MUNICIPAL BYLAWS

Saskatchewan Government Relations
Advisory Services & Municipal Relations Branch
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Topics for discussion

• Municipal authority to pass bylaws
  – Procedure
• What are the parts of a bylaw?
• What makes a bylaw good or bad?
  – How can we enhance compliance and acceptance?
  – Can we make bylaws more understandable?
  – How can we “bullet-proof” bylaws?
• Enforcing bylaws
Guide to interpreting power to pass bylaws

6(1) The power of a municipality to pass bylaws is to be interpreted broadly for the purposes of:

(a) providing a broad authority to its council and respecting the council’s right to govern the municipality in whatever manner the council considers appropriate, within the jurisdiction provided to the council by law; and

(b) enhancing the council’s ability to respond to present and future issues in the municipality.
Jurisdiction to pass bylaws

8(1) A municipality has a general power to pass any bylaws for the purposes of the municipality that it considers expedient in relation to the [municipality’s spheres of jurisdiction].

- nuisances
- public safety
- animal control

– Municipal purposes are defined – section 4.
• Bylaws reliant upon other legislation require specific authority.
  – *The Uniform Building and Accessibility Standards Act*
    • Building bylaws
  – *The Planning and Development Act, 2007*
    • Zoning bylaws

• Some bylaws require ‘approval’ before coming into force.
• Bylaws may:
  – Regulate or prohibit activities
  – Provide for inspections to confirm compliance
  – Charge licenses, permits and fees.
  – Create offences, including continuing offences;
  – Provide for penalties, including incentives to pay;
    • Voluntary payments, to avoid prosecution;
  – Authorize remedies, including moving, seizing, impounding, destroying or disposing of property.
• Provincial statutes and regulations take precedence over municipal bylaws and resolutions.

• Council exercises power by passing resolutions and bylaws.
  – If required to do so, a council shall exercise a power through the passing of bylaws.
  – If no requirement, council may use either.
Parts of a Bylaw

• Name of municipality
• Number
• Title
• Table of contents
• Statement indicating office consolidation and amendments, if applicable
Parts of a Bylaw - Continued

- Preamble
  - should be avoided – as a general rule, this does not increase a bylaw’s effectiveness.
- Enacting clause
  - identifies who established the bylaw.
- Formal citation
  - clarifies the bylaw when it is referenced in other documents or proceedings.
- Purpose statement
  - sets out the bylaw’s objectives.
- Interpretation provisions
  - define and clarify specific words and phrases used within the bylaw.
Parts of a Bylaw - Continued

• Operative provisions
  – set out the measures to achieve the objectives. These provisions create offences, including continuing offences.
  – Consider the WHIB questions:
    – W who, what, where, when
    – H how, how much
    – I if, if not
    – B but
Parts of a Bylaw - Continued

• Schedules
  – can be used to efficiently and effectively provide detail. Schedules are identified using a “schedule clause”.

• Penalties
  – which may be incurred for contravening the bylaw are set out in the “penalty clause”.

• Voluntary Payment Option
  – Municipalities may enable alleged offenders to pay an amount to avoid prosecution for the contravention.
    • Municipalities cannot determine a person’s guilt.
  – Penalties or remedies may include action respecting any type of real or personal property.
• Effective Date
  – Bylaws become effective immediately, unless the bylaw includes a “transitional clause”.

• Repeal Clause
  – cancels previous related bylaws, including any amendments.

• Bylaws are signed by the administrator and by the mayor.
  – Deputies have official powers in the absence of the mayor or reeve.

• The corporate seal of the municipality is applied to the document.

• Bylaws can only be amended by another bylaw – this includes amending a schedule.
How are bylaws passed?

• Bylaws must be “read” three times.
  – “Reading the bylaw” may involve only the title or the identifying number of the proposed bylaw.
  – Each member of council has the right to review the full text of a bylaw prior to first reading, and prior to third reading if there are any amendments after the first reading.
  – Proposed bylaws cannot be read more than twice at a single meeting, unless council unanimously agrees to consider third reading.
Where are bylaws retained?

• Original bylaws are retained in the minutes.
  – Repealed bylaws are **not** removed from the minutes.
  – Original bylaws form part of the minutes, and minutes are retained permanently.

• Certified copies of bylaws are maintained in an indexed register.
  – Remove certified copies of bylaw when they have been repealed.
What makes a bylaw “good” or “bad”?

• How do we measure a bylaw as “good” or “bad”?
  – High levels of compliance / public acceptance
  – Capable of withstanding challenges
How can we enhance compliance and acceptance?

• Compliance and acceptance may be improved through public consultation processes, such as:
  – Surveys or opinion polls
  – Public meetings
  – Stakeholder meetings
  – Focus groups

• Information and education may contribute to greater compliance or acceptance.
Drafting bylaws

• Writing a bylaw is similar to writing legislation.
  – Remember: bylaw = regulation
• Bylaws require preliminary analysis:
  – Background – What problem is being addressed?
  – Objective – What does the proposed bylaw intend to do about the issue?
  – Options – How can the problem be fixed?
  – Rationale – Why is the chosen option the best?
• Structure improves the look and effectiveness of a bylaw.
  – Sections can be compared to a paragraph; focus on a particular topic.
  – Subsections can be compared to sentences; focus on a particular item.
  – Clauses, sub clauses, and paragraphs drill down to single items.
• Statutory interpretation is the process of interpreting and applying legislation.
  – This will apply to interpreting bylaws.
• Key principles of statutory interpretation include:
  – Different words mean different things;
  – Every word has meaning;
  – Ordinary meaning in context;
  – *The Interpretation Act, 1995*
• Different words mean different things.
  – Avoid using synonyms
    • “the City” may not mean the same as “the Municipality”
  – “Elegant variation” may compromise the bylaw.
• Each word has meaning.
  – Legislation (bylaws) will not say anything that it has already said.
  – Legislation (bylaws) will not say anything that does not need to be said.
  – Words in one place but not in another intend a different effect:
    • Costs
    • Reasonable costs
    • Reasonably incurred costs
    • Costs that [the municipality] considers reasonable
• Ordinary meaning in context
  – Words are to be given their ordinary grammatical meaning.
  – Meaning will be drawn from the entire context of the bylaw, not only from the single provision in which those words are found.
  – Meaning will be determined so as to best accord the bylaw’s objective and intention.
• *The Interpretation Act, 1995* applies to every enactment, including bylaws, unless a contrary interpretation appears.

• The Act:
  – Defines words used throughout legislation;
  – Determines how to calculate periods of time;
  – Gives general direction on how courts should interpret legislation and bylaws.
• Using “plain language techniques” enhances bylaw readability and understanding.
  – Use familiar words.
  – Use shorter sentences.
  – Use headings and other pointers.
  – Organize for the public.

• Bylaws will likely be longer.
How can we “bullet-proof” the bylaw?

• Common attacks include:
  – *Ultra-vires*;
  – Discrimination;
  – Bad faith;
  – Vagueness;
  – Infringement of Charter rights;
  – Fairness.
• *Ultra vires* challenges may encompass:
  – Exceeding the municipality’s statutory jurisdiction;
  – Conflicting with provincial legislation;
  – Conflicting with federal legislation.
• Bylaws may only discriminate:
  – if the legislation expressly provides that the municipality may do so; or
  – where the authorization to discriminate is a necessary implication by exercising the municipal power.
Bad faith generally does not include situations where members of council express strong views or where they may be influenced by interest groups.

Bad faith may include:

- Passing bylaws with inordinate speed;
- Dispensing with normal practices and procedures;
- Withholding information from affected parties;
- Singling out properties to the detriment of its owners.
• Bylaws may be overturned if they are too vague or uncertain.

• Vagueness includes:
  – inadequate notice of prohibitions; or
  – indistinct standards.
In light of the broad spectrum of municipal activities, there have been numerous Charter challenges:

- Freedom of conscience and religion
- Freedom of expression
- Right to vote and hold elected office
- Life, liberty and security of the person
- Equality rights
• Bylaws may survive Charter challenges, particularly if it can be demonstrated that the interference is justified.

• Under the “Oakes” test, municipalities must establish that:
  – the objective of the bylaw is important enough to override the Charter right;
  – the means chosen are reasonably connected to the objective; and
  – there is minimal interference with the rights.
• A duty of fairness arises inversely proportional to the application of the bylaw.
  – Bylaws impacting a smaller portion of the population will generally require a higher duty of procedural fairness relative to bylaws having general application.

• Ombudsman Saskatchewan resources:
  – Practice Essentials for Administrative Tribunals
  – Fine Art of Fairness
• Relevant factors to determine content of duty of fairness include:
  – the nature of the decision, and the process followed;
  – the importance of the decision to the individual;
  – legitimate expectations of a person challenging the decision;
  – the procedural choices actually made.
Questions to Ask

• Does the municipality have authority to act?
• Does the bylaw differentiate or discriminate?
• Is there evidence of bad faith?
• Is there interference with Charter rights?
• Is the bylaw clear?
• Does the bylaw provide procedural fairness?
“... people continually try to misunderstand [legislation] ..., therefore, it is not enough to attain a degree of precision which a person reading in good faith can understand, but you must attain, if you can, a degree of precisions which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it.”

Stephen, J., *Re Castioni* (1890)
Bylaw Enforcement

• Enforcement takes a variety of forms:
  – Education, persuasion, encourage voluntary compliance
  – Remedial orders, impoundment
  – Prosecution

• Role of elected officials
  – NOT to actively participate in enforcement activities
  – ENSURE appropriate enforcement resources are in place
Questions or more information

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