

MEMORANDUM ON ENFORCEMENT OF TOWN BY-LAWS

INTRODUCTION

The purpose of this memorandum is to discuss the manner of enforcement of Town By-laws and to make some general recommendations for the consideration of the Town Council for policy in By-law enforcement. We are interpreting the term "By-law Enforcement" to mean the institution of legal proceedings in a court of law by the Town and by other parties.

GENERAL BACKGROUND

The general practice in the past with reference to By-law enforcement is very limited. Actual Court proceedings over the last several years have been mainly instituted under the Unsightly Premises By-law, usually at the instruction of Town Council or the Town Clerk. Generally, a decision is made by the appropriate committee to prosecute, that decision is either approved by Town Council or instructions are given to the Town Clerk by the committee chairman. These instructions are communicated to the Town Solicitor who in turn reviews the evidence and proceeds to draft information which are usually sworn by the Town Clerk. On some occasions, where the Town Solicitor does not feel that the evidence is sufficient or warranted for a prosecution, he will so advise the Town Clerk and the matter does not proceed. In some instances, where actions have been commenced and parties summoned to appear before the Court and enter plea, the Town Clerk has advised the Solicitor to withdraw the action, usually based on instructions from the Committee or Town Council, and are usually on the basis of substantial compliance having been made by the alleged offender.

In all instances, the fines are minor fines but, in general, these prosecutions appear to have been effective because it has placed the individual under public scrutiny and as well, usually to some cost if legal counsel is retained by the alleged offender.

In matters that have actually gone to trial, in all instance, convictions have been obtained.

The writers cannot recall instances of actual convictions in the enforcement of any other By-laws of the Town over the past several years.

There have been no actions commenced by the Town Solicitor on the instructions of the Council under the Peace and Good Order By-law in certain instances of littering and vandalism. There have been a number of prosecutions and vandalism. There have been a number of prosecutions and eventual convictions commenced by a private citizen under the Peace and Good Order By-law.

DUTY OF MUNICIPALITY TO ENFORCE BY-LAW

There is no obligation upon a municipality to enforce a By-law enacted within its

discretionary powers and it is, therefore, not liable for an injury caused through any violation of such a By-law. As well, there appears to be nothing to prevent a municipality from discriminating in the enforcement of a By-law, if it so wishes. Under certain principles, a municipality cannot discriminate in the administration of a By-law and apply its provisions against one and not against another, but there seems to be no grounds on which a court could interfere if a municipality exercises discrimination in enforcement as enforcement is generally a discretionary matter. The respective enforcement agencies of the Federal and Provincial governments exercise considerable discretion in the enforcement of their respective laws.

In general, therefore, the Town Council is not required by law to enforce its By-laws and when it does enforce its By-laws, it may exercise discretion in the manner in which it chooses to enforce them.

In the past, the RCMP have played little or no part in the enforcement of Town By-laws. The nature of the services rendered by the RCMP to the Town is contained in an Agreement entered into between the parties dated the 18th day of April, 1977 and which concludes on the 31st day of March, 1981. That Agreement provides that it may be renewed for an additional five years "upon terms that are mutually agreeable". In the recitals of that Agreement, there is a clause as follows:

AND WHEREAS by Section 19 of the Royal Canadian Mounted Police Act, members of the Force unless authorized by the Governor in Council, shall not be charged with any duties under or in connection with any Municipal by-laws;

According to the Attorney General's Department, they cannot locate any such authorization. In the body of the Agreement, there are some references to By-laws. In Section 3 the police Unit shall act under the lawful direction of the chief Executive (Mayor) of the municipality or such person as may be designated by him in enforcing By-laws of the Town.

In Section 4 there is a provision that the police Unit shall perform in the municipalities normal Police Officer duties including rendering services that are necessary to "preserve the peace, prevent crime and offences against...the laws in effect in the....Municipality..."

As well, in Section 4 (2) there is provision that the police Unit shall not be required to perform certain non-police functions in the Municipality including such things as the collection of taxes and fees, carrying out inspections concerning licenses, etc. And enforcing dog By-laws.

It is recommended that if the decision of the Town council is to request that the RCMP enforce specific By-laws, then such provision should be entered into their new agreement. It is not anticipated that the RCMP would be involved in the enforcement of many existing By-laws, and we would recommend consideration of requesting them to

enforce certain sections of the Peace and Good Order by-law, the Taxi By-law and the Bicycle By-law.

PROSECUTION

One of the major concerns of the Town with reference to By-law enforcement in addition to the determination of when to enforce their By-laws, will be the cost of enforcement. Neither the Federal or Provincial authorities will participate in the enforcement of By-laws by way of their Crown Officers. In other words, the prosecuting officer for the area, who is paid by the Provincial government, will not prosecute Municipal By-law offences. If there is any prosecution to be done, it must be done by solicitors retained by the Town, and, as is the practice in other municipalities, would presumably be the Town Solicitor.

If the RCMP become involved in the enforcement of certain By-laws, they would presumably request that they could have the advice of the Town Prosecuting Officer. This is the practice of the RCMP with respect to the enforcement of all Federal and Provincial statutes.

It is obvious that a great deal of conflict and expense would occur if the Town agreed to enforce and provide legal services for the enforcement of its By-laws based on the decision of any citizen in the Town to proceed with a prosecution under any of the By-laws. It is obviously preferable that the decision to proceed with prosecution be made through one authority who would consult with the prosecuting officer. Because the Town has the authority to exercise discretion in the enforcement of its By-laws, it is also obvious that it should develop a policy as to how that discretion would be used and to provide an outline of that policy as a guidance to the Town official who is authorized to institute enforcement proceeding under the Town By-laws.

RECOMMENDATIONS

It is therefore, recommended as follows:

1. That the Town Council authorize one Town employee, presumably the Town Clerk, to be the person to direct the enforcement of the Town By-laws or to commence a prosecution of an offence under the Town By-laws.
2. That the said prosecuting official exercise his discretion to proceed to a prosecution based on the following considerations:
 - a. A recommendation to proceed from the Town Constable or the RCMP;
 - b. A recommendation from the Town Solicitor as to the adequacy of the evidence;

- c. Whether in his opinion the offence is one that requires prosecution to properly maintain the public peace and good order of the Town as opposed to the private requirements of any individual;
- d. The specific recommendations of any committee of Council regarding a general policy of prosecution for specific By-laws or areas of concern;
- e. The general written direction of the policy made from time to time by Town Council;

DATED at Port Hawkesbury, this 30th day of March, A.D., 1981.