



Enforcement

Of Bylaws

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Topics

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- Types of Contravention Notices
- Steps to take before you issue a Contravention Notice
- The correct process
- Whoops! – what went wrong – some case studies
- Enforcing the Contravention Notice
- Some scenarios for urgent Bylaw Enforcement
- In a Nutshell

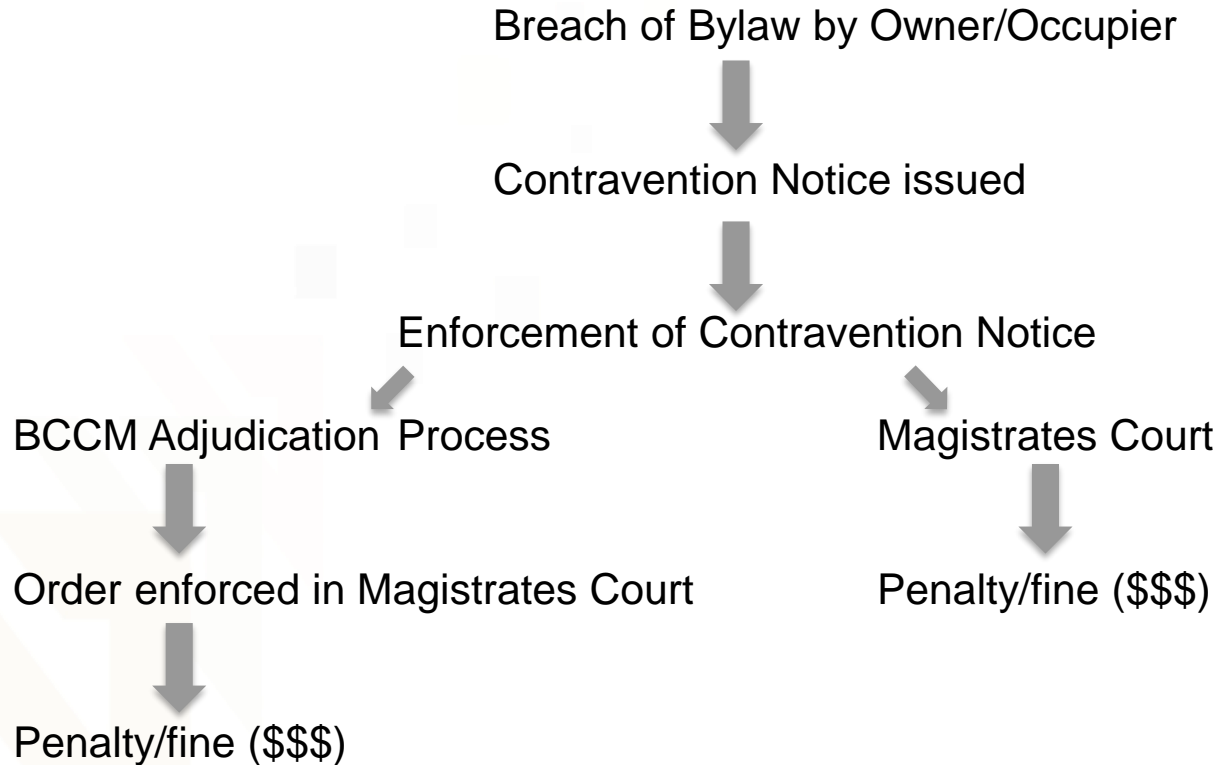
Background

- Scheme consisting of more than 2 Lots – different provisions & forms apply to 2 lot schemes
- Talking about Bylaw Contravention Notices
- The BC issuing and enforcing the Notice – not an owner
- Bylaw should be enforceable/valid (eg):
 - Should not impose a penalty;
 - Should not be prohibitive in nature (only regulatory);

Background (cont)...

- BC:
 - Must enforce its by-laws (s94(1)(b) BCCM Act); however
 - Subject to over-riding requirement that the BC MUST act reasonably in doing so (s94(2) BCCM Act)
- Two types of Notices:
 - Form 10 – Notice of Continuing Contravention
 - Form 11 – Notice of Future Contravention

General overview of the Bylaw Enforcement process



Types of Bylaw Contravention Notices

Form 10 – Notice of Continuing Contravention (Section 182 BCCM Act)

- Applies where there is a breach of a by-law and it is likely that this will continue;
- If there is an end to the breach and then possibly a new breach commenced (even daily or more frequently) - it is not a Continuing Contravention
- For example – bylaw not to alter appearance of lot without approval – once breached remains breached until removed

So, use a Form 10 where there is a breach of a continuing nature

Form 11 – Notice of Future Contravention (Section 183 BCCM Act)

- Applies where there is a breach of a by-law and it is likely that this will be repeated
- If there is an end to the breach and then possibly a new breach commenced (even daily or more frequently) - it is a Future Contravention
- For example- nuisance bylaw, bylaw prohibiting hanging towel over balustrade, parking on CP– even where event might occur/reoccur over period of days.

So, use a Form 11 where there are repeated breaches

Types of Bylaw Contravention Notices

Not always so easy –

- Conducting a business in the scheme contrary to the bylaws - BC adopted Form 10 Notice of Continuing Contravention - Is the breach dependant on the next transaction occurring – or opening each day for business – or is representing to the general public you carry on the business from the Lot, sufficient? - *Ulysses Blue Estate [2013] QBCCMCmr 320*
- BC issued Continuing Contravention Notice, not Future Contravention Notice – considered an “irregularity” but not invalidated - *Huntingdale Lodge [2015] QBCCMCmr 534*
- We have not seen any adjudication where the process was invalidated through the use of the wrong form – but best practice, use the right form!

Steps to take prior to issuing a Contravention Notice – can you head it off at the pass?

- A gentle word – have the Caretaker/Committee member raise the contravention in a reasonable and conciliatory fashion – make sure the offender:
 - Has a copy of the bylaws; and
 - Understands the requirement to comply with them;
- Consider an alternate liaison person –
 - Sometimes personalities clash
 - Consider someone else intervening
- Seek advice regarding likely validity of Bylaw- very important!! Many applications fail because the by-law is invalid (eg “no pets”bylaws).

The correct process for issuing Contravention Notices

What to think of:

- Authority
- Preparation issues
- Delivery

The correct process - Authority

Authority:

- Committee must issue the Notice (unless a restricted issue) – not the BCM or RUM
- Committee must formally resolve to issue it – before the issuing of the notice!!
- Committee must hold a reasonable belief the contravention will continue/be repeated:
 - One off event??
 - Prompt action – must relate to a current breach.

The correct process – Preparation Issues

Preparation Issues:

- Use the Form 10 or Form 11 Pro Formas - not mandatory but recommended!!
- The Notice must state —
 - The bylaw the body corporate believes is being contravened – cut and past the bylaw wording into the form or as annexure
 - Details sufficient to identify the contravention – set out with some precision

The correct process – Preparation Issues

- The Notice must also state —
 - The period within which the offender must remedy the contravention – this can be more difficult – err on the side of caution, ultimately a few more days/another week will not make much difference – BC required to act reasonably;
- If insufficient detail of the breach is provided – no offence is created

The correct process – Delivery

Delivery:

- Notice must be “given to person” – does not require “personal service”
- Can be a difficult issue if the Adjudicator/court does not accept the offender actually received the Notice
- Can be sent by post, however best practice, send by registered post (requiring signature to collect) or hand to them personally – that way there is no dispute about receipt/date of receipt.

The correct process – additional comments

Finally – note that:

- If the Notice is given in response to request by Owner/Occupier – must give a copy to that Owner/Occupier (s182(3), 183(3)) BCCM Act;
- If the Notice is given to an Occupant who is not an Owner – give a copy to the Owner (s183A); and
- If a Notice of Future Contravention issued – valid for earlier of:
 - 3 months after it is given to the person; or
 - a shorter period mentioned in the notice.

What went wrong – some case studies

- Greatest proportion – invalid bylaw
- Authority - Cttee relied on an invalid Cttee meeting - *Maria Creek Estate [2002]* QBCCMCmr 503
- Authority – Cttee issued notice on the basis it had been requested to by owner but Cttee did not believe a breach had occurred – Notice determined to be invalid - *Marlin Cove [2008]* QBCCMCmr 121
- Enforcing bylaw is just unreasonable – enforcement “premature” - *Pintari [2013]* QBCCMCmr 500
- Insufficient detail of breach – failure to properly identify breach – Notice invalid - *De Ville [2013]* QBCCMCmr 244

Enforcing the Contravention Notice

- Contravention Notice can be enforced through:

Magistrates Court	BCCM Adjudication Application
Formal more lengthy process	Less formal, more speedy process
\$\$\$\$	\$
Proper details of breach required in Notice- s182(6)/183(7) BCCM Act	Not as strict
Max fine for Bylaw Contravention = 20 penalty units (i.e.\$2,611)	Will not issue a fine- will order compliance
Max fine for breach of Adjudicator's order = 400 penalty units (i.e. \$52,220)	
S43 Acts Interpretation Act - Court can order up to 50% of the fine to be paid to the BC	

Urgent By-law Enforcement

Bylaws can be enforced without issuing a Contravention Notice (most relevantly) where:

- the application is for the interim order of an adjudicator; and
- 'special circumstances' exist - which justify the dispute being resolved urgently — for example, if the by-law breach is:
 - likely to cause injury to people or serious damage to property
 - causing a serious nuisance to people; or
 - for another reason, giving rise to an emergency.

In a nutshell

- Need to consider all of:
 - Is Bylaw valid
 - Is enforcement of bylaw reasonable?
 - Appropriate authority in issuing Notice;
 - Proper preparation (detail) of Notice;
 - Delivery of Notice

In a nutshell

- If proceeding to Adjudication – ensure orders sought are appropriate – don't want to have to start again....
- Consider the preferred route for enforcing the Notice – BCCM Adj vs Mags Crt (is detail sufficient??)