

# Municipal Legislation

**Municipal Affairs and Environment**

**November 2, 2017**

# Overview

- Legislative Authority
- Regulations - “May” versus “Shall”
- Regulations – Enforcement
- Taxes & Fees
- Acquiring & Disposing of Land
- Ticketing, Liens & Fines
- Conflict of Interest & Disclosure Requirements

# Municipal Legislation

Municipalities derive their authority from the Province through legislation

Authority derived  
explicitly from legislation

# Legislation

## **Most Pertinent under MAE:**

- *Municipalities Act, 1999 (MA)*
- *Urban and Rural Planning Act, 2000 (URPA)*
- *Municipal Elections Act*
- *Assessment Act, 2006*
- Three Cities Acts (Corner Brook, Mount Pearl & St. John's)

# Other Legislation

## **Examples of Other Important Legislation:**

- *Highway Traffic Act*
- *Access to Information and Protection of Privacy Act (ATIPPA)*
- *Public Tendering Act*
- *Occupational Health and Safety Act*

# *Municipalities Act, 1999*

- Provides municipal authority for services, taxation, administration, etc.

# Three Cities Acts

- Provides similar and additional authority for services, taxation, administration, etc.

# *Municipal Elections Act*

- Details requirements for municipal elections, by-elections and special elections



# *Urban and Rural Planning Act, 2000*

- provides a regulatory framework for development and land use, including municipal plans (including zoning) and development regulations

# Municipal Regulations

- Municipalities' authority to govern certain activities within their respective jurisdiction
- Authority found in several Acts, but most in the MA
- Towns should only use legislative authority to implement regulations that are necessary & can be enforced

# Regulations

**Municipalities cannot  
make regulations without  
express legislative authority**

# “Shall”

## *MA S.414 (1)*

- Municipalities shall make regulations for certain specific matters
- Towns **must** have properly enacted regulations for each item listed in s.414(1)

# “Shall” – Specific Regulations

- Water & sewage regulations
  - Specific aspects, i.e. Constructions of wells, sewage systems, control of water sources
- Building & occupancy regulations
- Fire & emergency services regulations
  - Ministerial approval required S.414 (1)(e) & (f)

# “May”

## *MA S.414 (2)*

- Municipalities may make regulations for certain specific matters listed under s.414(2) (e.g. in relation to: parking lots, fences, etc.)

# “May”

## MA 414 (2)

If not set out in S.414(2) likely cannot regulate it

Some Exceptions- Examples: Additional Authority for:

- Traffic regulations under *Highway Traffic Act*
- ATV regulations under *Motorized Snow Vehicles and All-Terrain Vehicles Act*
- Animal control regulations under *Animal Health and Protection Act*

# Enforcement

## Enforcement of Regulations:

- Mandatory regulations must be adequately enforced
- Municipalities that enact discretionary regulations should enforce them
- Obligation to HAVE an enforcement policy
  - Legislation does not dictate what is in the policy
  - Enforcement is not the same as policing



# Enforcement

## Policy Decision Immunity

- Municipalities should be immune from liability in making decisions about the allocation of scarce resources
- Extends only to policy decisions, not operational decisions
  - A policy decision involves the allocation of resources
  - An operational decision is the carrying out of a policy

# Enforcement

## S.404- allows municipalities to issue orders to force compliance with a regulation

- Orders may prohibit an activity
  - Examples: cease operation of a food truck or place of entertainment, cease development, cease causing a nuisance, etc.
- Orders may require positive action by a party
  - Examples: make alterations to a sewer or well water system, make alterations to a building, etc.

# Enforcement

## **S.420 - allows municipalities to recover fines for Offences**

- Go to court to get judge to issue fine
- Violation of Act & regulations

# Taxation

- Authority to tax is largely found in sections 112 - 131 of the *MA*
- Specific Authority - Constitutional Principle:
  - Federal & provincial governments divide taxation authority
  - Municipalities only get taxation authority from a direct delegation of provincial authority

# Real Property Tax

## S. 112 - Real Property Tax

- May impose real property tax
- Basis for most municipal revenue

# Real Property Tax

## S. 113 - Rate

- Allows town to fix rate as a % of assessed value
  - AKA to “*set a mill rate*”
- Residential
- Commercial

# Real Property Tax

Real property is assessed by the Municipal Assessment Agency.  
Amounts used by municipalities for property taxation

# Real Property Tax

## S. 118 - Exemptions

- Crown land
- Churches & other places of worship
- Cemeteries
- Rectory or place of residence
- Hospitals
- Schools
- Universities & Colleges
- Productive Farmland & Woodland



# Real Property Tax

## S. 119 - Supplementary Assessments

- Generally used for a substantial change in property which triggers higher tax rate
  - Interaction with the *Assessment Act, 2006*

# Business Tax

## S. 120 - Business Tax

- “Shall impose business tax”
- S. 121: where no property tax or assessment rate cannot be determined, may be % of gross revenue
- s. 123: Where also charged property tax: must be a % of property if fixed place of business
- S. 124: variances - classes of rates
  - Akin to setting mill rates
  - Classes of business may have different rates

# Poll Tax

## **S. 126 - Poll tax**

- May implement a poll tax on people living or working in the municipality

## **S. 127 – Exemptions**

- People working less than 90 days in the town
- People who pay the following taxes in another municipality or LSD:
  - Real property tax
  - Poll tax
  - Fee for service

# Direct Sellers Tax

## S. 129 - Direct Seller tax

- Can be applied to those operating direct sales businesses at a fixed rate
- Examples:
  - Mary Kay
  - Tupperware
  - Stella & Dot

# Water & Sewer Tax

## S. 130 - Water & Sewer Tax

- Shall be applied to those connected or capable of being connected
  - Not a discretionary tax
- May be taxed in the form of a:
  - Mill rate
  - Fixed rate
  - Metered rate
- May differentiate based on classes of property

# Fees

- NOT a general revenue source – Cost Recovery Only

## **S. 177 –fee for garbage pick up**

- - Fee is not a tax
- - May not charge more than recovery cost
- - May not charge interest
- - May vary fee depending on circumstances
- - May exempt as per S. 177(3)
  - for those paying poll tax or real property tax

# Debt Recovery

## S. 132(1)- Disconnection of Services

- Municipalities may disconnect the services being provided **to the person who owes** the tax, fee, or otherwise

# Debt Recovery

**S. 133 – all taxes can constitute a debt to the municipality**

- Recoverable as civil debt - costs & interest

**S. 134 – taxes which constitute a lien**

- Taxes on real property (not poll tax)
- Attaches on date due, or last payment made
- Can recover for 6 years only



# Debt Recovery

## **S. 139 – 144 - Properties with municipal tax arrears may be sold**

- Real property related taxes only
- Legislative notice requirements
- Ability to sell land free & clear of all encumbrances, except the Crown

# Acquiring & Disposing of Land

Municipalities may:

- buy land & assets for their operations
- buy land & assets outside of their operational requirements, with Ministerial approval
- Sale of land & assets valued over \$500 must follow procedures outlined in S.201.2 & S.201.3,

# Disposing of Land

## S. 201 Disposals

- 201.1 - under \$500 - may sell directly to buyer
- 201.2 - over \$500 - public sale
  - Exemptions:
    - 201.2 (8) – Adjacent property OR
    - 201.2 (7)- Social or economic development
- S. 201.4 – disposal of expropriated land must also comply with *URPA* provisions

# Conflict of Interest

## S.207- A Councillor is in conflict of interest when:

- S/he has a direct or indirect monetary interest distinct from that arising from his/her function as a Councillor
- S/he is an employee of a company who has a monetary interest
- S/he has a relative with a monetary interest

# Disclosure

## **S.210 - Councillors must file an annual conflict of interest Disclosure Statement**

- within 60 days of the Councillor taking office AND
- by March 1<sup>st</sup> in each subsequent year of the Councillor's term

# Conflict of Interest & Vacancies

**S.206(2)- A council must declare a councillor's seat vacant when it is clearly established that the Councillor:**

- (a) failed to disclose a conflict of interest

OR

- (b) discussed or voted on a matter in which he or she had a conflict of interest



# Questions?

## Thank you!