

# LIDSTONE & COMPANY

## BARRISTERS AND SOLICITORS

### BULLETIN

**TO:** British Columbia Clients  
**FROM:** Lidstone & Company  
**DATE:** April 24, 2020  
**RE:** COVID-19 - Bylaw Enforcement Guidance - New Powers

---

By Order in Council dated April 18, 2020, the Province took the extraordinary step of authorizing local government bylaw enforcement officers to enforce certain provincial orders related to the COVID-19 pandemic by way of issuing a violation ticket under the *Offence Act*. This bulletin focuses on enforcing the following prohibitions:

- against secondary selling (i.e. re-selling) of essential goods and supplies (Ministerial Order M084/2020)
- against price-gouging with respect to essential goods and supplies (Ministerial Order M115/2020).

The Order in Council also authorizes the enforcement of any provincial directives that would prohibit over-selling essential goods and supplies; and that would require hotel and commercial accommodation operators to accommodate essential workers or individuals for self-isolating. The COVID-19 Provincial Orders Support Team (“POST”) is available to assist local officers as to practical aspects of enforcement pertaining to current and future provincial directives.

We note three at least possible issues arising from the new enforcement powers.

First, bylaw enforcement officers will need to ensure that any violation tickets being issued are correctly filled in and served as required by the *Offence Act* and related regulations.

Second, the prohibition on re-selling will typically depend on the seller having previously purchased the items in a retail setting, and some evidence of the previous purchase may be required.

Third, the meaning of price gouging, defined as a price which “grossly exceeds” the typical price, is not certain and to be enforceable may depend on market forces and evidence from other marketers as to reasonable pricing.

## **Background**

This Bulletin is further to our April 3, 2020 COVID-19 Bulletin which deals with a March 26, 2020 Ministerial Order under which the Province directed bylaw enforcement officers to assist with enforcement of Provincial public health orders or guidelines. We noted then that bylaw enforcement officials are not authorized to enforce (ticket or detain) with respect to public health orders. Rather, they are directed to help by providing public education and encouraging voluntary compliance. This continues to be the case regarding public health orders, and all provisions of provincial orders *except* those for which ticketing by local officers is specifically authorized.

On April 18, 2020, Order in Council 177/2020 was made that amends the provincial ***Violation Ticket Administration & Fines Regulation*** (BC Reg 89/97) under the ***Offence Act***. This Regulation now authorizes police officers and local government bylaw enforcement officers to enforce certain provisions of COVID-19 orders by issuing a ticket for non-compliance in the amount of \$2,000 (plus a victim surcharge of \$300).

The order in council is available at:

[http://www.bclaws.ca/civix/document/id/oic/oic\\_cur/0177\\_2020](http://www.bclaws.ca/civix/document/id/oic/oic_cur/0177_2020)

The offences for which a ticket may be issued under this Regulation are based on:

- the prohibition in section 9 of Order M084 against secondary selling of “essential goods and supplies”;
- the prohibition in section 3 of Order MO115 against charging unconscionable prices for essential goods and supplies in a retail environment;
- the prohibition in section 8(4) of Order MO84 against selling more than the number of items of a good to a person in a single transaction, as specified by the minister; and
- the requirement in section 8(5) of Order MO84 for hotel or commercial lodge operators to provide accommodation services for individuals to self-isolate when so directed by the minister.

In both Orders,

“**essential goods and supplies**” means any goods and supplies that are necessary for the health, safety and welfare of people, including, without limitation, the following:

- (a) food, water and other beverages;
- (b) fuel and gasoline;
- (c) health care goods, pharmaceuticals and medical supplies;
- (d) personal hygiene, sanitation and cleaning goods.

In Order MO84, “**secondary selling**” in relation to an essential good or supply, means the purchase or other acquisition of the good or supply in a retail environment, or by donation from any person, or at no cost from a government or other organization or body, whether inside or outside British Columbia, and the subsequent offering of that essential good or supply for resale in person, on any business premises, by phone or fax, on a website or an internet-based application or by any other means.

In Order MO115, “**unconscionable price**”, in relation to selling or offering to sell *essential goods and supplies*, means a price that grossly exceeds the price at which similar essential goods and supplies are available in similar transactions to similar consumers.

The COVID-19 Provincial Orders Support Team (“POST”) has provided a call centre for assisting local bylaw enforcement officers with such matters as obtaining and processing provincial violation ticket forms, as well as guidance in their new role in protecting the public from unscrupulous secondary sales and price-gouging during the pandemic. The call centre is staffed from 8 am to 11 pm, 7 days per week.