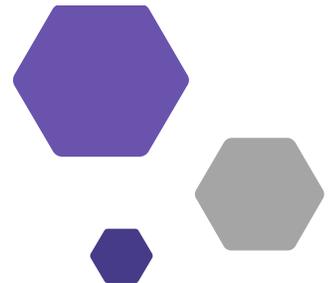


# Municipal Regulation and the Environment

By John Stefaniuk



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What is the role of a municipality in regulating environmental concerns? What are its powers? What kinds of things should municipalities be considering in order to promote stable, environmentally sound policies for the benefit of the community? What upfront work can be done to realize on opportunities? Here is some food for thought.

### **Municipal Powers and the Environment**

What powers do municipalities have in relation to environmental matters? In its 2001 decision in *Spraytech v. Town of Hudson*, the Supreme Court of Canada considered whether that municipality had the authority to implement a cosmetic pesticide ban. Lawn care companies objected to the by-law, saying that it interfered with their rights, granted in their provincial applicator licenses, to apply products that were approved under federal regulations as safe.

The Court confirmed that municipalities are statutory bodies without inherent authority. Instead, municipalities “may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the express power in the statute and those indispensable powers essential and not merely convenient to carrying out the purposes of the corporation”.

In looking at the Quebec legislation that created municipalities, the Court was satisfied that the “general welfare” powers granted to municipalities were broad enough to support a pesticide ban by-law. In *Spraytech*, the majority decision of the Court held that Hudson could prohibit the use of cosmetic pesticides, so long as its by-laws did not directly conflict with provincial legislation by making dual compliance impossible. A lawn care company could comply with both the provincial regulations governing applicator licensing and the by-law by not applying the products that were banned under the by-law. The concurring minority decision noted that these powers were not without limit - - they had to be associated with immediate community interests within the geographic boundaries of the municipality

In Manitoba *The Municipal Act* grants municipalities the power to make by-laws respecting “the safety, health, protection and well-being of people, and the safety and protection of property”, among other, more specific powers. Whether these powers are as broad as those considered in the *Spraytech* decision is something that can be debated. Nevertheless, municipalities can and do have a role.

Some provinces, Quebec and British Columbia included, have passed amendments to municipal legislation to limit the extent to which municipalities may regulate on environmental issues that fall within provincial jurisdiction.

In the July 2019 British Columbia Court of Appeal decision of *Canadian Plastic Bag Association v. City of Victoria*, the Court considered the validity of a by-law prohibiting merchants from providing plastic bags to customers. Provincial legislation in BC contains a requirement that municipal by-laws relating to protection of the natural environment must first obtain approval of the provincial Minister of Environment. The Court held that the plastic bag ban was, in pith and substance, environmental regulation that required the Minister’s approval in order to be valid. The by-law was struck down.

### **Zoning and Environment Industries**

During the mini windfarm boom of the last decade in Manitoba, many municipalities amended their zoning by-laws to make provision for the development of windfarms within agricultural zoning districts. This saved prospective developers considerable time in seeking zoning by-law amendments from planning authorities in municipalities in which they hoped to establish their windfarm operations. It allowed municipalities who were sufficiently prepared to attract that investment.

Does your municipality's zoning regime contemplate the new land uses that are part of a greener economy? Is there allowance for solar farms? Electric vehicle charging stations? Biofuel plants? Biomass? Cogeneration and small scale electric power development? Remember that if a use is not listed in a particular zoning district (or if an analogous use cannot be identified), the by-law will likely need to be amended to accommodate the new use. If those uses are to be included, how will they be treated? Will they be permitted or conditional uses? In which zoning districts? Will there be any specific requirements regarding siting?

When considering zoning by-law changes, do not forget the hierarchy of the zoning scheme. If a zoning by-law is not consistent with the municipality's development plan, the zoning by-law will be invalid. The development plan amendment process can be even more involved than simple zoning by-law amendments. Being prepared for potential new uses requires forward thinking and advance planning.

### **Preparing for a Changing Future**

The climate is changing. More and more municipal resources are being spent on adaptation and mitigation measures in response to or in anticipation of these changes. How will the municipality infrastructure plans meet the changing environment? Should development be restricted in areas of the municipality that may become more prone to weather emergencies or flooding? What can be done to limit future costs?

Thankfully there are many examples and guides to assist municipalities in this deliberate process of planning. For example, the International Institute for Sustainable Development released its January 2019 report *Local Climate Change Adaptation Planning in Manitoba*, containing key observations and recommendations.

### **Sticking to Your Knitting**

A question that municipal administrators and members of municipal council should regularly ask themselves is whether and when the municipality should take a role at all. While it is easy to jump on an environmental bandwagon, it can take more deliberation in deciding whether the municipality need take action itself. Administration and council may want to ask themselves some questions:

- Is the action tied to a particular local issue?
- Does it fit within the municipality's jurisdiction?
- Is the issue being adequately regulated by a different level of government?
- How do the benefits play out against the costs to the municipality and to local businesses and residents?
- Does the municipality have the resources (money, experience, technical expertise, etc.) to reasonably regulate on the subject and to then enforce the by-law?

As environmental issues come to the fore, it is incumbent upon municipal administration and members of council to be aware of the potential benefits and harms that lie ahead, and to use appropriate efforts to ensure that their municipality is properly positioned.

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John Stefaniuk engages in a broad practice with emphasis on environmental law, real estate and development law, natural resources and energy, commercial law and municipal law.