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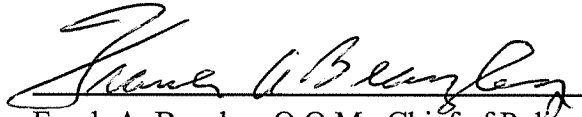


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Halifax Regional Council
May 10, 2005

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


Frank A. Beazley, O.O.M., Chief of Police

DATE: April 25, 2005

SUBJECT: Curfew

INFORMATION REPORT

ORIGIN

At the Committee of the Whole on March 22, 2005 under Item #5, Councillor Sloane referred to the many incidents of swarmings and vandalism by youth and requested a report with respect to the possibility of putting a curfew in place.

BACKGROUND/DISCUSSION

Halifax Regional Police contacted nineteen (19) Canadian police agencies of various sizes. Those contacted were: Fredericton, Montreal, Ottawa, Toronto, Hamilton, London, Windsor, Waterloo (ON) Regional, York (ON) Regional, Niagara (ON) Regional, Halton (ON) Regional, Winnipeg, Regina, Saskatoon, Calgary, Edmonton, Saanich (BC), Victoria and Vancouver.

All were questioned whether their respective municipalities had an existing curfew bylaw and, if so, whether it was enforced. For those with no curfew bylaw, a question was asked regarding what alternative methods were used by their police department to deal with the issues of youth crime and victimization. Responses were received from all but Halton, Niagara, Vancouver and Victoria. Of those responding, only Fredericton and Saskatoon advised they have a curfew bylaw. Both of these agencies advised that their police departments do not enforce the bylaw.

Municipalities which have explored and/or implemented curfew bylaws

Through this research and from the responses received, it was discovered that governments have for centuries and again in recent years resorted to imposing curfews to curb rising rates of crime and victimization. Canadian municipalities have been no exception. Smaller Canadian towns appear to favour curfew bylaws as an enforcement tool more readily than larger cities. Fifteen (15) towns in New Brunswick implemented curfew bylaws in 2001 to address this issue.¹ The Alberta towns of Rocky View, Red Deer and Drumheller as well as the Town of Yarmouth, Nova Scotia, have all passed curfew bylaws within the last seven (7) years².

However, not every community or small city which explores the implementation of a curfew bylaw follows through with it. Prince Albert, Saskatchewan; Yorkton, Saskatchewan; and Huntingdon, Quebec City Councils have, within the last year, either considered the implementation of a curfew bylaw and/or have approved one to deal with the issues of youth crime and victimization. Only Huntingdon³ City Council passed a curfew bylaw. According to a report by the Canadian Broadcasting Corporation, "[In general, curfews are not a major political issue in Canada, say the Federation of Canadian Municipalities and the Association of Municipalities of Ontario. While most municipalities may have such bylaws, they don't seem to be enforced."⁴

Despite opposition from some parents, the City of Huntingdon, Quebec located 60 kms Southwest of Montreal, passed a curfew bylaw in June 2004 banning children 16 and under from being out at night past 10:00 pm unless they could demonstrate they had an acceptable reason and were in compliance with the list of exceptions stipulated within the bylaw. One month later, Huntingdon's representative in the Quebec National Assembly lodged a human rights complaint stating the curfew violated the Quebec Charter of Rights and Freedoms, a provincial statute not unlike the Canadian Charter of Rights and Freedoms. The Quebec Human Rights Commission agreed the curfew bylaw contravened the Quebec Charter provisions which guarantee freedom of movement and freedom of assembly regardless of age. The decision effectively nullified the curfew bylaw.

¹Curfews: Do You Know Where Your Children Are?" CBC News Online: August 19, 2004.

² Refer to attached table for the population of each of these communities.

³ A motion to explore a curfew bylaw was defeated by Yorkton Council in 2004. Prince Alberta City Council discussed the suggestion in 2004 but did not explore it any further.

⁴ Id, Curfews.

Huntingdon City Council thereby suspended its curfew bylaw and replaced it with a new unique bylaw. The new bylaw established a fine structure for parents whose children are found on city streets or in parks without parental supervision between 10:30 pm and 6:00 am. Fines range from \$50 (first offence) - \$100 (second and subsequent offences). Huntingdon parents immediately vowed to launch a similar legal challenge to the new bylaw. To date, the Huntingdon Human Rights complaint is the only known legal challenge to which a curfew bylaw has been subjected in Canada.

The City of Saskatoon has one of the oldest curfew bylaws in Canada. It was passed by City Council in 1937 and established fines for any child found on a city street after prescribed hours - first offence of \$1.00, second and subsequent offences of \$2.00. This bylaw has not been enforced in recent memory but has been the subject of frequent Council discussions in recent years.

Indeed, this was evident in 1995, 1998 and again in 2002 when Saskatoon City Council inquired about the usefulness of enforcing it in response to a rash of youth crime. A concern was raised in 1995 by Saskatoon Police in response to the initial inquiry. It centered on the usefulness of the curfew and possible Charter challenges to the enforcement of it. Saskatoon Police Chief Sabo echoed the recent comments of Deputy Chief McNeil⁵ when he advised Council in response to the 1998 inquiry that Canadian police services "...do not believe curfew bylaws are an effective means of controlling youth crime."⁶

In October 2002, Saskatoon City staff were asked to survey other municipalities in North America on the existence of curfews for young persons. Larger cities in Western Canada were contacted: Regina, Prince Albert, Winnipeg, Victoria, Vancouver, Medicine Hat, Lethbridge, Edmonton and Calgary. Only Lethbridge and Medicine Hat had a curfew bylaw at that time and neither had enforced it for several years. The Lethbridge Bylaw Enforcement Officer further indicated in October 2002 that there was no intention to begin to enforce this bylaw. In response to the 2002 Council inquiry, Chief Sabo indicated in a letter to City Administration that "the Saskatoon Police Service does not support a curfew bylaw."⁷ When contacted by Halifax recently, Saskatoon Police advised they still do not enforce this bylaw.

Many curfew bylaws enacted in the United States have undergone constitutional challenges in the last decade with many having been struck down by the presiding courts. Cities and towns in the United Kingdom and Australia have in recent years also faced rising rates of youth crime and victimization and, in response, considered and/or implemented curfews to decrease rates. Similar

⁵Curfews Difficult to Enforce, Police Say", Halifax Chronicle Herald, March 30, 2005.

⁶Minutes of the Regular Meeting of Council (Saskatoon), Monday October 20, 2002. Legislative Report No. 17-2002, Section B - Office of the City Solicitor, B1 Enquiry - Curfew Bylaw. (File No. CK. 5000-1).

⁷Id.

concerns about constitutional rights infringement have also been expressed by City Councils and citizens in both of these countries.

Alternative approaches used to address curfew issues

Because of the difficulty in enforcing curfew bylaws, Ontario police agencies have indicated they resort to a variety of means for dealing with the issue of youth being out at night. Limited powers are available to police officers in Ontario through the Provincial *Children and Family Services Act*⁸. At first glance this legislation appears to offer police a workable alternative to enforcing a curfew. However, Ontario police services have advised that the Ontario courts have rendered a very strict interpretation of loitering in this section of the Act thus making it difficult to rely on for the stated purposes. A loitering complaint must be received for a charge to be laid.

Time prohibitions have been incorporated into other municipal bylaws which some Ontario agencies have advised provide a tool that allows them to address youth crime and victimization without specifically targeting youths. City Parks Bylaws generally contain provisions prohibiting **anyone** from entering into a city park between specified hours. The City of Montreal deals with this issue in the same manner. There, Parks Bylaws were brought forth to address specific populations in various parts of the city. Thus, by denying access to **anyone**, it was thought to be easier to regulate "problematic populations" whether it be youth, homeless persons or drug users.

Additionally, some Public Nuisance, Loitering and Streets bylaws contain similar provisions police can use. York Regional Police has also advised it relies on mischief provisions of the *Criminal Code of Canada* as well as the Provincial *Trespass to Property Act*; the latter is similar to Nova Scotia's *Protection of Property Act*. Toronto Police has advised it also enforces the *Trespass to Property Act* to respond, where appropriate, to these issues.

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- ⁸ A child under 16 years of age shall not loiter in a public place or be in a place of entertainment without an adult between the hours of 2400 and 0600 (s. 79(5) CFSA).
- b. A child found contravening this curfew may be apprehended without warrant and returned to his/her parent or guardian as soon as practicable.
 - c. Where it is not possible to return the child to his/her parent or guardian within a reasonable time, the child shall be taken to a place of safety as determined by the CAS until the child can be returned to the parent or guardian (s. 42 CFSA).
 - d. Permitting breach of a curfew may be an offence committed by the parent or guardian of the child, not the child (s. 85(1) CFSA).

Legal Issues Surrounding Curfews

As pointed out earlier in this report, there have to date been no judicial challenges of any curfew by-laws in Canada under the provisions of the *Canadian Charter of Rights and Freedoms*. This is probably due to the fact that most municipalities that have curfew by-laws do not actively enforce them and, as a result, few opportunities arise for such a challenge.

Nevertheless, staff of Legal Services have stated that, in their opinion, were such a challenge to go forward, it is likely to succeed and the by-law be struck down.

Section 15 of the *Charter of Rights and Freedoms* provides:

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.[emphasis added]

Section 1 of the *Charter* provides:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society

A curfew by-law will generally limit the rights of people under a fixed age from being out after a fixed hour based solely on the enumerated ground of age. This will clearly bring into play Section 15 of the *Charter*. Those advocating a curfew do so on the basis that a blanket exclusion on all youth under a certain age would act to prevent the swarming actions of a very few individuals. In the opinion of Legal Services, such a ban denies the entire youth population of the municipality benefits on account of presumed propensity and actions of a few. This denies essential human worth by applying a stereotype, is discriminatory and denies a benefit based on the enumerated ground of age. Such a great exclusion will most likely fail the minimum infringement test of Section 1, specifically, on the grounds that preventing all youths from being outside after a prescribed hour is not rationally connected to the objectives of stopping swarmings, is not the least restrictive way to combat the perceived problem and is not likely to accomplish the objective.

As noted earlier in this report, a Quebec municipal curfew by-law was challenged under the *Quebec Charter of Rights and Freedoms*. The Quebec Human Rights Commission agreed the curfew bylaw contravened the *Quebec Charter* provisions which guarantee freedom of movement and freedom of assembly regardless of age. While not identical to the *Canadian Charter of Rights and Freedoms*, the *Quebec Charter* is similar in effect. Although the decision of the Quebec Human Rights Commission is not binding in the rest of Canada, it does lend support to the opinion that a challenge of a curfew by-law under the *Canadian Charter of Rights and Freedoms* would suffer the same fate.

ATTACHMENTS

Community Populations- Curfew By-Laws

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: F. A. (Tony) Burbridge, Deputy Chief of Operational Support 490-7138

ATTACHMENT

Community Populations- Curfew By-Laws

City	Curfew	No Curfew
Fredericton (pop: 47,500)	X (1990)	
Huntingdon, Que (pop: 98,030)		X
Montreal (pop: 3,401,000)		X
Toronto (pop: ~4,000,000)		X
Ottawa (pop: 774,072)		X
Hamilton (pop: 662,401)		X
London (pop: 326,539)		X
Windsor (pop: 208,402)		X
Waterloo Region (pop: 480,000)		X
York Region (pop: 259,332)		X
Winnipeg (pop: 650,000)		X
Regina (pop: 192,800)		X
Saskatoon (pop: 213,600)	X (1937)	
Yorkton, SK (pop: 200,000)		X
Prince Albert, SK (pop: 40,000)		X
Red Deer (pop: 67,707)	X (1998)	
Calgary (pop: 522,315)		X
Edmonton (pop: 937,845)		X
Saanich, BC (pop: 109,639)		X
Yarmouth, NS (pop: 8,000)	X(1998)	