



# Provincial Offences By-Law Enforcement

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# Overview re Bylaw Enforcement

- Preliminary Considerations
- What is Enforcement
- Enforcement Options
- Provincial Offences Act Prosecutions
- Set Fines, Tickets and Certificates of Offence
- Bylaw Enforcement Officers
- Police
- Provincial Offences Prosecutor
- Discretion re Enforcement – non-enforcement



# Preliminary Considerations:

- Why do you need a by-law?
  - What is the problem of concern to Council?
  - Are there other enforcement methods that exist?
  - Is there statutory authority for the Municipality to regulate the issue?
- Try and determine “hot button” issues in your area. Are dogs at large a problem? Is there excessive noise? Are the zoning issues? Once this is determined there are a host of by-law precedents available. We can review and or prepare to avoid some pitfalls.



# Preliminary Considerations:

- Is the Municipality willing to fund enforcement?
  - Can not pass a regulatory by-law and simply not enforce
  - Who will/can enforce?
  - Do you have sufficient staff? Typically enforcement requires at least two staff, an investigator/enforcement officer and a prosecutor. These can't be the same person.



# Preliminary Considerations:

- Level of Service By-Law
  - Sets when and how by-laws will be enforced
    - Complaint based;
    - Proactive enforcement;
    - Legislative enforcement (e.g. Building Code)



# What Is Enforcement?

- What does “Enforcement” mean? Not just prosecution
  - Application of bylaw – eg dog licencing fees – often by Clerk
  - Education
  - Requesting compliance
  - Prosecution for Breach – eg Prosecuting Property Standards by-law – by CBO or Bylaw enforcement officer (Provincial Offences Officer)



# Enforcement Options

- How do we enforce bylaws using legal compulsion – what options are out there?
  - POA Prosecution
    - Certificates of Offence
    - Parking Tickets
    - Informations
  - Civil Action
    - Mandatory Orders and Injunctions



# Enforcement Options

- Changing enforcement or changing enforcement strategies are possible:
  - By-laws may be amended by council;
  - Alternative sentencing provision may be available under the *Municipal Act* ( such as prohibition orders ) or the *POA* ( such as probation orders).





# Provincial Offences Act

- Offences prosecuted/enforced by Municipalities typically are administered through the Provincial Offences Act.
- *Provincial Offences Act*, R.S.O. 1990, c. P.33.



# WHAT IS POA AND HOW DOES IT WORK?

- POA is short for the *Provincial Offences Act* which sets out the method for enforcement and adjudication of regulatory offences and by-laws in the province.
- The *Act* sets out three different types of offences:
  - 1. Part I Offences:
    - Offences where tickets can be issued ex. Speeding, careless driving
  - 2. Part II Offences:
    - Parking offences
  - 3. Part III Offences:
    - More serious offences or by-law offences



# Offences

- The meaning of “offence” is also found within section 1(1) of the *Provincial Offences Act*:
  - “**offence**” means an offence under an Act of the Legislature or under a regulation or by-law made under the authority of an Act of the Legislature.



# Offences

- A municipal bylaw can create an “offence” for the purpose of section 1(1) of the *Provincial Offences Act* (see *R. v. Webster (1981), 10 M.V.R. 310 (Ont. Dist. Ct.)*).



# Part I, Part II and Part III Offences

- **Part I**
  - General Offences for which a Municipality has received consent to issue Certificates of Offence;
- **Part II**
  - Parking, Stopping and Standing Offences
- **Part III**
  - More Serious Proceedings Commenced by Information



# Part I, Part II and Part III Offences

- **PENALTIES FOR SET FINES**

- Parts I and II of the *Provincial Offences Act* govern certificate of offence proceedings.
- This mode of proceedings is less serious than Part III proceedings, commenced by the laying of an Information.
- Penalties under Part I proceedings are regulated by section 12 of the *Provincial Offences Act*.



# PROVINCIAL OFFENCES ACT PROSECUTIONS

- Commencement of Proceedings by Certificate of Offence
  - Part 1 offences are commenced by Certificate of Offence
  - The Provincial Offences Officer serves the defendant with the offence notice or summons and then files the certificate of offence in the court office.
  - It is the filing of the certificate of offence in the court office that commences proceedings.
  - Examples: of Part 1 Offences: less serious matters such as speeding, careless driving, failing to surrender insurance card etc., various by-law offences.
  - The set fine for a Part 1 offence is set by the Chief Judge of the Ontario Court of Justice.
  - The Ministry reviews proposed wording for offences.



# PROVINCIAL OFFENCES ACT PROSECUTIONS

- Commencement of Proceedings by Information
  - Proceedings by way of Information (Part III offences) often resemble criminal charges. The Information must be sworn before a Justice of the Peace and the defendant is served with a summons.
  - By-Law offences with respect to Property Standards, Fences and Yards are Part III offences, therefore, defendants are charged by way of Information. Typically, the defendant will be charged with failing to comply with an Order to Comply which begins the process of prosecution. The Order to Comply is a request/requirement that the defendant come into compliance with a specific by-law (Property Standards, Yard, Fence or section of the *Building Code Act*).
  - With respect to set fines, the *Building Code Act* provides the maximum penalty for first, second and subsequent offences for both persons and corporations.





# PROVINCIAL OFFENCES ACT PROSECUTIONS

- Parking Infractions
  - A proceeding for a parking infraction may be commenced under a Part I or Part II.
    - To enforce a parking infraction under a Part II, a provincial offences officer issues a parking infraction notice and completes a certificate of parking infraction.
    - Payment may be made to the municipal office or facility shown on the parking infraction notice.
    - Early payment options are possible under Part II but not other parts.



# Offence Bylaw Drafting

- Include the legislative Authority; there must be legislative authority for a municipality to enact offences with respect to certain specified conduct. Most often, the pre-amble to a by-law makes reference to the authority to enact the by-law.
- While the *Municipal Act* is the main source of authority for municipal by-law making power, various other provincial legislation provides authority as well; for instance: *Environmental Protection Act R.S.O. 1990, c. E. 19, as amended*; *Motorized Snow Vehicles Act R.S.O. 1990, c. M. 44*; *Highway Traffic Act R.S.O. 1990. c. H. 8, as amended*.



# Offence Bylaw Drafting

- **Creating Offences in the bylaw**
- In order to create an offence, the bylaw has to impose a *duty*, a *prohibition* or an *obligation to comply on a person or group of persons*.



# Part I and Part II Set Fines and Approvals

- ***Penalty Sections***

- In order for a bylaw to create offences, **it must contain a penalty section.** Section 425 of the Municipal Act permits municipalities to pass bylaws creating offences.
- Section 429 of the *Municipal Act* is **NOT** a penalty section, but rather grants Municipalities the power to establish fines and sets monetary parameters for those fines.



# Part I and Part II Set Fines and Approvals

- ***Penalty Sections***

- **Section 61 of the *Provincial Offences Act* is a penalty section.** It acts as a default setting on which municipality can rely in the absence of actually passing a bylaw and establishing fines. That is to say, you can charge someone under the *Provincial Offences Act*. Some other legislation, like the *Building Code Act*, also provides a penalty section.
- However, **where a municipality is seeking ANY fines** (set fines or graduated fines) for offences under a bylaw, **they must still use the *Provincial Offences Act* as their penalty sections within the bylaw in order to create those offences and penalties** within the bylaw. Whether it's a set fine or a graduated fine, they are all enforced under the authority of the *Provincial Offences Act*.



# Part I and Part II Set Fines and Approvals

- ***Penalty Sections***

- **Minimum Fines:** Do not mention a minimum amount in the general penalty section. The Regional Senior Justice has the right to lower the set fine amounts requested by the municipality. If the judge lowers the requested fine below the amount mentioned in the penalty section, your penalty section will become invalid.



# SET FINES

- What are they?
  - The *Provincial Offences Act*, R.S.O. 1990 defines a set fine as the following:

“set fine” means the amount specified for an offence under section 91.1 by the Chief Justice of the Ontario Court of Justice or by a regional senior judge of that court for the purpose of proceedings under Part I or II.



# SET FINES

- Why enact Set Fines?
- If short form wording and set fines are approved, the enforcement officer can ticket rather than use a long form summons. The defendant can elect to simply pay the ticket and not attend court.





# SET FINES

- The Ontario Court of Justice website provides the set fines under different Provincial Offences legislation and regulations thereunder.
  - <http://www.ontariocourts.ca/ocj/how-do-i/set-fines/set-fines-i/>
  - <http://www.ontariocourts.ca/ocj/how-do-i/set-fines/set-fines-ii/>
- For example, legislation that the website provides includes, but is not limited to, the *Compulsory Automobile Insurance Act*, *Conservation Authorities Act*, *Employment Standards Act*, *Highway Traffic Act* etc.
- When attempting to set fines for your municipality, it is often helpful to look at approved set fines from other municipalities. That said, approval is required for all set fines and short form wording. Simply adopting another municipality's set fine and short form wording is not sufficient to make yours enforceable.



# Set Fines

- Municipal by-laws can also create offences for which a set fine may be established.
- In order for a municipality to establish set fines for violations of a specific by-law there is an application process to be followed and submitted to the Ministry of the Attorney General.
  - 1. A signed and certified copy of the fully passed by-law, a set fine schedule and cover letter must be submitted
  - 2. If the municipality is seeking fines under a Municipal Code, then a certified copy of the relevant chapter, a copy of the set fine schedule and cover letter must be submitted.



# Set Fines

- Process continued..
  - 3. If the municipality is seeking fines under an Act, such as the *Building Code Act*, then a copy of the Act, set fine schedule and cover letter must be submitted.
- If a municipality is seeking high fines or a significant increase to fines, then written reasons as to why an increase is being sought should be included in their Application.



# Set Fines

- Under Acts such as the *Building Code Act*, under the penalty section you can find the maximum penalty that can be charged for a violation of the Act, any regulation, or by-law passed thereunder.
- Section 36(3) and (4) of the *Building Code Act* provides that:
  - (3) A person who is convicted of an offence is liable to a fine of not more than \$50,000 for a first offence and to a fine of not more than \$100,000 for a subsequent offence.
  - (4) If a corporation is convicted of an offence, the maximum penalty that may be imposed upon the corporation is \$500,000 for a first offence and \$1,500,000 for a subsequent offence and not as provided in subsection (3).



# Set Fines

- What are set fines and how are they processed – how do we know what to charge/set a fine at
- The definition of a “set fine” is found in section 1(1) of the *Provincial Offences Act R.S.O. 1990, c. P. 33*. The term is defined as follows:
  - “**set fine**” means the amount of fine set by the Chief Justice of the Ontario Court of Justice for an offence for the purpose of proceedings commenced under Part I or II.



# SET FINES

- When attempting to set fines for your municipality, it is often helpful to look at approved set fines from other municipalities. That said, approval is required for all set fines and short form wording. Simply adopting another municipality's set fine and short form wording is not sufficient to make yours enforceable.



# Set Fines

- **PENALTIES FOR SET FINES**

*12(1) Where the penalty prescribed for an offence includes a fine of more than \$1,000 or imprisonment and a proceeding is commenced under this Part, the provision for fine or imprisonment does not apply and in lieu thereof the offence is punishable by a fine of not more than the maximum fine prescribed for the offence or \$1,000, whichever is the lesser. R.S.O. 1990, c. P.33, s. 12 (1); 2009, c. 33, Sched. 4, s. 1 (18).*



# Set Fines

- **PENALTIES FOR SET FINES**

The effect of this provision is to limit fines under Part I to a maximum of \$1000.

The maximum set fine for Part II offences is \$500.





# Graduated Fines

- **SET FINES vs. GRADUATED FINES**

- Graduated fines are not the same as set fines. A set fine is a simplified way of charging for an offence under **Part I or II** of the *Provincial Offences Act*, which can be handled out of court by payment of the amount written on a ticket. Where an enforcement officer believes that a higher fine is warranted, they can proceed via a scheme of graduated fines (1<sup>st</sup> offence, 2<sup>nd</sup> offence, etc.) under **Part III** of the Provincial Offences Act, and forego issuing a ticket.



# Graduated Fines and Set Fines

- So while you can establish a regime of graduated fines in your bylaw, it is not the same as a set fine. **The set fine is a lesser penalty than a graduated fine. So, the set fine must be lower than the stated minimum graduated fine.**



# Graduated Fines

- Graduated fines are sought separately from set fines and specifically under Part III of the *Provincial Offences Act*. Where a bylaw seeks to establish graduated fines in addition to set fines, it is a good idea to include a separate penalty section in the bylaw for the graduated fines. This makes it clear that the fines are administered and enforced separately.



# Short Form Wording

- Short form wording cannot be too vague otherwise a set fine cannot be approved
- Elements of short form wording:
  - Concise
  - Reflect the wording in the section
  - State the actual offence committed by the person or persons



# Staff Reports

- What goes into a staff report advising Council on the enactment of an offence by-law
  - Legal Authority for Bylaw
  - Enforcement Process
  - Enforcement Cost
  - Penalty Recommendations and authorities
  - Advice regarding seeking approval for set fines and short form wording
  - Advice regarding alternate enforcement options
  - Draft by-law language



# Draft By-Laws

- While approval of set fines and short form wording requires approval of the Ministry/Chief Judge, the Ministry will consider and advise on DRAFT offence by-laws.
- The application process requires fully passed and certified by-laws, but you can seek feedback and advice from the Ministry in advance of passing the by-law.
- Doing this will smooth and expedite the approval process and avoid having to amend bylaws that are not approved for set fines and short form wording.



# Enforcement of By-Laws

- Do you have to enforce a bylaw – how would could you justify enforcing only sometimes
- You may not simply “not enforce” a bylaw at all. If it is not appropriate for your municipality, repeal it;
- You may, however, decide when, and against whom you will enforce a by-law. You do not have to enforce a bylaw in all circumstances and Council has the discretion to decide not to enforce a bylaw (*City of Toronto v. Polai*)
- You may not use prohibited grounds to decide who to enforce against – in other words, you can not design enforcement based on religion, sex, sexual orientation, sexual identity, creed, colour etc.



# WHO ENFORCES BY-LAWS

- How do municipalities enforce by-laws?
  - Municipalities enforce their by-laws with the assistance of a by-law enforcement officer/provincial offences officer.
  - Municipalities may have their own by-law enforcement officer or contract out the services of a by-law enforcement officer from the surrounding area.





# WHO ENFORCES BY-LAWS

- How do municipalities enforce by-laws?
  - By-law enforcement officers receive special training and certification allowing them to enforce by-laws.
  - Many municipalities choose by-law enforcement officers because they can devote all their resources to enforcement. Municipal Police will enforce in priority. Ex. Criminal enforcement will trump by-law enforcement. Most OPP agreements do not include bylaw enforcement.



# BY-LAW Enforcement Officers

- Definition of “Provincial Offences Officer” under the *Provincial Offences Act*, R.S.O. 1990:

(a) a police officer,

(b) a constable appointed pursuant to any Act,

(c) a municipal law enforcement officer referred to in subsection 101 (4) of the *Municipal Act, 2001* or in subsection 79 (1) of the *City of Toronto Act, 2006*, while in the discharge of his or her duties,

(d) a by-law enforcement officer of any municipality or of any local board of any municipality, while in the discharge of his or her duties,

(e) an officer, employee or agent of any municipality or of any local board of any municipality whose responsibilities include the enforcement of a by-law, an Act or a regulation under an Act, while in the discharge of his or her duties, or

(f) a person designated under subsection (3);



# Utilizing By-Law Enforcement/Provincial Offences Officers from Surrounding Areas

- Municipalities can use by-law enforcement officers/provincial offences officers from surrounding areas



# Nuala M. Kenny

- Graduated University of Ottawa Law School in 1989
- Articled with the City of Ottawa
- Called to Bar in 1991
- Worked as a prosecutor then as assistant city solicitor in Ottawa (1991- 1995)
- Joined city of Sault Ste. Marie as assistant city solicitor in 1995, city solicitor in 2010, and joined WMG team in 2018
- Certified specialist in municipal law, planning & development law
- Acted as counsel for Sault Ste. Marie Police Service Board
- Acted as interim CAO for city of Sault Ste. Marie in 2015



# Mia L. Carella

- Graduated from Western Michigan Law School in 2015
- Articled at Wishart Law Firm LLP
- Called to the Bar in 2017
- Associate Lawyer at Wishart Law Firm
- Spent time as the acting municipal prosecutor for City SSM 2015-2016
- Currently acting municipal prosecutor for City SSM since August 2018
- Experience prosecuting Part I and II offences and Part III Building Code and Fire Code violations



# Top 10 Mistakes in By-Law Enforcement

**10.**

Using by-law as only tool for enforcement



# Top 10 Mistakes in By-Law Enforcement

9.

Not appointing a by-law enforcement officer



# Top 10 Mistakes in By-Law Enforcement

8.

Appointing wrong by-law  
enforcement officer





# Top 10 Mistakes in By-Law Enforcement

7.

Missing deadline



# Top 10 Mistakes in By-Law Enforcement

6.

Not considering the elements of the offence



# Top 10 Mistakes in By-Law Enforcement

5.

Insufficient evidence



# Top 10 Mistakes in By-Law Enforcement

4.

Not providing proof of service



# Top 10 Mistakes in By-Law Enforcement

**3.**

Not meeting/preparing service



# Top 10 Mistakes in By-Law Enforcement

2.

Not re-inspecting property prior to  
court



# Top 10 Mistakes in By-Law Enforcement

1.

Not using Wishart Municipal Law  
Group



# Q & A SESSION



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# Questions

- When are fines paid to POA and when not?
- Submission of fines depends on the Memorandum of Understanding between the Town and the Province. It varies.



# Questions

- Are there preferred options based on the type of bylaw being created – property standards, court, parking tickets, clean yard ticket



# Questions

- What do we need to pre-plan for when creating a bylaw so it is easier to enforce



# Questions

- How can we change the enforcement tool when it is not working



# Questions

- Can OPP enforce bylaws, how and why



# Questions

- Do you need a certified bylaw enforcement officer



# Wishart

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