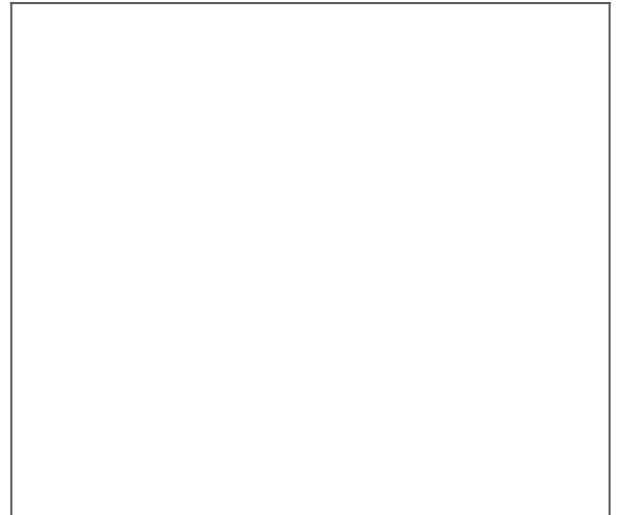


Municipal Powers and their Limits

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In its 2001 decision in *114957 Canada Ltée v. Hudson (Town)* (the “Spraytech decision”) the Supreme Court of Canada had occasion to review the nature and limits of the powers that are held by municipalities, as implemented through their councils. Referring to earlier decisions of the Court, it recognized the principle that municipalities are creations of statute that “may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation.” As provincial legislators cannot foresee every circumstance and every power that may be necessary, legislation also grants municipalities broader, general welfare powers in addition to powers that are specifically listed.



The legislation that creates and governs municipalities (in Manitoba, *The Municipal Act* and *The City of Winnipeg Charter*) set out some very specific powers, for example control over public streets. In other instances, powers are described in relation to “spheres of jurisdiction”. For example, councils may pass by-laws respecting “the safety, health, protection and well-being of people, and the safety and protection of property” and “businesses, business activities and persons engaged in business”.

Even where powers are broadly expressed, those powers may be subject to limitations contained in the statute itself or found outside of the governing act. Having a good grasp of what a municipality can and cannot do makes for more efficient and effectual governance. It also limits the opportunity for challenges of municipal actions. Here are a few of the considerations affecting the exercise of municipal powers.

A Word on Natural Person Powers: Some provincial legislatures (Alberta being one of them) have granted “natural person powers” to municipalities. This is the expression used to denote the powers that are granted to business and other corporations to enter into

contracts, own property (including subsidiaries) and make investments. Winnipeg is granted natural person powers, but other Manitoba municipalities are not. Whether this makes any practical difference, when taken with other legislative restrictions, can be debated.

Compliance with Other Laws: It is trite to say that a municipality is not above the law. It is not the Crown, so it has no immunity from federal or provincial legislation (unless specifically granted). Attempting to exercise a power in a manner that is illegal is not only likely to be unenforceable, it could result in prosecution.

Procedural Restrictions: Even though a municipality and its council may have the power to do something, it must follow required procedures to validly act. Hearings must be held in accordance with the rules. Notices must be given as specified. Council meetings must be properly constituted and decisions made in public session. A failure to follow proper process can defeat an otherwise valid exercise of jurisdiction. Often these procedural requirements are found in other legislation, such as *The Planning Act*.

Sub-Delegation: Where a decision-making power is specifically given to council (especially a legislative power), council may not delegate that power to another person or body unless permitted by legislation. Most municipal statutes now allow delegation of many powers to CAOs, planning commissions and others. When delegating, check to make sure that the authority to delegate is there.

Powers Delegated to Other Bodies: This is a bit different than just compliance with the law. In some situations, powers that might otherwise lie with a municipality are delegated to another body. Take, for instance, the jurisdiction of the Public Utilities Board to set rates for municipal-owned utilities, or the jurisdiction of the Municipal Board and the Minister when it comes to approval of development plans, annexations and amalgamations.

Constitutional Limits: Municipalities derive their powers from provincial governments. It goes without saying that the Provinces cannot pass on any powers that they do not themselves have. Certain areas - - - jurisdiction over federal lands, airports, seaports, Indian reserves, criminal law, telecommunications, inter-provincial railways (the list goes on) - - - are within the exclusive purview of the federal government. The case law on division of powers goes back to Confederation itself.

Some constitutional impediments are less obvious. For instance, the federal government has the exclusive power to levy indirect taxes. An indirect tax was described in the 1932 Supreme Court case of *City of Charlottetown v. Foundation Maritime Ltd.* as “a tax imposed on a person who is not supposed to bear it himself but who will seek to recover it in the price charged to another.” In that case, the Court found that a by-law that imposed a percentage tax on the contract price of all construction performed by non-resident contractors was

beyond the City's powers (and the Province's, for that matter). That additional cost would obviously be passed on to the property owner, which made it an indirect tax and therefore invalid.

The Canadian Charter of Rights and Freedoms: Municipalities, like other governments, must comply with the protections afforded to Canadian civil liberties under the *Charter*. The whole purpose of the *Charter* is to protect citizens' rights. There have been a great many court cases in which municipal by-laws and municipal actions have been challenged for failure to comply with *Charter* protections. Sign and posting by-laws, anti-panhandling by-laws and noise by-laws have been challenged under freedom of speech. By-laws and legislation restricting the rights of employees to organize have been challenged under freedom of speech. By-laws regulating the location of residential group homes have been challenged on several grounds. Restrictions that infringe on *Charter* rights will only be upheld when proven to be justifiable in a free and democratic society; that is a stringent test.

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