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BULLETIN

BYLAW ENFORCEMENT OFFICERS NOW AUTHORIZED TO ISSUE TICKETS FOR THE UNAUTHORIZED RESALE OF ESSENTIAL GOODS AND SUPPLIES AND PRICE “GOUGING”

This update is to provide local governments with information on recently granted novel powers to enforce provincial orders under the *Emergency Program Act* relating to the resale of essential goods and setting “unconscionable” prices. Recent amendments to the Violation Ticket Administration and Fines Regulation mean that local government bylaw enforcement officers may, for the first time, issue provincial violation tickets for specific contraventions of certain provincial regulations.

Specifically, bylaw enforcement officers may enforce the prohibitions imposed by sections 8(4), 8(5) and 9(2) of Ministerial Order No. 84/2020 and section 3 of Ministerial Order No. 115/2020. The orders containing the prohibitions can be found here:

http://www.bclaws.ca/civix/document/id/mo/mo/2020_m084

http://www.bclaws.ca/civix/document/id/mo/mo/2020_m115

Section 9(2) of MO 84/2020 prohibits a person from engaging in secondary selling of “essential goods”, which are broadly defined as including food, water, fuel, medical supplies and pharmaceuticals, and personal hygiene and sanitation products. “Secondary selling” means purchasing essential goods in a retail environment or receiving them by donation and then offering those essential goods for resale, whether in person, through a business, or by phone, fax, website or app, or by any other means.

Section 3 of MO 115/2020 makes it an offence to “sell or offer to sell essential goods and supplies in a retail environment at an unconscionable price”. The order defines an “unconscionable price” as “a price that grossly exceeds the price at which similar essential goods and supplies are available in similar transactions to similar consumers.”

A notable difference in the enforcement of *Emergency Program Act* orders compared to local government bylaws will be the form that is used to issue tickets. The *Offence Act* governs the use of violation tickets. Form A under the Offence Act Forms and Regulation can be found here:

http://www.bclaws.ca/civix/document/id/complete/statreg/422_90

In completing the form of ticket, the choice of act contravened should be selected as “other (specify)” with “*Emergency Program Act*” written in the blank space provided. In describing the

count and applicable fine on the form, the Violation Ticket and Administration Regulation provides the following wording and amounts:

Description of Offence(s)	Act/Regs	Section	Ticketed Amount
Fail to comply with direction to not sell more than specified number of items	<input type="checkbox"/> Act <input checked="" type="checkbox"/> Regs	MO 84/2020, s. 8(4)	\$2,300
Fail to comply with direction to provide accommodation services	<input type="checkbox"/> Act <input checked="" type="checkbox"/> Regs	MO 84/2020, s. 8(5)	\$2,300
Engage in secondary selling with respect to essential goods and supplies	<input type="checkbox"/> Act <input checked="" type="checkbox"/> Regs	MO 84/2020, s. 9(2)	\$2,300
Sell or offer to sell essential goods and supplies at unconscionable prices	<input type="checkbox"/> Act <input checked="" type="checkbox"/> Regs	MO 115/2020, s. 3	\$2,300

Each of the above carries a fine amount of \$2,000.00 with a victim surcharge levy of \$300.00, for a total ticketed amount of \$2,300.00.

As with issuing MTIs, bylaw enforcement officers need to have reasonable and probable grounds that at least one of the above contraventions occurred before issuing a provincial violation ticket in Form A. Bylaw enforcement officers may wish to consider seeking legal advice if there is uncertainty regarding how the prohibitions apply to particular circumstances.

Under the *Offence Act*, the Province collects the fines for violation tickets and forwards disputed tickets to the court. The issuing bylaw enforcement officer may be called upon to prosecute a disputed ticket or to be a witness in a prosecution, and in either case the evidence must show beyond a reasonable doubt that the contravention occurred. Local governments will need to ensure their bylaw enforcement officers are documenting incidences and gathering evidence in a sufficient manner so as to prove an offence should a ticket be disputed.

A final point that local governments will need to consider is the issue of service. If the alleged contravention was carried out by a person, personal service is required in accordance with sections 14(7) and 28 of the *Offence Act*. If the alleged contravention was carried out by a corporation, service will have to be effected in accordance with sections 14(7) and 29 of the *Offence Act*. A bylaw enforcement officer must also complete an affidavit of service in the prescribed Form B Offence Act Forms Regulation at the time of service.

At the time of writing, bylaw enforcement officers do not have any power to issue tickets under the *Public Health Act*, but under MO 82/2020 (http://www.bclaws.ca/civix/document/id/mo/mo/2020_m082) may still provide education to the public regarding public health orders and provide assistance in enforcing orders under that act. If you would like to discuss any of the above information further, please feel free to contact our office and speak with one of our lawyers.

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