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# PREPARING A CASE FOR ENFORCEMENT

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# Preparing a Case for Enforcement

1. Introductory context
2. Enforcement-related communications
3. Evidence collecting – knowing the case you need to prove, a note on hearsay, keeping good notes, taking good images, using maps and plans, keeping a chronology, and conducting accused/witness interviews
4. A word on “privilege”
5. Best practice tips
6. Dealing with difficult individuals



## High-Level Context of Enforcement

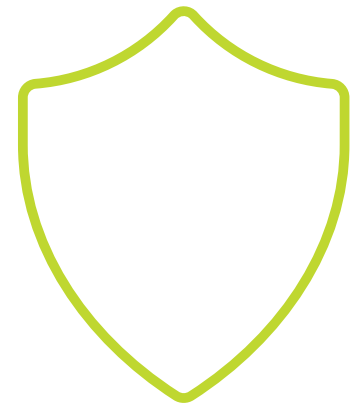
1. Seeking positive compliance and public safety outcomes
2. Dispassionate, sober approach
3. Building regulation enforcement is not an uphill battle before the Courts – law and outcomes are favourable
4. A clearly evidenced case will speak for itself –and result in positive outcomes



## A Note on the Role of Defence Counsel

1. Defend by picking apart your case
2. Will carefully read everything
3. Looking for holes/ambiguities

....this perspective should inform your work



# Case Prep – Enforcement Communications

## General Comments on Communications

1. **\*KEY TIP\*** - Approach all communications as if they will ultimately be before the Court
2. Be aware that local governments are “public bodies” subject to freedom of information legislation (*FOIPPA*)
3. Relevance of “documentary discovery” in litigation context
4. May be part of the record of a statutory “decision making” on a judicial review



# Case Prep – Enforcement Communications

## Tips - External Communications

1. Caution when using precedents – review them carefully
2. Clear writing – consistent use of plain (non-jargonized) language, stick to a single describing term, short and concise sentences
3. Clarity as to expected action – expectation, date for compliance and next steps
4. No need to retain early drafts of letters
5. The use of “confirming letters”



# Case Prep – Enforcement Communications

## Tips - Internal Communications

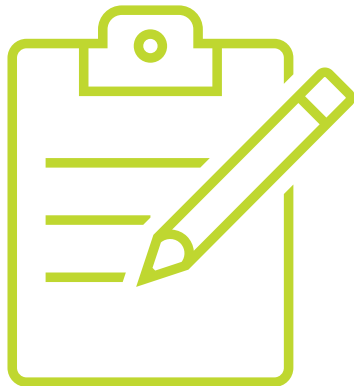
1. No jokes or sarcasm or editorializing – they do not translate
2. Nothing you'd be unhappy for a Judge to read – or published in the media
3. Caution when copying to external third parties (e.g. engineers) – may lose privilege



# Case Prep – Enforcement Communications

## Tips - Use of Standardized Forms

1. Carefully review for irrelevant “legacy” information
2. If using a form – complete all fields
3. Date your forms!





# Case Prep – Evidence Collecting

## Know the Case You Need to Prove

### 1. What is the alleged breach?

Construction has occurred without a building permit and has continued despite a “stop work order” being issued and affixed to the work.

### 2. What are the elements?

- Dates – discovery of breach, issuance of “stop work order”
- Location – within the local government jurisdiction
- Breach – construction occurred with no building permit
- Further breach – additional construction post-“stop work order”



## Tell Your Story in a Compelling Manner

- The strongest cases are those in which the evidence tells a compelling story which calls out for justice to be applied.
- In those cases, the law merely supports and authorizes the outcome which is warranted by the evidence



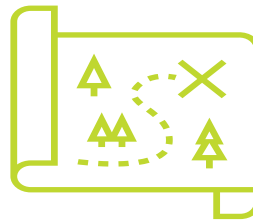
## Tips - Record of Observations and Notes

1. Concise, legible notes
2. Should be made contemporaneous or shortly thereafter
3. Date your notes
4. Sketches can be useful
5. No extraneous information (e.g. no editorializing, no jotting you will not be able to understand later, no doodling)
6. .... Assume you will be cross-examined on everything you write !!



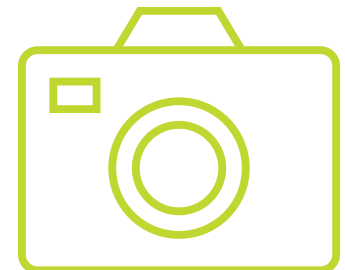
## Tips - Images, Maps and Plans

1. **\*\*Key Tip\*\*** - Images are often, if not always, your best evidence
2. Images are objective evidence
3. Images tell a story which an adjudicator will judge on his/her own
4. Obtain images to tell a story – and do so in a persuasive way



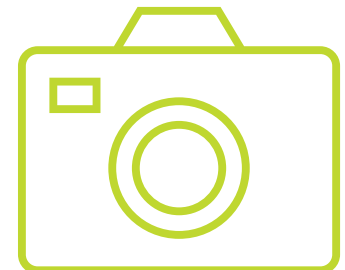
## Tips - Images – Evidentiary Requirements

1. Keep a record of who took the image and when it was taken
2. Will need to be able to say “This image accurately reflects what I personally observed on the date it was taken”



## Tips - Images – Best Practices

1. Learn how to take a decent image (lighting, composition, focus) – not hard with modern technology!
2. If an option in your camera – save to highest resolution possible – and provide high resolution images to legal counsel
3. If possible – toggle geo-location information and date and time signature



## Tips - Maps and Plans

1. Many people are visual learners
2. Helps to orient compass bearings and set the stage
3. Illustrates proximity and layout
4. Many online sources – e.g. ParcelMap BC, local government GIS resources



## Tips - Interviews – generally

1. Subjects: accused, complainant, witness
2. Can be in-person, telephone, videoconference
3. Take detailed notes – and decide whether contemporaneous (can scare people) or afterwards
4. Two representatives allows for evidence to be corroborated





## Tips - Interviews

1. Educate yourself before interview – you will better understand the information and will be able to call out false information
2. Sets goals for the interview – what do you want to accomplish
3. Prepare notes of questions of topics or questions
4. Open-ended vs. closed questions
5. Use of language to produce best responses (e.g. “What time did that happen” vs. “Do you know what time that happened?”)



## Tips - Interviews

6. Ask clear and unambiguous questions (“Was that the first time?” vs. “That wasn’t the first time, was it?”)
7. Short questions
8. One fact per question
9. Consider who you are speaking with – sophistication, choice of language
10. Do not offer opinions
11. Restate questions if required to get an answer
12. Re-cap to ensure accuracy of understanding



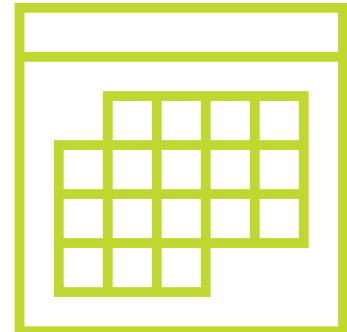
## A Note on Hearsay

1. An “out of court statement admitted for the truth of its contents”
  - May be misperceived, wrongly remembered, misleading, or false
  - No opportunity to test reliability or to subject the declarant to cross-examination
2. Presumptively inadmissible
  - Subject to certain established exceptions (business records, past recollection recorded, etc)
  - Can be used as part of “narrative”



## Chronology and Records

1. Internal value – creation of a clear record of relevant events/information which can be updated and used by multiple staff
2. Value to legal counsel – key resource for factual background, gets counsel quickly up to speed
3. Tells the “whole story” in a single narrative



# Case Prep – Evidence Collecting

## INVESTIGATION CHRONOLOGY

**THIS DOCUMENT IS PROTECTED BY LITIGATION PRIVILEGE  
AND SOLICITOR CLIENT PRIVILEGE**  
(Prepared in Anticipation of Litigation and with the Assistance of Legal Counsel)

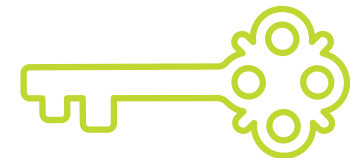
	Date	Document	Key Contents	Notes
<b>Background Records</b>				
1		Land Title Search		
2		Aerial Images		
3				
<b>Historical Records/Approvals</b>				
4		Permit(s)		
5				
6				
<b>Investigation Chronology</b>				
7		Complaint		
8		Inspection		
9		Enforcement letter		



# Case Prep – Evidence Collecting

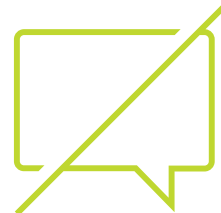
## Key elements of Evidence Collection

1. All relevant applications/permits/inspections
2. All relevant communications
3. All relevant “events” (not otherwise recorded in a document)
4. Make a list of all referenced documents (and make the title of documents clear)
5. The more organized, the better –saves time, promotes accuracy, enhances understanding of case
6. Best (less complicated) to have a single “storyteller”



## A Word or Two on Privilege

1. Once enforcement proceedings are in contemplation – “litigation privilege” protects certain internal records
2. Allows for candid, litigation-related internal communications which are excluded from FOIPPA disclosure
3. Privilege can be lost if otherwise privileged communication is sent or copied to third-parties



## Confirming letters

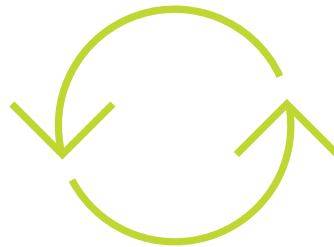
1. Fundamentally, is a piece of evidence
2. Starts with the appreciation that: (1) verbal communications are sometimes required or are valuable, and (2) people hear what they want to hear
3. Creates a record of what was said or agreed to
4. Creates a reverse-onus to disagree with the letter
5. \*\* A simple and powerful tool !!!





## Invariable Practice

1. Invariable Practice = Maintain the exact same practice so that you are reliably able to attest to the fact of something on that basis
2. Useful as evidence of repetitive elements of practice
3. Allows you to give evidence of “I don’t remember specifically, but I have an invariable practice of always doing XYZ”



# Case Prep – Dealing with Difficult Individuals

## Dealing with Difficult Individuals

1. Establish single point of contact
2. Always two staff members present
3. Consider “in writing only” protocol
4. Confirming letters/emails
5. Keep good notes
6. Remain professional and take the high road
7. Make no promises as to outcomes
8. Take steps if verbal abuse or threats of physical abuse



# Case Prep – Dealing with Difficult Individuals

## Understanding the psychology of an investigation subject

1. High stress situation – emotional
2. Varying sophistication
3. May have “inherited” a violation
4. Facing financial loss and burden
5. Looking for an explanation
6. Looking for a blameworthy party
7. Looking for a solution
8. Looking to Health Authority for the “answer”
9. Often, hearing only what they want to hear





# Questions?

