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# Cape Breton Regulatory Modernization Pilot: By-law Modernization Initiative

## Action Plan for Port Hawkesbury

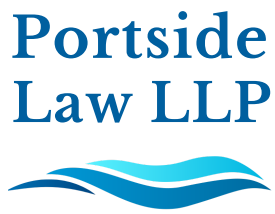
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DATE

September 17, 2020

SUBMITTED BY

PORTSIDE LAW LLP



## **Cape Breton Regulatory Modernization Pilot** **By-Law Inventory Initiative: Executive Summary**

### **Port Hawkesbury**

#### **Background**

In the spring of 2019, the Province of Nova Scotia, through the Office of Regulatory Affairs and Service Effectiveness, and the five municipalities on Cape Breton Island entered into a pilot partnership to improve the regulatory environment to make operation and expansion easier for Island Businesses. Regulatory reform and modernization play a key role in the province's broader economic growth strategy. Together, the parties agreed to a workplan that reflects the input provided by the business community during stakeholder engagement sessions in Port Hawkesbury, Glace Bay, Sydney, Baddeck, Inverness and Cheticamp.

One of the first initiatives the parties undertook was to produce an updated inventory of By-laws on municipal websites to alleviate confusion around compliance requirements for business. This initiative was in direct response to stakeholder input heard throughout the engagement sessions. Businesses identified that finding, learning and complying with different municipal By-laws as one of the challenges posed by operating across the Island. Upon completion of this project, that objective will be met.

Once the parties began work in this area it became readily apparent that there were substantial issues with a number of municipal By-laws in addition to their accessibility online. Portside Law LLP was engaged to review all the By-laws of the Cape Breton Regional Municipality, the Municipalities of the Counties of Richmond, Inverness and Victoria, and the Town of Port Hawkesbury, for issues of clarity, relevance and enforceability. The following is an action plan based on the findings made in our Final Report with respect to that work.

It is important to note that there is still much work to be done in terms of using this work to meet the objectives of the Cape Breton Regulatory Modernization Pilot. To that end, we added, for your consideration, a section where we consider areas of both similarity and difference between your municipality and your Island neighbours and partners in the pilot. There may be opportunities for further regulatory alignment if you wish to pursue them.

#### **Executive Summary**

The following is a condensed version of the work plan set out in our Final Report, which was delivered on September 17<sup>th</sup>, 2020. The purpose of this document is to give concise actionable items for your municipality to review and consider.

Turning to our analysis, we have identified the following By-laws that, in our opinion, require urgent attention. Included as well below is a brief explanation of our rationale for identifying these By-laws, although we would advise reviewing Appendix B to our Final Report for a more fulsome analysis when time permits:

1. Solid Waste Management By-Law – in reviewing this By-law, we identified some terms that should likely be defined within the By-law. We also identified some issues with respect to some of the offences contained within the By-law, and whether they would fit within to the realm of strict liability;
2. Advertising By-Law – in reviewing this By-law, it was determined that the By-law as currently constructed may lack some substance. There is also a concern that the legislative authority for the By-law was not apparent based on our review;
3. Anti-Litter By-Law – similarly, our review indicated that there may be some issue with the substance of this By-law and that there was not a clear legislative authority for the By-law contained within the document;
4. Automatic Machine Planning By-Law – our review of this By-law indicated that there was a concern that both the application of the By-law and the definition of Automatic Machines may require clarity. There were also concerns, as with other By-laws, about the lack of clear legislative authority within the By-law;
5. Municipal Land Transfer Tax By-Law – our review of this By-law indicated that its contents may duplicate the provisions of the *Municipal Government Act* and that the By-law had possibly been repealed;
6. Noise Control By-Law – our review of this By-law indicated that there were a number of typographical and formatting issues that negatively impact the clarity of the By-law. There were also issues with appendices being referred to that were not attached to the By-law;
7. Peace and Good Order By-Law – our review indicated that there were concerns about the modern applicability of this By-law;
8. Trucking By-Law – our review indicated that there were typographical and formatting issues which negatively impacted the clarity of this By-law. There was also some concern that certain provisions, including the penalty provisions, may have been repealed;
9. Subdivision By-Law – our review indicated that this By-law was enacted before the adoption of the land registration system under the *Land Registration Act* and that therefore there would need to be a variety of changes made to the By-law to improve its clarity and modern applicability; and



10. Topsoil By-Law – our review indicated that there were a number of typographical and formatting issues that negatively impacted the clarity of the By-law. There was also concern about the low dollar amount for the application fee under section 5(3)

We have also identified a significant number of By-laws that would benefit from minor revisions. This would include editing for grammar, punctuation, formatting, numbering and the inclusion of certain recitals and certifications.

We recommend that, as part of the review process, Council adopt a standard format for its By-laws as well as a consistent numbering system and maintain those on a go-forward basis.

It is our suggestion that each of these By-laws can be addressed by way of an omnibus by-law, the contents of which we can provide in template format once it is determined how, after review and consideration, your municipality wishes to proceed.

As such, our first recommendation is that the necessary members of your municipality's government and legal advisers review both this executive summary and our Final Report. You will see in Appendix B of that Report, that we have identified a number of By-laws that will require review in the medium to long- term range once the By-laws identified herein as requiring more urgent review have been reviewed by your municipality.

In undertaking the review of these By-laws, it is perhaps helpful to consider what regulatory subject matters have been covered solely by your municipality and which have been covered by a variety of other municipalities. We believe consideration of other municipalities' By-laws can help inform both current re-drafting of existing By-laws in the short term and possibly drafting of new By-laws in the longer term. Reference can be made to Appendix C of our Final Report, which provides a table of the subject matters covered within the By-laws of the various municipalities. A synopsis of this table for the purposes of your municipality is as follows:

By-Law(s) found only in Port Hawkesbury: Advertising/Posting, Council Rules, Enforcement, Fireworks, Solicitor, and Trucking

By-Law(s) found in all other municipalities except Port Hawkesbury: Tax Exemptions, Smoking

By-Law(s) found in all municipalities, including Port Hawkesbury: Solid waste