

# MUNICIPAL BYLAWS

*Saskatchewan Government Relations*

*Advisory Services & Municipal Relations Branch*

*May 2016*

# 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?

# *Closing comments [bylaws]*

“... 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

Advisory Services and Municipal Relations Branch

(306) 787-2680

[muninfo@gov.sk.ca](mailto:muninfo@gov.sk.ca)