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## **Municipal government: get on boards. (FEATURE on municipal law)**

Bowal, Peter

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We often wonder how the immense machine of government works. The municipal level of government, whether it is urban (such as a town or city) or rural (municipal district and council), is said to be the "closest to the people". It deals with matters such as parks, utilities (water, electricity, and sewers), the police, garbage collection, fire and ambulance services, traffic and parking, public health, signage, noise, business licensing, sports and recreational facilities, local elections, road building and maintenance, libraries, plant and animal control, public transportation, the arts, and even some social services. There is legislation for each of these subject matters. Public and Roman Catholic schools are operated by local school boards and regional health authorities are governed locally. All of these important domains in our daily lives are delegated by the province to the municipality to manage.

Occasionally, the constitutional limits of other municipal jurisdictions are tested and defined. For example, over the years, various civic authorities have unsuccessfully attempted to regulate prostitution by controlling usage of the streets (see Supreme Court decision in *Westendorp v. R.* 1983). On the other hand, municipal control of street use to reduce rioting has been found constitutional (see Supreme Court decision in *A.G. Can. v. Montreal*, 1978).

### Municipal Administration

Administration is the day-to-day operation of government. This happens through the creation and implementation of law and policy. Administrative actions seek to balance the private interest of directly affected parties with the public interest of all in the municipality. The decision to require a proposed building to be scaled down in order to better blend into the neighbourhood, for example, is made in the public interest. Everyone applies to the municipal government for a licence or permit or is subject to its administration, such as rules on land development or parking, in innumerable ways.

Administration, which is the implementation and enforcement of the law to countless individual cases, means that there must be an efficient method of processing applications and complaints from citizens of the municipality. Our elected politicians maintain the highest government profile, but they cannot carry out the day-to-day work of implementing the laws and policies that they make. The mayor or councillors cannot take the time to issue business licences or parking tickets, or collect library fines. They are too busy making law and policy, and they are not experts in these matters. Rather, the bureaucracy consists of the very large number of specialized, expert individuals doing this work. They often act alone, such as a clerk at the counter issuing a dog licence or someone assessing the value of your house for property taxes.

## Individual Administrators versus Boards

Most administrative decisions are made by individual officials. However, policy creation and the processing of specific appeals against the enforcement of laws are usually handled by groups variably known as councils, departments, committees, agencies, commissions, boards, and tribunals. For example, a denial of a building permit by a planning officer might be appealed to the Development Appeal Board. A policy-making board such as the Heritage Board might make guidelines on designating heritage sites within the municipality.

Administrators and boards may be under a legal duty to render certain decisions, but they more typically enjoy generous discretion in determining, for example, whether an applicant receives a licence. They must decide within the law, and they normally treat similar cases in similar ways, following objective and public criteria. Dealing with many cases, they are specialists in that subject area. Even the courts will defer to the expertise of administrative boards to make these decisions. These boards complete an integrated administrative structure that is effective and inexpensive to deal with the practical business of the municipality.

## Citizen Participation on Municipal Boards

Since municipalities are by far the closest government to people's daily lives, there are many opportunities to participate in the decisions of these boards.

## Serving as a Board Member

Across Canada, each year positions open up on municipal appeal and policy-making boards. Almost always these are unpaid, volunteer appointments for a year and one's appointment is usually renewable at the end of the year. Elected members of the municipal council make the public-member appointments to the boards. They look for a representative membership from the community in terms of backgrounds. Most members are not lawyers. Sometimes experience or qualifications in a field are sought--such as in the local tourism board where marketing skills are valuable--however, most boards do not require any particular training or preparation. As useful as technical expertise is, one's ability to fairly decide a case on its merits while balancing the public and private interests involved is the key element for citizen appointees.

Some boards may meet as often as weekly or biweekly with large appeal dockets; other boards may only meet occasionally throughout the year. The legislation may stipulate that a certain number of council members shall also sit on a board. Even though lay board membership may be a significant commitment of time and effort, there are usually more applicants than available positions, and most citizens who have served report that it was a valuable learning and, even, fun experience.

The provincial and federal governments also appoint many lay people to their respective administrative boards, but these appointments are often remunerated, if only by reimbursement of costs and a per diem honourarium. Some appointments such as federal parole and immigration board members are full-time, paid careers.

## Appearing as a Party Before a Board

Due to the pervasiveness of municipal administration in our lives, we may be unsatisfied with a municipal official's decision and wish to appeal it to a board. This puts one on the other side of the table.

The board will usually have been granted minimal legislative power by the enabling legislation that created the board. The laws, rules, and procedures made by delegated authorities (the boards) are called subordinate legislation. This means that the law allows boards to make their own rules which apply to the conduct of their own hearings.

Examples of this kind of rule include the kind of notice that is given, the rules of evidence that are followed, the numbers required for a quorum of the board, and the people or organizations that have the right to make representations to the tribunal. The board may require an appeal in specific form to be filed within a period of time after the first decision, setting out the grounds for the appeal. The board's procedures should be studied. These rules and procedures for the board's hearing are often available on a board's website or from the executive secretary of the board, who is usually in an excellent position to provide good advice before the hearing.

What is more important than the legislative function is the board's quasi-judicial function. The board will judge the appellant's circumstances in the same way that a court does. The material facts must be clear and applied to the law to render a decision. Some weight is given to earlier administrative decisions, but a majority of board members may view the facts and issues of a current case differently, and they may place a different interpretation on the applicable law.

One should know the reason why one was unsuccessful at the first level (often with an employed individual) and be prepared to explain why that decision should be reversed. Few board cases are so similar that they constitute precedents that the board must follow strictly. Since the only hearing you may get before the board could appear to you strange, intimidating and quick, you might want to visit and observe a few hours of board hearings several weeks before your own hearing is scheduled. The hearings are invariably open to the public to observe. At your hearing, it is important to listen to, and answer, any questions posed by board members. As lay people themselves, board members may be persuaded by factors that a judge in a courtroom would not find influential.

The appeal to the board will be handled in a more informal and more expeditious fashion than litigation in a courthouse. The rules of evidence and procedure are relaxed in an administrative board hearing as compared to an appeal in a courtroom. One does not need to hire a lawyer before a municipal board and few appellants do so. They come prepared to argue the merits of their own appeals before their peers in the community. While there may be a nominal cost to file the appeal with the board, there is rarely any further cost associated with an unsuccessful appeal.

The board may consist of as few as one person to as many as several dozen people. Often the full board divides into several panels of about three adjudicators for each appeal. Overall, it is helpful to remember that the board hearing your appeal is a specialized body that deals exclusively with its subject area. It reviews many cases each year and often hears the same points. In your

preparation, it is worthwhile to consider addressing your mind to how your position is in some way exceptional and how it also supports the public interest.

Peter Bowal is a Professor of Law with the Haskayne School of Business, University of Calgary in Calgary, Alberta.

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