



GUIDE TO SFO PROSECUTIONS

The Serious Fraud Office (SFO) is a small, highly specialised government department responsible for serious or complex financial crime detection, investigations and prosecutions.

Typically our investigations which result in a prosecution will meet one or more of the following indicative criteria:

- a high degree of factual, financial or legal complexity beyond the resources of most other law enforcement agencies;
- multiple victims (often investors) of the suspected financial crime and a high impact on those victims;
- a high impact on public confidence in New Zealand as a safe place to invest, or the integrity of our financial markets; or
- public interest considerations and a preventative impact of a successful prosecution.

In the case of bribery or corruption matters, we focus on crimes involving public officials, which could undermine public confidence in the administration of law.

This focus is consistent with the Government's strategic objectives to encourage a progressive, internationally competitive enterprise economy, and build an economically strong, cohesive New Zealand.

WHEN DOES A PROSECUTION START?

Not all SFO investigations result in a prosecution. The SFO will only commence a criminal prosecution after it has fully investigated an alleged serious or complex fraud. At the completion of the investigation the Director of the SFO will decide whether there is sufficient grounds to commence a prosecution.

The decision to prosecute will be based on:

- the evidence collected during the investigation; and
- the public interest in taking a prosecution.

The criteria for this are set out in detail in the Prosecution Guidelines published by the Crown Law Office www.crownlaw.govt.nz/uploads/prosecution_guidelines.pdf

A woman with dark hair, wearing an orange button-down shirt, is smiling while talking on a black corded telephone. She is also looking at a silver laptop computer. The background is a bright, slightly blurred office or home workspace with a framed picture on the wall.

HOW A PROSECUTION COMMENCES

To commence a prosecution the SFO completes a charging document which is filed with the Courts. Dependent on the circumstances of the case, the defendant will be arrested by the Police on behalf of the SFO or summoned to Court on a date provided by the Courts.

WILL THERE BE A TRIAL?

Not all prosecutions proceed to a trial. Quite often the defendant will plead guilty to the charges and will be sentenced accordingly.

HOW LONG DOES A PROSECUTION TAKE?

The time between the commencement of a prosecution and a trial (or a decision as to whether the defendant will plead guilty) can be lengthy. This can be affected by a variety of factors including:

- the size and complexity of the prosecution;
- available Court resources;
- applications to the Court by the prosecution or defence to deal with legal issues relevant to the prosecution. These hearings could relate to the admissibility of evidence, name suppression or other issues to do with the trial.

Generally speaking, more complicated cases will take longer to get to trial. These will also need greater preparation by prosecution and defence, and usually require more hearings beforehand. It is unlikely that you will have to attend these hearings but if you are required you will be notified in advance.

WHAT HAPPENS WHEN A CASE GOES TO COURT?

If a defendant pleads not guilty, there are a number of stages before the case is actually tried before a Judge and a jury (or a Judge sitting without a jury) to determine if the charges are proven. First, the prosecution must disclose all of its evidence to the defendant's lawyer. This disclosure includes what are called formal written statements, which are the signed statements of possible prosecution witnesses in relation to the case.

In cases of serious or complex financial crime, disclosure may consist of many thousands of documents. There will be a case management conference before a Judge in which the defendant explains whether he or she is going to change their plea, and, if not, the prosecution and defence must explain to the Judge what steps need to be conducted before the trial can begin. As part of this process, each side may require what is called a pre-trial application in which the Judge will be asked to rule on an aspect of evidence or procedure. Occasionally, these rulings are appealed to a higher Court before the trial commences. The last step before the trial is a pre-trial callover. At this stage, both the prosecution and defence confirm the case is ready for trial. Only after these steps have been completed does the trial commence.

At completion of a trial, if the defendant is found guilty the case is normally adjourned for sentencing. This enables the Judge to receive reports such as a victim impact statement and other relevant information, such as information about the defendant, before deciding on what the sentence should be.

WILL I BE KEPT INFORMED OF PROGRESS?

Our website contains information on some of our public prosecutions and may be a useful initial source of information for you.

You have the right to be kept up to date and informed throughout this process and the Case Manager will be able to tell you what is happening with prosecutions throughout. There may be information that the Case Manager is unable to provide you either to comply with the Serious Fraud Office Act or because it may prejudice the prosecution.

If you wish to know about the progress of the prosecution please look on www.sfo.govt.nz or you can contact the SFO Case Manager.

IF YOU ARE REQUIRED TO GIVE EVIDENCE

While you may have provided information during the SFO investigation, a prosecution may not require you to give evidence at a trial. Additionally, while you may be required as a witness not all witnesses are needed to give evidence. Sometimes, if the evidence is not contentious, the prosecution and defence can agree for evidence to be submitted to the court in written form.

If you are required to give evidence you will normally receive a summons telling you what day you are required to appear at the court. If you live a long distance from the court, or you're unwell, it may be possible for you to give evidence by video. The prosecutor will need to make a special application to the court for this to happen, so please inform him or her as soon as you can if you don't think you will make it to court.

For information about giving evidence in Court please refer to the 'Giving Evidence' guide published by the New Zealand Law Society. This can be found at www.lawsociety.org.nz/publications-and-submissions/pamphlets

HOW LONG WILL THE TRIAL GO ON FOR?

There are many things that influence the length of a trial so it will vary from case to case. The majority of SFO cases are large and complex and involve many witnesses and thousands of documents, meaning the trial may go on for weeks. If the case continues for weeks or months, you won't be expected to attend court for the entire period. You will normally only have to attend court on the day that you have to give evidence.

HOW DO I FIND OUT ABOUT THE VERDICT?

The SFO Case Manager will inform you of the verdict. The SFO will usually make a media release about the case so that the verdict appears in the media. Information may also be available on the SFO website.

SUPPORT FOR VICTIMS OF FINANCIAL CRIME

The SFO takes its commitment to victims seriously. We understand that being a victim of a financial crime can be a stressful, unsettling experience. Depending on how the crime has affected you, you may require support. We will endeavour to provide you with a high level of service and to ensure you are put in touch with the right agencies that can provide support and information.

WHAT HAPPENS AT SENTENCING AND CAN I PROVIDE A VICTIM IMPACT STATEMENT?

If you are a victim of the alleged serious or complex fraud under the Victims Rights Act 2002 you have the right to provide a victim impact statement to be placed before the Judge at sentencing. If this is the case, you will be contacted by the SFO so that a victim impact statement can be prepared. Please refer to the 'Giving Evidence' guide published by the New Zealand Law Society for more information about sentencing and victim impact statements.

CAN I CLAIM EXPENSES FOR ATTENDING COURT?

The SFO Case Manager will provide you with a Ministry of Justice expense claim form. This sets out what you can claim for, including expenses for travel (if we have not arranged this for you).



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