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Presentation to the Standing Committee on Justice

**Bill 38: The Provincial Offences Act and Municipal By-law
Enforcement Act**

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On behalf of the Association of Manitoba Municipalities, I would like to provide comments about Bill 38: The Provincial Offences Act and Municipal By-law Enforcement Act.

As the organization representing all Manitoba municipalities, the AMM identifies and addresses the needs and concerns of its members in order to achieve strong and effective municipal government.

The AMM has lobbied for several years to resolve a number of issues with municipal by-law enforcement. As a result, we would like to make comments specifically about The Municipal By-law Enforcement Act.

We were part of a working group consisting of representatives from the Province of Manitoba and the Manitoba Municipal Administrators Association.

The most important issue this group identified was the ability to effectively enforce by-laws to ensure compliance with available resources.

Municipal by-laws need to have teeth, and with limited resources for enforcement, this has been a challenge in the past.

The AMM supports the proposed changes to the by-law enforcement process for municipalities through an administrative scheme.

The new scheme is significantly different from the existing process, and it is based on a successful model implemented in British Columbia.

Initially, the new scheme was required for municipalities who wish to enforce parking by-laws.

We are pleased that municipalities will have the option to include other by-laws under the new enforcement process, as long as the penalty is under a certain amount.

The AMM believes a faster and simpler by-law enforcement process will save municipalities and the public both time and money.

Most importantly, we hope municipalities will now be able to effectively enforce their by-laws.

This is one of the core municipal responsibilities, and it's one of the main reasons why the AMM has lobbied on this issue for so long.

However, I also want to say that the AMM and the City of Winnipeg share similar concerns about Bill 38.

The AMM does appreciate the amendment to *The Drivers and Vehicles Act* requiring information to be shared with municipalities or local government districts for the purpose of enforcing by-laws and collecting fines.

We are also pleased with the additional powers municipalities will have to collect fines, such as seizing property or placing liens.

However, the AMM is concerned about a few of the differences between the BC legislation and Manitoba's proposed legislation.

First, Bill 38 allows the adjudicator to reduce the penalty for a by-law violation if grounds for doing so exist under the municipal by-law or if the adjudicator "is satisfied that exceptional circumstances exist."

The AMM feels this enables the adjudicator to allow their personal bias to influence their decisions.

It also creates uncertainty about outcomes, even if the adjudicator agrees that a by-law violation was committed.

In BC, the adjudicator can only confirm the penalty or compliance agreement or cancel the by-law notice.

The adjudicator does not have the power to reduce the penalty for a by-law violation.

These powers may be more appropriate for Manitoba as well.

Secondly, there is uncertainty regarding the training to be provided to adjudicators.

The AMM feels adjudicator training costs should be covered by the Province of Manitoba.

Municipalities should also have input on the content of this training and should be on the selection panel for the adjudicator rosters.

It is especially important that adjudicators be trained to make impartial decisions, particularly with their ability to reduce penalties.

Also, since there is no appeal process, a municipality cannot appeal the decision of an adjudicator to reduce or cancel a penalty.

Granting adjudicators powers they don't have elsewhere will act as a poor deterrent for violating by-laws. It may also undermine the purpose of the by-law and its enforcement, which is to achieve compliance.

The existing process is already cost-prohibitive for many municipalities, and allowing adjudicators these powers could potentially make the costs of the new enforcement process even higher.

Finally, at the request of many AMM members, we strongly suggest including a role for Planning Districts in by-law enforcement under Bill 38.

The AMM made this request directly to the Honourable Andrew Swan, Minister of Justice, when we met with him on June 5, 2013.

Planning Districts are the bodies responsible for administration and enforcement of the development plan for an entire Planning District.

They are also responsible for secondary plan, zoning, building, and maintenance or occupancy standard by-laws.

Their responsibilities extend to member municipalities and for the entire district under section 14 of *The Planning Act*.

It is for this reason the AMM believes Planning Boards should also have the ability to enforce by-laws using the new administrative scheme.

One option would be to allow building inspectors employed by the Planning District to act as municipal screening officers in certain cases.

Since by-laws dealing with building and maintenance standards are meant to ensure safety, it is extremely important that these by-laws are effectively enforced.

In closing, the AMM does feel overall Bill 38 is a step forward on an issue that has been stalled for some time.

The AMM appreciates the opportunity to provide these comments.

Thank you for your consideration.