



Portside  
Law LLP



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

**FINAL REPORT**

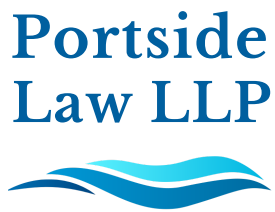
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DATE

September 17, 2020

SUBMITTED BY

PORTSIDE LAW LLP



September 17, 2020  
Cape Breton Partnership  
C/O Carla Arsenault – President and CEO 285  
Alexandra Street  
Sydney, NS B1S 2E8

Dear Ms. Arsenault:

**Re: Cape Breton By-law Modernization Final Report**

**Overview**

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. Upon completion of this project, that objective will be met. 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.

Once the parties began work in this area it became 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 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 our Final Report with respect to that work.

Phase 1 of our work involved a preliminary review of all By-laws of the municipalities of Cape Breton to identify issues affecting their clarity. Concurrently, we undertook a simple classification of each By-law based on its age and subject matter and flagged potential issues of enforceability and relevance for later reference. In Phase 2, we assessed each By-law to determine whether it suffered from deficiencies affecting its enforceability or needed fresh consideration of its continued relevance. In Phase 3, we developed a workplan for each Municipality to address the issues we identified.

The amalgamation of seven distinct municipal units into the Cape Breton Regional Municipality (CBRM) in the mid-1990's created unique issues with respect to its current regulatory framework. The continued relevance of many of the pre-amalgamation By-laws is questionable and we have concerns regarding regional variations in regulatory standards based on pre-amalgamation boundaries. We present our analysis of the pre-amalgamation By-laws of the former units of the CBRM separately in this Report.

### **By-laws of the Five Current Municipal Units of Cape Breton**

The most common issues identified in our review of the municipal By-laws are issues of clarity. In assessing clarity, we considered whether the presentation, format and language of each By-law presented a clear and concise document that could be readily understood by members of the general public. Antiquated or gendered language, extensive references to outside materials and codes, the use of special, undefined terms and inconsistent formatting have been identified as making some By-laws difficult to understand. For example, a housing standards By-law that used language such as "water closets" as opposed to "bathrooms" would be flagged for clarity, as would a By-law using exclusively gendered language. We have also identified instances where certain terms have been defined more than once in a single By-law, references to repealed legislation and instances where Schedules have been referenced but not attached.

With a few exceptions, we did not take issue with the relevance of the current By-laws that were reviewed. Our recommendations for action following Phase 2 are provided in the tables appended hereto as **Appendix "D"**.

With respect to the issue of enforceability, we have identified default imprisonment provisions within a number of the By-laws which create both public policy and logistical issues. These are further discussed herein. These logistical issues are compounded by our understanding, based on our discussions with the various municipalities, that there is, in general, a lack of personnel within each municipality that can enforce a broad scope of By-laws. This lack of enforcement capacity also creates uncertainty, as it may not be clear how the By-laws are being enforced and therefore how parties are expected to adhere to them.

Furthermore, we have identified a number of By-laws within the Phase 2 Report which are missing enactment clauses or otherwise contain internal inconsistencies which may create ambiguity and thus lead to potential enforcement issues. These matters have less to do with any sort of public policy consideration and can therefore likely be addressed through the repeal and re-enactment process discussed below.

The majority of the revisions we are recommending involve amendments of a minor nature. In only a few instances do we recommend the repeal of current By-laws. These minor issues tend to be similar in nature among the five current municipal governments. It is with this in mind that we have developed a generic work plan that will serve the needs of each municipality on a go forward basis.

At this stage it is important to remember that the municipalities power to enact By-laws is clearly stated under section 47 of the *Municipal Government Act*, R.S.N.S 1998, c. 18, as amended (the "MGA"). In general, the MGA provides municipalities with broad powers to enact By-laws (or, alternatively, resolutions or policies) on a wide range of subject matter.



With very few exceptions, we did not observe any instances where By-laws were enacted without legislative authority or otherwise dealt with subject matter that was already within the realm of provincial or federal authority.

Lastly, we identified a number of By-laws which contained provisions mandating default jail time for non-payment of fines levied under the applicable By-law. These provisions create a number of enforceability concerns, both from logistical and public policy perspectives. On that basis, we would recommend that each municipality give serious thought and consideration to the utility of these provisions. A more fulsome analysis of this issue is set out in **Appendix "C"** herein.

### **Recommended Action**

We noted that common among all of the municipalities are problems with formatting, spelling and grammar and insufficient evidence showing a By-law was duly considered and passed by Council, signed by the Clerk, published and/or certified. Many of the By-laws created within the past few years are more or less properly formatted, have fewer grammatical and spelling errors and, in general, tend to be properly certified. Many By-laws should also be updated to reference current legislative authority.

We recommend that each municipality review the By-laws identified for immediate review herein and for longer-term review as identified in **Appendix "D"** and undertake amendment and/or repeal as required. The sequence of events by which this is accomplished will depend on each municipality's available resources and its own individual public policy priorities. It is not our intention to wade into these considerations in this document.

Repeal or amendment of By-laws can be accomplished through a variety of approaches. Before considering these mechanisms, it is important to bear in mind that either amending or repealing a By-law must follow the same process as enacting a By-law, as dictated by section 168 of the *MGA*. These requirements are as follows:

- A By-law must be read twice;
- At least fourteen days before the second reading, notice of council's intent to consider the By-law must be published in a local newspaper;
- Municipalities may enact their own additional requirements with respect to enacting, amending or repealing By-laws as well; and
- By-laws, before they are effective, must be published, which includes approval of a Minister of the Crown.

In terms of mechanisms for either repeal or amendment, we have identified three options:

1. Enacting discrete amendments to individual By-laws;
2. Making necessary revisions to an individual By-law, enacting it as a new By-law, which would include a repeal clause repealing the old By-law; and
3. Performing a more thorough review and revision of all of the By-laws in a given municipality and performing a mass repeal and re-enactment in a single omnibus By-law.

We would not recommend the first option as a means to undertake a thorough revision of a municipality's register of By-laws. This approach creates multiple documents in relation to a single By-law and, as noted above, we have identified unincorporated amendments as a common issue affecting the clarity of some municipal By-laws. We are of the opinion that option would be inefficient and would fail to offer an acceptable level of clarity and simplicity expected by members of the public seeking access to By-laws.

The second option has the advantage of ensuring any revised By-law is enacted as a complete document, such that a reader can be sure that the By-law is current without reference to outside material. Furthermore, dealing with each By-law individually may make it easier for municipalities to assess and prioritize, from a public policy perspective, which regulatory issues require immediate attention.

It is our recommendation that each municipality strongly consider the approach set out as option three as a way to achieve a comprehensive review of its register of By-laws. We view this approach as a more efficient option than both the individual By-law amendment or the individual repeal and re-enact methods, particularly in addressing revisions of a minor or technical nature. For example, a municipality would be expected to engage in the process set out under section 168 of the *MGA* one time only using this approach. This method presents considerable advantages, calling for less administrative effort and cost, and would lend itself quite readily to achieving By-law standardization objectives.

In light of this, it is our recommendation that the omnibus approach to amendment and repeal be employed by the subject municipal governments to effect the majority of revisions we are recommending. We caution, however, that in instances where a more fulsome review of the policy objectives of a particular By-law is required, this approach may not lend itself to sufficient public and legislative debate.

Lastly, we would strongly recommend that municipalities develop a standard formatting and numbering approach to By-laws going forward and maintain that standard for all future By-laws. We have provided in **Appendix "A"** some guidelines for drafting By-laws on a go-forward basis.

### **By-laws Recommended for Immediate Review**

Using the By-law status chart created during Phase 2 as a guide, the following By-laws were found to be in need of more substantive review and revision and therefore should be given attention in the short term. The explanation for the conclusions reached in our review is set out in the status chart provided under Phase 2.

#### **Town of Port Hawkesbury**

1. Solid Waste Management By-law
2. Advertising By-law
3. Anti-Litter By-law
4. Automatic Machine By-law
5. Municipal Land Transfer Tax By-law
6. Noise Control By-law
7. Peace and Good Order By-law
8. Trucking By-law
9. Streets By-law
10. Subdivision By-law
11. Topsoil By-law

#### **Municipality of the County of Inverness**

1. Curfew By-law
2. Capital Cost of Sewer and Water By-law
3. Heritage Property By-law
4. Cheticamp Planning By-law
5. Port Hood Planning By-law

#### **Municipality of the County of Victoria**

1. Tax Exemption By-law – Dingwall Water Utility
2. Council Expenses By-law
3. Council Remuneration By-law
4. Minimum Housing Standards By-law
5. Electronic Voting By-law

#### **Cape Breton Regional Municipality**

1. Dog By-law
2. Heritage Conservation District North End By-law
3. Penalties By-law
4. Taxi By-law
5. Wastewater Discharge By-law

#### **Municipality of the County of Richmond**

1. Solid Waste Management By-law
2. Development Officer By-law
3. Amendment of Dangerous or Unsightly Premises By-law
4. Amendment to the Capital Cost of Sewer Construction By-law
5. Emergency Measures By-law
6. Term of Officer of Members of Richmond By-law

## **CBRM Pre-Amalgamation By-laws**

We have reviewed the pre-amalgamation By-laws of the eight former municipal units now forming the Cape Breton Regional Municipality. For the reasons that follow, we recommend that the CBRM consider the repeal of all By-laws of its eight pre-amalgamation municipal units. This could be achieved with a single omnibus repeal By-law.

### **Background**

Prior to 1994, eight separate municipal entities existed within the County of Cape Breton, namely the Municipality of the County of Cape Breton, the Town of Dominion, the Town of Glace Bay, the Town of Louisbourg, the Town of New Waterford, the Town of North Sydney, the City of Sydney and the Town of Sydney Mines. Each passed its own By-laws pursuant to the powers delegated under the *Towns Act* or *Municipal Act*.

In 1994, the *Cape Breton Regional Municipality Act* ("*CBRMA*") amalgamated each of these municipal units into the Cape Breton Regional Municipality. S. 7(6) *CBRMA* specifically preserved the By-laws of the former municipal units, until they were amended or repealed. In 1998, both the *CBRMA* and *Municipal Act* were repealed and replaced by the *Municipal Government Act*. Section 5 of the *MGA* continued the CBRM as a municipal body. The rationale for these provisions was to avoid a regulatory vacuum in the years immediately following amalgamation.

### **Current Status of By-laws Within the CBRM**

After 1994, the CBRM began enacting By-laws of general application across the County of Cape Breton. However, some pre-amalgamation By-laws address policy areas that have not yet been regulated by the CBRM. Often, these are in clearly obsolete policy areas, such as the weighing of coal or the speed of horses on municipal streets.

In some cases, however, CBRM has chosen not to enact a By-law in a policy area that appears to have continued relevance. Where a pre-amalgamation By-law enacts a policy with potentially continued relevance, it is flagged in the chart below. Some consideration should be given to whether these policies ought to be considered for revision and adoption by the CBRM. However, in many cases, the text of these By-laws is of poor quality, contains archaic or gendered language, contains fines or licensing fees of minimal amounts, or reference municipal entities or officials who no longer exist. In cases where there were significant issues regarding the clarity, continued relevance or enforceability of a pre-amalgamation By-law, we have recommended them for repeal.

Since amalgamation, the CBRM has enacted a wide range of By-laws that now apply generally across the municipality. In some cases, the newly enacted CBRM By-laws repealed in their entirety the analogous pre-amalgamation By-laws. For example, s. 9 of the CBRM Burning By-law B-400 provides as follows:

9. All Burning By-laws or similar By-laws adopted by the former municipalities of Cape Breton County to regulate and prohibit open air burning **are hereby repealed and the provisions of this By-law substituted therefore.**

The pre-amalgamation By-laws repealed by such provisions have been identified in the attached chart. No further action with respect to these By-laws is necessary.

In other cases, the CBRM, in adopting a new By-law in a given policy area, chose to only partially repeal the existing pre-amalgamation By-laws. For example, s. 13 of the CBRM Dog By-law D-400 provides:

13. Any Dog By-laws or any provision thereof passed and adopted by any of the eight (8) former municipalities of Cape Breton County prior to July 31, 1995 which conflict with or acts contrary to the provisions By-law are hereby repealed with this By-law becoming law **and any other provisions of such By-laws are hereby ratified and confirmed insofar as they are not in conflict with this By-law.** (emphasis added)

In other cases, newly enacted CBRM By-laws were silent with respect to the repeal or continued effect of pre-amalgamation By-laws. The result is that these pre-amalgamation By-laws must be considered effective, except to the extent they are in conflict with newer CBRM By-laws. Again, in cases where there were significant issues regarding the clarity, continued relevance or enforceability of a pre- amalgamation By-law, we have recommended them for repeal.

One consequence of incomplete or absent repeal provisions in CBRM By-laws is that, in certain policy areas, the regulatory scheme may vary in each of the former municipal units. This poses challenges for municipal enforcement officers, who ought to be familiar not only with the text of each current CBRM By-law, but also the variations contained in each of the pre-amalgamation By-laws. It also creates an unequal regulatory scheme which has the potential for unfairness for citizens based on their location within the CBRM, which would be difficult to justify in light of the time that has passed since amalgamation.

With only two By-law enforcement officers on CBRM staff, it is likely that a large number of pre-amalgamation By-laws that are technically still in effect are simply not being enforced. There are some risks associated with retaining unenforced By-laws. First, while there is generally no duty on a municipality to regulate, once a By-law has been adopted there is an obligation to ensure it is reasonably enforced. If a person were to suffer harm and could point to the negligent enforcement of a CBRM By-law as a cause of that harm, the municipality could be found liable for a portion of any damages awarded. Second, municipalities in Canada tend to benefit substantially from voluntary compliance with their By-laws. Enforcement is required only in relatively few instances. However, if it appears that enforcement of By-laws is unlikely, voluntary compliance will diminish.

As mentioned at the beginning of this section, it is our recommendation that the pre-amalgamation By-laws be repealed. However, it is our strong recommendation that, prior to doing so, the CBRM review the policy objectives of the pre- amalgamation By-laws in the following subject areas to determine whether they continue to address relevant policy objectives. If so, we recommend enacting current CBRM By-laws as appropriate.



## 1. Curfews

Each of the former municipal units of the CBRM, with the exception of North Sydney, have curfew By-laws or Ordinances. The ages of young persons addressed by these By-laws, as well as the curfew hours, vary slightly from unit to unit. In 2007, a curfew By-law in Thompson, Manitoba, was challenged on the basis of age discrimination. The case was not adjudicated, as the municipality opted to repeal the By-law instead.

## 2. Street Closings

Each former unit has several By-laws closing specific streets or designating them as one-way streets. It is not possible to determine based on a review of the text of the By-laws which of these closures remains current. By-laws affecting streets that do not remain closed should be repealed. It is our recommendation that the CBRM perform an inventory of current street closures and incorporate them into one document. This can be achieved by policy pursuant to s. 315 of the *MGA*.

## 3. Second-Hand Shops, Pawn Shops, and Auctioneers

There is no current CBRM By-law regulating second-hand shops, Pawn Shops or Auctioneers.

## 4. The Discharge of Firearms and Fireworks

It is our recommendation that the CBRM Noise By-law be reviewed and possibly amended to address this issue.

## 5. Closing hours of certain classes of businesses

There is no current By-law regulating the closing hours of businesses in the CBRM. It is unclear whether the closing hours By-laws of the former municipal units are observed or enforced.

## 6. Licensing of certain classes of Businesses

There is no current licensing By-law for the CBRM.

## 7. Snow removal

In some former municipalities, responsibility for snow removal lies with the owner or occupier of an adjacent property. It is not clear whether this results in variations of local practices. There is no CBRM By-law addressing this issue.

## Appendix A

### Guidelines for Drafting By-laws

This Appendix is provided to assist with the drafting or revision of municipal By-laws in the event a municipal council makes a policy decision to regulate an activity or subject matter. The considerations influencing these policy decisions are beyond the scope of this Report. In considering whether or not to regulate, municipal councils and their staff may benefit from reference to the following *Premiers' Charter of Governing Principles for Regulation*:

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## Premiers' Charter of Governing Principles for Regulation

Leading jurisdictions on regulatory reform and modernization adopt principles that guide regulators. The following statement of principles reflects the Maritime Premiers' vision for regulation in Nova Scotia, New Brunswick and Prince Edward Island and takes into account leading national and international practices.

### Premiers' Charter of Governing Principles for Regulation ("Charter")

Regulation is a powerful and sometimes necessary instrument of public policy that can support efficient and effective markets and protect consumers, workers, and the health, safety and environment of citizens and communities. But it has limits. And there are often better instruments of public policy than regulation.

Experience shows that unnecessary or outmoded regulation can distort markets, unduly burden citizens, businesses and governments, and impede economic growth. Given this, regulation should never be an instrument of first resort, and should be deployed only when necessary and where there is clearly no better policy alternative.

### A. Statement of Fundamental Intent on Regulation

#### 1. The Government will regulate to achieve its policy objectives only

- a. having demonstrated that satisfactory outcomes cannot be achieved by alternative self-regulatory or non-regulatory approaches;
- b. where analysis of the costs and benefits demonstrates that the regulatory approach is superior by a clear margin to alternative, self-regulatory or non-regulatory approaches;
- c. where the regulation and the enforcement framework can be implemented in a fashion which is demonstrably proportionate, accountable, consistent, accessible, targeted and predictable; and
- d. where the regulation and associated process is consistent with the Guidelines set out in section B below.

#### 2. There is a general presumption that regulation should not impose costs and obligations on business, social enterprises, individuals and community groups unless a robust and compelling case has been made to do so.

## **B. Guidelines for Developing and Assessing Regulation**

### **1. The policy need should be clearly articulated at the outset**

- illustrate how the need relates to relevant policy goals

### **2. Regulation should be the only effective and necessary way to meet the policy need**

- a full range of regulatory and non-regulatory instruments and options is identified (e.g. do nothing; educate; improve information sharing; use the market; use financial or other incentives; self-regulate; voluntary codes of practice)
- regulation is shown to be clearly and demonstrably superior to other alternatives
- other alternatives are shown not to be effective in achieving a satisfactory outcome
- assessment of alternatives is based on best available evidence

### **3. Regulation should be a tempered response**

- is proportionate to the issue being addressed
- is targeted to the area of need
- is the lightest form of regulation required to achieve the policy outcome
- does not unduly burden those being regulated
- takes into account the entire burden and impact of existing regulation on the regulated in considering the adoption of new regulation
- is considered and predictable and, barring compelling urgency, is not a rushed response to current events

### **4. Regulation should be accountable**

- the costs and burdens of regulation are measurable
- the impact of regulation is assessed before it is adopted and outcomes are monitored afterward
- regulators and the regulated are accountable for an effective regulatory system and compliance, respectively
- regulation and the measurement of its performance and impact is evidence-based, objective and free from bias
- existing regulation should be systematically reviewed for compliance with the Charter

### **5. Regulation should be accessible and easy to comply with**

- the process of making and monitoring regulation represents affected parties and is transparent
- representations from affected parties are solicited and considered in a timely and meaningful way in making and monitoring regulation
- regulation does not introduce unnecessary complexity by duplicating legislation or conflicting or overlapping with other regulations, requirements or forms already in place
- regulation should be written to be understood and complied with by the regulated as opposed to serving the administrative or drafting convenience of the regulator
- regulation should not be harder to comply with than equivalent regulation in relevant jurisdictions
- regulation should consider the critical importance of strong customer service values and standards in achieving high regulatory performance

## 6. Regulation should consider economic impact

- promotes a fair and competitive market economy
- promotes ease of interprovincial commerce
- presumed not to have the effect of creating an obstacle to internal or international trade
- presumed that the measured cost or burden of new regulation is at least offset by a reduction in the cost or burden of existing regulation

## 7. Good regulatory governance

- the responsibility of regulating, and of demonstrating that regulation is justified under this Charter, is that of the department, agency or office whose mandate includes the policy need the regulation seeks to address
- the Office of Regulatory Reform and Service Effectiveness is an independent advisory office of government, reporting to the Premiers, which oversees and advises on the application of the Charter and the adoption of regulatory best practices in Nova Scotia, New Brunswick and Prince Edward Island

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Once the policy decision to regulate an activity or subject matter has been taken, careful drafting is critical to ensuring that the regulatory objective of a municipal council is achieved. The *Municipal Government Act* does not set out an acceptable format for municipal By-laws. Because of the wide range of activities that fall within municipal jurisdiction in Nova Scotia, the layout of each municipal By-law may vary depending the subject matter being addressed; there is no single format that can be recommended in all cases. However, consistency in the presentation of the By-laws of a municipality will generally help businesses and taxpayers understand the regulations affecting them.

It is our recommendation that each municipality adopt a standard format for its By-laws and modify it as necessary in individual cases. Based on our review and investigation of best practices employed by a range of municipalities in Canada, we recommend the inclusion of the following elements in municipal By-laws in Cape Breton:

- Name of local government
- Title
- Subtitle to describe purpose
- Substantive purpose statement
- Preamble
- Enactment clause
- Citation
- Recitals
- Definitions (if any)
- Interpretation (if needed)
- Substantive provisions
- Severability clause
- Repeal
- Readings
- List of conditions (if needed)
- Adoption
- Authentication
- Schedule (if needed)

### **A. Name of Municipality**

The entire corporate name of the local government should be set out at the top of the By-law. For example, the “Municipality of the County of Richmond” is preferable to “Richmond County”. Under the Evidence Act, a court must take judicial notice of a By-law and so the name of the local government should be the correct legal name of the entity (the same as would appear on pleadings).

### **B. Title**

The words used in the title of a By-law generally derive from the words contained in the empowering legislation. For example, if the legislation empowers the council or board to adopt a By-law to regulate or prohibit businesses, business activities or persons carrying on business, then the plain language version of the title could be “Business Regulation By-law”.

### **C. Subtitle**

Some By-laws contain subtitles to provide in greater detail the nature of the By-law. This may be useful when searching for a By-law in electronic format using a search engine. It is also useful when a person reading the By-law is attempting to determine the nature of the By-law in greater detail than would be allowed by the simple title. An example of a subtitle for a business regulation By-law would be “a By-law to regulate or prohibit businesses or business activities.”

### **D. Purpose**

Some By-laws contain a clause setting out the purpose of the By-law. This is more common in land use By-laws than in other cases. A purpose clause is intended to help the reader, and a court if applicable, to interpret the legislation in a “purposive” manner that is based on the legislator’s purposes, and not the “subjective objectives” of the reader. A purpose statement sets out the basis on which the sections of the By-law are created.

### **E. Preamble**

Federal and provincial legislative counsel have always taken the view that a preamble to a statute should be limited to a recitation of facts.

### **F. Enactment Clause**

The Interpretation Act suggests there needs to be an enacting clause for an enactment. An enacting clause of a By-law is suggested to be as follows:

“NOW THEREFORE the Council of the Municipality of ... in open meeting assembled enacts as follows...”

### **G. Citation**

It is valuable to have a formal citation for the By-law because the By-law is often referred to or incorporated by reference in other documents or proceedings. For example, it is necessary to refer to a By-law in the minutes of a council or committee meeting, in a court proceeding, in a contract, in another By-law, on a website, or in a media release. There is no rule of law or accepted standard governing the naming of a By-law. Nonetheless, it is valuable to include in the name of the By-law information about what it does; the year of enactment or amendment, as the case may be; and a number based on a numbering system used by the office of the clerk. An example of a citation is as follows:

“This By-law may be cited as “Business Regulation By-law No. 49, 2009”.

As stated, when referring to a By-law that has been amended, it is necessary to refer to a citation and add the words “as amended”.



## **H. Recitals**

A court may consider the recitals section of a By-law when interpreting the legislation. Though it is not necessary to include recitals, they can prove beneficial in providing valuable context when determining a counsel's Intentions.

## **I. Definitions**

Where possible, it is advantageous for municipalities to include definitions in an interpretation By-law which would apply across the entirety of a municipalities By-laws.

## **J. Interpretation**

By-laws often contain interpretation sections. There is no advantage to repeat the provisions of the Interpretation Act (eg., dealing with the plural and the singular, gender, calculation of time, etc.) because, as stated, these provisions are deemed to apply to the By-law in any event and the public is deemed to have knowledge of the provisions of the Interpretation Act when using a By-law. It is necessary in some cases, however, to amplify or expand on the Interpretation Act provisions in order to make the By-law more accessible.

## **K. Substantive Provisions**

The substantive provisions must be drafted carefully to ensure they do not provide grounds for setting aside the By-law. For example, there must be authority in a provincial statute or regulation for each provision in the By-law.

## **L. Severability**

A regulatory By-law may contain a provision to the effect that if any portion of the By-law is found by a court of competent jurisdiction to be invalid, the invalid portion is to be severed and the remainder is to remain valid. This may have the effect of saving a By-law if a court finds a portion of the By-law to be invalid on one of the substantive grounds. If, however, a court finds that the council or board must have intended that the invalid portion is an integral part of the remainder, the court may set aside the entire By-law despite a severability clause.

## **M. Repeal**

It is necessary when adopting a new By-law to repeal the By-law or By-laws that it replaces. Although it is accepted that a new enactment supersedes an enactment that is already on the books, it is not often possible to identify with precision which portions of a new By-law supersede which provisions of an old By-law. It is preferable to deal with the matter by repealing the old By-law. It is also important to repeal the amendments that may have been made between the date of the original date of adoption and the date the new By-law is being adopted.

## **N. Readings**

By-laws should list the readings and the dates of the readings.

## **O. Conditions Precedent**

If there are statutory conditions precedent, such as the necessity for approval by an external authority, it is advisable to set out the date of the satisfaction of the condition precedent on the last page of the By-law under the "readings".

**P. Adoption Statement**

The date of the adoption should be stated.

**Q. Certification**

The By-law should contain a jurat containing the date, place and title of officer certifying the By-law.

**R. Schedule**

It is often necessary or advisable to place portions of a By-law in a schedule. The schedule is part of the By-law, so the definitions and interpretation provisions apply to the schedule. Examples of matters that are customarily included in schedules include application forms, fees, technical specifications or standards, graphs, drawings, plans or schematics; or provisions that are incorporated from another document.

## Appendix B

### Comparison of Existing By-laws of the Municipalities of Cape Breton

By-law category	CBRM	Inverness	Port Hawkesbury	Richmond	Victoria
Advertising/Posting			X		
Animals at Large/ Husbandry	X	X			
Building	X	X			X
Building Permits			X	X	X
Burning/Fires	X		X		
Business Tax (no property tax)		X			
Civic addressing	X				X
Council		X			
Council Rules			X		
Committees		X	X		
Council expenses					X
Council remuneration					X
Curfew		X			
Deed transfer Tax		X	X	X	X
Destruction of Documents		X			
Development Officer		X			
Dog Control		X		X	X
Electronic/Alternative Voting	X				X
Emergency management	X		X	X	X
Enforcement			X		
Fireworks			X		
Heritage Properties	X		X	X	
Improvement Charges		X	X		
Instalment Billing		X	X	X	X
Interpretation by-law		X			
Land Use	X		X		
Liability		X			
Litter		X	X		
Marketing levy	X	X			X
Minimum standards	X		X		X
Mischief and/or Nuisance		X			
Municipal officers		X			
Municipal Seal		X			
Noise	X	X	X	X	
Orderly Conduct	X	X	X		
Pension		X			
Public Property	X	X			
Seal		X	X	X	X
Sidewalks	X				
Sewer charges		X		X	

Smoking (non-smoking)	X	X		X	X
Solicitor			X		
Solid waste	X	X	X	X	X
Streets	X		X		
Swimming Pools	X		X		
Tax Exemptions	X	X		X	X
Taxis	X	X		X	
Trailers		X			
Trailer Courts		X			
Trucking			X		
Trunk Sewer Tax				X	
Unsightly Premises	X			X	
Vending (auctioneering, hawking, peddling)		X	X		X
Vending Machines	X		X		
Wastewater	X			X	
Water upgrade		X			X

## Appendix C

### Default Imprisonment Provisions

As noted in the body of this report above, one issue that occurred with some frequency is the stated inequitable default time on non-payment of fines associated with By-laws. As already mentioned, with respect to the issue of enforceability of the By-laws reviewed, a serious issue identified is with respect to provisions which mandate that a debtor face potential imprisonment for having failed to pay his or her fine.

We have suggested these reviews for a variety of reasons. The appeal of default time on fine payments has been the subject of judicial scrutiny for some time now. To that end, the following statement from the Nova Scotia Supreme Court, Trial Division in *R. v. Hebb*, 1989 CanLII 204 (“Hebb”) is apt:

If the allocation of default time is not part of the considered sentence, then poor persons could be routinely fined and imprisoned in default unless there is a possibility of review. It is irrefutable that it is irrational to imprison an offender who does not have the capacity to pay on the basis that imprisonment will force him or her to pay. If the sentencing court chooses a fine as the appropriate sentence, it is obviously discarding imprisonment as being unnecessary under the particular circumstances. However, default provisions may be appropriate in circumstances where the offender may choose not to pay, presumably on principle, and would elect to spend time incarcerated rather than make a payment to the state. For the impecunious offenders, however, imprisonment in default of payment of a fine is not an alternative punishment - he or she does not have any real choice in the matter. At least, this is the situation until fine option programs or related programs are in place. In effect, imprisonment of the poor in default of payment of a fine becomes a punishment that wouldn't otherwise be imposed except for the economic limitations of the convicted person.

Since the decision in *Hebb*, the Province of Nova Scotia has implemented a fine option program that acts as a potential diversion program for parties that are not able to pay fines. The unfortunate element of the fine option program for the purposes of our review is that the fine option program expressly excludes any fines ordered under a municipal By-law. In light of this, the concerns expressed by the Court in *Hebb* continue to apply to default imprisonment provisions under municipal By-laws.

Furthermore, there are practical and logistical concerns regarding the enforcement of such provisions. It is a matter of law that a debtor cannot apply to serve time in lieu of payment of fines. Only a crown attorney can seek such an extreme remedy by way of warrant of committal. As the Nova Scotia Provincial Court in *R. v. Falt*, 2014 NSPC 38 (“*Falt*”) stated:

Warrants of committal may be issued only when non-custodial means of collection have been exhausted, and only when the court is satisfied that an offender has unreasonably refused to tender payment.

As such, it is clear that Courts will only order imprisonment in default of payment of fines in extreme circumstances. And that is only after a Crown Attorney, acting on behalf of the municipality, has sought such a remedy, which is quite rare in and of itself. For these practical reasons, separate and apart from the public policy reasons noted above, we would suggest a review of By-law provisions which mandate default imprisonment where a debtor has failed to pay a fine ordered under a By-law.



## Appendix D

### Current By-laws of the five Municipalities of Cape Breton

#### Current By-laws of the Cape Breton Regional Municipality

By-Law No.	Title	Year Enacted (Year Amended)	Class	Recommended Action
D-400	Dog By-Law	1996 (1998, 2004, 2006, 2014)	General	Review Recommended
	Heritage Conservation District North End By-Law	2008	Planning	Review Recommended
N-100	Noise By-Law	2014	General	Review Recommended
P-200	Penalties By-Law	1995	General	Review Recommended
T-100	Taxi By-Law	1997 (1998, 1999, 2003, 2004, 2016, 2017)	General	Review Recommended
W-100	Wastewater Discharge By-Law	2009	General	Review Recommended
A-100	Alternative Voting By-Law	2012 (2016)	General	Review Recommended
A-200	Area Rate By-Law	2015	Economic	Review Recommended
B-200	Board of Police Commissioners By-Law	1995 (2006)	General	Review Recommended
B-300	Building By-Law	2009 (2010, 2015)	Planning	Review Recommended
B-400	Burning By-Law	1999	General	Review Recommended
C-100	Civic Addressing By-Law	2007 (2016)	General	Review Recommended
C-300	Commercial Development District Improvement By-Law	2018	Planning	Review Recommended
	Dog Tags fee By-Law	1998 (2005)	General	Review Recommended
E-100	Emergency Management By-Law	2008	General	Review Recommended
E-200	External Organizations Tax Exemption By-Law	2010	Economic	Review Recommended
H-100	Heritage Property By-Law	1995 (2017, 2019)	Planning	Review Recommended
M-100	Minimum Standards By-Law	2008	General	Review Recommended
M-200	Marketing Levy By-Law	2011	Economic	Review Recommended
O-100	Orderly Conduct By-Law	1995	General	Review Recommended
P-100	Parking Meter By-Law	2016	General	Review Recommended
P-300	Public Property By-Law	1995 (1996, 2019)	General	Review Recommended
P-400	Public Transit By-Law	1995	General	Review Recommended
S-100	Sidewalk By-Law	2006	General	Review Recommended
S-200	Smoking By-Law	2001 (2003)	General	Review Recommended
S-300	Solid Waste Resource Management By-Law	2003 (2005, 2006, 2018, 2019)	General	Review Recommended
S-400 (T-1)	Streets By-Law	1995 (1996)	Planning	Review Recommended
S-600 (S-2)	Swimming Pool Fences By-Law	1995	General	Review Recommended
V-100	Vending Machine By-Law	1999 (1999, 2006)	Economic	Review Recommended
V-200	Vendors By-Law with Maps	2016 (2016; 2017; 2019; 2019)	Economic	Review Recommended
V-300	Vacant and Derelict Buildings By-Law	2011	Planning	Review Recommended
B-100	Barbed Wire Fences By-Law	1995	General	No Action
C-200	Circus Animal Prohibition By-Law	2012	General	No Action
D-100	Daycare By-Law	2005	General	No Action
D-200	Deed Transfer By-Law	2002	Economic	No Action

By-Law No.	Title	Year Enacted (Year Amended)	Class	Recommended Action
D-300	Defined Benefits Pension By-Law	1964 (1995, 1996, 1999, 2016)	General	No Action
R-100	Responsible Animal Husbandry By-Law	2019 (2020)	General	No Action

# Current By-laws of the Municipality of the County of Inverness

By-Law No.	Title	Year Enacted (Year Amended)	Class	Recommended Action
11	Curfew By-Law	1994	General	Review Recommended
30	Capital Coast of Sewer and Water By-Law	2016	Planning	Review Recommended
33	Heritage Property By-Law	1982 (1983)	General	Review Recommended
37	Chet camp Planning By-Law	N/A (1991)	Planning	Review Recommended
39	Porthood Planning By-Law	N/A (1991)	Planning	Review Recommended
4	Committees and Boards By-Law	1994	General	Review Recommended
5	Municipal Officers By-Law	1994	General	Review Recommended
6	Municipal Business By-Law	1994	General	Review Recommended
7	Municipal Property and Streets By-Law	1994	General	Review Recommended
8	Mischiefs and Nuisances By-Law	1994	General	Review Recommended
10	Anti-Litter By-Law	1994	General	Review Recommended
12	Regulations of Animals By-Law	1994	General	Review Recommended
14	Tax on Commencing Business By-Law	1994	Economic	Review Recommended
15	Auctioneers, Pedlars, Hawkers and Traders of Goods By-Law	1994	Economic	Review Recommended
16	Garbage Collection By-Law	1994	General	Review Recommended
17	Garbage Disposal By-Law	1994	General	Review Recommended
19	Taxis By-Law	1994	General	Review Recommended
20	Trailers By-Law	1994	General	Review Recommended
21	Trailer Courts By-Law	1994	General	Review Recommended
24	Development Officer By-Law	1994	Planning	Review Recommended
25	Building By-Law	1995	Planning	Review Recommended
32	Emergency Measures By-Law	1986	General	Review Recommended
35	Tax Exemption By-Law	2006	Planning	Review Recommended
36	Pension By-Law	1980	General	Review Recommended
40	Respecting Relief from Liability By-Law	1995	General	Review Recommended
41	Noise Control By-Law	1997	General	Review Recommended
42	Respecting Smoking By-Law	2002	General	Review Recommended
45	Fracturing By-Law	2013	General	Review Recommended
48	Dog Control By-Law	2018	General	Review Recommended
1	Interpretation By-Law	1994	General	No Action
2	Council By-Law			No Action
22	Improvement Charges By-Law	1994	General	No Action
23	Destruction of Documents By-Law	1994	General	No Action

By-Law No.	Title	Year Enacted (Year Amended)	Class	Recommended Action
28	Municipal Land Transfer Tax By-Law	2006	Planning	No Action
29	Chief Administrative Officer By-Law	1994	General	No Action
31	Committee of the Whole By-Law	1982	General	No Action
34	Installment Billing By-Law	1980	Planning	No Action
43	Sewer Service Charge By-Law	2008	Planning	No Action
44	Marketing Levy By-Law	2012	Economic	No Action
46	Amendment to Service Fees for Payment Cards By-Law	2014	Economic	No Action
47	Property Assessed Clean Energy Program - PACE By-Law	2016	Planning	No Action

## Current By-laws of the Municipality of the County of Richmond

By-Law No.	Title	Year Enacted (Year Amended)	Class	Recommended Action
65	Noise Control By-Law	2019	General	Review Recommended
20	Taxis By-Law	Unknown	General	Review Recommended
32	Instalment Billing By-Law	Unknown	Economic	Review Recommended
53	Subdivision By-Law	Unknown (1992, 2001)	Planning	Review Recommended
55	Non-Smoking By-Law	Unknown	General	Review Recommended
17	Solid Waste Management By-Law	2013	Planning	Review Recommended
26	Development Officer By-Law	Unknown	General	Review Recommended
28	Amendment of Dangerous or Unsightly Premises By-Law	Unknown	Planning	Review Recommended
29	Amendment to the Capital Cost of Sewer Construction By-Law	Unknown	Planning	Review Recommended
50	Emergency Measures By-Law	Unknown	General	Review Recommended
51	Term of Officer of Members of Richmond By-Law	Unknown (1992)	Planning	Review Recommended
64	Dundee Hills By-Law	2016	General	No Action
43	Deed Transfer Tax By-Law	2016	Economic	No Action
49	Heritage Property By-Law	2019	Planning	No Action
56	Tax Exemption By-Law	2019	Economic	No Action
13	Respecting Dogs By-Law	2005	General	No Action
40	Trunk Sewer Tax By-Law	Unknown	Economic	No Action
52	Sewer Service Charge By-Law	Unknown	Economic	No Action
54	Civic Addressing By-Law	2001	Planning	No Action
57	Repeal Certain Ratings By-Law	Unknown	General	No Action
58	Repeals By-Law	2018	General	No Action
59	Gasha Fire Protection Rate Exemption By-Law	2009	Economic	No Action
60	Marketing Levy By-Law	2011	Economic	No Action
61	Building Permits Fees By-Law	Unknown	Planning	No Action
63	Charges for the Property Assessed Clean Energy Project By-Law	Unknown	General	No Action
62	Wastewater Management District By-Law	2019	Planning	No Action



## Current By-laws of the Municipality of the County of Victoria

By-Law No.	Title	Year Enacted (Year Amended)	Class	Recommended Action
	Civic Addressing By-Law	2011	Planning	Review Recommended
7	Building By-Law	1987	Planning	Review Recommended
8	Auctioneers, Peddlers and Hawkers By-Law	1982 (1991, 1993)	Economic	Review Recommended
	Building Permit Fees By-Law	2010	Planning	Review Recommended
	Deed Transfer Tax By-Law	2006	Economic	Review Recommended
	Emergency Management By-Law 2017	2017	General	Review Recommended
	Solid Waste Resource management By-Law	2017	General	Review Recommended
	Victoria County Subdivision By-Law	2016	Planning	Review Recommended
	Water Supply Upgrade Lending Program By-Law	2019	General	Review Recommended
3	Council Expenses By-law	1988 (1989)	General	Review Recommended
4	Council Remuneration By-Law	?	General	Review Recommended
6	Minimum Housing Standards By-Law	1986	General	Review Recommended
	Electronic Voting By-Law	2012	General	Review Recommended
	External Organizations Tax Exemption By-Law	2014	Economic	Review Recommended
2	Tax Exemption By-Law- Dingwall Water Utility	1981	Economic	Repeal
1	Repeal and Consolidation By-Law	1993	General	No Action
5	Installment Billing By-Law	1994	Economic	No Action
	A By-Law To Authorize The Voting By Telephone/Internet For The 2012 Municipal Elections	2012		No Action
	Dog Control By-Law	2017	General	No Action
	Dog Control By-Law SOT Schedule	2018	General	No Action
	Emergency Management By-Law	2014	General	No Action
	Marketing Levy By-Law	2010	Economic	No Action
	Municipal Smoking By-Law	2002	General	No Action

# Current By-laws of the Town of Port Hawkesbury

By-Law No.	Title	Year Enacted (Year Amended)	Class	Recommended Action
	Solid Waste Management By-Law	2020	General	Review Recommended
	Advertising By-Law	1987	General	Review Recommended
	Anti-Litter By-Law	Legislative/Council approval not specified	General	Review Recommended
	Automatic Machine By-Law	Legislative/Council approval not specified	General	Review Recommended
	Land Use By-Law	-2014	Planning	Review Recommended
	Outdoor Fire By-Law	2012	General	Review Recommended
	Committees and Boards By-Law	Legislative/Council approval not specified	General	Review Recommended
	Emergency Measures By-Law	(1991(	General	Review Recommended
	Excavations By-Law	Legislative/Council approval not specified	General	Review Recommended
	Fireworks By-Law	2013	General	Review Recommended
	Installment By-Law	1987	Economic	Review Recommended
	Town Council	1976	General	Review Recommended
	Minimum Housing Standards By-Law	-1981	Planning	Review Recommended
	Municipal Land Transfer Tax By-Law	1982	Planning	Review Recommended
	Noise Control By-Law	? 2002; Legislative /Council approval section not completed	General	Review Recommended
	Peace and Good Order By-Law		General	Review Recommended
	Trucking By-Law	Legislative/Council approval not specified	General	Review Recommended
	Streets By-Law	1978	Planning	Review Recommended
	Subdivision By-Law	1995 (1995)	Planning	Review Recommended
	Topsoil By-Law	Legislative /Council approval not specified	Planning	Review Recommended
	Swimming Pool By-Law	1987	General	Review Recommended
	Vending By-Law	2016	General	Review Recommended
	Boundaries By-Law	Legislative/Council approval not specified	General	Review Recommended
	Chief Administrator Officer By-Law	Legislative/Council approval not specified	General	Review Recommended
	Dog By-Law	2013	General	Review Recommended
	Heritage By-Law	Legislative/Council approval not specified	Planning	Review Recommended
	Improvement Charges By-Law	1978	Economic	Review Recommended
	Joint Development By-Law	Legislative/Council approval not specified	General	Review Recommended
	Parks By-Law	Legislative/Council approval not specified	General	Review Recommended
	Town Seal By-Law	Legislative/Council approval not specified	General	Review Recommended
	Town Solicitor By-Law	Legislative/Council approval not specified	General	Review Recommended

By-Law No.	Title	Year Enacted (Year Amended)	Class	Recommended Action
	Ratepayers - Voters Meetings By-Law	1978 (1978)	General	Review Recommended
	Repeal License Permits By-Law	2017	General	No Action
	Building Permit Fees By-Law	2010 (Note; not certified by CAO until 2016)	General	No Action
	Omnibus Repeal By-Law	2011	General	No Action
	Deed Transfer Tax By-Law	2012	Economic	No Action
	Municipal Planning Strategy By-Law	2014	Planning	No Action
	Interpretation By-Law	1976	General	No Action
	Memorandum on Enforcement of By-Laws	1981	n/a	No Action
	Rules of Order of Council By-Law	1976	General	No Action
	Tax Exemption By-Law	2002 (2004)	Economic	No Action
	Street Closing By-Law	1997	Planning	No Action