

The Municipality's Enforcement Toolkit

There are a number of different tools a municipality can use to enforce the law. The following general questions can help determine the best tool to use in a given situation:

1. Is the problem one of prevention (you want people to stop doing something), or is it one that requires positive action (you want people to do something)?
2. How important is it to resolve the problem quickly (are there immediate health and safety risks)?
3. How will the different enforcement tools impact the municipality's time and financial resources (can the municipality's enforcement cost be reduced)?
4. How will the different enforcement tools impact the evidentiary issues (how easy/difficult will the municipality's case be to prove)?
5. Is the violator a repeat offender?

This presentation should not be taken as legal advice on how to proceed in specific situations, and is simply a general overview of a municipality's different enforcement options and how one might choose between them.

Prosecution

Prosecution is conducted by issuing a Summons and Information (or a Parking Summons in the case of parking offences) pursuant to *The Summary Offences Procedure Act, 1990* [SOPA] and the *Criminal Code* sections that SOPA incorporates. It creates an incentive to comply with the law by sending a message that violation will result in having to pay fines.

Among the enforcement tools, prosecution is best at deterrence. It discourages violation of the law on the basis that violation will be met with punishment (fines).

While prosecution can be used to encourage positive action, it is best at prevention. Some people will continue to violate the law even if fines are imposed, so if positive action is the end goal (e.g., cleaning up a longstanding nuisance property), an Order to Remedy (discussed below) may be preferable.

Because of the slow speed of the court process, prosecution will not normally solve problems quickly. Where serious safety risks are involved, there are better options.

Prosecution can be time and resource consuming because it involves the municipality having to prove things in court beyond a reasonable doubt. The standard of proof may also raise concerns with evidence and the difficulty of proving certain kinds of offences.

In some cases, particularly in the case of a repeat offender, the best method may be to use both prosecution and Orders to Remedy. Also, there is some inherent overlap between the two options in the sense that it is a prosecute-able offence to fail to comply with an Order to Remedy.

Notice of Violation

Rather than go directly to prosecution in court, in some cases it may be more efficient to insert a section in the bylaw that allows municipality officers to issue Notices of Violation. Notices of Violation allow voluntary payment of fines to avoid prosecution.

Notices of Violation can reduce the impact of prosecution on municipality resources by allowing people to simply pay and avoid the court process. However, people will only have an incentive to pay outright if the fine is small, such that fighting it in court is not worthwhile. Therefore, Notices of Violation are best used for offences which are common and non-serious, such as parking or animal control offences.

Orders to Remedy

An Order to Remedy is an order issued by a municipality that compels someone to do something or stop doing something. There are a number of different Acts that provide Order to Remedy powers, including *The Cities Act*, s. 328, *The Municipalities Act*, s. 364, *The Northern Municipalities Act, 2010*, s. 384, *The Planning and Development Act, 2007*, s. 242(4), *The Fire Safety Act*, s. 33, *The Uniform Building and Accessibility Standards Act*, s. 17.

Orders are best used when some positive action is required. While some people may continuously violate the law even when they are prosecuted and fined, failure to comply with an Order to Remedy will usually result in the municipality being authorized to complete the required work itself.

The ability of the municipality to complete the required work itself means that Orders to Remedy will often resolve time-sensitive problems more quickly than prosecution, although there are other, faster options for emergency, or near-emergency problems.

While issuing an Order to Remedy in itself may be less resource intensive than prosecution in many cases, if the municipality later takes physical action to fix the problem itself, that action can entail significant costs. However, in some cases these costs can be

recouped very simply and reliably. For example, sections 330(3) and 333(1)(c) of *The Cities Act*, sections 366(3) and 369(1)(c) of *The Municipalities Act*, and sections 386(3) and 389(1)(c) of *The Northern Municipalities Act, 2010* allow a municipality to apply its costs directly to the tax roll of a property if those costs arose from remedying a contravention following non-compliance with an Order to Remedy, and where the contravention took place on that property.

Orders to Remedy are often easier than prosecution from an evidentiary viewpoint. The municipality is not required to have proof "beyond a reasonable doubt" to issue an Order to Remedy, whereas in prosecution the municipality will be required to meet that high standard. Similarly, the evidentiary standard in the various tribunals that hear appeals from Orders to Remedy is generally much more favourable to the municipality than the evidentiary standard in a trial.

Again, in some cases, particularly in the case of a repeat offender, the best method may be to use both prosecution and Orders to Remedy.

Immediate Physical Intervention

When a municipality is faced with an emergency, there is no time for legal process and immediate action must be taken. *The Cities Act*, s. 331, *The Municipalities Act*, s. 367, *The Northern Municipalities Act, 2010*, s. 387, and *The Fire Safety Act*, ss. 7 and 18 provide broad powers to do whatever is necessary to deal with an emergency.

While emergencies and potential emergencies can arise without someone having violated any law, some of these situations can also result from violations of the law. It is important to be aware of the legislation that permits immediate physical intervention in situations that, while not quite "emergencies", nonetheless pose a serious danger to safety. If immediate physical intervention is a lawful option at all in the circumstances, it is also probably the only safe option.

For example, under *The Fire Safety Act*, s.19, where a fire inspector has reason to believe that an "imminent risk" exists, the fire inspector may "take any measures that the fire inspector considers necessary for the immediate protection of persons, property or the environment against that risk." The term "imminent risk" is defined as "an imminent risk of a fire, emergency or other danger that, in the opinion of a fire inspector on reasonable grounds, threatens persons, property or the environment and requires the response of a fire department or the provision of fire department services."

Similarly, under *The Uniform Building and Accessibility Standards Act*, s. 17(5), where a building official is satisfied that a building constitutes an imminent danger to the safety of occupants or the public, the building official can do anything that he/she considers necessary to eliminate the danger.

Search and Seizure

Search and seizure are not usually enforcement options in themselves, but go hand-in-hand with the other more general enforcement options.

There are a number of sections that authorize a municipality to search or inspect property in order to ensure there is compliance with the law and/or to gather evidence of non-compliance, such as *The Cities Act*, ss. 324-326, *The Municipalities Act*, s. 363, *The Northern Municipalities Act, 2010*, s. 383, *The Planning and Development Act, 2007*, s. 242, *The Fire Safety Act*, ss.30-32, and *The Uniform Building and Accessibility Standards Act*, s. 17. In most cases, a search or inspection of a private residence requires either (1) consent of the resident, or (2) a warrant.

To give just one example, section 326 of *The Cities Act* can be useful where prosecution is one of the desired enforcement options, but where the municipality does not yet have sufficient evidence to prove its case beyond a reasonable doubt. Under section 326, so long as there are "reasonable grounds to believe that an offence against [*The Cities Act*] or a municipality bylaw has occurred and evidence of that offence is likely to be found in the place or premises to be searched", the municipality should be able to obtain a warrant to search the premises in question, seize relevant evidence, and compel the production of relevant records or other property.

Dangerous Animals

The Cities Act, s. 327, *The Municipalities Act*, s. 378, and *The Northern Municipalities Act, 2010*, s. 399, provide specific powers to search for and seize an animal where there are reasonable grounds to believe that the animal is dangerous (consent or a warrant are required if the property is a private residence).

Seizure and Sale of Vehicles

The Cities Act, s. 335.1, *The Municipalities Act*, s. 371.1, *The Northern Municipalities Act, 2010*, s. 392, allow a municipality to seize and sell vehicles in order to recover on outstanding parking fines.

Seeking a Court Order

Seeking a Court Order should be seen as an extension of the prosecution process, as such Orders will typically arise from a successful prosecution, and the typical remedy for non-compliance with a Court Order will be relatively higher fine amounts than normal.

Court Order from Provincial Court Following Conviction

There are a number of provisions that give the Court jurisdiction to order compliance with the law or an Order to Remedy following a successful prosecution: *The Cities Act*, ss. 172(4)(a) and 344, *The Municipalities Act*, ss. 202(4) and 387, *The Northern Municipalities Act, 2010*, ss. 223(4) and 408, *The Planning and Development Act, 2007*, s. 243(3), *The Fire Safety Act*, s. 42(4), and *The Uniform Building and Accessibility Standards Act*, 22(2).

Injunction from the Court of Queen's Bench

Regardless of any prosecution or outstanding Order to Remedy, a municipality can apply pursuant to *The Cities Act*, s. 334, *The Municipalities Act*, s. 370, and *The Northern Municipalities Act, 2010*, s. 390, for an injunction ordering the person in question to comply with the law. This remedy would usually only be sought for extreme repeat offenders, or where the consequences of a continued offence on the municipality are extreme.