

**MUNICIPALITIES AND CANADIAN LAW: DEFINING THE AUTHORITY OF LOCAL GOVERNMENTS.** By Felix Hoehn, Saskatoon: Purich Publishing, 1996, pp. 364 (\$39.00).

As the millennium approaches, the traditional shape of local government in Canada is being altered radically. Born in the aftermath of popular rebellion almost two decades before Confederation, the drive for responsible government culminated in the so-called *Baldwin Act*<sup>1</sup> of 1849 which largely established the existing system of municipal corporations to govern local affairs through elected councils. Nevertheless, as this century draws to a close, the changes experienced by local governments across Canada can often be attributed to disentanglement, downsizing and deficit-reduction exercises initiated by more senior levels of government. For example, on April 1, 1996, the Province of Nova Scotia established, by statute, the Halifax Regional Municipality which incorporated the cities of Halifax and Dartmouth, as well as the Town of Bedford and Halifax County Municipality into one, new local government.<sup>2</sup> At the date of writing this review, the Province of Ontario had just enacted a similar piece of legislation to amalgamate the seven existing municipal governments in the Toronto area into one super city to be known as the City of Toronto.<sup>3</sup> It would seem that bigger may indeed be better in the 21st century world of local governments.

Coinciding with this new revolutionary fervour is a renaissance in texts dealing with various issues in municipal law.<sup>4</sup> Among these is the book under review by Felix Hoehn which is a welcome addition to this burgeoning archive.<sup>5</sup> The author practices law in Saskatoon where he also teaches legal issues in urban studies and planning at the University of Saskatchewan. The book "...evolved from a need to develop materials for a course taught to planning students..." and focuses on "...land use planning powers and areas of municipal law of particular interest to professional planners...". Not surprisingly, Hoehn takes a multi-disciplinary approach to his subject and this results in a book that will not only be of assistance to planning students, but also to lay-persons dealing with local governments. Furthermore, it may also serve as a general reference for some lawyers seeking an introductory guide to municipal and planning law.

The book is well organized and divided into ten distinct chapters. Beginning with the constitutional origins of "municipal institutions", which placed them under provincial authority in the *Constitution Act, 1867*<sup>6</sup>, the book moves through a variety of areas, including municipal liability, conflict of interest, bias and public access to local government, before concluding with the increasingly significant effect that the

<sup>1</sup> S.C. 1849, c.81.

<sup>2</sup> *Halifax Regional Municipality Act*, S.N.S. 1995, c.3.

<sup>3</sup> *City of Toronto Act*, 1996, 1st Sess., 36th Leg. Ont. 1996.

<sup>4</sup> See for example: H. David, ed., *Thomson Rogers on Municipal Liability*, (Aurora: Canada Law Book, 1996); M.J. Smither, *Local Government: The Consequences of Advice to Ratepayers*, (St. Thomas: Municipal World Inc., 1996); and, C.R. Tindal and S.N. Tindal, *Local Government in Canada*, 4th ed., (Toronto: McGraw-Hill Ryerson, 1995).

<sup>5</sup> F. Hoehn, *Municipalities and Canadian Law: Defining the Authority of Local Governments*, (Saskatoon: Purich Publishing, 1996).

<sup>6</sup> (U.K.), 30 & 31 Vict. c.3 (formerly the *British North America Act, 1867*).

*Canadian Charter of Rights and Freedoms*<sup>7</sup> has had on municipalities.

Succinct headings and subheadings, which identify various legal issues, further subdivide the chapters and assist the reader in quickly locating his or her desired point of reference. In order to explain and assist in interpreting the legal principles identified in the various statutes, the author also provides a wealth of municipal law jurisprudence (predominantly Canadian but American and British cases, too), as well as the factual context in which the legislation was derived from either historical events or the common law.

This latter type of supplementary information is particularly intriguing with respect to the author's depiction of the origin of zoning by-laws in his chapter on the "Control of Land Use":

Prior to the introduction of zoning, state interference with the use of privately held land was minimal. Land owners had to depend on private law remedies to defend their rights to the use and enjoyment of their properties against interference from incompatible activities on nearby properties.....With the rapid pace of industrialization and urbanization in the early part of this century, it became apparent that public regulation of land uses was necessary, not only to prevent conflicts between individual owners, but also to facilitate orderly development in a manner that suited the interests of the community as a whole. It was believed that segregating different types of uses into separate areas of a city was the best way of achieving this result. This led to the control of land use by zoning.<sup>8</sup>

This chapter also provides a suitable point for Hoehn to further explore his underlying theme, that being the "inferior status" of local governments. Initially, the author observes that municipalities are "creatures of statute" which can only exercise those powers which have been delegated to them by provincial governments. Subsequently, when addressing the "Judicial Review of Municipal Authority", Hoehn suggests that it is this "inferior legal status [which] causes the courts to scrutinize the exercise of local authority more intensely than they scrutinize the exercise of authority by the provinces or by the federal government."<sup>9</sup> Finally, in discussing the requirement of ministerial approval for some zoning by-laws, the author returns to this theme by reiterating that such provincial approval "is another example of a lack of confidence in the ability of a constitutionally inferior level of government to carry out its responsibilities, and this lack of confidence potentially impairs the ability of an elected council to fulfil its democratic mandate."<sup>10</sup>

Despite the stated objective of his book "...to provide an overview of provisions in various jurisdictions in Canada that are relevant to the topics covered...", the author's analysis is not limited to merely comparing and contrasting the relevant statutes. Instead, Hoehn identifies both the strengths and weaknesses of the legislation under scrutiny and provides insightful observations on the preferred provisions or

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<sup>7</sup> Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act, 1982* (U.K.), 1982, c.11.

<sup>8</sup> See Hoehn, *supra*, note 4 at 151.

<sup>9</sup> *Ibid.* at 1.

<sup>10</sup> *Ibid.* at 156.

approaches described. These matters are all neatly summarized in the concluding section.

Perhaps the most interesting chapter, and one of the book's longest, is entitled, "Heritage Protection Legislation". In it, the author provides an in-depth summary of the various laws that seek to protect heritage property across Canada. The analysis includes an overview of the fundamental procedures by which such heritage designations can be obtained and the appeal processes available in each jurisdiction. However, the author's analysis on heritage goes much further than the subjects discussed in other chapters. For example, he delves into such unique topics as the importance of public participation in heritage protection applications, appeals and revocations, a requirement which he persuasively argues has yet to be adequately recognized in heritage-protection statutes. Furthermore, Hoehn suggests that "the goal of preservation will not be met by simply prohibiting the demolition or alteration of heritage buildings..." Alternatively, the author advocates for a variety of measures, including financial assistance through grants and loans or property tax relief to achieve a more balanced and successful approach to heritage protection. Ultimately, Hoehn concludes that, although the existing provincial statutes in Canada collectively contain "...almost all the features...for effective heritage-protection...", no single Act constitutes "...a comprehensive scheme that is adequate for the preservation of heritage properties..."<sup>11</sup>

In light of this book's origin, as a text for university students, a bibliography section detailing a list of relevant books and articles may be appropriate in future editions. Apart from this minor shortcoming, Hoehn has produced a clear, concise and accessible book which should find its niche between I.M. Rogers seminal text, *The Law of Canadian Corporations*<sup>12</sup> and Professor S.M. Makuch's *Canadian Municipal and Planning Law*,<sup>13</sup> the latter, regrettably, remains unrevised since 1983. It will be interesting to see whether or not Hoehn's perceptions regarding the inferior legal status of these "creatures of statute" are subsequently altered or revised in light of recent legislative reforms in Alberta designed to provide local governments with "...greater sovereignty and flexibility by granting them jurisdiction over generally defined subject matters, the powers of a natural person, and by including interpretative clauses intended to engender greater deference to municipal actions."<sup>14</sup>

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<sup>11</sup> *Ibid* at 323.

<sup>12</sup> 2d ed. (Toronto: Carswell, 1996).

<sup>13</sup> (Toronto: Carswell, 1983).

<sup>14</sup> See Hoehn, *supra* note 4 at 45.

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