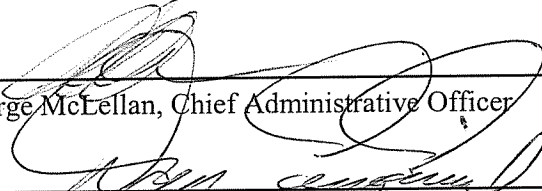
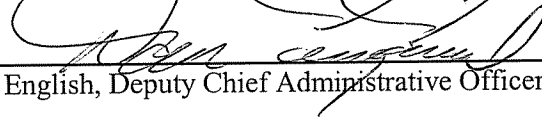


Halifax Regional Council
July 15, 2004

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


George McLellan, Chief Administrative Officer


Dan English, Deputy Chief Administrative Officer

DATE: June 10, 2004

SUBJECT: **Proposals to Amend Provincial Legislation to Support the Effective Punitive Measures Initiative**

ORIGIN

As part of the Effective Punitive Measures Initiative, Legal Services is recommending amendments to Provincial legislation to fill some of the gaps that are preventing by-laws from being enforced effectively.

RECOMMENDATION

It is recommended that:

1. Regional Council request the Province of Nova Scotia to consider the amendments outlined in Appendix A to the **Summary Proceedings Act**, the **Municipal Government Act**, the **Building Code Act** and the **Remission of Penalties Act** .

BACKGROUND

Amendment to the **Summary Proceedings Act**: If a Summary Offence Ticket is used to initiate a by-law prosecution and the accused never attends court, the Judge can only impose the minimum fine, regardless of the severity of the offence or previous convictions.

Amendments to the **Municipal Government Act** and the **Building Code Act**: Trials regarding offences under by-laws or the building code are heard in Provincial Court. However, a Provincial Court Judge can only impose a fine and cannot impose any orders.

Amendment to the **Remission of Penalties Act**: Under this Act, the accused can ask a Judge or Justice of the Peace to reduce the amount of the fine that has been imposed. This can be done at the trial or at some time in the future. In some cases, the application for remission is made after the accused discovers that the Registry of Motor Vehicles will not renew a licence because of outstanding fines. At this time, there are no guidelines in this Act to indicate when fines should be remitted.

DISCUSSION

Amendment to the **Summary Proceedings Act**: The amendment would enable the Prosecutor to request that a warrant be issued so that the accused be compelled to attend court. Once the accused attends court, the court would be able to ensure that the accused attends when directed so that the fine which is imposed reflects the severity of the offence and previous convictions. The Prosecutor would have to convince the Judge that the warrant would be in the interests of justice so the Prosecutor would likely only seek a warrant if there were clear reasons for seeking a higher fine.

Warrants are routinely issued now when charges are laid via a long-form information (as opposed to a Summary Offence Ticket). Once the warrant is issued by the court, the accused will be arrested during their next encounter with the police. It is also possible for the police to actively search for and arrest the accused.

Amendments to the **Municipal Government Act** and the **Building Code Act**: These amendments would enable Provincial Court Judges to issue 'compliance orders' which require the accused to comply with the by-law or statute. Hopefully the accused (especially if they are represented by a lawyer) will take such an order seriously. If not, then there could be high fines for the breach of a compliance order reflecting the importance of following such an order. The fines stated in the proposed amendment are the fines for driving without insurance which can be used by Prosecutors as a benchmark for determining the amount of fine that should be imposed. Compliance orders are issued in Alberta and Ontario.

Amendment to **Remission of Penalties Act**: This amendment would require that the Judge indicate why the applicant for remission faces undue hardship. This is the same criterion used under the **Victims' Rights and Services Act** which requires the judge to levy a victim-fine surcharge unless the judge is satisfied that undue hardship would result.

BUDGET IMPLICATIONS

If these measures are enacted there could be a modest increase in the amount of fine revenue received by HRM.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report applies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserved budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operable reserves, as well as any relevant legislation.

ALTERNATIVES


N/A

ATTACHMENTS

Appendix A - Proposed amendments

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Edward Sawa, Solicitor, Legal Services 490-4220

Report Approved by: 
Wayne Anstey, Q.C., Director, Legal Services 490-4229

APPENDIX A

1. Amendment to the **Summary Proceedings Act**, R.S.N.S. 1989, c. 450:

Subsection 8(15) currently states:

“(15) Where a person to whom a ticket summons has been delivered fails to appear in court as directed by the ticket summons or by the justice after appearance and plea, the justice shall

(a) where the information portion of the offence ticket is complete and regular on its face, enter a conviction on that information and impose the minimum penalty authorized by law for the offence and a charge of one hundred dollars or thirty dollars for a parking infraction as defined in subsection (1) of Section 8A or, where another penalty for that offence has been directed by the Attorney General for out of court settlement pursuant to subsection (6), that other penalty and a charge of one hundred dollars or thirty dollars for a parking infraction as defined in subsection (1) of Section 8A; or

(b) where the information portion of the offence ticket is not complete and regular on its face, quash the proceeding.”

The amended subsection 8(15) would state (changes are underlined):

“(15) Where a person to whom a ticket summons has been delivered fails to appear in court as directed by the ticket summons or by the justice after appearance and plea, the justice may

(a) [initial clause deleted] enter a conviction on that information and impose the minimum penalty authorized by law for the offence and a charge of one hundred dollars or thirty dollars for a parking infraction as defined in subsection (1) of Section 8A or, where another penalty for that offence has been directed by the Attorney General for out of court settlement pursuant to subsection (6), that other penalty and a charge of one hundred dollars or thirty dollars for a parking infraction as defined in subsection (1) of Section 8A;

(b) where the justice is satisfied that the interests of justice so requires, issue a warrant in Form 7 of the Criminal Code (Canada) for the arrest of the defendant and adjourn the trial to await his appearance pursuant thereto; or

(c) where the information portion of the offence ticket is not complete and regular on its face, quash the proceeding.”

2. Amendment to the **Municipal Government Act**, S.N.S. 1998, c. 18: add Section 505A as follows:

“505A(1) If a person is found guilty of an offence under Section 505, the court may, in addition to any other penalty imposed, order the person to comply with one or more of the following:

- (a) this Act;
- (b) an order, regulation or by-law in force in accordance with this Act;
- (c) a licence, permit or other authorization issued under the Act or a regulation or a by-law in force in accordance with this Act; or
- (d) a condition of a licence, permit or other authorization issued under the Act or a regulation or by-law in force in accordance with this Act.

(2) A person who contravenes or does not comply with an order under this Section is guilty of an offence for the first offence to a penalty of not less than one thousand fifty dollars and, in default of payment, to imprisonment for a term of not less than forty-five days, for the second offence to a penalty of not less than two thousand dollars and, in default of payment, to imprisonment for a term of not less than ninety days, and for the third or subsequent offence to a penalty of not less than five thousand dollars and, in default of payment, to imprisonment for a term of not less than one hundred and twenty days.”

3. Amendment to the **Building Code Act**: add Section 19A as follows:

“19A(1) If a person is found guilty of an offence under Section 19, the court may, in addition to any other penalty imposed, order the person to comply with one or more of the following:

- (a) this Act;
- (b) an order, regulation or by-law in force in accordance with this Act;
- (c) a licence, permit or other authorization issued under the Act or a regulation or a by-law in force in accordance with this Act; or
- (d) a condition of a licence, permit or other authorization issued under the Act or a regulation or by-law in force in accordance with this Act.

(2) A person who contravenes or does not comply with an order under this Section is guilty of an offence for the first offence to a penalty of not less than one thousand fifty dollars and, in default of payment, to imprisonment for a term of not less than forty-five days, for the second offence to a penalty of not less than two thousand dollars and, in default of payment, to imprisonment for a term of not less than ninety days, and for the third or subsequent offence to a penalty of not less than five thousand dollars and, in default of payment, to imprisonment for a term of not less than one hundred and twenty days.”

4. Amendment to the **Remission of Penalties Act**, R.S.N.S. 1989, c. 397: Add Section 6 as follows:

“6 A court or judge or the Governor in Council shall not remit any such penalty or forfeiture under section 2 or section 4 unless the convicted offender establishes to the satisfaction of the court or judge or the Governor in Council that without the remission the convicted offender or the dependants of the convicted offender would suffer undue hardship.”