

Nova Scotia



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**Department of
Municipal Affairs**

PO Box 216
Halifax, Nova Scotia
B3J 2M4

902 424-4141

Our file no:

April 2, 1987

Mr. Adrian Pearson
Clerk-Treasurer
Town of Stellarton
P.O. Box 2200
Stellarton, Nova Scotia
B0K 1S0

Dear Mr. Pearson:

RE: CURFEW BY-LAW

I enclose herewith the curfew by-Law as passed by the Town of Stellarton February 9, 1987, bearing the approval of the Minister of Municipal Affairs dated March 27, 1987.

I have previously advised the Town that the question of a policeman having power to return a child to his home might be regarded as an unjustified infringement of individual liberties. The Town has chosen to accept whatever risks there may be that this Section is unenforceable.

We have also advised that making the parent or guardian liable for the child's offense may be contrary to the Charter of Rights and Freedoms. The Town has also considered that they are prepared to take that risk as well. Other problems were corrected. Accordingly, the Minister approved the by-law for such validity as it may have on the request of the Council.

I am forwarding a copy of this letter to your Town solicitor so that he will be aware of the approval by the Minister.

Yours very truly,

A handwritten signature in black ink, appearing to read "John R. Cameron".

John R. Cameron
Counsel

JRC/lmm
c.c. Mr. John B. Baker, Q.C.
Enclosures

BY-LAW RESPECTING CURFEWS

UNANIMOUSLY RESOLVED by the Town Council of the Town of Stellarton, that the following By-law be and the same is hereby enacted and that the Clerk be and is hereby instructed to forward same to the Minister of Municipal Affairs with a request for his approval hereof.

1. No child under the age of sixteen years shall walk or be on any road, park, street, or sidewalk or in any restaurant, dance hall, theatre, or other place of amusement in the Town of Stellarton at any time after the hour of ten o'clock in the afternoon, and before the hour of 6:00 a.m. on the morning of the day next following, herein after called "Curfew Hours", unless such child is accompanied by his or her parent or guardian or by some person over the age of nineteen (19) years, authorized for such purpose by one of his or her parents or guardians.
2. Any such child found on any street, road, park way or sidewalk or in any restaurant, dance hall, theatre or other place of amusement, in the Town of Stellarton twenty minutes after the beginning of the Curfew Hours may be taken in charge by the Chief of Police or a Police Officer of the Town of Stellarton and taken to his or her home, and his or her parents warned by such policeman or constable that if the offence is repeated they shall be liable to the penalties hereinafter mentioned.
3. The Parents or guardians of any such child, who, after such warning, contravenes the provisions of this By-Law shall be liable to a penalty not exceeding \$ 100.00 Dollars and in default of payment, to imprisonment for a period not exceeding ten days.
4. To assist in the enforcement of this By-Law, the Town may utilize an alarm system. The alarm shall be sounded twice at 10:00 p.m. each evening.
5. It shall be the duty of the Chief of Police and the Police Constables of the Town of Stellarton to enforce the provisions of this By-Law.


This is to certify that the Resolution of which the foregoing is a true copy was duly passed at a duly called meeting of the Town Council of the Town of Stellarton duly held on the 9th day of February A.D., 1987.

GIVEN under the hand of the Town Clerk and under the Corporate Seal of the said Town this 11th day of February A.D., 1987.


A. A. PFARSON, Town Clerk

DEPARTMENT OF MUNICIPAL AFFAIRS

Recommended for
approval of the Minister



Nova Scotia



**Department of
Municipal Affairs**

PO Box 216
Halifax, Nova Scotia
B3J 2M4

902 424-4141

Our file no:

February 20, 1987

Ms. Joyce MacIntosh
Deputy Town Clerk
Town of Stellarton
P.O. Box 2200
STELLARTON, Nova Scotia
B0K 1S0

Dear Ms. MacIntosh:

Re: Curfew By-Law

Further to my letter of January 22, 1987, and your letter of January 19, 1987, which apparently crossed, I would ask that you advise whether or not Council wishes to proceed with the by-law in light of my comments in my letter of January 22.

If Council wishes to proceed in light of those comments, I am prepared to recommend the by-law for the approval of the Minister, with an amendment to change the alternative of imprisonment from 30 days to 10 days.

Perhaps you would let me know Council's wishes at your convenience.

Yours very truly,

A handwritten signature in black ink, appearing to read "John R. Cameron".

John R. Cameron
Counsel

JRC/Imm

Nova Scotia



**Department of
Municipal Affairs**

PO Box 216
Halifax, Nova Scotia
B3J 2M4

902 424-4141

Our file no:

22 January, 1987

Ms. Joyce MacIntosh
Deputy town Clerk
Town of Stellarton
P.O. Box 2200
STELLARTON, N.S.
B0K 1F0

Dear Ms. MacIntosh:

Re: Curfew By-law

You will recall that I called and advised you that we would be unable to proceed to recommend ministerial approval of the above noted by-law until such time as we were in possession of two properly certified copies of the by-law with original signatures on each copy and the town seal affixed to each. I have not received those to date.

Before you go to the trouble of having these prepared, maybe some problems that you would want to consider in terms of whether council wants to proceed to deal with the by-law at all.

In the first place there may very well be some serious problem enforcing the by-law notwithstanding the fact that virtually all the provisions are set out in the Towns Act. Most, although perhaps not all, of these problems relate to the Charter of Rights.

One difficulty is that there is an age discrimination, which may or may not be found by the Courts at some time to be reasonably justifiable.

There is also an enforcement problem in trying to determine whether or not a child is accompanied by a parent or guardian or an authorized adult. In this sense, there may be some difficulty in ascertaining what is meant by an adult, and in particular is that a person over sixteen or a person of the age of majority (19).

There is a fairly strong possibility that the provision in Section 2 authorizing a child to be taken in charge by a policeman
2/.....

2/.....Curfew By-law / Town of Stellarton

would be regarded by the courts as a serious infringement of individual liberties not justifiable. It is certainly a departure from the standard provisions of issuing tickets or subsequently summons.

A matter not dealt with in the by-law and perhaps not necessary to be included in the by-law, is that an offence under the by-law must apparently be prosecuted in family court under the terms of the Young Offenders Act. Apparently this is true for all charges since the result from the behaviour of a child is subject to the Young Offenders Act.

The provision in Section 3 making the parents or guardians liable for the offence of their child is a sort of indirect offence that a court providing the provisions of the Charter would frown upon.

As a minor issue, in the Department's opinion, the period of imprisonment in default of payment of the penalty should probably be 10 days. Generally, the Department considers that a rough equivalency of \$10. per day is appropriate.

In paragraph 5 the by-law refers to assistance to the Chief of Police, and in paragraph 2 you are referring to policemen or constables and there appears to be an inconsistency in the wording that might create some difficulties in the future.

By in large, towns have found that Curfew by-laws are exceedingly difficult to enforce.

Yours truly truly,



John R. Cameron
Counsel

JRC/bc

Office 752-5143
Res. 752-4927

JOHN B. BAKER, Q. C.
Barrister, Solicitor and Notary

253 Foord Street
P. O. Box 969
Stellarton, Nova Scotia
B0K 1S0

February 05th, 1987

Adrian A. Pearson
Town Clerk
Town of Stellarton,
Foord Street,
Stellarton, N.S.,
B0K 1S0

Dear Adrian:

Re: By-Law Respecting Curfews

I have reviewed the Curfew By-law as prepared by Robert Stroud and the Police Commission and the letter dated January 22nd, 1987 from the Department of Municipal Affairs.

I agree more with the manner in which the By-law is written and its contents than with the comments of the council for the Department of Municipal Affairs:

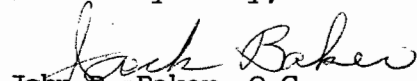
1. In my opinion I believe that the age discrimination would be reasonably justified and left up to the court to decide in each case.
2. I have rewritten part of paragraph one and changed 'accompanied by an (adult)' to someone over the age of nineteen (19) years and authorized by a parent or guardian.
3. I have altered paragraph two (2) and five (5) to include the Chief of Police and Police Constables and would recommend the implementation of these sections unless a court directed otherwise.
4. Any juvenile taken before the courts would be automatically dealt with under the Young Offenders Act.

It is correct that a parent might get off a charge under the provisions of the Charter of Rights, but I do think the intent and purpose of the By-law warrants its adoption and should any problem arise in the courts it can be appealed or amended.

Should the Town Council adopt this By-law I would suggest that it be returned to me to be sent to the Department of Municipal Affairs so that I may explain the Town's position on the several matters they brought up.

I enclose a copy of the By-law with the above noted changes made.

Yours very truly,


John B. Baker, Q.C.,

JBB/Mml
encls.