ENFORCEMENT OF MUNICIPAL BYLAWS: A PRIMER

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INTRODUCTION

Few laws affect our ordinary lives more than municipal ordinances. From complaining of a dog's incessant barking to walking through harmoniously-developed neighbourhoods, we see the necessity and effect of these bylaws every day.

Enforcing these laws is an important function of local governments. With over 700 municipalities in Saskatchewan, it is also an area many litigators will encounter at one point or another.

This paper, therefore, seeks to provide a brief introduction to the process and practicalities of bylaw enforcement.

Jurisdiction to enact Bylaws:

The Municipalities Act, SS 2005, c M-36.1 (the "*Act*") provides the legislative framework for most of Saskatchewan's municipalities to legislate over broad spheres of jurisdiction including peace, order, safety and welfare, as well as specific matters such as nuisances, vehicle use, businesses and animals.[2]

Within these realms, municipal powers will be interpreted generously. As the Supreme Court has held, local governments' "closeness" to the members of the public who live, or work, on their territory make them more sensitive to the problems experienced by those individuals".[3]

Municipal Discretion in Enforcement:

A municipality possesses discretion when deciding whether to enforce its bylaws.[4] The mere passing of a bylaw does not cast any legal duty on the municipality to see to its enforcement.[5] As a result, local governments may determine to prosecute some residents for breaches of a bylaw, but not others.[6] Perceived inequality of enforcement will offer no defense to an accused.[7]

The rationale for this discretion was explained by the Ontario Court of Appeal in *Toronto v. Polai:*

> Municipal council has a discretion as to when it will prosecute for a breach of or sue to enforce the provisions of the zoning by-law. **To deny the discretion in municipal council would be to place the most technical breach of the by-law beside the most blatant and to remove from consideration the harm done to the offender and the value to the community of the proposed proceedings when considering when they ought to be taken.** The discretion when to prosecute or when to sue which rests with the municipal corporation or the comparable discretion which rests with public authorities charged with the responsibility of enforcing the rights of the public when they are violated, is one of the great strengths of our system of justice.[8] [emphasis added].

That said, exceptions to such discretion include:

- Instances where mandatory enforcement is required by the bylaw itself; or
- Bad faith considerations underlying the decision not to prosecute. [9]

Once a municipality *has* chosen to enforce, it becomes subject to the usual requirements of operational care in carrying out such decision.

The Enforcement Process:

Bylaw enforcement will typically involve four steps:

- Receiving and investigating a complaint;
- Demanding compliance by the offending party;
- Inspection, seizure, or, prosecution; and
- Rectification.

Once a municipality has investigated a complaint, its first step may be a written warning, or immediate service of a notice of violation. If the problem persists, section 8(2) of the *Act* offers a number of remedies to a municipality. These include:

- Imposing fines or other penalties;
- Inspecting for contraventions;
- Moving, seizing, impounding, immobilizing or selling of property;
- Seizing, impounding, immobilizing, selling or otherwise disposing of vehicles to deal with vehicle offences.

Preparing for Prosecution:

In many cases, a violation can be dealt with through inspection or another self-help remedy. Other cases may, however, call for nothing less than proceeding to court. In such case, you should begin by carefully reviewing the bylaw at issue. Is it within the jurisdiction of the municipality? Is the offence clearly drafted, and free of ambiguity or vagueness? Is there an express mechanism already prescribed for enforcement?

The limitation period of two-years will rarely be a problem. Some defendants attempt to rely on section 4(3) of *The Summary Offences Procedure Act*, 1990, SS 1990-91, c S-63.1, which at first appears to mandate a six-month limitation:

> 4(3) **If,** in the applicable Act or regulation relating to a particular offence, **no time limit is specified for laying an information or issuing a summary offence ticket, the information shall be laid or the summary offence ticket shall be issued within six months** from the time when the matter of the complaint or information arose unless the prosecutor and the defendant agree to waive the six-month limitation [emphasis added]

However, such an interpretation overlooks the words, "if, in the applicable Act...no time limit is specified. This phrase refers us to section 386 of the *Act*, which clearly specifies a two-year time limit:

> Prosecutions
> 386 No prosecution for a contravention of this Act or a bylaw may be commenced more than two years after the date of the alleged offence.

Once evidence is gathered and witnesses interviewed, you will issue and personally serve the formal document summoning the offender to court. *The Summary Offences Procedure Act*, 1990, SS 1990-91, c S-63.1 (*"SOPA"*) governs prosecution of municipal and provincial offences in Saskatchewan. For municipal bylaw prosecutions, two processes are available:

- The summary conviction provisions of the *Criminal Code*, R.S.C. 1985, c. C-46.; or
- The summons ticket procedure contained within Part III of *SOPA* itself.

This paper cannot substitute for a close reading of *SOPA*. However, the basic process consists of:

- Service of a summons, informing the defendant of the alleged offence;

- An initial appearance before a justice of the peace. A plea will be entered and a trial date set; and
- The trial following a few months later.

The trial itself will be governed by normal procedural and evidentiary rules. All prosecution documents and intended witnesses should be disclosed to the defendant before trial, and the Crown must be prepared to prove all elements of the bylaw offence beyond a reasonable doubt.

In most smaller centers, the matter will usually be heard before a justice of the peace. The prosecution may be responsible for arranging both a clerk and a stenographer for the proceedings. Be sure to also bring a certified copy of the relevant bylaw to enter into evidence. More than one prosecution has failed at the outset due to this simple oversight.

If a conviction is entered, the defendant will be ordered to pay the imposed penalty sum, as well as a victim surcharge pursuant to *The Victims of Crime Act*, 1995, S.S. 1995, c. V-6.011. Beyond a fine, many situations will also see a municipality seek an order requiring compliance.

Dangerous Animal Complaints

Before concluding, one type of municipal proceedings deserves special mention.

Dangerous animal complaints result when an animal has attacked or threatened another person or animal. These complaints often do not involve bylaws at all, but can proceed under section 375 of the *Act*. The test for a dangerous animal order is simple:

Declaration of dangerous animal

375(1) On hearing a complaint that an animal in a municipality is dangerous, a judge may declare the animal to be dangerous if the judge is satisfied on reasonable grounds that:

> (a) the animal, without provocation, in a vicious or menacing manner, chased or approached a person or domestic animal in an apparent attitude of attack;
> (b) the animal has a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise threaten the safety of persons or domestic animals;
> (c) the animal has, without provocation, bitten, inflicted injury, assaulted or otherwise attacked a person or domestic animal; or
> (d) the animal is owned primarily or in part for the purpose of fighting or is trained for fighting

Any individual can seek a dangerous animal declaration. However, local governments will often fund these proceedings in order to deal with a notorious animal in the community. Orders seeking euthanasia are rare, and a first-time offending animal will generally receive the terms in section 375(5) of the *Act*, i.e. fencing, leashing, muzzling, signage, etc.

CONCLUSION

Bylaws are the instruments by which municipalities further the safety, health, and well-being of their citizens. While no local government welcomes the time and cost of court proceedings, a council must be ready to enforce its laws. Prompt and decisive action will:

- Ensure that all citizens are held to the same standards as their neighbours;
- Demonstrate that a municipality takes its public enforcement role seriously; and
- Avoid future problems through proactive enforcement, lest a situation worsen over time.

For those who may interact with this area in the future, I hope the above offers a general introduction of the process involved.

[1] I am grateful, with the usual caveats, to Monique Lambert-Wignes and M. Kim Anderson Q.C. for offering their insights.

[2] Cities and northern municipalities possess their own statutes.

[3] *R. v. Guignard*, [2002] 1 SCR 472, 2002 SCC 14 (CanLII) at para 17.

[4] *Freitag v. Penetanguishene* (Town) (2005), 202 O.A.C. 227 (Ont. Div. Ct.), at para. 13.

5 *Kent v. Laverdiere*, 2011 ONSC 5411 (CanLII) at para 145.

[6] *Ian MacF. Rogers, The Law of Canadian Municipal Corporations, loose-leaf* (2004-15) 2d ed (Toronto: Thomson Carswell, 2015) at 485.

[7] *R. v. Joy Oil Co.* (1963), 1963 CarswellOnt 17 (Ont. C.A.).

[8] [1970] 1 O.R. 483, 8 D.L.R. (3d) 689 (C.A.), aff'd [1973] S.C.R. 38, 28 D.L.R. (3d) 638, cited in *R. v. Geransky Bros. Construction Ltd.*, 2011 SKQB 88 (CanLII), 376 Sask R 83.

[9] See *Re Cosentino and the City of Toronto* (1934) O.W.N. 715. See also *Lester v. Smith*, 1990 CarswellOnt 4297 (Ont. Gen. Div.)