

Submission to Municipal Assessment Review

31 January 2018

The *Municipalities Act, 1999*, the *City of St. John's Act*, the *City of Mount Pearl Act* and the *City of Corner Brook Act* (collectively referred to as the "Municipal Legislation") provide a legal framework for cities and municipalities to represent the interests and respond to the needs of their communities. The Government of Newfoundland and Labrador has undertaken a review of the Municipal Legislation, and has requested public input. In this submission, I offer my opinion on how the municipal framework should be reformed to provide more value to taxpayers, and operate in a more democratic manner.

Context

The Province faces unprecedented financial challenges. In an era of historically low interest rates, the Province has imprudently amassed public debt which will be left to future generations to pay. This in a Province with a declining population and birth rate, and a rapidly increasing retired population with shrinking incomes. Impartial observers, including the Parliamentary Budget Office, have warned that current fiscal policy is unsustainable, and some have predicted bankruptcy is a probable outcome, especially if/when interest rates rise.

While Provincial spending has increased dramatically over the past 10-15 years, so too has revenues per capita. In fact, the Province takes in so much revenue per capita that it is not entitled to equalization, which provides only relief to provinces that lack the fiscal capacity to raise sufficient revenues. What is clear, on even the most basic analysis, is that public spending is too high, and is unsustainable. What's more, government has gone beyond loading an unreasonable burden on its current citizens; it has also burdened future generations (at least those who might be prepared to stick around).

This imprudent spending is not unique to the Provincial government. Municipal spending has also rapidly increased, at least on the Northeast Avalon, the region to which my comments apply. Since acquiring my current home in 2001, my municipal taxes have roughly doubled – far outpacing the rate of inflation, and growth in my own income. Municipal taxes now consume a significant percentage of personal income. Whereas once, people typically paid their municipal taxes in a lump sum annually or semi-annually, now many pay in monthly installments – like a car or mortgage payment - to make the expense manageable.

While municipal spending has rapidly increased, interestingly, my municipality has, to my knowledge, only recently created a budget for sidewalk construction – something I would consider basic infrastructure that my taxes *should* have been used for all along. Instead, higher priority has been placed in the ongoing conspicuous consumption among neighboring municipalities over what I call "trophy infrastructure", i.e., big, expensive, capital projects (think [REDACTED] new town hall, new fire hall, new arena, new planned library, new planned depot). It's not that these things aren't important, but why not use taxpayers' money to build something that is adequate, not gilded – such an approach would mean funds would be available for more mundane, yet important infrastructure, like sidewalks. To me, adjustment is needed in both the level of municipal spending, and what the money is being spent on.

Curiously, a significant portion of my municipal taxes go to support administrations that are duplicated in at least five other municipalities within a 20-minute drive of my house - things like Departments of Finance/Tax Services, Planning and Engineering, Public Works, Recreation, Enforcement, Business Development, etc. Meanwhile, the cost of services provided by these municipalities continuously rise, unchecked by competition or mandatory efficiency targets – these ever-increasing costs are simply passed on to the weary taxpayer.

I have spent my entire working life in competitive private industry, where there is a constant, unspoken focus on efficiencies, and providing customers with better service at lower cost. This ethos appears lacking in much of the public sector, where annual budgets are jealously protected, even if by imprudent spending of unused allocations before fiscal year-end, and where the customer, i.e., the taxpayer, is largely taken for granted, and simply seen as an unlimited source of revenues.

In my opinion, our Province's mismanaged finances and perilous economic state place us at a watershed moment, and the entire approach to the provision of public services needs an attitude adjustment. The customer, i.e., the taxpayer, should be of primary concern, not an afterthought. All levels of government should be obsessive in squeezing the maximum value from each tax dollar. Frankly, it is contemptuous towards taxpayers to do anything else.

What should be the goal of municipal government

Municipal government should have one dominant purpose – the provision of core civic services in the least-cost manner. This should be the prime directive of the Municipal Legislation. If government is unable to provide core civic services in the least-cost manner, those services should be provided by someone else who can. Taxpayers should not be forced to pay more for any municipal service than what they would pay a comparable service provider in the private sector.

Municipalities should be subject to mandatory financial discipline. Many other entities that provide monopoly-type services have their prices/rates regulated. To protect customers, this generally ensures services are provided in a prudent, least-cost manner, and that rates are just and reasonable. Other monopoly-type services have rate increases limited to inflation less a productivity factor, to ensure a constant focus on achieving efficiencies and cost savings for customers. Why do these principles apply to private, but not public monopoly-type services? The Municipal Legislation should impose similar rules of financial discipline to limit municipal spending and tax increases.

In reviewing the Municipal Legislation, government should not feel constrained by existing legal structures. Given our current and future financial challenges, government should start with a blank canvas, and simply ask: how can the provision of core civic services be delivered in the least-cost manner?

In my opinion, there are too many municipalities on the Northeast Avalon. Taken together, the entire population is probably smaller than the average North American city. Put another way, if the provision of municipal services was a business, there would have been industry consolidation years ago. It's a no-brainer, and in my opinion, it's only parochial political interests, and the lack of importance placed on efficiency for the taxpayer that has allowed the *status quo* to persist for so long. Therefore, my submission is that the *City of St. John's Act* and *City of Mount Pearl Act* should be replaced with legislation constituting the entire Northeast Avalon as one municipality. The region already operates for

all intents and purposes as one economic region, and the municipal boundaries that crisscross it are largely arbitrary markers, causing the unequal sharing of municipal burdens and benefits among people who reside there. By merging the entire region into one municipality, a wide range of efficiencies will be achieved, and the region will be planned and operated in a more coordinated, uniform and equitable manner.

And while the business of municipal government can be operated in a more efficient, centralized way, this is not to say that the separate communities comprising the Northeast Avalon will not continue to maintain their own distinct identities. Local service groups, charities and activities can continue to exist and thrive throughout the region, as they have done for years.

We also need to challenge the notion that municipalities can be everything to everyone. We have limited financial resources, and money will likely get tighter before things get better. Therefore, municipalities should have a clear, focused mandate – the provision of core civic services, such as water and sewer, roads, sidewalks and trails, recreational facilities, fire protection, garbage collection and snow clearing. Collectively, we must tighten our belts, and by focusing spending on core infrastructure and services, we will be better able to bring appropriate levels of service to all taxpayers across the Northeast Avalon.

Municipal Funding

No review of the Municipal Legislation would be meaningful without revisiting the municipal funding regime, and in particular, assessment-based property tax. This tax ignores the taxpayer's ability to pay and, in my opinion, should be replaced with a progressive funding arrangement.

Some municipalities go to great lengths in an attempt to address the regressiveness of assessment-based property tax by adopting a patchwork of half-way solutions, such as seniors' discounts, discounts for those receiving the Guaranteed Income Supplement, low income earner discounts, etc. However, a more direct and less costly solution would be to replace assessment-based taxation altogether with a genuinely progressive tax.

Assessment-based property tax has significant flaws, including:

- It is regressive – it does not consider the taxpayer's ability to pay;
- It is costly, inefficient and wasteful - taxpayers receive no incremental or special value from the substantial cost they incur to operate the assessment bureaucracy (including municipal funding payments to the Municipal Assessment Agency, and the cost of operating municipal tax departments and Assessment Review Courts) over funding municipalities through leveraging the existing income tax regime;
- It is arbitrary and inequitable to taxpayers – because of the nearly impossible task assigned to the Municipal Assessment Agency, there is a serious and persistent lack of uniformity in assessments, resulting in unfair sharing of the tax burden;
- It creates assessment disputes and additional costs to resolve those disputes - the time and effort consumed in countless assessment appeals;
- The unduly complicated and prohibitively costly appeal process which forces taxpayers to seek impartial redress from the Supreme Court, Trial Division effectively undermines the taxpayer's right to due process in disputing assessments; and

- There is, in my view, little public support for, or confidence in, the assessment process.

A more equitable and efficient way to fund municipal government would be through direct provincial funding, with property taxes replaced by revenues collected through the income tax system. This is a better model because it is progressive and fair, and assessment-based tax is neither. Further, using the existing income tax system to collect revenues to fund municipalities would allow the dismantling of the costly assessment bureaucracy, saving taxpayers millions of dollars annually.

There is another potential advantage of going this route. If government chose to maintain taxation at or near current levels, despite realizing savings from discontinuing the assessment system, it could divert those additional tax dollars into spending on essential municipal infrastructure such as roads, water and sewer, and sidewalks. Unlike money spent on the assessment bureaucracy, infrastructure spending delivers tangible benefits to taxpayers.

Lack of Due Process in Assessment Appeal Process

The public does not like the assessment regime. Each year, people are dissatisfied with their assessments, and appeal to municipally-operated Assessment Review Courts. The cost and effort consumed in this dispute resolution process (all of which is borne by the taxpayer) is further proof of the inefficient and generally unsatisfactory nature of assessment-based tax. No other form of tax creates as many disputes, or consumes more resources in adjudicating and resolving disputes, simply to accomplish the basic objective of fair taxation.

While there is widespread dissatisfaction with the assessment regime, the taxpayer's right of appeal is largely illusory. Under the assessment process, appeals are brought at first instance to a Review Commissioner who is appointed and paid by the municipality. Where a taxpayer is dissatisfied with the decision of the municipality's Review Commissioner, the only recourse is an appeal to the Trial Division of the Supreme Court. Such appeals are conducted under highly formalistic procedural rules that apply in the Supreme Court, the highest court in our Province. Given that virtually all residential property tax appeals involve only several hundred dollars, and the cost of hiring a lawyer to bring an appeal would almost certainly be in the thousands of dollars, the taxpayers "right" to pursue an appeal to the Supreme Court is farcical.

To subject the aggrieved taxpayer to even further effort and expense to obtain justice, the assessment appeal process then provides that, if the Trial Division allows the taxpayer's appeal, it cannot finally adjudicate the matter (despite the simple nature of the dispute, and the court's more than adequate capabilities), but rather must remit the matter back to the municipality's Review Commissioner for reconsideration, with instructions. That is an incredibly and inexplicably burdensome level of process, over an extremely small amount of money.

Clearly, the assessment appeal process appears designed to obstruct access to justice rather than to facilitate it. It would be far more sensible and meaningful for the appeal from the municipality's Review Commissioner to lie to the Small Claims Division of the Provincial Court. Small Claims Court is more of a "people's court", operates in a far more relaxed and informal manner than Supreme Court, and has jurisdiction over civil claims up to \$25,000. Interestingly, the Provincial Court website states that the Small Claims Court can "hear actions for unpaid municipal taxes". It is bizarre, and clearly a double standard that municipalities can use Small Claims Court to collect unpaid municipal taxes, but taxpayers

are forced to go through the unreasonable, costly and complicated process of pursuing an appeal in Supreme Court, to effectively contest how much municipal tax they must pay.

Closing

In closing, I hope this review will be conducted in an open-minded and impartial manner, and not unduly fettered by the constraints of existing legal structures, or influenced by those with financial or other vested interests in the *status quo*. A public consultation can only be meaningful and honest if it sincerely seeks to find policy solutions that are right for the *public*. This means a result that shows respect for, and delivers more value to, the taxpayer.

All of which is respectfully submitted for your consideration.

Regards,

P. Fitzpatrick

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