Innovations in Municipal Bylaw Adjudication

A Mitacs Accelerate Proposal created by the College of Law at the University of Saskatchewan and submitted to the Saskatchewan Urban Municipalities Association

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1.0 Introduction and Background Information

Saskatchewan's many municipalities differ in populations, geography, and major industries. Each face problems unique to their circumstances. In the province's existing model of bylaw adjudication and enforcement, municipalities must prosecute bylaw offences at Provincial Court in the same general manner as most criminal and regulatory offences. This "one-size-fits-all" approach fails to account for the differences between bylaw offences and criminal offences. It also fails to acknowledge or address the significant differences between communities: while parking enforcement may be a significant issue in larger cities, smaller communities may instead be concerned with animal control, unsightly properties, and junked vehicles.

This report constitutes the outcome of a study supported by funding from the Saskatchewan Urban Municipalities Association and a Mitacs Accelerate grant. The objective of the study was to find innovative approaches that would make municipal bylaw enforcement and adjudication in Saskatchewan more accessible, effective, and efficient and would reduce the involvement of the formal court system. The study investigated the current bylaw prosecution situation in Saskatchewan, consulted with stakeholders to gather valuable information, and reviewed other provinces' bylaw offence administrative schemes. Our findings from this research have led us to propose legislative amendments that would provide municipalities the option of enrolling in a new administrative system for bylaw prosecutions.

1.1 Project Scope: Different Municipalities in Saskatchewan

Saskatchewan currently has 773 urban, rural and northern municipalities.[1] Urban municipalities must meet standards prescribed in *The Cities Act*[2] and *The Municipalities Act*,[3] namely population thresholds including cities (>5,000 population),[4] towns (500-5,000),[5] and villages and resort villages (300-500).[6] Rural municipalities are designated geographical areas of land and are also governed by *The Municipalities Act.* RM's are mostly populated by farmers and those on acreages, and any hamlets within its boundaries must not exceed a population of 300 residents. *The Northern Municipalities Act* governs all remaining municipalities in the northern half of Saskatchewan, accounting for 4 percent of the province's population.[7] Saskatoon and Regina can support a designated "Bylaw Court", where disputes are adjudicated at a specific time and place separate from regular docket proceedings at Provincial Court.[8] Survey results, to be discussed throughout this report, indicated that most municipalities utilizing regular proceedings at Provincial Court deal with time-consuming and costly bylaw prosecutions that do not meet adjudication or enforcement expectations.[9]

On top of performing independent research, Mason Stott and Ciara Richardson (the "researchers") both had the privilege of meeting with stakeholders, city councillors, bylaw enforcement officers, and city planners in order to gain insight into the way that bylaw enforcement functions within Saskatchewan, Manitoba, Ontario, and British Columbia. Additionally, independent research examined the ways that bylaw prosecutions are implemented and enforced in commonwealth countries outside of Canada. Finally, the researchers created a

[1] Saskatchewan, *About the Saskatchewan Municipal System*, <https://www.saskatchewan.ca/government/government-structure/local-federal-and-other-governments/your-local-government/about-the-saskatchewan-municipal-system#general-information> [saskatchewan.ca] (9 August 2021).
[2] SS 2002, c C-11.1 [*Cities Act*].
[3] SS 2005, c M-36.1 [*Municipalities Act*].
[4] *Cities Act*, *supra* note 2, at section 39(1).
[5] *Municipalities Act*, *supra* note 3, at section 52(2).
[6] *The Municipalities Regulations*, RRS c M-36.1 Reg 1, at section 6(1) [*Municipalities Regulations*].
[7] Northern Saskatchewan Administration District, online: < https://www.saskatchewan.ca/business/first-nations-metis-and-northern-community-businesses/economic-development/northern-administration-district> (24 August 2021).
[8] Municipal (Bylaw) Court, online: Courts of Saskatchewan <https://sasklawcourts.ca/provincial-court/municipal-bylaw-court/> (24 August 2021).
[9] Bylaw Survey Detailed Response, August 2021.

survey respecting bylaw related issues and circulated it to urban municipalities in Saskatchewan and throughout Canada to assess the needs of the municipal sector.

Current bylaw adjudication and enforcement in Saskatchewan demands significant time and resources from the Provincial Court system, resulting in difficult access to court services for multiple parties, including bylaw enforcement officers, prosecutors, and the public.[10] First, the inherent complexity of bylaw offence prosecutions is no longer sustainable due to the amount of disputed bylaw matters brought forward and the limited resources of the judiciary. Second, Provincial Courthouses in Saskatchewan are geographically separated by distances presenting physical barriers to access.[11] The purpose of this report's research and consultation is to create a well-rounded proposal for a more sustainable, efficient, cost-effective, and overall more functional bylaw adjudication and enforcement system to accommodate Saskatchewan's high number of municipalities.

The purpose of this proposal is not to create a uniform bylaw enforcement and adjudication system wherein each municipality within Saskatchewan would be expected to follow the same set of bylaws or the same adjudication process as their neighbouring municipalities. It is well established that across the many urban, rural, and northern municipalities in Saskatchewan, there will be varying needs and responsibilities. Instead, the goal for this project would be to promote the autonomy of municipalities, while bolstering bylaw compliance rates and facilitating more expeditious and effective alternative dispute resolution (ADR) methods.

1.2 Municipal Lawmaking Authority: Provincially-allocated Powers

In accordance with section 92 of the Canadian *Constitution Act*, provinces have the authority to create municipalities and to self-govern. Municipalities have the authority to create certain laws called "bylaws". Bylaws are often inaccurately perceived by the public as "soft law" and of limited enforceability or importance. "Soft law" is a legal instrument that is not legally binding and often include codes of conduct, guidelines, roadmaps, and peer reviews.[12] However,

[10] Anonymous, Personal Communications, May 2021.
[11] Town of Kindersley, Personal Communication, May 2021.
[12] "Soft law", online: OECD <https://www.oecd.org/gov/regulatory-policy/irc10.htm> (16 August 2021).

if bylaws are properly passed they are legally enforceable like other Canadian law. Municipalities have authority to enact bylaws, so long as they are *intra vires,* meaning "within the powers granted" to the municipality under statutory authority.[13] If a bylaw is found to be *ultra vires,* or "beyond the powers granted", the bylaw will have no force or effect within that municipality.[14]

Given that each municipality will have distinct needs and obligations; the bylaws for each municipality will naturally have some variation. According to Section 4(2) of the *Municipalities Act*, the general purposes of municipalities are the following:

(a) to provide good government;
(b) to provide services, facilities, and the like that, in the opinion of council, are necessary or desirable for all or a part of the municipality;
(c) to develop and to maintain safe, and viable communities;
(d) to foster economic, social and environmental well-being; and
(e) to provide wise stewardship of public assets.[15]

In understanding the general objectives of municipalities, as they operate at the pleasure of the province, it is crucial to note that "good government" may apply very distinctly depending on the municipality itself. In addition to total population, there are other qualities that differ between municipalities, including demographics such as culture, language, and religion, average income of residents, average level of education amongst residents, and geographic positioning of the community such as proximity to other municipalities and distance to the nearest Provincial Courthouse, among others. Although *The Municipalities Act* does not explicitly define "good government", its section 3 indicates principles all municipalities must strive to uphold in their role as local government, including demonstration of "responsible and accountable" leadership, ability to self-govern and act in the best interests of residents, appropriately and flexibly respond to existing and future needs of the municipality, and govern creatively and innovatively, all while encouraging and enabling public participation in the governance process.[16]

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[13] Saskatchewan Ministry of Municipal Affairs, *Municipal Bylaw Guide,* <https://sarm.ca/pub/departments/Resources/MCDP/Municipal%20Resources/Resource%20Materials/3.%20Bylaws%20&%20Enforcement/bylaw-guide-for-municipalities.pdf> [sarm.ca].
[14] *Ibid.*
[15] *Sask Municipal System, supra* note 1.
[16] *Municipalities Act, supra* note 3, at section 3.

The preceding qualities may specifically take the form of facilitating the resolution of disputes over bylaw offences or between neighbours, using tax dollars to maintain the appearance of the community, enforcing local bylaws to ensure a safe and pleasant experience for residents and visitors, accurate and transparent city council operations, and other identified interests of the local population. Finally, as municipalities continue to develop and change over time, new bylaws need to be passed and existing bylaws occasionally revisited and amended. These shifts are necessary for a municipality to continue providing "good government" and to sustainably align with provincial objectives. Law reform to improve bylaws is a worthwhile endeavor for all municipalities.

1.3 Differences between Regulatory and Criminal Offences

Although there is no consensus in Canadian case law or academia which provides a clear distinction between regulatory offences and criminal offences, the Law Commission of Ontario's 2011 legislative reform report, *Modernization of the Provincial Offences Act*[17] (LCOR) argues three relevant points. First, *mens rea* (guilty mind) applies to all criminal offences, yet such an onus does not exist for regulatory offences unless prescribed by statute.[18] Second, the Report cites[19] the decision in *R v Wholesale Travel Group,*[20] when it explains that the *Canadian Charter of Rights and Freedoms* (*Charter*)[21] procedural protections that apply to criminal offences may apply differently to regulatory offences.[22] Third, the purpose of sentencing criminal offenders (to punish the wrongdoer) is distinct from penalties for regulatory offenders (wrongdoer must compensate society for the inconvenience caused).[23]

The Supreme Court of Canada (SCC) described the nature of criminal offences in its 1991 case, *R v Wholesale Travel Group,* as involving actions that are "so abhorrent to the basic values of human society that it ought to be prohibited completely", "repugnant" to all societies,

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[17] Law Commission of Ontario, *Modernizing the Provincial Offences Act: A New Framework and Other Reforms: Final Report* (Toronto: Law Commission of Ontario, 2011), available online: <https://www.lco-cdo.org/en/our-current-projects/provincial-offences-act/poa-final-report-august-2011/> [LCOR].
[18] *Strasser v Roberge* [1979] 2 SCR 953.
[19] LCOR, *supra* note 17, at 25.
[20] *R v Wholesale Travel Group* [1991] 3 SCR 154 [*Wholesale Travel*].
[21] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 91(24) [*Charter*].
[22] *Wholesale Travel*, *supra* note 20, at para 130.
[23] *Criminal Code*, RSC 1985, c C-46, at section 718.2 [*Criminal Code*].

and "universally" recognized as crimes.[24] Additionally, criminal offences are simply more "obvious wrongs" and include offences such as murder and assault that "involve direct, immediate and clearly apparent harm to identifiable victims, and [that] are done with manifestly wrong intention."[25] Meanwhile, regulatory offences are deemed to be wrong not because they are objectively wrong, but because society says they are wrong and they are now written into law.[26] There is nothing inherently or objectively wrong or harmful about parking on a street for more than 2 hours, although these types of violations arguably do impede the efficient operation and functioning of traffic. Also, regulatory offences occur when people are engaged in tasks that are not necessarily unwanted by society, but that may even be valuable, such as vehicles transporting residents around a city. Regulatory provisions dictate *how* drivers should conduct their actions, rather than if the action of driving should be allowed or not. The SCC stated that regulatory offences are "prohibited, not because [they are] inherently wrongful, but because unregulated activity would result in dangerous conditions being imposed upon members of society, especially those who are particularly vulnerable."[27] Just one driver exceeding the posted speed limit has the capacity to cause harm. However, if every driver exceeds the speed limit, the danger to other drivers, pedestrians, and bikers increases dramatically.

Imprisoning criminal offenders is meant to punish wrongful behaviour, whereas financially penalizing regulatory offenders is a response that reimburses the government for costs resulting from the contravention and discourages further violations. For example, littering is an inconvenience to local communities and imposes expenses on others, namely from the deterioration in the appearance of the neighbourhood as well as the time and resources spent by either another resident or the local government to clean up after the wrongdoer. Accordingly, penalties for regulatory offences address the results of the action, whereas penalties for criminal offences are meant to punish the action committed.[28]

The LCOR concludes that, based on the distinctions between these two types of offences, a separate code for the prosecution, enforcement, and sentencing of regulatory offences should

[24] *Ibid,* at page 218.
[25] Law Reform Commission of Canada, Working Paper 2, *The Meaning of Guilt: Strict Liability* (Ottawa: Information Canada, 1974) at 3.
[26] *Ibid.*
[27] *Wholesale Travel, supra* note 20, at page 218.
[28] *Ibid,* at page 219.

exist that is unique from Criminal Code procedures.[29] This reasoning follows the principle of "proportionality", wherein crimes warranting trials and strict procedural fairness are those with serious implications, such as life imprisonment for a murder charge.[30] Alternatively, regulatory offences including parking tickets have minimal implications and so do not require a trial with maximum procedural fairness and where the cost to the state of trial administration far exceeds the negative effects stemming from the offence.[31] As the LCOR states, "It would appear to be completely incongruent with the objectives of proportionality and efficiency to revert back to a complex procedural code with its extensive procedural protections for primarily minor, regulatory offences."[32]

1.4 Conclusion

Municipalities should have the autonomy to local governance of affairs in their communities. Currently, Saskatchewan municipalities have this authority although there is substantial room for improvement. Pursuant to the division of powers in the *Canadian Constitution,* municipalities may only do what their respective provincial government allows them to do. To change the mechanisms available for adjudicating and enforcing bylaws in Saskatchewan, one of the necessary and major components of enabling such a change is by reforming the applicable legal scheme.

2.0 History and Status Quo of Bylaw Adjudication

While British Columbia, Alberta, Manitoba and Ontario have all implemented, to varying degrees, AMP systems governing bylaw and other regulatory offences beginning in 2003. Saskatchewan has not followed this trend and instead maintains its existing bylaw adjudication system under *SOPA* and with continued reliance on the *Criminal Code*. The following section discusses the present situation in Saskatchewan and highlights numerous efficiency and cost-effectiveness concerns of the framework. Section 2.2 explains the serious issues realized by Ontario as municipal bylaws were previously dealt with through the Ontario Court of Justice

[29] LCOR, *supra* note 17, at page 30.
[30] *Ibid.*
[31] *Ibid,* at page 3.
[32] *Ibid,* at page 30.

(ONCJ), particularly with respect to unacceptably long periods of time occurring between bringing a case to court and the conclusion of the trial. Recent SCC jurisprudence has amplified the seriousness of lengthy times of court proceedings, with excessively time-consuming matters eventually risking dismissal and withdrawal of charges.[33]

In following the lead of larger provinces and in understanding the issues that they face, a better conclusion may be drawn regarding what is appropriate for Saskatchewan. With the increasing size of cities like Saskatoon and Regina, larger centers like those in Alberta, British Columbia, Ontario and Manitoba can be an excellent indicator as to what will be sustainable in this province. Saskatchewan continues to grow and expand, and it is expected that wait times at the Provincial Court level will become an increasing issue for bylaw adjudication. It would be prudent to receive the observations made by other larger provinces and to anticipate the increasing wait times with Provincial Court with a more productive plan in mind, such as a bylaw adjudication and enforcement system separate from the courts.

2.1 Procedural Differences between Saskatchewan's *Summary Offences Procedure Act* and the federal *Criminal Code*

Municipalities in Saskatchewan are governed by one of three pieces of legislation: *The Cities Act*,[34] *The Municipalities Act*,[35] and *The Northern Municipalities Act*.[36] These Acts dictate the extent and limits of power the province has assigned to municipalities. For example, *The Cities Act* dictates the composition of a municipal council,[37] the appropriate scope of bylaws,[38] the procedure for council to follow when passing bylaws,[39] and how bylaw infractions are to be adjudicated and enforced.[40] The procedure for prosecuting bylaw offences in Saskatchewan is discussed in the following paragraphs, and is illustrated in the form of a flowchart in Appendix B

First, section 338 of *The Cities Act*, 381 of *The Municipalities Act*, and 402 of *The Northern Municipalities Act* state that anyone contravening a municipal bylaw is guilty of an

[33] *R v Jordan*, 2016 SCC 27 [*Jordan*].
[34] SS 2002, c C-11.1 [*Cities Act*].
[35] SS 2005, c M-36.1 [*Municipalities Act*].
[36] SS 2010, c N-5.2 [*Northern Municipalities Act*].
[37] *Cities Act*, *supra* note 34, at section 5.
[38] *Ibid*, at section 8.
[39] *Ibid*, at section 77.
[40] *Ibid*, at section 338.

offence and liable "on summary conviction." *The Summary Offences Procedure Act's*[41] (*SOPA*) section 4(2) states that the words "on summary conviction" include the summary conviction provisions noted in *SOPA's* section 4(1). The result is whenever a bylaw is associated with the words "on summary conviction", such bylaws are subject to *SOPA's* 4(1), which itself states that bylaw offences resulting in fines, penalties, or imprisonment may be prosecuted under the *Criminal Code's* summary conviction provisions. The other option is to prosecute the offence under *SOPA* itself.

Prosecuting under *SOPA* is preferable to following the summary conviction provisions in the *Criminal Code* because of *SOPA's* ability to order default convictions when defendants do not appear at court.[42] Problematically, default convictions cannot be ordered under the *Criminal Code.*[43] The practical benefit of a default conviction is they minimize the time required to collect on unpaid tickets and improve a municipality's likelihood of collecting on the ticket at all.[44] Without a default conviction, the *Criminal Code* may force a Provincial Court justice to issue a bench warrant directing local law enforcement to arrest and bring the accused before the court. A Provincial Court justice does not have the option to find the defendant liable when they fail to appear at court. This process typically results in an ineffective continuous cycle of arresting and bringing the accused before the court, followed by the accused failing to appear at the next court date, followed by another bench warrant being issued, and so on.[45] *SOPA's* default conviction provisions[46] avoid this cycle and more efficiently and effectively allow a Provincial Court justice to find such a defendant liable for the alleged bylaw offence, at which point the matter may be sent to a municipality's collections department to seek payment of the ticket.

A practical implication of *SOPA* is that all bylaw offences in Saskatchewan must be prosecuted before a justice of the peace or a judge of the Provincial Court.[47] As explained in the introduction of this document, prosecutions before a justice and the court system are time-consuming, confusing, and resource-intensive. The alternative model other provinces have

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[41] SS 1990 c S.22 [*SPPA*].
[42] *Summary Offences Procedure Act*, 1990 S-63.1, at sections 14, 22, and 32.63 [*SOPA*].
[43] *Criminal Code*, *supra* note 23, at section 803(2).
[44] Interview of Erik Agrey, City of Saskatoon's Solicitor Office Bylaw Prosecutor, by Ciara Richardson and Mason Stott (3 June 2021).
[45] *Ibid*.
[46] Default convictions available in *SOPA's*: Part III (non-parking-related "summons" tickets); Part V.1 (parking-related "parking summons" tickets).
[47] *Ibid*, at section 14.

implemented which offer more efficient and effective methods of adjudicating bylaw offences, known as Administrative Monetary Penalty (AMP) systems, are not legal in Saskatchewan because of the current framework established by *SOPA*, particularly its section 14. The unfortunate implication of Saskatchewan's bylaw adjudication status quo is municipalities are limited to pursuing inefficient and ineffective prosecutions of disputed bylaw offence tickets at Provincial Court that often end up going unpaid. This timely, inaccessible, and expensive option does not guarantee a resolution and often leaves residents, administrators, and adjudicators frustrated with the complexity and ineffectiveness of the entire process.

Portage la Prairie's Director of Corporate Services, Ms. Cathie MacFarlane, described how, before Manitoba's AMP system was established in 2016, disputed tickets brought to Provincial Court under Manitoba's *Provincial Offences Act*[48] (*POA*) often resulted in the ticket being waived in favour of the defendant.[49] This occurrence was affirmed during interviews with Saskatchewan municipalities, as Provincial Courts are evidently forced to prioritize their available time and resources to prosecute more consequential criminal offences rather than to adjudicate regulatory and bylaw offences.

Many municipalities in Saskatchewan, particularly those with populations under 5,000 and within scope of *The Municipalities Act*, are left with somewhat unattractive options when it comes to collections' efforts. These municipalities will incur the costs of unsuccessful collections efforts through Provincial Court and are left to either simply remind the offender to pay the outstanding ticket, or abandon collections' efforts altogether. Larger centres in Saskatchewan, especially Saskatoon and Regina, have the necessary population to warrant designating specific court time to the adjudication of bylaw offences.[50] Smaller communities simply do not have large enough populations, and therefore, not enough bylaw offences, to warrant establishing a specific "Bylaw Court" within their local Provincial Court. Rather, bylaw offences are heard at regular docket proceedings in Provincial Court and often alongside more severe criminal charges such as assault, break and enters, etc. As stated in the introduction of this research paper, investigating alternative methods for municipalities to meaningfully adjudicate

[48] CCSM c. P-160 [MB *POA*].
[49] C. Macfarlane, Director of Corporate Services, Portage la Prairie, Personal Communication, June 2021.
[50] "Municipal (Bylaw) Court," online: Courts of Saskatchewan <https://sasklawcourts.ca/provincial-court/municipal-bylaw-court/> (22 July 2021).

local bylaws, collect on unpaid tickets, hold offenders accountable for their actions, and to improve levels of local bylaw compliance are needed.

2.2 Excessively Lengthy Court Procedures in Ontario

The LCOR cites the earlier *Report on the Administration of the Courts,*[51] published by the Ontario Law Reform Commission in 1974, stating "The primary goal of the court system is to serve the public; this involves adjudicative decisions which are not only fair, but made without delay and at reasonable cost and convenience."[52] A major problem inherent in Ontario's previous approach to adjudicating bylaws through the ONCJ were the lengthy periods of time to resolve a charge, whether regulatory or criminal.

The LCOR refers to data published by Ontario's Ministry of the Attorney General's Ontario Court Services Division which states the average length of time to resolve[53] a *POA* Part I non-parking-related bylaw offence at the ONCJ was 198.7 days (6.6 months) in 2007 and 207.1 days (6.9 months) in 2008.[54] Meanwhile, the period for resolution of Part III offences (criminal charges) through the ONCJ was 291.9 days (9.7 months) in 2007 and 276.8 days (9.2 months) in 2008.[55] Although time periods for resolution of Part II parking-related bylaw offences are not published, the Director of Court Services with the City of Toronto, Barry Randell, unofficially reported that arguing a parking ticket in court in Toronto would involve waiting 8 to 14 months for a trial date, depending on numerous variables.[56]

The SCC's decision in *Pearlman v Manitoba Law Society Judicial Committee*[57] and the SKCA's decision in *Peet v Law Society of Saskatchewan,*[58] both clarified that section 11(b) of the *Charter* applies to criminal proceedings with penal consequences, but not to regulatory/administrative proceedings absent penal consequences.[59] Since the newly proposed

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[51] Ontario Law Reform Commission, *Report on the Administration of Courts* (Toronto: Law Reform Commission of Ontario, 1973) [OLRC].
[52] *Ibid,* at Part I at 17.
[53] Time from the date when the bylaw offence is first scheduled to be heard in court to final disposition of the matter.
[54] LCOR, *supra* note 17, at page 13. Citing: Ministry of the Attorney General, Ontario Court Services Division, *ICON Database* (statistics) [unpublished].
[55] *Ibid*.
[56] LCOR interview with Barry Randell (April 2010).
[57] [1991] 2 SCR 869 [*Pearlman*].
[58] 2014 SKCA 109 [*Peet*].
[59] *Pearlman, supra* note 5757, at 879-880. *Peet, supra* note 58, at 43.

Administrative Systems for Alternative Bylaw Adjudication Act (ASABAA), discussed throughout this report, ensures its new administrative system's penalties are not punitive and carry no risk of imprisonment, then section 11(b) cannot apply to the *ASABAA*. Although 11(b) could be used to quash lengthy criminal proceedings, it cannot apply to, nor quash, bylaw offence proceedings. However, in *Blencoe v British Columbia (Human Rights Commission)*[60] the SCC determined that section 7 of the *Charter* applies to criminal proceedings and, in extreme circumstances, also to administrative proceedings.[61] Although this high threshold was not met in *Blencoe*, the SKCA found it was met in *Abrametz v Law Society of Saskatchewan.*[62] In summary, excessively long court proceedings may result in more inefficient and inaccurate adjudications and a decrease in public support for the justice system. While the courts are unlikely to require the same timeliness for administrative and regulatory proceedings as for criminal prosecutions, they will still intervene if the delay results in a section 7 violation or might be viewed as an abuse of process.

3.0 Stakeholder Consultations: Concerns and Opportunities

As part of the consultation process, there were many meetings with stakeholders with an emphasis on understanding the ways in which bylaw enforcement was functioning within other jurisdictions (or at times, not functioning cohesively). The findings of these consultations were helpful in gaining insight into what moves can be made in Saskatchewan to make positive changes.

Consistently throughout the consultation process, the word "education" came up in conversations with stakeholders. In speaking with a Bylaw Enforcement Officer in Cowichan Valley – Nino Morano, Morano referred to himself, above all, as an "education officer."[63] The consistent response that came from consultations was that bylaw enforcement begins and ends with educating citizens about what the bylaws are in their municipality. Often, bylaw contraventions can be adequately addressed through in-person discussions about the offence, such as identifying and discussing the pertinent bylaw, resolving a resident's sincere misunderstanding of a bylaw, addressing the problematic noncompliance with the bylaw

[60] 2000 SCC 44 [*Blencoe*].
[61] *Ibid*, at 46-47.
[62] 2020 SKCA 81, at 197-198 [*Abrametz*].
[63] N. Morano, Bylaw Enforcement Officer Cowichan Valley, Personal Communication, May 2021 [Morano].

including forthcoming impacts on neighbours and the greater community, and ensuring bylaw enforcement officers are knowledgeable and able to address residents' questions. Consultations with municipalities indicated that issuing tickets for noncompliance was usually limited to repeat offences.[64]

In discussions with some Saskatchewan based city councillors regarding a shift in a bylaw system, the greatest concern that arose was the associated cost to the municipality of administering a new adjudication and enforcement system.[65] Significant costs for municipalities' administering their own bylaw adjudication and enforcement models include hiring and training bylaw enforcement officers, screening officers, and adjudicators, developing details about the alternative system such as the design of tickets, deadlines for payments, appeals processes, outlining the collections procedures, and compensating administrative staff for efforts to follow collections procedures. It was stakeholders' perceptions that municipalities could not afford the preceding costs, especially since the current adjudication model, and its expenses, are provided by the province.[66] Additionally, stakeholders expressed concern and frustration over the notion of the Provincial Government "offloading" its responsibilities on municipalities.[67] Accordingly, interviewees were often curious about the likelihood, and amount, of any forthcoming financial support from the Provincial Government. Municipalities overwhelmingly stated their communities could not fund initial financial responsibility for developing nor ongoing costs for sustainably operating a new administrative system.[68]

Randy Kammerer, Bylaw Officer of Unity, Saskatchewan echoed the sentiments of Saskatoon based city councillors indicating that cost is always a barrier to effective bylaw enforcement. It was Kammerer's view that financial barriers are faced by both the municipalities and the residents. Currently, there are individuals who will not appeal tickets because the cost of making the trip to the nearest Provincial Court is not feasible and as such, they do not take advantage of the appeal process.[69] Understandably, the message that was driven home by

[64] J. Chorneyko, Chief Administrative Officer, Town of Wynyard, Personal Communication, June 2021.
[65] S. Gersher and H. Gough, City Councillors Saskatoon, Personal Communication, June 2021 [Gersher & Gough].
[66] *Ibid.*
[67] *Ibid.*
[68] *Ibid.*
[69] R. Kammerer, Bylaw Officer Town of Unity, Personal Communication, July 2021.

Kammerer was that awareness and consideration of the individual citizens is key in determining the bylaw enforcement and adjudication process.

Nick Krawetz, with the Association of Manitoba Municipalities, indicated that the *Municipal By-law Enforcement Act* (*MBEA*)[70] is an imperfect system, particularly for nearly every Manitoban municipality outside Winnipeg.[71] Smaller urban and rural municipalities find the system is not necessarily worth the time or cost to learn the new law of the *MBEA* itself, or develop and sustainably operate its administrative system. Despite the potential increase in revenues collected from penalty notice tickets, shifting to a new and separate administrative dispute resolution system may result in greater costs than benefits to the municipality.

Mr. Krawetz also noted Manitoba municipalities having implemented the new *MBEA* system experience difficulty reviewing and adjudicating disputes and then enforcing and collecting the penalties due. Specifically, efforts to collect on unpaid tickets through the *MBEA* requires spending time and resources that outweigh any increase in revenue. An additional barrier to both administration and enforcement of the system is the presence of significant personal privacy issues. These privacy obstacles hinder collections procedures and disincentive municipalities from opting into the new system, while presenting delays and more expenses to reach objectives.

Lastly, Manitoba's *MBEA* administrative system is focused mostly on adjudicating and enforcing parking-related bylaw offences rather than any other type of contravention. This approach works well for the City of Winnipeg, which already deals with significantly problematic parking infractions and associated low collections rates but is not of interest to the many much smaller municipalities in the province. The parking-specific focus of the *MBEA* contributes to the low enrolment rates of municipalities in the system, as smaller urban communities and rural areas are more concerned with problems related to animal control, unsightly properties, junked vehicles, and litter, for example. Many municipalities in Manitoba may have been more enticed to utilize the *MBEA* system if it was customizable to fit local

[70] CCSM 2016, c M245 [*MBEA*].
[71] N. Krawetz, Director of Policy and Communications, Association of Manitoba Municipalities, Personal Communication, June 2021.

circumstances. For example, stakeholders would find more value if the *MBEA* offered tools and methods that each municipality could tailor to various types of bylaw offences, thus improving the effectiveness of adjudication, enforcement, and collections efforts.

The consensus among all stakeholders seemed to be that where there is "buy in," there is compliance. A community driven approach is optimal because residents included in policy development may contribute their input to the discussion and this naturally lends itself to higher compliance rates.[72] The Orleans ward in Ottawa has taken this community driven concept to heart. Matthew Luloff, a city councillor with Orleans indicated the Ottawa council relies heavily on "Engage Ottawa;" a website where citizens can weigh in on potential bylaw decisions. The website introduced a bylaw consultation project wherein constituents may discuss proposed bylaws electronically.[73] Luloff noted that Ottawa's city council extensively engages the public both before and after a bylaw is passed, which the Orleans' councillor credits as the reason for significant bylaw compliance success.[74]

As part of the consultation process, the researchers created a survey to send out to urban municipalities in Saskatchewan and some other municipalities throughout Canada. One aspect of the survey was examining whether or not it would be feasible for a municipality to adopt a separate bylaw adjudication and enforcement system that was independent from the provincial court system. Next, the respondent was asked why or why not this would be feasible. 74 percent of respondents asserted that an independent bylaw adjudication and enforcement system outside the courts would be a realistic option to implement in their municipality. Respondents' most common concern with adopting such a system was the corresponding increase in financial burden for system development and operation, which may or may not be affordable.[75]

The results of the consultation were significant in understanding what has been functioning well and where improvement is still necessary within Saskatchewan and municipalities throughout Canada. Informed by the survey and consultation results, the researchers concluded an independent administrative bylaw system operated by municipalities

[72] E. Dixon, Community Planner, Personal Communication, June 2021.
[73] M. Luloff, City Councillor, Orleans, Ottawa, Personal Communication, July 2021 [Luloff].
[74] *Ibid*.
[75] Bylaw Survey Detailed Response, August 2021.

would be of interest due to a corresponding increase in bylaw compliance, payment of AMPs, timely resolutions, and user-satisfaction, although affordability remained a top concern. Survey respondents noted associated financial costs would be less burdensome if municipalities could collaborate with one another to spread costs and divide operational responsibilities.

The researchers had the privilege of circulating the survey through the SUMA newsletter and received insightful responses regarding the reception of the concept of a new bylaw enforcement and adjudication system in Saskatchewan. When asked if municipalities would be willing to share access to an available court system with other municipalities; the response was an overwhelming 96% in the affirmative.[76] Additionally, when asked if a municipality had access to a court system that met the needs of the jurisdiction, the response was 58% for the negative.[77] This is confirmation that there is both a need to address and a desire and openness from municipalities in Saskatchewan to work together to fill that need.

4.0 AMP System Comparative Analyses

The provinces of British Columbia, Alberta, Manitoba, and Ontario have each enacted their own form of AMP system as ADR mechanisms that address bylaw offences more efficiently and effectively. Each of the schemes range in complexity and proven sustainability, beginning with B.C.'s *Local Government Bylaw Notice Enforcement Act*[78] *(LGBNEA)* enacted in 2003, followed by Manitoba's *MBEA* in 2016, amendments to Ontario's *Municipal Act*[79] in 2017 and enactment of the associated *AMP Regulation 333*[80] (*Regulation 333*) in 2015, and finally Alberta's December 1, 2020 coming into force of its *Provincial Administrative Penalties Act*[81] *(PAPA).*

[76] *Ibid.*
[77] *Ibid.*
[78] SBC 2003, c 60 [*LGBNEA*].
[79] SO 2001, c 25 [*Municipal Act*].
[80] O Regulation 333/07 [*Regulation 333*].
[81] SA 2020, c P-30.8 [*PAPA*].

4.1 General Structure of an AMP System

AMP systems effectively prevent prosecution before a justice at Provincial Court and instead direct disputed bylaw offence tickets through an administrative, or bureaucratic, review mechanism. Typically, the review system begins when an enforcement officer has issued a bylaw offence ticket, for example to penalize someone for parking over the allowable time limit, and the recipient of the ticket disputes either the reason for the officer issuing the ticket or that its associated AMP dollar value should be reduced from its original amount. Under Saskatchewan's status quo the accused argues their disputed bylaw offence ticket at Provincial Court in a process similar to the resolution of criminal charges. In an AMP system, the accused/defendant must submit their dispute to a first-level of review, undertaken by "screening officers", who will review documentation pertinent to the circumstances of the issued ticket (penalty notice) and reach a decision as to its validity or its imposed financial penalty (AMP). Each of the *MBEA*, *LGBNEA*, and *Municipal Act* grant screening officers the power to either: uphold the ticket and its AMP, uphold the ticket but reduce the AMP, or dismiss the ticket altogether.[82]

There is usually a second-level of review in AMP systems, commonly requiring "hearing officers" or "adjudicators" to review the prior decision made by a screening officer. Hearing officer reviews may be requested by either the municipality as plaintiff or accused as defendant. This second review more closely resembles a trial in court, including that the adjudicator hears oral arguments and accepts relevant evidence, although in a much more informal manner than at Provincial Court. Many of the strict and complex rules, such as the rules of evidence, that exist at Provincial Court are not necessarily incorporated into AMP system procedures.

Finally, if either party has issue with the hearing officer's review of the screening officer's decision, there is the option to make an application to the province's superior courts[83] for judicial review of the hearing officer decision. Judicial reviews are distinct from appeals[84] and ask a judge of the superior court to either uphold or dismiss the hearing officer's decision.[85] This step is necessary because provincial superior courts are assigned exclusive jurisdiction for

[82] *LGBNEA, supra* note 78, at section 10. *MBEA, supra* note 70, at section 11. *Regulation 333, supra* note 80, at section 8(4).
[83] Superior courts include the BC Supreme Court, Alberta Court of Queen's Bench, Saskatchewan Court of Queen's Bench, Manitoba Court of Queen's Bench, and Ontario Court of Justice.
[84] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 52.
[85] *Ibid*, at para 4.

judicial review of provincial administrative tribunals, including AMP systems, while Federal Courts and Federal Courts of Appeal have the responsibility to judicially review administrative tribunals created from federal statutes.[86]

The preceding describes the generalities of how AMP systems work. Because of AMP systems' more simplified and understandable procedures, these ADR mechanisms save all parties time and resources, are more accessible to the public, and improve the satisfaction of users of the system. The following subsection 4.2 discusses the details of the most relevant jurisdiction for this report's investigation, being Manitoba's unique approach to developing and implementing its *MBEA* AMP system. Manitoba, as a province, is arguably more similar to Saskatchewan than either of B.C. or Ontario, both in terms of populations, demographics, and industry. For further comparative analyses, please see Appendix A's discussion on administrative and adjudicative systems operating in B.C., Alberta, Ontario, New Zealand, and the U.K.

4.2 Manitoba's *Municipal By-law Enforcement Act*

Manitoba's previous bylaw adjudication process under its *Provincial Offences Act* resembled the status quo in Saskatchewan, namely the process before a justice of the Provincial Court for those disputing a ticket and for municipalities attempting to collect on unpaid tickets.[87] When the *MBEA* came into force, all municipalities in Manitoba were automatically enrolled in the "parking-related" aspect of the AMP system. As such, each municipality was responsible for adjudicating local parking-related bylaw offences using an administrative system of review and financial penalties, thereby avoiding the *POA's* mandated prosecutions at Provincial Court.[88] While application of the AMP system to parking-related bylaws was mandatory, the *MBEA* gave municipalities the option of expanding their new AMP system to include any other local bylaw(s).[89] While municipalities are responsible for all associated costs of a new AMP system,[90]

[86] Chief Justice John D. Richard, "Administrative Tribunals in Canada – An Overview," November 2007 online: International Association of Supreme Administrative Jurisdictions <https://www.aihja.org/images/users/ARCHIVES/docutheque-docs/EReportCanada2.pdf> (22 July 2021).
[87] MB *POA*, *supra* note 48.
[88] *MBEA*, *supra* note 70, at section 3(2)(a).
[89] *Ibid*, at section 4(2).
[90] *Ibid*, at section 21.

the option exists for any municipality to collaborate with any other municipality(ies) to distribute expenses and responsibilities and operate a more cost-effective AMP system.[91]

For a municipality to fully comply with the *MBEA* and develop and operate an AMP system, it must appoint its own screening officers as a first level of review.[92] However, the province is responsible for appointing adjudicators as those reviewing screening officer decisions.[93] Municipalities are tasked with developing specifics of their AMP systems, including the necessary contents to include in a penalty notice ticket,[94] the means for an enforcement officer to issue the AMP ticket to the accused,[95] how accused may respond to a penalty notice,[96] the powers of screening officers when reviewing penalty notices,[97] details of compliance agreements,[98] proper procedures of adjudicators' conducting reviews of screening officer decisions,[99] implications of an adjudicator's decision,[100] and the final steps available to municipalities to collect on unpaid tickets.[101]

The general procedure of the AMP system process in the Manitoba context, although indicative of AMP systems generally, is illustrated in Appendix C. The flowchart begins with the issuance and delivery of a parking ticket or other "designated" (selected for inclusion in the AMP system) bylaw offence ticket, in the form of a penalty notice, followed by a description of the ways the accused may respond to the ticket including paying the fine, entering into a compliance agreement, or requesting an administrative review of why the ticket was issued. The flowchart continues until the process is either resolved or an application made by the accused for judicial review at the Court of Queen's Bench.

[91] *Ibid*, at section 5.
[92] *Ibid*, at section 3.
[93] *Ibid*, at section 15.
[94] *Ibid*, at section 6.
[95] *Ibid*, at section 9.
[96] *Ibid*, at section 10.
[97] *Ibid*, at section 11.
[98] *Ibid*, at section 12.
[99] *Ibid*, at sections 16-18.
[100] *Ibid*, at sections 19, 20.
[101] *Ibid*, at sections 22, 23.

5.0 Alternative Model Options

This paper will now explore some options for models of bylaw adjudication. The paper discusses continuing with the status quo and then explores a voluntary alternative administrative model, wherein municipalities may choose to enrol or remain under *SOPA.* As will be shown, the benefit of this paper's proposed alternative administrative adjudication model is that it can be adaptable based on the specific needs of each municipality. Different municipalities have their own unique needs, issues, and responsibilities, so the researchers drafted the enabling legislation to maximize autonomy of local governments.

5.1 Maintain Status Quo

The first option for bylaw adjudication in Saskatchewan is to maintain the status quo. The benefits of keeping the status quo include that the *SOPA* system is already in place and its procedures familiar to municipalities, and that city councils will not need to spend additional time or resources discussing, researching, and analyzing whether to enrol in the new administrative system, and if enrolling, how many of the four alternative systems to adopt. The *ASABAA* four alternative administrative systems include issuing AMPs to bylaw offenders, enabling offenders to work off outstanding AMP amounts through community volunteer hours, providing offenders the opportunity to enter into a compliance agreement to remedy their bylaw contravention and avoid paying the AMP, and/or using the services of a screening officer to mediate discussions between two or more parties with a mediation services agreement.

Resource-intensive public consultation will not be required when keeping with the status quo, and city councils will avoid the risk of attracting strong public opposition to its forthcoming decisions on the matter. Undoubtedly engaging the public in consultations on a new administrative system will be contentious and friction will arise. Also, transitioning to a new system can be arduous and imperfect, as well as time-consuming and expensive: municipalities will need to train existing staff, hire new staff, and allocate the funds to cover initial start-up costs and ongoing expenses. However, the researchers assert that the system currently in place is unsustainable and that Saskatchewan's municipalities, and Saskatchewan as a whole, would benefit from a new bylaw adjudication and enforcement model because of the potential improvements in efficiency and longer-term cost-effectiveness.

Throughout the consultation process, the constant refrain was that there remains a lack of compliance and a general lack of understanding surrounding bylaw violations. In consultation with the CAO of Wynyard, the concerns surrounding the current process were evident, with Chorneyko indicating that currently within his municipality, there is "no way" of enforcing moving violations and that this concern has no way of resolving itself.[102] The Ontario case *R v Felderhof* affirms these sentiments: in recent years court processes have only become more lengthy, complex, and inevitably more expensive.[103]

An additional option to consider is altering aspects of the status quo *SOPA* system. Existing procedures at Provincial Court could be changed with the objective of improving the efficiency and cost-effectiveness of bylaw adjudication, while requiring less expenses than a complete transition from bylaw prosecutions at Provincial Court to a new administrative system.

The Kindersley Bylaw Enforcement Model offers an insightful perspective on this report's research. The Town of Kindersley has incorporated a separate bylaw enforcement system, partnering with other municipalities to relieve congestion from the Provincial Court.[104] The researchers interviewed a stakeholder from Kindersley, who explained that financial penalties imposed on bylaw offenders often go unpaid. A bylaw court was introduced in the Kindersley region and has grown from an initial 15 municipalities to currently over 40.[105] The initiative has generally been successful and offers simpler and more understandable dispute resolution procedures for residents, more streamlined and efficient adjudications, greater collections rates on tickets, and improved bylaw compliance rates. The Kindersley model benefits from spreading costs amongst its member municipalities. In terms of setbacks, the interviewee described how administrators of the system were required to navigate a bureaucratic and time-consuming process and collaborate with the Provincial Government and Provincial Court to develop and establish the special Bylaw Court.[106]

Significant costs in terms of delays at Provincial Court proceedings and growing and new financial expenses are not issues that will be resolved on their own over time. It is asserted that as Saskatchewan grows in population, and if municipalities are to be awarded greater autonomy,

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[102] *Ibid.*
[103] R. v. Felderhof (J.B.) (2003), 180 O.A.C. 288 (CA) at paras 40-43.
[104] Kindersley Bylaws, *Kindersley Experience Our Energy*, online: < https://www.kindersley.ca/council/bylaws/> [Kindersley.ca].
[105] Town of Kindersley, Personal Communication, May 2021.
[106] *Ibid.*

it should naturally follow that an independent system be put in place, similar to the provinces of British Columbia, Alberta, Manitoba, and Ontario. This would address concerns related to the existing time-consuming and ineffective adjudication processes of current bylaw proceedings and the lack of accessibility to such a legal system.

5.2 Voluntary Transition to Administrative Systems

Similar to the models for bylaw adjudication in other Canadian provinces, an alternative to the status quo may take the form of the adoption of an AMP system in Saskatchewan. Again, AMP systems are regulatory systems operating in multiple jurisdictions in Canada and continue to operate under numerous pieces of legislation.[107] The AMP system could be offered to Saskatchewan municipalities through legislative reform including the passage of a new law, such as the proposed *ASABAA,* and minor amendments to both *SOPA* and *The Fine Option Program Regulations* (*FOPR*).[108] Upon implementation of AMPs, alternatives including a fine option program, compliance agreements, and mediation services agreements could also be considered.

An AMP system would be beneficial in a jurisdiction like Saskatchewan where there is a high number of municipalities. This is because distinct municipalities may maintain autonomy by determining how they would prefer to utilize the alternative administrative system. This could incentivize bylaw compliance and speed up the process of payment of fines. One disadvantage is, as with any new system, insufficient communication with the public may result in pushback from residents. A reasonable way to address this opposition is to ensure comprehensive consultation with the public occurs prior to a municipality adopting a new system like the *ASABAA.*

The role of the province in any AMP system would be as follows:

- to designate maximum AMP amounts;
- assign minimum deadlines for payments or requests for review;
- appoint adjudicators and describe the breadth of their authority;
- list options for individuals issued an AMP fine;
- issue final notice to collect on unpaid AMP fines; and

[107] *Canada Labour Code*, RSC 1985, c L-2. *Pest Control Products Act,* SC 2002, c 28. *Agriculture and Agri-Food Administrative Monetary Penalties Act,* SC 1995, c 40.
[108] RRS c S-63.1 Reg 1 [*FOPR*].

- allow for a judicial review.[109]

The role of municipalities in an AMP system would first involve deciding whether to opt-in to the *ASABAA* administrative system or do nothing and remain under *SOPA*. If a municipality chooses to opt-in to the new administrative system, and depending on which of the *ASABAA* options selected, it must:

- designate bylaws subject to AMPs;
- designate AMP early payment discounts;
- develop details on issuing/delivering penalty notice tickets listing AMP information;
- develop deadlines for payment of an AMP, time to request review or adjudication of an AMP, time for screening officers and adjudicators to reach a decision on a case and time to inform the accused of the case decision;
- develop details on eligibility for the fine options program;
- develop details on compliance agreements;
- develop details on mediation services agreements;
- appoint screening officers to review penalty notices listing AMPs, enter into compliance agreements, and execute mediation services agreements;
- list limits to screening officers' decision-making authority and jurisdiction.[110]

Furthermore, municipalities would have the option of adopting various parts of the *ASABAA*, including how to address compliance issues, by incorporating the use of:

- default convictions – ordered when an accused does not attend their scheduled court date – to speed the adjudications process and waste less time before a justice of the Provincial Court;
- a fine option program enabling an accused to voluntarily work off the hours of a fine at an hourly rate equivalent to minimum wage at an organization in the community (currently offered under *SOPA*);
- a mediation services agreement where a screening officer acts as an unbiased third party to guide and facilitate two or more disputing parties through a discussion(s) to resolve the

[109] *MBEA, supra* note 70. *LGBNEA, supra* note 78.
[110] *Ibid.*

issue; dedicated community mediation services exist throughout Canada including at Community Mediation in Ottawa,[111] Mediation Services in Winnipeg,[112] Mediation and Restorative Justice Centre in Edmonton,[113] and Community Mediation Calgary Society in Calgary;[114] The status quo in Saskatchewan allows for mediation to be used as a method to resolve disputes between persons of a municipality.[115]

- restorative justice principles into compliance agreements to provide an offender the opportunity to learn, acknowledge, and repair the harm they have caused.[116]

The above options may be used in conjunction with one another or it is possible for a municipality to choose to employ only one, or none, of the options.

The recommendation for a new bylaw enforcement and adjudication system is contingent on the understanding that the shift is to be of a voluntary nature. With the high number of municipalities in Saskatchewan, there are inevitably municipalities who may be content with the processes that they have in place, or as mentioned in Appendix F's Indigenous Considerations, there are many communities who have their own method of self-regulation.

As the new system would not be of a mandatory nature, this offers more autonomy to municipalities; and allows for communities to seek out regulation as they feel it is needed. This also offers municipalities the option to apply bylaw regulations where it is most necessary. For example, in smaller municipalities, parking may not be the significant issue that it is in larger municipalities. In those cases, there may be a decision to focus on addressing the need for animal control, unsightly properties, junked vehicles, excessive littering, or any other bylaw offence(s).

Municipalities can use their voice to determine what their jurisdiction needs to focus on, and where they can allocate funds. The appeal of this type of system is that it can be applied throughout Saskatchewan, but can be customized to suit each separate municipality. As Emily Dixon, community planner from British Columbia astutely noted: where there is autonomy, and

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[111] "Community Mediation Ottawa, online: Canadian Institute for Conflict Resolution, <https://www.cicr-icrc.ca/en/services/community-mediation-ottawa.html> (12 August 2021).
[112] "About Us," online: Mediation Services <https://www.mediationserviceswpg.ca/about-us> (12 August 2021).
[113] "About MRJC," online: Mediation & Restorative Justice Centre <http://www.mrjc.ca/index.php/about> (12 August 2021).
[114] "Free Mediation & Conflict Assistance," online: Community Mediation Calgary Society <https://www.communitymediation.ca/> (12 August 2021).
[115] *Cities Act, supra* note 2, at section 351.1.
[116] *Ibid.*

where individuals feel they have a voice, it is more likely that there will be "buy in" and compliance.

5.3 Benefits and Opportunities of a New Administrative System

Anytime a new regime is introduced there is the potential for communities to benefit and thrive. If implemented appropriately, a new administrative system has the capacity to alleviate Provincial Court congestion, improve bylaw compliance, and reduce misunderstandings among citizens through more educational efforts. Below are some of the specific benefits and opportunities that Saskatchewan could see with the implementation of an independent bylaw system.

5.3(1) Improving User-Satisfaction by offering a Faster, Cheaper, and Simpler Alternative to Provincial Court

LCOR illustrates potential benefits of AMP systems which are affirmed by the experience of the City of Vaughan.[117] Established in 2009, Vaughan's AMP system was the first in Ontario. LCOR determines that from 2009 to 2011, Vaughan's AMP parking system "has been a great success"[118], particularly with respect to the following:

- the wait time to see a screening officer is around 2 weeks and to see a hearing officer is around 5 weeks after the screening officer review, compared with the approximately 10 month wait for parking tickets when heard in ONCJ;
- reviews and hearings are scheduled for an exact time, rather than a docket court which starts at a specific time but requires an accused to remain until their case is dealt with;
- reviews and hearings are scheduled during the workday, resulting in less overtime paid when compared to dealing with parking matters at court; additionally, no prosecutor attends the administrative reviews and hearings;
- 1.5% of all administrative tickets issued proceed to a hearing, as opposed to the 3.5% of tickets that were challenged in court;
- the ONCJ was able to focus their time on *POA* offences rather than parking offences;

[117] LCOR, *supra* note 17, at pages 56-57.
[118] *Ibid.*

- City employees and hearing officers reported users of the administrative review system were more satisfied with the process compared to attending court;
- Vaughan spent $13,000 for two hearing officers (only one day of hearings per week), which the City says is recovered by the increased revenue from more AMPs being paid.

5.3(2) Municipal Collaboration to Improve Operational Efficiency and Viability

While the LCOR's investigations were conducted when only two cities in Ontario had adopted the province's new AMP system (Oshawa's program had only been operational for six months before the publishing of the LCOR while Vaughan's had been running for 24 months). The report did not investigate Oshawa's experiences and, although these two municipalities are within only 70 kilometers of one another and physically close enough to enable possible collaboration, the two cities were operating independently as of August 2011. Pursuant to British Columbia's *LGBNEA* section 2(4), Manitoba's *MBEA* section 5, and Ontario's *Municipal Act* section 20, municipalities in each of the provinces may collaborate with other municipalities to jointly offer AMP systems. This option presents the opportunity for more cost-effectively run administrative penalty systems, improved physical accessibility to review and hearing centres, and less onerous time commitments for employees of each participating municipality as responsibilities will be divided amongst multiple communities.

5.4 Shortfalls and Risks of a New Administrative System

While there are limitations to adjudicating and enforcing bylaws under *SOPA* and through Saskatchewan's Provincial Courts, the status quo scenario operates sufficiently for some municipalities.[119] Those city councils choosing to adopt the alternatives within the *ASABAA* will inevitably face additional costs and obstacles throughout development, implementation, and operation of the new administrative system. Similar to many policy decisions, determining whether to pursue an alternative bylaw adjudication and enforcement system will require municipalities to weigh the potential benefits against the identified costs.

[119] Anonymous stakeholder interview.

5.4(1) Stakeholder Opposition to the Costs and Time Necessary to Develop an Administrative System

Developing and implementing a new administrative system will inevitably present additional costs in terms of time, skilled workers, money, and other resources required such as technological equipment. Matthew Luloff, City Councillor in the ward of Orleans in the City of Ottawa, noted during an interview that municipalities wishing to successfully shift to a new bylaw adjudication system would require hours of additional time and expensive labour for a regime that does not have a definitive chance of enhancing the community.[120] The requirement for these additional resources may result in local opposition as residents of municipalities may already be content with the existing bylaw adjudication system at Provincial Court.[121]

While there remains the potential for municipal collaboration to spread costs and divide operational responsibilities, the geographic spread between Saskatchewan communities limits the number of municipalities that could meaningfully join in offering an administrative system. Communities spread too physically far apart present the additional problem of requiring residents to drive inconveniently long distances to attend an administrative review. If reviews and adjudications were offered through telephonic and electronic means, it would provide an alternative to traveling the inconveniently long distances between communities and nearby adjudication centres. Remote access options, although valuable, have inherent problems as well mainly due to limited and unreliable telephone and internet connections, as well as access to a phone or computer itself.

Additionally, residents initially supportive of a new administrative bylaw adjudication system may eventually become resistant to the system, whether because the new approach is ineffective and does not work properly or has been poorly and inefficiently implemented. If a new administrative system is perceived to work even worse than the original *SOPA* scheme, it will be difficult for municipalities to fix the underlying problems and sustain the new operation.

The preceding issues illustrate the need for municipalities to sufficiently consult with stakeholders at all stages of the development, implementation, and operation of the new system, as well as during the initial investigation itself into whether a new system should be pursued. Councillor Matthew Luloff described how local governments' city councils must work *with*

[120] Luloff, *supra* note 73.
[121] Anonymous stakeholder interview.

residents of a city to determine policy choices, rather than councillors deciding the direction of the municipality amongst themselves.[122] Where there is respectful, mindful communication, there is a much greater likelihood that there will be compliance.[123]

5.4(2) Stakeholder Confusion on Adopting the Administrative System

Municipalities interested in enrolling in one or more of the *ASABAA* administrative systems will need to learn and navigate the new *ASABAA* itself and the necessary amendments to *SOPA* and *FOPR*. *ASABAA* dictates what municipalities choosing to opt-in to the administrative system are required to do and what they have the discretion to do.

If a municipality chooses not to enrol in the *ASABAA* administrative system, the status quo approach to bylaw adjudication and enforcement would remain in that jurisdiction and bylaw prosecutions would continue before a justice at Provincial Court. Municipalities would be able to enrol in some, or all, of the *ASABAA's* administrative scheme and at any time, so an immediate decision would not need to be made by individual municipalities. Municipalities would have the discretion to first choose which of the four options of the *ASABAA* to adopt and, upon having made a selection, may choose which of the municipality's bylaws to include within each type of adopted system.

Interested municipalities could establish their own administrative system or could collaborate with other municipalities to spread costs and share operational tasks. Municipalities considering opting-in to the *ASABAA* system may benefit from the following considerations:

- is your municipality interested in switching from bylaw adjudication and enforcement at Provincial Court, to an entirely self-operated administrative system?
- if so, does your municipality have the necessary time, money, knowledge, and human capital to develop, implement, and sustainably operate the administrative system?
- have you thoroughly reviewed the new *ASABAA* and amended *SOPA* and *FOPR*?
- have you identified which of the four administrative system options (described throughout section 5) your municipality wishes to adopt? Have you identified which bylaw offences will be included in each of the selected administrative system option(s)?

[122] Luloff, *supra* note 73.
[123] Gersher & Gough, *supra* note 65.

have you identified the AMP amounts each bylaw offence is subject to? And all other requirements of the *ASABAA*?

- are you collaborating with other municipality(ies) to offer an administrative system, considering the division of: responsibilities, costs, location of screening officers, and how/where adjudications will be heard?

Once a municipality has decided to enrol in the *ASABAA* administrative system, some of the policies and procedures required (as well as optional policies and procedures) by the *ASABAA* are listed as follows:

- prepare and enact the enabling bylaw (and amend existing bylaws as appropriate) to officially adopt the new *ASABAA* system, considering the requirements listed throughout the *ASABAA* and depending on the administrative system option(s) chosen;
- identify and train bylaw enforcement officers, screening officers, and finance/administrative staff to run the administrative system(s);
- prepare a communications plan for informing and discussing with stakeholders, such as FAQs on the municipality's website and informational brochures with summaries of the new administrative system;
- prepare budgets;
- prepare a plan and strategy on collections efforts on unpaid tickets;
- prepare a record retention system;
- prepare details on the responsibility and procedures of screening officers with respect to conducting administrative reviews and successfully operating a fine option program, compliance agreements, and mediation services agreements;
- create the "penalty notice" ticket itself (appearance and contents), pursuant to the *ASABAA;*
- create the screening officer and adjudication forms (appearance and contents), both for how an accused may request a review or adjudication and for how screening officers and adjudicators may inform the accused of their decision, pursuant to the *ASABAA;*
- consult with the provincial government on how municipalities may select adjudicators from the provincial roster and schedule hearings;

- consult with the Court of Queen's Bench on how to support accused making an application for judicial review.

5.5 Discussion of the Proposed *ASABAA*

Writing and developing a new alternative administrative system to better adjudicate and enforce bylaws in Saskatchewan should mostly consider the *MBEA*, *LGBNEA*, and *Regulation 333*. Although Alberta's *PAPA* is also an administrative system, it applies only to provincial legislation rather than to municipal bylaws. Additionally, the constitutionality of *PAPA* has not been proven, as the law was enacted very recently in 2020.

The researchers' proposed *ASABAA* most closely resembles the format and structure of the *MBEA* and *LGBNEA*, with aspects of Ontario's *Regulation 333* incorporated within. The *ASABAA* has been written as "enabling" legislation, meaning it is entirely voluntary for municipalities to opt-into. The *ASABAA* offers four different administrative models to better adjudicate and enforce bylaws, including the use of AMPs, fine option programs, compliance agreements, and mediation services agreements. Within these four options, municipalities have complete discretion to choose which bylaw offences to include within each program and to choose other terms relevant to each individual program. For example, municipalities may pick and choose the bylaw offences to include within an AMP system, list the exact dollar amounts of each AMP, and corresponding deadlines for AMP payment. Other provinces' existing administrative systems typically only offer the option of attaching AMPs to penalty notice tickets, while *ASABAA's* fine option program, which has already experienced success at Provincial Court through *SOPA*, better respects resident autonomy by offering another payment option.

Additionally, the *ASABAA's* inclusion of compliance agreements reflect those articulated in the *MBEA*. These compliance agreements incorporate principles of restorative justice into the adjudication and enforcement process by enabling the offender to learn the impacts and harm of the bylaws they have contravened and presents the offender with the opportunity to remedy the situation. Upon successful completion, defendants will not need to pay their AMP(s). Lastly, mediation services agreements offer an ADR mechanism that more effectively addresses disputes between neighbours, compared to the alternative of requiring bylaw enforcement officers to issue AMPs to either one or both of the parties involved.

Other parts of *ASABAA* are meant to improve the discretion available by municipalities such as: enabling collaboration with other municipalities to spread costs and divide responsibilities, detailing the issuing, delivering, and designing of penalty notices, describing ways for an accused to respond to penalty notices, hiring and training screening officers, training adjudicators, articulating review procedures and rules of evidence during screening officer and adjudicator hearings, ordering default convictions upon the accused failing to appear at court, and more. Multiple administrative systems were included as options in the *ASABAA* because of the heterogenous nature of Saskatchewan municipalities and the resulting variations in the types of bylaw offences that presented the greatest challenges for each community.

Ontario's *Regulation 333's* presented multiple novel and unique approaches to improving administrative systems, including section 6's measures to improve the likelihood that these new administrative systems will comply with the *Charter*. Section 7's inclusion of policies, procedures, and factors meant to improve administration of the system itself will also provide value from an operational and pragmatic perspective.

Minor amendments are required to both *SOPA* and *FOPR* to ensure the *ASABAA* and existing *Cities Act, Municipalities Act,* and *Northern Municipalities Act* can operate in conjunction with the greater legislative scheme. The *ASABAA* and amendments to existing laws mean no amendments are required to any of the preceding *Cities, Municipalities,* and *Northern Municipalities Acts.* Amendments specific to *SOPA* will enable municipalities the option to opt-out of its ambit by opting-into the *ASABAA's* new system. Amendments to *FOPR* allow *ASABAA* to utilize Saskatchewan's existing fine options program.

It is recommended that *ASABAA* be written in an understandable, simplistic, and user-friendly manner, due to the strong emphasis LCOR places on the need to improve the public's ability to learn the content of the legislation with a particular focus on improving principles of access to justice. However, this generality must be balanced against an appropriate level of detail, as legislation that is too vague will not provide adequate guidance for stakeholders and may be difficult to apply because of the need for excessive reader discretion.

In addition to aspects of other provincial legislation, LCOR also offered valuable insight into other aspects to write into *ASABAA*, most notably with respect to accessibility and equity concerns. Specifically, adjudication and enforcement services offered in commonly spoken languages will improve the understandability of relevant substantive and procedural law.

Cultural accommodations will also improve different groups of persons' interactions with the justice system and allow for more meaningful participating in law reform and operations of the administrative system. Lastly, physical barriers to access must be considered, as any justice system would benefit from including more residents in dispute resolutions.

6.0 Report Recommendations and Conclusions

The hundreds of different municipalities in Saskatchewan vary considerably and each have unique qualities and aspects. Accordingly, the rigidity within the existing bylaw adjudication processes in Saskatchewan, namely under *SOPA*, do not maximize the efficiency or effectiveness of these regulatory prosecutions. This research project draws from the law reform activities of other provincial jurisdictions and is guided by the valuable insights shared by stakeholders throughout Saskatchewan and the rest of Canada. The example new legislation, *ASABAA*, must be "enabling" in the sense that municipalities are completely free to opt-in to the new system entirely, partially, or not at all. By respecting the autonomy of Saskatchewan municipalities, bylaw adjudication and enforcement mechanisms will be improved in terms of faster resolutions, simpler and less expensive procedures, greater accessibility, improved user-satisfaction, and a greater upholding of the rule of law.

Appendix A: AMP Systems of British Columbia, Alberta, Ontario, and Foreign Jurisdictions

British Columbia's *Local Government Bylaw Notice Enforcement Act*

Upon approval by the Lieutenant Governor in Council,[124] any municipality in British Columbia may voluntarily choose to opt-out[125] of the current framework in the *Offence Act*[126] by opting-in to the *LGBNEA* AMP system.[127] The *Bylaw Notice Enforcement Regulations*[128] (*BNER*) list the municipalities having opted-in so far, with some of the cities including: Vancouver, Burnaby, Surrey, Richmond, Coquitlam, Chilliwack, Nanaimo, and Prince George.[129] Upon enrolling in the AMP system, a municipality must pass bylaw(s) embracing the *LGBNEA's* new adjudication process and detailing how the municipality will administer the program.[130] The *LGBNEA's* scope of applicability includes all bylaws of any enrolled municipality in the province regardless of if the bylaw is parking-related or not.[131]

In terms of adjudication, the *LGBNEA* requires each municipality appoint its own screening officers as a first level of administrative review,[132] while the province is responsible for appointing adjudicators to review screening officer decisions.[133] Jurisdiction and procedural rules applying to screening officers and adjudicators are listed in *LGBNEA* sections 10 to 13 and 16 to 22, respectively, and must be reflected in a municipality's adopting bylaw. The eight mandatory qualifications of an adjudicator are listed in the *BNER's* section 6, while the *LGBNEA's* section 2(3)(b) grants more discretion to municipalities when selecting screening officers. Finally, *LGBNEA* states in its section 23 that municipalities must pay the full costs to administer their AMP system.

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[124] *LGBNEA*, *supra* note 78, at sections 2(1) and 29.
[125] *Ibid*, at section 27.
[126] RSBC 1996 c 338 [*BC OA*].
[127] *Ibid*, at sections 2, 4, and 14.
[128] BC Reg 175/2004 [*BNER*].
[129] *Ibid*, at Schedule 1.
[130] *LGBNEA*, *supra* note 78, at section 2(2).
[131] *Ibid*, at section 4.
[132] *Ibid*, at section 10.
[133] *Ibid*, at section 15.

Alberta's *Provincial Administrative Penalties Act*

Alberta's *PAPA* entered into force on December 1, 2020 and is the equivalent to Manitoba's *MBEA*, B.C.'s *LGBNEA*, and Ontario's *Municipal Act* and *Regulation 333*. Similar to the other provinces, *PAPA* establishes an ADR mechanism using administrative penalties, although its AMP system currently only applies to most of the regulatory offences in the *Traffic Safety Act*[134] (*TSA*). The exception to this rule being offences involving vehicle collisions (section 70) and/or people caught driving with a suspended license or who have been disqualified from driving (94.1(1)).[135] In late 2021, *PAPA* will be scaled up to include all *TSA* offences other than offences involving bodily harm or death, and then at a later date to all provincial regulatory offences, including municipal bylaws.[136]

There is no mention in *PAPA* of screening officers, hearing officers, or the two-stage review process seen in other provincial schemes. Instead, *PAPA* requires a single level of review by provincially-appointed adjudicators, whose AMP reviewing procedures are governed by the Act's sections 9, 10, and 11. After the adjudicator's review, unsatisfied parties may apply for judicial review at the Alberta Court of Queen's Bench.[137] Lastly, and seemingly problematically, *PAPA* applies a "reverse onus" burden of proof in reviews, wherein "The burden of proof in a review is on the person requesting the review."[138] It is currently unsettled law if the *Charter's* section 11(d), which grants "any person charged with an offence" the right "to be presumed innocent until proven guilty", applies to regulatory offences such as those in the *TSA*.[139]

Ontario's *Municipal Act* and *AMP Regulation 333*

In addition to the *Municipal Act's Regulation 333* and the 2017 amendments to the Act itself, part of Ontario's AMP system falls within the scope of the *Statutory Powers Procedure Act* (*SPPA*). The *SPPA* lists the procedures hearing officers (equivalent to the *MBEA* and *LGBNEA* adjudicators) must follow when conducting secondary-reviews of tickets having

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[134] RSA 2000, c T-6 [AB *TSA*].
[135] *Ibid*, at sections 157(1.1), (1.2), and (1.3).
[136] George Blais, "Provincial Administrative Penalties Act changes rules for first-time impaired drivers," 1 December 2020, online: St Albert Today <https://www.stalberttoday.ca/beyond-local/provincial-administrative-penalties-act-changes-rules-for-first-time-impaired-drivers-3142987> (21 July 2021).
[137] *PAPA*, *supra* note 81, at section 24.
[138] *Ibid*, at section 18(1).
[139] *R v Wigglesworth*, [1987] 2 SCR 541.

already been reviewed by a screening officer.[140] Similar to B.C.'s framework, Ontario's *Municipal Act* grants municipalities complete discretion as to whether they will include parking-related[141] and/or non-parking-related[142] offences in the AMP system, or whether to adopt the AMP system at all. To fall within the scope of AMPs, municipalities must designate each specific bylaw offence warranting a "penalty notice",[143] which in turn carries with it an AMP.

Regulation 333 was enacted under the *Municipal Act* as a means of detailing operational standards,[144] procedural requirements,[145] and measures of enforcement[146] of the Province's AMP system. LCOR discusses how Ontario ensures all bylaw-related AMPs comply with section 7 of the *Charter*, namely by application of *Regulation 333's* section 6 which requires AMPs be neither punitive nor exceed a dollar amount that would reasonably promote compliance with the bylaw.[147] Next, section 4 of *Regulation 333* states that an accused who has been issued an AMP cannot also be charged under Ontario's *Provincial Offences Act*[148] (*POA*) for that same bylaw offense. Section 10 of *Regulation 333* grants Ontario's Registrar of Motor Vehicles the power to withhold driver's license/permit renewals for those failing to pay an AMP. Further, *Regulation 333's* section 11 grants municipalities the flexibility to develop, adopt, and operate their own enforcement programs.

Similar to the other provinces, municipalities in Ontario must pass "enabling" bylaws to adopt the provincial AMP system.[149] These bylaws must explain how screening officers[150] and hearing officers[151] may be appointed by the municipality, as well as detailing the procedures of hearing officer reviews.[152] Finally, these bylaws must ensure that hearing officers' procedures follow requirements in the *SPPA*.[153]

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[140] *Regulation 333*, *supra* note 80, at section 8(4).
[141] *MA*, *supra* note 79, at section 102.1.
[142] *Ibid*, at section 434.1.
[143] *Regulation 333*, *supra* note 80, at section 5.
[144] *Ibid*, at section 7.
[145] *Ibid*, at section 8.
[146] *Ibid*, at section 9.
[147] Stan Berger, "Report into Administrative Monetary Penalties (AMPS) for Parking Infractions" (Prepared for the Law Commission of Ontario, 11 June 2010) at 11-12.
[148] RSO 1990, c P-33 [ON *POA*].
[149] *Regulation 333*, *supra* note 80, at section 3(1).
[150] *Ibid*, at section 8(1)(3).
[151] *Ibid*, at section 8(1)(5).
[152] *Ibid*, at section 8(1)(4) to 8(1)(11).
[153] *Ibid*, at section 8(4).

International Considerations

Two commonwealth countries outside of Canada were considered in terms of their unique approaches to bylaw adjudication and enforcement. First, the New Zealand bylaw-adjudication and enforcement system has three primary purposes:

- protecting the public from nuisance;
- protecting, promoting and maintaining public health/safety; and
- minimizing potential for offensive behaviour.[154]

While non-compliance may result in financial penalties, seizure of property, and remedial action, New Zealand has placed a particular emphasis on the importance of remedial action as a means of enforcing bylaws. For example, section 10.1 of the *Hamilton Dog Control Bylaw Act,*[155] states "If any owner of a dog is classified as a probationary owner pursuant to the *Dog Control Act 1996,*[156] Council may require at its discretion the person to complete at his or her expense, a dog owner education programme and/or a dog obedience course."[157] This type of enforcement tool – wherein time rather than money is required – is not commonly used in other countries and penalizing offenders in ways different than financial penalties. For example, bylaw offences subject to fixed financial penalties act regressively on residents, with a $50 ticket representing a greater percentage of a minimum wage worker's weekly wage than a more highly compensated professional. Penalizing every offender with the same fixed punitive measure may be perceived by the public as a system favouring high-income earners, who intuitively would be less deterred from offending than lower-income peoples.

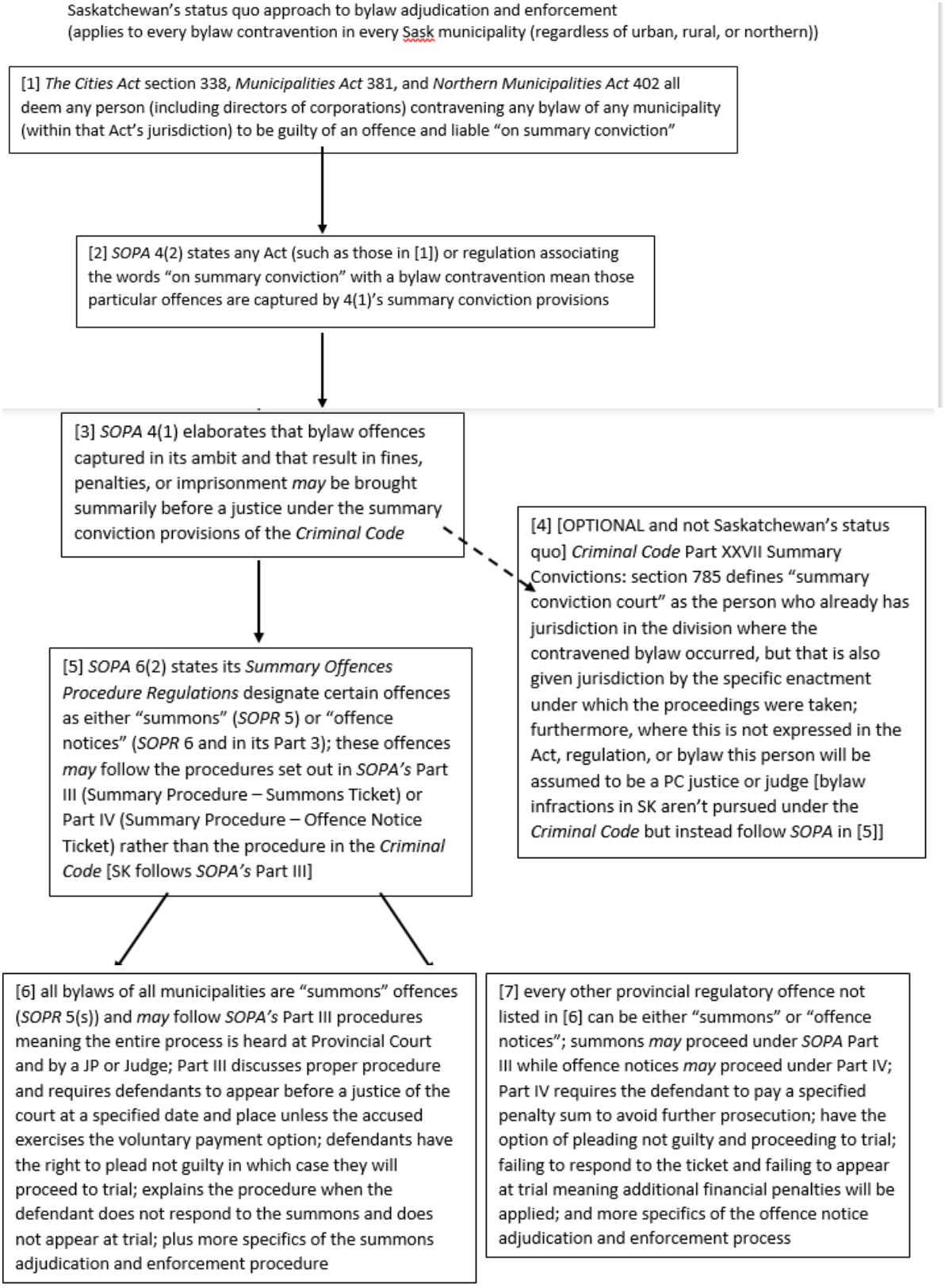
Australia emphasizes the importance of independent resolution with respect to bylaw offences. Residents are encouraged to resolve any issues independently and to resort to bylaw enforcement only when necessary. However, there is a bylaw "special circumstances" exception, wherein issues that are deemed to be urgent can merit an application seeking an urgent order on the matter. Issues deemed to be more urgent include those likely to cause injury to people or

[154] Hamilton City Council, Our Council Policies, Bylaws and Legislation <https://www.hamilton.govt.nz/our-council/policies-bylaws-legislation/bylaws/Pages/default.aspx> [Hamilton.govt.nz].
[155] *Ibid.*
[156] *Ibid.*
[157] *Ibid.*

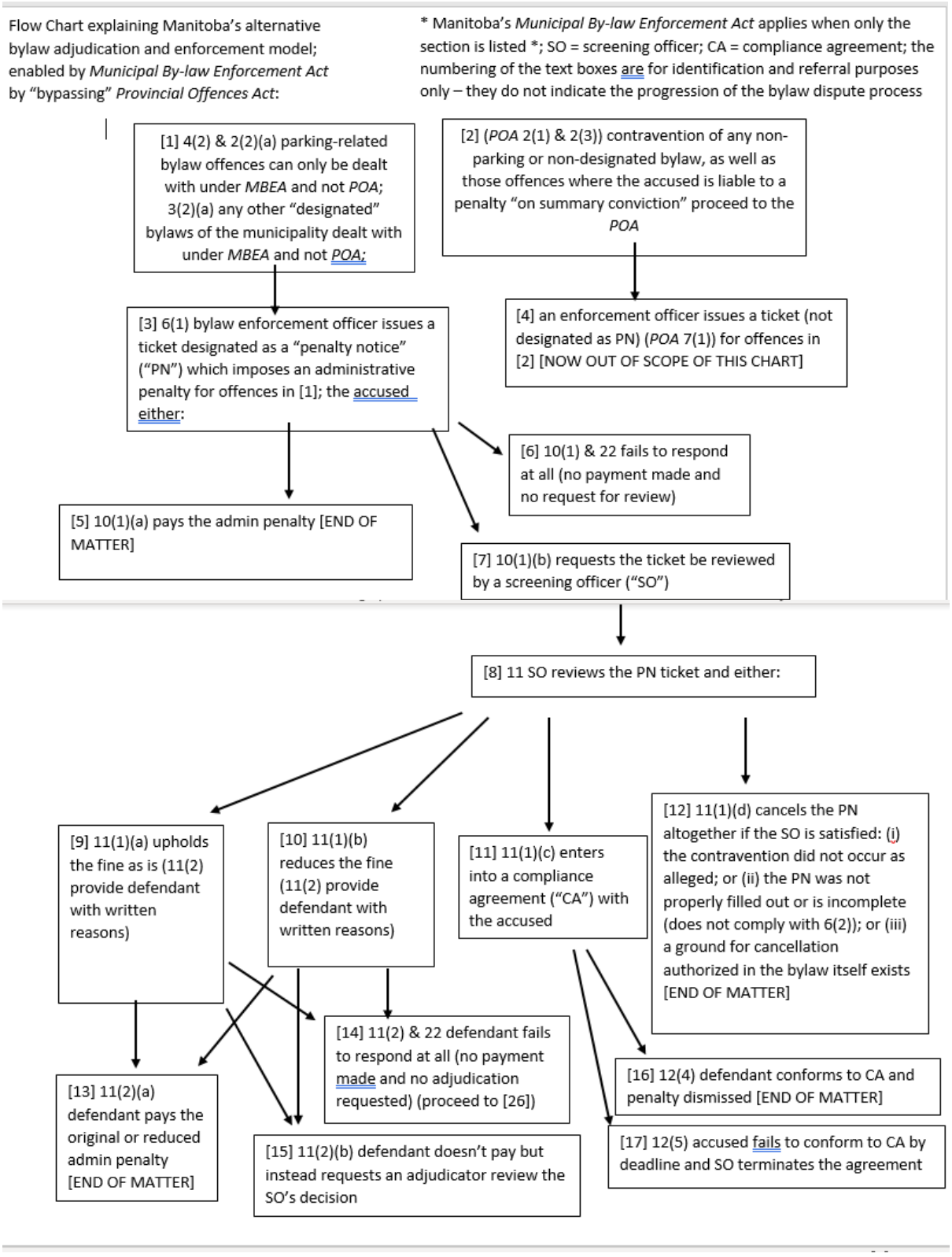
seriously damage property, risk human health or safety, cause serious nuisance, and more.[158] This option is available in Saskatchewan as well, pursuant to *The Fire Safety Act,*[159] *The Uniform Building and Accessibility Standards Act,*[160] and *The Occupational Health and Safety Act.*[161]

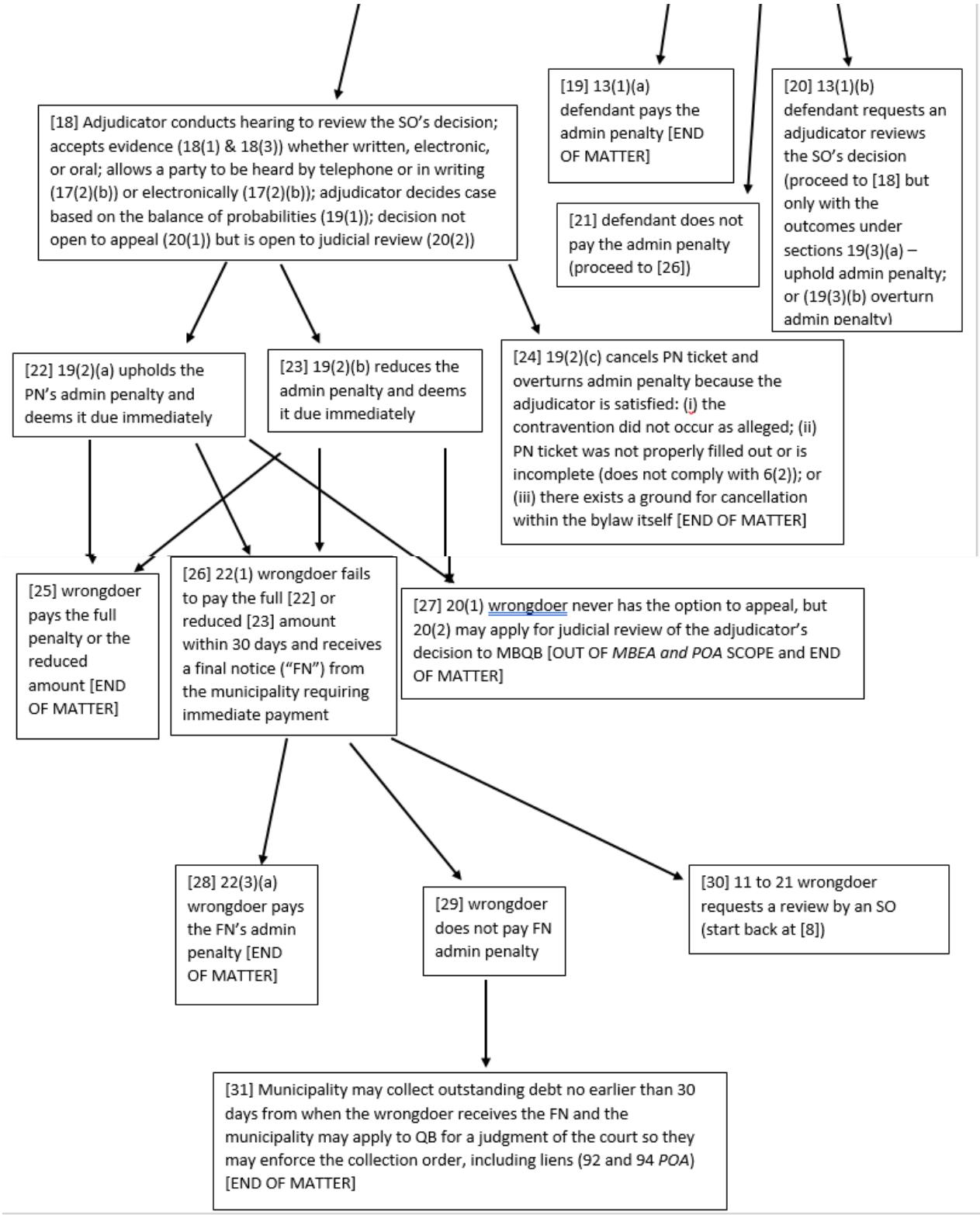
[158] Queensland Government, *Enforcing By-laws* < https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/by-laws/enforcing-by-laws> [qld.gov.au].
[159] Saskatchewan Public Development, *The Fire Safety Act,* <http://pubsaskdev.blob.core.windows.net> [pubsaskdev.net].
[160] Saskatchewan Public Development, *The Uniform Building and Accessibility Standards Act,* <http://pubsaskdev.blob.core.windows.net/uniformbuilding> [pubsaskdev.net].
[161] WorkSafe Saskatchewan, *Occupational Health and Safety Act* < https://www.worksafesask.ca/industries/occupational-health-safety/> [worksafesask.ca].

Appendix B: Flowchart of Saskatchewan Status Quo Bylaw Prosecutions



Appendix C: Flowchart of *MBEA* AMP Bylaw Prosecution




[18] Adjudicator conducts hearing to review the SO's decision; accepts evidence (18(1) & 18(3)) whether written, electronic, or oral; allows a party to be heard by telephone or in writing (17(2)(b)) or electronically (17(2)(b)); adjudicator decides case based on the balance of probabilities (19(1)); decision not open to appeal (20(1)) but is open to judicial review (20(2))
[19] 13(1)(a) defendant pays the admin penalty [END OF MATTER]
[20] 13(1)(b) defendant requests an adjudicator reviews the SO's decision (proceed to [18] but only with the outcomes under sections 19(3)(a) – uphold admin penalty; or (19(3)(b) overturn admin penalty)
[21] defendant does not pay the admin penalty (proceed to [26])
[22] 19(2)(a) upholds the PN's admin penalty and deems it due immediately
[23] 19(2)(b) reduces the admin penalty and deems it due immediately
[24] 19(2)(c) cancels PN ticket and overturns admin penalty because the adjudicator is satisfied: (i) the contravention did not occur as alleged; (ii) PN ticket was not properly filled out or is incomplete (does not comply with 6(2)); or (iii) there exists a ground for cancellation within the bylaw itself [END OF MATTER]
[25] wrongdoer pays the full penalty or the reduced amount [END OF MATTER]
[26] 22(1) wrongdoer fails to pay the full [22] or reduced [23] amount within 30 days and receives a final notice ("FN") from the municipality requiring immediate payment
[27] 20(1) wrongdoer never has the option to appeal, but 20(2) may apply for judicial review of the adjudicator's decision to MBQB [OUT OF *MBEA and POA* SCOPE and END OF MATTER]
[28] 22(3)(a) wrongdoer pays the FN's admin penalty [END OF MATTER]
[29] wrongdoer does not pay FN admin penalty
[30] 11 to 21 wrongdoer requests a review by an SO (start back at [8])
[31] Municipality may collect outstanding debt no earlier than 30 days from when the wrongdoer receives the FN and the municipality may apply to QB for a judgment of the court so they may enforce the collection order, including liens (92 and 94 *POA*) [END OF MATTER]

Appendix D: Assessment of Alternative Models

Two frameworks, one theoretical and one pragmatic, are applied to the earlier section 5's alternatives discussion. The "specificity" related discussion below explains and applies the theoretical approach, namely drawing from academic literature on law reform and using "legal instrumentalism" as a rationale to bring about change in society. These societal changes are made possible by strategically influencing the level of detail written into new or amended laws. LCOR's pragmatic and practical objectives of law reform efforts including fairness, efficiency, and accessibility are then discussed following the "specificity" subsection.

Optimizing a Law's "Specificity" to "Socially Engineer" Society

Professor Koen van Aeken, a scholar at the University of Antwerp, writes on the topic of legal instrumentalism: "when law is deployed, it should be so from a well-considered view, enhancing the policy with some of the intrinsic values of law."[162] Drafting improved legislation requires insightful and thorough research, strong team management, and useful stakeholder consultation. Van Aeken further explains instrumentalism can be used to "socially engineer"[163] a society for the better and to bring about change. Van Aeken's ideas on legal instrumentalism are consistent with this report's approach of amending and creating law to improve a certain aspect of society, namely bylaw adjudication, enforcement, and compliance. Altering provincial legislation and regulation governing municipal bylaws will address frustrations felt by communities regarding inefficient, ineffective, overly expensive, and time-consuming status quo prosecutions through Provincial Court.

One technique the provincial government may use to improve the law is to write different levels of "specificity" into the legislative text itself, informed by analyzing numerous contextual variables. Authors Francesco Parisi and Vincy Fon elaborate on van Aeken's ideas by discussing how vague laws, known as "standards", and detailed laws, known as "rules", are each better suited to different operating environments.[164] The two are near opposites, as "Standards and rules can be visualized as two extremes on a continuum representing the degree of precision of

[162] Luc Wintgens, *The Theory and Practice of Legislation* (Burlington: Ashgate Publishing Company, 2005), Koen van Aeken, *Legal Instrumentalism Revisited* (pp 67-92) at 68 [van Aeken].
[163] *Ibid*, at 69.
[164] Francesco Parisi, Vincy Fon, *The Economics of Lawmaking*, (Oxford University Press, 2009), at 4.

laws."[165] Parisi and Fon determine how lawmakers may maximize the economic and financial benefits of legislation felt by stakeholders, by manipulating the degree of "specificity" within the legal document.[166]

High-specificity rules provide greater clarity, certainty, predictability, and ultimately more value for stakeholders applying and utilizing them, although these rules are also inflexible in their application and cannot adapt to unanticipated situations.[167] Rules accordingly require extensive and time-consuming research and analyses to create, meaning they are more expensive than standards. Standards, being the opposite of rules, have an inherent lack of detail, making them vague, generalized, and ultimately of less value to stakeholders than rules. However, standards also require less resources and less time to create and offer greater flexibility during application, meaning they are well-suited to quickly changing operating environments and industries.

While standards risk being too vague, confusing, and obscure so they do not provide enough guidance for stakeholders, the money invested in rules to achieve greater clarity may ultimately be wasted if the applicable operating environment changes too quickly.[168] Considering the scope of this research project, maximizing the value of forthcoming legal amendments requires an optimal incorporation of specificity within the law to achieve the most appropriate level of flexibility. A major guiding factor to improving bylaw adjudication for municipalities is recognizing that every community in Saskatchewan is different – with some municipalities being immensely different than others. What may concern stakeholders in Saskatoon and Regina will vary significantly from the concerns of stakeholders in less populated hamlets, resort villages, and towns. Because of these large variations in preferences, provincial laws governing bylaw prosecutions must be written with low specificity. This vaguer nature to them will in turn produce a standard of adequate flexibility, thus maximizing the important concept of encouraging municipality discretion.

The *ASABAA* enables municipalities to opt-in to the new administrative system, either partially or completely, or to remain under the status quo by continuing to prosecute bylaws in Provincial Court. As was discussed earlier in the report, the court in *Felderhof* found that as

[165] *Ibid*, at 10.
[166] *Ibid*, at 3.
[167] *Ibid*, at 11.
[168] *Ibid*.

society continues to develop, so does its complexity. Life in municipalities will only become more complicated as time progresses, meaning laws amended today will become obsolete more quickly than laws in the 20th century did, for example.

The research required for this report's law reform work, including stakeholder consultations by way of interviews and surveys, paired with inter-provincial legislative reviews, illustrates that Saskatchewan's current provincial laws award excessive levels of procedural fairness to trials of commonly occurring regulatory and bylaw offences. While current approaches to prosecuting in Provincial Court may have been adequately efficient 30 years ago, the sustainability of such a system continues to diminish and there remain areas of the system to improve upon.[169]

The *ASABAA* and amendments to *SOPA* and *FOPR* have been developed to structure an adequately robust alternative model for municipalities to apply to bylaw offences, while remaining flexible enough to allow for regional customization. The *ASABAA* is also less detailed, meaning it will require less time, research, and resources to write and enact, and will remain relevant and applicable for a longer period of time. The lesser inherent value found in obscure standards is not problematic in this scenario because the cost-effectiveness of this standard will improve with every passing year of relevancy. Although a rule would inherently provide more value to municipalities, its inability to adjust, and remain applicable, to a complex and heterogenous target market means the initial large investment spent to develop such a law is realized only for a short period of time. Problematically, the cost of developing the rule would greatly outweigh its limited forthcoming benefits.

Law Commission of Ontario's Guiding Factors

The Law Commission of Ontario has provided "guiding factors" to promote impartial and fair treatment for all citizens.[170] These guiding factors can be directly applied to Saskatchewan's bylaw enforcement and adjudication system. The status quo in Saskatchewan utilizes the Provincial Court to settle bylaw adjudication, causing congestion in the system. The guiding principles provided by the Law Commission of Ontario could be efficiently applied to the Saskatchewan system in a way that would relieve congestion from the provincial courts. This

[169] LCOR, *supra* note 17, at 13.
[170] *Ibid.*

proposal will highlight a few of the predominant factors that would be most applicable to the Saskatchewan municipal bylaw enforcement system.

The first guiding factor is fairness. Specifically, procedural fairness dictates that defendants must always have the right to an unbiased and just trial. That said, the process of the trial could be narrowed and cultivated specifically for the type of offence while still maintaining an appropriate level of fairness.[171] Due to the more limited complexity associated with regulatory offences, there is no need for a jury or judge.

Within the procedural fairness umbrella, there are other principles which must be consistently guaranteed.[172] The first is that an offender has a right to know and understand the offence they are charged with.[173] The right of an accused to know the offence they are charged with can easily, and clearly, be written into any new legislation, although improving the understandability of specific offences within individual bylaws is best suited for municipal city councils.

The second requirement is that offenders have the right to be heard by an unbiased decision-maker. This requirement does not demand that the decision-maker be a judge. The decision-maker could be a justice of the peace, or a separate non-judicial appointee. All that remains germane is that the decision-maker treat the matter with fairness and through an honest, impartial lens.[174] This requirement could also be applied in Saskatchewan. Saskatchewan could appoint a justice of the peace, or a review officer or adjudicator whose specific role is bylaw arbitration.

The third procedural fairness requirement that is always guaranteed is that prosecutions must be *perceived* to be fair. This is to maintain public respect for both the rule of law and administration of justice. This requirement ties directly back into the second requirement of the right to be heard by an unbiased decision-maker.[175] With an unbiased adjudicator, the public perception of the rule of law should remain more firmly intact.

Efficiency is the second guiding factor. Efficiency, under the Law Commission of Ontario, asks for consideration of proportionality. This means that there must be a balancing act

[171] *Ibid.*
[172] *Ibid.*
[173] *Ibid.*
[174] *Ibid.*
[175] *Ibid.*

between the necessity for enforcement of laws, the complexities and nuanced nature of the offence and the individual offender, and the expense of the court processes and severity of that offence. In contextualizing the efficiency component of the guiding factors, the easiest way to apply this to a bylaw system in Saskatchewan is to ask whether the cost and time associated with adjudication is balanced with the severity of the violation.[176]

If an individual is facing a $30 parking ticket, for example, is it necessary to implement the complicated and extensive rules that would apply to an individual who has been arrested for a criminal offence? It is asserted that efficiency would demand that just as a punishment must be proportionate to a crime, so too should a trial be proportionate to the offence in question. An informal review of a parking ticket by an administrative officer who has been granted the authority to do so is definitively a less stringent method of adjudication – however, this does not make it an 'unfair' process.

Another aspect of efficiency that must be considered is that the process must be both just and also sustainable. There are a high number of regulatory offences occurring each day; too many to justify the application of complex procedural mechanisms for each offence. The burden that this places on the Provincial Court system cannot be overstated and has been discussed, in detail, throughout this proposal. As was stated in *R v Jamieson* (ONCA 1981), the POA (Provincial Enforcement Act) is "an inexpensive and efficient way of dealing with, for the most part, minor offences."[177]

It is impractical, intimidating, and inaccessible for the public to have a system where an individual accused of an egregious assault is participating in the same process as an individual hoping to appeal a parking fine. This is not only inefficient for the court system, but also for the citizens who are looking to appeal a ticket that they may assert was unjustly issued, and that they have minimal time and funds to dispute.

The final element of the Law Commission of Ontario guiding factors that will be discussed is accessibility.[178] There is a significant barrier that exists between the public and the legal system. The legal system can be, for many, intimidating, traumatizing, financially daunting and difficult to understand. For those who have minimal or no experience with the court system,

[176] *Ibid.*
[177] *R v Jamieson* 1981 CanLII 3223 (ONCA).
[178] LCOR, *supra* note 17.

there remains significant barriers in accessing the system. Throughout the consultation process, bylaw enforcement officers that were willing to interview noted that they believed that much of their work had as much to do with education and informing the public of the bylaws that were in place than anything else. Many individuals may not even realize that the penalty they have been issued must be paid, as some residents believe that bylaws are a type of "soft law."[179]

In addition to the financial barriers, there are physical barriers to the justice system. As has been previously mentioned, Saskatchewan is home to a large number of municipalities. Inaccessibility to courthouses remains a significant problem as not everyone has access to transportation or time off from work. There are many individuals who may have aging parents, young children, or family members with disabilities who are in need of constant care. Time is a significant barrier to those seeking to understand, appeal, or even pay a penalty if they are in a more isolated municipality. A bylaw system that is closer to home and without the daunting nature of procedures at Provincial Court mean individuals may be more likely to punctually arrive for their court date and seek answers to any questions they may have.

Finally, in 2020 alone, there were 13,364 new immigrants who came to Saskatchewan.[180] For many new Canadians, language can be a significant barrier in understanding the laws in their new home. Language barriers can offer a sometimes insurmountable obstruction for an individual looking to understand or appeal their violation. In offering a system that is less intimidating, and more accessible, new Canadians may feel safer in interacting with the adjudication system and accordingly may be more knowledgeable and engaged.

The above theoretical and pragmatic frameworks assist in assessing and evaluating alternatives to the status quo by offering valuable insight into costs and benefits associated with each dispute resolution model. Additionally, developing legislation that is sufficiently specific, yet still clear and understandable, will clarify the law and grant municipalities the flexibility to tailor administrative systems to local circumstances and preferences.

[179] Morano, *supra* note 63.
[180] Statista, *Number of Recent Immigrants in Saskatchewan from 2001 to 2020.* <https://www.statista.com/statistics/609178/number-of-immigrants-in-saskatchewan/> [statista.com].

Appendix E: Indigenous Considerations

This proposal is not specifically an analysis on the impact of bylaw enforcement and adjudication on Indigenous communities. However, any exploration on the topic of community governance would be incomplete without an acknowledgment of the issues surrounding colonial law making and its imposition on Indigenous peoples.

Indisputably, the relationship between the Canadian Government and Indigenous people in Canada has been paternalistic, obtrusive, and oppressive. In order to respectfully move forward with this proposal, there must be recognition of Indigenous communities' propensity for self-contained governance. This proposal could extend to Indigenous communities, with the caveat that all elements of the proposal are of an "opt-in" nature and may be adopted on a case-by-case basis for Indigenous communities.

Currently, First Nations or band bylaws operate much in the same way that a municipality does in that an Indigenous council must pass the bylaw. Additionally, a bylaw can only be enacted on a reserve if it covers a subject that is within the powers given to the council under the *Indian Act.* Even within those parameters, there are still additional restrictions to what band councils can control within their reserve.[181] Indigenous peoples have developed (pre-colonization) and continue to carry on their own regulatory/judicial system within many communities. In Cree societies, for example, there are four decision making groups; the family, medicine people, elders and the whole community. The role that each group plays and their degree of authority is dependent on the type of legal action required. The Gitskan society is another contrasting example. In Gitskan society the law operates through the matrilineal kinship units of extended families and overarching clans.[182]

It is crucial to appreciate the distinctions between the ways in which Indigenous groups deal with legal violations versus the way that colonial law makers. The history of oppression from colonial settlers on Indigenous peoples has been devastating, but this does not mean that there are no opportunities for combined efforts from both Indigenous groups and local

[181] Government of Canada, *Changes to Bylaws* <https://www.sac-isc.gc.ca/eng/1421864597523/1565371978843> [Canada.ca].
[182] University of Victoria Law, *What is Indigenous Law? A Small Discussion* <https://www.uvic.ca/law/assets/docs/ilru/What%20is%20Indigenous%20Law%20Oct%2028%202016.pdf> [uvic.ca].

governments. In Manitoba, for example, RCMP officers were called in to help the Manitoba Keewatinowi Okimakanak (MKO) band enforce bylaws surrounding COVID restrictions. RCMP Deputy Criminal Operations Officer Supt. Scott McMurchy indicated that there was "a missing mechanism to investigate and charge those who did not respect the newly enacted Indian Act bylaws [during the COVID-19 pandemic]."[183]

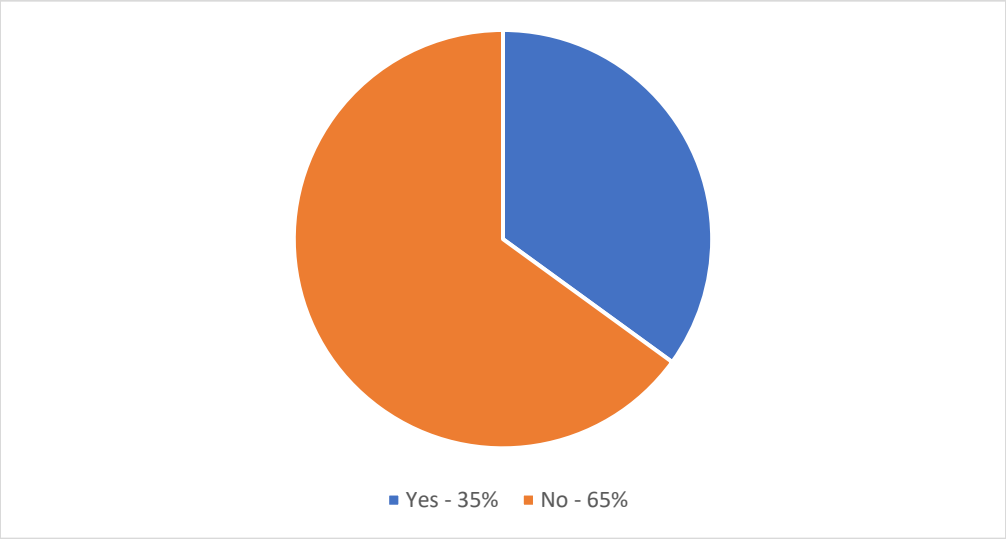
It is asserted that the recommendations being made within this proposal – should they be adopted by the provincial government – could be acknowledged as an option for Indigenous communities to utilize where they see fit. Much like the circumstances in Manitoba with the MKO band, the proposition in this case would be that Indigenous communities would be able to adopt these enforcement and adjudication models where it is appropriate and necessary. Additionally where an enforcement and adjudication model may be deemed appropriate and necessary would be completely at the discretion of the band or Indigenous reserve leader in question.

[183] Thompson Citizen, *Agreement will enable RCMP officers to enforce band bylaws at request of MKO First Nations* <https://www.thompsoncitizen.net/news/nickel-belt/agreement-will-enable-rcmp-officers-to-enforce-band-bylaws-at-request-of-mko-first-nations-1.24323170> [Thompsoncitizen.net].

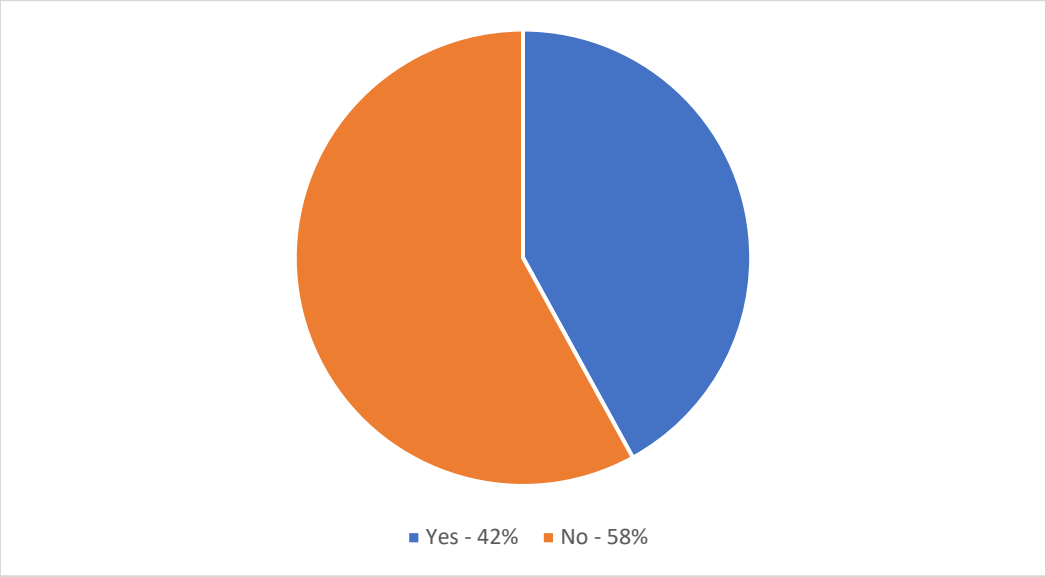
Appendix G: Bylaw Survey Results

As part of the research, an intensive bylaw questionnaire was distributed throughout Saskatchewan urban municipalities. The bylaw questionnaires were returned after one week, and a sampling of the comments and statistics were analyzed. Below are some of the concrete findings from the questionnaire.

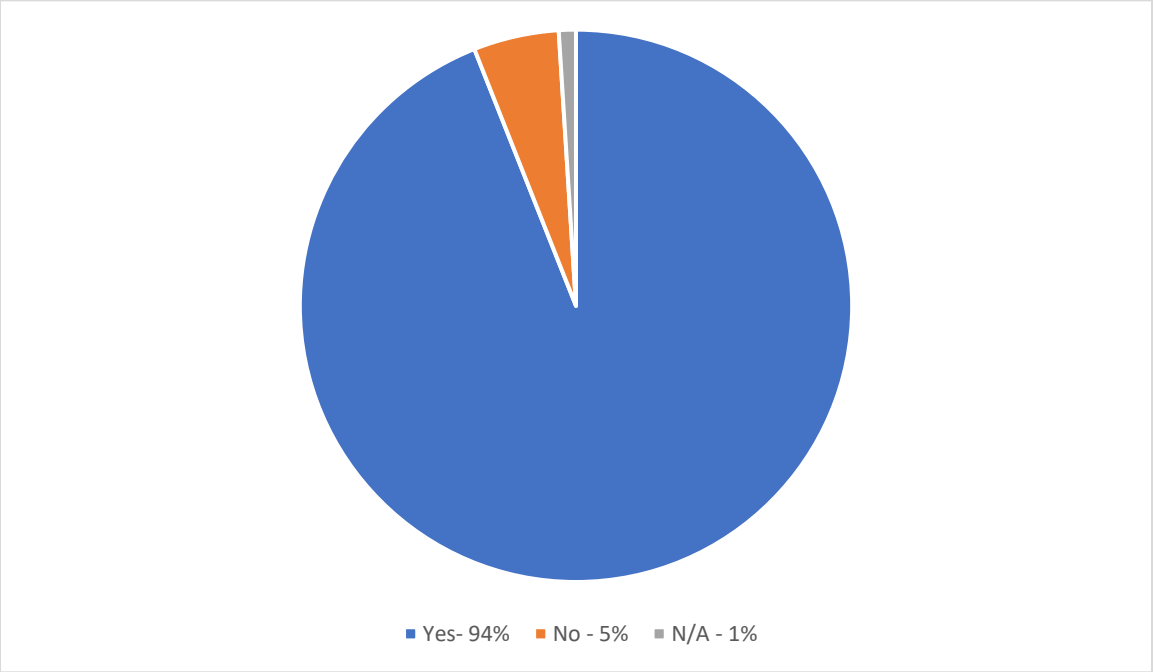
1. Does the municipality currently have access to the court for adjudication of bylaw offences?



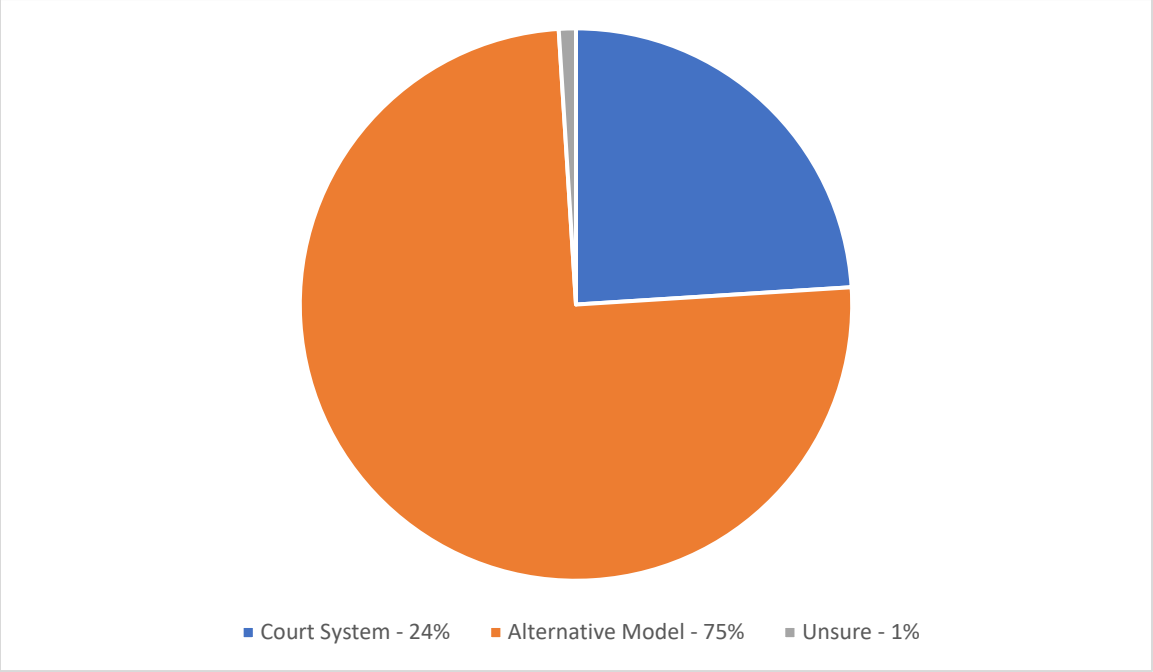
2. If your municipality does have access to a court process, does the access meet the needs of your municipality?



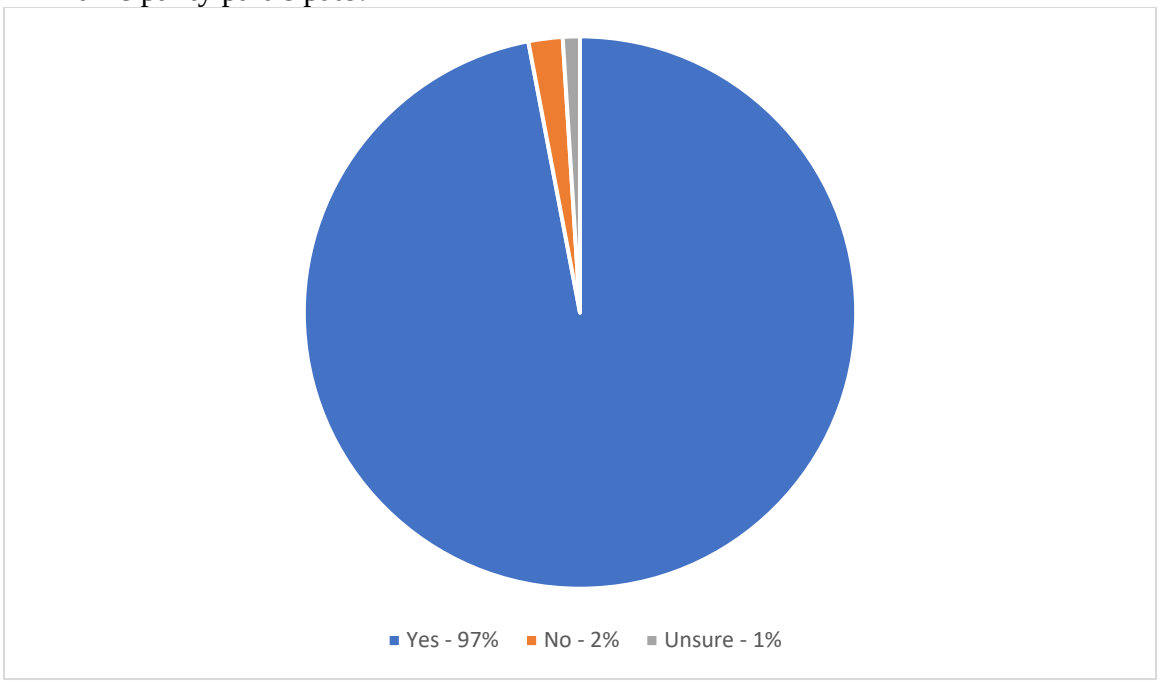
3. If your municipality had access to the court or another method of bylaw enforcement, would your municipality take advantage of it?



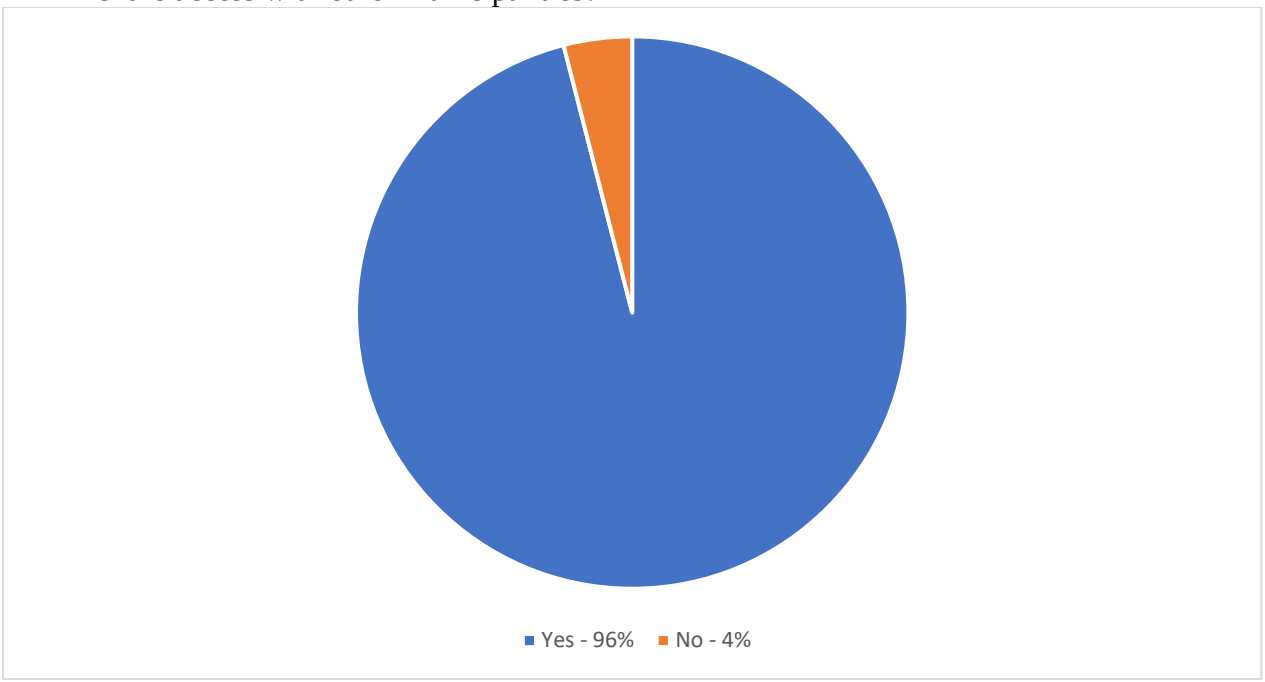
4. If you answered yes, is it more likely that your municipality would take advantage of a court system or an alternative method?



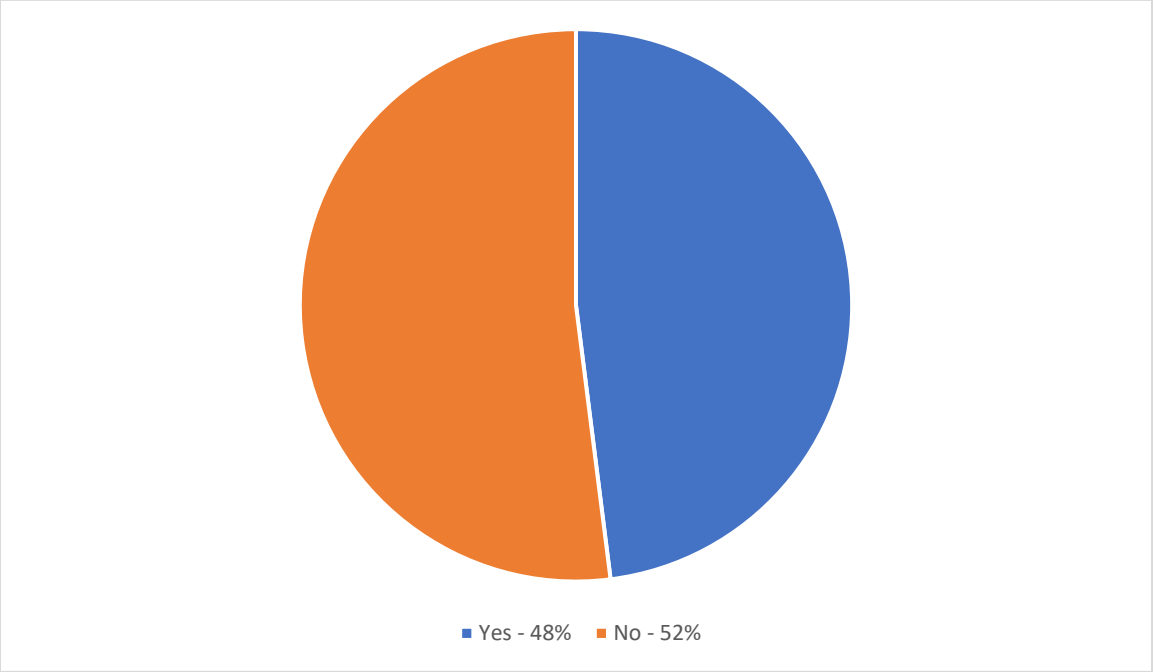
5. If the alternative method included sharing access with other municipalities, would your municipality participate?



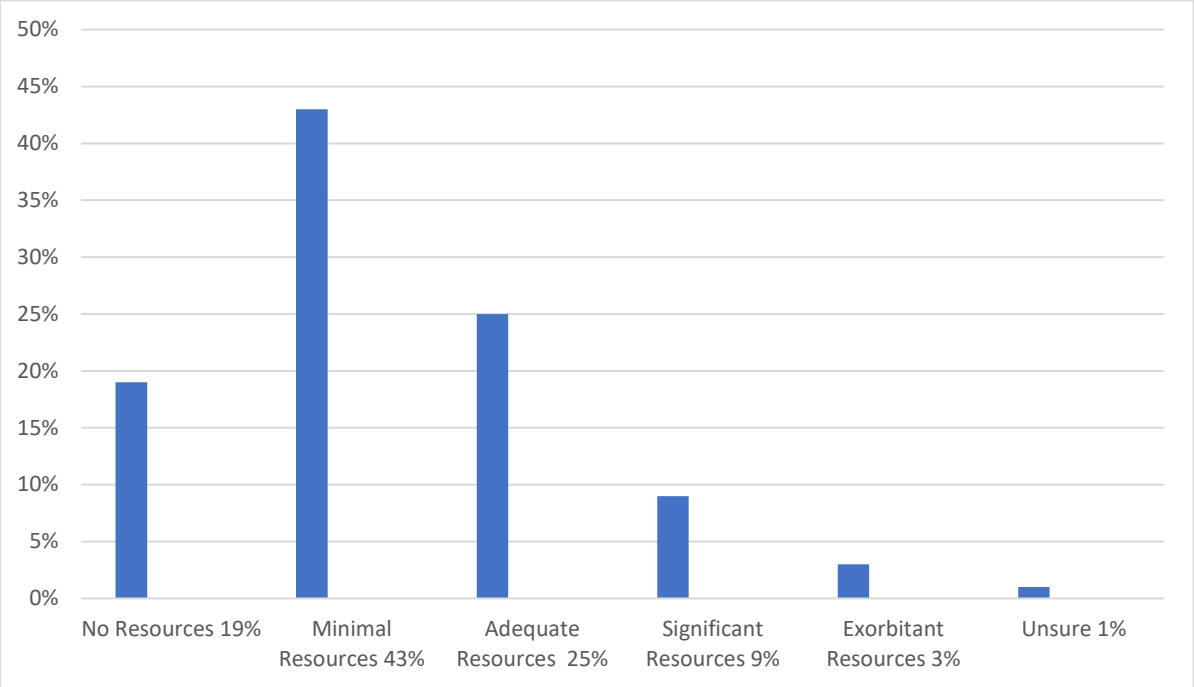
6. If greater access to a court system were available, would your municipality be willing to share access with other municipalities?



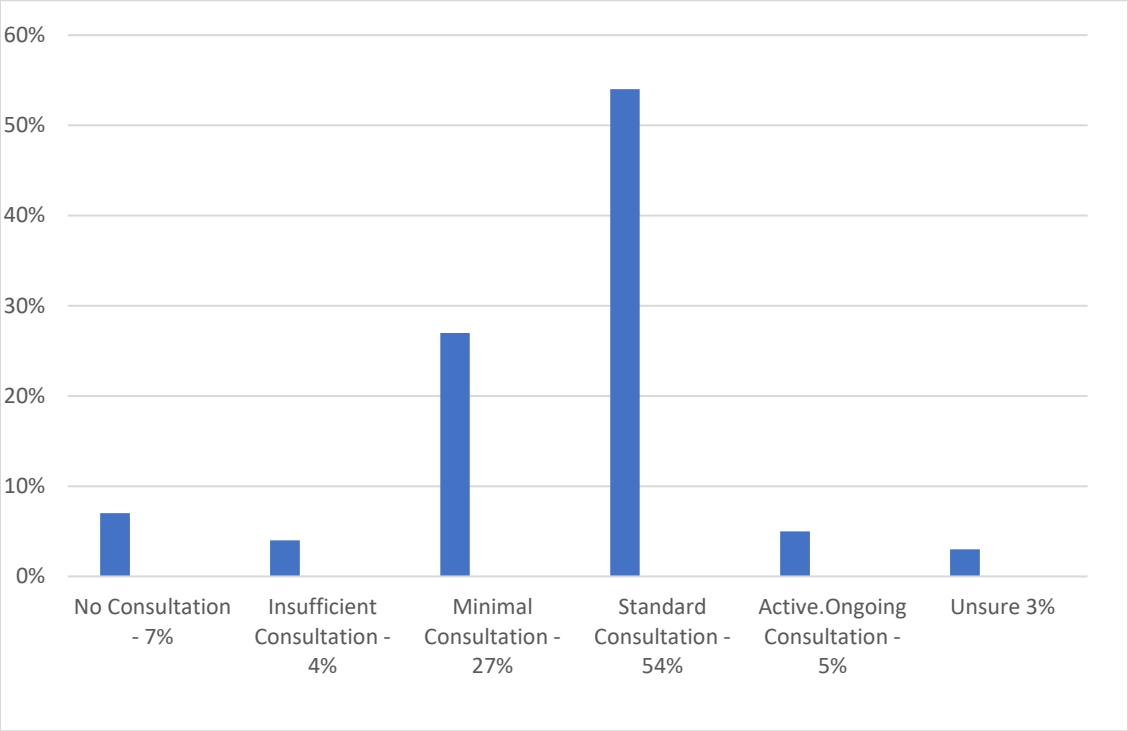
7. Does your municipality budget for bylaw adjudication and enforcement?



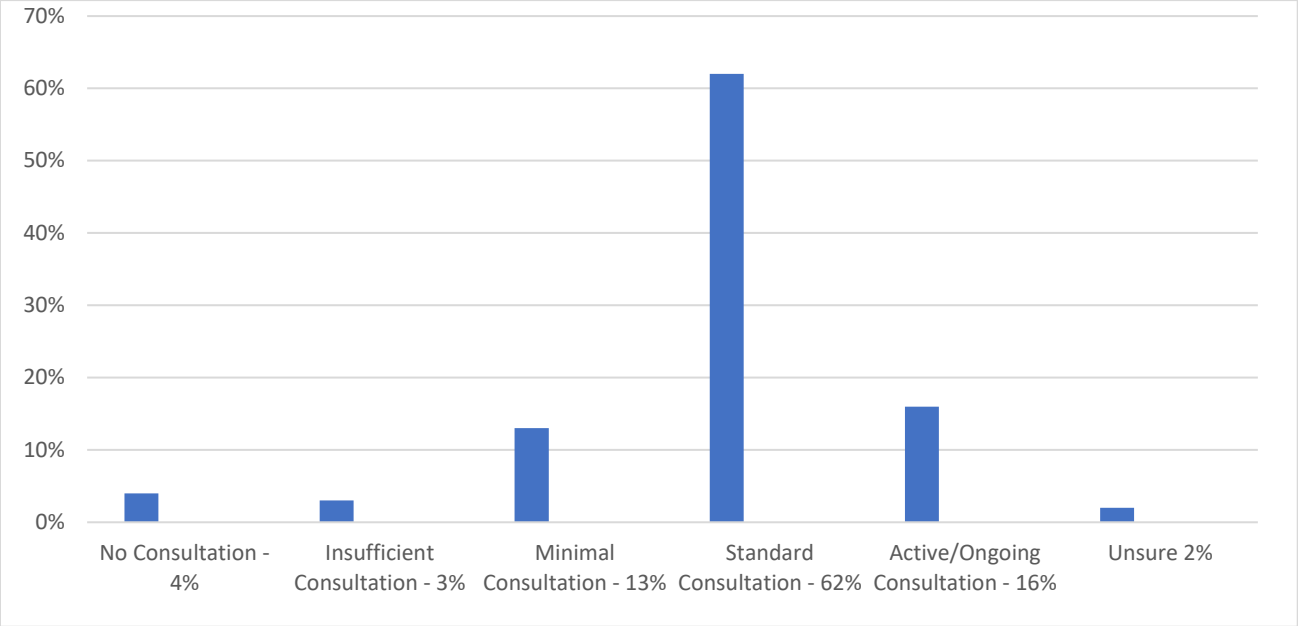
8. For tickets that are never paid nor collected, how much time and resources does your municipality spend on enforcing ticket collection with ultimately no results?



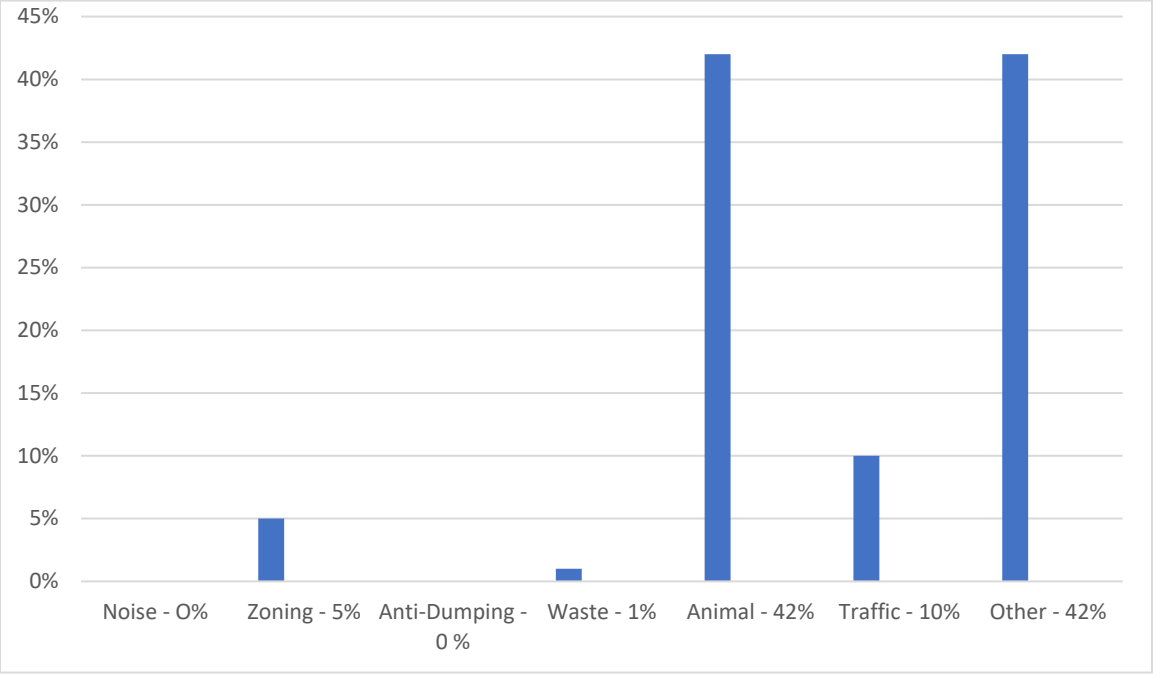
9. How much consultation takes place with affected constituents before a bylaw comes into effect?



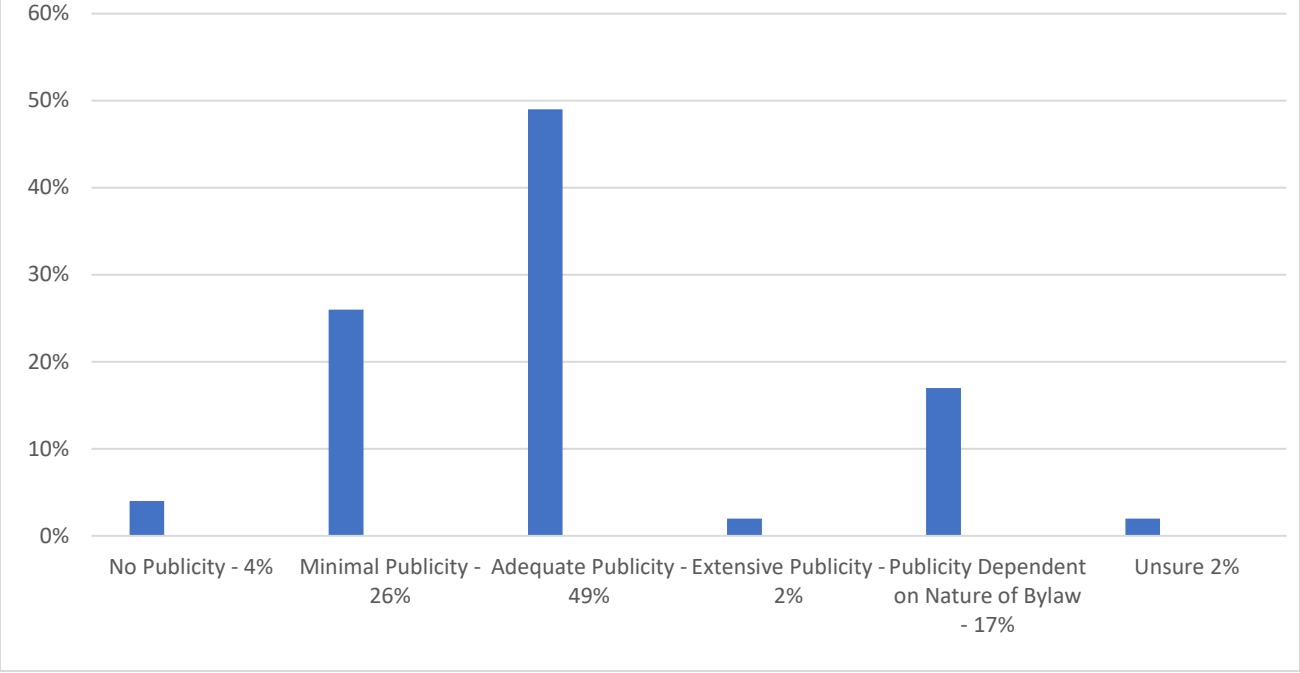
10. How much consultation would ideally take place before a bylaw comes into effect?



11. What are the most common bylaws that your municipality enforces or needs to enforce and have adjudicated?



12. Upon introducing new bylaws, what type of publicity takes place within your municipality?



13. What is the general level of understanding amongst community members respecting proper ways to pay, dispute, or appeal a ticket?