

ORVEL CURRIE PRESENTATION July 9, 2019

I generally don't require a microphone so testing, testing, can you hear me at the back? Yup, perfect so um the reason I don't require a microphone is because I'm in court a lot and I'm in a court a lot doing municipal work so tonight what Council had asked me to do is share with you a presentation I frequently do with Council members and ratepayers to give you an idea of what your Council's responsibilities are and to give you an idea of powers of a municipality. I'm going to tell you the end of the story at the beginning and then I'm going to drag you through the story. So the end of the story is that your municipal councils in Canada today and in Manitoba specifically are extremely powerful entities. They have a great deal of power and they should be making decisions using that power and we'll go through it and we'll explain how that comes about. Now I also lecture on the fact that you're going to get straight up Manitoba law and there's a reason you're getting Manitoba law is because if you try to apply Ontario law to Manitoba, you're going to have problems. Ontario has tiered municipalities, they have 1 to 4. Manitoba does not have tiered municipalities. The Rural Municipality of Springfield is the same thing as the City of Portage la Prairie. Uh, you might have a charter in the case of the City of Portage la Prairie and you might have a charter in the case of the City of Winnipeg but neither has more power than the other, I'll put it that way. In Ontario you have four tiers of municipalities. Tier 1 are the most powerful, that's the City of Toronto, a lot of the cities around it now in the GTA, there used to be um 13 of them, now there is one, I was part of the amalgamation group there, so what I'm indicating to you is that it's an exceedingly powerful position, municipal politics today. So with that I generally go (discussion about the slide presentation)...I'm missing a slide here somewhere, I'll just go, ya so after we're done this lecture what you should be able to do is understand what municipal councils are mandated to do, understand the Manitoba Municipal Act as it relates to municipal council powers, understand how the courts work in respect of interpreting municipal powers. So in Canada we have what's called common law jurisdiction and what we do is we start with statutes and those are the primary laws. So the primary laws in Canada will be the Charter, the Constitution and federal legislation under that, then you're going to have provincial legislation which includes the Municipal Act, the Planning Act, the Assessment Act and the Conflict of Interest Act which are the primary ones that effect municipalities. Everybody with me so far? Good, ok.

So you should understand, at the end, how courts are thinking of what municipal powers are all about. Um so very quickly um municipalities are created to be responsible and council governments with respect to matters within their jurisdiction and each municipality is given powers and duties under the Municipal Act and many other acts for the purposes of providing good government with respect to these matters so if we start with the Municipal Act, I believe that the primary, the other three primary acts, Planning, Assessment and Conflict but there are the Water Rights Act, there's a good example of where the municipality has powers under the Water Rights Act that you have to go there and look at it and determine what those powers are. And what it is, they have power over drains in the Water Rights Act, they have concurrent power with the Province of Manitoba so when we are looking at all of this I'll flip through the general propositions but so far the end, the story at the end of the day is that a municipal government is very, very powerful and they have very strong rights to govern within their discretion and we'll get to where the courts are talking about that.

Now all the case laws that I'm going to talk about today is all common law jurisdiction and what it's doing is interpreting legislation. We have the legislation, somebody comes in and reads it and says "hey, I have to know what way is this swinging" and of course we'll come in and give an interpretation of it and then that will be for all purposes once it hits the Supreme Court of Canada the law of this land and it will never be changed. So uh we're going to look at the statutory provisions and we're going to look at what the Courts are saying. Uh so, what is a good government uh let's just go back (he's referring to slide presentation), I just want to go back to one, right here, so what are the purposes of the municipality. Well, the Act tells you what the purposes are. The purposes of the municipality are to provide good government, to provide services, facilities, other things and I got it emboldened in red for you, in the opinion of the Council of the municipality, that are necessary or desirable for all or part of the municipality. So just recognize it's in the opinion of Council, you can sway their opinion with your presentation but your opinion is not carrying the day as ratepayers. It is the opinion of these Council members. As ratepayers you can address Council, you can do delegations, but it's not your opinion that counts at the end of the day. So uh I always want to make sure that you're very clear where you stand in the process uh because when we get through this you're going to see a whole lot that I think it's going to surprise you. We'll get through it. So you're successfully, what is good government successfully supplying services and facilities in a **cost effective manner**, developing and maintaining safe and viable communities, **operating the municipality in a transparent manner, maintaining an impartial government where ratepayers can feel they are treated fairly, and maintaining the balance between the greater good of the municipality and the ratepayer that appears as a delegation** so lots of times the decision is not going to go in your favour and there's reasons for that because Council has decided in their discretion and opinion that the needs of the municipality are greater than your particular needs. That's just simply the process. So what is a safe and viable community, quality services, quality utilities, quality infrastructure, safe infrastructure, what is viable, practical, reasonable, worthwhile, sustainable? Those are just um principles. They are not legal principles, they're principles out of governments' documents that we get out of the Munk School of Municipal Services (Global Affairs and Public Policy) and what they do, they just look at this and say, what is safe and viable? So if you're going to

end up in a courtroom, you're going to be talking about what is safe and viable really means. So Council's responsibilities, what are they? They are found in the Act, Council is responsible for developing and evaluating the policies and programs of the municipality, for ensuring that the powers, duties and functions of the municipality are appropriately carried out and again I emboldened in red, and they're also responsible for carrying out the powers, duties and functions expressly given the Council under this or any other Act. So let me explain what occurs here.

I'll start with a historical lesson because history is everything when you try to understand how we get to where we are in Manitoba. In roughly the early 1900s municipalities were very new in the Province of Manitoba. 1907, 1860 whatever, this municipality was 1860 something, you guys were one of the first municipalities incorporated. Um in those days they looked at municipal governments as um almost like children they had to guide. So the province would be totally in power and the municipal government elected officials would just be given very limited power to maybe build a road here or do some other things over there but it was very limited. By 1970 uh well 59 or so is really where it changed, you had actually a very unique system here in Manitoba in 55 to 59 you had what you called a combined Act, you had your municipal governments, your assessment and your planning such as it was in the 50s and you had your assessment all under one Act, at that time called the Municipal Act. By around 1965 they started to use a different theory, they stripped out those and they started to do different acts. Keeping in mind you didn't have an Environmental Act until 1972 in this province so the environment was not an issue. It just wasn't ever considered to be an issue. So as we progressed through time, what is happening is that people, conditions are changing, that's what I'm going to say, people are more interested in the environment so by 1972, you started the Environment Act, at that same time they split out the Planning Act in 74 created as a separate entity, they created an Assessment Act shortly after that and they left the Municipal Act where it was and they really didn't bring the Conflict of Interest Act into play until the mid to late 70s and then it was really not a very significant issue, it was like a few sentences about you shouldn't steal money from the municipality and things like that, just very simple things. By 1980 um all four of those Acts became much more robust so assessment became a concern. So if we think about assessment, it is the tax base of the whole municipality, it is the financing engine of the whole municipality, it became much more robust in the 80s. So did Conflict of Interest. It started to become much more robust and what I mean by that is they changed the focus to say, hey, if you're a municipal council member and you go ahead and you vote on an issue where you're actually going to get a benefit from it, that's just a conflict and you ought to declare it. If you don't declare it, you could lose your elected seat so that it got much more robust. Now we're moving forward, we've got now the four Acts and we get into the 90s. Here's what happens historically. In the 1990s, around 95 I worked with Diane Flood and we were working on the Municipal Act here and their first step toward what I'll say is increasing municipal powers came out of how we drafted the 95 Act. Now every Act in Western Canada including Ontario at this point had moved or was moving toward the same process. We went away from very strict um legislative wording to what we referred to as spheres of power and I'll get to that. You'll see me refer to spheres of power. So what it meant was you had the ability to do the uh, to do uh, you had the ability to sell a parcel of land, you would also have the administrative power to do all the necessary legal work to pass a uh bylaw sorry the resolution, might have been prior to, um actually prior to 1995 I think it was going to have to be by by-law to sell land but you would give all the powers that would go with that after the 95 Act and we'll show you where those changed. So what that did was broaden municipal powers substantially by doing that. The next thing that happened was around 2000 we had a decision come out of the Supreme Court of Canada and that decision basically said that they were moving away from a strict construction of the municipal act, meaning if it didn't say you could sell land, you couldn't sell land, that's a strict construction of your act, to a benevolent and generous interpretation of, a purposeful interpretation of the Act. What that meant was that they changed the whole perspective. Now instead of trying to look to limit municipal powers they looked to find how municipal power was enjoined in the sphere of the powers. Everybody with me? You'll see, ya everybody following, ok so that's how the acts start. By 2010 and you'll see the case law coming out, I'll go through it, but it's all Supreme Court of Canada case law, Justice McLaughlin, great judge, just retired recently, uh she really pushed the edge and well she pushed the whole municipal side of it but essentially what the end of the story is, is **that elected officials are, their decisions are almost unassailable. And I'll show you how that is. As long as they are acting within their powers, once they have made a decision they are almost unassailable. Now the only time that that's not accurate is if we don't follow a process.** If we um are required um to have a hearing and we don't have a hearing, that is likely to be a failure for sure in a courtroom. That's a process problem. It's not a decision problem. Just always when you're thinking about these things, think process, think decision. So that's a historical analysis and it gets down to this point and this is where the law ends up. **In order to overturn a decision of Council that's properly decided it has to be an aberrant decision so odd as to have no council ever consider passing or making that decision before a court steps in.** We'll show you the case law and the language around that which tells you that this group of elected officials are very powerful with their decision making so if we look at what overall Council's duties are, I'm just now going to bring you back to where we were. I've given you the big picture and where we're going to end up.

Um, the Act itself was actually changed um in uh 95 to add a provision that says that the guide to interpreting the powers to pass by-laws, what did you do to pass by-laws? Well in this case the power uh given to Council under this division to pass by-laws stated in (a) general terms (b) to give broad authority, not narrow authority, broad authority to the Council and to respect its right, to respect its right to govern the municipality in whatever way the Council considers appropriate and that has, those

are very significant words because it is down to them as to what goes on in this municipality with respect to the decision. Now I warned councils and I've had this discussion with this Council that with such great power comes a great deal of responsibility to act judicially, to use good decision making, to use their discretion wisely but it is a huge power, it's massive when you look at it. So uh the interesting thing is that this guide to interpreting the powers to pass by-laws are also to enhance the ability of Council to respond to present and future issues in the municipality so let me give you a good example. Um nowhere in this Act says that you can govern drones. Why would you think you would want to govern drones? Well if I have my wife who's sunbathing in her backyard, in our backyard and my neighbour's running his drone and running it over her body and then taking off and coming into my backyard and looking in my shop, there's an invasion of privacy and now, I'll get into the big thing. I'm often told by people, well if the federal government is regulating this area, we have no right, you have no rights as a municipality to legislate in that area, that's simply false and wrong in law and we'll get to it and we'll explain that. Um so why would you want to regulate drones, well you want to regulate them for privacy, you want to say look you can't do them in certain areas, you can't run it over your neighbour's backyard, these are personal privacy issues that you may want to address. Uh you don't want to be like in California and these are real happening events, less so in Canada but they do happen, but in California they were using shotguns to shoot their neighbour's drones out of the air so you can't get to that kind of level of neighbour interaction in order to fix problems so you have to govern. You have to take control and responsibility to govern so what I am saying to you is we're down to the enforcement by-law and I'm saying to you that these folks need the broadest, most strongest by-law that's applicable to assist them to govern. That's why it's such a big by-law. Now do they use it as a hammer on a eel, no you shouldn't but do you need to use it and you're going to have it, you should have it so the answer is that, and that is what stimulated this conversation was the question of the by-law, the enforcement by-law. Well you want to have as much power as you can that's legal and you want to use it judicially. Everybody with me? No, no one is understanding? I'm talking French and only one of you are French? **Darryl Speer speaks. This presentation, can we have it? Orvel Currie - Darryl, I will share with you the principles but I'm a little protective of it because it tends to be duplicated with my competitors now so if you would agree not to share it with anyone, I would agree to share it with you. (Agreed) So I will give it to you.** So, uh um now why I wanted you to know how strong municipal councils are is because at the end of the day, one of the only real recourses that you have are to elect new council members if you are not happy with their decisions, that is simply it. We'll get into that, it's really strong language that the Supreme Court of Canada has come out with. And it has come out with it in the last decade. The last 10 years has been a tremendous change, tremendous change in the world of municipal law.

So where we start generally is Section 232.1 of the Municipal Act, so here's where we talk, if you look at 232.1, I sometimes have two screens going but tonight I don't. It's in there, you are going to have to take a peek at it, but it's quoted here verbatim so a Council may pass by-laws for municipal purposes respecting the following matters: (a) the safety, health, protection and well-being of people, and the safety and protection of property; That means if you are running a drone over my backyard or another person's backyard and they're pulling out a shotgun and are going to shoot it out of the air, you have a right to maintain that, you'll see the Supreme Court of Canada talks about this particular section and what it really means. So not only do you have uh the ability to pass by-laws for the protection of people but the safety and protection of property. So if for example you try to uh dam up your uh the drain that runs at the back of your property and you flood out your neighbours well municipalities have by-laws for that. They'll go out and clean the drain and they have the power to do that because otherwise your neighbour is getting flooded out. So all of these powers are there. That's the broadest power. I haven't put out all 232.1 powers, if I did it's all the way to (o) and if I went through each one, I'm going to tell you it's a bit of a, there's a lot there. So what I typically get is, ah you know, I own property and uh my property rights are you can't come on my property and between here and here I'm god and maybe a little bit more. The answer to that is that's just simply not true. It's just not true. You are subject to all the by-laws of a property owner, you are subject to all the by-laws of the municipality including enforcement by-laws, zoning by-laws, all of that and the responsibility of um Council would be to enforce on the safety and protection of that property so a good example is the blocked drainage where you're flooding your neighbour out or your neighbour is flooding you out or a variety of things. So 233 activities or things in or on private property is somewhat limited but I want to go back to general law. The one thing we do know and I've had this debate with a Council member, what, maybe last year sometime, he was insisting with me that the Constitution protects property. It doesn't. The one thing it doesn't protect is property rights. It never protected property rights, personal rights, yes, but not property rights. So there's no constitutional charter argument over your property, there just isn't. So very basically um you're down to the rights you might have as a participant of society, that's what it really is. It's down to that social contract and the courts have recognized that. Every time we pass a zoning by-law, I restrict your property rights or the municipality restricts your property rights because maybe at one point you could have, it was all agriculture and then suddenly we put in residential subdivisions, well you can't farm it anymore. Or you can as long as it is blank but, I mean, once the subdivision goes in, you can't farm it anymore, you're done. You can't exercise rights there, again farm on a 100 by 150 ft. lot. You can do perhaps some market gardening if the by-laws allow you to do it but generally they don't so there is a loss of rights. It's just the way that the zoning works. So typically uh you could see uh for example, I'll give you a good example in this municipality. Out by the Industrial Area, that whole entire area at one time was subdivided into residential lots so if you see and you go back in history and you look at it, there were like seriously hundreds of lots out there just off the City of Winnipeg. Those lots have now all been evaporated and are now commercial lots. So as much as, you know, there used to be a right to build a house there, you don't any longer, the zoning has changed into industrial and commercial.

You can't build a house in there, a residential property. You following me how your rights are effected by zoning and by basically almost everything a municipality does will affect your rights, this is the way it goes. But the reality of this is that um they have the power to do so and there is just nothing that changes that. So um let's just see what else we've got. 232 they can regulate private works on or along municipal roads, municipal roads, we got that, private property adjacent to highways and municipal roads, whether the property is publicly or privately owned so when you look at that again they have rights to govern what your rights are, uh the operation of off road vehicles on public or private property. What do you do with the 14 year old on the ATV who's ripping up and down the streets, what do you do? Well, you can regulate it through an ATV by-law. That's how you do it so um drains and drainage, preventing and fighting fires, I'd like to get to the interesting so they can regulate businesses, business activities, persons engaged in business. Uh they can uh use uh, they can enforce their by-laws so when you start to look at this think back about this as spheres of jurisdiction. So it's not the narrow interpretation of what that power says but the broad interpretation of what that power says. So there's all kinds of things that courts and lawyers will say you can do that assist you to implement those powers, that's why you have spheres of jurisdiction and actually talk about it like that. And Justice McLachlan, sorry I think it was Justice um the name will come to me, in any event there was a big scandal in Toronto with respect to tendering and what was happening was that family members were coming in and getting specialized contracts for tendering and they brought it to Judge of the Supreme Court of Canada to do the uh the uh review of the city's behaviour and they talked, it's a really good decision, it's called the Toronto Commission, sorry the Transit Commission investigation and it's really a good read if you want to understand the spheres of jurisdiction because uh the judge goes through it and explained it thoroughly. It's a very good discussion of, it's got a great discussion of Conflict of Interest in it as well, but the one for our purpose would be this so it's on line, you can pick it up, it's a really neat discussion and what, what the judge was saying was that even though we had moved to spheres of jurisdiction, what had happened was that lawyers, judges, uh former um you know elected officials even or former administrative staff always kept thinking backwards like it was a strict construction issue and as a result of that, uh up until 2005, uh people were not really using their powers. So that was one of the reasons that um that uh the Court or that particular judge, I think it was maybe Bassaraba, I don't even know, to be honest with you, I'll look it up later but it's not important, it's in that, their name is in that uh in that report. But the big one here for me is 233(d) and this is, again I get a lot of this kind of comment, you can't ah um regulate me doing this or that, well they can pass a by-law for activities or things that in the opinion of Council are or could become a nuisance, which means noise, weeds, odours, unsightly properties, fumes and vibrations. So that's broad and it's broader if you look at the spheres of jurisdiction. Now, um one of the tricks of this one is that in the opinion of Council. It doesn't say in the opinion of a court or a judge. And when you get into the case law, you'll see that the judge position is being um set aside frankly. You'll see this report from the Supreme Court of Canada Justice McLaughlin said, look, it is not for a judge sitting in downtown Winnipeg or a judge in Ottawa on the Supreme Court of Canada to tell six elected officials how to run their municipality. They're at the core of the municipality and they're the people who are going to know best on how to deal with things and we'll get through that case law, it is well quoted and it's well, well set out. So in the opinion of Council that may be a nuisance which may include noise, weeds, odours, unsightly property, fumes, vibrations and it gets broader than that if you really look at the by-laws of today's world so uh continuing you got 232 um exercising by-law making powers uh without limiting the generality of Subsection 1. Subsection 1 basically says that a municipality has all powers and rights to pass by-laws in whatever way they consider appropriate to govern a municipality but what I wanted to get through for our purpose today was 232(2) they can regulate or prohibit, that's important. They can put conditions, when we mean regulate, they can put conditions on it or we can prohibit. Uh, I thought by reference in whole or part with any changes the Council considers necessary or applicable, a code of standards. So they can go out and say I like the federal standard for this purpose, I'm going to adopt it, one of the common ones that you do in that regard is called Building Code. You've adopted that from the Canadian government essentially. So uh uh you deal with any development, so this is another one I get, oh you know you are discriminating against me and the fact of the matter is the Act says you can discriminate. Uh, so um prior to around 1995 that was a big thing, you couldn't discriminate but now the Act allows you to deal with it so if you read (c) I'll let you read it yourselves, you deal with any development, activity, industry, or thing in different ways. You've just got broad authority to deal with them in whatever way you think. So you can deal with industrial this way, commercial that way, residential this way. You've got great powers to do whatever you have to do. One of the things that we'll uh we'll be going through at some point is the fact, where do you get your fees and how can you tax. Right now your biggest taxation as I said earlier is real property taxation but you also have development charges which you can charge under the Planning Act but you can also charge fees under the Municipal Act. Many of your rural municipalities in Manitoba do not charge these fees and they have a minor fee for an application, that might be it, but if you're aware of what's happened in the City of Winnipeg, they put an Impact Fee on for new development and it's substantial. Like it'll be \$13 to \$15,000. per house, substantial. So that matter is now proceeding but uh uh as we move on that's a good example. So if you look at that you can establish fees, uh you can, the municipality can prohibit a development, activity, industry, business or thing until a license, permit or approval is granted. So they can say that if you want to come into town and run a drone business or have drones, you'd better have a license and we'd better approve you. So you just can't go in and start up. Um, you can, the municipality can provide by-law the terms and conditions that may be imposed on a license, permit or approval so I often get this. This is what I get. Oh, you, you, you don't have a subdivision and you don't have a variation and you don't have a conditional use which are all the traditional things that you would have to trigger a development agreement under the Planning

Act. And now this Act says that you can provide the terms and conditions that may be imposed on any approval. So let's assume that you're coming in and you're asking for a development and we're saying to you, ya even though you're not zoning, even though you're not subdividing, we need an agreement for our approval. So what I've seen in the past in this Province is that everybody, ah we can't do it because it's not in the Planning Act, it's not here, well you can do it and so I'm, I'm not going to waste any more time but I will produce one of these and expand on them so what I wanted to talk about was the regulation on private property um uh here's where your limits are under Clause 232(1)(c) which is activity or things on property, private property, the by-law is limited to the requirement that land improvements be kept and maintained in a safe and clean condition so you've got your unsightly and unsafe property, you can enforce that, that parking and storage of vehicles including the number and type of vehicles that may be kept or stored and the manner of parking and storage so uh the removal of topsoil, it's not a big one. It typically gets dealt with, everybody is happy to deal with it, but it is the (d) one that you're going to want to look at. They can regulate on private property, activities or things that are, what does it say **(NOTE: I didn't notice any eagles present in the crowd which is what you would have had to be almost to read the overhead. Sounds like engaging your classroom in interaction to me.)**, IN THE OPINION OF COUNCIL uh are or could become a nuisance which may include noise, weeds, odours, unsightly properties, fumes, and vibrations so if you think about it, and we'll talk about this as we go along. This is just the spheres of jurisdiction meaning there's more powers that are in behind this.

So uh if we keep going the second thing that happens, I am going to skip through this one to get you right to here, this one here is a better decision, um as I indicated to you, around the 1900s they restricted the power of municipalities by what we refer to as a strict construction and what they meant was if it didn't say you could do it, you couldn't do it. And then we move to the spheres of jurisdiction and then the courts came forward and started to uh interpret legislation uh to give a benevolent and purposeful ah interpretation of the legislations. So we'll see what that means. This is just a 1907 case talking about um the stricter construction, the benevolent construction and if the language fell short of expressing and conferring the powers played but did confer in a fair and reasonable implication I would not hesitate to adopt the construction sanctioned by the implication. So even in the strict construction there was a broader interpretation but it was still a strict construction model in 1907. So now uh what happens is around as I say the late 90s uh um ah they started to do a benevolent construction and they started to uh talk about a court should look to the purpose and wording of the provincial enabling legislation when deciding whether or not uh a municipality has been empowered to pass a certain by-law, it is somewhat stricter rule of construction than that suggested above by Davis J. ?? an order where the municipality is attempting to use a power which restricts common law or civil rights but that just said, that's your typical strict construction. Um if you go further uh they start to talk about this conclusion follows recent authorities that statutes be construed purposefully in their entire context in the light of the scheme of the Act as a whole with a view to ascertaining the legislature's true intent so there is by the late 1990s they were moving off of strict construction to a benevolent purpose. By 2000 we'll see where we get here, what's the, oh ya this one here is a, now this is your Manitoba law, this is where it starts at with the Manitoba law. Um so well a law at the turn of the twentieth century is what we're talking about in the 1900s strict compliance with the enabling statutes, modern case law prefers a broad and purposeful approach to the interpretation of statutes. This modern approach is explained by Scurfield and J. White vs Portage la Prairie beginning at paragraph 17 and you can say, see it says uh the application engages the Court in an interpretation of the Act, generally the interpretation of all legislation including the Act is governed or guided by what is sometimes referred to as the broad and purposive approach. So now they've just expanded it in the courts. They're giving you more power by way of their interpretation of the Act. Everybody following how we are getting here? It's a long history but it's going to get you to where you're going to need to go. So uh um so if we look at, I'm just going to look at the um the uh the red but this is now the Supreme Court of Canada in United Taxi Drivers Fellowship of Southern Alberta vs The City of Calgary. What happened was that in that particular case there were a number of taxi licenses that were restricted in Calgary and the restriction allowed the taxi drivers to in fact uh um monopolize that industry because if you could restrict the license, you could control how much work you got, right, because fewer licenses, more traffic for those licenses. City of Calgary decided that they would weigh in on that and they uh, there was a provincial entity called the uh uh The Taxi Board who was issuing these licenses and the City said no, we're going to issue these licenses. And effectively the Supreme Court of Canada uh um went through it and came to the conclusion that the evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities. It's a notable shift in the nature of municipalities as acknowledged by McLaughlin J as she then was in Shell Canada which is a 1994 case where she starts it. She says the benevolent and strict construction dichotomy has been set aside. That's what I was telling you, the strict construction is now set aside. That was done in 94 by the Supreme Court of Canada. It had been done really prior to that but she really, she put a stake in its heart on that time and she said a broad, purposive approach to the interpretation of municipal powers has been embraced. The shift in legislative drafting reflects the nature of modern municipalities which require greater flexibility in fulfilling their statutory purposes. So what the Supreme Court of Canada just said was we're opening up this to be a much more broader interpretation of your power. So we get through that and uh then we have Nanaimo Trucking, um. This is where the Supreme Court of Canada, you can just see if you read the site there, it says 2001 Supreme Court, SCR means Supreme Court Reports, at 342 and this case goes up to the Supreme Court of Canada. The Court uh concluded at that time and this is where we talk about the Court wasn't really there to interfere with municipal councils' decisions and you'll see the red part, municipal councillors are elected by the constituents they represent and as such are more conversant with the exigencies of their communities than our reports. That's just a

different way of saying a judge sitting in downtown Winnipeg should not be making decisions for this municipality. Everybody listening? OK. So uh....of course. **Councillor Ralke** - So all of this is leading up to just so's everybody's not getting lost here because it's just like so much conversation here, so this is all putting it together for us to say that, that's why we're going into an enforcement by-law, that's why (**Orvel Currie interrupts while she is talking but I believe he is saying, that is why you have the authority to do so**) and so why when you mentioned that there was three other ones would be adopted together because of these examples you are giving us? **Orvel Currie** - Well, I'll get into that Val, that's where it's going to end up but I'm not there yet so maybe just leave it until we get to the other if you don't mind because I just want everybody to understand how much power you have, how the courts have deferred to your discretion, and how the Supreme Court of Canada has said that you're going to have to use your discretion and how your powers are clear under the Act and now what are you going to do with enforcement and that is why you have those enforcement by-laws, that's where, that will come at the end. So Shell Canada is another Supreme Court of Canada case you'll see SCR moniker at the end where it says, Shell Canada vs Vancouver City SCR231, that means it's come out of the Supreme Court of Canada and Mrs. McLaughlin, Justice McLaughlin so she says um here's what she really says, recent commentary suggests an emerging consensus that the courts must respect the responsibility of elected municipal bodies to serve the people who elected them, to exercise caution to avoid substituting their views of what is best for the citizens of those municipalities, of those municipal councils. So, again, she's saying it again, in this particular decision, it's now said twice, courts should not be governing what goes on in a municipality, that's what these elected officials are all about. Barring clear demonstration if a municipal decision was beyond its powers where it's not so told and we've already seen where courts are already expanding the powers of municipalities or you are getting this expanded interpretation and this is uh still in 1994. It gets much broader in 2000. In cases where powers are not expressly conferred but may be employed, implied courts must be prepared to adopt the benevolent construction to which the court referred to in Greenbaum and confer the powers by reasonable implication. They're expanding your powers, that's what they're doing. **Unknown female** - Are you talking about the power to legislate or the interpretation of your own by-laws? **Orvel Currie** - I'm talking about the power to legislate. And that when the court gets there, the courts' going to give a great deal of deference to the decision of Council to have regulated them. They're going to look at the power, they're going to expand it. They're not going to narrowly construct it. Follow the difference? (UF - the authority to legislate) It's going to be expanded. That's what McLaughlin is saying. Not only is the authority to legislate but the actual terms of legislation may be expanded by that interpretation. So uh so uh when you get to the end, here's what Justice McLaughlin is really saying. Whatever rules of construction are applied, they must not be used to usurp the legitimate role of municipal bodies as community representatives. So she's saying, courts, stay out of here. That's what she's really saying. Ok, so ah this one here is ah Stuartburn, this one was really a good, an interesting decision out of Manitoba. It really had implications for your Manitoba law. Stuartburn, it's as simple as this, um, they had the town, I think it was Morris, I'll have a look, it's in there somewhere but there was a town and it existed and it had its four corners and right on the edge was an agricultural zone. Now the agricultural zone had a permitted use of intensive livestock so along comes farmer A ah um, it's actually a numbered corporation, but it's farmer, and he decides that he is entitled to put an intensive livestock operation right on the edge of town because he's got agricultural land there. You can see, can anybody see the fuss with that? You ever been beside an intensive agricultural livestock operation? Just drive out by Brooks, Alberta sometime and your eyes will water. And the reality of it is that it's very strong acid smell and it's very disruptive to the community so what um what happened was that the municipality passed a by-law under the Municipal Act, not under the Planning Act, the Planning Act allowed the activity and when they passed the by-law under the Municipal Act, they said um you can't have your intensive livestock operation because we can control, what did it say, noise, nuisance, smell, da da dit da, copy so they said I'm going to pass it under the Municipal Act and the courts upheld it. You can pass it under the Municipal Act. So end of the story, uh um the um the uh farmer said, no, no, no you are passing a zoning by-law and you shouldn't be allowed to do that because if you make amendments to a Zoning By-law there a whole procedure that you have to go through, there has to be a public hearing, all the rest of it and there's all kind of stuff that goes with this and the end result is that uh Court said uh uh really at the end different levels of government have powers to regulate the use of land and activities on land and such regulations can and often do co-exist. So you can have powers under the Municipal Act, you can have power under the Planning Act and so this is what uh I'm just trying to figure this one out, Justice Huban, I think talks about this later on but in any event, they relied on this STRYTAC decision which is, STRYTAC talks about dovetailing and that means when you have federal legislation, you have provincial legislation and you have municipal legislation. What you cannot do is overlap so that one cannot be completed by the other so if the federal legislation says you can't fish and the municipal legislation says you can fish, you would uh be unable to pass that. However if the federal legislation says you can fish and you said, yes you can fish but you can only fish between 9 and 5, you would be fine. You haven't change their ability to be able to comply with federal legislation or the provincial ah um legislation. So in Spraytech what was happening there is that it's a Vancouver decision and we'll talk about the differences in law in Vancouver but can anybody take a wild guess what you think they do in Vancouver mostly, in terms of the municipality what do you think they try to protect? With environment exactly their water bodies, everything so Spraytech was a chemical company who supplied chemicals to many industries in B.C. and said and then uh the municipality came along and said you are not going to use that in our jurisdiction so they're protecting the environment. So you see the overlap of Environmental Act concerns and so then on Spraytech what they did was, they imposed by municipal by-law uh I think it may have been a ban on certain of the uh chemicals and then, uh or pesticides and they started to regulate, some by banning it, prohibiting it, you saw

that in powers, they can prohibit, and then they, some of them they could only be used under these conditions and they regulated it. And the Supreme Court of Canada upheld that. Um so that's the Spraytech decision and actually the Supreme Court of Canada says, the Supreme Court of Canada noted as a general principle, the mere existence of provincial or federal legislation in a given field does not oust a municipal prerogative to regulate the subject matter and that's what a lot of people just miss that all the time and I almost invariably Ontario through to B.C. they always say to me, ah Federal jurisdiction, NO, it's not a problem, we can regulate it, a federal jurisdiction as long as we have power to do so but you've got pretty broad powers. Nuisance, noise, vibration, the safety and health of people, you can, if you've thought somebody who is spraying chemicals by federal regulation was going to harm people, you can pass a by-law to stop it so ah or the municipality can pass it. Um, I don't want to go too much further because this is now just a repeat, they just keep going and going and going and then we get to the Catalyst Paper Corp. vs Cowichan decision and now what they're saying here is that deferential approach to municipal council's decisions have long been recognized by all levels of court. The importance of affording municipal councils deference on judicial review of decisions within their jurisdiction as discussed in the Supreme Court of Canada as it shall as in Shell, Nanaimo Trucking and now by Catalyst and so by 2012 um they're saying this deference principle has been reiterated in numerous Manitoba cases and as required in superior courts, give deferential treatment to municipal decisions and review them on a standard of reasonable. When we get into this type of review, a court will review it from two standards now. One is reasonable, was the decision reasonable or was the decision correct. Is this a pure legal issue? The municipality has to be absolutely correct i.e. a court will look at this and say, hey, um you didn't follow the correct process or you did something completely off base. If it's a standard of correctness, uh the end result will be that the court can substitute their decision for the municipality. If it's a standard of reasonableness, the courts are unlikely to substitute their decision for the municipality. They can but it's highly unlikely and you'll see the test later on the ? . So um well here's Justice Huban's uh remarks on the, so this went to the highest court in Manitoba. I think we get into the Stuartburn case in not making it into the Supreme Court of Canada but it did make it to the highest court in this land uh so this is what I really uh thought was interesting because um the purpose or the way that they passed this particular by-law for Stuartburn was under what they refer to as the General Welfare Provisions and you'll see the same language there, it says while some aspects of by-law 36-2001 have the attributes of the zoning by-law, so it looks like a zoning by-law, I am satisfied that the purpose of the by-law is to regulate intensive livestock operations. This is authorized by the Act both under the General Welfare Provisions in Section 232.1(a) the safety, health and well being of people, the safety and protection of property, we've seen that already in the statute, right? So once we get there in 232.1(c) activities on private land where the activity is, or in the opinion of Council could become a nuisance. So now you are seeing the powers being expanded and what did we point out to you in the statute was in the opinion of Council. You with me, everybody's following? You don't have to agree with me, I'm not here to make you agree with me, I'm here to tell you what the law is and when the Supreme Court of Canada says what the law is, I'm sorry, it can't be changed. It won't be changed in this country, at least unless you can bring up some really unique arguments but that's going to be a rarity. So what my point is is that um the very strong and powerful position Council is in to use their jurisdiction. We have it repeated in the Grenier vs Piney rural municipality decision in 2003 here in Manitoba, this is Justice DeGraves?, he's telling you the same thing as the Supreme Court's told you, in view of benevolent construction we are going to give you a great deference on your decision making. The courts are not going to interfere. So authority to pass by-laws for planning, Manitoba law is just the same thing, saying, it doesn't matter if you say it's planning and they've just got another power they can use it under the Municipal Act. So uh I don't want to go through this too much um this slide kind of got me a little out of hand here with everybody wanting to um uh so kind of just really come down to saying again this is a decision of Justice McLaughlin. You can see she is a very powerful judge, she is a very well respected judge out of Ottawa, well reasoned, when she was appointed everyone was applauding her appointment and she's a very practical judge so um her decisions are considered very strong. Um so um here is one of the tests. So let's say that you brought an application before the courts and said, look this by-law is unreasonable and court has to decide what test am I going to rely on to determine if it is unreasonable or not well if you look just by the hammer there, I'm not sure if it is big enough for you to see it or not. She said it was determined that the test to apply to municipal by-laws should be only if the by-law is one no reasonable body informed by the factors could have taken will the by-law be set aside. So very, she sets the bar very high. So um if you go on I won't bother to concern you with that but why is she saying that? She gives the rationale if you look by the scale there, she says municipal councils passing by-laws are entitled to consider not merely the objective considerations bearing directly on the matter but the broader social, economic and political issues. In judging reasonableness of a by-law it is appropriate to consider both the process and the content of the by-law. So she is saying in very clear terms that this council has to take into account what are the social conditions so if you have two property owners and one is running their drone over the other property owner's property, would it be appropriate to have a by-law to prevent that? If you want to take your drone out, go to a park or some public place as long as it's proper in terms of the federal regulations, go knock yourself out but don't be running it over your neighbour's daughter. It's a little inappropriate. So and uh those things are happening. They are happening in Canada, they're happening in the U.S. so uh let me just see uh oh ya, here's a good one um this is a good one. In Stuartburn this was the final decision. They said that they could legislate for nuisance so I often get, well what's a nuisance, how do you measure that. Well, you know how we measure it? It's in the opinion of Council, that's what a nuisance is. That's how you measure it and it says so in this case and it say so in the legislation. So uh to conclude there um what's this one, oh ya, um ya here this is another case that is kind of interesting, this one starts out in 1898 but uh this one here uh indicates that a by-

law is not unreasonable merely because particular judges may think it goes further than is prudent, necessary or convenient or because it's not accompanied by a qualification or exception which some judges may think ought to be there. So uh again as early as the turn of the century they were starting to say um we shouldn't interfere with Council's proper discretion. So um then you go back to the Act and you look at ah um Section 384 and the Act itself says no by-law, resolution or proceeding of Council and no resolution or proceeding of council committee may be challenged on the ground that the by-law is unreasonable and not in the public interest so once we get to that level the courts are saying, ok well the reasonable test is at this table, that's the reasonable test. So uh oh ya I wanted to talk um um I'm fairly close to the end, I'm not sure how I'm doing on time there, Colleen? **Coleen Draper** - I think we're at that time, we're all kind of waiting with bated breath I think to find out how does the RM implement their by-laws now so. **Orvel Currie** - Let me just run through the ? decision um so McLachlan and ? really set it out well, it's a good decision and if you're interested in the area, give it a read because it's probably one of the best decisions and you can get it all off of Canada ? so uh the power of the court to set aside a legitimately passed municipal by-law is very narrow as confirmed by the Supreme Court of Canada and ?'s decision, court must take a deferential approach and should, should not interfere with by-laws if it is one that no reasonable elected Council could have made or interfere with it if no reasonable elected municipal Council could have made it. Uh it goes on to say that uh um it has to be aberrant, I'm trying to find those words, uh but one of the things that it is important that you understand why the courts are taking this into account because municipal councillors are passing legislation, that's what they're doing and when they pass legislation uh they're they're acting in a legislative role, not of an adjudicative nature. So by-laws are not quasi-judicial decisions, rather they involve an array of social, economic, political and other non legal considerations. Municipal governments are democratic institutions, ah I think it was Justice LaBelle that made that other report. In the context reasonable means, reasonableness in courts means courts must respect the responsibility of elected representatives to serve the people to whom they are accountable to. Let me just see if there is anything else that I really want to get through on this. That is really it. There's more to the ? decision ultimately, so maybe at the end there, hmm, let me just see, that might be it, so uh oh ya this is an interesting thing too and I wanted to bring it to everyone's attentions that uh municipalities do not formally explain the basis of a by-law, that's what ? uh um says so if you read paragraph 30 out of ?, it says nor contrary to ? contention, is the municipality require to formally explain the basis of a by-law and that's discussed above Councils have extensive latitude in what factors they may consider when passing a by-law, they may consider objective factors directly related to the consumption of service, but they may also consider broader social, economic, political factors that are relevant to the electorate so all of their powers so the bottom line is this um now uh um to get to the point that I guess um uh really I came out and gave my presentation to Council and said there's four enforcement by-laws that you require. One is a general enforcement by-law under Section 232(o) of the Municipal Act, and the second one is uh a Municipal By-law Enforcement Act By-law, uh Derelict Buildings Enforcement By-law and you need a Provincial Offences Act Enforcement By-law so if we look at the 232 uh (o) Enforcement By-law under , the reason you need that, and I'll give you the sections so that you can go through the research yourself um if you look at Sections 242, 243, 244, 245, 6, 7, 8, 9 all the way through, essentially it says this. The municipality can give you a notice and say you're in contravention of a by-law uh once they've given you the notice you have the right of appeal, uh if on an appeal the municipal council does not uphold your side of it, but wants the enforcement completed and you will be obliged to either clean up your property or do whatever the municipality tells you to do and if you do not do it, the municipality may go in uh to your property uh and proceed now up until just about two months ago, we would have proceeded with a warrant to enforce. Now we just simply go down to the courthouse, you swear the information and you get a warrant and you go in and you clean it up and the cost of the clean up under Section 236 you can seize property, you can, all the cost of the clean up can go back on the property and can be collected in the same nature as a tax which means it can be put on your real property taxes and your property could be sold for tax sale. So that's the 236 powers and the answer to, that's why you need a general enforcement by-law because the Municipal By-law Enforcement Act, I refer to it affectionately as the dogs, cats, and parking by-law. It really was never intended to do general enforcement, it was intended to work for larger urban centres who had a cat and dog problem and parking problem. What happens there is that when you put it under the Municipal By-law Enforcement Act um you list in Schedule A the number of by-laws you want to enforce under that Act and some you want to enforce by way of a fine and that's generally where you put it so you can imagine in the City of Winnipeg they put it under there and they catch a tabby and they lock up him or her up and then uh uh along comes the owner and says I want Tabby out of jail uh and they say, well no there's a cat by-law that says you can't have him running wild here and uh so then there's a process under the Municipal By-law Enforcement Act which is a summary process which then says, ok you can go to a Screening Officer at the municipality and you can say, ah you know what my mother was sick, I had to rush her to the hospital, things weren't going well for me, uh can you give me a break on this one. Tabby just jumped out on me and I didn't have a chance so the Screening Officer can go, ya ok I believe you, I understand what you're doing and the Screening Officer can, and has the discretion to set aside the fine, alter the fine, or do anything like that. So when you are talking about fines of that nature, you are looking for by-laws that are amenable to that kind of fine system. In rural communities I typically have a situation of haul roads routes where we fine for them and we really don't want to, you know there are all kinds of explanations for farmers and for other truckers and so on so that the Municipal By-law Enforcement Act and you should have that. Um derelict buildings look at Section 247(2). A derelict building by-law is now required, it is different from a general enforcement by-law. There's a case it's uh Roblin, if forget the name of that plaintiff but effective what happened was the municipality used prior to about 2006 used their power in Roblin to go in and tear down a house and they

had given notice the first time and the lady lived in Winnipeg and she came back and she said, ah look I am interested in saving this property. They said ok well that's good just get it cleaned up and fix it up and she left again and then they gave her notice at the same address that she had lived in previously. The weird thing was she had moved so she didn't get notice and they said ok well we're going to go in and they tore down her house in Roblin. Now there's bad news and good news to all of this. The bad news was that they didn't use the proper process as they hadn't given her notice. The good news is that the house was so ratty that the court gave it a value of \$1 so it was a messed up house. So they won their case but they won a dollar. It wasn't very effective for them. But what it did spur the Province to do is to take derelict buildings and put them into the same process that you would do at a tax sale. So in order to now get a derelict building torn down, you have to go through a similar process that you do in a tax sale before you do a tax sale itself. So you gotta go to the Land Titles, they got an address, you have to serve the person at that address, there are certain protections now that apply. So we'll look at that 247, that a derelict building section, we would, we're going to say this Council pass a Derelict Building by-law so that you have the authority and the ability to look at that very quickly and have administrative things happen in the correct manner as you should. The last one is a brand new one. In September um uh the Highway Traffic Board is gone now and so municipalities will be given the authority on municipal roads to control speed. Now uh the reason that you want to use the Provincial Offenses in that case is because speeding is a quasi-criminal charge. It has its own elements to it and so while it's not going to stop you from being admitted into the U.S. it definitely is a quasi-criminal charge and that is why the Highway Traffic Act is written the way it is. So when we look at that, the Provincial Offenses Act has a very particular procedure on how you are going now to enforce the speeding tickets if you issue those speeding tickets, you don't have to, you actually have a police force here so it would make sense if you do. Now in your case the question of whether you need the uh in your jurisdiction whether you need the uh Provincial Offenses Act um ah by-law we're looking at that right now. Ah, it may be that you don't because you have your own police force. But if you're intending to have your by-law enforcement officers which they can now enforce your speeding, then you're going to have to have the Provincial Offenses Act. The only reason that you get away with it in this jurisdiction is that you have an actual police officer. Your police force here is like the City of Winnipeg Police Force, they have every bit of power that they do. **Unknown male audience member** - Is that the R.C.M.P. or the Springfield Police Service? **Orvel Currie** - The Springfield Police department has the same powers as any other Canadian police force. **Unknown male audience member** - I was surprised to find out that the R.C.M.P. does not enforce the by-laws of the RM of Springfield. **Orvel Currie** - Yes, that is an historical issue. We used to get them to do it all the time, we did service notice through them, but like everyone else they're cutting back. Not only are they cutting back on those types of services that they're not doing anymore but they are also cutting back in terms of their building a Supercentre in Steinbach and they're going to pick up all these smaller jurisdictions and put them all in Steinbach. You're not even going to have, it's highly unlikely you're going to have an R.C.M.P. office here in this municipality much longer. I'd be interested in looking at the operations in the background so I uh think it's coming for you because I know the Supercentre is going in Steinbach. So then you're going to rely on your police force even more so. They can investigate uh you know, neighbour assaults, criminal activities. Whether you want your police force to do that is a different issue. That's a different issue but they have the authority and the power to do so. They are a provincial police force. **Unknown male audience member** - Ya , ya but the issue is that at 1 o'clock in the morning this Council's not going to obviously, they need an arm. Somebody has to be able to respond to a by-law failure at 1 in the morning. **Orvel Currie** - Well, it's even more than that. This Police force can respond to criminal activities (A CHAIR BREAKS SOUNDING MUCH LIKE A GUN SHOT), oh that's ok..oh, wow, that does not appear to be your fault (laughter) ..can I get a release form signed (more laughter) uh if you want to move over therebad when there is a municipal solicitor watching. In any event back to that, Springfield police force can go out to a criminal activity and arrest on the basis of criminal activity and of course, your Police Chief is very experienced in that from Calgary so uh incredibly experience really but the way he, that's up to him, it depends I think on the circumstances and what the municipality wants him to use his time in that fashion. So whether we do a Provincial Offenses Act by-law we still have to discuss that with Council because if you're going to have a municipal by-law enforcement officer do this, then we have to have the Provincial Offenses Act. Now what happens there is that the charges go into a Crown, the Crown looks at them, probably brings the proceedings and there's a whole Summary Proceeding under that Act for those to be enforced. So I am done.