 - ii. a DDMP; or
 - iii. a RMP.
 - c. matters shall be referred to another Prosecutor where the accused or the complainant is closely connected to the Prosecutor to whom the file was initially assigned;

- d. matters shall be referred to a Special Prosecutor where the complainant or victim is:
 - i. the Judge Advocate General (JAG);
 - ii. a Deputy Judge Advocate General (DJAG) or a member of the Legal Branch who holds the rank of Colonel/ Captain(N); or
 - iii. a Military Judge.
- e. Matters shall be referred to a legal officer of the Office of the JAG (OJAG) other than a RMP where the complainant or victim is:
 - i. the ADMP;
 - ii. a DDMP;
 - iii. a RMP; or
 - iv. part of the CMPS support staff (civilian or military).

List of CAF Officers who are Members of the Bar of a Province

- 13. To facilitate the appointment of Special Prosecutors, the Office of the DMP shall maintain a list of CAF officers who are members in good standing of the bar of a province but who are not legal officers.

Application of DMP Policy Directives

- 14. Special Prosecutors or legal officers of the OJAG appointed by the DMP are required ordinarily to be responsible to carry out the charge assessment and, where there is a decision to prefer charges for Court martial, for the conduct of the ensuing prosecution.
- 15. Special Prosecutors and legal officers of the OJAG appointed by the DMP are required to apply all DMP Policy directives at all steps of the pre-charge screening, post-charge review and court martial process unless the policy would require the Special Prosecutor to take action that would be inappropriate in the circumstances.

AVAILABILITY OF THIS POLICY STATEMENT

- 16. This policy statement is a public document and is available to members of the CAF and to the public.