Vanderbilt Law Review En Banc

Volume 77 | Issue 1 Article 3

2024

CHANCERY COURT DEMONSTRATES WILLINGNESS TO APPLY CONTEXT-SPECIFIC TESTS IN ASSESSING CHALLENGES TO ADVANCE NOTICE BYLAWS

Robert S. Reder

Noah Nance

DELAWARE CORPORATE LAW BULLETIN

CHANCERY COURT DEMONSTRATES WILLINGNESS TO APPLY CONTEXT-SPECIFIC TESTS IN ASSESSING CHALLENGES TO ADVANCE NOTICE BYLAWS

Two Vice Chancellors, applying different standards of review, refuse to enjoin operation of "commonplace" bylaws

Robert S. Reder
Professor of the Practice of Law, Vanderbilt University Law School / Retired Partner, Milbank LLP

Noah Nance
Vanderbilt University Law School, J.D. Candidate, May 2025

INTRODUCTION

"It is well established," under Delaware law, "that stockholders have a fundamental right to 'vote for the directors that the s[tock]holder[s] want [ ] to oversee the firm.' " *Sternlicht v. Hernandez*, 2023 WL 3991642 (Del. Ch. June 14, 2023) ("*Sternlicht*"). Moreover, "[s]ubsumed within that fundamental right to vote is the right to nominate a competing slate." Despite this recognition, the Delaware General Corporation Law "is silent as to how a stockholder may propose a nominee for election." *Strategic Inv. Opportunities LLC v. Lee Enters., Inc.*, 2022 WL 453607 (Del. Ch. Feb. 14, 2022) ("*Strategic Investment Opportunities*"). "[T]o fill this gap," public companies have adopted so-called advance notice bylaws.

Generally, advance notice bylaws require stockholders to provide the corporation with prior notice of their intention to nominate director candidates, together with detailed information about their nominees, their stockholdings, and other relationships with the corporation. As such, "advance notice bylaws have become 'commonplace' tools for public companies to ensure 'orderly meetings and election contests.' "

I. LEGAL BACKGROUND

The Delaware Court of Chancery ("*Chancery Court*") "generally enforce[s] clear and unambiguous advance notice bylaws to avoid 'uncertainty in the electoral setting.' " Because corporate bylaws constitute "a 'flexible contract between corporations and stockholders,' " a challenge to an advance notice bylaw "begins with a contractual analysis." "Several questions form the heart of that inquiry: were the bylaws clear and ambiguous, did the stockholder's nomination comply with the bylaws, and did the company interfere with the [stockholder]'s attempt to comply." This, however, is not the end of the inquiry. Rather,

> [i]f circumstances require, the court will go on to consider whether the fiduciaries' actions were unreasonable or inequitable. Equity will prohibit, for example, attempts to "utilize the corporate machinery" for the "purpose of obstructing the legitimate efforts of dissident stockholders in the exercise of their right to undertake a proxy contest against management."

The threshold issue in any fiduciary challenge to board action is the selection of the applicable standard of review. This choice can often have a profound impact on the outcome of the challenge. Historically, in the context of challenges to the application of advance notice bylaws, the Chancery Court has had two standards from which to choose:

- The "enhanced scrutiny—Delaware's intermediate standard of review" (i) first articulated in *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985) ("*Unocal*"), in connection with a famous challenge to measures taken by a board to fend off a hostile takeover; and (ii) subsequently applied in the stockholder vote context in *Blasius Indus., Inc. v. Atlas Corp.,* 564 A.2d 651 (Del. Ch. 1988) ("*Blasius*"); *or*
- A "context-specific" application of the oft-quoted doctrine of *Schnell v. Christ-Craft Indus., Inc.*, 285 A.2.d 437 (Del. 1971) ("*Schnell*"), that "inequitable action does not become permissible simply because it is legally possible."

In *Rosenbaum v. CytoDyn Inc.*, 2021 WL 4775140 (Del. Ch. Oct. 13, 2021) ("*Rosenbaum*"), the Chancery Court discussed these standards in the context of a challenge to the application of a "commonplace" advance notice bylaw to block nominations by three unhappy stockholders.

- *First*, the *Rosenbaum* Court explained that "*Blasius* applies as the default standard whenever a board of directors deprives the stockholders of their right to elect directors through the wrongful enforcement of an advance notice bylaw." The *Rosenbaum* Court declined to apply *Blasius* under the circumstances, however, as *Blasius* is to be used only "sparingly" and may not be invoked "in the absence of evidence that the Board's response was the product of 'manipulative conduct.' "
- *Next*, the *Rosenbaum* Court recognized that *Schnell* "reserve[s] space for equity to address the inequitable *application* of even validly-enacted advance notice bylaws." Under this approach, "[t]he inquiry ultimately focuses on whether the by-law, *as applied in these circumstances*, has afforded the shareholders a fair opportunity to nominate director candidates."

The *Rosenbaum* Court ultimately denied the stockholders' requested relief. (For a more detailed analysis of *Rosenbaum*, *see* Robert S. Reder & Gabrielle M. Haddad, *"Chancery Court Declined to Apply Blasius "Compelling Justification" Standard in Sustaining Board's*

Rejection of Opposition Slate Under 'Commonplace' Advance Notice Bylaw," 75 VAND. L. REV. EN BANC 195 (May 12, 2022).)

Demonstrating the context-specific nature of the analysis, the Chancery Court recently applied different standards of review in rejecting fiduciary challenges to the operation of two very similar advance notice bylaw provisions.

- *First*, in *Strategic Investment Opportunities*, an insurgent stockholder who had made an offer to purchase the company challenged two requirements of its advance notice bylaw. The stockholder had failed to satisfy either requirement. Given the "defensive mindset" in which the board of directors "was operating when it rejected" the insurgent's nominees, Vice Chancellor Lori W. Will applied enhanced scrutiny. According to the Vice Chancellor,

  > [w]hether labeled as *Unocal* or *Blasius*, this standard of review "recognize[s] the inherent conflicts of interest that arise when a board of directors acts to prevent shareholders from effectively exercising their right to vote either contrary to the will of the incumbent board members generally or to replace the incumbent board members in a contested election."

- *Next*, in *Sternlicht*, former directors with significant stockholdings challenged the deadline for nominations imposed by an advance notice bylaw in light of "a 'radical shift in position, or a material change in circumstances' " following the deadline. Vice Chancellor Paul A. Fioravanti, Jr. turned to the context specific application of *Schnell* articulated in *Hubbard v. Hollywood Park Realty Enters., Inc.*, 1991 WL 3151 (Del. Ch. Jan. 14, 1991) ("*Hubbard*"). The *Hubbard* Court ruled that a board of directors "had a duty to waive an advance notice bylaw provision under the principles of *Schnell* where a 'radical shift in position, or a material change in circumstances' had occurred after the deadline for nominations had passed."

II. STRATEGIC INVESTMENT OPPORTUNITIES

A. Factual Background

1. Lee Advance Notice Bylaw

Lee Enterprises, Inc. ("*Lee*") is a "print and digital local news provider in mid-sized markets across the United States." Lee's amended

bylaws include an advance notice provision ("*Lee Advance Notice Bylaw*") requiring:

- Written notice "between 90 and 120 days before the 'first anniversary of the preceding year's annual meeting' " from any stockholder seeking to nominate a board candidate;
- The nominating stockholder to be "a stockholder of record at the time such notice is delivered"; *and*
- The form of notice to include "a completed and signed questionnaire and written representation agreement . . . in the form to be provided by the Secretary . . . within 10 days of such request . . . ."

2. Alden Makes an Offer and Seeks to Nominate Candidates

In January 2020, Alden Global Capital LLC (together with various affiliated entities, "*Alden*"), "a significant investor in newspaper companies," disclosed in a Securities and Exchange Commission ("*SEC*") filing that it "owned 5.9% of Lee's common stock." Then, in late November 2021, to facilitate a bid for Lee, Alden requested that its broker, J.P. Morgan Securities LLC ("JPM") "move 1,000 shares of [Lee] to book entry form as soon as possible" so that Alden would become the record holder of those shares. Due to the nominating deadline imposed by the Lee Advance Notice Bylaw, Alden also requested that JPM arrange for Cede & Co. ("*Cede*")—the record holder of the Lee shares beneficially owned by Alden—to issue a letter ("*Cede Letter*") advising Lee of Alden's intention to nominate candidates to the Lee board of directors ("*Lee Board*").

Hours later, Alden sent a "non-binding proposal" to the Lee Board "offering to purchase Lee for . . . a 30% premium . . . ." To permit Alden to nominate candidates for election to the Lee Board at the upcoming annual meeting of stockholders, it also emailed Lee's corporate secretary to request "an electronic copy of the form of questionnaire . . . and written representation and agreement" referenced in the Lee Advance Notice Bylaw. Lee's secretary denied this request on the ground that "the Company's list of registered holders . . . confirmed that [Alden] was not a stockholder of record."

Alden continued to press JPM and Cede. Alden was, however, unable to complete the process for delivering nomination notices by the November 26 deadline. Accordingly, on November 26, Alden's legal counsel emailed two documents to Lee's General Counsel: "a notice of stockholder nomination" ("*Nomination Notice*") and the Cede Letter. The Nomination Notice affirmed that the process for making Alden a

record holder of Lee shares had not been completed. Crucially, however, the Nomination Notice "did not include Lee's form of questionnaire." Instead, the Nomination Notice attached questionnaires completed by three Alden nominees purporting to be "substantially similar in scope to the forms of written questionnaires provided by a company's secretary in like situations." Finally, on December 2, Alden became a Lee stockholder of record.

3. Lee Rejects Alden's Nominees; Litigation Ensues

On December 3, Lee rejected the Nomination Notice: *first*, because "the purported nominations were not made by a stockholder of record"; *second*, because "the record holder failed to comply with numerous requirements for the contents of the notice"; and *third*, because the Nomination Notice "did not include a completed and signed questionnaire from each [p]roposed [n]ominee in the Company's form." In response, on December 15, Alden sought "declaratory and injunctive relief" from the Chancery Court, claiming "breach of contract against Lee, and breach of fiduciary [duty] against the members of the Board."

B. Vice Chancellor Will's Analysis

Vice Chancellor Will focused on two key questions in assessing Alden's claims. *First*, did the "Nomination Notice . . . comply with the clear and unambiguous requirements of" the Lee Advance Notice Bylaw *as a matter of contract law*? And *second*, should the Lee Board's rejection of the Alden nominees "nonetheless be set aside" *based on equitable principles*? The Vice Chancellor, answering each question in the negative, denied Alden's requested relief.

1. Contract Analysis

The Vice Chancellor's "contractual analysis" asked: "were the bylaws clear and ambiguous, did the stockholder's nomination comply with the bylaws, and did the company interfere with [Alden]'s attempt to comply[?]" The Vice Chancellor concluded that the requirements of the Lee Advance Notice Bylaw were "not ambiguous." Further, Cede—the actual record holder of the shares beneficially owned by Alden—"did not 'ma[k]e' the nomination, as the Bylaws require," and "did not provide, 'as to each person whom the Noticing Stockholder proposes to nominate,' information required by the Bylaws . . . ." Alden's submission of a "substantially similar" questionnaire did not satisfy the literal requirement of the Lee Advance Notice Bylaw. And, finally, because Alden "did not become a stockholder of record until . . . six days after

the Nomination Notice deadline . . . Lee cannot be said to have interfered with [Alden]'s attempted compliance."

2. Equity Analysis

a. Standard of Review

Vice Chancellor Will began this part of her analysis by describing the approaches to the standards of review championed by each party:

- Not surprising, Alden claimed the Lee Board faced a high bar to prevail, arguing that, even if the Nomination Notice failed to comply with the Lee Advance Notice Bylaw, "the Board's fiduciary duties obligated the directors to exercise their discretion in favor of the stockholder by waiving, or allowing [Alden] to cure, any legal defects."
- In contrast, Lee placed a high bar on Alden, arguing that "a plaintiff stockholder must first prove manipulative conduct or 'compelling circumstances' that could justify a finding of irreparable conduct . . . ." Absent such a showing, "the court's inquiry should end because the business judgment rule applies."

The Vice Chancellor rejected each approach, noting that:

> Delaware law necessarily leaves room for assessing whether a board's actions in enforcing a clear advance notice bylaw were justified, consistent with the doctrine of *Schnell*. This court must have the opportunity to consider whether the bylaw is being enforced fairly, in furtherance of a legitimate corporate purpose, or whether equity demands that it be set aside in a given context.

Rather than continuing with a *Schnell* analysis, however, Vice Chancellor Will, noting that Alden's attempt to nominate director candidates "arises in a takeover context," could not "ignore the defensive mindset in which the Board was operating when it rejected the Nomination Notice." On this basis, the Vice Chancellor determined that "enhanced scrutiny . . . is the appropriate standard of review to apply in this case," regardless of "[w]hether labeled as *Unocal* or *Blasius* . . . ." Moreover, such inquiry must "be undertaken 'with a special sensitivity' where directors' actions may affect the stockholder franchise or the result of director elections."

In language reminiscent of *Unocal* and its progeny, the Vice Chancellor explained that, under the circumstances, application of enhanced scrutiny review

> requires a context-specific application of the directors' duties of loyalty, good faith and care. Fundamentally, the standard to be applied is one of reasonableness. The defendants must "identify the proper corporate objectives served by their actions" and "justify their

> actions as reasonable in relation to those objectives." If the incumbent directors['] actions "operate[d] as a reasonable limitation upon the shareholders' right to nominate candidates for director," they will generally be validated.

b. Application of Enhanced Scrutiny

Applying enhanced scrutiny review, Vice Chancellor Will concluded (i) Lee's rejection of the Nomination Notice "was justified," (ii) the "record holder requirement was neither facially problematic nor unreasonable as a matter of policy," and (iii) there was " 'no evidence of any manipulative conduct' by the Board suggesting that its enforcement of the Bylaws was not made even handedly and in good faith." In support of these conclusions, the Vice Chancellor observed that:

- Alden "failed to comply with a validly enacted bylaw that had a legitimate purpose . . . [and] could readily have been satisfied by any stockholder." Further, the Lee Advance Notice Bylaw was "adopted on a clear day long before Alden surfaced," and "the Board was not faced with an imminent threat—much less a threat from Alden—at that time."
- "Under Delaware law, corporations are entitled to 'rely upon record ownership, not beneficial ownership, in determining who is entitled to notice of and to vote at the meeting of stockholders.' " Indeed, "[r]eliance on record ownership ensures order and gives the corporation certainty that the party attempting to take action based on a right incidental to share ownership is, in fact, a stockholder."
- There was no evidence of any manipulative conduct: "[h]ere, nothing—and certainly no actions of the Board—precluded [Alden] from complying with the Bylaws' requirements." In fact, Alden's "own delay is what ultimately prevented it from satisfying the Bylaws' record holder (and, by extension, form) requirements."

Thus, the Lee Board's "decision to stand by the Bylaws' requirements was not inequitable in these circumstances." To the contrary, the Lee Board "had a genuine interest in enforcing its Bylaws so that they retain meaning and clear standards that stockholders must meet." As such, the actions taken by the Lee Board "cannot constitute a breach of fiduciary duty and are far from the sort of inequitable conduct that would require this court to intervene."

III. STERNLICHT

A. Factual Background

1. Cano Advance Notice Bylaw

Cano Health, Inc. ("*Cano*") "owns and operates medical centers and delivers healthcare services through affiliate relationships with other providers, focusing primarily on coordinating care to members under Medicare Advantage health plans." Dr. Marlow Hernandez ("*Hernandez*"), a co-founder of Cano, has acted as chief executive officer since inception and serves with five other individuals on Cano's board of directors ("*Cano Board*"). Hernandez "controls 4.75% of Cano's voting power." Three individuals—Barry Sternlicht, Dr. Lewis Gold, and Elliot Cooperstone—who formerly served on the Cano Board (collectively, "*Plaintiffs*") "control 35.7% of the voting power of Cano."

Beginning in August 2021, Hernandez arranged a series of loans for himself, secured by pledges of stock he owned in Cano. Some of these transactions were disclosed to the Cano Board and publicly, while others were not. Several of these loans were obtained from individuals who had sold their business to Cano or had other business relationships with Cano.

Cano's bylaws contain an advance notice provision ("*Cano Advance Notice Bylaw*") that requires any stockholder who wishes to nominate a Cano Board candidate to give written notice to the corporate secretary "not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the one-year anniversary of the preceding year's Annual Meeting." Because the 2022 annual meeting was held on May 16, 2022, written notice of nominations for the 2023 annual meeting were due by February 15, 2023 (the "*Nomination Deadline*").

2. Plaintiffs Grow Dissatisfied

By November 2022, after Cano announced that CVS had walked away from a potential acquisition, the trading price of Cano stock fell to two dollars per share. Plaintiffs, who at the time still served on the nine-member Cano Board, became dissatisfied with Cano's performance and Hernandez's stewardship as CEO. Their dissatisfaction grew after they received negative reports concerning Hernandez's tenure, including undisclosed related party payments and transactions by Hernandez and members of his family, from various corporate officers.

When confronted with these developments, the Cano Board ruled out terminating Hernandez, but discussed taking other actions, including revising compliance policies and taking such remedial actions as separating Hernandez's roles as Cano Board chairman and CEO. Dissatisfied with the lack of Board action, one Plaintiff threatened, if Hernandez refused to step down as CEO, to resign as a director and issue a public statement explaining his reasons therefor.

Over Plaintiffs' objection, in March 2023, the Cano Board created a special committee (which did not include any of the Plaintiffs) to deal with any fallout from any so-called "noisy resignation" by one of the Plaintiffs (the "*Special Committee*"). The Special Committee was authorized to negotiate and make recommendations to the Cano Board "regarding settlements with stockholders 'notwithstanding any such stockholder's designation as a member of the Board,' and 'all such other actions that the Special Committee may determine are necessary or advisable in connection with the Purpose of the Committee.' "

Later that month, the Special Committee presented various recommendations to the Cano Board, including "that Hernandez be removed as chairman of the board, but remain a director," and be subjected to "a probationary period . . . to improve Company performance . . . ." Over Plaintiffs' continued objections, the Cano Board accepted the Special Committee's recommendation. Within days, Plaintiffs resigned from the Cano Board. the Cano Board, in turn, reduced its size to six directors.

3. Plaintiffs' Post-Resignation Actions; Litigation Ensues

On April 4, Plaintiffs announced, in an SEC filing, their formation of a group. They attached one of their resignation letters to the filing. Two days later, in his own SEC filing, Hernandez disclosed both a sizable loan from one of Cano's stockholders and Hernandez's agreement to transfer twenty million shares of Cano stock to this stockholder to repay the loan.

On April 14, approximately two months after the Nomination Deadline, Plaintiffs sent a letter to Cano's outside counsel claiming that "the recent disclosures by Hernandez . . . , together with the changes at the Company that occurred after" the Nomination Deadline, were "material changes that required the board to immediately reopen the nomination window for thirty days." Notably, Plaintiffs had not yet "submit[ted] a nomination proposal or otherwise attempt[ed] to comply with any of the requirements" of the Cano Advance Notice Bylaw. In response, on April 27, "Cano decided to set the annual meeting date on June 15 and to use a record date of May 8."

After the Cano Board failed to respond to Plaintiffs' April 14 letter, they filed their initial complaint on April 28, ultimately asking the Chancery Court for "an order: (a) enjoining Cano from enforcing the advance notice bylaw; (b) setting June 21, 2023 as the record date for Cano's 2023 annual meeting; and (c) setting July 26, 2023 as Cano's annual meeting date."

B. Vice Chancellor Fioravanti's Analysis

Unlike the circumstances faced by Vice Chancellor Will in *Strategic Investment Opportunities*, Vice Chancellor Fioravanti was not required to consider either the validity of the Cano Advance Notice Bylaw (no one claimed it was invalid) or whether Plaintiffs had complied with its terms (they clearly had not). Instead, according to the Vice Chancellor, the question whether there was "some basis in equity to excuse strict compliance with the bylaw . . . animates this case." Siding with Hernandez and his fellow directors ("*Defendant Directors*"), the Vice Chancellor denied Plaintiffs' requested injunction.

1. Framing the Issue

Vice Chancellor Fioravanti began his analysis by noting that "[c]ases challenging the application of an otherwise valid advance notice bylaw present a context-specific application of *Schnell*." In a footnote, he explained that neither Plaintiffs nor Defendant Directors "presented this expedited injunction action through th[e] lens" of *Blasius*. Accordingly, the Vice Chancellor centered his analysis on *Schnell*. He cautioned, however, that the *Schnell* doctrine "should be reserved for those instances that threaten the fabric of the law, or which by an improper manipulation of the law, would deprive a person of a clear right."

Next, the Vice Chancellor observed that Plaintiffs "framed their claim within the context-specific application of the *Schnell* doctrine recognized in *Hubbard*." In *Hubbard*, the Chancery Court ruled that a board of directors has "a duty to waive an advance notice bylaw provision under the principles of *Schnell* where a 'radical shift in position, or a material change in circumstances' had occurred *after the deadline* for nominations had passed." (emphasis added) Implying that Plaintiffs' reliance on *Hubbard* might be a risky proposition, the Vice Chancellor pointed out that "[n]either the court nor the parties have been able to identify any decision of this court in the ensuing 32 years enjoining the application of an advance notice bylaw in reliance on *Hubbard*."

Before assessing Plaintiffs' *Hubbard* arguments, Vice Chancellor Fioravanti noted that in *AB Value Partners, LP v. Kreisler Mfg.*

Corp., 2014 WL 7150465 (Del. Ch. Dec. 16, 2014) ("*AB Value*"), the Chancery Court found that "the standard for invoking *Hubbard* . . . was high and required the plaintiff to provide compelling facts indicating that enforcement of the bylaw was inequitable." The *AB Value* Court "distilled the *Hubbard* framework to three questions:

- First, did the change in circumstances occur after the advance notice deadline?
- Second, was the change 'unanticipated' and 'material' ?
- Third, was the change caused by the board of directors?"

2. Application of Hubbard

In addressing these three questions, Plaintiffs argued that "materiality under *Hubbard* is the same as the materiality standard governing proxy disclosures to stockholders." Quoting *AB Value*, Vice Chancellor Fioravanti rejected this approach, explaining that the appropriate "focus is on . . . material actions taken by the board that *substantially alter the direction of the company*."

Against this backdrop, Vice Chancellor Fioravanti ruled that the "moving target of post-deadline 'material' changes" alleged by Plaintiffs "fail to establish a reasonable probability of success on their *Hubbard* claim." Specifically, none of the actions taken:

- at a "meeting of committee chairs" concerning a loan made to Hernandez by the former owner of a Cano subsidiary who served as the subsidiary's president;
- during a conversation among a so-called "Shadow Board" of four Cano directors concerning renomination of one of the Plaintiffs and concealment of an internal report concerning Hernandez's performance as CEO; *or*
- by the Cano Board in forming the Special Committee, accepting the Special Committee's recommendations, or appointing as Board Chair one of the Defendant Directors who previously served as "lead director,"

triggered "material or radical change in Cano's circumstances" taken by the Cano Board as contemplated by *Hubbard*.

In fact, echoing Vice Chancellor Will's opinion in *Strategic Investment Opportunities*, Vice Chancellor Fioravanti noted that Plaintiffs "were in no hurry to take action" to advance their nominees, even though they had "decided to nominate a competing slate in early March, and in furtherance of that goal, launched a ploy to strategically delay and ultimately, to assert claims of material post-deadline change that are both pretextual and insufficiently radical under [ ] *Hubbard* and

Schnell." In short, "equity aids the vigilant, not those who slumber on their rights."

CONCLUSION

Although the two Vice Chancellors' application of different standards of review may, on the surface, seem perplexing, both decisions illustrate the Chancery Court's willingness to apply context-specific tests under the circumstances of a challenge to an otherwise "commonplace" advance notice bylaw:

- In *Strategic Investment Opportunities*, Vice Chancellor Will, in the context of defensive measures taken by the Lee Board in response to a takeover threat, determined that a *Blasius/Unocal* analysis was appropriate.
- In *Sternlicht*, Vice Chancellor Fioravanti observed that "[c]ases challenging the application of an otherwise valid advance notice bylaw present a context-specific application of the *Schnell* doctrine" that was "recognized in *Hubbard*."

These standards of review are not necessarily at odds, but they do present different levels of deference and scrutiny. Nevertheless, in *Strategic Investment Opportunities* and *Sternlicht*, the ultimate result was the same—the Vice Chancellors declined to award the requested relief. As more challenges are brought, it will be interesting to see if the Chancery Court continues to rely on context-specific tests rather than adopting a more uniform approach. In any event, absent compelling circumstances, plaintiffs face a high bar in challenging the operation of a "commonplace" advance notice bylaw.