



Guide to Municipal Bylaw Offences and Enforcement

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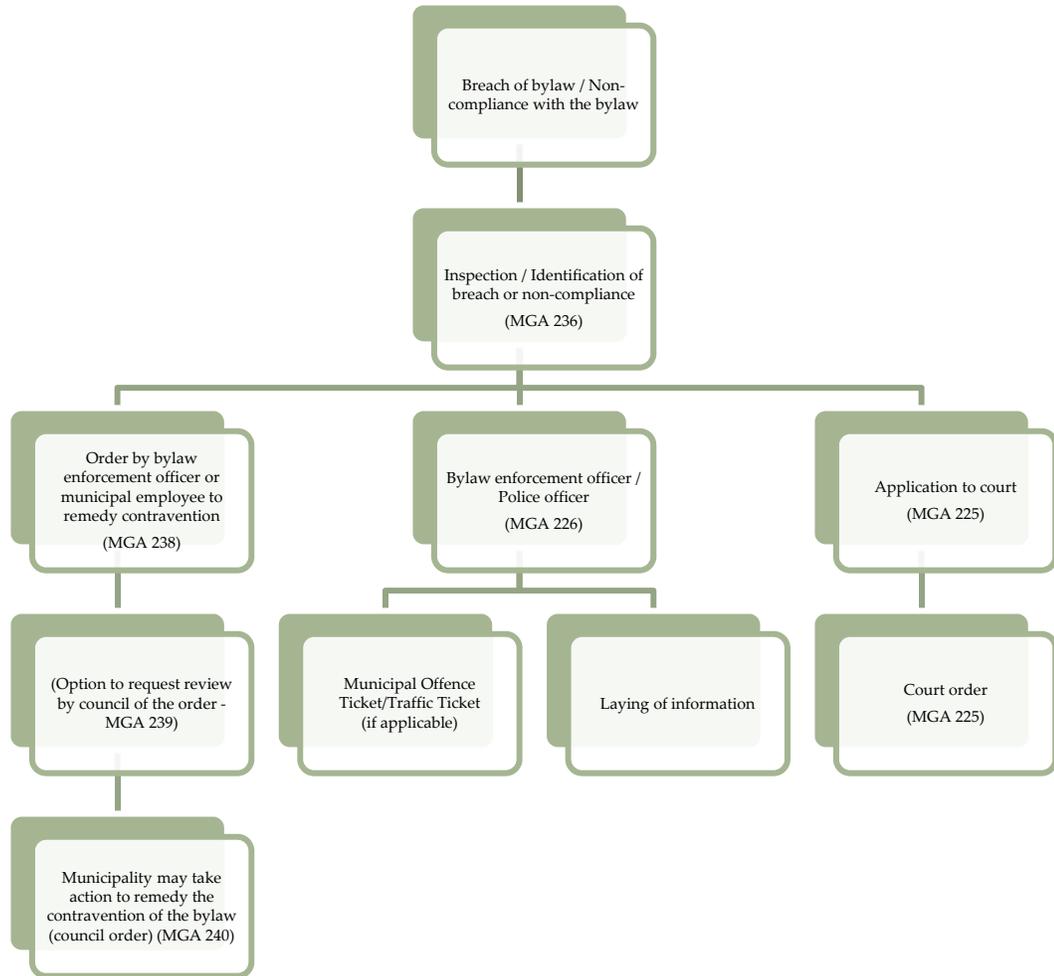
Guide to Municipal Bylaw Offences and Enforcement under the Municipal Government Act

The *Municipal Government Act* (MGA) outlines the process for the appointment of bylaw enforcement officers in municipalities in Prince Edward Island and for the enforcement of these bylaws – including through the issuing of municipal tickets.

This guide explains the bylaw enforcement options available to councils, along with the process by which bylaw enforcement officers can be appointed and their powers to enforce municipal bylaws. **Please note that this document does not take the place of legal advice and should not be relied on as such.** To see the provisions relating to bylaw enforcement in the *Municipal Government Act* of Prince Edward Island, please refer to sections 223 – 240.

I. Bylaw Enforcement

Bylaws can be enforced in several different ways. The options involve differing levels of effort, expense, and time. The appropriate enforcement tool will depend entirely on the facts of the situation – the first step is always to get legal advice.



The first step in enforcing a bylaw is to clearly identify the breach of the bylaw. This includes collecting proof, such as photographs or other measures. Any verbal communication with the individual or person suspected of the breach should be documented and should always be followed up in writing, unless the breach is remedied immediately.

II. Appointing Bylaw Enforcement Officers

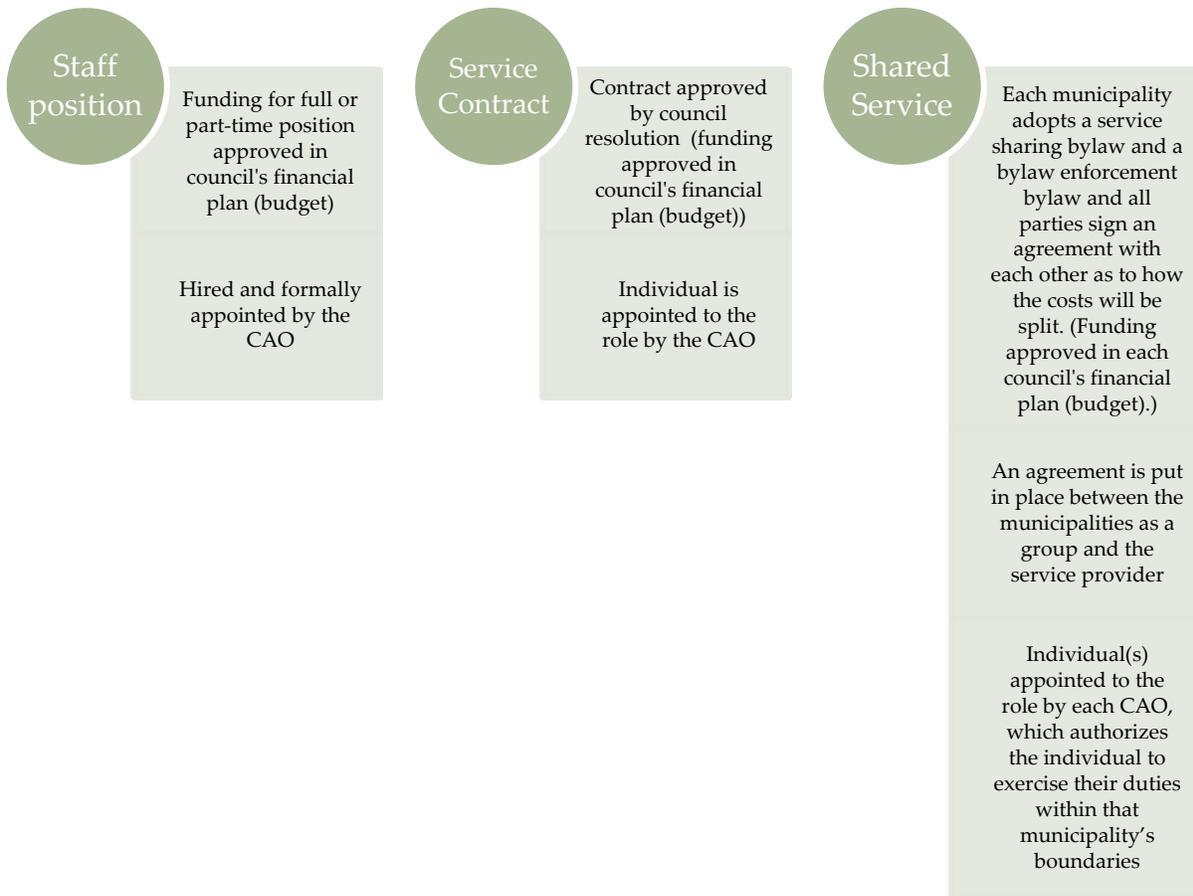
If a municipality chooses to appoint bylaw enforcement officers, the council must first pass a bylaw enabling the appointment. This bylaw must contain, at a minimum:

- The education, experience and training or other qualifications required for bylaw enforcement officers

- The powers and duties of bylaw enforcement officers
- A complaint and discipline process through which bylaw enforcement officers will be held accountable. This process must provide for: an investigation; a hearing; disciplinary action (if required); and an appeal process. To ensure fairness, the same person cannot conduct the investigation, the hearing and the appeal.

Bylaw enforcement officers may be regular employees (full or part-time) or an individual or firm providing a contracted service. While service contracts require a resolution of council, the formal appointment of the individual granting the individual all authority associated with the role must also take place. The Chief Administrative Officer (CAO) of a municipality is responsible for appointing enforcement officers and these officers must report to the CAO.

Where the enforcement officer is a third party offering a contracted service (or even a part time employee), that enforcement officer may be employed as such in more than one community simultaneously, either through the officer taking up employment or service contracts with multiple municipalities, or through a group of municipalities deciding to proceed with a shared service under a single contract. In either case, all municipalities involved in sharing an enforcement officer must have passed a bylaw enforcement bylaw.



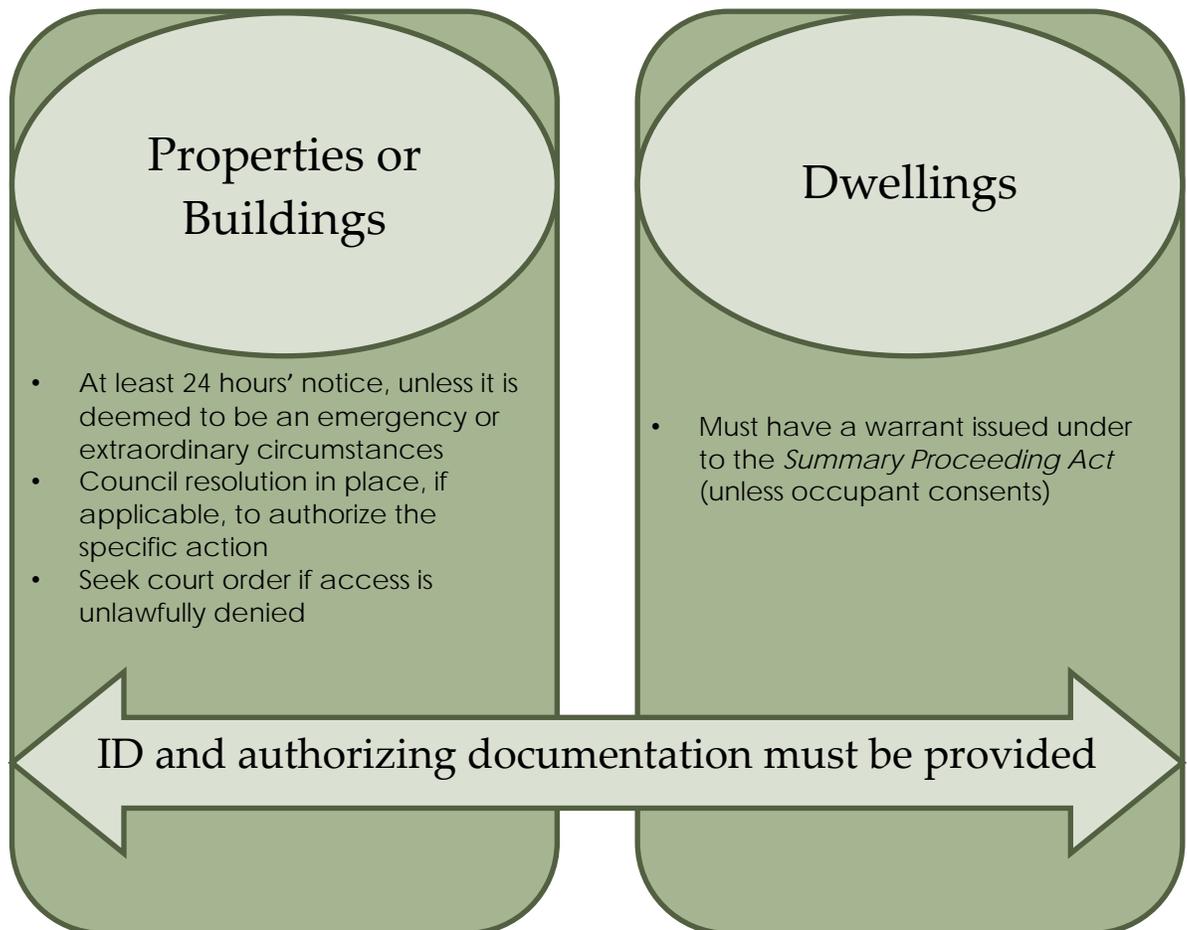
III. Powers of Bylaw Enforcement Officers

If an enforcement officer is required to inspect or remedy property, enforce anything, or do anything else specified under the *Municipal Government Act* or another bylaw, the officer or the municipality must give not less than 24 hours' notice to the owner or occupier of the land or building before action is taken. Following this, the enforcement officer may enter the land or building at any reasonable time to carry out the action required. The enforcement officer may also require that anything be produced to assist in the inspection or may make copies of anything related to the inspection, enforcement or action taken.

If there is an emergency or other serious circumstances, the 24 hour required notice period may be waived.

Upon request, enforcement officers must produce identification and documentation authorizing their entry.

If an individual refuses to allow or interferes with the entry, inspection, enforcement or other action required under the bylaw or the *Municipal Government Act*, the municipality can apply to a justice of the peace or provincial court judge for an order under subsection 237 of the MGA. However, a search warrant issued under the *Summary Proceedings Act* is always required before an enforcement officer or designated municipal employee enters a home or dwelling, unless the occupant consents to the entry.



IV. Bylaw Penalties

Municipalities can set their own penalties for breach of a bylaw. If these penalties are not stated, a person who breaches a bylaw is guilty of an offence and is liable on summary conviction to:

- a fine in an amount not less than \$200 and not more than \$10,000;
- an additional fine in an amount not less than \$500 and not more than \$2,500 for each day or part of a day which the offence continues after the first day;
- imprisonment for up to one year; or
- both a fine and imprisonment.

For each day the offence occurs, the individual is guilty of a separate offence. Any fines collected for breach of a bylaw by way of a municipal offence ticket are owed to the municipality.

Additionally, a court may order that an individual comply with a bylaw.

V. Breaches and Contraventions

Bylaw enforcement officers can enforce bylaws in two ways.

A. ISSUING A MUNICIPAL TICKET

Municipal offence tickets are a common method of enforcing municipal bylaws. Council, through a municipal ticketing and enforcement bylaw, may specify which bylaws can be enforced through the issuing of a municipal offence ticket. Council should include a list of all ticketable offences with their penalties and a copy of a municipal ticket in the schedules to the bylaw.

The issuing of a municipal ticket simplifies the bylaw enforcement process and reduces the need for the

enforcement officer to appear before a justice to lay an information. A ticket is a summons to appear in court if the party receiving the ticket wishes to contest it.

Essentially, when someone “endorses” or signs a ticket, they are admitting guilt. This removes the need for any trial.

If someone receives a ticket, does not plead guilty by endorsing it, and fails to appear as directed, the Provincial Court Judge has the ability to enter a conviction and impose a penalty or quash the proceeding if the ticket is not complete.

Prosecution for alleged bylaw contraventions must be commenced **within six months** of the date of the alleged breach of the bylaw. Given the relatively short timeline to begin prosecution, seeking legal advice promptly is key.

Provided there is a bylaw in place regulating the relevant activity, municipal offence tickets can be issued for the following types of offences:

- Animal control
- Dangerous or unsightly premises
- Noise or public nuisance control
- Parking of vehicles
- Planning and development control under the Planning Act
- Smoking in or on municipal property
- Signage
- Pesticide control
- Any other matter specified in the regulations

The municipality can set a financial penalty for breaching a bylaw, which is specified on the municipal offence ticket.

B. LAYING AN INFORMATION BEFORE A JUSTICE

An enforcement officer may lay an information in writing and under oath before a justice of the peace or a provincial court judge when he or she believes on reasonable and probable grounds that a bylaw has been contravened. Generally speaking, an information is a document that sets out the nature of the offence or charge against the individual person.

The justice will hear and consider the information. If the justice considers that a case may be made, a summons (or where circumstances require, a warrant for arrest) will be issued for the accused to appear and answer to the charge.

VI. Taking Action

If an individual is determined to be in breach of a bylaw, the enforcement officer or designated employee of the municipality may, under Section 238 of the MGA, in writing

- order that the person stop doing something or take action to remedy the breach (or prevent a re-occurrence of the breach); or
- order the demolition of a building or premises (if authorized by a resolution of Council).

The written notice must state a timeframe in which the person is required to comply and state the action that will be taken if the individual does not comply in the specified time. The notice must also state that the cost of the action is at the expense of the individual who is in breach of the bylaw.

The specified timeframe begins after the order is received by personal delivery, registered mail, or immediately following the posting of the order in a conspicuous place on the property.

An individual may apply in writing for a review of this order within 14 days of receiving it. The reason for the review must

be included in the request. At the review, Council may confirm, vary, substitute or rescind the order.

The municipality can take whatever action or measure it considers necessary to remedy the breach of a bylaw so long as the following conditions are met:

- a written order has been issued, containing all required information about what action will be taken at the individual's expense if no action is taken within a specified time
- the individual has not complied within the timeframe specified; and
- either
 - i. a review has been conducted, completed, and Council has ordered that the municipality take the action specified; or
 - ii. the period for requesting a review has elapsed and no request has been made.

As mentioned, the cost of the action is at the expense of the individual in breach of the bylaw. Given that the municipality may have to take legal action to ensure payment of the costs by the individual in breach of the bylaw, it is additionally important that the municipality seek legal advice to ensure that all steps in the process are followed correctly.

VII. Planning Bylaws

Planning bylaws may be enforced pursuant to Part IV of the *Planning Act*, which sets out procedures for the Supreme Court (or a judge thereof) to grant either: a declaration that an imminent or current action is a breach of a bylaw or regulation; or an injunction restraining any person from breaching or continuing to breach a bylaw, regulation, or provision of the *Planning Act*.

The ticketing provisions of the MGA provide an additional option for municipalities in terms of enforcement, provided that the bylaw enforcement bylaw is in place and a bylaw enforcement officer has been appointed by the CAO.

VIII. Additional Considerations

While this guide lays out legal procedures for enforcement, enforcing bylaws begins by communicating with the individuals believed to have contravened a bylaw. Verbal communication should be documented and is generally followed up in writing.

Photographs (as many as possible), and timelines are also important pieces of evidence if it does come to a stage of legal action, providing the back-up needed to demonstrate that orders or injunctions are warranted.

This guide lays out several options or legal routes available to municipalities in the enforcement of their bylaws, but legal advice should always be sought to protect the council, individual council members, and the municipality as a whole, and to ensure that the best and proper procedures are being followed.