

Prosecutor Classification of In-House Lawyers: Solicitor-General's Guidance

1. The following classification framework applies to in-house lawyers who lead public prosecutions in the District Court and are employed by public service departments and Crown entities. It creates a career pathway environment which allows for capacity building, training and supervision of prosecutors. It is designed to assist agencies with allocation of criminal prosecutions to the appropriate level of in-house counsel, thereby enhancing the prosecutorial capability of the public prosecutions network.

Key principles

2. **Flexibility and discretion:** This document outlines the ordinary criteria for classification as a general guidance against which classification applications will be measured. It is by no means a prescriptive or exclusive code. Variations of or departures from the guidance criteria will be looked at on a case-by-case basis and accommodated in appropriate cases where the candidate presents alternative forms of experience akin to the criteria described below.
3. **Judge alone trial experience:** The main focus of the classification assessment for non-Crown prosecutors is their level of experience in Judge-alone trials as sole or lead counsel. Experience in other areas of litigation (e.g. civil, administrative or family litigation, clerkship to the judiciary etc.) will be taken into consideration and compared, to the extent it is practicable, to the appropriate equivalent level of Judge-alone trial experience.
4. **Junioring and secondments:** Prosecutors in departments and Crown entities may not be exposed to the same frequency of Court appearances as their colleagues from the Crown Solicitor network. This is particularly evident with regards to trial experience. To ensure prosecutors progress through the classification framework and maintain high levels of performance, special encouragement is given to junioring and secondment arrangements with other prosecution agencies, as well as Crown Solicitors, with a view to enhancing the variety and intensity of the criminal advocacy experience.

Supervision

5. Level 1, 2 or 3 Prosecutors are required to be supervised. The supervisor's role will be to guide and mentor the classified prosecutor and, when appropriate, recommend the prosecutor's re-classification. Supervisors will also determine whether a matter is 'simple' or 'complex' for the purposes of this framework (see table below).
6. Agencies that employ in-house prosecutors are encouraged to have at least one Level 4 Prosecutor amongst its staff, who could supervise the agency's prosecutors. In addition, or alternatively, supervision may be provided by appropriately classified prosecutors from other prosecution agencies or Crown Solicitor offices.

7. For the avoidance of doubt, supervision under this framework does not necessarily extend to management of the prosecutor, nor to responsibility for work allocation. Where the person allocating work to prosecutors is not a Level 4 Prosecutor, and the intended prosecutor is one whose classification allows appearances in 'simple' matters only under this framework, feedback from a Level 4 Prosecutor would be required to inform the work allocation.

Application for classification

8. Level 1 Prosecutors will be classified internally by their agency's Chief Legal Advisor, on the recommendation of a supervisor described in the table below.
9. Level 2, 3 or 4 Prosecutors will be classified by the Solicitor-General. Classification applications should be submitted by the agency's Chief Legal Advisor, thus reflecting their own professional assessment of the prosecutor and recommendation that the prosecutor be classified or re-classified.
10. Applications to the Solicitor-General for classification or re-classification may be filed at any time with the Public Prosecutions Unit by emailing publicprosecutionunit@crownlaw.govt.nz.
11. All classification applications to the Solicitor-General should include professional evaluation of the prosecutor's skills by a supervisor described in the table below.
12. Applications should identify how the classification criteria are met. If relevant, the application should identify where one or more of the criteria are not met, and how the prosecutor demonstrates an equivalent level of experience or training.
13. Applications for Level 3 Prosecutor and Level 4 Prosecutor should include representative lists of prosecutions and other significant litigation conducted by the prosecutor, with a brief description of what those matters entailed in terms of prosecutorial experience. In particular: the type of charges (under which legislation); the role played by the prosecutor (e.g. sole/lead or second/junior counsel, in the latter case with an indication as to their role in Court e.g. opened/closed/cross examined); particular areas of expertise; significant features and scope of cases (e.g. number of witnesses, number of days, whether defendant gave evidence).

General

14. Agencies may choose to voluntarily apply stricter classification criteria. Where practicable, and if considered desirable, agencies may also choose to adjust and extend this framework to non-criminal areas of litigation or to non-lawyers who appear in Court for the agency.
15. Where granted, classification decisions will be valid for three years, after which time an application for re-classification will be required to be filed with the Public Prosecutions Unit. Candidates classified as Level 3+ Prosecutors are able to do all of the work of a Level 3 plus the mentoring and supervision of a Level 4 Prosecutor.
16. Prosecution agencies may apply to the Solicitor-General for general or specific approval to appear in Court as an exception to this framework.
17. Crown Law will review this framework no later than 1 October 2019. The review will include consultation with prosecution agencies.

Counsel Classification - Non-Crown Prosecutions

Level 1 Prosecutor		Level 2 Prosecutor		Level 3 Prosecutor		Level 4 Prosecutor	
Entry requirements							
Standard of previous experience	Law degree and New Zealand practising certificate.	At least 1 year of experience in criminal litigation with regular court appearances.	At least 3 years of experience in criminal litigation with regular court appearances.	At least 5 years of experience in criminal litigation with regular court appearances.			
Standard of previous training	Relevant in-house training to the satisfaction of Level 4 prosecutor (from any agency) or PPU.	Ethics for prosecutors ¹ and at least one of the following: <ul style="list-style-type: none"> • Departmental Prosecutors' Forum Bootcamp • Police Prosecution Service (PPS) Intro to Prosecutions Course; • Equivalent in-house or external training. 	Ethics for prosecutors ¹ and at least one of the following: <ul style="list-style-type: none"> • New Zealand Law Society (NZLS) Introduction to Criminal Law Practice course; • PPS Basic Advocacy course; • Equivalent in-house or external training. 	Ethics for prosecutors ¹ and at least one of the following: <ul style="list-style-type: none"> • NZLS Litigation Skills course; • PPS Advanced Advocacy course; • Equivalent in-house or external training. 			
Key demonstrated skills		<ul style="list-style-type: none"> • Sound understanding of relevant procedural provisions. • Basic litigation skills. • Appropriate handling of victims. 	As per Level 2 plus working knowledge of the CPA and Evidence Act, good standard of oral advocacy and litigation skills at trial level.	As per Level 3 plus – <ul style="list-style-type: none"> • advanced competence in cross examination. • exercise of good judgement. 			
Classified by	Chief Legal Advisor	Solicitor-General	Solicitor-General	Solicitor-General			
Operation of a classified prosecutor							
Allocated Court work	Appearing as sole counsel in: <ul style="list-style-type: none"> • Judge's and Registrar's List Courts during the administrative stage²; • Simple³ sentencing hearings; • Simple³ s106 hearings. Drafting simple prosecution documents . ⁴ Junioring. Providing litigation support to other prosecutors.	Level 1 plus: <ul style="list-style-type: none"> • drafting complex³ prosecution documents;⁴ • attending to case management discussions with defence and appearing at case review hearings; • appearing in formal proof hearings; • appearing on defended hearings for infringement offences; • appearing in complex sentencing hearings. 	Level 2 plus: Appearing as sole/lead counsel on <ul style="list-style-type: none"> • Category 1 Judge-alone trials; • Simple³ Category 2 Judge-alone trials; • Cat. 1, 2 or 3 pre-trial hearings; • disputed facts hearings; • appeals to the District Court. 	Level 3 plus: <ul style="list-style-type: none"> • appearing as sole/lead counsel on Category 3 and complex³ Category 2 Judge-alone trials; • mentoring and supervision of Level 1 to 3 prosecutors; • training; • peer review; • assessing whether matters are simple or complex for the purposes of this framework. 			
Supervisor	Level 3 or 4 prosecutor or Crown Solicitor equivalent	Level 4 prosecutor or Crown Solicitor equivalent	Level 4 prosecutor or Crown Solicitor equivalent				

Notes/definitions:

- Note 1: The requirement to attend the '**Ethics for prosecutors**' training will apply only when such a module is made available to prosecutors, by or on behalf of Crown Law.
- Note 2: The **administrative stage** commences when the prosecution is commenced and concludes when a plea is entered. Administrative stage appearances include the first and second appearances, as well as subsequent administrative appearances before the plea is entered.
- Note 3: Determining whether a matter is **simple** or **complex** will be the role of the allocated supervisor.
- Note 4: **Prosecution documents** include charging documents, summonses, summary of facts, case management memoranda, applications for adjournments and pre-trial matters, as well as memoranda and written submissions.