

Manitoba Ombudsman

REPORT UNDER

THE OMBUDSMAN ACT

CASE 2014-0515

RURAL MUNICIPALITY OF ARMSTRONG

REPORT ISSUED ON MARCH 17, 2016

CASE SUMMARY

In November 2014 Manitoba Ombudsman received a complaint from a property owner in the Rural Municipality of Armstrong (the RM). The complainant indicated that the RM sent her a compliance order in June 2014, requiring her to clean-up her property by July 2, 2014 and that she followed this order. The complainant stated, however, that the RM took material from her property on October 7, 2014 and subsequently issued her a bill of \$630 for the clean-up.

Given that the RM does not have any record of inspecting the property within a reasonable time following the compliance deadline of July 2, 2014, we are unable to determine whether an inspection occurred or whether the property was cleaned-up by the deadline. In our view it was unfair for the RM to wait approximately three months to enforce the compliance order without further notifying the complainant that she was contravening the order. As a result, we recommend the following:

1. That the RM cancel the clean-up bill it issued to the complainant.
2. That in future matters involving compliance orders, the RM documents all contact with property owners and that it maintains dated photographs of properties after every inspection. The RM should add clarity and detail to its policy for dealing with unsightly and unsafe property to ensure better record-keeping of non-compliance with written orders, including the need to gather evidence of non-compliance immediately before enforcement action is taken.
3. That the RM follow the policy requirement to post a copy of the written compliance order in a conspicuous place on the premises or property and photograph the notice for the RM's file. We note that to our knowledge this is not a requirement in statute, so if the RM does not wish to continue this policy requirement it should amend its policy accordingly.

4. That the RM amend its unsightly property policy by adding a reasonable time frame for the RM to enforce a compliance order once a deadline given to a property owner has elapsed (i.e. two weeks).

The RM considered these recommendations and decided to cancel the clean-up charges it issued the complainant. The RM indicates that it will also amend its policy for dealing with unsightly property in order to improve record-keeping and set reasonable time frames for enforcement of compliance orders.

OMBUDSMAN JURISDICTION AND ROLE

Under *The Ombudsman Act*, Manitoba Ombudsman investigates administrative actions and decisions made by government departments and agencies, and municipalities, and their officers and employees. Investigations may be undertaken on the basis of a written complaint from a member of the public, or upon the ombudsman's own initiative.

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation. On other occasions it is written policy or established procedures implemented to give effect to legislative purpose. In cases concerning an impact on individual rights or benefits we also examine the fairness of the action or decision.

KEY ISSUES

- 1. Did the RM inspect the complainant's property within a reasonable time after the compliance deadline of July 2, 2014?**
- 2. Did the RM fairly inform and/or adequately notify the complainant prior to enforcing the compliance order on October 7, 2014?**

BACKGROUND INFORMATION

The former chief administrative officer (CAO) of the RM sent the complainant a warning letter dated May 21, 2014, indicating that the RM's by-law enforcement officer inspected her property on that date and that a violation existed "due to the presence of waste material such as garbage, hay, scrap wood, oil barrels and animal waste material located along the fence line and on your property." Photos of the material were enclosed with the letter. The warning letter indicated that, under the authority of subsection 243(1) of *The Municipal Act*, the complainant must remove this waste material by May 30, 2014. The CAO indicated in the letter that in accordance with subsection 239(1) of the act, he would enter her property on May 30, 2014 to inspect it a second time.

The RM mailed the complainant a compliance order dated June 9, 2014, which stated that the RM had inspected her property again during the previous week and because waste material was

still present on the property, the RM was issuing an order that clean-up of the following material was required by July 2, 2014:

Your property contains waste material such as garbage, hay, scrap wood, oil barrels and animal waste material located along the fence line and on your property. This material is specifically identified in the attached pictures which to date has not been removed. [...]

The order stated that non-compliance would result in the RM removing the waste material described above and that in accordance with subsection 245(3) of *The Municipal Act*, the complainant would be responsible for the cost. The compliance order also warned that if such measures were necessary and the complainant did not repay the RM for the amount owing, it would be added to her property taxes.

Lastly, the compliance order indicated that as per subsection 244(1) of *The Municipal Act*, the complainant could appeal the order by filing an objection in writing with the CAO of the RM prior to July 2, 2014.

The complainant indicates that she received both the warning letter and the compliance order and that her daughter cleaned up the property prior to the July 2, 2014 deadline. Her daughter indicates that she saw people at the property on July 2 but she was not sure if they were representatives of the RM.

The complainant states she did not advise the RM that she had cleaned the property because she felt the matter was resolved when she followed the order. The RM indicates that in August 2014, the CAO at the time called the complainant and indicated that she must clean-up the property, but the complainant does not recall this conversation. In October 2014, the RM hired a company to clean-up the complainant's property and billed her \$630 for the costs of doing so.

COMPLAINANT'S POSITION

The complainant believes the bill she received for the costs of the clean-up is unfair because she complied with the RM's order to clean-up her property by July 2, 2014. She states that the RM hired a company to take material from her property without notifying her that there was still a problem with her property; therefore, she should not be required to pay the costs of the clean-up.

RM'S POSITION

While the RM has no record of inspecting the property immediately following the July 2, 2014 deadline, it stated the following to our office in a letter dated May 15, 2015:

It would seem that the RM did inspect [the complainant's] property after the July 2nd deadline according to the letter sent by [the complainant] dated Oct. 1, 2014 that [her] daughter had seen RM staff on July 2nd at her property.

The RM indicates that the former CAO spoke with the complainant in August 2014 and its understanding is that the complainant had still not cleaned up the property at that time. The RM also provided us the letter it received from the complainant on October 10, 2014 that was dated October 1, 2014. The letter stated that if the complainant's property must be clean, she wanted the entire neighbourhood to look clean as well. The RM believes this letter shows that the property was not cleaned-up as of October 1.

SCOPE OF THE INVESTIGATION

Our investigation of this complaint included the following:

- Review of information provided by the complainant and the RM;
- Review of *The Municipal Act* and *The Municipal Act Procedures Manual*; and
- Review of the RM's policy for dealing with unsightly and unsafe property and premises (*Policy No. PRO-701*).

ANALYSIS

1. Did the RM inspect the complainant's property within a reasonable time after the compliance deadline of July 2, 2014?

The Municipal Act authorizes municipalities to issue and enforce orders regarding unsightly properties without the requirement of enacting a specific by-law to deal with this issue. The act states that if a designated officer of a municipality believes an unsightly property is detrimental to the surrounding area, the officer may issue a written order requiring the property owner to improve the appearance of the property in a specified manner. Section 246 of the act authorizes a municipality to take whatever action it considers necessary to deal with the unsightly condition of the property if the following conditions are met:

- The order states a time within which the person must comply with the order;
- The order warns that if the property owner does not comply by that time, the municipality will take the required action at the expense of the person;
- The person to whom the order is directed has not complied with the order within the time specified in the order; and
- The period to appeal the order has passed or, if an appeal has been made, the appeal has been decided and the decision allows the municipality to take the required action.

The act also states that the costs of an action taken by a municipality in these circumstances are an amount owing to the municipality by the property owner who did not comply with the order.

In *The Municipal Act Procedures Manual*, the department of Manitoba Municipal Government offers advice to municipalities regarding how to conduct inspections of unsightly property and

issue compliance orders. It also provides tips to municipalities to assist with the enforcement process. In this case, the evidence indicates that the RM inspected the property and issued the compliance order within its authority under *The Municipal Act* and generally followed the advice in *The Municipal Act Procedures Manual* regarding property inspections and compliance orders. For instance, the RM advised the complainant on May 21, 2014, that it had conducted one inspection, requested that she remove waste material from the property, and notified her of an upcoming second inspection prior to issuing the compliance order. The RM's compliance order also stated the timeframe for remedying the situation, what would happen if compliance did not occur, and how the complainant could file an appeal of the order. These steps are also set out in the RM's policy for dealing with unsightly and unsafe property (*Policy No. PRO-701*).

However, *The Municipal Act Procedures Manual* also advises that the RM document all contact with property owners, including telephone calls, and ensure that detailed notes are written and that photographs of the property are taken, dated and initialed (see Appendix). While the RM has detailed file notes and photographs of the property from the inspection in May 2014 and photographs of the property after it took material away in October 2014, it was unable to provide any file notes or photographs of the second inspection it conducted in early June, or any records of an inspection on July 2, 2014 or shortly thereafter. The complainant provided us one photo she states was taken on July 2, 2014 that she believes shows she complied with the order.

We are not aware of any law or policy that sets out the date by which the RM is required to inspect an unsightly property if it wishes to enforce a compliance order. However, as indicated previously, *The Municipal Act* requires that such orders include a deadline for compliance. In our view, if a municipality wishes to enforce a compliance order it must inspect the property within a reasonable time following the compliance deadline. Given that the RM does not have any record of inspecting the property within a reasonable time following the compliance deadline of July 2, 2014, we are unable to determine whether an inspection occurred or whether the property was cleaned-up on by the deadline. Specifically, the RM does not have any photographs or file notes of an inspection of the complainant's property in July 2014. Better record keeping by the RM may have prevented the need for our office to investigate this matter. As a result, we recommend the following:

Recommendation 1

- **That the RM cancel the clean-up bill it issued to the complainant.**

Recommendation 2

- **That in future matters involving compliance orders, the RM documents all contact with property owners and that it maintains dated photographs of properties after every inspection. The RM should add clarity and detail to its policy for dealing with unsightly and unsafe property to ensure better record-keeping of non-compliance with written orders, including the need to gather evidence of non-compliance immediately before enforcement action is taken.**

We note that while the compliance order stated that compliance was required “on or before July 2”, the RM’s policy on dealing with unsightly property indicates that the compliance order must state both the “date and time” within which compliance is required. We suggest that in the future, to avoid any possible confusion, the RM clearly indicate deadlines on compliance orders by stating not only the date but also the time by which compliance is required.

We also note that the RM’s policy for dealing with unsightly property states that a copy of the written compliance order must be posted in a conspicuous place on the premises or property and the notice shall be photographed for the file. However, the RM does not have a copy of the notice in the file or any record that this notice was posted on the property. We therefore recommend the following:

Recommendation 3

- **That the RM follow the policy requirement to post a copy of the written compliance order in a conspicuous place on the premises or property and photograph the notice for the RM’s file. We note that to our knowledge this is not a requirement in statute, so if the RM does not wish to continue this policy requirement should amend its policy accordingly.**

2. Did the RM fairly inform and/or adequately notify the complainant prior to enforcing the compliance order on October 7, 2014?

The complainant states that her daughter cleaned up the property by July 2, 2014. She indicates that new tenants officially moved to the property on October 1, 2014 and that they had not yet finished unpacking when a company hired by the RM took material from the property on October 7.

The complainant states that the RM hired the company to remove the material without further communication or notice to her. The complainant maintains that she had cleaned-up the property by July 2; she believes that if, after that date, the RM was concerned about waste material on her property, it should have sent her another notice. She was living in British Columbia during this time, so she was unaware that there was a problem with the condition of the property.

The CAO at that time confirmed to us that the complainant was not notified prior to October 7 that the RM had decided to enforce the compliance order. The RM also provided us with a letter from the transport company in which it indicates that in October 2014 it removed one tandem of hay bales and one tandem of grass and manure from the complainant’s property, as well as a motor and some barbed wire.

The RM was unable to provide any explanation for why it did not enforce the compliance order until October 7. While the RM’s unsightly property policy sets out detailed steps regarding the enforcement of compliance orders, the policy does not set out any time frame for the enforcement of an order after the deadline given to the property owner has elapsed but the contravention continues.

In this case, while the complainant received a written compliance order to resolve issues with her property, in our view it was unfair for the RM to wait approximately three months to enforce this order without further notifying the complainant that she was contravening the order. As a result, we recommend the following:

Recommendation 4

- **That the RM amend its unsightly property policy by adding a reasonable time frame for the RM to enforce a compliance order once a deadline given to a property owner has elapsed (i.e. two weeks).**

OTHER MATTERS

Content of the compliance order

We note that the evidence indicates that the RM arranged for the removal of a variety of material from the complainant's property on October 7, 2014, including grass. The written order she received in June 2014 required removal of "waste material such as garbage, hay, scrap wood, oil barrels and animal waste material" from her property but it did not mention that grass needed to be cut.

We remind the RM that going forward, if it chooses to enforce an order regarding an unsightly property, it should ensure that enforcement is limited to the specific improvement it required in the written order issued to the property owner.

The RM adding unpaid clean-up costs to a resident's property taxes

As noted above, *The Municipal Act* states that a municipality's costs to enforce an unsightly property order are an amount owing to the municipality by the property owner who did not comply with the order.

In this case, when the complainant did not pay the \$630 clean-up bill, the RM added it to her 2014 property taxes at a monthly interest of 1.25 per cent. This is consistent with the RM's policy for dealing with unsightly property, which indicates that at year-end all enforcement costs that remain outstanding will be added to the property owner's tax account.

If the RM accepts the recommendation in this report to cancel the clean-up bill issued to the complainant, it will be removed from her property taxes. Nevertheless, we think it is important to note the following guidance in *The Municipal Act Procedures Manual* for adding unpaid clean-up costs to a resident's property taxes:

While The Municipal Act allows for the adding of costs to property taxes when the municipality has taken measures to deal with an emergency (s. 247(5)), no such provision exists in non-emergency situations (s. 246(3)). In that regard it is best to have a by-law that provides for an amount owing for costs of enforcement to be added to taxes.

In other words, the manual states that if a municipality wishes to add clean-up costs to the taxes of the contravening property in a non-emergency situation, it is best for the municipality to enact a by-law that provides for this. In this case, the RM waited approximately three months to enforce the compliance order with the deadline of July 2, 2014. As such, we believe the RM considered the contravention to be a non-emergency situation.

While the RM of Armstrong has a policy to deal with unsightly property issues, it does not have a by-law that deals with such issues. If the RM wishes to maintain its policy of adding unpaid unsightly property clean-up costs to a resident's property taxes in non-emergency situations, we encourage it to consider enacting a by-law that provides for this authority given the guidance in *The Municipal Act Procedures Manual*.

FINDINGS AND RECOMENDATIONS

Given that the RM does not have any record of inspecting the property within a reasonable time following the compliance deadline of July 2, 2014, we are unable to determine whether an inspection occurred or whether the property was cleaned-up by the deadline.

Further, in our view it was unfair for the RM to wait approximately three months to enforce the compliance order without further notifying the complainant that she was contravening the order.

As a result, we recommend the following:

1. That the RM cancel the clean-up bill it issued to the complainant.
2. That in future matters involving compliance orders, the RM documents all contact with property owners and that it maintains dated photographs of properties after every inspection. The RM should add clarity and detail to its policy for dealing with unsightly and unsafe property to ensure better record-keeping of non-compliance with written orders, including the need to gather evidence of non-compliance immediately before enforcement action is taken.
3. That the RM follow the policy requirement to post a copy of the written compliance order in a conspicuous place on the premises or property and photograph the notice for the RM's file. We note that to our knowledge this is not a requirement in statute, so if the RM does not wish to continue this policy requirement it should amend its policy accordingly.
4. That the RM amend its unsightly property policy by adding a reasonable time frame for the RM to enforce a compliance order once a deadline given to a property owner has elapsed (i.e. two weeks).

THE RM'S RESPONSE TO THE RECOMMENDATIONS

We provided the RM a copy of this report and recommendations. The RM provided us a copy of this resolution in response, which it passed at its March 8, 2016 council meeting:

WHEREAS Council of the RM of Armstrong has received the Ombudsman Report regarding File 2014-0515, cleanup charges for unsightly property;

AND WHEREAS there are areas that need to be improved with the RM of Armstrong's policy for unsightly property;

THEREFORE BE IT RESOLVED THAT this policy be reviewed and amended to add a reasonable time frame for the RM to enforce a compliance order once a deadline is given to a property owner has lapsed;

AND FURTHER RESOLVED THAT due to this extended time frame taken for the RM to enforce the cleanup the council of the RM of Armstrong approve to remove the cleanup charges from this tax roll.

The RM informed our office that it also accepts our recommendation to improve RM record-keeping in matters involving compliance orders and that it will amend its policy on unsightly property accordingly.

The RM states that when reviewing its policy for unsightly property, it will consider our recommendation regarding the policy requirement to post a copy of the compliance order in a conspicuous place on the premises or property.

We are pleased that the RM has considered our recommendations and will be improving its policy for dealing with unsightly property.

The release of our report now concludes our involvement regarding this complaint.

MANITOBA OMBUDSMAN

Municipal Act Procedures Manual

PART 7 - BY-LAWS: GENERAL JURISDICTION

Subject: 2 - By-law Enforcement and Compliance

Page: 7.2.6

Date Issued: April 2005

New:

Amendment: ✓

(3) Enforcement Procedures

(a) Investigation

Unsafe structures / excavations.

Unightly property.

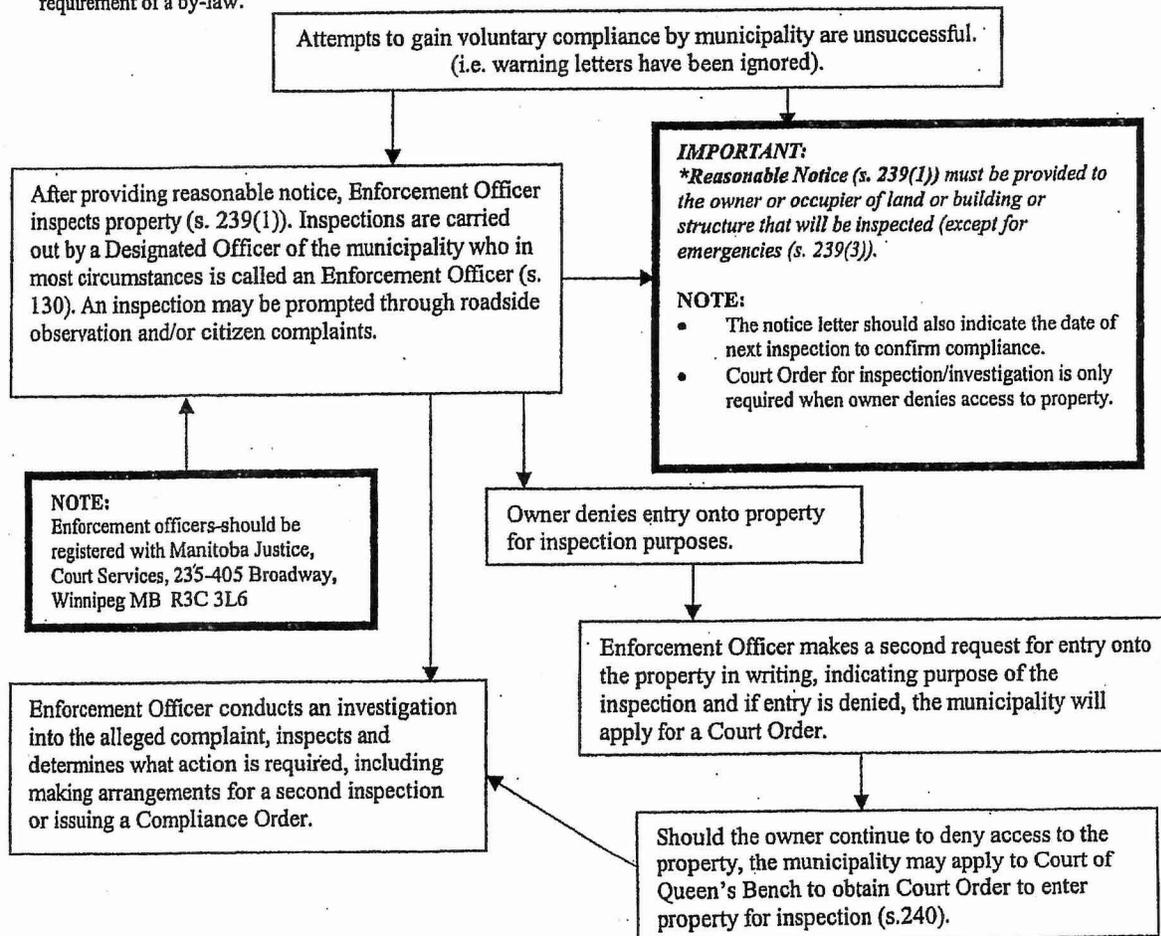
Any by-law that requires entry onto private property for inspection.

The Municipal Act (s. 239,240)

Circumstances that may require inspection by the municipality to remedy public safety threats or cleaning up unsightly property, removing animals, removing derelict vehicles, or responding to construction that is done without a building permit. While a by-law is always recommended, The Municipal Act makes provision for dealing with unsafe and unsightly property without the requirement of a by-law.

Tips:

- Ensure that an Enforcement Officer has been properly appointed and is clearly identifiable to the public – photo identification is produced and vehicle is properly identified.
- Prior to formal enforcement proceedings, discussion with the property owner or a 'friendly' warning letter may be sufficient.
- Conduct a road side inspection. This may be enough to establish if further action is required.
- Document all contact with property owners and/or tenants, including telephone calls, e-mails and ensure that detailed comments are kept in a notebook and that photographs of the property (dated and initialed) are taken.
- If property is occupied by a tenant, all correspondence, notices, and legal proceedings should be sent to the owner by the same method that the occupier is notified.
- Consistent follow-up and a diary date system are necessary. Always be ready for the next step.
- If you feel that taking action could present a safety issue, seek support from law enforcement.



Municipal Act Procedures Manual

PART: 7 - BY-LAWS: GENERAL JURISDICTION

Subject: 2 - By-law Enforcement and Compliance

Page: 7.2.7

Date Issued: November 2003

New:

Amendment:

(b) Compliance

Unsafe structures / excavations.
Unightly property. Any by-law that requires remedial action by a municipality.

The Municipal Act (s. 242, 243, 244, 245, 246, 247, 248)

When a contravention occurs, the overriding goal is compliance rather than punishment. A Compliance Order is a powerful tool. Issuing a Compliance Order sets the stage for a municipality to take action as necessary including closing premises, eliminating public safety threats or cleaning up unsightly property. A municipality is not required to have a Court Order to enforce a Compliance Order. A sample Compliance Order can be found at www.amn.mb.ca/resources, the sample by-law directory Property Section - (Unightly Property - generic).

TIPS:

- Refer first to Act or by-law for specific legislative requirements.
- Ensure documentation (letters, pictures, orders, notes) is in order. This will be critical if the matter goes to Provincial Court or Court of Queen's Bench.
- If the municipality will be doing the work required for compliance, ensure that crews are accompanied by an Enforcement Officer and are clearly identifiable.
- If you feel that taking action could present a safety issue – seek support from law enforcement.
- Keep your eye on the goal – compliance!

Enforcement Officer inspects property - determines legislation and/or by-law is being contravened.

Enforcement Officer issues **Compliance Order** (s.245,246) directing:

- person to stop what they are doing or the way they are doing it; or
- person to take action - to remedy the situation; and stating:
 - the timeframe to do so;
 - what will happen if compliance does not occur; and
 - how person may file an appeal.

IMPORTANT:

Compliance Order to be served on the property owner and/or occupier in accordance with The Municipal Act (s.421(1)).

Owner complies with Order.

Owner appeals Order to municipal council (within 14 days of the Order being received). (s.244(1))

Owner does not appeal and does not comply with Order.

Council can confirm, vary, substitute or cancel an Order. (s. 244)

NOTE: Tips for council on adjudicating appeals is attached as Appendix 1.

After following steps in s.245(1) or 246 which state requirements for issuing a Compliance Order, municipality can take action to remedy contravention such as boarding up buildings, removing occupants, eliminating public safety threats caused by unsafe structures, or cleaning up unsightly property (s. 245(1)(2), 246(2)).

TIP:

Enforcement Officer should still inspect property to document compliance and set the stage in the event of a 'next time'.

Costs associated with eliminating dangerous or unsightly property conditions may be added to property taxes:

- if by-law provides for it (s.236(1)(iii)); or
- actions were required to eliminate an emergency contravention (s.247(5)).