INSIDE CANADA

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Municipal Law Enforcement Pre- and Post-COVID

There was a time not too long ago where the scope of work for the Municipal Law Enforcement (MLE) Department centered around traditional regulatory activities. These included but were not limited to enforcing property standards to ensure one's interior and exterior property was maintained, ensuring that grass was kept short, making sure excess noise was not likely to disturb neighbours, overseeing that taxis were operating legally, and taking steps to ensure businesses were licensed to operate above board.

While regulatory changes do occur, they typically happen incrementally or at the margins; by and large, the work of MLE Departments continues with limited changes year-over-year. Some of the largest shifts in operating activities over the past five years were concentrated on how rideshare operators (Uber) would fit within or complement existing regulations and how short-term rentals (Airbnb) fit within the existing community of property standards and zoning regulations. However, since March 2020, as a result of the COVID-19 pandemic, municipalities have been inundated with new provincial regulations that have required the MLE Department to significantly shift both the breadth and depth of their work in record time.

Shifting Regulations: Over the last 16 months municipalities across Ontario have shifted priorities to respond proactively and reactively to the COVID-19 concerns. It began March 17, 2020 when the Office of the Premier of Ontario announced an order declaring an emergency across the Province under section 7.0.1(1) of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 (*EMCPA*). Section 7.0.1(1) provides:

> the Lieutenant Governor in Council or the Premier, if in the Premier's opinion the urgency of the situation requires that an order be made immediately, may by order declare that an emergency exists throughout Ontario or in any part of Ontario.

On July 21, 2020, the Ontario government passed Bill 195, now known as the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (*ROA*). The *ROA* came into force on July 24, 2020 and has been consistently amended since that date, loosening regulations when COVID-19 cases are low and tightening the regulations when the COVID-19 cases are high. On May 21, 2021 as COVID-19 cases continued to decrease, the Ontario government announced a three-step reopening plan. The reopening plan required the entire Province of Ontario to stay in each step for 21 days, moving to the next step will depend on the number of people vaccinated, and public health and health care measures.

What this Shift Means for Municipal Law Enforcement in Hamilton: Since the onset of the COVID-19 pandemic, MLE Departments have played a critical role in the interpretation and enforcement of provincial regulations made under *EMCPA* and the *ROA*. Traditionally, MLE Officers do not have the authority to enforce the orders of the *EMCPA*; however, the provincial government extended their authority and signed a ministerial designation under the *Provincial Offences Act*, R.S.O. 1990, c. P.33 to designate MLE Officers as provincial officers for the purpose of enforcing all *ROA* and *EMCPA* orders, including exercising powers to ticket individuals for not complying with the recently-expired stay at home order. For businesses, the regulations enforced by MLE Officers include interpreting what is an essential and non-essential business, as well as distance requirements between restaurant tables, capacity limits, maintenance of customer logs at food establishments, screening protocols for staff and prohibition of indoor dining (at present, only outdoor dining is permitted in

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Ontario). Occasionally, non-essential businesses that were not permitted to be open have refused to close or comply with the *ROA*. Under traditional regulatory protocols, MLE Officers would issue fines, suspend a licence and require the business to appear before the licensing tribunal. Now, non-compliance requires engagement with the Ministry of the Attorney General to explore next steps in issuing an injunction that will prevent the business from operating, and the filing of an application in the Ontario Superior Court of Justice for a Court order restraining the business and anyone acting on its behalf from continued contravention of the regulations.[1]

For residents, the regulations enforced by MLE Officers include prohibitions against indoor gatherings, mandatory face coverings in all indoor establishments (as well as in outdoor lines), and ensuring a mandatory physical distance of two metres from those not within the same household. MLE Officers now find themselves assisting police services at protests, often being filmed by those that are receiving a ticket.

MLE Officers can issue tickets with fines up to $1000 for non-compliance, and they also now have the power to temporarily close premises and disperse individuals who are in contravention of a provincial order. (*O.Reg. 8/21*). This has been a dramatic shift from the traditional regulatory activities of late 2019.

The COVID-19 pandemic has meant turning the MLE Department into a seven day a week operation, constantly balancing and re-assessing priorities. To deal with the influx of COVID enforcement, the City of Hamilton[2] was the first in the Province to establish a COVID-19 enforcement team. This team act as ambassadors in educating the community on the ever-evolving rules and issuing tickets for non-compliance. To date the COVID-19 enforcement team has issued 326 *EMCPA* charges, 504 *ROA* charges, 34 face covering charges, and 202 physical distancing charges.

Municipal Expectations: Despite adapting to the new evolving rules, there is still an expectation by constituents that Hamilton will maintain existing service levels. With more people working from home within the community, there has been an increase in calls to action from residents. In 2021 MLE has received over 23,000 calls, which works out to be approximately 155 calls a day, nearly double the amount pre-pandemic. The MLE Department continues to ensure compliances with other municipal priority initiatives including, animal rabies concerns, cannabis, property standards and firearms. This is a prime example of a municipal department working smarter, leveraging internal capabilities and strategically adjusting to do more with less.

CONCLUSION

The MLE Department is an unsung hero throughout the COVID-19 pandemic, meeting the expectations placed on them by the province and the municipality to enforce ever-changing regulations while still maintaining existing service levels. To succeed over the last 16 months, the MLE Department had to broaden and evolve its capabilities to balance competing priorities between City's goals of being open for business while enforcing health directives during a pandemic. The MLE Department has done more with less, exhibiting an ability to manage, pivot and adapt despite monumental shifts in roles and responsibilities-and thrive while doing it.

Notes

1. On June 4, 2021 the Crown filed an application and sought an order restraining a local tattoo shop Kryptonian Ink, its owner and anyone acting with their authority or direction from continuing to provide tattoo services. Justice James Ramsey granted the application.
2. With a population of approximately 600,000, Hamilton is the third largest city in Ontario and is located just 70 km (43 miles) southwest of Toronto. ML



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