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

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ARCS/ORCS FILE NUMBER: <b>56860-00</b>	EFFECTIVE DATE: <b>March 15, 2004</b>	POLICY CODE: <b>ENV 1</b>
SUBJECT: <b>Environmental Prosecutions</b>		CROSS-REFERENCE: <b>CHA 1    CHA 1.2</b>

**POLICY**

Reports to Crown Counsel on environmental offences and complicated or sensitive forestry related prosecutions under the *Criminal Code* should be forwarded for charge assessment to designated environmental Crown Counsel who have expertise in those matters. The procedure on page 2 should be followed.

The Branch policy on charge assessment guidelines (CHA 1), rather than the policy on social regulatory – provincial statute offences (CHA 1.2), is to be applied to environmental offences. In applying the charge assessment standard, Crown Counsel should keep in mind the importance of both the general legislative scheme to protect the environment and the overarching principle of general deterrence. The public interest test for prosecution is generally met where one or more of the following factors apply:

- other methods of enforcement have proven ineffective in relation to previous offences, or there is reason to believe that other enforcement methods will not be effective
- the accused is a repeat offender
- the action of the offender was wilful, or fell significantly below the standard of due diligence
- there is more than minimal damage to the environment, or there is substantial potential for damage to the environment
- there is a significant non-compliance with environmental legislation, regulations or standards
- the lives or safety of persons were endangered
- the public interest in the maintenance of environmental values otherwise requires a prosecution

## DISCUSSION

### Environmental Prosecution Procedure

This policy applies to all prosecutions of environmental and forestry related offences under the provisions of various provincial statutes, primarily the *Environmental Management Act*, *Wildlife Act*, *Forest Act*, *Forest Practices Code of British Columbia Act* and *Water Act*, as well as the federal and provincial *Fisheries Acts*.

All environmental prosecution files should be forwarded for charge assessment to the designated environmental Crown Counsel for that area. They should consult with Regional Crown Counsel and the Director, Legal Operations or designate in significant, sensitive or particularly complicated cases. Cases which in the opinion of designated environmental Crown Counsel do not require their involvement may be referred to the Crown Counsel office closest to the location of the offence for prosecution, in which case the designated environmental Crown Counsel will be available to provide advice and assistance.

Designated environmental Crown Counsel will generally have conduct of all appeals to the Supreme Court of British Columbia arising out of environmental cases. Decisions with respect to Crown appeal requests to the Supreme Court of British Columbia in environmental matters will be made following consultation between Regional Crown Counsel and the Director, Legal Operations or designate, and policy APP 1.1 applies.

Decisions with respect to Crown appeal requests to the Court of Appeal in environmental cases will be made following consultation between Regional Crown Counsel, the Director, Legal Operations or designate, and the Director of Criminal Appeals and Special Prosecutions. Generally, appeals to the Court of Appeal will be conducted by the Director, Legal Operations or designate. Decisions with respect to a possible Crown appeal, or application for leave to appeal, to the Supreme Court of Canada in an environmental case, and on the assignment of conduct in such cases, will be made following consultation between Regional Crown Counsel, the Director, Legal Operations or designate, and the Director of Criminal Appeals and Special Prosecutions. In determining whether a Crown appeal should be taken to the Court of Appeal or Supreme Court of Canada, policy APP 1 applies.

Any disagreement about whether a Crown appeal or application for leave to appeal should be undertaken will be resolved by the Assistant Deputy Attorney General.

### *Forest Practices Code of British Columbia Act*

Provincial forestry legislation establishes schemes which provide a double tiered system of remedies and sanctions contemplating that the majority of violations will be dealt with by way of administrative remedy, and that only the more serious matters will be dealt with by way of prosecution. Additionally, the schemes place the primary focus for compliance on holders of licences or other tenures, rather than on the individuals or employees working in the forests. Restraint should be exercised in prosecuting those who do not have the primary responsibility to ensure that forestry standards are met.