

Flexing that municipal muscle

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In their legislative role, municipalities face challenges not seen by other levels of government. Luckily, there's never been a better time for creative solutions

Great change often starts with a lone voice of dissent, and that certainly holds true for the changes that have provided municipalities across Canada with greater powers.

In 1994, Madam Justice McLachlin of the Supreme Court of Canada made a strong case for supporting the legitimate role of municipal bodies in making decisions in the best interests of their communities. Her comments were part of a dissenting opinion in a judgment relating to a dispute between Shell Canada and the City of Vancouver.

Little did we know that 12 years later, that lone voice of dissent would mark the beginning of an evolution toward a more generous, deferential approach to municipal decision-making. In today's municipal world, laws that grant municipal powers contain broad statements about the expansive role of municipal governments and the deference to be given in interpreting those laws. And courts continue to exercise caution in substituting their views for those of municipal councils.

There are several key examples of this in recent Supreme Court of Canada decisions. In 2000, the City of Nanaimo, B.C. was successful in having a soil processing operation declared a nuisance and having it stopped. In 2001, the Town of Hudson, Quebec had its right to limit pesticide use within its boundaries upheld. In 2004, the City of Calgary, Alberta successfully defended its right to freeze the issuance of taxi plate licences.

All of these cases made their way up to the Supreme Court of Canada and were decided in favour of the municipality and all relied on what many now refer to as the "McLachlin rule" in reviewing municipal decision-making, with broad deference given to the solutions of various municipalities in tackling problems in their jurisdictions.

While the challenges and responsibilities faced by municipalities have never been greater, so have the potential solutions. But creativity and innovation is often needed. Local governments should be encouraged to "flex their municipal muscle" to achieve the results needed to serve the people who elected them and carry out their broad mandate that is now prescribed by legislation in most provinces.

In assessing response to the challenges faced by municipalities, it is essential to factor in the legislation and the courts of today in creating solutions. Municipalities may have more latitude than they think in taking innovative approaches to problem-solving.



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