

MuniLegislativeReview

From: Peter Shapter [REDACTED]
Sent: Thursday, December 21, 2017 11:49 AM
To: MuniLegislativeReview
Subject: Municipal Legislation Review Submission

FYI this is the text of an email sent to the Federal/Provincial Intergovernmental Affairs Ministers, my MHA, Mayor and Ward Councillor:

July 13, 2017
Ministers of Intergovernmental Affairs – Canada and Newfoundland.
MHA – District of Topsail
Mayor of the Town of Conception Bay South (CBS)
Ward I Councillor (CBS)

RE: Municipal Governance

In the Province of Newfoundland and Labrador (NL) the Municipalities Act of 1979 was revised in 1999. I suspect that it may be revised again by 2019. In that context I would like to offer some perspective on the way cities and towns are governed in general and specifically in Canada, especially NL.

I Constitutional Arrangement

(1)The relationship between the Federal and Provincial governments was established by the British North American (BNA) Act in 1867 which is now the Constitution Act of 1982. After 150 years cities and towns are referred to as “municipal institutions” and come under the laws of their province.

Because towns are formed by the legislation of another government and the election of their councils are also established by legislation the voting rights of the citizens are not protected under the Charter of Rights (1982).

The concept of the “Town Hall meeting” is widely portrayed as being among the most representative concept of democracy. People assembling to discuss the things – whether major or mundane – that affect them day to day must be an ancient universal practice. I find it absolutely amazing that the votes of the attendees have limited power to support their decisions or even to choose to build a Town Hall. It is also a paradox that the Council which is formed by votes that are not Chartered protected can impose on citizens who rights are Charter protected.

II Municipal Revenue

(1) The Council and staff are held responsible for the fiscal management of the Town and are accountable to the Province. But under NL laws the council’s budget only has to match revenues with expenditure. Revenues (taxation) is neither limited nor indexed by variables such as population or geographic area.

Also the Council cannot be defeated as a Parliament can if they cannot agree on a budget – or any other major fiscal resolution. Yet if the Province or the Federal government passes laws requiring extra Town expenditure – which will be paid by town taxes –it is not considered a fiscal bill. Theoretically, then a government can download a massive tax burden via municipal taxation and still not be vulnerable to defeat in a legislative assembly.

(2) The main source of revenue for a Town is the property tax. The general principle of modern taxation is that a government is entitled to collect a fair share of any cash flow such as income, trade or profit from investment. But property tax is not. It is based on a hypothetical market value of a person’s shelter. What would happen if CRA or the IRS tried to tax the Stock Market that way? Not only could one lose all of their retirement nest egg invested partly in the stock market, but they may end up paying more than they put in. The Province neither places limits on the mil rate, the maximum annual tax that a family has to pay, nor the maximum lifetime tax that can be paid on an ancestral homestead.

(3) One tax that is particularly disturbing and appears unique to NL is the Water and Sewer (W/S) tax. The Act allows domestic water meters but they are very rare. The Act also allows the Town to establish classes of properties for the

purposes of taxation. Yet almost all towns apply a flat rate even on houses that have w/s mains on their road but are not actually connected. So whether a home uses a lot of water, a little water or in some cases no water at all they pay the same tax which again there is no limit imposed by the Province. Is that not a form of discrimination?

III Intergovernmental Affairs

In my Town I have observed a number of disputes between the Town and the Province. One recurring problem arises from the fact that the main highway through the Town is owned by the Province. Even the design and cost of traffic lights and who pays for these has become a contentious issue. Yet how can a subordinate council that is formed and can be dissolved by the superior government win any argument?

In conclusion I would like to provide some overview on municipal governments.

Countries, kingdoms and empires are established on a jurisdiction over geographic areas. They rule over the people that occupy those territories. However when those people – often of necessity – settle in high congested concentrations the burden of managing their habitation falls to local governance. Massive infrastructure and social problems are the City's problem. The "State" will then extract taxes from the people, businesses and industries of the City but will only return an amount that they choose.

Throughout history nations, kingdoms and empires have risen and fallen but many world cities just carry on through good and bad times, freedom and conquest. There is a particular case in Newfoundland's history. In the 1930's the Dominion of Newfoundland collapsed and was replaced by a British Commission. Voting rights – or at least voting opportunities - of the people were suspended until the referenda that ultimately led to Canada gaining a large tenth province. However municipal voting continued in the ancient port and city of St. John's (and perhaps the new railway town of Windsor in Central Nfld).

Maybe the NL public will be allowed to participate in drafting the new Municipalities Act but will there ever be any structural change in municipal government? I don't remember any City, Town or association of cities and towns actively seeking improved constitutional status during the discussions surrounding the patriation of the BNA Act (1982), the Meech Lake Accord (1986) nor the Charlottetown Accord (1992). I doubt if the Canadian people have any patience for any more Constitutional quarreling. With municipal voter turnouts so low citizens may lose whatever voting rights they now have – apathy is or will become the enemy of civil and civic liberties.

Thank you for reading this.
E. Peter Shapter

