

Operating Guideline # 1808

Enforcement Procedures

September 19, 2019



**PURPOSE:**

The purpose of this Operating Guideline (OG) is to ensure that enforcement procedures resulting from fire code inspections are conducted in accordance with departmental guidelines, Office of the Fire Marshal Technical Guideline OFM TG-02-2009 - “Commencing Proceedings Under Part I of the Provincial Offences Act” (issued June 2009, revised Dec. 2010 and May 2015), Office of the Fire Marshal Technical Guideline OFM TG-01-2012 - “Fire Safety Inspections and Enforcement” (issued May 2012) and in a consistent manner.

**GUIDELINE:**

1. Proceedings under Part I of the *Provincial Offences Act* (POA) may be initiated against any person by members of the Fire Prevention Division - Fire Prevention Officer (FPO)/Fire Inspector - who are appointed as Assistants to the Fire Marshal (AFM) for offences under the *Fire Protection and Prevention Act, 1977* (FPPA) for non-compliance with the Fire Code for which short form wording and set fines have been established. A Part I “Offence Notice” should be used and filed with the court in accordance with set filing provisions.

**NOTE:** On March 11 2015, Ontario Regulation 52/15 was filed amending Reg. 950 of R.R.O. 1990 and updating Schedule 17.4 to include a number of short form wordings and set fine amounts for certain offences committed under the FPPA.

2. Proceedings under Part III of the POA may also be initiated against any person or entity by members of the Fire Prevention Division for offences under the FPPA following consultation with the Fire Chief or Deputy Fire Chief.

3. Proceedings under Part III of the POA (issuance of a “Summons”) are commenced by placing an “Information” before a Justice of the Peace at the local Provincial Offences Court. Prior to authoring the Information and requesting the appropriate Summons, the FPO/Inspector must confirm the availability of a prosecutor for the identified court dates sought. The FPO/Inspector must also call ahead to the Bracebridge Provincial Offences Office (705-645-1231) to ensure that a justice is available for intake.

4. A complete “prosecution package” must be made available to the individual acting as the prosecutor no later than two weeks prior to the date selected as the return date on the Summons (first appearance date). Prosecution packages shall contain the following documents as a minimum:

- a) Title page and Index
- b) Copy of the information
- c) Copy of the Summons
- d) Synopsis of the case (sufficient to provide the court with adequate information to support a “guilty” plea should this occur)
- e) Witness statements (including the investigation FPO/Inspectors statement and copies of notebook/file entries)
- f) Statements provided by the defendant
- g) Other evidence (photographic images, company profiles etc.)
- h) Previous Fire Code Conviction record of the defendant
- i) Request for witness subpoena’s (if relevant)

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5. The fire prevention officer/inspector must use his/her discretion and judgement when contemplating the charges under the FPPA. When conducting any fire code inspection, the fire prevention officer/inspector should assess the level of compliance or non-compliance together with the willingness of the building owner/occupant to remedy any contraventions of the Ontario Fire Code discovered before initiating any prosecution.

6. When conducting code inspections and investigating identified contraventions of the code, the use of the primary and/or secondary cautions as appropriate are necessary any time a statement is being solicited from any potential defendant to charges.

**Enforcement Practices:**

7. The first priority should always be to obtain voluntary compliance by issuing Inspection Orders or in some cases fire inspection reports and/or letters.

8. The history of the building/owner/occupant should be taken into account when enforcement measures are being contemplated. Depending upon the severity and nature of the violation(s) noted a progressive increase of actions is typically warranted.

9. When encountering an occupancy or building that has either: a. Three or more of the same type of violation (such as multiple closures that are wedged or blocked open, aren't maintained properly, records not available or on site etc.), or

b. Several of the violations for which short form wordings and set fines are available; the fire prevention officer/inspector should consider issuing Part 1 Certificates of Offence to the building owner/occupant as a general deterrent to repeating the violations.

10. In some cases, the issuance of a Part I Summonses for offences that do not have short form wordings may be warranted. This approach is less costly and time consuming than commencing actions under Part III. Approval of the Fire Chief or Deputy Fire Chief is required for issuing Part I Summonses directly.

11. When a(n) Inspection Order(s) has (have) been issued and an appeal or request for review has NOT been filed with the OFMEM, and a re-inspection on or about the due date finds the Inspection Order has not been substantially complied with, unless the building owner/occupant can provide legitimate reasons in writing for the delay (such as contractor or materials availability) the process for laying an information under Part III of the POA for "Failing to Comply with an Order" should begin.

12. If the building owner/occupant has complied with the Inspection Order in its entirety prior to an information being sworn by the fire prevention officer/inspector the decision to charge under Part III of the POA may be reconsidered and the process abandoned following consultation with the Fire Chief or Deputy Fire Chief..

13. When any of the following Ontario Fire Code violations are found as the result of any inspection, the fire prevention officer/inspector shall consult with a the Fire Chief or Deputy Fire Chief and consideration should be given to commencing proceedings under Part III:

a) Fire alarm systems – not operational, annual test, check, inspection not completed

b) Sprinkler systems – not operational, annual test, check, inspection not completed

c) Commercial cooking exhaust and fire protections systems – not operational; required tests, checks, inspections - not completed; and/or required cleaning -not performed

e) Exits – blocked or chained shut preventing use, two or more slide bolt blocks on any one door

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f) Emergency power systems – not operational, annual tests, checks, inspections not completed

14. In all cases when a summons is to be issued (Part I or Part III) prosecution packages should be prepared as per sentence 4.

**Immediate Threat to Life/Orders to Close:**

15. In rare cases the life safety of building occupants and first responders may necessitate that immediate action be taken by the FPO/Inspector in accordance with the provisions of the FPPA.

16. When an "Immediate Threat to Life" is present, the FPO/Inspector may pursue items outlined in Section 15.(1)(a) – (g) of the FPPA and if the item will cause expense to the Township of Muskoka Lakes, the approval of the Fire Chief or Deputy Fire Chief shall be obtained (verbally or in writing) in order to alleviate the hazard.

17. When actions are taken under Section 15 of the FPPA, and there is a cost to the Township of Muskoka Lakes, the FPO/Inspector shall as soon as possible begin the cost recovery process in accordance with Section 35 (1)(b) of the FPPA.

18. In other cases, an "Immediate Threat to Life" may not be sufficient to alleviate the life safety hazard to building occupants and first responders, in which case the FPO/Inspector should consider actions under Section 21(2)(a) OR 21(2)(b) of the FPPA for an Order to Close or an Authorization to Close.

19. Closure of the property should be considered when: a. The conditions constitute an immediate fire hazard;

b. The person responsible for the building is unable or unwilling to alleviate the hazard immediately;

c. All other reasonable avenues have been pursued to alleviate the hazard, but have proven unsuccessful (including the provision of alternative measures); and/or

d. Where applicable, implementing measures under Section 15 would not achieve an adequate level of life safety.

20. When considering an Order to Close under Section 21(2)(a) the owner must be available, capable and willing to close the property, and the Fire Marshal must approve the Order to Close.

21. IF the owner is not available, not willing or not capable of closing the property, an Authorization to Close (under Section 21(2)(b)) is the other option. In this case, the Township of Muskoka Lakes will be responsible for the costs involved in closing the property.

22. When actions are taken under Section 21(2)(b), the FPO/Inspector shall as soon as possible begin the cost recovery process in accordance with Section 35 (1)(a) of the FPPA.

23. If the actions to be taken to alleviate an Immediate Threat to Life, an Order to Close or an Authorization to Close include removing residents from their homes the District of Muskoka housing branch, Muskoka Victim Services or other social services agency should be contacted and asked to attend to assist with obtaining temporary housing for the residents.

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### **RESPONSIBILITY:**

This guideline will be followed by all fire prevention personnel involved in fire inspections that have been appointed as an Assistant to the Fire Marshal under Subsection 11.(1) of the Fire Protection and Prevention Act, 1997.

### **DEFINITIONS:**

**“Fire Safety Inspection Report” means** – A written document outlining fire code deficiencies in a standard format that is not an “Inspection Order”

**“Immediate Threat to Life” means** a situation discovered upon inspection where the threat of a fire is imminent AND there is a serious risk injury or death to humans. (SEE ALSO: OFM TG-01-2012 “Fire Safety Inspections and Enforcement”)

**“Inspection Order” means** – A legal document referred to in Section 21 of the FPPA whereby an owner or occupant is required to comply with provisions of the OFC or other fire safety matters. Inspection Orders may be appealed to the Fire Marshal, the Fire Safety Commission and the Divisional Court.

**“Primary Caution” means** – When fire prevention personnel have an intention to proceed with charges under the FPPA, it is good practice to inform the person(s) in control of the building and/or property in question that they do not have to answer any questions or provide any information and that anything they say may be used gather further evidence or be given in evidence.

**“Secondary Caution” means** – Informs persons that if they have already spoken to another enforcement officer on the same matter, that you want them to clearly understand that you do not want to influence them in making any statement

**“Substantially” means** - For the purposes of this guideline, and within the standard meaning of the term “to a great or significant extent”, that at least 80% of the required remedial work has been completed.

### **REFERENCES:**

- Ontario Regulation 213/07 Ontario Fire Code
- Fire Protection and Prevention Act 1997 as Amended
- Technical Guideline OFM-TG-01-2012 – “Fire Safety Inspections and Enforcement”
- Technical Guideline OFM-TG-02-2009 – “Commencing Proceedings Under Part I of the Provincial Offences Act” – (and subsequent revisions in 2010 and 2015)
- Ontario Courts of Justice – Schedule 17.4
- MLFD OG 1801 Fire Inspection Practices