



Islands Trust

Preserving **island** communities, culture and environment.

# BYLAW ENFORCEMENT and LITIGATION MANAGEMENT REVIEW

## FINAL REPORT

FEBRUARY 20, 2008

ROYCROFT CONSULTING SERVICES  
NANOOSE BAY

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# BYLAW ENFORCEMENT and LITIGATION MANAGEMENT REVIEW

## INTRODUCTION

The Director of Local Planning Services was authorized to undertake a brief review of the way in which the Islands Trust currently operates and manages its Bylaw Enforcement activities. The following statement summarizes the intent of the project:

The Islands Trust Council made the following resolution on December 7<sup>th</sup>, 2007;

*Direct the Local Planning Services Director to complete by the March 2008 Trust Council meeting a review of the bylaw enforcement program as itemized in the Strategic Plan under 'Excellence in Governance', paying particular attention to the re-classification of one Bylaw Enforcement Officer to Co-coordinator.*

The firm of Roycroft Consulting Services was contracted to support the review through a structured process, involving consultation and input from Trustees and staff, along with some external and independent research.

At the outset, Trustees identified a series of matters they felt needed to be examined, and these were expressed as a series of questions within three areas, including:

- Bylaw Enforcement
- Litigation Management, and
- General Issues

Trustees input have been reviewed, along with suggestions for the terms of reference itself. Brief responses to each of these questions are provided, following a series of initial recommendations.

At the outset it should be remembered that the goal of a Bylaw Enforcement Program is to gain compliance with regulations in effect at the time. It is recognized that formal Bylaw Enforcement is not always the most preferred route to take, but that in some instances it is required. Experience elsewhere has shown that the whole field of enforcing bylaws must assume a layered approach involving many steps along the way. Starting at the very first level, with awareness of the situation, through to verbal and other communications, up to ticketing or even civil action through the courts, it can be a lengthy and costly process. Every situation demands a different approach, and the skills of the people involved must include a wide range of abilities.

At the same time however, it is a requirement in today's world, and has become increasingly difficult with the demands placed on the Trust by increasing developments and complexity. It is timely to take a look at how it is being conducted, and where

improvements can be considered to improve both the enforcement activities, and attainment of the Trust Mandate.

## **RESEARCH ACTIVITIES**

In order to gain an appreciation of the issues associated with the general field of Bylaw Enforcement, interviews were held with a series of other communities, including a small urban, larger urban and several rural local governments. The questions provided in the Terms of Reference served as a starting point for those discussions. Refer to Appendix One for the specific questions.

The comments submitted from many Trustees were reviewed and the three staff currently involved directly in the Bylaw Enforcement Program were interviewed as well. Comments are contained within Appendix Two.

Current trends, experiences with the bylaw enforcement environment and other matters were addressed. In particular, the new initiatives enabled under the Community Charter were thoroughly examined. Senior staff from numerous other jurisdictions were interviewed, with summaries of their comments provided in Appendix Three

Finally, the solicitor who has worked on most of the recent litigation cases on behalf of the Islands Trust offered a number of comments and suggestions for consideration aimed at improving the way in which the Trust manages its court actions. These comments are reported in Appendix Four.

Some time was spent on reviewing various local government web sites for information related to their particular programs.

An Interim Report was presented to the Local Planning Committee Meeting on February 11 and further follow-up comments were also received from members. All of the input has been considered in the preparation of the final report.

## **ANALYSIS**

During the background discussions with staff, a wide range of opportunities and concerns arose. While it was recognized that the issues and constraints related to performing enforcement activities are the same everywhere, the unique situations in the Islands Trust did pose additional challenges. These include such matters as the geographic extent, transportation barriers, multiplicity of stand alone governing bodies, the differing allocation of responsibilities across the Trust and of course, the ultimate obligation to pursue the primary mandate of the organization.

Some of the more interesting discussions revolved around the last issue, that of preserving and protecting the area. The current Bylaw Enforcement Officials indicate that, due to time constraints, little of their time seems to be spent in this area, while the majority is directed towards land use complaints and development management.

It was noted that some policy direction had already been provided in this area, but with the limited resources available, and the demands posed by current and on-going complaints and other infractions, the officers involved acknowledged that they did not

seem to be able to address this matter in the fashion anticipated. An opportunity may be available to redirect their time and energies towards the primary mandate of the organization, with resulting benefits across the Trust area.

It was interesting to note that the Trust already practices many of the recommended procedures in place in the other local governments surveyed. Similar policies are in place, the same kind of criteria is used to proceed to court action and many of the same steps are followed in attempting to secure compliance. Many have found the same limitations with the use of the MTI system, and success seems to demand a higher level of organizational capacity than the Trust has available, in order to meet the legislated time lines and undertake satisfactory follow-up.

It is clearly recognized that there is no one solution that can be applied across the entire trust area. Each individual local trust area demands its own unique approach. Having said that however, there are still principles and practices that do apply generally and having a greater range of potential tools is preferred. Finally a consistent approach towards the issues of environmental protection and other significant policy areas should be ensured.

## **RECOMMENDATIONS**

Conclusions and recommendations have been grouped into the following themes. It is suggested that the consideration of each recommendation noted herein should be done in the context of its applicable theme:

### **A. STAFFING**

#### RECOMMENDATION A -1

***The total staff complement be increased to three full time Bylaw Enforcement Officers (BLEOs), one each for the three Regions North, South, and Central***

These actions will enable the Trust to maintain basic bylaw enforcement coverage throughout all three regions. They will also provide for overlap and coverage in the event of excessive work demands in one area or temporary absences for vacation or training activities.

It is important to maintain the regional approach so that a single officer has primary responsibility for a region. That will increase their understanding and knowledge of the particular nuances of the various locations and issues. However they should also be free to move across the lines so to speak, in order to provide back up support to their neighbouring offices. The additional benefit of this is ease of coverage during absences and providing an opportunity for a fresh look at a particular issue, almost like a second opinion.

The biggest benefit of the additional capacity will see more time being spent in the field and quicker response to and awareness of infractions. Most of the comments provided indicated an interest in having more timely response, and consistent follow up. It is a reality of the geography and transportation services within the Trust area, that this can only be accomplished by having more resources available.

## RECOMMENDATION A – 2

***All Bylaw Officers meet or exceed training standards for the Industry and be full time employees.***

The Trust will be best served by ensuring staff in the Bylaw Enforcement area are as trained and competent as possible. Participation in provincial organizations and on-going educational activities should be encouraged. As it becomes more difficult over time for all organizations to recruit and retain qualified officials, it will be imperative to be able to offer full time employment with all of the accompanying benefits arising from that.

## RECOMMENDATION A – 3

***Continue with the staffing of a part time Bylaw Administrative Assistant to undertake many of the more routine administrative functions, thus freeing up BLEO availability for field work.***

When implemented, the administrative position should be situated in the head office in Victoria, to provide for ease of communication with other staff in that location. Consideration may also be given to recruiting someone with legal experience to further enhance internal capabilities, and reduce reliance upon external legal counsel.

Work for this position would include such activities as ensuring time deadlines for various actions are met, proper attention is paid to maintaining files and other correspondence, and internal reports are prepared and submitted in a timely basis for inclusion in agendas. The goal is for the Bylaw Officers to have as much time as possible available to spend in the field, as opposed to being chained to the office by paperwork.

## **B. STRUCTURE**

### RECOMMENDATION B - 1

***One Bylaw Enforcement officer should also be appointed as the Coordinator, with others reporting to that position.***

It will be very difficult for the DLPS to properly attend to managing all of the various functions within his/her area, while leading and directing the efforts of numerous BLEOs. A normal hierarchical structure, with a sole point of contact is preferred in order to achieve consistency and for mutual support.

This will also free up some modest additional capacity in the field, as the BLEOs would be administratively reporting to a member of their own unit as opposed to having to attract the time and attention of the DLPS. The secondary benefit would be felt by the DLPS as that person would only have to relay instructions, policy directions and other communications to one person as opposed to several.

## RECOMMENDATION B – 2

### ***The Coordinator should report to the Director of Local Planning Services***

The unit should remain within the Local Planning Services area due to the frequent interaction between BLEOs and the Planning Staff. Both groups can provide mutual on the ground support and assistance to each other, and as such should be managed jointly. For ease of contact between the Coordinator and senior staff, the Coordinator position should be based out of the Victoria Office.

## C. BUDGETARY ITEMS

### RECOMMENDATION C - 1

#### ***Litigation efforts continue to be initiated at LTC level, retaining Executive authorization for expenditures***

In keeping with the legislation establishing the Trust, the Local Trust Councils cannot delegate the authority to launch an enforcement action. However it is also essential that the Executive retain the overall authority to actually fund any action, due to the costs involved and the opportunity to avoid duplications and wasted efforts.

### RECOMMENDATION C - 2

#### ***All BLEOs to undertake increased level of investigation, replacing some of the work currently undertaken by external legal counsel thereby reducing legal costs.***

Several opportunities to reduce current costs have been identified and the additional costs incurred by having three BLEOs officers may be more than offset by savings and the potential revenue increases that might result from increasing fines in certain circumstances such as where chronic non-compliance is being experienced.

### RECOMMENDATION C – 3

#### ***Investigate opportunities to work with the Trust Fund Board to assist them with some monitoring and other site work as the BLEOs travel in the course of their routine duties.***

There may be an opportunity for providing some local support to the TFB that could further their aims and share resources.

## D. PROCESS

### RECOMMENDATION D – 1

#### ***Examine increasing use of the Municipal Ticketing Information System and the benefits of increasing fines to promote compliance.***

Securing compliance is the ultimate goal, and everyone would be better served if it can be secured through better awareness. The use of the MTI system is more common in other jurisdictions and is a better area to focus efforts on than increasing the use of court action. Higher fines combined with more aggressive ticketing in those specific areas identified by the LTC's may in fact prove to reduce the need to rely on the Courts, which are costly and have unpredictable outcomes.

Having three full time BLEOs should help to improve the effectiveness of this system by allowing speedier processing to avoid the six month limitation on taking action. While not without its limitations, the MTI System is far easier and cheaper to work with than is the next step, that of going to court. During several of the interviews, other Bylaw Departments observed that the unpredictability of the outcome of Court action is equal to the significance of the costs associated with it in acting as a deterrent for them to rely upon that step.

#### RECOMMENDATION D - 2

***Investigate use of Provincial Adjudication system (Bylaw Court) to streamline processing, increase compliance and reduce costs/time.***

The Community Charter introduced a new forum for local governments across British Columbia to make use of as another step in the enforcement of bylaws. It generally uses a less rigid approach towards evidence and requirements for determining guilt. A local government interested in this system must engage a provincially certified Adjudicator and provide suitable locations for the Court to operate from, along with administrative support.

The Bylaw Court system is relatively new, and not many jurisdictions have implemented it yet. Accordingly it is too early to determine if it will be truly effective in the area of enforcing land use regulations. In some cases however, it has been shown to significantly increase enforcement success and reduce costs of enforcement. Monitoring and exploration of the experiences elsewhere should be undertaken. Currently the communities in the Comox Valley area and the CRD are considering use of the system, and the Islands Trust may be able to participate in those local courts, reducing administrative time and expense in establishing one for the Trust itself.

The Bylaw Court option also provides an opportunity for the negotiation of "Compliance Agreements" which are used to trade off a portion of the fine which may be levied by an infraction for work to be performed to bring the situation into compliance with the bylaw in question. Significant on the ground improvements could be achieved through the use of this initiative as they are enforced through the Courts.

## **E. LITIGATION MANAGEMENT**

#### RECOMMENDATION E - 1

***Litigation activities should be coordinated at the Administrative level by the Coordinator, under the managerial direction of the DLPS, and with the approval of the CAO***

Having a single point of contact is preferred by the solicitor as that would promote a more consistent approach, and enable inspections to be conducted in a more comprehensive manner. Concentrating this activity would increase the internal understanding of best practices to follow in use of the court system.

This would not eliminate the need for the other Officer(s) to have some contact with the solicitor in specific cases where they have been involved, but would enable one person to become more familiar with and proficient in preparing for cases that end up before the courts.

Relying upon the DLPS to coordinate these actions, amongst all of the other demands on that position, may lead to less time and attention being provided to them.

Both the DLPS and CAO would also have a role to play, but at a more senior level, as befits their positions within the organization.

#### RECOMMENDATION E - 2

***The Coordinator should be the sole contact with the solicitor for routine administrative functions, to streamline and improve communications.***

The goal here is to have one person in the organization that can specialize in supporting litigation actions, as opposed to having multiple staff playing the same role.

#### RECOMMENDATION E - 3

***Prior to initiating litigation obtain solicitor advice on estimated costs and likelihood of success, and include in the report to LTC and Executive Council.***

Most jurisdictions surveyed practice this, as has the trust in the past. It is a sound policy to continue as it promotes for more informed decision-making.

#### RECOMMENDATION E - 4

***BLEOs to attend some LTC meetings, as practical, to ensure clear communications and promote understanding and awareness of common interests***

Greater understanding of local issues and priorities will benefit the BLEOs as will the opportunity to inform and apprise LTC members of current bylaw enforcement activities and results.

#### RECOMMENDATION E - 5

***The Chief Administrative Officer should be involved in recommendations to proceed with litigation actions. In addition, where the Solicitor requires specific directions of a sensitive nature, both the DLPS and CAO should be the point of contact, depending upon the level of the issue.***

## F. INTERNAL COMMUNICATIONS

### RECOMMENDATION F – 1

***Regular reports should be made to all Trust bodies, such as Local Trust Committees and the Executive Committee, on current Bylaw situations, including enforcement activities and progress and results of litigation.***

Increasing internal knowledge and awareness of the realities of enforcing bylaws, should lead to improved governance and bylaw development. It also provides a better opportunity for spreading information to the public through regular contacts that occur.

### RECOMMENDATION F - 2

***Prior to adoption of any bylaw provide an opportunity for Bylaw Enforcement Officer review to ensure and increase enforceability.***

Due to their closer exposure to enforcement activities across the entire Trust area, and first hand knowledge of litigation results the BLEOs should provide support and assistance in the drafting of bylaws.

### RECOMMENDATION F - 3

***Institute a program to undertake, over time, a comprehensive review of all current bylaws with a view towards improving the likelihood of successful enforcement actions.***

This action could be handled through the additional capacity provided by having three BLEOs. Sharing the task may also allow for each to focus on some particular bylaws, thereby streamlining and increasing efficiency of this task.

### RECOMMENDATION F - 4

***Summaries of all legal opinions obtained should be circulated to all Local Trust Committees to increase awareness.***

The purpose of this step is to promote awareness and improve understandings of experiences gained when bylaws are examined in a legal context. Better governance and bylaw development would hopefully result.

### RECOMMENDATION F - 5

***Circulate details of specific enforcement litigation results on a “need to know basis”.***

Respecting the fact that there are some matters that will have to be kept as confidential due to the legal obligations and exposures possible, information should be shared wherever possible, and as widely as possible.

### RECOMMENDATION F - 6

***Make regular presentations to the Trustees on the value and benefits of Compliance/Enforcement through such opportunities as bringing in guest speakers (President of the Licence Inspectors and Bylaw Officers Association as an example).***

By increasing Trustee awareness of both general and specific enforcement activities and outcomes, improvements to the entire bylaw system can be achieved. Eliminating provisions in bylaws that have proven themselves to be unenforceable will increase public confidence, promote attainment of trust objectives and reduce legal costs.

## **G. EXTERNAL COMMUNICATIONS**

### RECOMMENDATION G - 1

***Promote Compliance through public education materials – brochures, website, posters and other forms of public communications materials.***

Improving public awareness has many benefits by increasing attention on the bylaw requirements, informing many citizens who have eyes and ears on the ground and may be very valuable in the event an issue goes before the Courts and proof can be provided of the efforts to avoid non-compliance.

### RECOMMENDATION G - 2

***Offer to have BLEOs provide Public Awareness presentations to groups such as local Service Clubs.***

There are many advantages to having the issue of bylaw compliance discussed at these kinds of groups who generally represent a broad section of the community. It puts a human face on the enforcement activity, and improves public confidence.

### RECOMMENDATION G - 3

***Prepare brochure on bylaw enforcement steps and procedures for distribution to all residents, highlights in posters for display in every office.***

Putting the information directly into the hands of the residents is the best way to inform and educate.

### RECOMMENDATION G - 4

***Celebrate successful bylaw enforcement initiatives to promote compliance through the use of Press Releases and other forms of communications and reports to increase public awareness and understanding of bylaws and potential consequences of non-compliance.***

The public are both the source of bylaw infractions and the solution. In many cases contraventions can be attributed to real lack of awareness, or at worst a claim of

ignorance of the prevailing laws and rules. Increasing public information is a relatively low cost way of addressing both problems.

## **H. MEETING THE MANDATE**

### RECOMMENDATION H - 1

***Consider a policy directive to have BLEOs to focus a minimum of half their time on issues associated with the overall mandate of the Trust, to preserve and protect the environment***

Currently the BLEOs indicate they are spending less time on larger environmental considerations as much of their efforts are being consumed with what could be construed as minor land use infractions (setbacks, building heights, accessory structures, etc). This situation is partially the result of the increased level and pace of development activity occurring coupled with the public pressures that are being felt at all levels.

It is recognized by the staff that current policy directs them to focus attention on these strategic matters, but the day-to-day reality sometimes imposes its own limitations and demands their attention be directed elsewhere.

By directing that 50% of the available staff time be focused on addressing the Highest Strategic Issue of the primary Mandate, the overall effectiveness of the Trust itself may be improved. It also gives the Bylaw Officers the support they need to prioritize their time accordingly.

The most likely outcome of this policy direction will be a more proactive effort in some cases. The downside to this step will be less attention on some items of concern to the public and consequential complaints.

## **I. INSPECTIONS**

### RECOMMENDATION I - 1

***When in the field, BLEOs should undertake routine inspections to follow-up on issuance of Development Permits to ensure compliance.***

Closing the loop through on site observations will promote compliance and confirm to the public that the Trust is serious about seeing the bylaws complied with. An increase in public faith should result.

### RECOMMENDATION I - 2

***On Hornby and Denman Islands, every location issued a Siting & Use Permit should be inspected.***

BLEOs indicate they generally have sufficient time available when in the field to undertake these kinds of inspections due to the transportation schedules. Not conducting these inspections reduces public confidence in the bylaw enforcement system and potentially leaves the trust open to criticism and possibly liability, by not enforcing its own bylaws. This might arise for instance in a situation where another land owner claims they are experiencing damages as a result of a illegal action by someone where the bylaws have not been enforced. While small, this risk may present itself.

## **J. OTHER MATTERS**

### RECOMMENDATION J - 1

***Examine the opportunity to engage trained and selected volunteers in observation and possible investigations to speed up Bylaw Enforcement Officer actions on infractions.***

Utilizing external volunteers is an attractive option as it may increase capacity without associated costs. However it too is fraught with potential risks through exposing volunteers to potential conflicts and if considered, must be approached cautiously.

### RECOMMENDATION J- 2

***Provide magnetized Bylaw Enforcement signs for BLEOs to use on their vehicles where circumstances warrant them.***

When the public sees an “official” vehicle traveling the roads it may have the benefits of encouraging compliance. There are times however, when a more quiet approach is appropriate, thus having the ability to use them when the Officers feel the need exists provides the flexibility they require.

### RECOMMENDATION J - 3

***Not consider use of Official uniforms at this time.***

The use of uniforms signals a higher level of response and at the current time may lead to more public concern. At some time however, the Officers may require this raising of the bar so to speak.

### RECOMMENDATION J – 4

***Continue to pursue opportunities to contract in specialized services from other agencies to increase Trust capacity.***

The Trust currently contracts in various services from other organizations and groups and opportunities to make effective use of this option for bylaw enforcement should be maintained through regular communications with adjoining organizations.

## CONCLUSION

The recommendations above arise out of an examination of the current trends and practices associated with Bylaw Enforcement at the Islands Trust and across other jurisdictions in British Columbia. The situation the Trust finds itself in is not unique in that many communities struggle with all aspects of Bylaw Enforcement. Pushed too hard, many enemies can be created amongst the citizens. Alternatively an insufficient level of enforcement will likely lead to an erosion of public trust and more generalized lack of compliance, making it difficult for the organization to achieve its policies and mandates.

Through their input, many Trustees indicated a certain level of concern regarding the current kind and level of enforcement activity. Doing nothing by just continuing with past practices and the current level of Bylaw Enforcement activity, may very well lead to more of the same. It is indeed a case of getting what you pay for, and the additional capacity that would come with having three full time Officers would address some of the concerns identified, albeit at some cost.

The sooner the above recommendations are put in place, the sooner will the Trust receive the anticipated benefits. However, it is recognized that budgetary limitations do exist, and perhaps it may take a number of years to consider all of the suggestions offered.

In the interim it is strongly advised, that one of the Bylaw Officer positions still be appointed as a Coordinator in order to achieve some of the potential benefits illustrated above, such as reducing external legal costs, ensuring a consistent approach and increasing the amount of information flowing to the decision-making bodies. In this scenario, the second Officer should report to the Coordinator to put in place the recommended long term organizational structure and still achieve some of the efficiencies noted earlier.

Thanks to Peter, Miles and Mac for the contributions to date.

# APPENDIX ONE - QUESTIONS RAISED

## Bylaw Enforcement

Is the current bylaw enforcement service adequate? If not, how is it lacking?

- There are areas for improvement such as long outstanding cases, inconsistent investigations, higher legal costs and lack of attention to higher level Environmental Protection

Is the current bylaw enforcement organizational structure adequate? If not how is it lacking?

- The current system is managed off the side of the DLPS desk and more officer time should be available to spend in the field

Who would have financial management responsibility for bylaw enforcement?

- Executive Committee has overall responsibility with the program being administered through the DLPS

Would a Trust wide bylaw enforcement approach be better than the current regional approach?

- A Regional approach offers the best chance to recognize the differences in demands, style and interests across the Trust area. BLEOs should have a primary regional responsibility, but be able to respond across the entire area as demands warrant

How can BLEOs provide better service to the LTCs, Executive Committee and Islands Trust policies?

- Promoting public awareness, prompt and professional investigations of complaints, adequate preparation for further enforcement actions, improving bylaws and spending significant time on achieving the overall Mandate of the Trust itself

Should there be Trust wide bylaw enforcement policies and/or unique LTA bylaw enforcement policies?

- Both, Trust wide from an overall perspective to ensure general fairness and consistency, but allowances for individual approaches based on local interests

How can we ensure bylaw enforcement issues are made corporate issues?

- Raising the profile through regular reports to Council and Committees, updating the public on enforcement activities, spending the time to clear out unenforceable bylaw provisions, and promoting a clear, consistent and professional approach

How should bylaw enforcement resources be structured and located?

- An overall Coordinator position be created, which is also a BLEO, two other BLEOS to report to the Coordinator and

How should bylaw enforcement services interface with the new LPS unit structure and lines of responsibility?

- The Coordinator should report through the DLPS, with both Planning and Bylaw Enforcement being seen as one team

## Litigation Management

Is the current litigation management service adequate? If not, how is it lacking?

- Improvements could be made in the areas of overall coordination, providing consistent investigations, reducing reliance (at greater cost) on solicitor, reducing the number of staff involved with the solicitor to remove the potential for communication conflicts, and avoiding the potential perception of political influence (need to separate politics from individual actions)

Is the current litigation management organizational structure adequate? If not how is it lacking?

- A single point of contact should be established and an individual appointed to coordinate routine aspects of bylaw enforcement litigation. DLPS and CAO to retain high level responsibility, but assign day to day activities to Coordinator.

How should litigation management services interface with the new LPS unit structure and lines of responsibility?

- Should report to the DLPS, alongside the planning staff. Integration achieved through internal communications

Who would have financial management responsibility for litigation?

- At the management level, the DLPS would have overall responsibility but primary work performed by Coordinator. At political level, Executive Committee retains responsibility, but involve LTC's in specific instances

How should litigation management services resources be organized?

- The coordination of litigation should be centralized into one position

## General

Should bylaw enforcement and litigation management be integrated into a single work group responsibility to effect coordination of compliance? If yes, would the Islands Trust benefit from a Compliance champion?

- Yes all aspects of Bylaw Enforcement should be aligned and coordinated into a unique work group operating alongside the planners
- Compliance is the goal of all enforcement action, and the overseer (Coordinator) should be the Champion internally

Should existing Islands Trust policies be amended?

- Some existing policies, procedures and bylaws need to be continuously reviewed and updated

Should new Islands Trust policies be created?

- New Enforcement Policies should be developed in response to emerging needs

Who should have authority and responsibility to access legal services with respect to bylaw enforcement and litigation management?

- The Director of Local Planning Services, should be able to access legal opinions and basic services; Local Trust Councils should continue to authorize all litigation with Executive approval

Who should manage bylaw enforcement and litigation management?

- A new Bylaw Enforcement Coordinator position, reporting to the DLPS, should be mandated with providing BE services within one of the regions and coordinating overall activities, with that position being administratively responsible to the DLPS and the corporate oversight function being provided by the CAO

How can we improve the understanding by trustees that bylaw enforcement is effective?

- Promote benefits of securing compliance, bring in external speakers

How can we ensure the timely management of files/

- By having someone charged with the responsibility to engage in effective coordination, and holding them accountable to set standards and monitor and track files to ensure completion

How can we improve file management?

- Regular update reports to the Trustees on every Local Trust Council agenda, and

What administrative support is needed for the recommended structure?

- Consideration should be given to providing a .5 FTE at the Victoria Office to support all bylaw activities

## **APPENDIX TWO – TRUSTEES’ COMMENTS**

Below is a summary of comments made by Trustees about Islands Trust bylaw enforcement and litigation management.

Twelve of twenty four Trustees responded to Mac Fraser’s request for input from Trustees.

### **General Comments about Bylaw Enforcement**

No problem with status quo.

High satisfaction with present system

No data on why change is necessary

Don’t know of a problem with BEO system and thus cannot see reason for proposed changes

Issues in bylaw enforcement is related to policy and guideline deficiencies

Not familiar with work of the Bylaw Officers

### **Communications**

Does not get many questions from public about specific cases and feels it’s the BEOs job to answer them

Complainants can phone the BEO

Wants senior staff to respond to media inquiries

Wants signs for vehicles

Wants better reporting of BEO activities

Wants better education about need for regulations

Work to establish realistic expectations about capabilities of regulations and enforcement process

Wants more education of public about possibilities of enforcement, set realistic expectations

Put more information on Website

Wants more complete follow up on complaints

Give more feed back to complainants

Dissatisfaction is with management of communications not files

Files should be reported to LTCs in same way as applications logs on each LTC agenda

Local Planning Committee should develop communications policies

We should trumpet our successes with illustrative stories

Communicate feed back to complainants

Communicate to public our enforcement policies

People are confused about enforcement

People are confused about why enforcement is reactive and not proactive

Public does not see need for regulations before there is a problem

Standard form for complainant feed back is needed

BEO can issue information about litigation matters if there is a policy directive

There should be policy governing role of DLPS and LTC roles on media contacts

Change name of Bylaw Enforcement Officer to Bylaw Compliance Officer

Local bylaw issues should be funded locally and Trust wide issues should be funded area wide

Reports do not indicate degree of complexity of each file

### **Location of BEO office**

Feels more positive about BEO in each region  
Wants Bylaw function in each region  
It is inefficient to have central bylaw office when there are three regions  
Two officers are not more efficient than three  
Have a bylaw team but one officer for north and one officer for south  
No Nanaimo office  
BEO should be located in the region they serve  
Why region wide model if we have 12 different LTCs  
Likes three BEOs –thought we agreed to hire three full time positions  
Need BEO on Salt Spring due to size of community  
There should be designated “first responders” for bylaw enforcement on each island.

### **Litigation Management**

What is the problem with Director of Local Planning Services being manager of legal matters?  
Will management of litigation slow down enforcement by loading BEO with new responsibility?  
Wants LTC to be asked about what regulations it wants enforced before requesting permission to sue on specific case.  
Wants alternatives to formal court process to be established  
Coordinator management of litigation would slow down process  
Litigation reports should tell LTC that no enforcement will be a policy decision not to enforce on similar cases  
Litigation should be senior task not off side of BLEOs desk  
There should be a separation between persons doing enforcement process and prosecution processes  
Regional Planning Managers should manage litigation in their own areas  
Bylaw enforcement should only be done for health and safety issues

### **Coordinator role**

Supervisor’s role could use up enforcement time unless he is a “working in charge”  
Coordinator managing legal issues will draw away from enforcement.  
Cost management is important  
No need for Coordinator just need for better policy  
Review of enforceability of bylaw should be done by a local BEO  
Coordinator time would cause need for another BEO  
Coordinator job cannot be done off the side of a desk

### **Clerk Position**

Need more information on BEO clerk’s responsibilities  
BEO not clerk can send form letters to complainant

### **Additional Duties for BEOs**

Does not want additional responsibilities for BEO or change in BEO available time for enforcement  
Monitoring for compliance will cause need for bigger unit

### **Additional Comments**

Likes Enforcement policy on STVR

Wants legal non conformity claims investigated  
Wants review as to enforceability of proposed regulations by BEO  
Tried and Tested regulations should be put in place  
Drafting bylaws that have public support will result in voluntarily compliance  
If there is a review of a Bylaw underway there should be no enforcement priority on that issue

**Comments about the consultant's review.**

Proposed changes should be justified  
The consultant should come to his own conclusions and staff bias should be kept out of the terms of reference.  
This should be a bylaw enforcement service review not a bylaw enforcement policy review  
The consultants review should be about improving existing bylaw enforcement structure not new structure.

## **APPENDIX THREE – SURVEY of OTHER COMMUNITIES**

The following remarks were taken during telephone and personal interviews held by the consultant. They are intended to provide a brief synopsis of the main highlights.

### **Capital Regional District**

Bylaw Enforcement responsible for enforcing all CRD Bylaws  
Also contract to other local governments  
Adjust action to meet jurisdiction/customers' needs

#### Process

- First approach is requesting voluntary compliance
- Written warning
- Fine
- Legal or other direct action

For the most part complaint or referral driven  
Also actively patrol; i.e. Parks, Animal Control

#### Municipal Ticket Information System

- Under MTI for most bylaws, sometimes work, in other cases don't  
- But only a six month window to issue a ticket from date of infraction occurring, not used frequently for zoning  
- If investigation is happening more than 6 months after the infraction occurs, use mediation, request voluntary compliance  
- Formal letter from solicitor, advise legal action pending, request compliance - Demand letter from solicitor as last chance

#### Litigation

- Electoral Area Services Committee or local Council makes determination to proceed with recommend legal action  
- Generally also send another letter advising legal action authorized  
- Report to elected officials will outline nature of the issue, extent of violation, history, implication of not proceeding (i.e. liability for organization)

#### Policies

Some Enforcement Policies in effect, provide clear guidance

#### Bylaw Court System

Negotiations can continue even during court, sometimes negotiate a Consent Order through Courts, binding, but finalized before trial so reduces legal costs  
Looked at Bylaw Court system, benefits of getting a Court Order as opposed to writing another ticket  
Giving it active consideration

### **City of Port Coquitlam**

#### Process

Levels of Enforcement

- Start simple, investigation, verbal warning
- Hard warning rectify by a date
- Write an MTI, don't use long form very much, used when want a conviction plus court order
- Direct action by municipal forces (where appropriate)
- Direct action, such as property clean up, on private lands can be billed to tax roll
- Remedial orders in cases where repairs not suitable
- Court action

### Litigation

Have staff discretionary authority at low cost, say under \$1,000.

Before going to Court, must show that all previous efforts have been unsuccessful, compliance unlikely unless enforced by a higher authority

Council makes a political decision

### Bylaw Court

Not using Bylaw Court because of costs to set up, get adjudicators, etc

Now exploring with Coquitlam opportunity to collaborate with them

Will add another option to deal with disputes

### Land Use Enforcement

Enforcement of land use bylaws is difficult, a lot at stake

Complex and challenging scope of investigation

Need to be well prepared for a tough fight

Threats often used, i.e. illegal suites, people don't want to risk Income Tax problems

Word of successful efforts gets around quickly, almost like a game of chicken; people tend to back off when faced with determined effort

### General

- If you're not serious about enforcement and aren't prepared to go all the way, don't start it

- Frustrating, waste of time and money, destroys credibility and makes a mockery of the Bylaws

### **City of Coquitlam**

Exclusively complaint driven, but moving to be more proactive

### Bylaw Court

- Changed from exclusive reliance on MTI to Provincial Adjudication system

- Working much better

- Previously the requirements for personal service of documents meant that costs exceeded revenue

- Now 10% of tickets are disputed

- 1% goes to Adjudication

- Only 7 out of 100 overturned

- Maximum fine is \$500.

- MTI – inspection by others, not Bylaw Enforcement

- Problems with process, meeting standards, staff didn't want to do it

- Public saw this as non-enforcement
- All Departments can now issue tickets
- Looking to run Bylaw Court on a monthly basis with other adjacent communities
- Burden of proof is different, not just reasonable doubt
- Many disputes can be settled with simple photographic evidence; people then tend to drop appeals
- Compliance agreement can be used to reduce fines
- Part of the Provincial tool kit
- Initial challenges in getting political support

### Litigation

Rarely use Civil Court Action

City Solicitor decides on Court Action

- Seriousness of situation
- Repeat offenders

### **Mt. Waddington Regional District**

- Have a Bylaw Enforcement Policy
- No direct staff
- Do conduct enforcement, no experience with it
- Bylaw Department would decide to proceed to litigation
- Not use MTI
- Spend extra effort on seeking compliance
- Rely on real estate comments, and others to expose violations; be patient
- People who violate the rules get caught eventually

### **Comox Strathcona Regional District**

#### Litigation

Probability assessment from lawyers

- Costs
- Likelihood of success

Decision then made by the Board

#### Process

Layered approach

- Compliance through verbal discussion
- Ticketing
- Then to litigation

#### General

- Critical to track activities
- Report on or media release of successful outcomes

#### Structure

1. Director Corporate Services
2. Manager Bylaw
3. Compliance Officer

## **City of Langford**

### **General**

- Sales skill – typically enough, not alienate the parties involved
- Gain voluntary compliance
- Bylaw Enforcement Officers benefit from sales training
- Initial indication of person's likely response
- Advise on what steps are involved
- Use all tools ultimately, fines, courts
- No written policy, every case is approached on its own
- Try to evaluate which would be the optimal process
- Primarily are complaint driven
- Unsightly premises, too many vehicles do site inspections

### **Process**

- Issue identified
- Verbal conversation with individual
- Document, send letter seeking voluntary compliance with deadline
- Monetary penalties, likely a ticket
- Then through court, staff prepare reports to the Crown Prosecutor
- If civil action then get Council OK first

Identify complainant internally but never release the name unless in court

### **Litigation**

No routine policy to take to Council, but is accompanied by staff report with a recommendation

- History of violation
- Number of complaints
- Evidence gathered
- Enforcement steps taken
- Budget situation

Annually budget for some court actions

Average about one a year

### **General**

Officers handle about 30-40 files each, try to run through as fast as possible

On-going public education program

Rely on Departmental brochures etc.

Officers drive around in marked vehicles

Officers also taking on Community Safety function

- Patrols at night, traffic control, graffiti

### **OCP and Land Use**

Same steps as above

## **Town of View Royal**

### **General**

- Generally complaint driven

- When complaints received, staff do formal follow-up
- Rely on Public Education, awareness, publicize on web site, periodic notifications in newspaper to promote compliance
- Primarily rely on MTI system, and only consider court action in extenuating circumstances

### Litigation

Court is the ultimate last resort, biggest hammer, but is cumbersome, expensive, time-consuming for staff and not results are not always predictable

Usually CAO authorizes going to Court, but may consult with Council, want to avoid appearance and potential for political interference

Criteria used to determine use of Court Action is

- All other attempts have failed
- Issue is persistent
- No other options exist to gain compliance
- Issue is significant

## APPENDIX FOUR - SOLICITOR INPUT

### Telephone Interview with Francesca Marzari, Lidstone Young Anderson

- IT faces major challenges due to geography, scattered nature of separate and distinct units. Creates real problems for enforcement and especially inspections. She sees a slower pace of investigation due to the challenges. Travel time, frequency of visits by inspectors, etc. Coupled with few staff that is spread thin, understandable why enforcement is a concern.
- Experience has shown approvals to proceed to litigation have been dealt with in a timely basis.
- Support for their work has been dependent on the skill levels and experience of the investigating officer.
- Offered a comment that in general life and the approach from government on the Islands was more easy-going than elsewhere, which works well for seeking compliance but is not as effective for litigation which requires by its nature a more aggressive approach.
- All problems are land use related so instructions often come from planners. Due to varying degrees of experience, and staff turnover, getting directions from a multitude of personnel can add even more challenges.
- In her experience getting information and requests or follow-up from a variety of personnel is not a problem when she is asked to provide an opinion, but for litigation there really needs to be one person assigned to interact with the solicitor and for the bylaw enforcement actions. This would eliminate potential confusion and duplication and be more efficient with regard to the amount of time the lawyers spend on the file.
- In her opinion it would be ideal to interact with a Chief of Bylaw Enforcement, who they would liaise and exchange information with, and that person would obtain directions and be the champion for the action within the organization. Instead of relying upon the other staff that may or may not have the knowledge or skills required, that person would handle matters related to consultation and local research.
- Also they prefer to interact with a staff person who has the authority to provide direction, and with the necessary political sensitivity and judgment to offer informed estimates of the likely political direction.
- In the event there is a single point of contact, that person needs to be familiar with litigation, needs to be in attendance at Trust Council meetings to secure political interests. Depending upon the skills of the individual they could do much if not all of the required investigation and research, lessening the involvement of the legal team.

Francesca offered to review and provide comments on the draft report.

From notes taken by R. Roycroft, Jan 21/08