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MUNICIPAL PROSECUTIONS: THE TIMES THEY ARE A'CHANGING

(SEE ALSO: "MY FIRST DAY IN JAIL")

GOVERNMENT OF ALBERTA RATIFIES BILL 9 TO KEEP TAXPAYERS OUT OF JAIL FOR A DOG LICENSE FINE

For the past year the Alberta Government has been working on amendments to the *Provincial Offences and Procedures Act* (the "POPA"), the legislation that regulates and guides provincial and bylaw prosecutions. These amendments were tabled as Bill 9 which received third reading on May 25, 2016.

Since then, the Government has spent the last year drafting the new *Procedures Regulation*. On March 29, 2017, two Orders in Council were issued proclaiming changes to the POPA and *Procedures Regulation* to take effect on May 1, 2017.

What is the government looking to achieve with these changes?

To revise the enforcement mechanism to streamline and simplify how provincial laws and municipal bylaws are managed by:

- eliminating warrants to arrest persons who fail to respond to a ticket;
- eliminating the threat of jail time for failing to pay a fine for a minor offence;
- expanding the use of electronic ticketing ("e-tickets") to ensure processing times are simple and errors are reduced, thereby creating cost saving benefits; and
- reallocating justice resources (court, peace officers, corrections officers, etc.), to more serious criminal matters;

To help protect vulnerable Albertans, particularly those who are at risk of:

- homelessness,
- poverty,
- mental health or
- additional issues that may cause Albertans to fail to pay fines.

This failure to pay may be due to a lack of funds created by a cycle of poverty and incarceration. The Government has termed this cycle the "criminalization of poverty" and these amendments seek to end the cycle.



[Mike McLaws, Contributor](#)

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A Summary of the Key Amendments - Bylaw Enforcement and Peace Officers Take Note!

There are four primary changes to the legislation to achieve the Government's goals:

1. Changes to the circumstances of when a Part 2 or Part 3 ticket may be issued;

- Where a long form information is not issued under the *Criminal Code (Canada)*:
 - the procedure in Part 2 must be followed if: 1) there is no specified penalty or 2) the specified penalty is over \$1,000, excluding any surcharge;
 - the procedure in Part 3 must be followed where the specified penalty is \$1,000 or less, excluding any surcharge, unless a peace officer believes it is in the public interest to issue a ticket under Part 2 without a voluntary payment option;
- The criteria in determining if a public interest exists in issuing a Part 2 ticket under sections 22(3) or 27(3) of the *POPA* now includes a fourth criteria (i.e. whether the defendant's operator's licence is an out-of-province operator's licence). Peace officers must consider all four criteria now in determining if public interest exists (previously consideration of the criteria was discretionary);
- Where a defendant has an out of province operator's licence, a peace officer may issue a Part 2 ticket that:
 - gives the defendant the option of making a voluntary payment; and
 - does not require the defendant to appear before a justice on the initial appearance date to answer the ticket, if the defendant makes a voluntary payment prior to the first appearance;
- The changes to the use of Part 2 and Part 3 tickets serves to reduce the use of warrants for failing to appear or failing to pay a fine. The focus of enforcement is thereby changed from the use of warrants and the threat of jail, to the restriction of motor vehicle registry services or, where a denial of registry services would have no effect, alternative civil enforcement mechanisms are available, including writs on real estate or personal property, and garnishing wages;

2. The elimination of the need for the complaint portion under a Part 2 ticket to be sworn before a commissioner of oaths;

- This eliminates an administrative step resulting in a presumption that the allegation is made under oath by the charging officer;
- Violation tickets printed prior to the amendments coming into force may continue to be used until supplies are exhausted. If old tickets are used, there is no requirement for the complaint part of the old version of the ticket to be sworn before a commissioner of oaths, that part of the ticket may be left blank;



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3. The expanded use of e-tickets to include tickets under Part 3 of the *POPA*;

- For e-tickets alleging a parking violation, in addition to the other procedural requirements set out in the *Procedures Regulation*, the certificate of offence must contain the date that the offence notice was sent by ordinary mail to the defendant's address;

4. Expansion on the restriction of motor vehicle services to all municipal bylaws;

- Previously only bylaws enacted under the *Traffic Safety Act* (i.e. traffic bylaw, off-highway vehicle bylaw, etc.) could be enforced by way of restriction on motor vehicle registry services.

Amending Municipal Bylaws – Enforcement Provisions

We note that several municipalities' bylaws expressly authorize its peace officers to issue a violation ticket pursuant to Part 2 of the *POPA*. If your municipality has one of these references to violation tickets specifically being issued under Part 2, it may do either of the following:

- Amend the bylaw to remove the specific reference to "Part 2" and revise to state "issue a violation ticket pursuant to the *Provincial Offences and Procedures Act*"; or
- Amend the bylaws' specified penalties to amounts of \$1,001 or greater.

Final Comments

We note that although the amount of a specified penalty is a policy decision for municipal council, the specified penalty should be proportionate to the offence. Accordingly, a fine of \$1,001 or greater may not be appropriate for certain bylaw offences, therefore a better alternative may be to delete the reference to a violation ticket being issued under Part 2.

The amendments to the *POPA* and *Procedures Regulation* take effect on May 1, 2017. Municipalities that employ bylaw enforcement officers or community peace officers should ensure its officers understand and comply with the new legislation to ensure compliance with the new procedural requirements and avoid any tickets issued after May 1st being quashed by the Provincial Court for procedural errors.

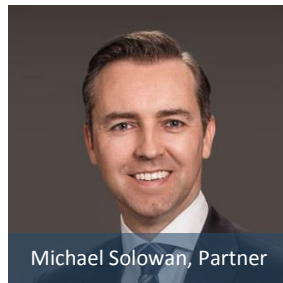
Finally, we remind municipalities that the *Municipal Government Act* provides that fines and penalties imposed under a municipal bylaw are an amount owing to the municipality and are recoverable as a debt owing. Accordingly, for those persons who refuse to pay fines and otherwise do not have use for motor vehicle registry services other civil enforcement mechanisms are available (e.g. writs on real estate or personal property, and garnishing wages). To utilize those additional mechanisms, a municipality may convert a bylaw conviction against a defendant into a debt judgment. A civil enforcement agency can then take steps to collect the fine or penalty on the municipality's behalf.



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Who to Contact

If you have any questions with respect to this bulletin, would like more detailed information on all of the amendments made to the *POPA* and *Procedures Regulation*, or discuss the amendments in greater detail please contact either the writer, our Municipal Enforcement Practice team lead, Derek J. King, or any of our other municipal prosecutors.

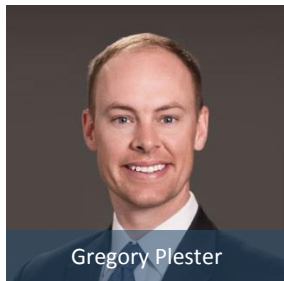


CALGARY OFFICE

7th Floor, 396 – 11th
Avenue S.W.
Calgary, AB T2R 0C5

T: (403) 232-8300

F: (403) 232-8408

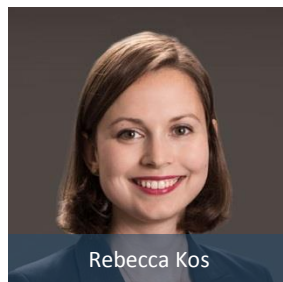
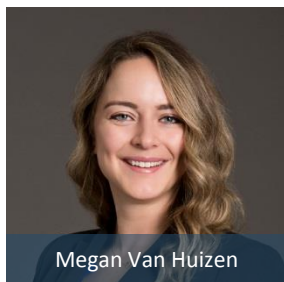


EDMONTON OFFICE

2200 Commerce Place
10155 – 102 Street
Edmonton, AB T5J 4G8

T: (780) 497-4800

F: (780) 424-3254



Toll Free: 1-800-661-9069