

BRIEFING

To:	Trust Council	For the Meeting of:	March 8, 2023
From:	CAO	Date Prepared:	February 3, 2023
SUBJECT:	Bylaw Enforcement Policy and Practices Overview		

1. PURPOSE:

To provide an overview on Islands Trust enforcement policy and practice to Trust Council.

2. CONTEXT

Following a delegation at the December 2022 Trust Council meeting regarding the application of bylaw enforcement procedures, Trust Council, during the disposition of delegations session, made the following motion:

That Trust Council requests that Executive Committee include a session on bylaw enforcement policy and practice in the March 2023 Trust Council meeting agenda.

To support Trust Council's direction the following actions are underway:

1. Development of this report on current bylaw enforcement practice;
2. A session for the March 2023 Trust Council has been developed including guest speakers from the Ombudsperson Office and the Attorney General's office, in order to speak to current best practices and any issues with the Islands Trust;
3. An in-camera session has been planned for Trust Council to address issues associated with specific bylaw files.

More specifically, these reports and the sessions will describe the bylaw enforcement process and authorities, describe the current authorities of local trust committees, trustees and Trust Council; describe the number and nature of open files; describe the issues and number and nature of complaints by citizens on how the service is delivered, including charges of bias, diversity, bullying and proportionality.

Following receipt of this work, Trust Council may provide direction on how it wishes to proceed, either to continue with current practice or direct changes in either policy, practice or both.

3. BACKGROUND

3.1 BYLAW ENFORCEMENT AUTHORITY

The authority to enforce land use bylaws lies with the local trust committees. Section 28 of the *Islands Trust Act* gives the local trust committees all of the powers and authority of a regional district board in relation to bylaw enforcement. The only proviso is that any fines collected through bylaw enforcement are paid to Trust Council. The legislation does not compel local trust

committees, or any local government in British Columbia, to enforce its bylaws; the decision on whether to enforce a bylaw or not is up to the local government, including local trust committees.

Section 14 of the *Islands Trust Act*, however, gives control of the budget to Trust Council, not the local trust committees. Therefore, there is a role for Trust Council in approval of budgets for bylaw enforcement, as well as all other budget decisions.

As a result of the above legislative structure, Trust Council does not have authority to tell a local trust committee how to enforce its bylaws. However, Trust Council can provide guidelines for local trust committees to follow, and use those guidelines to help Trust Council determine appropriate funding and resourcing availability to local trust committees for bylaw enforcement.

Because of this division between legislated authority to undertake enforcement of bylaws, and the funding of bylaw enforcement, all requests by local trust committees to undertake significant enforcement action (usually through the British Columbia Supreme Court) requires approval for funding through the Executive Committee.

3.2 BYLAW ENFORCEMENT BYLAWS

All local trust committees have a “Bylaw Infractions Investigation Bylaw”. This bylaw permits the bylaw enforcement officers to enter any property at any reasonable time to determine whether the local trust committee bylaw, or any issued permits are being complied with.

Most local trust committees have a “Bylaw Enforcement Notification Bylaw”. This bylaw permits the bylaw enforcement officers to issue violation tickets (with a fine attached) for violations of the provisions of the land use bylaw. The infraction, and the fine amount, are established in the bylaw. The bylaw establishes the general process for the issuance and collection of the fine, as well as an appeal process for the person who receives the fine. Note that these bylaw infraction notices are only used in those local trust areas that have adopted a “Bylaw Enforcement Notification Bylaw”.

3.3 TRUST COUNCIL BYLAW ENFORCEMENT POLICY

To provide guidance to local trust committees on resourcing for bylaw enforcement, Trust Council has adopted [Policy 5.5.1 \[Bylaw Compliance and Enforcement\]](#). This policy is based on the Ombudsperson’s “[Bylaw Enforcement: Best Practices Guide for Local Governments, 2016](#)”, with adjustments to reflect the unique structure of the Islands Trust.

Generally, Policy 5.5.1 sets out when an enforcement investigation may be opened by bylaw enforcement staff. This is usually based on a complaint, but the policy also indicates certain situations where staff may proactively enforce without a complaint; these are generally to do with violations that may cause environmental damage, or health and safety issues.

The Policy also allows local trust committees to establish their own local policies for enforcement. This currently is being used by some local trust committees, who have “standing resolutions” instructing staff on either proactive enforcement on particular issues (such as short-term vacation rentals), or to withhold enforcement in certain situations (such as residential use that appears not to be lawful due to the affordable housing issue). While these policies require different enforcement standards in each local trust area, the work is undertaken with the resources allocated by Trust Council, and managed by the Manager of Bylaw Compliance and Enforcement. If a local trust committee policy direction requires additional resources, staff would advise the local trust committee of this, and the local trust committee would then ask staff to make the appropriate requests through Trust Council for additional resources to support the enforcement policy.

The policy also specifies that local trust committees and trustees will not get involved in the investigation of a complaint, or the writing of reports about the complaint. This is a best practice to ensure that the investigation and reporting is free from politics. Of course, should compliance not be achieved, the local trust committee will become involved when deciding whether or not to seek legal action to uphold the bylaw or to direct that a file be closed.

The policy also includes other aspects of enforcement such as mediation, confidentiality, and taking legal action.

3.4 ORIGINS OF THE CURRENT PROCESS

Roycroft Report

In 2007, Trust Council passed a resolution that directed the Director of Planning Services to complete a review of the bylaw enforcement program. The report was completed in 2008, and provided recommendations that established the current organization of the bylaw office, and the policies and procedures that they currently follow.

The Roycroft Report made the following key recommendations:

- that a supervisor was required, originally in the form of a coordinator, and eventually in a position designated as the manager;
- that a bylaw officer operate in each of the three geographic areas: Northern, Salt Spring and Southern;
- that communications information be provided to those subject to complaint;
- that the bylaw enforcement adjudication system be investigated for use by Islands Trust and it was ultimately adopted by ten Local Trust Areas; and
- that the CAO be involved in recommendations to proceed with litigation actions.

Trust Council Policy and Ombudsperson Best Practices were used to create the Bylaw Enforcement Best Practices Manual and it outlines the purpose of bylaw compliance and enforcement program and it details how complaints and bylaw files are to be processed and investigated. It provides guidance to staff on how to conduct operations and on file management and communications with respondents, complainants and Trustees.

An important element of the process is the notification to respondents, complainants and Trustees when a file is open. The notifying of those effected immediately upon opening a file is a non-confrontational way of proceeding with an investigation and it achieves success in opening a cooperative dialogue.

The manual is maintained in accordance with the procedural and administrative fairness measures outlined by the Ombudsperson guide on best practices for bylaw enforcement. This document can be edited and updated on a regular basis and it is a work in progress that is labeled a DRAFT.

Mediation is an option in the Trust Council Policy but it is not mandatory and there are no policies or procedures on how the process is to be conducted. However, training in mediation and negotiation from the Justice Institute of BC (JIBC) is required for bylaw staff. The JIBC courses provide the skill and knowledge base for how mediation is to be conducted. These courses are combined with courses on conflict resolution and negotiation.

Local Trust Committees make their own policies on bylaw enforcement by way of standing resolutions.

3.5 CURRENT DAY-TO-DAY PRACTICES

The current day-to-day practices for bylaw enforcement, generally, are as follows:

1. When a **complaint** is received, a bylaw file is opened to investigate on the authority of the Manager and the Manager assigns a Bylaw Officer to the file. The property owner is sent a **notice letter** and is asked to contact the bylaw officer assigned to the file.
2. Bylaw Officer assigned to the file begins to research and **investigate** the complaint and the property.

3. If the property owner contacts the officer as requested, he conducts an **interview and arranges a site visit**.
4. If contraventions are identified during a visit or inspection, respondent receives a **determination letter** identifying contraventions, which may include a deadline for compliance. If there are no contraventions, then the file can be closed. If there are issues relevant to other agencies, it could be referred for their action.
5. If there is no compliance by the deadline, a **bylaw violation notice (BVN)** may be issued by the bylaw officer. Bylaw Officer has the authority to issue BVNs for contraventions identified in an adopted Bylaw Enforcement Notice Bylaw (BEN).
6. Manager's recommended policy to Bylaw Officers is to give two deadlines for issuing a BVN: one of 90 days and then one of 45 days.
7. Property owner can pay or dispute a BVN. If they dispute, the BEN bylaw and policy will state who the appointed **screening officers** are. Manager is usually the screening officer but if the Manager writes a BVN, then the Regional Planning Manager becomes the screening officer.
8. Screening officer can uphold or cancel a BVN. There are adopted policies on when a bylaw notice can be cancelled. If upheld, a **compliance agreement** can be offered to correct the contravention. Most compliance agreements come with a 100 percent discount to encourage compliance.
9. If there is no resolution with a compliance agreement, the bylaw notice goes to an **adjudicator**.
10. Bylaw Manager will request an adjudicator on a specific date from the Ministry of Attorney General, and a hearing date will be confirmed. All parties notified of the hearing date.
11. Adjudicator will uphold or cancel a disputed BVN. Their decision cannot be appealed but judicial review of the decision is available based on factual errors or errors in law.

The day-to-day oversight of bylaw enforcement is delegated by Trust Council (Policy 5.5.1) to the Bylaw Compliance and Enforcement Manager (Manager), Trust Council Policy 5.5.1 states that the Manager will maintain the best practices operating manual, and the Manager reports to the Director of Planning Services, who is briefed on a regular basis. The CAO is briefed on bylaw enforcement issues and resource allocations and responds to individual complaints or problems as needed.

3.6 REPORTING

The Director of Planning Services receives updates and briefings on files as and when required. The Director briefs the Chief Administrative Officer (CAO) when appropriate or at the CAO's request.

Trust Council Policy 5.5.1 also states that Trustees will be advised when a bylaw file is opened, and that Trust Council will be informed of the volume and type of bylaw enforcement files bi-annually. The policy also states that Local Trust Committees may request reports about specific investigations and general enforcement activity.

The policies stated in section 10 of Trust Council Policy 5.5.1 mean that the Local Trust Committees have a more active participation in day-to-day enforcement than the CAO, or the Director, as the local trustees are advised of all file openings and some local trust committees have requested that they be notified of files closed. The CAO and the Director of Planning Services are not routinely advised of these activities.

Local Trustees who are contacted by respondents, or complainants, can and do contact the Manager for updates and guidance on how to respond to those enquiries.

3.7 INVESTIGATION

On receipt of a complaint, staff create a file and investigate the complaint. This is to determine if there is merit to the complaint, and if there is, to speak with the person in violation to seek voluntary compliance. While staff investigate complaints based on order of receipt, some

complaints that look like they may have environmental or health and safety concerns are usually investigated ahead of other complaints that do not seem to have a similar impact.

The determination of a contravention, and the requests for compliance by giving deadlines or issuing a bylaw warning notice, can initiate the following actions:

- respondent can state they will comply with the regulations and they provide a timeline;
- respondent can state they will not comply and the bylaw officer provides a deadline for compliance;
- respondent can request a mediation process; and
- respondent can state that the determination is incorrect and there is no contravention of the bylaw. They often demand that the determination be rescinded or they wish to appeal the decision.

Generally, about 90 per cent of violations are concluded using the voluntary process.

3.8 APPEAL OF BYLAW ENFORCEMENT DECISION PROCESS

Appeal Process – Bylaw Violation Notice (BVN) Issued

This bylaw dispute adjudication system was introduced in 2010 on Salt Spring Island and then in five other LTAs by 2011. The bylaw notice adjudication system was established by the Province as a 'bylaw court' that is not part of the court system. It was primarily designed to deal with minor bylaw contraventions but a wide range of local governments use the system to deal with all bylaw contraventions whether they be parking, noise, animal control, soil deposit and removal, or land use contraventions.

Bylaw Violation Notices are only issued in those local trust areas that have adopted a Bylaw Enforcement Notification (BEN) Bylaw, and only then for those items listed in the bylaw for which a notice can be issued. A Bylaw Violation Notice (BVN) is issued after a respondent has been given time to comply, which is usually a minimum of 90 days, and there may be an extension of 45 days if it is reasonable to do so.

The criteria used when considering the issuance of a BVN comes down to whether or not a compliance agreement is available under the relevant BEN bylaw, and whether or not a reasonable amount of time has been given for the respondent to achieve compliance.

If there is no compliance agreement available for a contravention, it is interpreted that there should be no time to comply given, or cannot be given. In these cases, a BVN would be issued once a contravention was confirmed. If there is a compliance agreement available for a contravention, it is then interpreted that time to comply can be given and that no BVN should be issued until a reasonable amount of time to comply has been given.

Screening Officer

Once a bylaw violation notice (BVN) has been issued, the respondent has 14 days to either pay the penalty or dispute the BVN. Once a dispute has been received, it is forwarded to a screening officer.

Screening officers are appointed by a Local Trust Committee and the powers and duties are adopted by policy. Options for officers are limited to a number of staff positions (See Attachment 1.). A screening officer can cancel a bylaw notice, negotiate a compliance agreement with the disputant, or forward the matter to an adjudication hearing. Screening officers are not authorized to approve legal actions as a part of their duties. Their role is to follow the LTC adopted policies on how and when a BVN may be cancelled or when it should not be forwarded to adjudication.

This is the first formal opportunity for a respondent/disputant to raise concerns about the process, conduct of staff, or the interpretation of a bylaw. Many concerns are addressed at this phase as the screening begins the process to negotiate a compliance agreement or even determine if the Screening Officer policies dictate that a bylaw notice be cancelled.

The Screening Officer may cancel a Bylaw Violation Notice if satisfied that one or more of the following reasons exist:

1. the Bylaw Violation Notice was issued to the wrong person;
2. an exception specified in the bylaw or related enactment exists;
3. a permit exists which authorises the alleged violation;
4. there is poor likelihood of success at adjudication for the Local Trust Committee.

For example:

- a) The evidence is inadequate to show a contravention;
 - b) The officer relied on incorrect information in issuing the Bylaw Violation Notice;
 - c) The Bylaw Violation Notice was not completed properly;
5. It is not in the public interest to proceed to adjudication for one of the following reasons:
 - a) The bylaw has changed since the Bylaw Violation Notice was issued, and now authorizes the contravention;
 - b) The offence occurred as a result of a circumstance that made it impossible for the person to reasonably comply with the bylaw.

Adjudication

The Ministry of Attorney General maintains the roster of adjudicators and assigns them on a rotational basis. Local governments cannot ask for specific adjudicators to be assigned to a hearing.

Once a hearing date has been set, the process is to advise the disputant of the date and request how they wish to be heard. This is set out in regulation. They can appear in person, in writing, or by electronic means. We forward our reports that we wish to present to the adjudicator to the disputant two weeks prior to the hearing. Disputants are requested to do the same, but it is not mandatory. They can present their entire case and evidence on the day of the hearing.

An adjudicator's decision is final and there is no appeal. However, a judicial review can be requested if the disputant believes there has been an error in law.

Appeal Process – No Bylaw Violation Notice Issued

Bylaw Violation Notices are only issued in those local trust areas that have adopted a Bylaw Enforcement Notification Bylaw, and only then for those items listed in the bylaw for which a notice can be issued.

There is currently no formal process within Islands Trust to deal with an appeal of a determination made by a bylaw officer. If a respondent feels strongly that they have not contravened a bylaw, they typically take one of the actions listed below.

- raise the issue with the Manager and request a review of the determination;
- raise the issue with a Regional Planning Manager or Director of Planning Services and request that they review the determination;
- raise the issue with the CAO and may make an administrative fairness complaint; or
- make a complaint to the Ombudsperson.

Appeal Process – Actions of Bylaw Officers

When somebody has a concern about the way they have been treated by any staff (including bylaw compliance and enforcement officers), or trustees, they may make an in-formal or formal complaint to the Islands Trust. Trust Council has adopted two policies to guide how these complaints are received and how they are handled.

[Trust Council Policy 7.1.1 \[Administrative Fairness Principles\]](#), and [Policy 7.1.2 \[Handling of Administrative fairness Complaints\]](#) together outline the process for internally handling complaints about the actions of local trust committees, trustees and staff.

Generally, Policy 7.1.1 states that complaints about bylaw enforcement should be considered in regards to the procedures on bylaw enforcement (Policy 5.1.1). Normally this means that complaints about a decision of the local trust committee is not something Trust Council can adjudicate as the decision to enforce its bylaws or not, is the discretion of the local trust committee. This means complaints regarding a local trust committee's decisions would be referred to that local trust committee.

Policy 7.1.2 outlines the procedures for informal complaints and formal complaints. Formal complaints are generally in writing, are logged, and are dealt with according to the policy. Informal complaints are usually verbal (in person or on the phone) and usually dealt via a conversation with the Chief Administrative Officer or Chair, depending on whether it is staff or trustee/trust committee related.

Complaints regarding local trust committee actions, or trustee actions are handle through the Executive Committee, and Policy 7.1.2 outlines the process for this.

Complaints regarding staff are handled by the Chief Administrative Officer following the procedures outlined in Policy 7.1.2.

Policy 7.1.2 also provides avenue for appeal should people not be satisfied with the outcome, authorising the Executive Committee to undertake a review of the decision of the Chief Administrative Officer.

Appeal Process - Ombudsperson

In British Columbia anybody who is not satisfied with a decision of a local government may file a complaint regarding a local trust committee action or decision, a trustee action or staff action with the Ombudspersons Office. When they receive a complaint, the Ombudsperson will contact the Islands Trust to notify us of the complaint, and request our records about the issue.

The ombudsperson is interested to see what we did to resolve the issue. In some instances, the complaint is beyond the jurisdiction of the ombudsperson (such as a land use planning decision or bylaw enforcement decision), or the Ombudsperson is satisfied with the action taken by the Islands Trust. In some instances we may agree to take further action to resolve the issue. In all situations, when there is a complaint to the Ombudsperson's office, we work cooperatively with them to resolve the complaint. Under the *BC Ombudsperson Act*, the Islands Trust is compelled to provide all requested information, which we do.

3.8 DISCRETION AND PROPORTIONALITY The Ombudsperson Best Practise guide indicates that "administratively fair enforcement decisions are proportional, equitable and consistent." And more specifically, "Bylaw enforcement action should be proportional to the nature of the violation and appropriately address the harm that is caused by the violation."

So, how is proportionality evidenced at the Islands Trust and how does this relate to the discretion of bylaw enforcement? A related question is *when* is proportionality implemented or evidenced: on site with the bylaw enforcement officer, at an LTC meeting when a decision to proceed is made, or at the Executive Committee table when litigation funding is approved?

The Islands Trust Enforcement Best Practise and Procedures draft manual does not explicitly define proportionality, however it does reference that the enforcement service is conducted in keeping with the Ombudspersons Best Practise Guide, which does address proportionality. Further in practise, the sequence of compliance (i.e. voluntary compliance): education, mediation and enforcement is graduated. This is an important element in service delivery and indeed education itself contributes to 90% of files never getting to the bylaw notice stage. The BEN bylaw process has a proportional range of ticketing values that can be applied by LTCs. Nevertheless, there may be

merit in developing a set of agreed criteria that express the Islands Trust understanding of proportionality and how it may be applied in a different manner.

That being said, once a complaint has been made, the process relies on a relatively literal interpretation of the offence process as described by the land use bylaw. Bylaw staff have exercised limited discretion when it comes to enforcement options, that discretion lies with the Local Trust Committees who are the decision makers on whether or not to enforce their bylaw.

Generally proportionality/discretion at the bylaw enforcement officer level is expressed by giving and extending reasonable time to achieve compliance. A land use bylaw states that a contravention occurs each day a non-permitted use or siting occurs as opposed to one-time discrete events. While the Land Use Bylaw states that every day is a new contravention, rarely have respondents been fined on a daily basis. Respondents are given reasonable time to comply options so that they may find solutions or apply to the LTCs for permits. However, Bylaw staff cannot make determinations or give time to comply based on the perceived merits of a use or structure.

Policy 5.5.1 provides four conditions for the closing of a file and only two of those apply to bylaw officers: they may close the file if there is no contravention or if compliance has been achieved. The policy (S. 4.1.4) does permit the Manager and the Director to make determinations on minor contraventions and close files. This may mean that contraventions remain but it is not in the public interest to pursue or it may be unreasonable to pursue. This policy has not been used extensively and there may be value in providing a clearer path to apply for discretion under 4.1.4. The Director may also delegate the authority to the Manager. The LTC has unfettered authority on whether or not to enforce its bylaws and an LTC may direct that a file be closed. When each BEN bylaw is adopted, it is the LTC that reviews the penalty schedule for the Land Use Bylaw and they can establish the penalty amounts and whether or not a compliance agreement is available for a specific contravention.

Generally the practise has been that the criteria and principles for enforcement are based upon the land use bylaw, the BVN Notice criteria, and the relevant enforcement bylaw. Determinations of public interest have generally been made at the LTC table in considering individual violations and continued enforcement. Perhaps this balance needs to be revisited, and more discretion at the officer level be inserted into the system. Moving to a more staff lead approach could be challenging/undesirable, as it is that elected officials have a better insight into the public interest and the best means of achieving the mandate of the Trust. Another consideration is that the application of proportionality at the staff level is challenged by the number of Local Trust Committees, variety of land use bylaws that they are required to enforce, and the attendant desire by each community to have an independent regulatory regime.

3.9 LEGAL ACTION

Local Trust Committees may authorize legal action against property owners who fail to comply with the regulations. As bylaw notices cannot be issued for development permit area contraventions, legal action is the only means to enforce the regulations.

If bylaw staff believe that they cannot obtain compliance by using BEN or through negotiation, they will prepare a request for legal action that will be considered by the LTC. LTCs are the sole authority to determine if they wish to enforce their bylaws. Outside legal counsel provide opinions based on the investigations and facts provided by bylaw staff, the regulations in the relevant bylaw, and a review of judicial decisions.

Any legal action approved by an LTC must then be considered by the Executive Committee (EC) for funding.

3.10 MEDIATION

Trust Council policies establish the structure for day-to-day operations for both staff and Local Trust Committees regarding the opening and closing of files, the conduct of investigations, and the process for pursuing legal action.

For mediation, the policy was adopted as an alternative to regular enforcement steps and it recognized that its application would be limited. The mediation process was never intended to be a means to resolve disputes between bylaw staff and property owners, it was meant to provide a means to resolve neighbour disputes. It was fully recognized that the law cannot be mediated.

There are no procedures or policies written specific to the mediation process. A more robust mediation process could be developed at the direction of Council.

4. RELEVANT BYLAW ENFORCEMENT STATISTICS

Current Open Files	Average new files 4 yr avg	Average closed files 4 yr avg	On Hold by Standing Resolution (deferred enforcement)
598	260	179	112

Open by written Complaint	Open by Standing Resolution on STVRS (Proactive)	Standing Resolution for Derelict Vehicles on North Pender (Proactive)	Bylaw Officer (Proactive)
455	115	12	16

Complaints about the conduct of Bylaw Officers since 2013	Complaints to the Ombudsperson
six	one

The complaint to the Ombudsperson resulted in no action or follow-up required by Islands Trust.

5. ANALYSIS AND ISSUE IDENTIFICATION

Trust Council has heard concerns expressed about the bylaw enforcement process and the conduct of bylaw officers. In the context of recent complaints, an issue to consider is whether or not Islands Trust is delivering the service to all stakeholders (Trustees, Respondents, Complainants) in a fair and functional manner, and also meeting the Trust Mandate to preserve and protect.

Islands Trust bylaw staff typically process more than 260 new compliance and enforcement files each year. Approximately 50 percent of files are resolved after the Notice to Respondent letter is received. Property owners will acknowledge obvious contraventions and take steps to comply within a reasonable amount of time after which no further action is necessary and the file can be closed.

The number of files that result in BVNs is minimal and does not amount to more than ten percent of the total number of open files. The average from the latest reporting cycles is eight percent. There are always disputants willing to sign compliance agreements and voluntarily comply. Those signing compliance agreements are given a 100 per cent discount on any penalty amounts.

If we are to use the Pareto principle, or 80-20 rule, 80 percent of the files are resolved without the need for any type of bylaw warning notice or bylaw violation notice. The remaining 20 percent require what could be considered the hard enforcement tactics of issuing warning notices, violation notices with penalties, or court action approved by an LTC. There are a limited number of disputed BVNs going to adjudication and almost all can be dealt with by holding four adjudication days per year.

Specific issues presented by the delegate at Trust Council focused on due process, communication and inappropriate conduct. As it is staff who deliver the enforcement service, it is difficult for them to provide an objective analysis of some of these sensitive issues. It would be more effective to address the issue through an external review or analysis. Nevertheless, the following commentary is provided as a general overview of the criticism of the bylaw enforcement process.

EQUITY AND FAIRNESS

Does bylaw enforcement disproportionality target working and non-elite residents?

- The records that are kept in TAPIS (Trust Area Property Information System) are for properties, and there is no separate identification of the specific characteristics or personal attributes of the property owner. Staff do not have data or information to indicate a structural bias is in place. Although the owner is ultimately responsible for contravention, the investigative process and the enforcement file is really for the property only. Bylaw staff are concerned about the physical structures on the lot and the actual uses on the lot, and any contraventions identified are for the land uses irrespective of the relative incomes or permanence status of the landowners. .

NO APPEAL PROCESS

Is there an appeal process for citizens/residents who claim to be unfairly enforced against?

- The combination of the administrative fairness process, Ombudsperson process, and the adjudication process function as an appeal processes available to citizens, however, Trust Council may wish to investigate an alternative or additional process to ensure fairness.

PREDETERMINED GUILT

Is guilt presumed through the complaint and bylaw enforcement process?

- Bylaw complaints are fully investigated before any determination of a contravention is made. Trust Council dictates that written complaints be processed, and if they are anonymous, use fake names, or impersonate others, or are vexatious, they are either not processed or the file closed.

BULLYING

Are citizens bullied by either the bylaw enforcement staff or the process?

- In the last approximately 10 years, there have been 6 complaints regarding staff conduct in this area, three of which refer to bullying or intimidation specifically. One went to small claims court and the matter was dropped, another was addressed through the compliance agreement process and the third was referred to the ombudsperson office and no findings against the Trust were made.
- Staff abide by the code of conduct standards for the Province. If a contravention is confirmed for a property, all owners are given time to comply and this is negotiated with them whenever possible. Those subject to enforcement are asked to estimate how much time they need to comply and if the time frame is reasonable, it is accepted by staff. Mediation is offered if it is reasonable to do so. The majority of those offered mediation with the complainants, or complainants, refuse Islands Trust intervention if it just means sitting down and talking with their neighbours about the problem.

6. WHAT CAN BE DONE DIFFERENTLY?

If Trust Council wants to establish a different bylaw enforcement regime or practice, it could consider a number of avenues, including the following:

1. Initially, Trust Council may wish to undertake an independent analysis of the function and seek some recommendations for change. The Ombudsperson Office regularly conducts 3rd party independent reviews of this nature.
2. The Islands Trust could consider a more robust definition and practice associated with proportionality and the exercise of discretion they would like to see used by bylaw officers.
3. Trust Council could consider that a more formal appeal process for determinations made by Bylaw Officers to be established to deal with respondents concerns before any BVN is written.
4. An alternative to the Administrative Fairness process could be adopted to address staff actions/conduct.
5. The previous Trust Council Policy of giving respondents 90 days before any legal action was initiated should be reinstated. The compliance and enforcement policy is to seek voluntary compliance and give respondents time to comply and this is a more than reasonable policy to ensure that we are seeking compliance and not using punitive measures. The 90 day period was removed from the policy in 2019 may have caused enforcement to happen too quickly in 2020 and caused unnecessary stress for certain respondents.
6. LTCs can adopt their own policies on “time to comply” for specific contraventions if they wish, and it would be beneficial for some LTCs to follow such a policy to address community concerns.
7. LTCs could reconsider the use of “standing resolutions” on general or specific violations in order to lessen the number of instances of interaction between the organization and community members.
8. Trust Council could consider in more detail how the mandate of the Islands Trust is reinforced by the bylaw enforcement function and land use regulation.
9. Other matters identified by Trust Council.

8. ATTACHMENT(S):

1. **Example of screening officer policy (North Pender Island LTC)**

9. FOLLOW-UP: as directed by Trust Council

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Reviewed By/Date: David Marlor, Director, Legislative Services/February 3, 2023