

Terms of Reference for a Special Investigation

Appropriateness of Wildfire Act Determinations

INTRODUCTION

Almost half of all wildfires in BC are caused by people, and in the past decade, government has spent almost \$2.7 billion on wildfire management. Government has the ability to recover costs related to human-caused wildfires, and may in fact be increasing its efforts to do so.

The *Wildfire Act* (WA) provides two avenues for recovering wildfire suppression costs. Section 25 permits the Minister to recover costs from a Crown land leaseholder or occupier, or private land owner or occupier who caused a wildfire or contributed to its spread. Sections 27 and 28 permit the Minister to recover costs from a person that contravened the *Wildfire Act* or *Wildfire Regulation*.

If government suspects that a person caused a wildfire or contravened the *Wildfire Act*, it conducts an investigation. A government official weighs the evidence and makes a decision, called a determination. The official "determines" whether a person caused a wildfire or whether there has been an administrative contravention, and if so, may levy penalties, recover costs, and order remediation. The Board regularly receives and reviews the *Wildfire Act* determinations.

Section 68 of the *Wildfire Act* permits the Board to conduct special investigations to determine compliance by parties with certain parts of the *Wildfire Act*, including the appropriateness of government enforcement. These are the terms of reference for a special investigation of the appropriateness of *Wildfire Act* determinations.

OBJECTIVE

The objective of this special investigation is to determine whether *Wildfire Act* determinations are appropriate. For the purposes of this investigation, appropriate means consistent, fair, and timely. The review will also identify policy issues, such as how the regime addresses the public interest in hazard abatement (including fuels reduction in wildland urban interface areas), and differences among those subject to its regulations.

SCOPE

All *Wildfire Act* determinations made between January 1, 2015, and the present are included in the special investigation. More than 70 determinations were made during this period.

APPROACH

To determine whether determinations are appropriate (consistent, fair and timely), all determinations within scope will be reviewed, compared and evaluated according to the criteria listed below. Once that is done, any trends will be identified. Relevant Forest Appeals Commission decisions will also be reviewed.

- Activity
- Penalty
- Cost recovery sought, including fire control costs, value of Crown timber and other resources damaged, reestablishment of plantations etc.
- Individual or company
- Size of wildfire
- Non-compliance
- Consideration of damages (is this the same as third bullet above?)
- Relevant fire centre (geographic area)
- Official making decision
- Time from incident to determination
- *Wildfire Act* section 23 factors:
 - (a) previous contraventions of a similar nature by the person,
 - (b) the gravity and magnitude of the contravention,
 - (c) whether the contravention was repeated or continuous,
 - (d) whether the contravention was deliberate,
 - (e) any economic benefit derived by the person from the contravention, and
 - (f) the person's cooperativeness and efforts to correct the contravention.

REPORTING

The results will be reported to the public and will answer the question of whether *Wildfire Act* determinations and selected policy objectives embedded in the regime are appropriate. Opportunities for improvement may be identified and the report may make recommendations for improving legislation, policies, and processes relevant to making determinations under the *Wildfire Act*.