



**Forest
Practices
Board**

Complaint Investigation Process

February 2017

Table of Contents

INTRODUCTION.....	1
1.0 MISSION, VALUES AND GUIDING PRINCIPLES	2
1.1 Mission Statement	2
1.2 Fundamental Purposes	2
1.3 Values and Guiding Principles.....	2
2.0 THE BOARD’S MANDATE.....	3
3.0 NATURE OF COMPLAINTS AND INVESTIGATIONS	4
3.1 Making the Decision to Investigate	4
4.0 THE COMPLAINT INVESTIGATION PROCESS.....	5
5.0 RELATED MATTERS	7
5.1 Anonymous Information.....	7
5.2 Requests for Anonymity (Confidentiality)	7
5.3 Who Can File a Complaint?.....	7
5.4 Conflicts of Interest.....	8
5.5 Withdrawing Complaints.....	8
5.6 Timeliness.....	8
5.7 Reporting	8
5.8 Representations.....	9

Introduction

This document provides an overview of the Forest Practices Board's mandate and process for investigating public complaints about forest and range planning and practices. It has been prepared to provide information and guidance for parties involved in, or affected by, a Forest Practices Board complaint investigation.

Further information about the Forest Practices Board, its policies and activities can be found at: www.bcfpb.ca

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1.0 MISSION, VALUES AND GUIDING PRINCIPLES

In 1994, the provincial government created the Board as an independent public agency under the *Forest Practices Code of British Columbia Act* (the Code). In 2004, the provincial government continued the Board's mandate in the *Forest and Range Practices Act* (FRPA), and later in 2004 added a role for the Board in the *Wildfire Act* (WA). Collectively, all three acts are referred to in this document as "forest and range practices legislation."

1.1 Mission Statement

The Board serves the public interest as the independent watchdog for sound forest and range practices in British Columbia.

1.2 Fundamental Purposes

In fulfilling its mission the Board encourages:

- sound forest and range practices that warrant public confidence;
- fair and equitable application of the *Forest and Range Practice Act* and the *Wildfire Act*; and
- continued improvements in forest and range practices.

1.3 Values and Guiding Principles

The Board applies principles that reflect key organizational values as a guide for day-to-day practices and operations, including complaint investigations. The Board:

- acts on behalf of the public's interest, not those of any single group,
- is straightforward in its approach;
- emphasizes solutions over assigning blame;
- behaves in a non-adversarial and balanced manner;
- treats all people with respect, fairness and sensitivity;
- performs in a measured, unbiased and non-partisan manner;
- carries out its mandate with integrity and efficiency;
- provides clear and concise reports to the public;
- bases actions on knowledge, experience and common sense; and
- is accessible and accountable.

2.0 THE BOARD'S MANDATE

The Forest Practices Board was established in December 1994 and is continued today under the *Forest and Range Practices Act* (FRPA). The Board has responsibilities under FRPA and the *Wildfire Act* (WA).

The Forest Practices Board provides assurance to the public – both locally and internationally – about forest and range practices in British Columbia. The Board also makes recommendations aimed at improving forest and range practices and legislation.

The FRPA and the WA define the Board's statutory roles and responsibilities, requiring it to:

- deal with complaints from the public, relating to either compliance with FRPA and the WA, or to enforcement of that legislation;
- undertake periodic independent audits of agreement holders and government, to determine compliance with FRPA and the WA; and
- report conclusions (with reasons attached) of investigations and audits.

In carrying out its responsibilities, the Board is enabled by legislation to:

- conduct special investigations;
- appeal specified determinations to the Forest Appeals Commission and join appeals launched by others;
- make recommendations following an investigation or an audit;
- follow up on recommendations; and
- make special reports, or comment publicly about matters relating generally to the Board's duties under legislation or to a particular case investigated.

These roles and responsibilities extend to all activities described in Parts 2 to 5, Part 8 of FRPA and Parts 1 to 3 of WA.

The Board has the power to obtain information or records related to a complaint investigation, a special investigation or an audit (section 125 of FRPA). In addition, it can ask for information or records in the form and manner it considers appropriate.

The Board's roles and responsibilities apply to licence holders and the BC Timber Sales Program, who are subject to requirements under FRPA and the WA, and various government agencies with responsibilities under that legislation.

The Board reports to the public, complainants or auditees, and ministers with responsibilities under FRPA and WA.

3.0 NATURE OF COMPLAINTS AND INVESTIGATIONS

The Board must deal with complaints from the public regarding the sections under FRPA for which it is responsible. Complaints must be related either to compliance with requirements, described under Parts 2 to 5, Part 6 of FRPA and Parts 1 to 3 of WA, and the regulations associated with those requirements, or governments enforcement of those requirements.

Before and during a complaint investigation, the Board attempts to bring participants together and encourages them to find solutions to all, or some, of the issues raised in the complaint. If the complaint cannot be resolved, the Board will proceed with an investigation.

In some investigations, it can be difficult for the Board to assess strict compliance with some provisions or objectives in FRPA because achievement of results related to those provisions or objectives may not be evident for years. Therefore, investigators may assess the soundness (from the perspective of the public) and effectiveness of forest and range practices.

If an investigation concerns discretionary decisions, an investigator will examine whether they were based on sufficient and up-to-date information, and were reasonably made considering the 11 FRPA values (set out in the *Forest Planning and Practices Regulation*), objectives set by government, and the public interest in sound forest and range practices. Specifically the investigator will ask:

"Was the decision consistent with sound forest and range practices? Did it achieve the intent of the forest and range practices legislation? And was it based on an adequate assessment of available information?"

Guidance documents are not part of forest and range practices legislation, but often provide important information about the government's regulatory intent or the standards expected of those carrying out forest and range practices. Investigators actively use guidance documents, handbooks and any other documentation available from parties (such as standard operating procedures) to help assess the reasonableness, effectiveness or appropriateness of practices and decisions.

3.1 Making the Decision to Investigate

If the Board has the authority to investigate a complaint, it must do so unless at least one of the following five factors applies:

1. **Is the matter more than a year old?** The Chair will consider not only how old a matter is and how long the complainant has known, or should have known, of the problem, but also when the complainant learned that he or she could contact the Board.
2. **Is there another adequate legal or administrative remedy available that the complainant could have tried?** The Chair will consider whether the existing administrative procedures include more than just formal review or appeal. For example, could the complainant have simply discussed the concern with the parties involved?
3. **Is the complaint frivolous, vexatious, lacking in good faith, or concerning a trivial matter?** This rarely applies because the frivolous or vexatious nature must be plain and

obvious, such as when the intent is clearly only to annoy or embarrass a participant in the complaint.

4. **Is further investigation actually necessary?** The Chair may consider whether a previous investigation has already dealt with the issue(s). Another example would be when undisputed facts obtained during the initial investigation are enough to decide the matter; if so, the Board could simply report the conclusion without further investigation.
5. **Could an investigation actually help the complainant?** For example, if the complaint is about something from the past, and the law or practice has already changed to prevent the occurrence or recurrence of the problem, an investigation might not be beneficial to the complainant.

4.0 THE COMPLAINT INVESTIGATION PROCESS

Although the investigation process is flexible and adaptable to the specific circumstances of each complaint, an investigation typically proceeds through the following series of steps:

1. A member of the public contacts the Board with a concern. If the concern involves something that the Board could help with, a Board investigator will informally begin some exploratory work. This may include talking to the participants to clarify the issues at stake, reviewing the history among the parties, and attempting to help resolve the matter. If it involves something that is within the Board's authority to investigate, the investigator sends the complainant a *Notice of Complaint* form, with an explanatory brochure.
2. When the Board receives a *Notice of Complaint* form from a complainant, an investigator checks it for completeness. A complaint to the Board must be in writing, contain the name and address of the complainant, the grounds for the complaint, and a statement describing the relief requested. If all of this information is included, the investigator will acknowledge receipt of the complaint in writing (generally by email). If any required information is missing from the original complaint submission, the investigator will explain the deficiencies (in writing) and invite the complainant to resubmit the complaint. When a complaint is received that satisfies the Board's criteria, the Investigations Director will assign an investigator to the complaint if he or she has not already done so.
3. The investigator contacts the participants to more fully understand the issues. Where feasible, the Board prefers to have a dispute resolved rather than investigating and reporting on a complaint, therefore the investigator will encourage problem solving throughout the entire investigation process.
4. If resolution is not possible, the investigator will begin investigating. The investigator will send a notification letter to all involved parties to advise that they are participants in a complaint. The notification letter includes a brief summary of the nature of the complaint, the name of the investigator doing the investigation, and his or her contact information. It also explains that the Board does not represent the complainant, and will remain neutral and objective throughout the investigation.

5. Soon after sending the notification letter, the investigator calls each participant to collect additional information, clarify the issues in the complaint, and organize formal interviews. An investigator's call informs participants about details of the complaint, providing enough information that each participant can respond effectively. The investigator will also answer any questions about the complaint investigation process.
6. The investigator carries out formal interviews individually with participants, examines relevant documents and e-mails, and may do a field investigation.
7. The investigator solicits feedback to ensure he or she correctly understands the facts, and to clarify any facts that are in dispute. Once the facts are satisfactorily checked, the investigator will use them to develop a draft report with discussion, findings, conclusions and possibly recommendations.
8. Every person or party that may be adversely affected by any part of the draft report is given a chance to respond to the report in a process called "representations." The Board Chair determines who is entitled to make representations, and decides the method and timing of representations. Representations are normally provided in written form within two to four weeks after the person or party receives the draft report. In special circumstances, a party or person may be allowed to make oral representations.
9. Board staff carefully consider the representations made by participants, and update the report as necessary based on direction from the Board Chair or panel.
10. Based on direction from the Board Chair or panel, the investigator produces a final report or closing letter. Once approved by the panel or Chair, the report or closing letter goes to the Chair for final publication approval.
11. An advance copy of the report or closing letter goes to the complaint participants (typically a day before public release). If the Board decides to issue a news release about the investigation, a copy will be sent to the participants the day before. The Investigations Director will also send a letter advising each participant who made representations of how their representations were dealt with in the report.
12. On the day of public release, the report or closing letter is sent to the minister and is posted on the Board's website. A report is also sent to the Board's email subscribers, key stakeholders and is shared on social media. If a closing letter is issued, it is only sent to the minister and the participants.

What is a field investigation?

The need for, and approach to, a field investigation associated with a complaint will depend on the nature of the complaint. It may entail an informal field visit to confirm facts provided by participants, or it could include detailed formal assessments of practices on the ground. Sometimes an investigator will organize a field trip with several or all participants to prompt discussion or a possible resolution of the complaint.

The Board may engage its own specialists to assist in field assessments and discussions where it is required.

13. If the Board makes recommendations in its report, the investigator will track the response and will request follow-up information, as necessary. If no response deadline has been set in the report, the investigator will follow up after one year has passed. The parties' responses to any recommendations and the Board's reaction to those responses will be published on the Board website with the original investigation report.

5.0 RELATED MATTERS

5.1 Anonymous Information

The Board will not proceed on information provided by someone who will not identify himself or herself to an investigator. This is not to be confused with complainants identifying themselves, but then requesting anonymity during the investigation process itself (see 5.2 below).

5.2 Requests for Anonymity (Confidentiality)

A complainant may be willing to identify himself or herself to an investigator, but then ask that his or her name not be disclosed to parties during and after the complaint investigation.

Persons wanting anonymity should be aware that the Board can accept a complaint or proposed complaint on an interim basis until the Chair decides whether to grant anonymity. However, investigators will not begin to investigate a complaint by a person wanting anonymity until the Chair has decided whether the complainant can remain anonymous. Persons concerned that their identification may result in reprisals are advised that:

1. The Chair, on behalf of the Board, may agree to keep a complainant anonymous, but cannot ensure that a party will not guess their identity. It is also possible (although unlikely) that the Board would have to disclose a complainant's identity by order of a court or the Information and Privacy Commissioner.
2. FRPA provides some protection on privacy issues. Evidence given to the Board cannot be used in a court against the person providing it (with some exceptions). There is also some protection against discrimination for "whistleblowers."¹ Complainants must decide for themselves whether those provisions provide adequate protection in their circumstances.

5.3 Who Can File a Complaint?

The Board can consider complaints from any person regardless of residency or citizenship. An employee or member of a company, organization or public agency may file a complaint on their own behalf, or on behalf of the group they work for or represent. However, if a person files a complaint on behalf of the group he or she works for, or is a member of, the Board will first confirm whether the group is willing to have the complaint filed.

¹ A whistleblower is a person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct within an organization that is either private or public.

5.4 Conflicts of Interest

The Board has a strict conflict of interest policy that requires Board members and staff to declare whether they might have a real or even a perceived conflict of interest with each complaint file. No individuals with a conflict are permitted any involvement with the complaint.

Anyone with a conflict of interest will have access only to general information about the complaint (the same information that is available to the public—such as information posted on the Board’s website), and not until the information is available to the general public.

5.5 Withdrawing Complaints

Complainants sometimes want to withdraw a complaint. Requests for withdrawal are not automatically granted, but must be considered by the Chair (under section 123 (2) of FRPA). The Board operates in the interests of the general public, therefore the Chair may decide to continue an investigation in the public interest.

5.6 Timeliness

An investigation can be unsettling and have a disruptive effect on a party’s operations and/or on the individuals involved. In addition, complaints usually arise from a dispute, therefore it is important to participants that the Board expresses its views as quickly as possible. Thus, the Board’s goal is to produce reports in a timely manner while maintaining standards for clarity, thoroughness and fair process.

The investigator remains accessible throughout the investigation so all the participants can remain informed about the process and stage of the investigation. The investigator will provide periodic updates, but it is each participant’s responsibility to ask about progress throughout the investigation.

Remaining informed is important because an investigation is a dynamic process. Some issues can be resolved, and the scope of each investigation can be adjusted in response to new information. This may cause the investigation to change focus as it proceeds.

5.7 Reporting

After completing an investigation, the Board must report its findings and conclusions with reasons to the complaint participants and the minister (if the government is not already a party). Investigation reports document the facts and try to reflect the views of the participants on the main issues, including views expressed during the representation process. They may include recommendations to remedy certain circumstances and/or to prevent recurrence of the circumstances that led to the complaint. Where the report includes recommendations to parties, the Board may request a response describing the actions taken to implement the recommendations, or the reasons for not taking action.

The Board may prepare a full report or a closing letter, depending on the nature of the investigation, the findings, recommendations, and whether a resolution was reached during the process. All Board reports are publicly available on the Board's website at www.bcfpb.ca.

5.8 Representations

If the Board determines that a party involved in a complaint may be adversely affected by the complaint investigation report, it must provide that party with an opportunity to make representations to the Board. Normally, parties are asked to provide their representations in writing, although exceptions have been made where circumstances make written representations difficult.

This stage in the process is the final opportunity for parties to make the Board aware of facts, circumstances and rationales that have not previously been disclosed to the investigator and may be important to the findings and conclusions of the investigation. It is also a final opportunity to suggest refinements or changes to the wording in the report. Broadly disputing the investigator's findings is not helpful. Constructive input is preferred, for example referring to specific lines within the report and suggesting alternate wording to the text. If it appears the Board is unaware of important information, this is the last opportunity to bring it to the Board's attention.

Board staff carefully analyze the representations received and then review the analysis with the Board Chair or panel, who make the final decisions on any changes to the report. When the final report is published, the Investigations Director will send a letter to those parties who provided representations explaining generally how the Board dealt with their representations.



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