



REYNOLDS MIRTH  
RICHARDS & FARMER

# Municipal Enforcement

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## Enforceability

- For a regulatory regime to be effective, it must provide sufficient deterrence for those who choose not to abide by bylaws because of economic forces or personal preference, or both
- In some instances, residents may choose to do things that are prohibited by the rules

## Enforceability

- However, limiting people's rights can cause friction for a municipality
- When non-compliance comes to the attention of the municipality, the challenge is determining not only what enforcement options are available but also the benefit, as compared to the cost

## Different Means of Enforcement

- Land Use Bylaws and other municipal bylaws can be enforced by way of:
- Prosecution, or
- Stop Orders/Orders to Remedy issued under MGA
- Enforcement is usually complaint driven
- Warning letters can supplement the process

## Prosecutions

- Council can create offences and provide for penalties under s. 7(i) of the MGA
- A bylaw may provide for a fine not exceeding \$10,000.00, imprisonment for up to one year, or both
- These penalties are also governed by the Provincial Offences Procedures Act

## Prosecutions

- Sometimes, a Bylaw creates offences for contraventions of provisions of the Bylaw and prescribes a maximum fine, or specific (and increasing) fines for certain contraventions

## Prosecutions

- Much more difficult to succeed than you might expect
- Must prove guilt to a criminal standard (beyond a reasonable doubt); harder to prove than civil standard applicable to stop orders (balance of probabilities)

## Prosecutions

- Usually need to hire private lawyer to prosecute
- As fines are usually low, will not cover the costs incurred
- Practical reality of municipality vs. the little guy



## Common Problems

- Naming the right accused person
- Identifying the offence date
- Having the necessary evidence and the right witnesses

## Naming The Right Accused

- Often it will seem very simple as to who you should name:
  - The person who loiters, the person who is breaking curfew
- But what about the person who makes noise? Or the person responsible for an unsightly property or for a fire?

## Naming The Right Accused

- Even though it may seem like common sense as to who was responsible, that is different from proving it in court
- These are cases where the by-law should make it an offence for the OWNER of the property that is responsible for the nuisance

## Noise Bylaw Example

- No person shall make or cause to be made any unnecessary or unusual noise likely to disturb the peace and quiet of the area...

Vs.

- No owner shall make, permit, or cause to be made, by amplifiers, loud speakers, or any other means whatsoever, any unnecessary or unusual noise, likely to disturb the peace and quiet of the area, or other persons in the neighborhood

## Owner-Based Offences

- Also important to create an expansive definition of owner
- Owner includes:
  - Registered owner of the property
  - A person who is the occupant of the property under a lease, license or permit
  - The agent of the registered owner, lessee or occupier of the property

## Other Considerations

- Also be careful in distinguishing between corporations and individuals
- Municipality deals with individual, but Prosecutions may have to be against the Corporation which owns the property or is otherwise responsible for the offence
- Even if in practice they are one and the same

## Offence Date

- Often, a violation can be ongoing over a period of time
  - Noise that remains a problem over a series of days
  - Graffiti that is not cleaned, or other unsightly conditions on a property

## Offence Date

- This does not change the fact that a violation ticket (unlike an Order to Remedy) has to specify an “offence date”
- The Prosecutor has to prove the offence was made out on this date
  - i.e. evidence from any other date is irrelevant



## Example

- Abandoned cars all over a person's property
  - Municipality takes pictures and sends letter with the photos to the owner demanding they be removed
  - Owner doesn't comply, so ticket issued
  - Bylaw Officer dates the ticket when he goes to serve it on the owner

## Example

- But when it comes to trial, realize all the evidence (photographs, etc.) are from a different date
- Although sometimes obvious it continued, this is not evidence unless officer can specifically confirm the same conditions were in place on the offence date

## Evidence / Witnesses

- Consider carefully what will need to be proven both when you draft a bylaw and when you go to issue a ticket
- Any ambiguity will be read in favor of Accused, and have to prove each element of an offence beyond a reasonable doubt
- Consider what evidence you will need, and how likely you are to have the witnesses who can provide that evidence

## Stop Orders

- In some cases, different action is needed to achieve compliance with a municipality's specific goals and policies
- MGA provides effective measures but determining the right option can be daunting
- Must also consider the potential risks

## Stop Orders

- Stop Orders are authorized in the MGA under s. 645, which states that a development authority may issue an order requiring the offending development or use be stopped where it is of the opinion that it is not in accordance with the Act, the regulations, the Land Use Bylaw, a development permit, or a subdivision approval

## Stop Orders

- A Stop Order can require the demolition, removal, or replacement of an offending development, or require such other measures to be taken as the authority considers appropriate to bring about compliance

## Drafting Thoughts

- Must be in writing
- Must be directed at the registered owners of the land, the person in possession of the land or building, or the person responsible for the contravention, or any of all of them

## Drafting Thoughts

- Must specify the time within which compliance must occur
- Benefits of issuing a stop order, and obtaining a court order if necessary, include:
  - Lower standard of proof than prosecution (easier to prove)
  - Means to bringing property into compliance



## Appeal of Stop Order

- To SDAB
  - 21 days after Stop Order made
- Appeal to Court of Appeal with leave
  - 30 days after SDAB Decision

## Order to Remedy Contraventions

- S. 545
  - Designated officer issues
  - Where person contravening MGA, other Act municipality entitled to enforce or a bylaw
  - May overlap with s. 645

## Order to Remedy Contraventions

- Order may:
  - Direct person to stop doing something
  - Direct person to take action or measure necessary
  - State time for compliance
- Very broad language

## Order to Remedy Dangers and Unsightly Property

- S. 546
  - “detrimental”
  - “unsightly condition”
  - Dangers, excavations, unsightly
  - May be bylaw as well

## Drafting Thoughts

- Must be in writing
- Identify contravention and relevant bylaw
- Identify required action and time within what must occur

## Appeal of s. 545 and s. 546 Orders

- Review by council, different time periods
- Appeal to Court of Queen's Bench

## Self Help Remedy

- S. 646 and s. 549 and s. 550
  - Municipality may take action necessary to carry out the order
  - Risks where significant action taken
  - Costs addressed under s. 553
- S. 551
  - Emergencies

## Injunction

- S. 554
  - Requires court application
  - Very broad jurisdiction given to Court of Queen's Bench
  - Protects municipality
  - Deals with municipality's powers in the event of non-compliance and costs
  - Breach is contempt of Court Order



## Caveats

- S. 546.1
- S. 646(2)

## Potential Risks

- Policies re: enforcement
- Generally speaking municipalities possess discretion not to enforce
- Cost/benefit analysis
- Due Diligence at investigation stage
- Due Diligence in bringing property into compliance

## Other Potential Avenues

- Safety Codes Orders
- Alberta Health
- Forbearance Agreement
- Civil remedies available to residents



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