



Province of
British Columbia
Ministry of
Forests

Prince George
REGION
Standard Operating Procedure

Number : 16-1

SUBJECT :

Prosecution Test Procedures

CHAPTER
16

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1.0 Purpose:

To provide standard operating procedures and to define responsibilities for district and regional compliance and enforcement (C&E) staff when dealing with alleged contravention's which may be subject to prosecution. These procedures follow the Ministry's Prosecution Policy including the requirements for consistency and independence of enforcement decisions with respect to recommending case files to Crown counsel.

2.0 Scope:

This procedure provides C&E staff with a decision making tool when considering whether to recommend prosecution to Crown counsel for offences of applicable provincial statutes (Forest Practices Code of British Columbia Act, Forest Act, Range Act). The current procedure does not address alleged offences which come under the investigative mandate of Protection Branch. It also provides guidance on how to deal with alleged violations of the federal Fisheries Act and the Criminal Code. The issuance of violation tickets is not included in this procedure.

3.0 Definitions:

3.1 Prosecution:

Means the laying of a charge against a person alleged to have committed an offence under the Act, Regulations or the Criminal Code. For the purposes of this procedure, prosecution does not include the issuance of a violation ticket.

3.2 Crown Counsel:

Means a Crown prosecutor employed by the Criminal Justice Branch of the Ministry of Attorney General. He/she has the final decision on whether or not a charge will be laid for an alleged offence.

3.3 Report to Crown Counsel:

Means a formal document submitted to Crown counsel recommending prosecution.

3.4 Offence:

Means any contravention of a section of the Acts or Regulations which is specifically identified as being an offence.

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3.5 Lead Investigating Officer

Means the district or regional C&E staff member who is in charge of an investigation.

3.6 Prosecution Test Evaluation Committee (PTEC):

Means a committee consisting of the lead investigator, the district C&E leader (if available), a district C&E FOS and/or the district C&E specialist, and a regional C&E specialist, who will evaluate the prosecution test to determine if a report to Crown counsel should be developed. Where applicable, additional input may be requested from Compliance and Enforcement Branch specialists, the RCMP or other enforcement agencies. The lead investigator will chair the committee.

4.0 Responsibilities

4.1 District enforcement staff or are responsible for investigating alleged contraventions and for the subsequent preparation of case files for senior official determinations and/or possible prosecutions. The prosecution test must be considered for all investigations that involve an alleged offence. In cases where a prosecution test indicates that a report to Crown counsel may be warranted, the district will contact the regional C&E leader and inform him/her of the need to carry out a formal evaluation of the prosecution test. The regional C&E leader will then designate a regional C&E specialist to participate as a member of the evaluation committee. A lead investigator will be selected to chair the committee. Factors such as the magnitude and complexity of the investigation and the availability of district resources could result in a decision to appoint the regional C&E specialist as the lead investigator for the remainder of the investigation.

4.2 The lead investigator will be responsible for:

- (a) preparing the investigation case file and carrying out the preliminary prosecution test for cases where an alleged offence has occurred
- (b) chairing the prosecution test evaluation committee and making the final decision as to whether or not the case will be forwarded to Crown counsel
- (c) completing a report to Crown counsel if required

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- (d) completing a report to the senior official for determination, if an administrative remedy is also applicable;
- (e) updating appropriate regional/district C&E staff on the progress of the investigation
- (f) liaising with C&E Branch, Protection Branch, Crown counsel, and other enforcement agencies if required.

4.3 The regional C&E specialist will be responsible for:

- (a) assisting in the evaluation of district prosecution tests
- (b) providing an investigative lead role or assistance to districts as required;
- (c) providing advice to districts on investigative strategies for potential prosecution cases;

4.4 District members of the PTEC will be responsible for:

- (a) assisting in the evaluation of prosecution tests
- (b) reviewing the case details as required to determine whether there are sufficient resources in the district to complete the investigation;
- (c) preparing a resource shortfall briefing note to be forwarded to the regional C&E leader if there are insufficient resources to carry out the investigation;

4.5 The RSM/regional C&E leader will be responsible for:

- (a) assigning a regional C&E specialist to provide advice or take on the role as lead investigator,
- (b) reviewing any resource shortfalls identified by the PTEC
- (c) contacting other regions or branches for assistance if regional resources are inadequate
- (d) advising the district and provincial C&E leaders if a case cannot proceed due to resource shortfalls.

4.6 All members of the prosecution test evaluation committee will provide input into the decision on whether or not proceed with a report to Crown counsel. However, the final decision will be made by the lead investigating officer. The decision as to whether or not the case meets the prosecution test will rest solely on the fact pattern of the case.

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5.0 Procedures:

5.1 Provincial Statute Prosecution (Forestry and Range legislation):

- 5.1a** The district lead investigator will complete the "Prosecution Test Sheet" for cases which involve an alleged offence (Appendix A). In cases where it is warranted, the investigator will request a formal prosecution test evaluation by submitting the above form to the regional C&E leader.
- 5.1b** Upon receipt of the request, the regional compliance leader will assign a regional C&E specialist to participate in the evaluation. The regional specialist will then contact the district in order to confirm the membership of the prosecution test evaluation committee (PTEC) and to arrange a date and time to carry out the evaluation.
- 5.1c** Members of the PTEC will review the facts and evidence gathered to date. The lead investigator will then make a decision as to whether a report to Crown counsel will be submitted. Notes should be taken during the meeting. Page one of the "Prosecution Test Evaluation Sheet" (Appendix B) will be completed by the lead investigator. If the investigation is deemed to warrant a recommendation to Crown counsel for prosecution, the members of the PTEC will discuss, the following items:
- (a) Availability of staff
Given the complexity of the case, does the district feel it has both the time and sufficiently trained personnel to carry out the investigation internally? The role of the regional C&E specialist will also be determined i.e. what level of consultation or assistance is required by the district lead investigator, or will the C&E specialist assume the role of lead investigator for the district.
 - (b) Availability of funding
Are there anticipated investigation costs that would exceed current budget allocations? If the case is also being pursued administratively, would any extraordinary investigative costs qualify for funding through the Remediation Sub-account?

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- 5.1d** After completion of the discussion, the district C&E leader or designate will fill out Page two of the "Prosecution Test Evaluation Sheet" and forward the completed form to the regional C&E leader.
- 5.1e** Upon receipt of the form, the regional C&E leader will follow up any requests for support of the investigation.
- 5.1f** When the investigation, has been completed, the lead investigator will submit the report to Crown counsel and distribute the required copies. For administrative remedies, the required copies of the report will be forwarded to the district C&E leader who will in turn forward it to the senior official for determination.
- 5.2 Provincial Statute Prosecution (Forestry legislation dealing with environmental issues):**
In accordance with the Prince George Regional Implementation Plan, the Ministry of Environment, Lands and Parks must be contacted in cases where environmental issues are involved. After a joint review of the case, it will be decided which ministry will take leadership of the investigation. If the investigation becomes the responsibility of the Ministry of Forests, the above process will be followed. If MELP takes on the lead responsibility, then Ministry of Forests staff should provide assistance as requested.
- 5.3 Federal Statute Prosecution (damage to fish habitat)**
If an investigation indicates that there has been potential damage to fish habitat, then MELP and the federal Department of Fisheries and Oceans must be notified. After a joint review of the case, it will be decided which agency/ministry will proceed with the investigation. If DFO/MELP feels that prosecution under the Fisheries Act is warranted, MOF staff will have no further involvement in the prosecution investigation beyond providing assistance to the other agencies as requested.

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5.4 Criminal Code Prosecutions:

If obvious criminal activity is discovered in progress, and it is important that the activity is stopped immediately, then the local RCMP detachment must be contacted.

Most forestry-related crimes, even if they are active, are not the type that would require an immediate discharge of RCMP authority. In fact, some discreet observation from the person making the discovery (i.e. noting licence plate numbers, descriptions, etc.) and then leaving quietly could be beneficial. Forestry investigations of a criminal nature are the mandate of the RCMP Forest Crimes Unit, who must be notified of any suspected criminal activity. If district C&E staff is uncertain whether a contravention is of a criminal nature, they should discuss the incident with a regional C&E specialist prior to making a decision on whether or not to contact the Forest Crimes Unit.

5.5 Joint administrative and prosecution actions

If an outside agency takes the lead in the investigation of an offence, the report to Crown counsel will be completed by that agency. However, if an administrative remedy will also be pursued for the contravention, Ministry of Forests enforcement staff will also be required to complete a report to the senior official for determination.

6.0 Attachments:

Appendix A - **Prosecution Test Sheet**

Appendix B - **Prosecution Test Evaluation Sheet: Pages 1 & 2**

Ray L. Schultz, R.P.F.
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