

# **PROVINCIAL – MUNICIPAL RELATIONS: DOES LITTLE BROTHER EVER PREVAIL?**

## **INTRODUCTION**

Provincial-municipal intergovernmental relations have historically been contentious, with disagreements arising over the legislative extent of municipal authority and the funding arrangements to pay for municipal services. This paper will examine the key components of the provincial-municipal relationship, in order to answer the question “does little brother ever prevail?”

First, the author will examine the legislative authority (or lack thereof) presently granted to municipalities under: (i) the Canadian Constitution; (ii) municipal constating legislation; and (iii) ancillary legislation. As shall be demonstrated, municipal authority is severely constrained due to prescriptive constating legislation, and ancillary legislation that allows the province to encroach on matters delegated to the municipal domain.

The author will then examine the use of provincial-municipal funding agreements as a policy tool, to illustrate the extensive nature to which municipal public policy choices (and in some instance, operational decisions as well) can be unduly influenced by provincial priorities, due to municipal reliance on provincial grants to fill the gap between municipal own-source revenues and service provision costs.

Finally, the author will analyze the use of municipal associations as a method for municipalities to advance their policy agenda in the face of provincial opposition, with specific focus on the Association of Manitoba Municipalities and the Federation of Canadian Municipalities. Prevailing research indicates that while municipal associations have been active in bringing the concerns of their members to the provincial and national tables over the past century, few significant gains can be shown as a result of their lobbying efforts.

## **DEFINITION AND PURPOSE OF “MUNICIPALITY”**

### **(I) Definition**

According to L’Heureux, a municipality may be defined as “a political body formed by the residents of a particular region and having powers of a local nature that it can exercise autonomously”.<sup>1</sup> Two facets of this definition deserve further discussion at the outset, as they are themes that will be reiterated throughout this paper.

First, the notion that a municipality is “formed by the residents of a particular region” is not technically accurate. In law, municipalities are formed by provincial governments, pursuant to provincial constitutional authority. However, while the legal authority to create a municipal government rests with the provinces, L’Heureux is correct in stating that local residents do have a role to play in ‘forming’ municipalities through the election of the municipal political actors who govern them.<sup>2</sup>

Also, in certain unique circumstances, local residents may have a role to play in persuading a provincial government that a municipality should be created, as was the case with the formation of a separate municipal government in Headingley, Manitoba. Originally part of the City of Winnipeg, residents of Headingley did not believe their local needs were being met as part of a large urban centre, and lobbied to secede from the City. On May 12, 1993, the provincial government acceded to the citizens’ wishes and incorporated the Rural Municipality of Headingley as a new local government.

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<sup>1</sup> L’Heureux, J., “Municipalities and the Division of Powers” in Simeon, R. (research coordinator), *Intergovernmental Relations*, Royal Commission on the Economic Union and Development Prospects for Canada, No. 63 (Toronto, ON: University of Toronto Press, 1985), pg. 179.

<sup>2</sup> *Ibid.*

Second, the notion that municipalities can exercise their powers autonomously presupposes that municipalities have both the proper legislative authority and financial resources to carry out their duties without interference from their provincial masters. This presupposition is not the current reality in provincial-municipal relations. Rather, through the use of policy tools such as issue-specific legislation and provincial-municipal funding agreements, provincial governments are able to exert a high degree of influence over a municipality's public policy choices. Therefore, although a municipality may theoretically have the ability to make an autonomous decision on an issue, they may in fact be severely constrained in the options open to them.

## **(II) Purpose**

In March, 2005, there were 3,726 municipal governments in Canada<sup>3</sup>, and there are currently 137 municipal governments in Manitoba<sup>4</sup>. As the local level of government closest to the people, municipalities have an opportunity to play a significant role in the lives of the citizens they govern.

According to the Manitoba Municipal Act, the broad purposes of a municipality are: (i) to provide good government; (ii) to provide services, facilities or other things that, in the opinion of the council of the municipality, are necessary or desirable for all or part of a municipality; and (iii) to develop and maintain safe and viable communities.<sup>5</sup>

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<sup>3</sup> Gilbert R. and D. Stevenson, "Coping with Canadian Federalism: the case of the Federation of Canadian Municipalities", *Canadian Public Administration*, vol. 48:4 (2005), pg. 529.

<sup>4</sup> Manitoba Municipal Relations, "Municipal Officials Directory", at <https://www.gov.mb.ca/mr/contactus/pubs/mod.pdf>

<sup>5</sup> The Municipal Act, S.M. 1996, c.58, section 3.

Or, as L’Heureux states, “Municipal institutions serve a two-fold purpose. First, they must efficiently provide certain services to residents. Second, they must allow residents of a specific region to administer their own local affairs autonomously.”<sup>6</sup>

Arguably, then, the primary purpose of a municipality is to provide certain core services at the local level. However, the definition of core services and the appropriate provider of those services is currently a source of great debate amongst all levels of government, as demonstrated by recent service provision trends such as contracting out, public-private partnerships, and the provincial downloading of service provision functions and responsibilities to municipal governments (generally without a corresponding increase in funding).<sup>7</sup>

## **SOURCES OF MUNICIPAL AUTHORITY**

### **(I) Constitutional Authority**

Under the Constitution Act, 1867, only two orders of government, federal and provincial, are recognized. Municipalities as an order of government do not exist under the Constitution and, as a result, are not granted any constitutional powers. Rather, section 92 of the Constitution Act provides that the provinces are responsible for all things municipal, including “municipal institutions in the province”<sup>8</sup> and “generally, all matters of a merely local or private nature in the province”<sup>9</sup>.

Therefore, municipal governments do not exist unless specifically created by provincial statute, and they do not have any powers unless expressly delegated to them by the provinces. As

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<sup>6</sup> L’Heureux (1985), pg. 180.

<sup>7</sup> Illustrated, for instance, by the downloading of services to municipalities that occurred in Ontario under the Harris government’s “Common Sense Revolution”, as discussed in Graham, K. and S. Phillips, “Who Does What in Ontario: The Process of Provincial-Municipal Disentanglement”, *Canadian Public Administration*, vol. 41:2 (1998), pp. 175-209.

<sup>8</sup> Constitution Act, 1867, subsection 92(8).

<sup>9</sup> Constitution Act, 1867, subsection 92(16).

stated by Adamson J. in the case of *Brandon v. Municipal Commissioner for Manitoba*,<sup>10</sup> “it is not obligatory on the province to have municipalities and municipal institutions, and had such institutions never been brought into being all their powers would be in the provincial government.”<sup>11</sup>

The lack of constitutional recognition for municipalities is not unique to Canada. Constitutions of jurisdictions such as Australia<sup>12</sup> and the United States also do not recognize local governments, while jurisdictions such as South Africa, Brazil and Switzerland have only within the past two decades enacted constitutional amendments to entrench the existence and powers of local governments as separate governmental entities under the constitution.<sup>13</sup>

However, Canadian municipalities have not taken their lack of constitutional status as a permanent *fait accompli*. At various points in recent history, municipal governments have lobbied for constitutional recognition, primarily linking this request to a need for increased municipal funding for the provision of services delegated to municipalities by the provincial and federal levels of government.

The notion of constitutional recognition for municipalities was first raised in Lord Durham’s 1839 “Report on the Affairs of British North America”, in which he argued that “unless municipal institutions were guaranteed by the Constitution, the legislature would never

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<sup>10</sup> *Brandon v. Municipal Commissioner for Manitoba*, [1939] 3 D.L.R. 397, pg. 402.

<sup>11</sup> It should be noted that a provincial government can only delegate to a municipality those powers that fall under provincial jurisdiction. So, a province cannot delegate to a municipality, for instance, authority over airports, since that is a matter of federal jurisdiction. And, as stated by L’Heureux (1985) at p. 185, “[provincial legislatures] cannot delegate powers they do not themselves have”.

<sup>12</sup> The Australian Local Government Association cites as one of its main objectives “the achievement of formal [constitutional] recognition”, a concept that was not dismissed by the recently-elected Labor Party, one of whose election commitments was “to consult, during its first term, with local government on the process for achieving constitutional recognition”. See the constitutional recognition portion of the ALGA website, at <http://www.alga.asn.au/constitutionalrecognition/>, for further details.

<sup>13</sup> Steytler, N., “Constitutional Recognition of Local Government”, (September 22, 2008) at [http://www.idluam.org/files/cursos/conferencias/constitutional\\_recognition\\_LG.ppt](http://www.idluam.org/files/cursos/conferencias/constitutional_recognition_LG.ppt)

agree to renounce the taxation powers necessary for the establishment of municipal institutions”.<sup>14</sup>

However, the issue of constitutional recognition for municipalities did not make it to the forefront of the Canadian intergovernmental agenda until the early 1970’s, when the Canadian Federation of Mayors and Municipalities (subsequently, the Federation of Canadian Municipalities) became a vocal participant in the debate. The Federation’s Joint Municipal Committee on Intergovernmental Relations was created to advance the Federation’s two intergovernmental goals, namely:

- (i) “a system of voluntary cooperation under which methods and institutions would be developed for a continuing system of consultation and coordination on matters of mutual concern; and
- (ii) a system of tripartite division of powers in which the municipal level of government would have an established constitutional position.”<sup>15</sup>

As a mechanism to reach these goals, the Joint Committee advocated for constitutionally recognized federal-provincial-municipal conferences which, they argued, would result in municipalities still being “subject to provincial law, but this would be modified by their right to be consulted and to be heard, a right which would be formally recognized and would no longer be a matter of provincial sufferance...”<sup>16</sup>

In response to the Federation’s proposals, then Prime Minister Pierre Trudeau appointed a Minister to head up a newly-created Ministry of State for Urban Affairs. This federal

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<sup>14</sup> Young, W.R.. *Municipalities, The Constitution, and the Canadian Federal System*, Background Paper BP-276E (Ottawa, ON: Library of Parliament, October 1991), pg. 2.

<sup>15</sup> *Ibid*, pg. 9.

<sup>16</sup> Canadian Federation of Mayors and Municipalities, Joint Municipal Committee on Intergovernmental Relations, “Presentation to the Special Joint Committee of the Senate and the House of Commons on the Constitution” (March 2, 1971), pg. 11.

government department had no program responsibilities, but was mandated “to plan, coordinate and develop new urban policies; to integrate federal urban priorities with other federal policies and programs; and to develop coordinating intergovernmental relationships”.<sup>17</sup>

This Ministry coordinated a federal-provincial-municipal conference in both 1972 and 1973, and organized a third conference to be held in 1976. However, the early 1970’s were marked by great turbulence in the working relationship between the three levels of government as the municipal governments attempted to advance their fiscal and policy agendas on the national scene, often with the assistance of the federal government. The provincial governments viewed the de facto acknowledgment of municipalities as a national player with direct links to the federal government as a threat to the provinces’ constitutional status and powers.<sup>18</sup> In the end, the provinces refused to attend the 1976 tripartite conference, which effectively put an end to the formal tripartite consultation process. Shortly thereafter, in 1979, the Ministry of State for Urban Affairs was disbanded.

Following this initial foray into the realm of constitutional recognition for municipalities, and the associated negative reaction from the provinces, the Federation of Canadian Municipalities has focused on pursuing its desire for increased municipal funding and new forms of intergovernmental revenue-sharing agreements outside of the constitutional process. Although the Federation briefly attempted to revive the constitutional issue in 1991, and presented a brief to then Constitutional Affairs Minister Joe Clark reiterating municipalities’ request for constitutional recognition, federal and provincial governments “refused to add these proposals to the constitutional agenda.”<sup>19</sup>

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<sup>17</sup> Young (1991), pg. 10.

<sup>18</sup> Ibid, pg. 11.

<sup>19</sup> Young (2006) at <http://www.parl.gc.ca/information/library/PRBpubs/bp276-e.htm>

## (II) Legislative Authority

The primary pieces of constating municipal legislation in Manitoba are *The Municipal Act* and individual city charters (such as the City of Winnipeg Charter, the City of Brandon Charter, the City of Portage la Prairie Charter, the City of Flin Flon Charter and the City of Thompson Charter). Young defines a charter city as “a city that operates under its own ‘stand-alone legislation, or Charter, designed to meet the particular needs of that city and provide for powers and responsibilities not contained in the municipal Acts of general application.”<sup>20</sup> Therefore, while certain provisions of *The Municipal Act* are expressly stated to apply to the City of Winnipeg<sup>21</sup>, the City of Winnipeg Charter is a much more comprehensive document that touches on matters of governance and service provision unique to an urban centre.

The extent of provincial control asserted over municipal actions, through prescriptive provisions in the constating legislation, is extensive. The key legislative provisions in *The Municipal Act* and City of Winnipeg Charter can be broken down into the following broad categories:

- **Organizational** – municipal formation, municipal amalgamation, land annexation, municipal dissolution
- **Electoral** - election procedures, composition and duties of Council, conflict of interest provisions, compensation provisions
- **Administrative** – appointment and duties of the Chief Administrative Officer and other statutory officers
- **Procedural** – minutes, quorum, voting, public hearing process

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<sup>20</sup> Ibid.

<sup>21</sup> See, for instance, Municipal Act provisions dealing with (i) “Tax Sharing Agreements”; (ii) “Inter-Municipal Roads, Bridges, and Drains; (iii) “Drownings and Unclaimed Bodies”; (iv) “Amusement Tax”; (v) “Grants in Lieu of Taxes”.



- **Financial** – operating budget, capital budget, five year capital plan, borrowing, loans, investments, auditor’s report
- **By-Laws** – application, spheres of jurisdiction, enforcement
- **Financing Arrangements** – grants, tax credits, tax increment financing, economic development, tax sharing, service sharing
- **Service Provision** – police, fire, roads, bridges, drains
- **Taxation** – property tax, business tax, local improvements, amusement tax, grants in lieu of taxes, tax collection, tax sales
- **Land Use** – land use plans, zoning by-laws, development agreements, subdivisions, variances, conditional uses

Not only do the provinces specifically prescribe the authority granted to municipalities under the broad categories listed above, but certain decisions of municipal governments are also subject to review and final appeal or approval by either the provincially appointed Municipal Board, or the Minister of Intergovernmental Affairs. This gives the provincial government an added level of oversight in areas such as municipal taxation and land use. For instance, a decision by Winnipeg City Council to enact a by-law amending the City of Winnipeg’s land use plan (Plan Winnipeg) – redesignating a piece of land from Rural Policy Area to Neighbourhood Policy Area, for instance - may be referred to the Municipal Board by the province, should they feel a review is warranted,<sup>22</sup> and must always receive final authorization from the Minister of Municipal Relations.<sup>23</sup>

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<sup>22</sup> The City of Winnipeg Charter, S.M. 2002, c. 39, subsection 229(2).

<sup>23</sup> The City of Winnipeg Charter, S.M. 2002, c. 39, subsection 228(1).

## **PROVINCIAL POLICY TOOLS USED TO IMPACT MUNICIPAL POLICY**

### **(I) Legislative Tools**

While constating legislation is the key statutory document governing municipalities and the exercise of their powers, provinces may also pass other ancillary pieces of legislation to regulate the activities of municipalities. Statutory regulation is one of the most effective and direct policy tools a provincial government can use to influence the public policy choices of a municipality, as “regulation draws on the most fundamental resource a government has, its capacity to command and prohibit”.<sup>24</sup>

In order to illustrate this point, an examination of one such piece of ancillary legislation, provincial police acts, is warranted. While the provinces have delegated the provision of municipal policing services to local municipalities, police acts across the country mandate the creation of a civilian police commission (at either the provincial or municipal level) to provide governance and oversight to municipal police forces.<sup>25</sup> To provide clear understanding of the nature of the terms “governance” and “oversight”, the following definitions may be helpful: “Governance involves controlling and directing the development of policy as the vehicle for directing and influencing the decisions of the organization. Oversight involves ensuring that the legislated functions of the police department are carried out by the organization...”<sup>26</sup>

At the day to day level, while specific legislative provisions may differ, generally in large urban centres civilian police boards are responsible for:

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<sup>24</sup> Pal, L. *Beyond Policy Analysis: Public Issue Management in Turbulent Times*, third edition. (Toronto, ON: Nelson, 2006).

<sup>25</sup> For specifics on police commission legislation in Canadian urban centres see, for instance: (i) Police Act, RSBC 1996, c. 367; (ii) Police Act, RSA 2000, c. P-17; (iii) Police Act, RSS 1990, c. P15.01; (iv) Police Services Act, RSO 1990, c. P15; (v) Police Services Act, SM 2009, c.32.

<sup>26</sup> LaLonde, M.W. and D.W. Kean, *Municipal Police Board Governance in British Columbia* (New Westminister, BC: Justice Institute of BC, 2003), pg. 13.

- **Personnel Matters** - hiring and firing the police chief, disciplinary measures, collective bargaining
- **Budget** - while municipal councils retain control over setting the overall budgetary amount, the allocation of dollars toward specific line items is the responsibility of the commission
- **Business Plans and Policy Development** - setting priorities and measurable goals (for example, a 5% reduction in property crimes), implementing programs and strategies to achieve those priorities and goals
- **Complaints** – receive citizen complaints against police officers, conduct inquiries into matters involving actions of police officers or civilian employees

As a result, while municipal policing notionally falls under the jurisdiction of the municipality, specific policy and operational decisions with respect to the municipal police force have been removed from the municipality's control.

This is especially highlighted in some jurisdictions by the composition of the police commission itself. While all commissions have provision for representation from the municipal council, as well as municipal civilian appointments, jurisdictions such as British Columbia<sup>27</sup> and Ontario<sup>28</sup> also make provision for provincial appointments, which gives these provinces additional control over municipal policing decisions through their representatives' seat at the table and resulting vote.

Provinces may argue that the decision to remove public policy decisions related to policing from municipal control is merely a manner of ensuring citizen input into the provision

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<sup>27</sup> Police Act, RSBC 1996, c. 367, subsection 23(1)(c).

<sup>28</sup> Police Services Act, RSO 1990, c. P15, subsections 27(4)(c) and 27(5)(d).

of the municipal service deemed most important by municipal residents.<sup>29</sup> However, the question must be asked whether, in reality, the establishment of civilian police commissions actually signifies a provincial vote of non-confidence in the ability of municipalities to provide effective oversight and governance of their police forces.

This brief analysis of the use of provincial police acts as a policy tool to influence the public policy choices of municipalities and the questions raised by such analysis are not limited to the specific issue at hand, but can also be applied to other pieces of provincial legislation that regulate the actions of municipal governments; provincial planning acts (which impact municipal land use policy) and municipal assessment acts (which impact municipal taxation policy), to name just two.

## **(II) Funding Tools**

Another highly effective provincial policy tool used to influence municipal public policy choices is provincial-municipal funding agreements.

As previously stated, the primary purpose of a municipality is arguably to provide core services at the local level. The top expenditures of Canadian municipalities fall within four primary categories: (i) protection (fire, police); (ii) transportation (roads, bridges, transit); (iii) environment (water, sewer, solid waste); and (iv) recreation (community centre infrastructure and programming).<sup>30</sup> Based on expenditure level alone, it could be assumed that services falling within the preceding four categories are municipal core services.

However, as previously acknowledged, the debate surrounding the definition of core services and which level of government should provide such services is an ongoing issue, with

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<sup>29</sup> For an interesting discussion on the history and rationale behind municipal police commissions, see LaLonde and Kean (2003) at pg. 17-20.

<sup>30</sup> McMillan, M., "Municipal Relations with the Federal and Provincial Governments: A Fiscal Perspective" in Leuprecht, C. and R. Young, eds. *Municipal-Federal-Provincial Relations in Canada*, Canada: The State of the Federation 2004 (Kingston, ON: McGill-Queen's University Press, 2004).

the three primary areas of contention centring around the provision of education, housing, and social services (the latter becoming the subject of controversy between the provincial and municipal levels of government in Ontario during the first term of the Harris regime, which eventually resulted in the offloading of social services to the municipalities in the late 1990's<sup>31</sup>). Clearly, the question of what is a core service and which level of government should provide it is not cut and dried.

Nonetheless, as stated by Johnson, “The important economic question in the provision of public services is not in determining the level of government that actually provides them. Each service should be provided by the level of government that can produce it at minimum cost. The two important questions are who should determine the level of each service and how the cost in providing the service should be divided among the levels of government.”<sup>32</sup>

Therefore, the question of how municipal services are funded is key to understanding current issues at the forefront of provincial-municipal relations. Borrowing is not an option for municipal operating costs<sup>33</sup> and, while municipalities are permitted to borrow for capital projects, Council approval – and, depending on the governing legislation, Municipal Board approval – is required to borrow funds for capital projects as well.

So, if borrowing is not an option, how does a municipality generate revenues? A municipality's constating legislation grants it the authority to raise funds through the imposition of certain forms of taxes and user fees, and these own-source revenues do make up the majority of a municipality's funds. However, this legislative authority to tax is generally limited to a small

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<sup>31</sup> By 2003, the expenditures of Ontario municipalities on social services made up approximately 1/3 of total municipal expenditures. McMillan, M., “Municipal Relations with the Local and Provincial Governments: A Fiscal Perspective”, draft prepared for the Municipal-Provincial-Federal Relations Conference, Queen's University (May 9-10, 2003), pg. 15.

<sup>32</sup> Johnson, J.A., “Provincial-Municipal Intergovernmental Fiscal Relations”, Canadian Public Administration, vol. 12:2 (1969), pg. 168.

<sup>33</sup> McMillan (2004), pg. 48.

list of prescribed taxes (property taxes, business taxes, amusement taxes) and any authority sought by a municipality to impose a new form of tax must be specifically granted by the province through a legislative amendment.

In 2001, property taxes (which include both real property taxes and items such as local improvements) made up 41.9% of municipal revenues Canada-wide, and user fees (which include items such as development cost charges) made up 23% of municipal revenues Canada-wide.<sup>34</sup> While “public demands for service improvements are sometimes accompanied by a willingness to pay higher taxes”<sup>35</sup>, reality dictates that there is a ceiling to the amount that even a willing taxpayer will accept as a reasonable tax increase. Both political and economic pressures dictate that these own-source revenues are relatively flat and do not allow the municipality much flexibility to raise additional revenues to correspond with the full cost of providing municipal services.

Therefore, municipalities are often required to fill the gap between own-source revenues and service provision costs by going cap in hand to big brother – either the federal or provincial government – and asking for a handout. Generally, provincial governments will provide gap funding, though the majority of that funding comes with strings attached. In 2001, federal and provincial grants made up 17% of municipal revenues Canada-wide, which can be further broken down into program-specific funding agreements (14.6%) and unconditional grants (2.4%).<sup>36</sup>

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<sup>34</sup> McMillan (2004), pg. 51.

<sup>35</sup> Kennedy, W. and M.L. McAllister, “Politics of Municipal Property Taxes: Implications for Decision-Making”, *Canadian Public Administration*, vol. 48:2 (2005), pg. 211.

<sup>36</sup> McMillan (2004), pg. 51.

**(A) Program-Specific Funding Agreements**

Program-specific funding agreements are the grant of choice amongst the higher levels of government. As their name implies, program-specific funding agreements are monies that are provided conditional upon the municipality spending them on a specific purpose identified by the funder. By dictating what the money is to be spent on, a province has the ability to influence not just municipal policy priorities, but in some cases, municipal operational priorities as well.

Examples of program-specific funding initiatives relevant to Winnipeg citizens include:

- provincial transit funding (dedicated, for instance, to capital expenditures for a rapid transit corridor);
- provincial police funding (dedicated, for instance, to providing additional officers for the Winnipeg Police Service auto theft unit); and
- infrastructure funding (dedicated, for instance, to road renewal for specific streets).

Program-specific funding agreements have advantages for both municipal and provincial governments, as well as for the citizens they represent. From the municipal perspective, a program-specific funding agreement is a manner in which the municipality can receive dedicated funding for a big-ticket priority item that it may not be able to fund on its own (ie. rapid transit). However, this is only an advantage if the project to be funded is genuinely a municipal priority; otherwise, the municipality may be forced into funding a big-ticket project that it wouldn't ordinarily have considered, simply to take advantage of provincial money, which puts a strain on the municipality's budget, and may force it to reduce spending on other more important priorities. As stated by L'Heureux, "Obviously, a municipality wanting to benefit from grants offered will adapt its priorities accordingly."<sup>37</sup>

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<sup>37</sup> L'Heureux (1985), pg. 195.

From the provincial perspective, a program-specific funding agreement is a manner in which the province can download service provision to a municipality who may be able to provide it more efficiently (ie. ambulance services), yet still retain ultimate control over the issue at stake. L’Heureux opines that “[conditional grants] can serve as an easy way out for provincial legislatures, which can delegate certain difficult services to municipalities, all the while retaining control through such grants. In this way, provincial legislatures avoid having to provide such services or being held responsible for them by the public.”<sup>38</sup> However, an agreement of this nature can at best be only neutral for municipalities, provided the provincial grant is sufficient to cover the actual cost of providing the delegated service. Increasingly, though, provinces use their authority to download services without covering the full costs of service provision, which again puts a strain on a municipality’s budget, and may force it to reduce spending on other more important priorities. To return to the example provided earlier with respect to the downloading of social services to Ontario municipalities, “Ontario’s social transfers still leave the municipalities to meet half [the costs of social service provision]” which, in 2001, amounted to approximately 16% of their total municipal expenditures.<sup>39</sup>

The benefit of a program-specific funding agreement for the taxpayer is transparency. Since specific conditions are attached to the provincial funds, a municipality may be held accountable for its spending, to ensure that the monies are expended against a particular – and tangible – service, and are not simply allowed to disappear into the municipality’s general revenue fund.

However, the primary disadvantage with program-specific funding agreements is their lack of long-term reliability. Since these agreements are generally negotiated for a specific

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<sup>38</sup> Ibid.

<sup>39</sup> McMillan (2004), pg. 64.



project, time period, and dollar amount, municipalities cannot depend on the existence of these funds after the expiration of the agreement. This could potentially result in political headaches if a successful program has to be terminated or additional budget amounts must be found when a multi-lateral funding agreement is not renewed.

To provide a practical example, the Province of Manitoba, City of Winnipeg, and the Winnipeg School Division have entered into a tri-level funding agreement to fund police officers in certain north end schools.<sup>40</sup> The agreement is for a three year time period, with an associated three year funding commitment. Though it is unlikely that funding would be pulled for a project recognized by all parties as a success, if either provincial or school division funding was not available at the end of the three year period, the municipality would be put in a difficult position. It would then be forced to either try to negotiate more money from the remaining partner, find more internal funding, or cancel the program. And while this cancellation may not be the municipality's fault (as it was not the partner who pulled out of the agreement), the fact that policing is a municipal responsibility would result in citizens and the media treating the demise of a successful school resource officer program as a municipal issue, and viewing the municipality in a negative light.

**(B) Unconditional Grants**

Unconditional grants are monies that are not conditional upon the municipality spending them on a particular purpose. Instead, the municipality can allocate the monies on either operating or capital projects, according to their need. For example, if the municipality has an unanticipated expenditure on snow-clearing due to heavy snowfall, the unconditional grant can be allocated to that need.

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<sup>40</sup> For recent information on this initiative, see the October 22, 2008 decision of City Council (“North End School Resource Officer Program”) at <http://www.winnipeg.ca>.

Unlike program-specific funding agreements, these unconditional grants – which form only a small portion of the municipality’s revenues – act as a more pure form of equalization payment to fill the gap between a municipality’s expenditures and revenues.<sup>41</sup> As a result, unconditional grants are the preferred funding tool of municipalities, as they provide flexibility for municipalities to deal with operating and capital priorities without provincial oversight and delay. In effect, they show confidence in municipal administrators for determining and dealing with their own priorities.<sup>42</sup>

However, unconditional grants are even more unreliable than their conditional counterparts. Because unconditional grants are not tied to the provision of a specific service, it is easy for the province to increase or decrease such grants as the need arises, without taking public heat for cutting funding to particular programs. From that standpoint, it is fortuitous for municipalities that unconditional grants make up such a small percentage of municipal revenues.

**(C) Future Direction**

Given that the property taxation system has limited potential for growth, and the current provincial grant system is unreliable and allows for inordinate provincial control over municipalities, municipalities must look to new and innovative approaches when negotiating future funding agreements with the provinces. Municipalities have two primary options: they can request increased authority to levy new forms of own-source growth revenues, or they can negotiate a share of existing provincial or federal growth revenues. As stated by Courchene, “The fiscal reality facing [municipalities] is that they rely almost exclusively on property taxation and provincial transfers for their revenues, which means that they typically do not have

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<sup>41</sup> McMillan (2004), pg. 63.

<sup>42</sup> Though the fact that unconditional grants only make up 2.4% of total municipal revenues signifies that confidence is not extremely high.

access to a tax base that automatically grows apace with income and population (such as a share of income taxes, of general sales taxation, or even of specific excises such as gasoline taxes).”<sup>43</sup>

The discussion of alternate municipal revenues was brought to the forefront of the municipal agenda in 2003, with former Winnipeg mayor Glen Murray’s proposal for a “New Deal for Cities”. Murray argued that in order to fund the existing infrastructure deficit (approximately \$203 million) and sustain services at the same time, the City would need to increase property taxes by 54%, a notion that was politically unpalatable, and simply not a realistic option to impose on taxpayers.<sup>44</sup>

So Murray proposed a solution that involved a reduction in existing municipal taxes, specifically, (i) a 50% reduction in residential property taxes; (ii) elimination of the business tax; (iii) a 50% transit fare reduction; and (iv) a freeze in recreation fees; in exchange for a combination of new and increased existing revenues, including

- doubled frontage levy fees;
- a water and sewer rate increase;
- a garbage fee of \$1.00 per bag;
- full cost recovery on permit fees and fines;
- a municipal sales tax (incremental revenues);
- a municipal fuel tax (combination of incremental revenues and a share of existing revenues;
- a natural gas and electricity tax, a liquor tax, a hotel tax, and a monthly telephone fee.

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<sup>43</sup> Courchene, T., “Citistates and the State of Cities” in Leuprecht, C. and R. Young, eds. *Municipal-Federal-Provincial Relations in Canada*. ( Kingston, ON: McGill-Queen’s University Press, 2004), pg. 91. Certain exceptions to this general rule occur, such as the income tax-sharing agreement that currently exists between the Province of Manitoba and the City of Winnipeg.

<sup>44</sup> City of Winnipeg, “Early Ideas – A New Deal For Winnipeg” (2003), at <http://www.canadascities.ca/pdf/finaltownhall.pdf>.

Murray also proposed replacing the existing system of provincial grants with a cost-sharing agreement based on a fixed formula, where the City would get a fixed percentage of existing provincial income tax and sales tax.<sup>45</sup>

The public consultation process on Murray's proposal elicited a large citizen response, with many citizens complaining the initiative was too complicated. In the end, Murray also hit a wall of opposition from a provincial government whose mantra was that they were not elected to raise taxes<sup>46</sup> and the initial version of the New Deal died an unceremonious death.

The watered-down package approved by Winnipeg's City Council consisted merely of a request for: (i) 2/3 of 1% of federal GST collected in Winnipeg; (ii) conversion of all existing provincial grants to an income tax sharing formula; (iii) 3 cents per liter of existing provincial fuel tax collected in Winnipeg; and (iv) a new fuel tax of 3 cents per liter throughout the province, of which the City would receive 100% of the funds collected in Winnipeg. City Council also approved a 4% reduction in municipal property taxes, followed by five additional years of municipal property tax freezes, and agreed to implement infrastructure maintenance efficiencies resulting from investments in new infrastructure.<sup>47</sup>

One has to wonder, though, whether the fate of the New Deal would have been different had Glen Murray taken the route of negotiating with his provincial counterparts prior to taking the idea public. Since the vast majority of Murray's proposal required provincial approval, a more astute municipal strategy would have been to engage in private negotiations with provincial officials to garner their support from the outset, rather than trying to publicly back the provincial government into a corner.

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<sup>45</sup> Ibid.

<sup>46</sup> See Glen Murray's comments on provincial response in: CBC Winnipeg, "Winnipeg Mayor Introduces 'two per cent solution' to City's Tax Problems", at [http://www.cbc.ca/canada/story/2004/04/06/winnipeg\\_20040406.html](http://www.cbc.ca/canada/story/2004/04/06/winnipeg_20040406.html).

<sup>47</sup> See the April 21, 2004 decision of City Council ("The New Deal") at [www.winnipeg.ca](http://www.winnipeg.ca).

## **MUNICIPAL TACTICS USED TO PROMOTE A POLICY AGENDA IN THE FACE OF PROVINCIAL OPPOSITION**

Negotiations between provincial and municipal governments occur on a regular basis; both formal (pre-arranged meetings) and informal (discussions at a social function) discussions at the political (elected officials discussing high level policy) and administrative (bureaucrats discussing technical matters) levels. These negotiations are simple when the two parties agree on the general concept. For example, if elected officials from both the Province of Manitoba and the City of Winnipeg agree that there should only be one assessment authority for the entire province (whereas currently, there is one assessment authority for the City of Winnipeg and a separate assessment authority for the remainder of the province), the real negotiations will occur between the bureaucrats, as they hammer out the details on how to make that policy objective a reality.

The real issue is how a municipal government can advance its policy agenda when municipal-provincial negotiations break down. Unlike the provinces, who have the constitutional authority to unilaterally impose policies and programs upon the municipalities with or without their consent<sup>48</sup>, municipalities are at a significant disadvantage when it comes to implementing political priorities with which the provincial government does not agree. Over the course of the past century, one mechanism municipalities have used to advance their public policy agendas in the face of provincial opposition is lobbying efforts by municipal associations who represent a group of municipalities (theoretically) sharing common interests.

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<sup>48</sup> See, for instance, Downey, T. and R.J. Williams, "Provincial Agendas, Local Responses: the "Common Sense" Restructuring of Ontario's Municipal Governments", *Canadian Public Administration*, vol. 41:2 (1998) at pg. 209, where it is stated with respect to the consultation process surrounding the Harris government's municipal restructuring initiative, "There is...very little evidence that the whole process of restructuring itself was ever part of a negotiated plan between the municipalities and the province; it was – yet again – entirely a provincial concoction, with the municipalities on the receiving end."

## **(I) The Role of Municipal Associations**

The first municipal association in Canada, the Union of Canadian Municipalities, was formed in 1901 and merged with the Dominion Conference of Mayors in 1937 as a reaction to the economic issues plaguing local governments as a result of the Great Depression.<sup>49</sup> Indeed, the primary focus of municipal associations throughout much of the last century has centred around increased fiscal pressures faced by municipal governments as their roles expand and their revenues remain relatively flat. The public policy role of two such associations, the Association of Manitoba Municipalities and the Federation of Canadian Municipalities, will be explored in greater detail below.

L'Heureux analyzes the role of municipal associations as follows: "Municipal associations can assist their members in protecting their interests through exchanges of information, discussions and participation in common struggles, but they do not have the representative nature of the federal or provincial governments and they could only with difficulty play the same role as the governments if the municipalities were protected by the Constitution. The municipal councils are the organizations which are responsible to the electorate, not the associations which they join. Furthermore, the associations cannot convey the variety of opinions which characterize municipalities, because each association necessarily represents the will of the majority of its members."<sup>50</sup>

Due to these significant constraints, the author submits that while municipal associations may have a role to play in bringing municipal governments together to discuss public policy issues of common interest, their effectiveness at lobbying for concrete change is minimal.

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<sup>49</sup> Gilbert and Stevenson (2005), pg. 530.

<sup>50</sup> L'Heureux (1985), pg. 201.

**(A) Association of Manitoba Municipalities**

The Association of Manitoba Municipalities (“AMM”) was created in January, 1999 from a merger between the Union of Manitoba Municipalities and the Manitoba Association of Urban Municipalities. Membership is broken into seven districts (Northern, Parkland, Interlake, Midwestern, Central, Eastern) with each district represented by two board members (one rural and one urban), excepting the Northern District and the City of Winnipeg, which each have one board member. The mandate of the AMM is to lobby on issues that affect Manitoba municipalities, and the board holds annual meetings with the provincial cabinet, the provincial opposition, individual cabinet ministers and utility corporations, to achieve that end.<sup>51</sup>

In recent years, the AMM’s primary focus has been lobbying for a share of gas tax funding, and more recently, a new municipal sales tax and/or a share of existing provincial sales tax. This issue came to a head at the AMM’s annual meeting in November, 2008, where membership voted on a motion calling the province to implement a new municipal sales tax. AMM Resolution 75-2008 read in part: “That the AMM lobby the Province of Manitoba to collect a one cent municipal sales tax to be allocated to municipalities for municipal infrastructure.”<sup>52</sup>

However, as debate ensued, a divide between urban municipalities (who were advocating implementation of the MST to address a significant infrastructure deficit) and rural municipalities (who did not see the value of an MST as they are not responsible for significant infrastructure costs, due in part to provincial maintenance of rural roads and bridges) became evident. At the end of the day, AM Resolution 75-2008 was initially tabled, then brought back to the floor the next day, amended, and carried. The revised resolution was modified to reflect a

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<sup>51</sup> [http://www.amm.mb.ca/about\\_who.html](http://www.amm.mb.ca/about_who.html)

<sup>52</sup> See full text of AMM Resolution 75-2008 at <http://www.amm.mb.ca/PDF/Events/Convention/2008/resolutions2008.pdf>

shift from a new municipal sales tax to a request for a one percent share of the existing provincial sales tax, as follows: “Therefore be it resolved that the AMM lobby the Province of Manitoba to allocate the equivalent of a one per cent provincial sales tax to municipalities for municipal infrastructure.”<sup>53</sup>

This example of a convoluted and contentious effort by a municipal association to advance a fiscal policy agenda on behalf of its members concretely illustrates the challenges faced by umbrella organizations in representing municipalities of vastly different sizes, with varying resources and public policy interests.

**(B) Federation of Canadian Municipalities**

As previously referenced, the Federation of Canadian Municipalities was initially founded as the Union of Canadian Municipalities in 1901, and merged with the Dominion Conference of Mayors in 1937 to form the Canadian Federation of Mayors and Municipalities. It was renamed the Federation of Canadian Municipalities (“FCM”) in 1976.<sup>54</sup>

The FCM currently consists of more than 1,775 members, which include cities, towns, villages, hamlets and rural municipalities. Members meet annually, with a mandate to “represent the interests of municipalities on policy and program matters that fall within federal jurisdiction”, including: active cities and communities, affordable housing and homelessness, clean air and climate change, immigration settlement and integration, municipal infrastructure, public safety and emergency preparedness, and rural and northern development.<sup>55</sup>

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<sup>53</sup> <http://www.amm.mb.ca/PDF/NewsReleases/2008/Nov26.pdf>

<sup>54</sup> Gilbert and Stevenson (2005), pg. 530.

<sup>55</sup> [www.fcm.ca](http://www.fcm.ca)



A subset of FCM is the Big City Mayor's Caucus, which consists of 22 mayors from member cities and meets 2-3 times per year. Their mandate is to "discuss shared issues and reinforce FCM's policy and advocacy agenda set by the National Board of Directors".<sup>56</sup>

FCM and its Big City Mayor's Caucus has been at the forefront of the call for both constitutional recognition for cities (under the leadership of Jack Layton) and a fiscal new deal (in the Glen Murray era). While some scholars credit FCM for the implementation of federal initiatives such as: (i) the extension of the municipal GST rebate from 57 per cent to 100 per cent; (ii) a municipal share of the federal gas tax; and (iii) an expansion of the Green Municipal Fund by \$300 million<sup>57</sup>, there is little concrete evidence to suggest a direct causal effect between FCM's lobbying efforts and the federal government's fiscal decisions on these matters.

## **CONCLUSION**

In summary, in the majority of circumstances where provincial and municipal agendas conflict, "little brother" does not prevail. Since Canadian municipalities do not have constitutional status, they are created under and derive their powers from provincial legislative authority, which means that municipal autonomy is subject to the whim of the provinces. In addition, even when a municipality has been granted autonomy in a particular subject area, provincial governments are able to exert considerable influence over municipal public policy through the use of policy tools such as provincial legislation and provincial funding agreements.

Given that municipal associations have not been able to effectively advance municipal policy agendas, municipalities must resort to other means of effecting change. In the current media age, where politicians respond more to public pressure than to sound policy advice, one resource municipalities must avail themselves of is their citizen population. Public support must

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<sup>56</sup> <http://www.fcm.ca/English/View.asp?mp=450&x=506>

<sup>57</sup> Gilbert and Stevenson (2005), pg. 550.

be mobilized around specific issues such as new municipal revenue sources, both during regular municipal lobbying efforts and during provincial election campaigns. Given that municipal governments are responsible for issues that directly affect the citizens they represent, they must find ways to make those issues relevant in such a manner that promotes citizen engagement.

As urban centres become larger and the municipal responsibility for service provision increases, it is critical that municipalities become a significant force in the intergovernmental regime. Only once municipalities are taken seriously by the provincial “big brother” can “little brother” ever hope to acquire the legislative and financial capacity required to effectively meet the needs of the citizens they represent.

