



B R O W N L L P
B a r r i s t e r s & S o l i c i t o r s

ANNIE (DON'T) GET YOUR GUN: RULES RELATED TO MUNICIPAL BYLAW ENFORCEMENT OFFICERS AND FIREARMS

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INTRODUCTION

At the recent Emerging Trends held in Edmonton on February 21, 2013, a question was asked during the Bear Pit Session with respect to whether or not bylaw enforcement officers can be authorized by a municipality to transport, in a municipal vehicle, their personal long guns, such as a shotgun, while performing their job duties. This anonymous and hypothetical question was premised on the assurance that the firearm would only be discharged to deal with stray animals or animals at large. We were assured that the bylaw enforcement officer's actions would be papered by a formal authorization from the chief administrative officer, and that the firearm would only be used for public and personal safety.

This question gives rise to a number of interesting intersections between different statutes and regulations. This article clarifies the scope of a bylaw enforcement officer's powers with respect to transporting and discharging a firearm while on duty. The short answer is that a municipal bylaw enforcement officer cannot transport and discharge a personal firearm while on duty. We recommend that municipalities review their bylaw enforcement officers' current practices to determine whether or not they are lawful.

THE FIREARMS ACT

A member of the public can carry an unrestricted firearm in his or her vehicle, provided that the transportation complies with the "Storage, Display, Transportation and Handling Firearms by Individuals" regulation under the *Firearms Act*.

THE PEACE OFFICER ACT

In Alberta, some bylaw enforcement officers are community peace officers ("CPOs"). This category of peace officer is appointed through the Office of Alberta Solicitor General and Public Security. The *Peace Officer Act* is clear that no peace officer may carry any weapon (including a

firearm), unless his or her appointment specifically permits it and his or her employer has been authorized to provide firearms. In these circumstances, the CPO is not carrying a personal firearm, but rather has been provided one by his employer for the purposes of performing his duties. If both the foregoing prerequisites have been met, the peace officer and the authorized employer must comply with the requirements of the *Peace Officer Act*, its regulations and the *Peace Officer Policy and Procedures Manual* (2012).

A CPO may apply to carry a firearm only for the purposes of the duties found within the *Animal Protection Act*, *Dangerous Dogs Act*, *Stray Animals Act* and the *Wildlife Act*. The *Peace Officer Policy and Procedures Manual* (2012) specifically states that any other use of a firearm may result in criminal charges and constitute a contravention of the CPO's appointment. Given the rules and regulations under the *Peace Officer Act*, it follows that a CPO may not carry a personal firearm pursuant to the *Firearms Act* while carrying out their duties.

A CPO, when wearing a uniform and empowered by the *Peace Officer Act*, is a public official. The different rules for CPOs respecting the transportation and discharge of unrestricted firearms are an attempt to balance the needs of the public officials in carrying out their duties and the safety of the peace officers and members of the public. The Province of Alberta has decided that in order to justify the need for CPOs to carry weapons, an authorized employer must provide the following:

1. specific duties of the peace officers which would require the use of a weapon;
2. liability coverage for the proposed weapons;
3. a letter from the chief administrative officer or equivalent showing that the authorized employer accepts the responsibility and liability for any weapons applied for;
4. a written policy describing use, storage, and maintenance of the weapons;
5. a written policy relating to training, recertification and only those peace officers who have been trained in accordance with standards set by the Director, shall be permitted to carry weapons;
6. a written policy describing when it is appropriate to use weapons; and
7. a written policy requiring reporting to the Public Security Division each incident where a peace officer on duty uses a firearm or shotgun outside of duties in accordance with regulations and policy. This policy must include provisions requiring that in the event of a serious or sensitive situation the authorized employer must report to the Director of the

Public Security Division as soon as the employer becomes aware of the incident and no later than 24 hours in other circumstances.

If the Director of the Public Security Division is satisfied that the foregoing justifies the carrying and use of weapons for peace officers employed by the applicant, terms and conditions shall appear on each authorization and appointment issued under Peace Officer Program.

THE MUNICIPAL GOVERNMENT ACT

The Criminal Code carves out an exception for weapons related offences in the Criminal Code and the *Firearms Act*. Specifically, section 117.07 of the Criminal Code states:

117.07 (1) Notwithstanding any other provision of this Act ... no public officer is guilty of an offence under this Act or the *Firearms Act* by reason only that the public officer:

- a. possesses a firearm ... in the course of or for the purpose of the public officer's duties or employment...

The Criminal Code defines firearm as any "barrelled weapon from which any shot, bullet or other projectile can be discharged." More importantly, a "public officer" is defined to include a "peace officer". In Alberta, there is no requirement that a bylaw enforcement officer be a peace officer (although in practice, some of them are). There is case law that indicates that a municipal bylaw enforcement officer is not a peace officer within the meaning of this section of the Criminal Code. Consequently, a bylaw enforcement officer is not given any protection under this section of the Criminal Code.

Furthermore, section 556 of the *Municipal Government Act* (the "MGA") requires that council must by bylaw specify the powers and duties of bylaw enforcement officers when enforcing municipal bylaws. As bylaw enforcement officers derive their authority to enforce bylaws from the MGA, they have no other powers bylaw than those established by bylaw. Section 203 of the MGA prohibits council from delegating its power to pass bylaws. Consequently, a letter from a chief administrative officer is not sufficient to expand the powers and duties of a bylaw enforcement officer.

Similarly, a bylaw enforcement officer who is also a CPO can only carry firearms provided by their employer when expressly authorized by the province and only for the purpose of enforcement of those provincial statutes they are authorized to enforce. A CPO who transports and discharges a personal firearm in accordance with the *Firearms Act*, has breached his provincial appointment. A number of cases have found that a peace officer acting outside of his statutory authority is acting as an ordinary person. As such, the municipal bylaw enforcement

officer would not have been acting in his role as a “public officer” as defined by the Criminal Code and may be liable for charges pursuant to the Criminal Code.

There may be situations in which the bylaw enforcement officer may, in the course of his municipal duties, be authorized pursuant to his provincial CPO appointment to use a firearm. For example, if a bylaw enforcement officer was also a CPO with an appointment to carry a firearm, he may be able to discharge in firearm in a situation where originally he was investigating a bylaw complaint and discovered, for example, a pit bull attacking a child. However, these circumstances would require the bylaw enforcement officer to have the proper provincial appointment.

CONCLUSION

We strongly recommend that municipalities and bylaw enforcement officers review all their policies and procedures. Regardless of whether a bylaw enforcement officer is also a CPO, it is clear that there needs to be specific authorization for them to be transporting and discharging weapons in the course of their duties.

Both municipalities and bylaw enforcement officers may face unintended liability if a casual approach is taken to the practice of individuals transporting and discharging personal firearms while using municipal vehicles and performing official duties. A municipality may be exposed to liability as a result of a bylaw enforcement officer discharging a firearm during the course of his or her job duties. Additionally, the bylaw enforcement officer may be exposed to civil or criminal liability, if they are acting outside the scope of their official powers pursuant to either the *Peace Officer Act* or the *MGA*.

HELP?

Should you have any questions regarding the above or require any assistance in enforcing your bylaws or determining the scope of your Bylaw Enforcement Officers’ powers, please contact Derek King at (403) 260-1472 or dking@brownleelaw.com or any member of the Brownlee LLP Municipal Enforcement Practice Team or Municipal Governance and Authority Practice Team.