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TOWN OF WESTVILLE

August 7, 1987

Town of Westville
P. O. Box 923
Westville, N. S.
B0K 2A0

Attention: Gary R. Rankin, Town Clerk

Dear Mr. Rankin:

Re: Town of Westville - Proposed Loitering By-Law

As per request from Chief Chaulker, we have examined the issue of the enforceability of a proposed Loitering By-Law similar to that recently implemented by the Town of Stellarton. As you will be aware, the Solicitor for the Department of Municipal Affairs has strong reservations about the enforceability of such a By-Law and the Minister of Municipal Affairs approved the Stellarton By-Law only for such validity as it may have, on a without prejudice basis.

It is our view that the implementation of such a By-Law would be very much open to challenge under the equality provisions of the Charter of Rights. Our review of reported decisions has not revealed any ruling on this issue thus far by a superior court in Canada. Nevertheless, we are of the view that strong argument could be made that such a provision applicable to young people only would be discriminatory and contrary to the purpose and intent of the Charter. There are also practical problems of enforcement with respect to such a By-Law, including the probability that such a By-Law would have to be enforced under the Young Offenders Act, with all the restrictions that are applicable thereto. Should any parent or juvenile wish to challenge the provisions of such a By-Law, the Town could be confronted with claims for false arrest, false imprisonment, etc.

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19

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Town of Westville
Page 2
August 7, 1987

Our recommendation would be to enforce as best the Police Department is able the existing laws with respect to both littering and disturbing the peace. Although enforcement of these provisions is somewhat difficult, we suspect it is no more difficult than the problems that could well arise from any attempt to enforce a Curfew By-Law. Having said this, we do note that there appears to be nothing that would prevent the Town of Westville from passing and attempting to enforce a Curfew By-Law so long as the Town Council is prepared to accept both the financial and non-monetary risks of such questionable legislation.

Yours truly,

MACINTOSH, MACDONNELL & MACDONALD



Bruce T. MacIntosh

/jef

cc: Chief Oswald Chaulker