INVESTIGATING AND ENFORCING BYLAWS

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I. INTRODUCTION

The ability to investigate bylaw infractions and to enforce bylaws are both central to a local government's authority. This paper will discuss the options and restraints on local governments seeking to accomplish these key goals.

II. INVESTIGATING BYLAW CONTRAVENTIONS

A. Authority to Inspect

Bylaw enforcement officers have few powers enabling them to infringe private rights when investigating alleged bylaw violations. Bylaw enforcement officers have no general powers to seize documents or other things, or to hold people under arrest. Fortunately, most offences against local government bylaws can be proven on the strength of oral testimony from witnesses, and readily available public documents such as land title records. Powers of seizure or arrest are seldom needed.

The most important power bylaw enforcement officers have is the authority to enter onto and inspect private property. This authority is now found in section 16 of the *Community Charter*, and was formerly found in section 268 of the *Local Government Act* (which now only relates to regional districts). Section 16, which is set out in Appendix A, to this paper, represents a significant change in the way municipalities are authorized to enter and inspect private property.

B. Important Points for Municipalities

- Authorized to enter property for all reasons listed in section 16(6);
- No bylaw required – section 16 provides the statutory authority;
- All employees and officers automatically covered – but others require authorization;
- Inspections without consent are permitted;
- Unless there is an emergency, entry must be at a reasonable time and in a reasonable manner and reasonable steps must be taken prior to entry; and
- A separate scheme exists for private dwellings, but section 16(5)(e) appears to undermine this.

C. Important Points for Regional Districts

Section 16 applies to regional districts because of section 314.1 of the *Local Government Act*, also set out in Appendix A.

Reference is made in section 314.1 to section 268 of the *Local Government Act* which still plays a key role in authorizing regional districts to conduct bylaw investigations. Section 268 reads:

> 268 If a board has the authority to regulate, prohibit and impose requirements in relation to a matter, the board may, by bylaw, authorize officers, employees and agents of the regional district to enter, at all reasonable times, and on any property to inspect and determine whether all regulations, prohibitions and requirements are being met.

Again, it is important to note the limitations that are involved:

- Authorized to enter property for purposes of 268 and 269 of *Local Government Act*;
- The power to enter must be delegated in a bylaw;
- The person intending to enter must be specifically appointed to do so;
- Inspections without consent are permitted;
- Unless there is an emergency, entry must be at a reasonable time and in a reasonable manner and reasonable steps must be taken prior to entry; and
- A separate scheme exists for private dwellings, but section 16(5)(e) appears to undermine this.

D. Consequences of No Authority to Enter

If a local government officer or employee is not authorized to enter and inspect a property, any entry onto private property would constitute a trespass. A local government could face a claim for trespass in these circumstances.

It is not clear that any evidence gathered by an officer or employee who was trespassing would not be admitted as evidence in court, but a local government would be well advised to avoid relying on this type of evidence.

E. The Charter of Rights

Section 8 is the most important section of the *Canadian Charter of Rights and Freedoms* relating to entry and inspection of private property. Section 8 reads:

> 8. Everyone has the right to be secure against unreasonable search or seizure.

There have been a numbers of cases that have spoken to the issue of municipal warrantless searches, including *R. v. Bichel* (1986), 4 B.C.L.R. (2d) 132 (C.A.*), Jackson v. Penticton (City),* 2004 BCSC

711, *R. v. Kostecki* 2008 BCSC 551 and, most recently, *Arkinstall v. City of Surrey,* 2008 BCSC 1419.

In *R. v. Bichel* (1986), 4 B.C.L.R. (2d) 132 (C.A.) it was argued that a search under former Section 310 of the *Local Government Act* (now Section 16 of the *Community Charter*) constituted an "unreasonable search" contrary to Section 8 of the *Charter* if no warrant is obtained prior to the search. In that case, a property owner in the District of North Vancouver was charged under the zoning bylaw with the offence of preventing or obstructing entry by a building inspector. At trial, the owner was acquitted, but the Court of Appeal reversed the decision and imposed a conviction.

The Court of Appeal held that no warrant was required for administrative searches such as those under former Section 310, because there is no stigma attached to such a search and the subject matter is not serious enough to require that a judge authorize the search. However, the court stated that a householder who is subjected to a search under the former Section 310 may:

- demand identification from the inspector;
- require that the inspector give a valid reason for the inspection;
- refuse entry if the time of the inspection is inconvenient, as the search may only take place during "reasonable hours".

There is no reason to conclude that these rules do not still apply to section 16 of the *Community Charter*.

F. Warrants

Local governments can obtain entry warrants, which are similar to search warrants, pursuant to section 275 of the *Community Charter* (and section 847 of the *Local Government Act*). A sample shell Information and Warrant is set out in Appendix B.

III. ENFORCEMENT OPTIONS

A. Selection of Enforcement Procedure

Both the *Local Government Act* and the *Community Charter* provide for three distinct means of enforcing municipal bylaws:

- injunction proceedings, both permanent and interlocutory, in Supreme Court;
- quasi-criminal proceedings (prosecutions) in Provincial Court; and,
- direct enforcement, without the involvement of a court.

In selecting the appropriate form of enforcement procedure, several factors must be considered. Those factors include:

- the nature of the apparent violation and its seriousness;
- the cost of proceedings;
- the goal sought to be achieved by the local government (for example, fine or court order); and,
- the urgency of the problem.

It is important to note that local governments are not limited to any one of these options, and may run different enforcement actions at the same time.

B. Proving Every Element of the Offence

If a local government chooses to enforce a bylaw through the courts, then regardless of whether the local government is seeking an injunction or a conviction, each element of the bylaw provision sought to be enforced must be proven. For example, where a municipality seeks to enforce a general noise regulation which provides that:

> No person shall cause, or permit to be caused, any noise or sound which disturbs, or tends to disturb, the quiet, peace, rest, enjoyment, of persons in the vicinity or neighbourhood,

it will be necessary for the bylaw enforcement officer to gather evidence which establishes that:

- the entity that has allegedly contravened the provision is a "person";
- the entity has caused, or permitted to be caused, a noise or sound;
- the noise or sound caused, or permitted to be caused, by the entity disturbed the peace, quiet, rest, enjoyment of persons; and
- those persons were in the vicinity or the neighbourhood.

If the municipality fails to gather sufficient evidence in relation to any of the essential elements of the bylaw provision, the bylaw enforcement proceedings will likely be unsuccessful.

C. Injunctions

An injunction is a court order directing a person to do, or not to do, a specified act. The Provincial Court has no jurisdiction to grant injunctions, so they must be sought in Supreme Court. As a result, a lawyer is virtually always involved when an injunction is being sought.

Section 274 of the *Community Charter* (and section 281 of the *Local Government Act*) empowers local governments to enforce their bylaws, the *Local Government Act* and even the *Community Charter* itself by way of an injunction:

> 274. (1) A municipality may, by a proceeding brought in the Supreme Court, enforce, or prevent or restrain the contravention of,
>
> (a) a bylaw or resolution of the council under this Act or any other Act, or
>
> (b) a provision of this Act or the *Local Government Act* or a regulation under those Acts.
>
> (3) The authority under subsection (1) is in addition to any other remedy or penalty provided by or under this Act or the *Local Government Act* and may be exercised whether or not a penalty has been imposed for the contravention.

Under section 274(2)(c) of the *Community Charter*, notice of civil proceedings to enforce bylaws must be given to the Attorney General.

1. Permanent Injunctions

The onus of proof in injunctive proceedings requires the local government to prove a breach of a bylaw. The burden of proof is the civil standard, on the balance of probabilities. Basically, the local government must prove that it is more likely that not that a bylaw has been breached.

Because the remedy of an injunction grew from the courts of equity, an injunction has traditionally been discretionary. The courts have traditionally been willing to grant an injunction only where the person seeking the order has "clean hands." Due to this discretion, courts have refused to grant injunctions even when a breach of a bylaw has been proven if it was also proven that the local government had misled, or otherwise unfairly treated, the defendant. In recent years, however, the courts have moved away from applying "equitable standards" to the granting of injunctions to enforce local government bylaws.

A series of cases now suggests that courts will grant an injunction whenever a breach of he bylaw has been established. In the case of *Maple Ridge (District) v. Thornhill Aggregates Ltd.* (1998), 47 M.P.L.R. (2d) 249 (B.C.C.A.), the British Columbia Court of Appeal stated that:

> Where an injunction is sought to enforce a public right, the courts will be reluctant to refuse it on discretionary grounds. To the extent that the appellant may suffer hardship from the imposition and enforcement of an injunction, that will not outweigh the public interest in having the law obeyed.

Unfortunately, courts have not been consistent when deciding whether they have discretion to deny injunctive relief in bylaw enforcement proceedings. In *Capital Regional District v. Smith* (1999), 49 M.P.L.R. (2d) 159 (B.C.C.A.), the Court of Appeal accepted the idea that its

discretion to refuse injunctive relief in bylaw enforcement matters was limited, but then refused to grant the local government an injunction to enforce its zoning bylaw because to do so would be highly inequitable to the defendants. In *Langley (Township) v. Wood* (1999), 173 D.L.R. (4th) 695 (B.C.C.A.), the Court of Appeal strengthened the position of local governments in injunctive proceedings brought to enforce their bylaws when it held that "the court has no discretion to deny the Township an injunction once a breach is established".

Given the position taken by the British Columbia Court of Appeal in *Wood*, it appears that equitable principles regarding the issuance of injunctions are no longer applicable to civil injunctive proceedings brought to enforce local government bylaws. However, it remains important that bylaw enforcement officers approach their enforcement duties with "clean hands" so that a court in the future is not put in the position of preferring the Court of Appeal's decision in *Smith* over its decision in *Wood*.

2. Interlocutory Injunctions

Interlocutory injunctions are injunctions that may be obtained during the interval between commencement of legal proceedings and the time of the trial. The burden of proof on interlocutory injunction proceedings requires that the local government show that it has a strong case (*Martin v. Chilliwack* (City) 40 M.P.L.R. (3d) 56). An interlocutory injunction is an extraordinary remedy where a person is directed to do, or not to do, something prior to a court finding any fault. The party seeking an interlocutory injunction must generally meet a balance of convenience test and provide an undertaking to the court to pay damages suffered by the enjoined party if the case for the permanent injunction is not successful. However, where a public body is enforcing an alleged breach of a statute or bylaw, these rules do not apply.

D. Prosecutions – The Basics

1. Theory of Prosecution

Criminal prosecution leading to a fine, imprisonment, or both, is based on the theory that an offence has been committed against the interests of society as a whole, so punishment should be sought by the state. By contrast, civil actions historically result from wrongs against individuals.

Criminal law in Canada is a federal matter, so true criminal offences are established in the federal *Criminal Code*. However, provinces and municipalities also have the right to enforce their laws as part of their law-making jurisdiction. In British Columbia, the Legislature has enacted the *Offence Act*, R.S.B.C. 1996, c.338 to set out the procedure to be followed in prosecuting "quasi-criminal" acts against the state at the provincial or municipal level.

Although prosecution is fundamentally an exercise of the rights of the Crown, anyone may initiate a prosecution by laying an information. However, the Attorney General may intervene in the conduct of a prosecution, or discontinue it after it is initiated.

2. Establishment of Offences

There are two general provisions that make the contravention of a municipal bylaw an offence. Section 260(3) of the *Community Charter* states:

> 260 (3) If a bylaw establishes a lawful regulation or requirement to be observed in a municipality, a person who contravenes the regulation or requirement commits an offence that is punishable in the same manner as if the bylaw had expressly forbidden persons from doing or refraining from doing the act.

(The *Local Government Act* equivalent, relating to regional districts is section 267).

The second general offence-creating provision is section 5 of the *Offence Act*:

> 5. A person who contravenes an enactment by doing an act that it forbids, or omitting to do an act that it requires to be done, commits an offence against the enactment.

Most bylaws also contain a provision reiterating that doing something prohibited by the bylaw, or failing to do something required by the bylaw, constitutes an offence.

3. Forum for Prosecution

Bylaw prosecutions are heard in Provincial Court, before a Provincial Court Judge or a Justice of the Peace. By directive of the Chief Judge, traffic related bylaw prosecutions are generally heard by Justices of the Peace and non-traffic related bylaw prosecutions are generally heard by Provincial Court Judges.

4. Limitation Period for Prosecution

Section 3(2) of the *Offence Act* establishes the following limitation:

> (2) If no time is specially limited for making a complaint or laying an information in the Act or law relating to the particular case, proceedings must not be instituted more than 6 months after the time when the subject matter of the proceedings arose.

This limitation makes it important to make a decision on whether to prosecute without delay, particularly as weeks or months may have passed before complaints are made and investigated.

5. Appeal

The appeal court from proceedings in Provincial Court is the Supreme Court.

E. Long Form Informations v. Municipal Ticket Informations

Local governments generally have a choice when they choose to prosecute – they can proceed by way of a so-called "Long Form Information", or by way of a "Municipal Ticket Information" ("MTI").

A long form information and a MTI are similar in that they are both prosecuted in provincial court, the charges must be brought within 6 months of the offence, and the decision can be appealed to Supreme Court, but there are some significant differences, too.

1. Long Form Informations

Under the Criminal Caseflow Management Rules, introduced by the Chief Judge, the procedure for bylaw prosecutions by long form information now typically include at least four court appearances:

- Initial Appearance;
- Arraignment Hearing;
- Trial Confirmation Hearing; and
- Trial.

Section 263 of the *Community Charter* empowers a municipal Council to establish penalties for offences against bylaws that include fines and imprisonment. The authority includes the right to establish both minimum fines, and a maximum fine of up to $10,000. Specific penalties are generally built into each bylaw. (The authority for regional districts to create penalties is found in section 266 of the *Local Government Act*).

Where no penalty is specifically provided for, section 4 of the *Offence Act* establishes that a person convicted "is liable to a fine of not more than $2,000 or to imprisonment for not more than 6 months, or to both".

2. Municipal Ticketing Information System

(a) Background

Prior to 1974, local governments used the Magistrate's Court to prosecute bylaw offences. In 1974, the Province took over the Magistrate's Court from local governments and assumed control of prosecutions in Provincial Court. However, as volume increased in the Provincial Court, bylaw offences began to receive lower priority by Crown Counsel.

As a result, in the early 1980's, the Union of British Columbia Municipalities ("UBCM") requested that a new division of the Provincial Court be established to deal with bylaw enforcement. In 1988,

the Justice Reform Committee considered this request and concluded that establishing a true "bylaw court" was not necessary.

Concurrently, the UBCM recommended to the Justice Reform Committee that a ticket enforcement option be provided to local governments wishing to enforce a broad range of bylaws in this manner. The Committee's report, *Access to Justice: The Report of the Justice Reform Committee*, suggested that the *Local Government Act* be amended to allow local governments to designate bylaws that could be enforced by ticket, and to set maximum allowable fines for these violations. In 1989, the Province responded by enacting amendments to the *Local Government Act* to establish the MTI system.

(b) Overview of the Statutory and Regulatory Mechanism

The scheme is set out in Division 3 Part 8 of the *Community Charter*. Those sections apply to regional districts by way of section 266.1 of the *Local Government Act*.

Section 264(1)(a) of the *Community Charter* empowers a municipal Council to adopt a bylaw designating certain regulatory bylaws for enforcement through the MTI system. The bylaws to be enforced by MTI must not relate to firearms or motor vehicle speed limits because those bylaws are specifically excluded by B.C. Regulation 425/2003.

Under section 264(1)(c) of the *Community Charter*, the Council may also adopt a bylaw to authorize the use of any word or expression on its MTI to designate an offence against a bylaw. While it is preferable that the exact wording used to describe the offence in the MTI bylaw be used on the MTI, subsection 264(4) of the *Community Charter* provides:

> (4) The use on a ticket of
>
> (a) any word or expression authorized by bylaw under subsection (1) (c) to designate an offence against a bylaw, or
>
> (b) a general description of an offence against a bylaw,
>
> is deemed sufficient for all purposes to describe the offence designated by that word, expression or general description.

Other than the description of the offence, the form and content of the MTI must be as prescribed as set out in B.C. Regulation 425/2003. A MTI that is not in the precise form prescribed by the Regulation is invalid.

Once a bylaw has been designated for enforcement by MTI, section 264(2) and (3) allows a "bylaw enforcement officer" to commence a prosecution by means of a ticket without having to swear the MTI before a court official. To qualify as a "bylaw enforcement officer", a person must be designated by the Council or Board in a bylaw adopted under section 264(1)(b). Under section 3 of

the B.C. Regulation 425/2003, potential bylaw enforcement officers include several classes of local government employees (e.g., municipal clerks, regional district secretaries, local assistant fire commissioners, licensing inspectors, building inspectors and animal control officers) in addition to police officers and bylaw enforcement officers appointed under section 36 of the *Police Act*.

A local government may generally establish a maximum fine of $10,000 for a bylaw violation. However, pursuant to section 2 of B.C. Regulation 425/2003, the maximum fine levied by way of MTI may not exceed $1,000. Consultation with the Chief Judge of the Provincial Court is no longer required before the Council or Board sets its final fine.

Section 265(2) of the *Community Charter* also allows local governments to establish different fine amounts depending on whether the fine amount is paid on or before the 30th day after the ticket is issued. This section is somewhat awkward because the legislation permits a deemed conviction after 14 days – so waiting for 30 days seems unlikely. Further, the provincially-mandated form of the ticket does not currently provide for this type of fine differentiation – so it is not clear how a municipality would introduce this system.

The distinctive features of the MTI system are that the initial ticket information need not be prepared under oath or presented to a Justice of the Peace for approval; it is simply served on the accused person. Further, where the accused person has neither paid the fine, nor indicated an intention to dispute the ticket 14 days after the ticket was issued, a deemed conviction is presumed and the Provincial Court must enter a conviction and impose the fine indicated on the ticket upon being presented with a properly issued ticket and evidence that it has not been responded to. These are significant advantages to a local government in bylaw enforcement.

(c) Steps to Enforce an MTI

The steps that will typically be involved in enforcing a bylaw under the MTI system are as follows:

The bylaw enforcement officer completes the MTI and personally serves a copy on the alleged offender. As stated earlier, it is preferable that the exact wording used to describe the offence in the MTI bylaw is used on the ticket.

- The bylaw enforcement officer must fill in a date on the MTI on or before which the offender must respond. The *Community Charter* provides that the person on whom a ticket is served may, within 14 days of the date of service, pay the fine or indicate an intention to dispute it. This does not mean within 14 calendar days of the date of service. Fourteen days should be counted by simply excluding the first and last days in the calculation (e.g., an MTI issued January 1 must be responded to no later than January 16 (exclude January 1 and January 15 in the calculation)).

- At the same time as the MTI is issued, the bylaw enforcement officer should complete and sign a report noting the details of the violation for use in court proceedings should they become necessary. The reverse side of the enforcement officer's copy of the MTI

provides space for particulars to be recorded, but enforcement officers may have to collect additional evidence (e.g., photographs; witness statements).

- Where the MTI has not been responded to by payment of the fine or the filing a notice of dispute within 14 days, the accused is deemed to have not disputed the charge. The MTI no longer has to be referred to the Provincial Court

- Where the offender indicates that the charge is disputed by completing the notice of dispute, the local government must file the MTI and the bylaw enforcement officer's report with the Provincial Court. The Registry will schedule a hearing and notify the accused and the local government of the date of the hearing. From this point on, enforcement proceedings are similar to those taken under the *Offence Act* through a regular information.

- If the accused is found guilty, the Court may impose any penalty set out in the bylaw under which the offence is charged. Although the court is not limited to imposing the amount of the fine indicated on the original ticket, in practice the court is inclined to do so unless aggravating circumstances can be shown to the court warranting an increase in the fine.

(d) Collection of Fines

The collection of fines is no easier under the MTI system than a conviction initiated with an information sworn under the *Offence Act*. The prosecutor may file the convicting judge's order with the Supreme Court or the Provincial Court so that enforcement measures under the *Court Order Enforcement Act*, R.S.B.C. 1996, c.78, may be initiated if the offender fails to pay the fine. Imprisonment for failure to pay a fine is not an option. The local government may also use Section 267(3) of the *Local Government Act* and Section 262(1) of the *Community Charter*, which permits a court to authorize the "penalty and costs to be levied by distress and sale" of the offender's goods and chattels.

(e) Benefits of MTI

The implementation of a MTI system can be of significant assistance in enforcing a local government's bylaws. However, it should not be assumed that they will solve all existing enforcement concerns. Bylaw enforcement officers must still be vigilant in their investigation of the facts before issuing MTIs and be prepared to give testimony in court that can substantiate the charge. A MTI cannot be expected to displace "proof beyond a reasonable doubt" in a court of law.

Bylaw enforcement officers must still exercise their discretion carefully as to whether to deal with a particular bylaw violation by means of a MTI, another enforcement option, or at all. A MTI will normally be the preferred option where one or more of the following circumstances exist:

- It is expected that the accused will not dispute the offence;

- The voluntary fine specified in the MTI bylaw is an appropriate penalty in the circumstance;

- The public interest does not require that a bylaw breach be restrained immediately by an injunction or other court order.

It is important to note that the lack of sufficient evidence to secure a conviction in trial proceedings under the *Offence Act* is not a consideration in determining whether to issue an MTI instead of laying an information. In all cases, it is open to the accused to dispute a ticket, and if a ticket is disputed the City must, if it wishes to enforce the bylaw, prove the charge in Provincial Court.

Further, if it becomes known that the local government abandons prosecutions when disputed, the advantages of the MTI system will not be realized as offenders will routinely dispute the ticket rather than voluntarily pay the fine or plead guilty to the offence. As such, MTIs should be used sparingly and only where clear evidence exists to support a prosecution.

Finally, the fact that a local government enacts a MTI bylaw does not mean that whenever an enforcement officer observes or investigates an offence under that bylaw the offence may be dealt with only by issuing a MTI. The MTI bylaw merely gives the enforcement officer an option of issuing a MTI where the enforcement officer considers it appropriate. Local governments retain the right to enforce bylaws by:

- initiating a prosecution by laying an information under the *Offence Act*;

- seeking an injunction; or

- where permitted, taking direct enforcement action.

F. Bylaw Forum

The Bylaw Forum is now operating in three North Shore municipalities. This new system could potentially replace many prosecutions. The system is designed to deal with the perceived problem that prosecutions are expensive, procedurally burdensome and time consuming. The most important elements of the new scheme are as follows:

- A Bylaw Notice replaces the long form information, the MTI, and the so-called love note – one document commences all process.

- The Bylaw Notice does not have to be personally served.

- Disputed notices will be reviewed by a local government screening officer prior to adjudication.

- Adjudication is more informal, and procedurally simple.

- Standard of proof is "balance of probabilities" and not "beyond a reasonable doubt".

- Adjudicator has no discretion on penalties.

G. Direct Enforcement

1. General Provisions

Direct enforcement involves carrying out enforcement remedies (such as demolishing buildings or adding charges to municipal taxes) without the authorization of a court decision. Because direct enforcement involves punishing an offender or taking remedial action where there is no formal proof of guilt, local government must be careful in the manner in which they take direct action. Substantial damages may follow if it turns out that direct enforcement was unjustified.

The general direct enforcement power is set out in section 17 of the *Community Charter* for municipal action at a defaulter's expense (and section 269 of the *Local Government Act* for regional districts). Section 17 of the *Community Charter* reads:

> 17 (1) The authority of a council under this or another Act to require that something be done includes the authority to direct that, if a person subject to the requirement fails to take the required action, the municipality may:
>
> (a) fulfill the requirement at the expense of the person, and
>
> (b) recover the costs incurred from that person as a debt.

Note the important restrictions on this power:

- Council must have the authority under statute to direct that the thing be done;
- the direction to have the thing done at the expense of a person in default must also come from Council (by resolution or bylaw); and
- although section 17 may be read as empowering a general bylaw provision concerning direct enforcement on default, a more cautious view is that orders for direct enforcement should be made on an individual case basis -- the reference in section 17 to "a person" may well imply such a requirement.

2. Division 12 of Part 3 of the *Community Charter* – Remedial Action Requirements

This Division is to a large extent a replacement for what was formerly sections 698 and 727 of the *Local Government Act*. However, there has been a significant reduction in authority under this new scheme. Prior to the *Community Charter*, local governments could enforce zoning

bylaws by way of Section 698 of the *Local Government Act*. Now the remedial action requirement only relates to building bylaw, and not zoning bylaws.

3. Other Provisions

In addition to this general direct enforcement power, the *Community Charter* and *Local Government Act* contain a number of specific direct enforcement powers, including:

- Section 283 of the *Local Government Act* -- to recover gas, electricity or water rates by distress and sale of personal property.
- Sections 8(6), 15, and 60 of the *Community Charter* -- to suspend or revoke a business licence under given conditions.
- Section 57 of the *Community Charter* -- to file a notice on title to land where the owner has allegedly not complied with the building regulation bylaw in given circumstances.
- Section 707 of the *Local Government Act* and Section 48 of the *Community Charter* -- powers to seize and impound animals.
- Section 725(d), (e) and (f) of the *Local Government Act* and Sections 8(3)(h), 64 and 74 of the *Community Charter*-- to force removal of graffiti, rubbish, weeds and insects.
- Section 18 of the *Community Charter* –to discontinue a service.

Although direct enforcement can be carried out successfully, before demolishing a building or seizing property a municipality should be satisfied that the propriety of its actions are beyond doubt. In most cases where direct enforcement is contemplated, the person affected must be given notice and an opportunity to be heard by Council or the Board before the decision to enforce directly is made. Where notice requirements are included in the statute, they must be strictly observed. If the statute is not complied with, the local government may end up in court anyway – undermining one of the most important reasons direct enforcement is chosen – to avoid court.

*This paper was updated from an earlier paper originally prepared by Grant Anderson.

APPENDIX A

Community Charter

[SBC 2003] CHAPTER 26

Part 2 – Municipal Purposes and Powers

Division 3 – Ancillary Powers

Authority to enter on or into property

16 (1) This section applies in relation to an authority under this or another Act for a municipality to enter on property.

(2) The authority may be exercised by officers or employees of the municipality or by other persons authorized by the council.

(3) Subject to this section, the authority includes authority to enter on property, and to enter into property, without the consent of the owner or occupier.

(4) Except in the case of an emergency, a person

(a) may only exercise the authority at reasonable times and in a reasonable manner, and

(b) must take reasonable steps to advise the owner or occupier before entering the property.

(5) The authority may only be used to enter into a place that is occupied as a private dwelling if any of the following applies:

(a) the occupier consents;

(b) the municipality has given the occupier at least 24 hours' written notice of the entry and the reasons for it;

(c) the entry is made under the authority of a warrant under this or another Act;

(d) the person exercising the authority has reasonable grounds for believing that failure to enter may result in a significant risk to the health or safety of the occupier or other persons;

(e) the entry is for a purpose referred to in subsection (6) (a) in relation to regulations, prohibitions or requirements applicable to the place that is being entered.

(6) Without limiting the matters to which this section applies, a municipality may enter on property for any of the following purposes:

(a) to inspect and determine whether all regulations, prohibitions and requirements are being met in relation to any matter for which the council, a municipal officer or employee or a person authorized by the council has exercised authority under this or another Act to regulate, prohibit and impose requirements;

(b) to take action authorized under section 17 (1) *[municipal action at defaulter's expense]*;

(c) in relation to section 18 *[authority to discontinue providing a service]*, to disconnect or remove the system or works of the service;

(d) to assess or inspect in relation to the exercise of authority under section 8 (3) (c) *[spheres of authority — trees]*.

Local Government Act

[RSBC 1996] CHAPTER 323

Part 8 – Special Powers Relating to Property

Division 4 – Other Regional District Powers

Authority to enter on or into property

314.1 (1) Section 16 (1) to (5) *[authority to enter on or into property]* of the *Community Charter* applies in relation to an authority under this or another Act for a regional district to enter on property, except that a reference to subsection (6) (a) of that section is to be read as a reference

to section 268 *[inspections to determine whether bylaws are being followed]* of this Act.

(2) Without limiting the matters to which this section applies, a regional district may enter on property for the purpose of taking action authorized under section 269 *[regional district action at defaulter's expense]*.

APPENDIX B

Information to Obtain an Entry Warrant

The Community Charter, SBC 2003, Chapter 26 (the "Act")

Canada
Province of British Columbia

This is the information of _____, Bylaw Inspector, _____, _____, British Columbia, _____ (the "informant"), taken before me.

The informant says that the informant has reasonable grounds to believe that access to the dwelling situated at _____, _____, British Columbia (the "Premises") is necessary for the purposes of an inspection to determine compliance with:

(a) the _____(the "Zoning Bylaw"); and

(b) the _____ (the "Building Bylaw").

GROUNDS FOR BELIEF ARE:

1. I am a Bylaw Inspector for the _____, British Columbia and, as such have personal knowledge of the facts set forth in this information, except where same are stated to be based on information and belief and where stated, I verily believe those facts to be true.

2. I have been a Bylaw Inspector for the _____ since _____. Prior to that date I was a Bylaw Enforcement Officer for the _____ for _____years.

3. The property at _____ in _____ is owned by _____. The property is in an area zoned _____. Mr. _____constructed a single family dwelling (the "Premises") on the Land pursuant to a building permit. The approved permit plans show _____. Attached to this my Affidavit as Exhibit "A" is a copy of the title search for the property. Attached to this my Affidavit as Exhibit "B" is a copy of the approved permit plans.

4. In late December of 2005 and early January of 2006 the _____received complaints alleging that the Premises was being used as a _____, a use not permitted in an _____zone. Attached to this my Affidavit as Exhibit "C" is a copy of the relevant excerpts from the Zoning Bylaw.

5. I inspected the Premises on _____ with _____. We found _____ . Attached to this my Affidavit as Exhibit "D" is a copy of the Building Bylaw.

6. On August 9th, 2008 I spoke with Mr. _____, asking him if I could conduct an inspection and take photographs of the Dwelling. On _____Mr. _____ called to say that he was refusing entry for the purposes of taking photographs.

7. We have decided to send the matter to the Supreme Court of British Columbia for an order asking that the illegal use for _____ be discontinued. I believe that and inspection of the Dwelling is necessary to permit the court to fully consider whether the use is a contravention of the Zoning Bylaw.

Sworn before me on (date))

)

At , British Columbia)

)

)

_____) _____

A Justice under the Offence Act Signature of Informant

[Provisions of the Community Charter, SBC 2003, Chapter 26, relevant to this document are Sections 16 and 275]