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Municipal System and Municipal Financial Control in Canada

by

**David W. T. Rattray, B. Comm., FCGA, FCIS, CIA, PAdm
Senior Associate, Parliamentary Centre of Canada**

This article serves to explain the governance, structure, mechanisms of effective control in local level or municipal government in Canada.

Canada: Vibrant economy with a vast, sparsely populated land

Geographically, Canada is a very large country, occupying an enormous land mass not dissimilar to the Russian Federation, much of which is not inhabited due to the remoteness of its regions, and further complicated by the harshness of its climate and terrain. The vast majority of its close to 35 million inhabitants live along a narrow strip of land close to its southern border shared with only one other country, the United States of America.

Like the Russian Federation states, both countries are rich in terms of natural resources, particularly oils and gas reserves, as well as agricultural lands and a skilled labor force to sustain its vibrant industrial sector.

Canada has a distinct trading advantage as a member of the North American Free Trade Agreement that provides it with preferred status to the American market where close to 80% of its exports occur. For at least the past decade, Canada and its regions have enjoyed large economic surpluses which have contributed significantly to the enrichment of programs at all three levels of government. These surpluses have resulted in additional funds that have been transferred down from one level of government to the next to better support new and existing programs.

Compared to other more heavily populated countries of the world, such as the Russian Federation, Canada has less than a dozen cities with a population of over one million people. It is a land of small towns and villages administered by municipal governments, the level of government closest to its citizens and their everyday life requirements.

As additional funds flow to lower levels of government, it is therefore tremendously important that each level of government be well controlled and administered. There are a

several legislative instruments of municipal control that have been installed since Canada officially became an independent nation in 1867. One of the primary control instruments is audit, both performance and financial audit, that serve to hold elected officials publicly accountable to its citizens.

Canada's Three Levels of Government

The three levels of government include: federal; provincial; and municipal, or local government. Each level of government is responsible for providing certain services and has the ability to raise money through specific types of taxation.

The Federal Government

As stated in the *Constitution Act, 1867* the federal government has the power “to make laws for the peace, order and good government of Canada” except for areas in which the provinces are given exclusive powers.

Among the many exclusive powers of the federal government are:

- citizenship
- copyright
- criminal law
- employment insurance
- foreign policy
- money and banking
- national defense
- regulation of trade and commerce
- the population census
- the national postal service

The Provincial Government

The provincial government is responsible for issues that are explicitly stated in Canada's written constitution: *the Constitution Act, 1867*. Through the provincial legislature, the provincial government has the power to enact or amend laws and programs related to:

- administration of justice
- culture and tourism
- education, including post-secondary institutions
- highways
- hospitals
- natural resources and environment
- prisons
- property and civil rights in the province
- social services

The province directly funds or transfers money to institutions to ensure delivery of these essential services. *Provincial legislatures also have legislative power over all municipal institutions in each of the ten provinces.*

Municipal Government

Municipal government, or local government as it is often referred to, is responsible for most community affairs and includes related boards and commissions (school boards, for example). It provides many of the services within their local boundaries which residents rely on every day. The list that follows is of the most common obligations of municipal authorities, which make this level of government the most caring for the immediate populations needs. In Canada this list might fluctuate from one municipality to another. The list includes: police, fire and emergency medical services, public health, long-term care and housing for seniors, child care, social housing, arts and culture, library services, public utilities, garbage collection and recycling, public transit, snow removal, road and sidewalk maintenance, water, sewage, storm sewers, parks and recreation and local airports.

Municipal governments in the province spend billions of dollars each year to provide the public services that meet these important needs of its residents. Municipal governments raise most of the money for financing these services from the property taxes levied on the estimated valuation of property paid by residents and businesses in the local area. Additional funding comes from "user fees" or "non-tax revenue" from use of public municipal facilities like athletic complexes and public theatres and libraries and other sources such as parking fines. Certain formula based funding also comes from the next higher level of provincial government for many shared services.

Legislative Instruments of Municipal Government Control

- Constitutional Status of Canadian Municipalities

The Canadian Constitution gives the provinces exclusive control over cities and other municipalities, subject to certain limited exceptions. Therefore, the powers a municipality possesses depend almost entirely on the powers the province wishes to grant. Similarly, a province can, at will, take away or change any municipal power previously granted. A province cannot, however, grant a municipality a power the province itself does not possess under the Canadian Constitution.

As a creature of a province, a municipality has no inherent powers - only the powers given by the province, generally in a statute. Given the provinces' exclusive control over "municipal institutions," the power of the federal government to deal directly with municipalities is limited, unless the province gives permission, which is rare. Federal government action and legislation can, however, legally impact municipalities if the federal government is exercising one of its exclusive powers under the Constitution.

- Variation in Treatment of Municipalities Across Canada

Because the powers of cities depend on the political will of the province concerned, municipal powers vary greatly across Canada. Like a parent, one province can allow municipalities little discretion while another allows extensive independence.

For example, municipalities in some provinces (including the largest province population and economically, Ontario) operate under "laundry list" legislation: their governing legislation spells out every power. If the power is not listed or necessarily implied, the municipalities do not have the power. The "laundry list" legislation is the most restrictive way a province can grant powers to a municipality: it often prevents a municipality from easily and efficiently adapting to changing conditions: each change requires the municipality to apply to the province for amending legislation. If a municipality does not conform to the articles of the Municipal Act the provincial level of government can take over and directly manage that function.

In contrast, in 1995, the province of Alberta introduced "natural person" power legislation, which gives municipalities the powers of a natural person¹, unless specifically excluded by the legislation.

The province of British Columbia has taken yet a different approach by creating what amounts to a "bill of rights" for municipalities. It passed legislation in 1998 recognizing that "local government is an independent, responsible and accountable order of government" and committing to provide a new legislative foundation for local government. British Columbia subsequently passed legislation broadening municipal powers by, for example, facilitating public-private partnerships and giving more flexible revenue-raising authority. The province plans to provide more authority and autonomy to municipal governments through its proposed Community Charter legislation.

In other cases in Canada, urban areas are recognized in various ways as being different from other municipalities. For example, Toronto, Vancouver, Winnipeg, Montreal and Saint John are all Charter Cities. Rather than being subject to a Municipal Act of general application to other municipalities in the province, each of these five cities is governed by its own "stand alone" legislation, its Charter. Each Charter codifies the laws applicable to the particular city and contains powers and responsibilities not given to other municipalities in the province concerned, as the following examples illustrate.

Saint John is the oldest Charter City, having been established by Royal Charter in 1785. Unlike other province of New Brunswick municipalities, Saint John has natural person powers and possesses, subject to general provincial and federal laws, a very broad authority: for example, it could establish an airport.

Montreal has all the powers of other Quebec municipalities, together with the power to deal with any assets (including the power to pledge and mortgage an asset), the power to raise money by any kind of security and "the right to exercise all other powers necessary for the performance of its obligations and functions".

By virtue of its Charter, Winnipeg has powers that other municipalities do not: remedial health and sanitary measures, greater autonomy to raise money and an independent property assessment system and planning administration.

¹ In [jurisprudence](#), a **natural person** is a human being perceptible through the senses and subject to physical laws, as opposed to an [artificial person](#), i.e., an organization that the law treats for some purposes as if it were a [person](#) distinct from its members or owner.

The primary characteristic of and purpose for having a Charter is to recognize the uniqueness of a city and to customize the legislation to an individual city's responsibilities and needs: provincial policies and programs that are designed for province-wide operations often do not fit the needs or operations of a major urban area.

- **Municipal Sources of Revenue Across Canada**

Generally, provinces have allowed municipalities limited powers to levy even direct taxes. Municipal taxing powers have generally been restricted to property taxes. In addition, provinces have given municipalities the authority to raise money by user fees: i.e. charges for services.

Some cities, however, have access to other types of revenue. For example, Calgary and Edmonton are receiving a road infrastructure grant based on fuel consumption in their cities. In addition, the Vancouver and Winnipeg tri-partite agreements give those cities some access to additional funding for specific problems from the two levels of government.

In summary, the key provincial legislative control that is exercised over Canadian municipalities is the Municipal Act, which generally provides a wide variety of powers and obligations to municipalities. It is delegated powers that are selective and any municipal action beyond those powers requires a submission for permission to the provincial legislature. Charter cities are the exception to the general rule as outlined above.

Municipal Government Structure and Governance

Most of the populated area of Canada is organized into municipalities, although there are great tracts of sparsely populated land that remain unincorporated for municipal purposes. In the latter areas, local administration falls to the provincial governments and the territorial governments, although in some places quasi-municipal institutions, such as improvement districts, have been formed.

Municipalities remain the most important elements in systems of local government. In most places, the municipalities are the only general-purpose governments at the local level and the municipal governing council is therefore usually the focus of attention in local politics. The council is expected to concern itself with matters of general interest to the community and to represent the community in its relations with the outside world.

The powers granted to municipalities under the each of the ten provincial Municipal Acts² of the various provinces reflect this, for municipal councils are the repositories for local government functions not assigned to other agencies. The multiplication of special-purpose bodies at the local level itself is testimony to the role of the municipalities, since these bodies have been formed to relieve the general-purpose governments of the ostensibly specialized functions that they are ill equipped, as general governments, to perform.

² It is a common practice for each of the ten provinces to have a provincial Municipal Act which is a consolidated statute governing the powers and duties, internal organization and structure of municipalities.

In each province, there are different classes of municipalities. The most important distinction is between urban and rural authorities. The latter - called townships, parishes, districts, rural municipalities, etc - have the most limited functions. Generally, their most important duty is to maintain roads. People in rural areas have rarely been willing to pay for very active local government.

On the other hand, in urban areas where there is a need and demand for more government activity, the situation is different. Urban municipalities are classified by size as villages, towns and cities; to be reclassified upwards means an increase in prestige and in the powers of the municipal council. City councils are the most active municipal governments and have played a major role historically in developing new public services and the regulations necessary to modern life.

The relative increase in the activities of the provincial governments over the past six decades is partly the result of an effort to make city-quality services available elsewhere. In the course of this effort, functions once performed at the municipal level (if they were performed at all) have been taken over by the provincial governments. This applies particularly to social services. What remains at the core of municipal activity is a set of economic functions.

Municipal councils have always been expected to serve as agencies for local economic development. Most of them regard it as their first responsibility to provide the infrastructure for the local economy, e.g., physical facilities such as roads and sewers, and basic services such as police and fire protection. More recently, the urban municipalities in particular have attempted to play a more positive role by using physical planning controls to set the pace and determine the form of economic development. Planning issues have thus become central to municipal politics.

Municipal councils and other elective local authorities in Canada are generally quite small. Most comprise from 5 to 15 members; only the largest municipalities are liable to have bigger councils. It is usually feasible for the council to act as its own Cabinet, with the mayor (or chairman) taking the leading role. Because most councilors are theoretically nonpartisan, collegial decision-making is possible.

Most councils divide themselves into committees for the different municipal functions, and this eases the burden on the central body. The traditional tendency to delegate duties to semi-autonomous agencies, such as school boards (whose boards are largely appointed by the municipal councils) further reduces the scope of responsibility at the centre.

As mentioned earlier, municipal governments must generally depend on real property taxes for most of their own revenues. This limits their financial capacity, and forces them to rely on provincial grants, which limit municipal discretion. Indeed, the municipalities and other local governments have been used increasingly as mere administrative agencies of the province and have been subjected as such to tight controls.

Even when local governments are acting independently, using their own revenues for their own purposes, they are subject to the laws and regulations of the province. These may severely restrict local freedom of action, and force the governments concerned to seek provincial approval for capital spending, land-use regulations and other items of local concern. The provincial department of municipal affairs is normally the most prominent agency of control, but other departments and administrative tribunals are also involved. Local governments simply do not have the autonomy in relation to the provinces.

Many critics have claimed that local government could be strengthened by consolidating existing authorities into larger units with wider responsibilities. This would mean eliminating most, if not all, of the special-purpose local governments and redrawing municipal boundaries to bring suburbs and satellite towns under the control of city councils. In rural areas, whole regions or counties might be unified. However, the provinces have little incentive to create local governments that would rival them in power and prestige. Thus, the trend throughout Canada has been to make comparatively minor adjustments in boundaries and functions, and to preserve local government arrangements in the face of socioeconomic change.

Most of the major cities in Canada now have metropolitan or a new level of regional governments of some sort. The creation of these new units of regional municipal government reflects a more general tendency in the past few decades to enlarge the scale of local administration. Health, education and welfare administration - traditionally entrusted to special-purpose local authorities - has generally been regionalized, if not provincialized.

While consolidation becomes an increasingly frequent occurrence, there are still some 5000 municipal governments in Canada, and new ones continue to be formed. It is difficult for provincial governments to persuade local communities to take responsibility for their own affairs without organizing municipal councils. Once created, these councils become symbols of local autonomy and are not easily eliminated.

Council duties include: the generation and approval of local legislation and by-laws; and the legislation and collection of local taxes. Councils operate through committees, task groups and citizen advisory bodies. Council meetings are open to the general public and in the larger communities the meetings are public ally televised.

Municipal Electoral Process

Municipalities are governed by municipal councils. The job of municipal councils is to make decisions about municipal financing and services. The head of a local municipal council is either called the mayor or the reeve. The head of council is always elected at large by all of the voters in the municipality. There is no party structure at this level of government. Individuals participating in an election do so on individual political platforms. The members of council may be called councilors or aldermen.

The way councilors are elected differs from municipality to municipality. Municipal councilors may be elected at large or by a geographical region called a ward. Elections occur in November and candidates are elected for three year terms. The latest elections were held in 2006.

In a municipality where the councilors are elected at large, all councilors represent the entire municipality. In an election, the voters choose among all candidates who are running in the election. If a municipal council has 8 councilor positions, for example, the 8 candidates with the highest number of votes win the election and become the new councilors.

Other municipalities are divided into wards. Depending on the municipality, each ward may have one, two or more representatives on council. Voters in each ward can choose only among the candidates who are running for election in that ward. For example, if a municipality has 8 council members and 4 wards, 2 councilors will be elected from each ward. Each voter chooses 2 candidates from among the candidates running in that ward. In each ward, the two candidates with the highest number of votes will serve on municipal council.

Federation of Canadian Municipalities

The Federation of Canadian Municipalities (FCM) has been the national voice of municipal government since 1901. With more than 1,600 members, the Federation represents the interests of municipalities on policy and program matters that fall within federal jurisdiction. Members include Canada's largest cities, small urban and rural communities, and 18 provincial and territorial municipal associations.

Municipal leaders from all parts of Canada assemble annually to establish Federation policy on key issues. The National Board of Directors meets quarterly to review policy and program matters. The Federation is dedicated to improving the quality of life in all communities by promoting strong, effective and accountable municipal government.

Through the actions of the Federation, municipal governments have maintained a strong advocacy role in lobbying the federal government to include municipal concerns in policy development and national decision-making. A key operating objective of the Federation was to ensure the federal government understood the full impact of their decisions on municipal governments and taxpayers.

Members of the Federation of Canadian Municipalities annually submit resolutions on subjects of national municipal interest for debate at the National Board of Directors meetings. The Board meets in November, March and September each year. The Board appoints members to standing committees to develop policy positions on key national municipal issues. Federation staff provides research and support to policy development.

Four policy matters that have recently been presented at the federal government level were: City Infrastructure and shared levels of government funding; relief from federal value added tax; social housing concerns; and inner city crime reduction financial support.

Importance of audit and public accountability

Universally, citizens and particularly taxpayers are demanding more public accountability for the way all levels of government are managing the funds they have been entrusted with. Governments at all levels are being asked by their citizens to do more with less. Greater public transparency of government operations and spending efficiency and integrity is called for. A key player in this situation is the auditor.

The federal government has an Auditor General appointed by legislation and each province in Canada also has by legislation, a provincial Auditor General, who has a mandate to conduct financial compliance and performance audits on how budget funds of each province is expended. Each provincial Auditor General has the legal mandate to audit any funds that are transferred down to a lower level of government such as a regional or municipal government. However, they have no mandate to audit any other budgeted funds of these levels of government, especially those funds raised through municipal taxing powers or service fees paid by municipal citizens. Any municipality, or boards or commissions, or other administrative bodies legally established by the municipality, are subject only to financial compliance audits. Each provincial Municipal Act contains provisions that govern the appointment of an auditor, the nature of duties to be performed, the process for contracting out the audit services and the responsibility for payment. Most municipal governments commercially outsource financial auditing to large private auditing companies through a competitive process. The municipal governments pay, through budgeted funds, the remuneration of the appointed company along with the expenses incurred in the auditing process.

Audit reports are submitted to the respective municipal council within a period agreed between the auditor and the council but usually no later than six months following the end of the fiscal year. There is provision in every province under the respective Municipal Acts that audit results have to be reported publicly. Any citizen that is interested can visit the municipality and read the reports.

Types of municipal audits

There are two types of audits that are presently being conducted by professional auditors: financial compliance audits and performance audits.

Financial compliance audits are required annually under the Municipal Act. Such audits are designed to examine the budget expenditures to ensure they are in compliance with the laws and budgets that have been approved by the legislatures.

Performance audits are not currently required under Municipal Acts. These audits examine systems and management practices in local government and look to report on instances where expenditures have not been managed by bureaucrats with regard to economy of procurement of goods and services, where operations have been managed in a wasteful or inefficient manner and the overall expenditures are not effective, or in other words, meeting the objectives as set in legislation.

Several of the larger Canadian cities have appointed Auditors General with funding available to employ permanent staff as well as to commercially outsource some audit activity. Auditors General have mandates to conduct both types of audits: financial and performance.

Performance audits are generally only conducted in the larger cities where funding or audit structures exist to conduct this type of auditing. Performance reports, like financial compliance audits, are made public.

Strengthening municipal auditing to better serve citizens.

Municipal audit, while having been in existence for decades in Canada, is the least developed in terms of both the breadth of its audit mandate and the organization of itself as an association of community of municipal auditors. In order to best serve its citizens it has much to implement in terms of roles and responsibilities from the two more senior levels of Canadian government and its auditors.

As mentioned earlier in this article, the provincial department of municipal affairs is normally the most prominent agency of control. Provincial legislation in each province of Canada has a similar ministry that is directly concerned with matters such as land use, expenditure control, large dollar capital spending and compliance with the various requirements of municipal acts. These ministries have powers to take over the administration of municipalities that are in non compliance with legislation, not just budget expenditures. The method of assuming administration in municipal jurisdictions is for provinces to appoint interim persons to run municipal administrations until corrective actions have occurred or elected or appointed officials have been replaced.

While municipal audit has been in existence for decades in Canada, most professionals in Canada agree that municipal audit practices need to be developed further in terms of mandate and organization. For example, municipal auditing is relatively less organized in terms of both the breadth of its audit mandate. With the exception of the few Chartered Cities, only financial audits are required by legislation.

Also, both the federal and provincial Auditors General have formed a formal association known as the Canadian Council of Legislative Auditors that has a mandate to deal with emerging areas of professional audit practice, audit techniques and tools and professional development activities. There is no such organization in existence yet at the municipal level.

Municipal Auditors and especially municipal Auditors General, because of their limited numbers, rely on provincial and federal auditor associations to exchange ideas and professional practices. They also rely on others for the development of emerging methodologies as well as for formal training.

It is expected that as their numbers grow, they will form their own association with an ability to address matters that pertain more to municipal governments and the challenges those auditing at that level are faced with.