

**Subject: LOCAL GOVERNMENT BYLAW ENFORCEMENT PROPOSALS**

**Date:** Wed, 15 Jan 2003 13:48:20 -0800

**From:** "Ernie Crist" <ernie\_crist@dnv.org>

**To:** "FONVCA (E-mail)" <fonvca@fonvca.org>

A MESSAGE FROM ERNIE CRIST

The fundamental flaws in the system of local governance and provincial municipal relations in BC are nowhere more evident than in the way local government bylaws are dealt with.

On one hand municipalities have the power to initiate bylaws while on the other hand powers to enforce such bylaws suffer from a severe feudal hangover. On one hand the province is attempting to make local government independent while on the other hand it cannot quite bring itself to give local governments sufficient clout to enforce bylaws up to and including the power to force action or payment for infractions outside an elaborate and expensive court procedure.

But help is on the way or is it.

In June 2002 the Provincial Ministry of Attorney General issued a discussion paper proposing changes in the way that minor bylaw offences are dealt with.

The proposal envisions a new approach for processing and resolving minor bylaw infractions that is simpler and more cost effective than the current system.

Local Government uses several means by which to institute enforcement of their bylaws. Regardless of the offence and how enforcement is initiated, whether by long form information, Municipal Ticket Information (MTI) or Notice of Bylaw Violation (traffic violation) the matter is ultimately dealt with in the Provincial Court system. This entails procedural and evidentiary rules similar to those that apply to provincial criminal offences.

The new (Municipal) Bylaw Forum that is being pro-proposed will replace the Provincial Court as a the venue for resolving disputes of minor bylaw breaches. The new forum will have the power to deal with minor bylaw matters through administrative system rather than the Provincial Court. The intention is to provide an opportunity for hearings that are simple, efficient and fair, in contrast to the complex procedures and rules currently used by the courts often to the detriment of municipalities.

Under the proposed system provincial courts would no longer hear disputes. Instead, the court would only hear serious bylaw infractions and offences involving issues such as land use and building bylaw offences, while minor offences such as traffic and parking would be dealt with through the new process.

The bylaw Forum would be held in community buildings and not the court house.

Enforcement would start with the issuance of a ticket - there would be no longer a requirement to personally serve the Bylaw Notice, and delivery could be achieved by leaving the notice on a vehicle, mailing the notice, leaving it at the commercial premise, house or job site, or personal delivery.

Once the Bylaw Notice has been delivered, the person would have 14 days to either pay the amount of the notice or dispute the notice.

A Local Government Forum would conduct its review on a very informal basis without applying the formal rules of evidence procedure. Legal counsel would not be required to appear.

Disputes would be treated as civic claims where the standard of proof would be on the balance of probabilities and not proof beyond a reasonable doubt. No appeal would be permitted from the decision of the Local Government Forum.

So far so good, but there are concerns. While the Local Government Bylaw Forum is seen as a major step forward in improving the mechanism by which municipal government bylaw infractions are dealt with, there is still a problem with collection, and no enhanced collection powers have been proposed. This is a serious flaw in the proposed system.


A further issue is the related costs. Those costs are to be borne entirely by the local government. This includes costs of adjudicators, as well as the cost of the venue for the Bylaw Forum. There is also still some uncertainty about the range of minor versus major offences. It is clear that infractions such as parking violations will be included in the definition of minor offences.

These questions are to be addressed through various channels including the Union of British Columbia Convention UBCM which will deal with those outstanding issues and make the necessary recommendation. The question is will the government go the distance needed or keep one finger in the pie? However, one thing is for certain, the time of getting off with even minor bylaw infractions including parking offences with only minor fines will be a thing of the past. If the Municipality has to pay for the administration of the new Local Government Forum, fines will have to be sufficient to pay for it unless it is the taxpayers in general who will do so which would neither fair nor prudent.

The information contained in the above story has been obtained from different sources and includes excerpts from relevant staff reports.

Ernie Crist

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