

Provincial Offences Act – Part III Procedure

Reviewed Date		Number	<i>LG0105</i>
Revised Date		Approved Date	<i>November 22, 2000</i>

Introduction

Under the provisions of Part III of the Provincial Offences Act an information may be sworn before a Justice of the Peace when it is established that one or more persons may have committed an offence. The process is usually initiated when dealing with situations that fall within one or more of the following areas:

- a) The case particulars are sufficiently detailed and involve issues which are too complex to deal with under Part I procedure;
- b) Where previous Offence Notices that have been issued appear to have limited impact and it is deemed appropriate to seek higher penalties;
- c) Summoning the appearance of the defendant before the court is deemed beneficial to allow for a full answer to the charge.

Purpose

Legislative Authority

Policy Definitions and Interpretation

Policy

1. Approval of the Service Director or designate is required prior to the application of Part III proceeding.
2. The Legal Consultant is responsible for the assessment and evaluation of case files prior to application of Part III proceeding, for making recommendations to the Service Area Director and staff with regard to application of Part III proceeding, and for proceeding with matters before Provincial Court consistent with prosecutorial standards. Refer to Prosecution Information Form (Appendix 1).

Procedures

A. Case File Management

1. The Provincial Offences Officer (see policy LG0107 Designation of Provincial Offences Officer) completes an accurate and detailed case file together with the applicable documentation:
 - a) Case summary brief/synopsis

- b) Statements
 - c) Field reports / notices
 - d) Samples
 - e) Photographs with summary table
 - f) Orders
 - g) Corporate / Business / Land Title or Registry documents (see LG0110Titles Search Policy and LG0109Corporation and Business Searches Policy)
 - h) Other applicable documentation
 - i) Prosecution Information Form. Refer to LG0105(F1)
2. The Provincial Offences Officer reviews the case file with their Director prior to submitting a request to proceed with a Part III prosecution.
 3. The Provincial Offences Officer forwards relevant documentation with the request to proceed with Part III prosecution to the Legal Consultant.
 4. The Legal Consultant reviews, assesses and evaluates the evidence in the case file for sufficiency and continuity. Where it is the opinion of the Legal Consultant that deficiencies exist, the Legal Consultant may meet with the Provincial Offences Officer and the Service Director or designate to discuss the deficiencies and recommend remedial measures.
 5. The Legal Consultant examines and prepares legal documentation and the prosecution file in accordance with legal practice.
 6. Once a charge has been sworn before a Justice of the Peace a summons is issued for service and the Legal Consultant forwards a notice for trial to the respective agency staff and Service Director. Refer to Notice for Trial Form LG0105(F2)
 7. Prior to appearance in provincial court, the Public Health Inspector must re-inspect fixed premises to determine the status of the deficiencies and report to the Legal Consultant as required. Inspectors under the Tobacco Control Act will not generally conduct pre-trial site assessment.
 8. The Legal Consultant schedules pre-trial meetings in consultation with Provincial Offences Officer, the defendant/counsel, witnesses and the Service Director or designate as required to review and discusses case evidence, strategy and proceedings.

B. Service of a Summons and Completion of the Affidavit

1. All summons that are issued are to be served personally on the defendant and where the defendant is a corporation service shall be made upon an officer of the company. i.e. President, Vice-President, Secretary, Treasurer or Director.
2. Where service of the summons is not likely to occur prior to the appearance date, the Provincial Offences Officer notifies the Legal Consultant who determines whether it is necessary to appear before the court.
3. Once service has been achieved Provincial Offences Officer completes the affidavit of service and the following information:
 - a) Name of issuing officer and agency
 - b) Date of service (D,M,Y)
 - c) Mark appropriate service box

- d) City in which the affidavit is to be sworn
 - e) Enter your Provincial Offences Officer number and agency designation beside DIV.
4. The Provincial Offences Officer swears the affidavit before a Commissioner for taking affidavits or contacts the local provincial court office for an appointment to see a Justice of the Peace (Contact the Legal Consultant). Refer to Affidavit of Service of Summons Form LG0105(F3).
 5. Submit the original and a copy of the completed summons with affidavit to the Legal Consultant.
 6. Disclosure of case file and related documents will usually occur after the first appearance and under the direction of the Legal Consultant.
 7. The Legal Consultant will schedule pre-trial conference agency personnel, the defendant/counsel or agent to discuss, review or negotiate cases as required.
 8. The Legal Consultant is responsible for all matters related to case proceeding and prosecution of the case once the case is before the Court.
 9. Post-trial meeting will be conducted by the Legal Consultant with agency staff the service director or designate as required to review the case outcome, legal issues and agency performance related to the case.
 10. The Legal Consultant will prepare and close all case files, compile statistical data and report the outcome of the cases on the Provincial Court Case Management Data System.

C. Appeal Matters

1. Notices of Appeal will be served on the Legal Consultant who will prepare and initiate a response after consultation with Service Director, and the Medical Officer of Health.
2. The Legal Consultant will facilitate all case matters related to Part III Appeal procedures with the Ministry of Health, Ministry of Attorney General, counsel or respond on behalf of the agency.
3. The disposition of all case outcomes is forwarded to the service director or designate for inclusion in the file. The Legal Consultant retains a copy of the results and a summary is compiled on the Provincial Court Case Management Data System.
4. The decision to access external legal counsel occur at any step may in the process follow any consultation with the Medical Officer of Health.

Related Forms

C6.020(F1) - Prosecution Information Form
C6.020(F2) - Notice For Trial
C6.020(F3) - Legal - Provincial Offences Act - Part III Procedure

Related Policies

Final Approval Signature: _____

Review/Revision History:

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