

What We Heard

Municipal Legislation Review

November 2018





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Introduction

Municipal legislation provides the authority to our cities, towns, and local service districts to operate as local governments. Under the current structure in Newfoundland and Labrador, each of our cities has its own legislation and the remainder of our 400+ municipalities and local service districts under a separate act. These laws affect cities and municipalities across the province and the residents within those communities. Like all laws, they must be updated from time to time to ensure the legislation works effectively for our modern communities.

What is Being Reviewed?

The Government of Newfoundland and Labrador is reviewing the four key municipal acts (collectively referred to as the “municipal legislation”) which govern how our cities, towns, and local service districts function:

- Municipalities Act, 1999
- City of St. John’s Act
- City of Mount Pearl Act
- City of Corner Brook Act

These Acts have been in force for decades. There have been amendments to these Acts over time, but this is the

first comprehensive review to consider them collectively and in full.

The municipal legislation in Newfoundland and Labrador is currently very prescriptive. In recent years, many Canadian jurisdictions have moved toward more permissive frameworks, giving towns and cities broader powers and authority.

The review is intended to evaluate the municipal legislation in light of stakeholder needs and compared with best practices from other Canadian jurisdictions.

This is expected to result in updated legislation that:

- Is more user-friendly;
- Increases openness, accountability, and transparency;
- Addresses councillor and municipal staff conduct and conflict of interest;
- Empowers municipalities for increased local and regional decision-making and service delivery;
- Clarifies the roles of municipalities and provincial government; and
- Provides municipalities with the ability to generate revenue and facilitate economic development.



The Public Engagement Process

On December 6, 2017, the Minister of Municipal Affairs and Environment, along with the President of Municipalities Newfoundland and Labrador (MNL), the President of the Professional Municipal Administrators (PMA) and the Mayor of St. John’s, launched consultations to modernize the municipal legislation. The public was encouraged to make submissions and share their thoughts on how Newfoundland and Labrador can renew the legislation governing our communities and cities.

During that first phase of public engagement, the department received more than 70 written submissions from individuals, local service districts, towns, cities and interest groups. Submissions addressed various topics ranging from issues around governance, finances, transparency and accountability, and professional conduct. In addition to the submissions, other feedback was collected from correspondence related to municipal legislation and received by the department in recent years, MNL resolutions, and the results of a PMA member survey.

The submissions and other feedback were reviewed in detail and used to develop a second phase of consultation launched on May 25, 2018 and concluding on August 10, 2018. This second phase was designed to dig deeper into key issues emerging from the first phase, including municipal structure and purposes, accountability and transparency, professional conduct, municipal services, and municipal revenue sources. Delivery was primarily through in-person sessions with facilitated small group discussions. These sessions were open to the public, but particular efforts were made to engage individuals who use the municipal legislation in a substantial way. As a result, these were attended primarily by municipal councillors, local service district committee members, professional municipal staff, and other community leaders. Polling was also conducted during interactive presentations delivered at MNL and PMA events. Once the in-person sessions were complete, an online questionnaire, covering questions posed at in-person sessions and presentations, was made publicly available. The online component was used to ensure anyone unable to attend an event had an opportunity to participate.



On October 4, 2018, Premier Dwight Ball hosted the third annual Premier’s Forum on Local Government and the municipal legislation review was selected as the topic for this session. Taking advantage of the collective experience and expertise of municipal leaders attending the forum, delegates were asked to participate in discussion and workshop activities. The forum activities were designed to obtain additional insight related to conflict of interest, professional conduct, and the structural elements of enabling legislation.

The information collected through all parts of the engagement process is being reviewed by the Department of Municipal Affairs and Environment. All feedback will be considered as officials prepare recommendations for modernizing the legislation. We will continue to reach out to stakeholders for additional advice or clarification as necessary while we complete our analysis and recommendations.

Results at a Glance

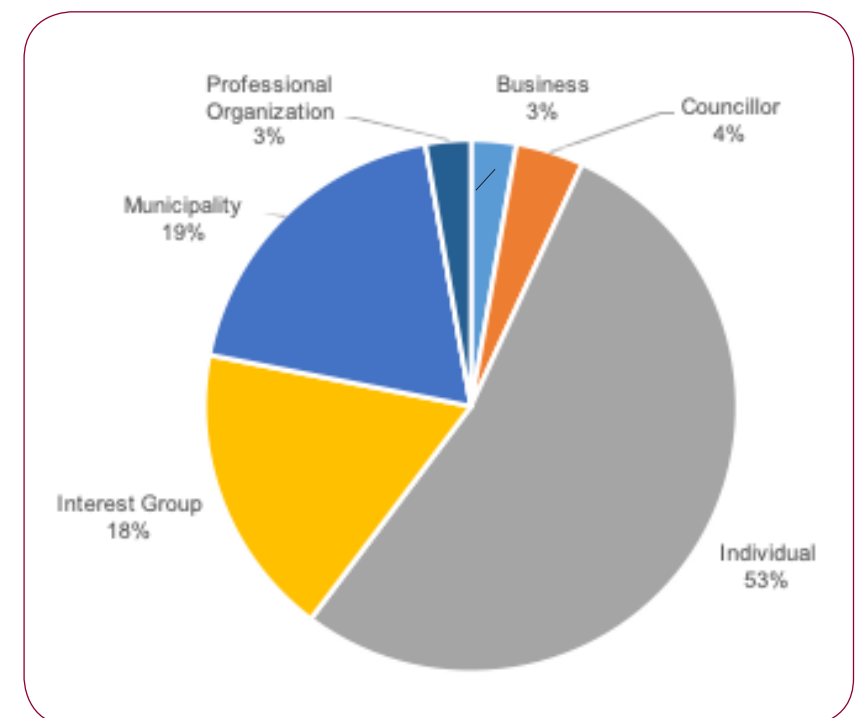
- Written submissions were received from 74 individuals, businesses, municipalities, interest groups, and professional organizations.
- The written submissions generated 691 recommendations.
- Other feedback (departmental correspondence, MNL resolutions, PMA member survey) contributed an additional 220 ideas and recommendations.
- Eleven regional in-person sessions were attended by 145 people.
- More than 1,200 individual ideas or recommendations were captured during group discussions.
- Sixteen people completed an online questionnaire, answering a number of polling questions and generating 55 additional ideas.
- Members of Municipalities Newfoundland and Labrador (MNL) and the Newfoundland and Labrador Professional Municipal Administrators (PMA) also responded to polling questions during interactive presentations.
- The third annual Premier’s Forum on Local Government was attended by 52 delegates.
- Delegates of the Premier’s Forum answered polling questions and worked collaboratively in small groups to develop recommendations related to conflict of interest and code of conduct provisions. Delegates also provided feedback on the opportunities and challenges presented by shifting legislation toward a more permissive and enabling framework.

Phase One: Written Submissions

An open call for written submissions on the municipal legislative review was held between December 6, 2017 and January 31, 2018. More than 70 submissions were received during that time frame, with a few additional submissions accepted late. Written submissions received during phase-one are posted online for viewing. Submissions received during the open call, and other feedback from departmental records and correspondence were used to develop phase two of consultations.

Who Participated

Seventy-four written submission were received during the open call. Most submissions were contributed by individuals (53 per cent). A substantial portion of submissions were contributed by municipalities (19 per cent) and interest groups (18 per cent). Additional submissions were received from municipal councillors (four per cent), professional organizations (three per cent), and businesses (three per cent).



Percentage of written submissions received from various sectors.

What we Heard During Phase One



Word cloud illustrating the frequency with which the most common topics were raised in written submissions. All topics included in the cloud appeared in at least 10 submissions. The size of the word demonstrates the relative frequency a topic was raised. That is, a word twice the font size of another word appeared twice as often in submissions.

Concerns, ideas, and recommendations were extracted from the written submissions and categorized according to relevant legislative subject matter. The most common issue addressed in the written submissions was the topic of taxation. Commentary related to municipal powers and authority, conflict of interest, access to information, enforcement, elections, and the acquisition and disposal of assets were also common subjects.

A number of general themes common across a number of topics emerged from the written submissions and are worth noting. Participants indicated that:

- Municipalities should have more authority and autonomy.
- Municipalities have too much autonomy or need more oversight.
- Better tools needed to allow municipalities to enforce regulations.

- Better mechanisms are needed to ensure municipalities are acting in compliance with legislation.
- More transparency is generally desired.
- Professional conduct needs to be addressed or addressed better in legislation.
- Legislation needs more clarity and plainer language.

Additional themes related to specific items were identified. These are presented below and grouped by topic.

Enabling Legislation

- More flexibility is desired for decision-making.
- Current legislation is too restrictive.
- Broad powers and natural person powers, similar to other Canadian jurisdictions, should be granted.
- City legislation should be enabling in nature to acknowledge the autonomy and professional capacity of cities.

Legislative Structure

- All cities should be subject to one Act of legislation.
- The City of St. John's should retain its own legislation.
- Pros and cons of separate or combined legislation for cities, or separate or combined for cities and towns, should be evaluated with legislative requirements, clarity and consistency in mind.
- As long as legislation is flexible and enabling, the number and organization of legislative Acts is not important.
- Some consideration should be given to an Act for cities and large towns separate from other towns and local service districts.
- Small towns cannot be governed by the same legislation as large towns.

Municipal Structure

- There are too many municipalities in the province.
- Build incentives into legislation to encourage regionalization.
- Legislation should be forward-looking and acknowledge the necessity of regionalization.
- Legislation should facilitate amalgamation and sharing of resources, costs, and responsibilities.
- The entire northeast Avalon should be treated as one municipality.
- Local Service Districts should be required to incorporate as a municipality or amalgamate into an adjacent municipality.
- Do not incorporate any new municipalities until a regional governance structure is implemented.
- Criteria are needed to describe incorporation feasibility in terms for sustainability.
- Establish criteria for towns to apply to become cities.
- Small municipalities and large municipalities need to be distinguished from each other and subject to different legislative rules.
- A municipal plan and development regulations should be a criteria for incorporating a municipality.

Municipal Purposes

- Municipalities should have a clear and focused mandate.
- Municipal government primary purposes should be provision of core services in a cost-effective manner.
- Municipal sustainability should include consideration of healthy built environments.

Councils

- The process for electing a mayor and deputy mayor should be clarified and simplified.
- Council should be allowed to hold separate elections for deputy mayor, similar to mayor.
- Clarity on procedures, including timelines, for filing the office of mayor if it becomes vacant is required.
- Clarify the value of and role of a youth representative on council.
- A criminal record should disqualify an individual from holding a position on council.
- Responding to correspondence in a timely fashion should be a required duty of council.
- Small towns need the authority to engage councillors to conduct work for the town without requiring ministerial approval, as there is often no other option for this work and ministerial approvals cause unnecessary time delays.
- The composition and roles of specific committees and their relationship to council needs to be clarified.
- Committees of council should be mandated to have terms of reference and to follow rules of procedure with penalties for failing to do so.
- Ability to attend meetings electronically should be extended to committee meetings.
- Mandatory training should be introduced for councillors.
- Mandatory core training for councillors should include:
 - o rules of order;
 - o authorities and delegation of authorities;
 - o states of emergency; and
 - o human resources.
- Funding programs available through the Department of Municipal Affairs and Environment should be contingent upon councillors participating in orientation opportunities.

Administration

- Minimum hours of operation for a municipal office should be established to ensure accessibility to residents and provide sufficient time for the administrator to perform required duties.
- Establish minimum work hours for town clerk or manager adequate to ensure administrative work of municipality can be completed.



- Clarity is required to better define the relationship between council and administrative staff.
- A Chief Administrative Officer (CAO) should be mandatory for cities, with duties including those of clerk.
- All administrative duties for cities should be assigned to CAO or City Manager. CAO or City Manager should have authority to establish organizational structure, including staff positions and reporting lines, and appropriately delegate and manage duties.
- The Medical Officer's role in St. John's is outdated and should be replaced with a Public Health Officer.
- Flexibility needed to allow job title to accurately reflect duties, but still allow appropriate staff to have signing authority; currently too prescriptive. Do not legislate specific titles with defined duties.
- Dismissal of administrators and department heads should be limited to situations where dismissal is for due cause.
- Employer contributed pension plan should be mandatory.
- Allow councillors to be included in pension plan or provide discretionary authority to establish pension and group benefit plans for councillors.
- Ensure retirement provisions do not contravene Human Rights Act 2010.

Professional Conduct

- Legislation should include provisions to address widespread harassment issues in municipal offices.
- Provisions to require municipalities to abide by a code of ethics or code of conduct is absolutely necessary.
- Councillors need to be required to hold each other to a standard of behaviour.
- Participation and council and on committees should be identified as a professional standard.
- A code of conduct should be mandatory.
- Legislation should provide authority to municipalities to adopt a code of conduct.
- The City of St. John's needs to have legislative authority to enforce breaches in ethics codes.
- Harassment needs to be defined.
- Legislation needs to explicitly protect municipal employees from being harassed or obstructed when carrying out municipal duties.
- Appropriate repercussions or penalties need to be established for breaches of a code of conduct.

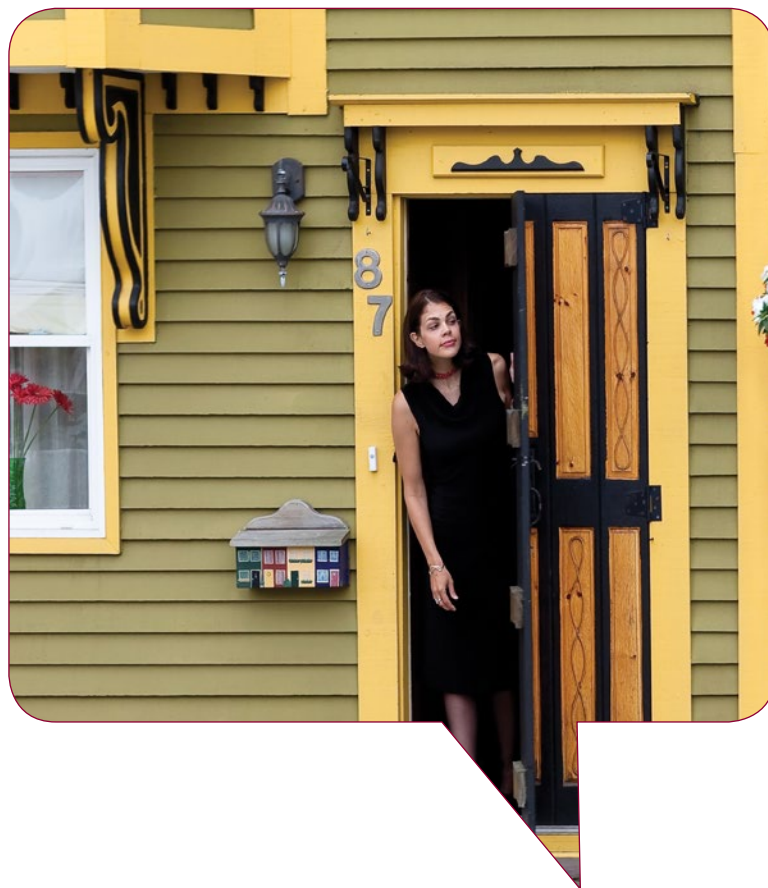
Conflict of Interest

- Conflict of interest should apply to personal interests beyond those monetary in nature.
- Expand the definition of relatives to include extended family and close personal associates.
- Definition of conflict of interest needs to be clearer or more explicit.
- Monetary interest and distinct interest need to be defined.
- A step-by-step process for dealing with conflict of interest allegations needs to be included in legislation.
- Explicitly include a councillor's right to a hearing in the process for responding to allegations.
- Definition of conflict of interest needs to be expanded to address use of privileged information and use of influence for personal benefit.
- A process independent of council is needed to determine whether a conflict exists or has occurred.
- Residents need the ability to challenge conflict of interest decisions prior to engaging in an expensive court appeal.
- Mandatory vacation of a councillor's seat is too harsh, particularly if acting in conflict was genuinely inadvertent.
- For Mount Pearl, consistent with other municipalities, make declaring a councillor's seat vacant the penalty for acting in a conflict of interest.
- In circumstance where council agreed that no conflict existed, there must be some liability with entire council if it is later determined that a conflict occurred.
- A range of penalties should be available for infractions.
- Councillors should be required to leave chambers when an issue for which they are in conflict is being discussed.
- Councillors should be able to remain in chambers and observe discussions around an issue for which they are in conflict, with the same rights as a member of the public.
- A provision prohibiting council from awarding a contract or benefit to a former councillor within a defined period of time after they ceased to hold office should be introduced.
- Councillors should be prohibited from receiving valuable gifts for performing their duties of office.
- Legislation should set a time limit on submitting allegations of conflict to some number of years after the incident occurred.
- Council should be required to act within some reasonably short period after receiving an allegation.
- An independent entity should be established to investigate and make determinations around conflict of interest.
- It is not clear that the City of St. John's Act has appropriate measures and parameters to deal with conflict of interest issues.



Municipal Powers

- More autonomy and authority, especially for larger towns and cities, are desirable.
- Mayor should be granted veto power.
- State clearly that mayor and all councillors must support and abide by decisions of council.
- Provide mayors the authority to declare a state of emergency without council approval.
- Municipalities should have more authority for:
 - o safety;
 - o traffic control;
 - o managing nuisances;
 - o protecting built heritage (particularly St. John's);
 - o the protections and safety of animals;
 - o environmental protection; and
 - o providing grants to charitable or philanthropic causes.
- Councils need to be able to delegate authority, particularly for signing authority.
- Provide expanded authority and control within municipal planning boundaries.
- Cities and large towns would like the authority to stop vehicles for certain moving violations.
- Municipalities with plans and development regulations should have authority to issue development permits.
- Municipalities should have the authority to enter Crown land for municipal purposes without prior approval.
- Need better processes for cleaning up derelict properties and wrecks.
- Demolition or deconstruction orders should be issued on the opinion of a qualified engineer, not on the opinion of council.
- Propose requiring salvage of all available architectural and heritage building materials, and design features of public structures, for buildings which have been approved for demolition.
- Heritage protection should be addressed under the Urban and Rural Planning Act, not in municipal legislation.
- Enable municipalities to conserve wetlands by creating reserves without compensation to landowners.
- City of St. John's needs provisions that allow the city to prohibit development in environmentally sensitive areas without expropriation or compensation.



- Municipalities should be granted authority to build and operate not-for-profit housing.
- Municipalities should have authority to provide services at a competitive rate, even where a private company is available, if the service was traditionally provided by municipality.
- Municipalities, rather than individual councillors, should be liable for actions of councillors conducting their duties.
- Officers should be protected from personal liability unless acting dishonestly, neglectfully, maliciously, or libelously.
- Maintain important powers such as vesting of Public Land, no adverse possession, no liability of nuisance claims (St. John's).
- Exempt the City of St. John's from the Urban and Rural Planning Act and include broad development authority.
- Include a statement that municipal powers are limited by provincial and federal laws.

Provincial Powers

- Provide clarity around the roles and responsibilities of each level of government.
- Require Province to consult with municipalities prior to transferring any existing provincial government responsibilities to municipalities.
- Remove mandatory ministerial approvals throughout the legislation pertaining to cities.
- Provide larger municipalities with greater flexibility to conduct their business without having to seek prior approval from the Department of Municipal Affairs and Environment.
- Criteria should be developed that, if met, release municipalities from requiring ministerial approval for long-term borrowing.
- Unless projects are cost-shared with the province, municipalities should not require ministerial approval for borrowing.
- Municipalities, particularly cities, with professional accounting staff, should not require ministerial approval for borrowing.
- Cities and large towns with engineers on staff, or with the capacity to hire engineering services, should not require ministerial approval for tender specifications.

- Municipalities should be able to buy and sell land for legitimate purposes without ministerial approval.
- Regulation of the taxi industry most appropriately rests with the Province and should not be the responsibility of individual municipalities.
- The Department of Municipal Affairs and Environment is responsible for ensuring municipal legislation is followed and should have authority to issue orders to municipalities and apply penalties for failure to comply.
- The Department of Municipal Affairs and Environment should be more hands-on when complaints are made that a council or committee is not acting properly.

Regulations (By-laws)

- Regulation provisions are too restrictive.
- Simplify legislative language regarding regulation.
- Remove any overlap with the Urban and Rural Planning Act.
- Eliminate any sections related to morality from the lists of regulations.
- Provide a default set of core regulations automatically adopted by municipalities if they fail to make their own.



Enforcement

- Legislation needs to accommodate small communities with limited professional capacity and provide direction for enforcing by-laws.
- Municipalities need expanded enforcement authorities.
- Update value of fines to reflect modern realities so that they are effective as deterrents.
- Councils should have the authority to set fines appropriate to the specific issues.
- Provide authority to set timelines appropriate to nature of order; 30 days is too long for urgent issues such as snow clearing or garbage covering.
- Expand and generalize the authority to issue violation notices.
- Provide ticketing authority.
- Provide authority to use water shut-off as a penalty for unpaid fees or taxes, even where not directly related to water.
- Provide authority to allow courts to order payment of outstanding fees or taxes in addition to fine for failure to pay.
- Allow municipalities to share resources for enforcement purposes.
- Municipal enforcement officers should have authority to enforce signs posted on private property, such as no parking signs.
- Mandatory training for municipal enforcement officers should be introduced.
- Municipalities should not be liable for failure to enforce regulations.

Appeals

- All motions passed by council should be subject to appeal.
- Cost-prohibitive for residents to appeal decisions of council in court.
- The Department of Municipal Affairs and Environment should have a role in reviewing municipal decisions prior to any court process.
- Unbiased third party entity needs to be created to hear appeals not covered by current Appeal Board structure.
- Time to appeal a council decision should be extended to 21 days.
- Appeal Boards should have stringently enforced timelines within which hearing must be held.

Transparency and Accountability

- Municipal legislation needs better consistency with the Access to Information and Protection of Privacy Act.
- Should be a requirement to publish responses to any access to information request on town website within 30 days of issuing response.
- Allow notices, orders, documents and records to be made public through electronic means such as posting on social media or municipality's website.
- Increase routine and proactive disclosures.
- Require financial information to be made available online.
- Municipal legislation should require councils to make details associated with all public acquisitions available publicly.
- Require public records to be available online and at council office. Minimally allow for records to be requested by email.
- Reduce maximum timelines for making council and committee meeting minutes publicly available.
- Increase maximum timelines for making meeting minutes publicly available.
- Remove or relax mandatory timelines for the release of information.



- Allow council to make regulations regarding the public release of records.
- Require a notice period for public comment in advance of adopting any by-laws.
- Develop an inventory of best practices related to transparency and citizen engagement that can be shared with municipalities.
- Council should be required to record audio or video of all meetings and retain recordings as public records.
- Councils must be prevented from conducting the majority of council business behind closed doors.
- Criteria need to be established under which closed meetings may or must occur.
- Council should be required to post publicly in advance of a closed meeting the reason for the meeting being closed.
- All matters discussed in closed meetings should be kept in confidence until discussed at a public meeting.
- Ratification of decisions from closed meetings at public meetings needs to be done in such a way that it still protects privacy of individuals, consistent with the Access to Information and Protection of Privacy Act.
- Public audience attending public meetings should have opportunity to speak to matters on the agenda.
- A public consultation process with clearly defined rules, similar to the Indigenous consultation process, should be implemented.

Oversight

- Appoint an independent Municipal Auditor General, or Ombudsperson, or Advocate.
- Introduce an Integrity Commissioner, similar to Ontario.
- Penalties should be established for municipalities/councils that are acting outside of their authority to strengthen the ability to enforce legislative compliance.
- Legislate reasonable timelines to have an appeal heard and change the structure of appeal boards if necessary to meet deadlines.

Municipal Boundaries

- Streamline process for modifying existing municipal boundaries; should not always require feasibility

report, especially for minor changes.

- All Crown lands within municipal boundaries should become municipal property.
- Municipalities should have more control over Crown land within municipal boundaries.
- Crown land applications and processes should be more transparent.

Revenue and Taxation

- Incorporate City of St. John's Municipal Taxation Act into renewed City of St. John's Act.
- Municipalities require more flexibility to create revenue streams.
- Diversity potential revenue streams to increase community sustainability.
- Municipalities need more flexibility to create property classifications and vary tax rates based on these.
- Authorize municipalities to impose fees and taxes outside municipal boundaries for services provide outside municipal boundaries.
- Property taxes are regressive; municipalities should have authority to charge income-based tax.
- Taxes should be based on ability to pay.
- Each property should be charged an equal tax amount.
- More flexibility should be provided to municipalities for the imposition of minimum taxes.
- Need more authority to compel employers to share employee information for the purpose of poll taxation.
- Poll taxes are difficult to collect fairly.
- Poll taxes do not provide enough revenue to make them worth the effort and cost of collecting.
- Municipalities should not be allowed to use both property tax and poll tax.
- Poll taxes should be abolished.
- Include provisions allowing municipalities the authority to charge the cost of firefighting to property owners or owners' insurance.
- Business tax provisions are too prescriptive; more flexibility is required.
- Provide authority to levy a commercial realty tax partly based on property value and partly based on gross revenue, in lieu of business tax.
- Create a mechanism for municipalities to set business taxes a number of years in advance to allow business to plan and budget.



- Businesses should pay full taxes to the municipality where they are headquartered, not where they deliver services, unless headquartered out-of-province.
- Establish a home-based business tax.
- Extend definition of business to include self-storage facilities and not-for-profit services.
- Clarity is required regarding what constitutes a business in order to properly apply business taxes and issue permits.
- Allow vacant commercial properties to be subject to a higher tax rate than occupied commercial property to encourage economic development.
- Taxes on vacant property should be scheduled to increase as the length of vacancy increases.
- Allow municipalities to collect an accommodations tax.
- Do not allow an accommodations tax for general municipal revenue. Room levies should be industry-led and revenue should be specifically used for tourism marketing and development.
- Municipalities should receive a share of the HST

- generated within municipal boundaries.
- Admission fees for recreational facilities should not be mandatory.
- Water and sewer fees should be based on a metered rate.
- Local Improvement Assessment and Service Levy are frequently misunderstood and more clarity is required.
- Allow cities to establish the method for assessment of Local Improvement Assessments and Service Levies.
- Service levies should continue to be attached to property sold for tax arrears.
- Municipalities should have the authority to set criteria for tax exemptions and discounts.
- Federal and provincial property should be subject to taxation, or at least be subject to water and sewer fees.
- Allow tax exemptions for low-income households.
- Allow for a senior's discount on taxes and/or fees.
- Problems with the current provisions related to tax sales for recovery of unpaid taxes:

- o six year limit on arrears collectible;
- o inability to evict an owner in order to conduct a tax sale;
- o clear title cannot be provided to purchaser;
- o time-consuming;
- o expensive; and
- o complex.
- Eliminate restrictions and prohibitions related to residential property tax sales.
- Increase lien for property tax to 12 years. Similarly, increase period to commence collection to 12 years.
- Allow subdivision of owner-occupied property to provide an avenue for tax recovery through tax sales while owner is still residing on property.
- Clarify that a municipality can seize both the property and the title to the property in order to allow clear title for purchaser.
- Require professional market-value appraisal prior to a tax sale and prohibit sale at less than 75 per cent of market value (set a minimum bid at 75 per cent of value).
- Provide council with the ability to withhold permits or issue stop orders where taxes or fees are outstanding.
- Provide the authority to enforce any non-payment with service disconnection, even if relevant service fee is not outstanding.
- Municipalities should be able to garnish wages for outstanding taxes and fees.
- Provide authority to charge interest on outstanding taxes and fees.
- Provide authority to allow payment plans for municipal taxes.
- Provide authority to collect a "municipal tax" which would include a property-based component and all other fees and levies, such that the full amount could be applied as a lien to property.
- Create a refundable tax credit on provincial income tax for property tax paid, like Ontario.

Budgets and Financial Statements

- Include provision requiring careful and responsible financial management.
- Retain requirements for municipalities to have a balanced budget.
- Legislation needs to be updated to be in compliance of Public Sector Accounting Board (PSAB) standards.

- Procedures need to be established to authorize and verify expenditures that are not included in a budget.
- Cities require greater flexibility and less provincial oversight in management of finances and budgeting.
- Towns large enough to have professional financial staff should have fewer requirements for ministerial approvals related to borrowing, spending, and use of operating reserves.
- Establish a municipal auditor general to assist municipalities with development and maintenance of appropriate financial records.
- Require municipalities to issue a Request for Proposals for auditing services.
- The option to have the annual audit waived should be removed from legislation.

Asset Management

- Require municipalities to be transparent in acquisition of private property for public use, and clearly inform property owners of rights at the outset of negotiation.
- For large towns, remove ministerial approval to hold real and personal property.
- Replace ministerial approvals related to disposal of property below market value with a 2/3 vote of council.
- Towns should be able to buy and sell assets or services from one another without subjection to the Public Tender Act.
- Remove ministerial approvals related to the acquisition and disposal of municipal assets.
- Require ministerial approval for acquisition or disposal of assets only where action is not accounted for in approved budget.
- Require towns to be transparent and ethical in disposal of assets, rather than prescribing how asset disposal can occur.
- The \$500 threshold for acquisition and disposal of assets below market value is unreasonable.
- Councils should be allowed to acquire goods or services through public auction opportunities or from other municipalities.
- Allow all cities to dispose of land not required for municipal purposes as council sees fit.
- Require municipalities to exercise due diligence in the disposal of assets, including obtaining a professional valuation analysis.

Permits

- Current legislation is too prescriptive.
- Water and sewer permits should not require approval of an officer of provincial government.

Services

- Expand authority to provide services.
- Fire and emergency services should be mandatory.
- Civic addressing should be a mandatory service.
- Larger municipalities should provide clean drinking water as a mandatory service. Smaller municipalities should be required to prioritize clean drinking water over other non-mandatory services.
- Municipalities are primary supplier of inclusive and accessible recreational opportunities; recreation should be seen as a core responsibility of municipalities.
- Allow municipality to enter property without notice for urgent or emergency purposes.
- Provide a mechanism so that costs associated with the removal and disposal of waste can be attached as a lien on property if unpaid.
- Provision to allow municipality to charge a fee for services delivered outside municipal boundaries, including fire suppression.
- Provide authority to place snow and ice control materials on private property without liability.
- Provisions regarding private services are too restrictive.
- Residents across the province should have access to a comparable level of service regardless of where they are located.
- St. John's requires increased authority for the leadership role in regional services.
- St. John's should be the regulator of the regional water supply.

Expropriation

- Expropriation process is onerous and needs to be more efficient.
- Property owners are unfairly burdened by lengthy expropriation process.
- Delays in expropriation process are caused by requirements for ministerial approval; consider revising approval process.

- Consider including provisions for expedient resolution, such as immediate payment for underlying property value with other claims to be resolved at a later date.
- All cities should be allowed to expropriate under their own authority, similar to the City of St. John's.
- Provide authority to pose land surveys and legal descriptions online, with advertising to reference website.
- Grandfather infrastructure prior to some reasonable date so municipalities are not liable for old encroachments.

Additional Items

- Better definitions are needed for:
 - o business;
 - o car wrecks;
 - o economic development;
 - o ordinary resident; and
 - o wetland (to be consistent with Water Resources Management Act).
- Provide a mechanism for demolition costs incurred on a property by a municipality to become a lien against that property.
- Include a provision for holding a non-binding plebiscite to obtain electorate opinion on issues.
- All municipalities with more than 500 residents should be required to restore or replace any wetland altered for development at a one-to-one ratio.
- Include provisions to encourage health and wellness initiatives and healthy built environment requirements.
- Mandate municipalities to have a Health and Wellness Committee.
- Reporting requirements for fire departments should be introduced.
- Municipal legislation should be reviewed every five years.

Phase Two: In-Person Engagement

The second phase of consultation on the review of municipal legislation was designed to dig deeper into the issues raised during the first phase of consultation. Organizations and professionals who use the Municipalities Act, 1999, the City of St. John's Act, the City of Mount Pearl Act and the City of Corner Brook Act in a significant way were especially encouraged to participate.

Phase Two stakeholder engagement consisted of:

- In-person engagement sessions consisting of 17 polling questions and seven small group questions were held in 11 locations throughout the province between May 29 and June 20, 2018. Feedback from the in-person sessions is available for viewing in the combined format used for analysis.
- An online questionnaire, available from July 20 through August 10, 2018 was completed by 16 individuals. Combined results of the online questionnaire are available for viewing.
- Two interactive presentations, including polling questions, were delivered at MNL and PMA events. Raw polling data can be viewed online at the following links:
 - o MNL Municipal Symposium results (May 4, 2018)
 - o PMA Convention results (June 8, 2018)

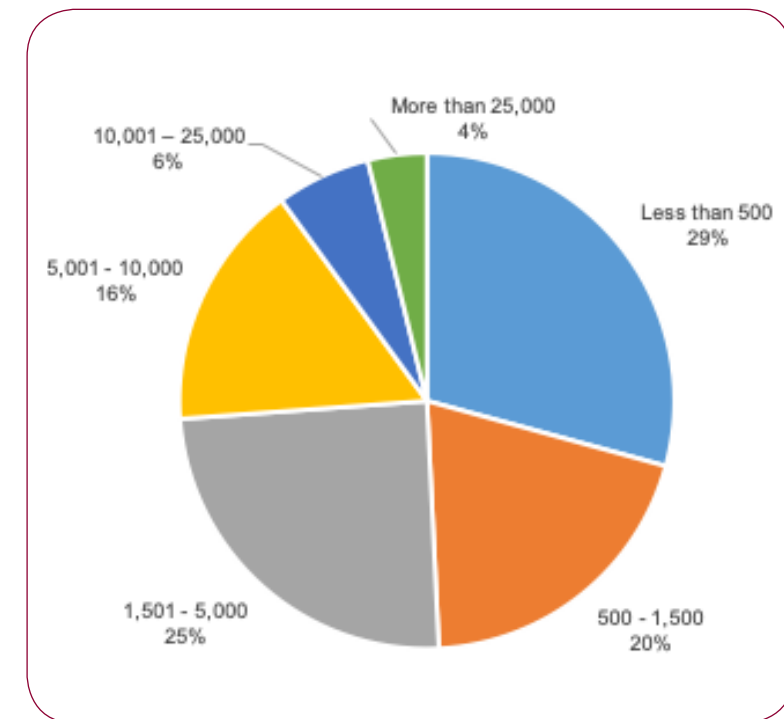
Phase two differed from phase one in that the department asked specific questions to get additional feedback or clarification on issues related to municipal structure, municipal purposes, municipal and provincial powers, professional conduct, municipal services, and municipal revenue sources. Results presented below are related to the questions posed.

Who Participated

The in-person sessions were attended by 145 participants. The online questionnaire was completed by 16 participants, five of which also participated in an in-person session. The majority of participants (85 per cent) were residents of towns, with additional participants from LSDs (11 per cent) and cities (four per cent).

Most participants (74 per cent) were from communities with no more than 5,000 residents and most participants (75 per cent) describe their community as rural. Self-identified rural participants were seven times more likely to live in communities of 5,000 or fewer than in communities of 5,000 or more. Similarly, self-identified urban participants were four times more likely to live in a community of 5,000 or more than in communities of 5,000 or fewer.

The interactive presentations engaged 179 attendees of the MNL Municipal Symposium (19 per cent from



Percentage of participants at in-person sessions and the online questionnaire residing in communities of various size categories.

communities smaller than 500; 18 per cent from communities larger than 5,000) and 117 attendees of the PMA Convention (42 percent from communities smaller than 500; 14 per cent from communities of more than 5,000).

What We Heard During Phase Two

Enabling Legislation

Traditional municipal legislation is highly prescriptive in nature, meaning that anything not explicitly found in the legislation is not permitted. The current legislation in Newfoundland and Labrador is prescriptive.

Across Canada, modern legislation is more permissive and enabling. Enabling legislation empowers municipalities for increased flexibility in making decisions at the local level and allows municipalities to operate with more autonomy. The Department of Municipal Affairs and Environment has made a commitment to use this legislative review to develop modern legislations to govern how local governments function.

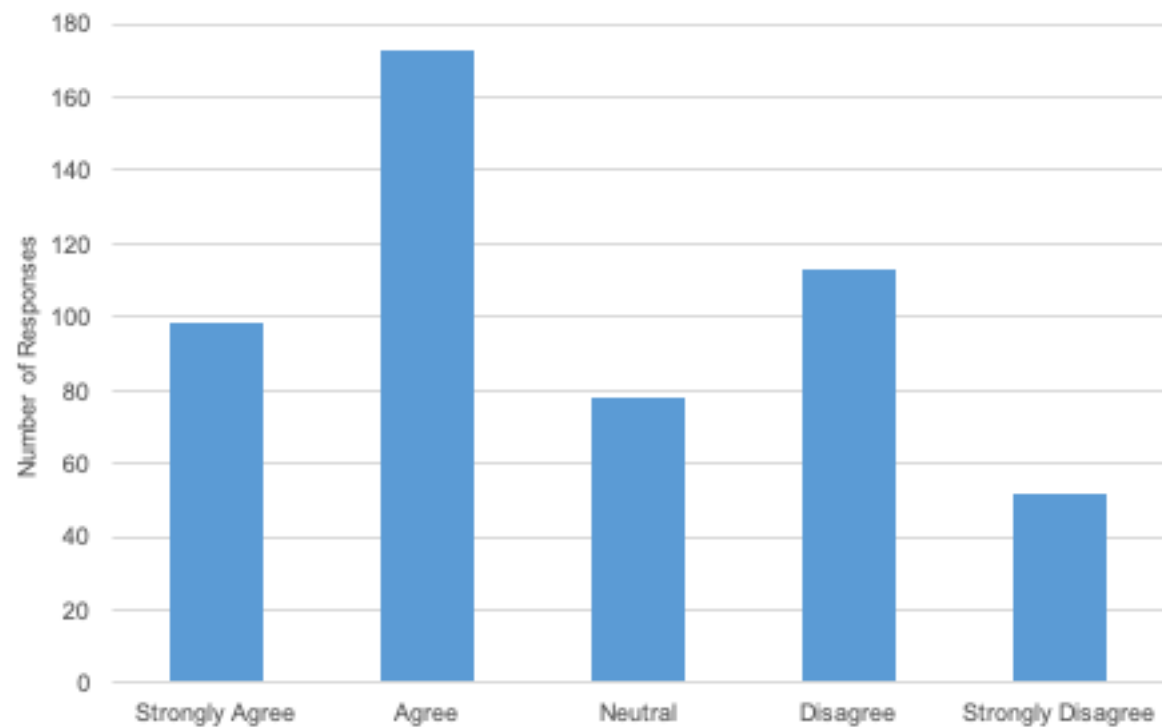
POLL: Which of the following is more valuable?

Municipalities have the ability to make their own decisions on local issues.. 47.2%

Municipalities have specific instructions on how to manage local issues. 52.8%

Participants were divided on whether it is more valuable for municipalities to be enabled to make decisions autonomously, or to have instructions on how to make decisions.

POLL: My community has the capacity to accept more flexibility and autonomy
OR My community has enough capacity (professional/operational) to function with



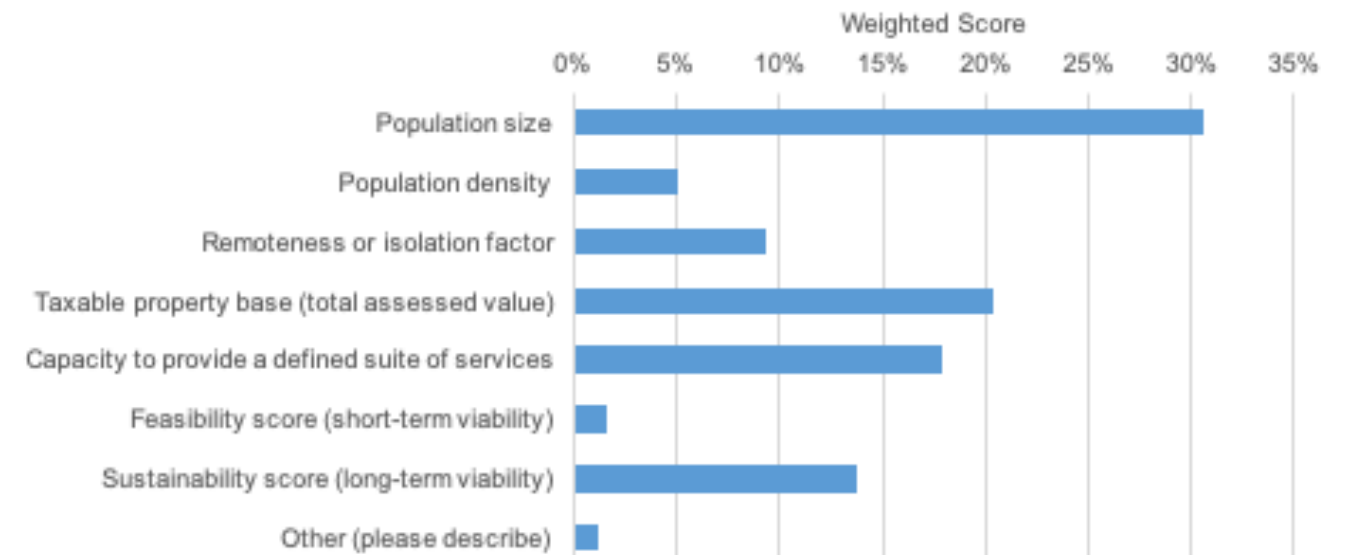
Across all sources, 53 per cent of participant responses agree or strongly agree that their community is capable of functioning with more enabling legislation compared to 32 per cent who disagree or strongly disagree. Approximately 15 per cent of participant responses were neutral or uncertain on the matter.

At the in-person sessions, where this question followed discussions related to enabling legislation, 69 per cent of responses agreed or strongly agreed and 12 per cent disagreed or strongly disagreed that communities have the capacity to accept more flexibility and autonomy. Viewing the in-person data in the context of community size, about 60 per cent of participants from communities of 5,000 or fewer were in agreement that capacity exists to manage enabling legislation. Agreement increases to about 85 per cent when viewing communities larger than 5,000.

Municipal Structure

Newfoundland and Labrador has three cities and 268 towns, ranging from large centres to small rural communities with small populations. Additionally, there are 171 local service districts (LSDs). The province's cities, towns, and LSDs are governed by the municipal legislation under review. Newfoundland and Labrador's municipal legislation does not contain criteria for a local service district, a town, or a city.

POLL: If municipal designations (e.g. city, town, local service district) were defined by criteria, what would be the most useful measures? (Choose up to three, Ranked)



The most prominent criteria emerging from participant responses were, in order of popularity, population size, taxable property base, capacity to provide a defined suite of services, and a sustainability score (indication of long-term viability). In contrast, population density, remoteness or isolation, and a feasibility score (indication of short-term viability) were not rated as useful criteria.

QUESTION: If criteria for cities, towns, and local service districts were to be set, how should the province handle communities that do not meet the criteria for their current designation?

Participants commented on whether or not criteria for different municipal structures should be set in legislation. Opinions included:

- Criteria needs to be set to describe municipal structures.
- It is important to have criteria.
- Criteria should be required of municipal structures that are not operating properly.
- There is no need for criteria; communities should be able to adopt the structure they prefer.
- There is no point in establishing criteria. Towns have run for many years without following legislative requirements and the only ramification is a letter from the Province every year.

Participants also discussed what criteria should be used, if included in legislation. Considerations raised by participants included:

- There should be a minimum population size for towns.
- Population size is important, but should not be sole criterion.
- Criteria need to include minimum tax base and economic development base.
- Legislation should be broad and allow communities to meet some combination of criteria, not necessarily all criteria.
- Population size is not meaningful without considering demographics.
- Sustainability should be a consideration.
- Criteria should be based on service provision.

On the matter of how, if criteria are introduced, to handle existing municipal structures that do not meet criteria, participants offered the following recommendations:

- A grace period for existing communities to have time to comply with criteria.
 - o The idea of a grace period was well-supported.
 - o Some indicated that there would also need to be guidelines for how criteria could be achieved.
 - o One participant suggested communities should be audited and given instructions on what is required to meet criteria. Further, that interest-free loans should be made available from the province to complete the necessary work.
- Many comments indicated that any criteria introduced should be applied immediately.
 - o The idea of immediate application of new criteria to all communities was well-supported.
 - o Some suggested that a grace period would not be useful, especially for criteria such as population size.
 - o Some stated that a community's current designation should not be a consideration; all communities should be assigned the classification that fits.
- Existing cities, towns, and LSDs should be grandfathered in with their current designation.
- Communities not meeting criteria should be required to formally cooperate through amalgamation, a joint council, or regional governance.
- Communities should be encouraged to amalgamate in order to meet criteria.
- All communities that do not meet minimum criteria to be a town should be required to amalgamate or regionalize.
- Communities should be able to cooperate and meet criteria collectively without amalgamation.
- New types of municipalities could be added to capture those that do not fit into criteria.
- Unincorporated areas need to be captured by criteria.
- Unincorporated areas that do not meet criteria for any designation should be forced to join adjacent community.

Participants weighed in on implications of setting criteria in legislation. Comments included:

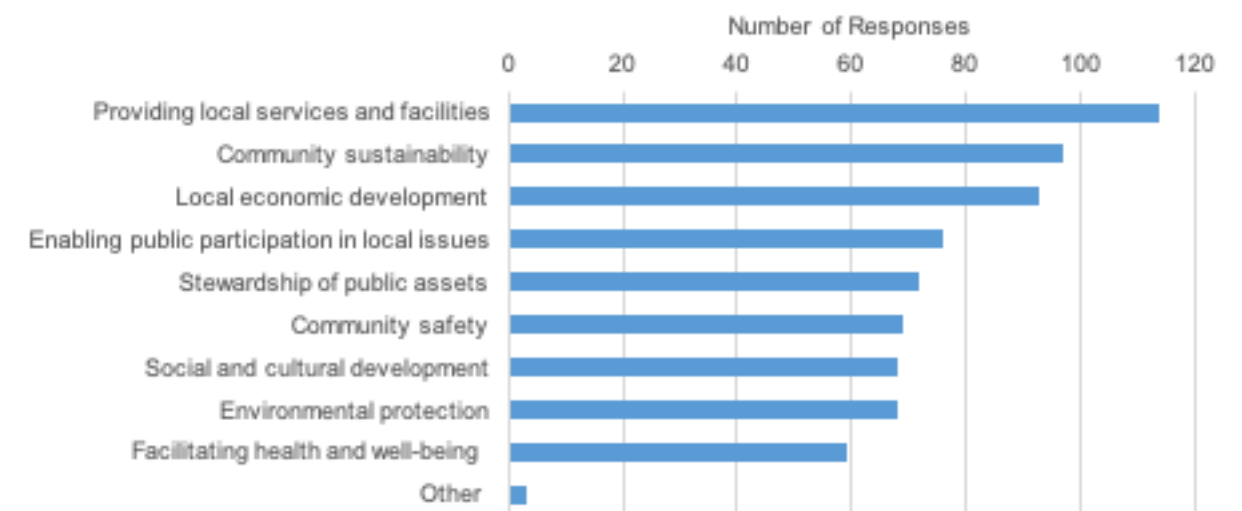
- Resources and/or support might be required to help communities meet and maintain criteria.
- Taxes may need to increase to meet criteria.
- Introducing criteria could result in an increase in LSDs which would be counterproductive.

- Introducing criteria could be intended as a policy tool to justify tiered or nested municipal structure, including regionalization.
- Introducing criteria could be used to justify reduced financial support from the Province.

Municipal Purposes

Newfoundland and Labrador's municipal legislation does not currently include a definition of municipal purposes. Defined municipal purposes help to interpret scope of municipal powers by providing a framework within which municipalities are able to act. Municipalities are limited to acting and enacting by-laws consistent with municipal purposes. This ensures that municipalities can exercise broad legislative authority without exceeding that authority.

POLL: In addition to providing good governance, which of the following should be used to define municipal purposes in Newfoundland and Labrador? (Choose all that apply)



When results of the in-person sessions and online questionnaire are combined, there is good support from participants for all potential municipal purposes presented. In particular, participants see the provision of services and facilities, developing sustainable communities, and fostering local economic development as primary purposes of local governments.

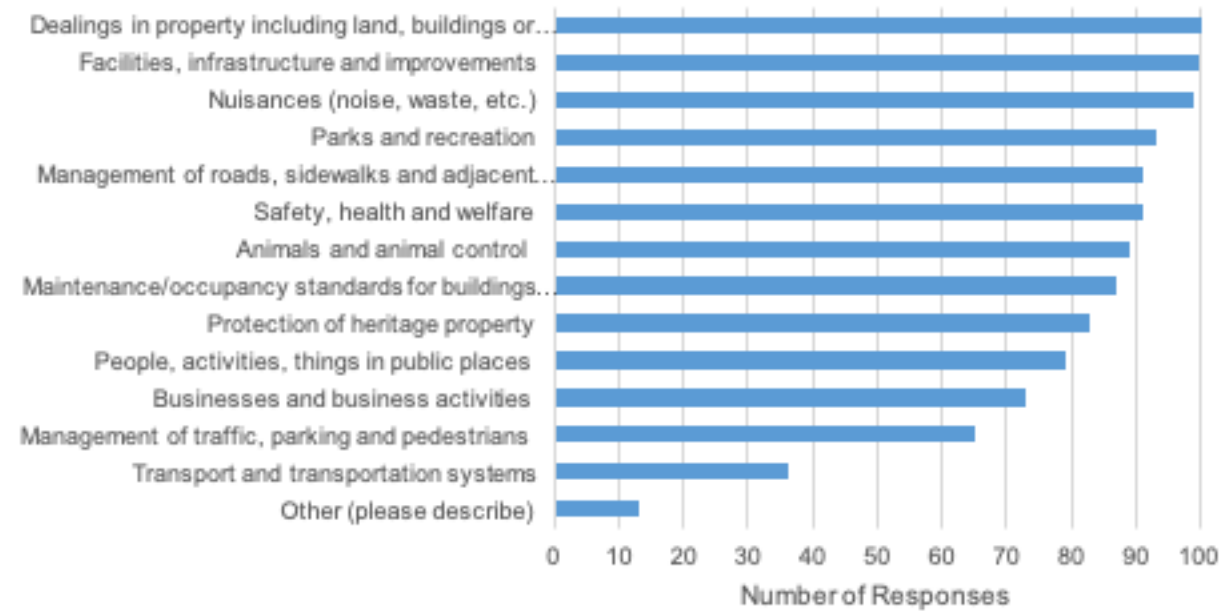
POLL: If municipal purposes were defined in legislation, I would have a better understanding of the scope of authority granted to a municipality.

When asked at interactive presentations, 71 per cent of participants at the MNL Symposium session and 79 per cent of participants at the PMA Convention agreed that municipal purposes would improve the understanding of the scope of authority for municipalities.

Municipal Powers

As part of the trend toward enabling legislation, provinces and territories in Canada have adopted legislation that sets out a list of areas of broad authority in which municipalities can act. Broad powers provide an additional aspect of the framework for local governance. If an action is within a broad power and does not exceed municipal purposes, municipalities do not need any additional authority in order to make decisions or enact by-laws. They are able to operate with flexibility and autonomy.

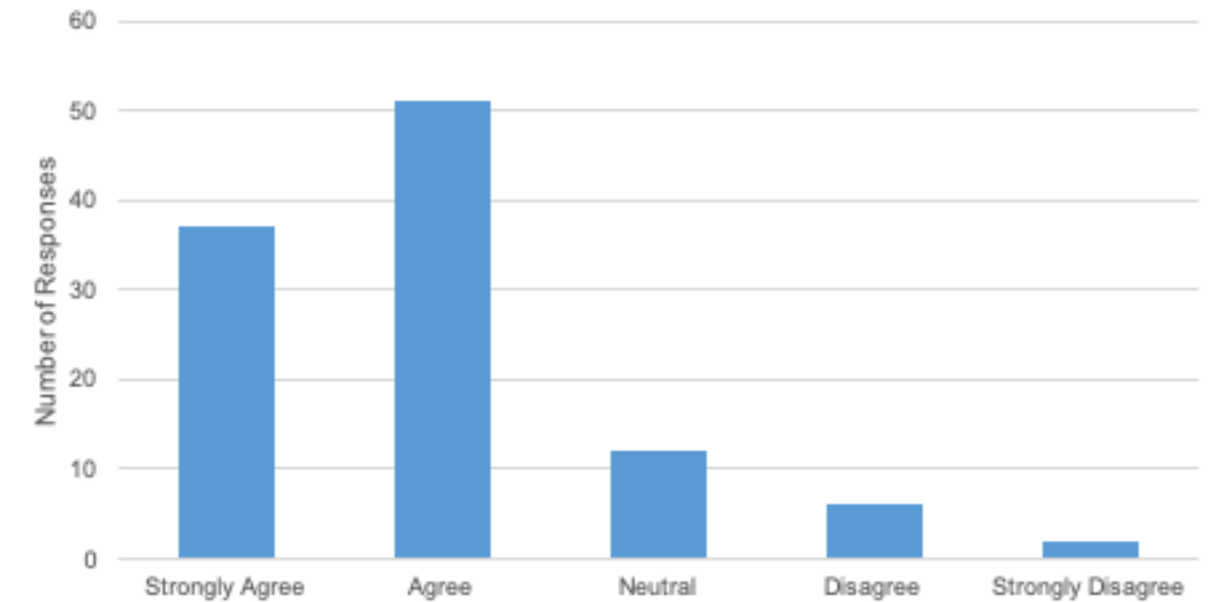
POLL: Which of the following broad powers would be valuable to your community? (Choose all that apply)



At the in-person events and online, participants were presented a list of the broad powers commonly included in enabling legislation in other jurisdictions and asked which powers would be valuable for their community. This question was used, to some extent, to give participants an idea of what broad powers might look like. All broad powers presented, particularly those related to property, infrastructure, public safety, and nuisances were popular selections. Powers related to business activity, traffic control, and transportation were well supported but less popular.

Participants from towns and cities responded in a manner consistent with the overall results, in that all the broad powers suggested were identified as likely valuable. Participants from LSDs, where local governance activity is restricted to delivery of a limited number of services, indicated that authority related to health and safety, infrastructure and improvements, animal control, and parks and recreation could be valuable.

POLL: Broad powers would improve my municipality's ability to govern efficiently and effectively.



A large majority (81 per cent) of participants at the PMA Convention agreed or strongly agreed that broad powers would improve the efficiency and effectiveness of local governance; only eight per cent disagreed or strongly disagreed.

QUESTION: Should legislation provide municipalities with broad powers, enabling more flexibility and autonomy at the local level? Why or why not?

Participants were generally supportive of broad municipal powers, stating the following reasons for preference:

- Current legislation is very restrictive and does not allow for innovation.
- Will result in safer and better communities.
- Could improve sustainability of communities.
- Would allow municipalities to make decisions in the best interest of the community.
- Broad powers would demonstrate trust in municipalities which could encourage more participation in local governance.
- Current need for provincial approvals is inefficient and results in slow decision-making.
- Enabling legislation allows communities to be adaptable; one size does not fit all.
- Flexibility would help keep community identity intact.
- Municipalities should have more authority and responsibility.
- Could help communities solve difficult situations.
- Economic development will benefit from local decision-making.

Some participants indicated a preference for prescriptive powers and authorities, stating the following reasons:

- Legislation currently works and is not overly restrictive.
- Prevents councils from acting with personal agendas or vendettas.
- Easy to stay within authority if there are strict rules.
- Status quo is comfortable and familiar.
- Too much flexibility is not always good.
- Reluctance to be responsible for unpopular decisions made with broad authority; prescribed authority reduces responsibility.

Participants raised a number of concerns about broad municipal powers, such as:

- Increasing authority feels like downloading responsibility.
- Small municipalities may be disadvantaged because they lack the capacity of large municipalities.
- Too much autonomy has the potential to be abused; there is a need for checks and balances.
- Lack of prescribed rules could deter participation.
- Increased authority or autonomy could have significant costs associated with it.
- Less restrictive legislation could increase liability and legal expenses for councils.

- Permissive legislation would need civic leadership willing to use the new tools.
- Municipalities are not making full use of the power they already have.

Issues related to capacity were raised and discussed by participants. Comments included:

- Small municipalities may lack resources or administrative staff hours to make use of broad powers.
- Municipalities of all sizes should be extended the same powers and authorities.
- Communities with aging populations will be increasingly disadvantaged as capacity diminishes.
- Flexibility inherent in broad powers would mean small municipalities could limit themselves to using only the powers they have capacity for.
- The advantage of broad powers is that municipalities can operate within their own capacity.
- Flexibility introduces the possibility that services provided will vary a great deal between municipalities, even within a designation.
- General lack of enforcement capacity will limit ability to use broad powers.
- Broad powers need to be accompanied by broad enforcement authority.



- Resources are needed for enforcement.
- Additional support from the Department of Municipal Affairs and Environment would help with capacity-building.
- Guidelines or templates would help municipalities use broad powers.
- Training will be needed.
- Mandatory training would be welcome/advisable.
- Increased authority must be accompanied by increased accountability
- There is an increased role for the Province in ensuring compliance with legislation.

Discussion about how the principles of enabling legislation might apply to LSDs, despite the inability to extend broad powers (by-law authority) to LSD committees included:

- LSDs do not need or desire more authority.
- Some LSDs have the capacity for increased authority.
- LSDs would like to be able to engage in recreation services.

Provincial Powers

The Minister of Municipal Affairs and Environment is provided with broad mandatory and discretionary power, primarily to ensure transparency, accountability, and oversight. The level of involvement by the Minister varies between the different municipal acts.

QUESTION: To what extent should Provincial Government be involved in local governance?

The majority of comments indicated that, in general, Provincial Government should have less involvement than currently exists. Some comments indicated that, in general, Provincial Government should have more involvement than currently exists. Some participants indicated satisfaction with current level of involvement.

Commentary from participants included the following suggestions on the role of Provincial Government:

- Oversight function but not micro-management.
- Monitor and ensure compliance with legislation.
 - o Some suggested operational audits with public reporting of issue/orders.
 - o Some suggested operational audits and working directly with municipalities to rectify issues.

- o Some suggested applying penalties such as fines for non-compliance.
- o Some suggested progressive discipline culminating in dismissal of council for persistent or recurring issues.
- Degree of provincial involvement should vary depending on the type of municipality.
- Province should be addressing issues related to professional conduct.
- Issue approvals for major items. Specific items identified as appropriate for Ministerial approval included:
 - o Incorporation of municipal structures/ change in classification;
 - o Large projects/ expenditures;
 - o New by-laws; and
 - o Borrowing.
- Annual budgets should be reviewed by the Department of Municipal Affairs and Environment, even if already subject to public comment.
- The Province should only be asking for items that need to be reviewed for approval; if things are simply being “rubber stamped” there is clearly no need to submit for review.
- Province should not be involved in normal budgeting and financial controls.
- Province should not be involved in small-scale financial matters.
- Province should not be involved in making decisions regarding taxation.
- Anything financial should require Minister’s approval.
- Minister should not allow spending on discretionary items unless core services and infrastructure maintenance are being taken care of.
- Less or no involvement in the acquisition and disposal of assets.
- Intervention in governance during extraordinary circumstances of council dysfunction or crisis.
- Intervention in governance if there are financial irregularities or evidence of criminal activity.
- Establish an appeal board for development decisions.
- Establish a municipal ombudsperson office.
- Province should be collecting property tax from LSDs and unincorporated areas.
- Province should be compensating municipalities for services extended to LSDs.

Additional comments were made about the relationship between local governments and the Provincial Government, including:

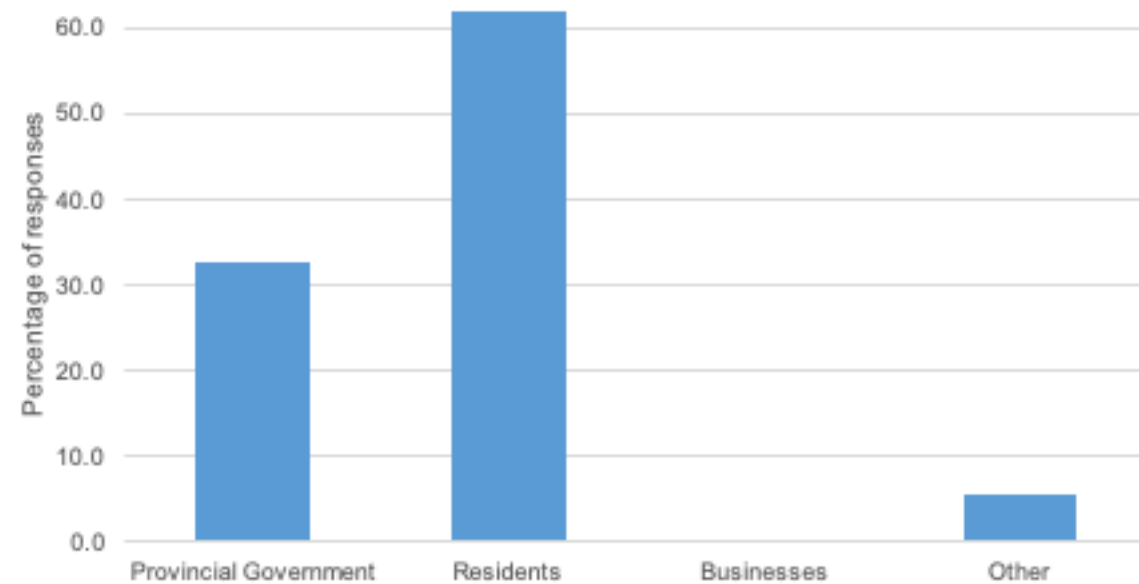
- There is a perception of a lack of trust between Province and local governments; introducing more autonomy for local governments will help demonstrate trust on behalf of Province.
- The Department of Municipal Affairs and Environment should be providing more support for day-to-day governance issues. Suggestions for ways the department should provide more support included:
 - o Help with interpreting legislation;
 - o Mandatory training for new councils;
 - o Ongoing professional development;
 - o Provide more online tools; and
 - o Provide templates and guidelines for by-laws.
- Training should be provided outside of normal business hours and delivered in more locations.
- Provincial Government needs to respond more quickly to requests from municipalities.
- Increased transparency on the part of municipalities would not reduce the degree of responsibility of Provincial Government.

Accountability

Good governance requires transparency in decision-making and accountability to the public. Transparency is generally exercised by allowing the public to observe decision-making processes. Accountability is generally exercised by communicating the plans and objectives and reporting on performance.

Municipalities are incorporated by the Province and the primary legislative accountability of municipalities is to the Province. Contemporary expectations generally presume the primary accountability of municipalities is to their residents.

POLL: Local governments (city or town councils, local service district committees) are primarily accountable to:



A polling question regarding to whom local governments are accountable was posed at the MNL Symposium and in the online questionnaire. Sixty-two per cent of respondents indicated that local governments are accountable primarily to their residents; 33 per cent indicated that local governments are primarily accountable to Provincial Government.

POLL: Should local governments be required to produce multi-year plans and annual performance reports including accomplishments and degree of success in meeting performance objectives?

This question appeared only in the online questionnaire, thus it must be noted that only a few individuals responded to this question. Of the 16 respondents, 50 per cent answered yes, 38 per cent expressed uncertainty, and 12 per cent answered no.

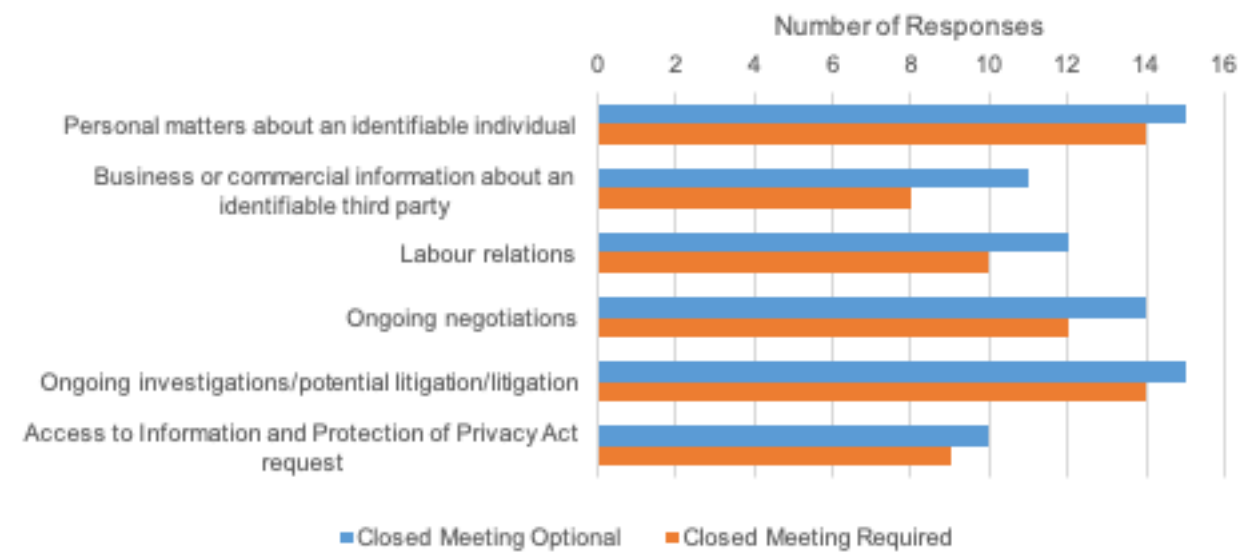
Respondents added the following comments related to planning and performance reports:

- It gives the public assurance for accountability and demonstration that performance is on task.
- It provides a means to be accountable to residents and to government.
- Measuring and evaluating performance is essential for progress; unexamined work can lead to repeating the same mistakes.
- Reporting is not a bad idea, but requirements for paperwork can become a daunting task. If it becomes a requirement, municipalities should be coached so that the process is a benefit for them and not a burden.
- Some communities cannot afford new infrastructure or development every year. Even with planning in place, unexpected expenditures can derail plans.
- If we are going to give municipalities authority over their own affairs, that includes the authority to be wrong.

Closed Meetings

There is a general expectation that meetings of council and committees should be conducted in public, unless there are legitimate reasons to hold closed (privileged or private) meetings. Currently, municipal legislation in Newfoundland and Labrador does not set criteria for legitimate reasons to hold closed meetings.

POLL: Which of the following matters could constitute legitimate reasons to hold a closed (privileged or private) meeting of council or committee? (Choose all that apply)
and
POLL: Which of the following matters should require use of a closed (privileged or private) meeting of council or committee? (Choose all that apply)



Online questionnaire participants generally agreed legitimate reasons for holding a closed meeting of council or committee, could include the discussion of matters related to:

- Personal matters about an identifiable individual;
- Business or commercial information about an identifiable third party;
- Labour relations;
- Ongoing negotiations;
- Ongoing investigations or potential litigation or litigation; or
- Access to Information and Protection of Privacy Act request.

Agreement was less consistent when asked which of these matters should require the use of a closed meeting, with some degree of support for all matters. Personal matters about an identifiable individual and matters related to ongoing investigations, potential litigation, or litigation were generally identified as requiring a closed meeting for discussion.

The polling questions regarding closed meetings were only presented in the online questionnaire, thus it must be noted that the sample size for the response is small.

Access to Information

For certain types of information, the municipal legislation requires a town or city to make the information available to the public. These include items such as adopted minutes of council, regulations, records related to budgets, finance, or contracts awarded, permits and orders issued, and assessment roles. Municipalities may make other information available through proactive disclosure. In other cases, the public may need to file a formal request for information under the Access to Information and Protection of Privacy Act, 2015.

Local service districts have less authority and less responsibility than municipalities. Committees are required to annually present a report on financial and other operations of the local service district at a public meeting. Under current legislation, local service districts are not required to make any information available except at the annual meeting of householders.

The following questions on Access to Information were only presented in the online questionnaire. Therefore, it must be noted that the sample size was small and may not be reflective of all stakeholders.

QUESTION: Are there other types of records that municipalities (towns, regions, and cities) should be required to disclose publicly?

Participants offered the following recommendations for additional public disclosure of municipal records:

- Councillor disclosure statements and committee reports.
- Committee meetings should be open to the public.
- Transparency of the decision process is critical; rationale for decisions should not be secret.
- The current requirements are sufficient or satisfactory.

QUESTION: Are there other types of records that local service districts should be required to disclose publicly? Should disclosure continue to be primarily through an annual meeting?

Participants offered the following recommendations for public disclosure of LSD records:

- Community meetings should be quarterly.
- LSDs should have similar obligations for transparency as municipalities.
- Current requirements are sufficient.



POLL: How should the public be able to access local government records? (Choose all that apply)



With acknowledgment that this question was answered by a relatively small number of participants through the online questionnaire, participants generally agreed that the public should continue to be able to access records in-person at the council office. About half the participants agreed that local governments should have the ability to determine the best way to make records accessible to their local community. There was good support for access by mail or email request, for access through community websites. There was less support for access through the Provincial Government website. Few participants agreed that how documents are accessed should depend on the type of document.

Participants who agreed that the type of document may dictate, to some extent, how it is accessed offered the following comments:

- Minutes of meetings should be available to residents anytime; financial reports could require advance notice.
- Online access is good for those who have a computer. For those who do not, access should be provided in-person or by attending town meetings.
- Some documents are easy to provide electronically, others are not.

Participants made additional comments about access to information generally, including:

- Once a document is in digital form, information can be copied to any number of local or provincial websites.
- The public should be made aware of the financial and human resources needed to provide information.

Conflict of Interest

Municipal legislation sets out ethical rules for councillors if they have certain personal interests in a matter that is before the council or a committee of the council. The conflict of interest provisions in the four Acts vary somewhat in how conflict is defined, how it is determined, and the consequences for acting in a conflict of interest. With the exception of the City of St. John's Act, if a councillor acts in a conflict of interest, council is required to declare the councillor's office vacant.

Conflict of Interest was one of the most common themes in the feedback received during the first phase of consultation. Based on that feedback, it is strongly evident that the current provisions are not satisfactory to municipal councillors, municipal administrators, or the public.

QUESTION: How can conflict of interest rules be improved?

Participants articulated a number of concerns about the current provisions, including:

- Councillors can misuse the provisions to avoid voting on an issue by making a false claim of conflict.
- Uncertainty around what constitutes conflict results in elected officials being unnecessarily excluded from decision-making.
- The automatic vacating of a councillor's seat if conflict of interest rules are breached is seen by most as too severe or harsh, particularly where a breach may be genuinely unintentional.
- The severity of consequences for acting in a conflict of interest may prevent residents from participating in municipal government.
- The process to appeal either a decision of whether conflict exists or that a councillor acted in a conflict of interest necessitates a costly court process which is likely prohibitive at least some of the time.
- Small towns are particularly susceptible to conflict issues.
- There was general agreement that rules around conflict, and the definition of conflict of interest in particular, are overly broad and need clarity.
- There was a minor opinion that the definition is currently too narrow and overly restrictive and should be broadened.

With respect to improving conflict of interest provisions, participants suggested:

- Conflict of interest provisions should apply to all staff, or minimally to staff in decision-making or decision-influencing positions
- Conflict of interest provisions should apply only to councillors, or to anyone with voting power, such as committee members for committee business.
- Conflict should be limited to monetary interests over some threshold value.

- Conflict should include any personal interest, not just financial interests.
- Conflict should be limited to personal interests of the councillor only.
- Conflict should be extended to include personal interests of friends and extended family, such as in-laws.
- Staff should be required to use disclosure statements to identify potential conflict of interest on meeting agendas.
- Everyone should be responsible to identify known or potential conflicts.
- When there is uncertainty, the decision as to whether a conflict of interest exists should not be a decision of council.
 - o Many comments suggested that the Department of Municipal Affairs and Environment should rule on whether conflict exists.
 - o Some indicated that the clerk may have a role in determining conflict.
 - o Others suggested a third party such as a board or ombudsperson or arbitrator or committee including representatives from MNL and PMA be established.
- A councillor in conflict should be able to observe/participate in discussion the same as a member of public.
- There should be an investigation process for complaints with a specified timeframe for resolution.
- Should be a mechanism for anonymous complaints.
- Should never allow anonymous complaints.
- A statute of limitations or other time limit should be introduced, after which complaints cannot be made.
- If council investigates its own members, the Minister should rule on whether a conflict occurred, based on a report.
- A range of penalties should be available for discipline and applied either in a progressive fashion or case-by-case reflecting the severity of the specific violation.
- Penalties for unintended breaches should be less severe than for intentional action.
- Penalties should not be lenient or they will cease to be effective as deterrents.
- There should be an appeal process that allows for appeals to a body, such as a board or the council of another municipality, prior to seeking a court decision.

- Decisions of council should be final, thus there is no need for an appeals process.
- Some participants stated that they are satisfied with the current provisions and do not see any need for change.

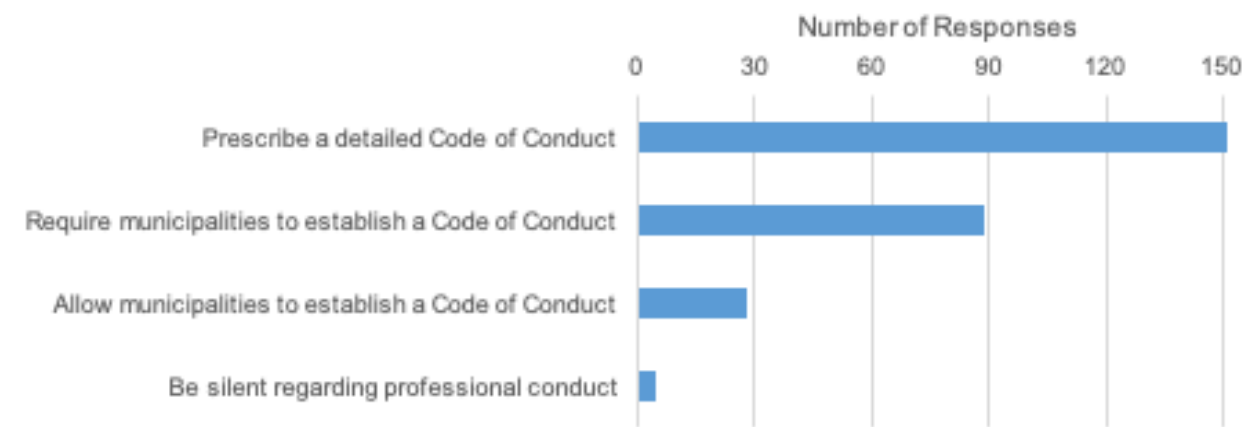
Participants also discussed the need for support to make good decisions around conflict of interest and suggested the following strategies:

- The Department of Municipal Affairs and Environment should provide case-by-case advice to help municipal councils identify conflict.
- Sharing records of conflict decisions between councils could help everyone make better decisions.
- More frequent or more intensive training is required.
- Conflict of interest training should be mandatory.

Code of Conduct

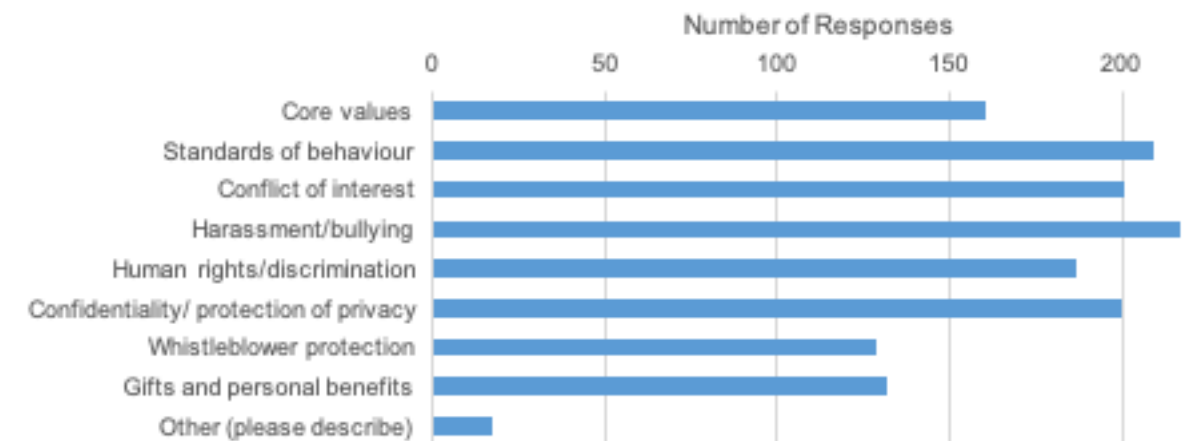
Some municipalities have codes of conduct/ethics for councillors and/or municipal staff that govern the behaviour of those individuals. Such codes generally establish guidelines for the conduct of individuals, set out responsibilities, and set out corrective measures for failing to comply with the code. Currently, the municipal legislation does not include a provision relating to codes of conduct.

POLL: How should a code of conduct be addressed by legislation?



A large majority (88 per cent) of participants of the MNL Symposium, the PMA Convention, and the online questionnaire indicated that a code of conduct should be mandatory. Most participants (55 per cent) agreed that a code of conduct should be prescribed by legislation. A significant portion (33 per cent) agreed that municipalities should be required to adopt or establish a code of conduct. About 10 per cent of participants agreed that municipalities should be permitted to establish a code of conduct. Very few (less than two per cent) participants indicated that legislation should not address a code of conduct.

POLL: What topics should be included in a Code of Conduct? (Choose all that apply)



Participants of the in-person engagement sessions, PMA Convention, and online questionnaire indicated a high level of support for a code of conduct to include provisions related to: standards of behaviour, conflict of interest, harassment and bullying, human rights and discrimination, and confidentiality and the protection of privacy. Less, but still significant, support was indicated for inclusion of provisions related to: core values, whistleblower protection, and gifts and personal benefits.

QUESTION: What should the procedures for addressing Code of Conduct violations look like?

A number of general comments were made about inclusion of a code of conduct in legislation, including:

- Similar to workplace health and safety, everyone should be responsible for identifying and correcting behaviour contrary to the code/ respectful workplace is everyone's responsibility.
- Absence of a code of conduct reduces participation in local government.
- Concern expressed that introducing a code of conduct may reduce participation in local government.
- A code of conduct should not prevent the duties and functions of council from proceeding.
- Province-wide consistency is important; one way to achieve this is by a prescribed code.
- A code of conduct needs to be clear and specific.
- The definition of harassment must be clear.
- A code of conduct cannot be too specific because it may inadvertently exclude something.
- There are a number of codes of conduct that could be used as a model. Suggestions included adopting the code developed by the City of St. John's, borrowing from Provincial Government, adapting existing safe and respectful workplace policies, or looking to the business community for best practices.
- Complaints should be fully resolved internally, with the ability to appeal decisions externally.
- Complaints should be fully resolved by an independent third party such as an ombudsperson or adjudication board or conduct panel.
- Concern expressed that independent third party would be prohibitively expensive.
- Training and/or guidelines will be necessary.
- Code of conduct training should be mandatory.
- LSD model does not provide a mechanism to deal with conduct issues and should be able to go to the Department of Municipal Affairs and Environment for this.



Regarding the complaints process, participants made the following recommendations:

- The complainant should have input into the process for resolution.
- Complaints should be made in writing.
- A complaint form would help make sure all the necessary information is included.
- Complaints should be submitted to council.
- Complaints should be submitted to head of staff.
- Complaints should be submitted to the Department of Municipal Affairs and Environment.
- There should be maximum timelines for responding to a complaint.
- Complaints of a criminal nature should be forwarded to police.

Regarding the investigations process, participants made the following recommendations:

- Investigations should be conducted internally by the town. Suggestions for who should conduct internal investigations included:
 - o Council;
 - o A committee of council; and
 - o Staff member not involved in the complaint.
- Council and staff all know each other, so it would be inappropriate for investigations to be internal (lack of impartiality).
- It may be sufficient to have internal investigations reviewed by an independent third party.
- Investigations should be conducted by an independent third party. Suggestions for an appropriate third party included:
 - o Regional committee;
 - o Town advisor who is not on council or staff;
 - o Private contractor;
 - o Investigator appointed by the Department of Municipal Affairs and Environment; and
 - o A Department of Municipal Affairs and Environment official.
- Investigators must be appropriately trained and/or qualified.
- For harassment complaints, municipalities should have access to Provincial Government harassment investigators.

Participants discussed who a code of conduct should apply to and offered the following recommendations:

- A code of conduct should apply to council only because staff conduct is subject to employment agreements and labour standards.
- A code of conduct should apply to council, staff, and any agents working on behalf of, or associated with, the municipality. This would include volunteers, contractors and firefighters, for example.
- A code of conduct should apply to the public.
- A code of conduct cannot be applied to the public, at least not outside of municipal buildings; that is what the police are for.

Emerging from the group discussions there was a general consensus that principles of natural justice should be reflected in the process and that a process should include the following elements:

- Mechanisms for complaints;
- Investigation;
- Determination;
- Administration of penalties;
- Appeals; and
- Oversight.

Regarding the process for determination or adjudication, participants made the following recommendations:

- Investigation reports should be reviewed by another party for a determination of whether the code was breached. Suggestions for who should make this determination included:
 - o Council;
 - o Council of another municipality;
 - o Senior staff member;
 - o the Department of Municipal Affairs and Environment;
 - o Ombudsperson; and
 - o Adjudication board or committee.



Regarding the process for applying penalties, participants made the following recommendations:

- Penalties should be agreed on by all parties involved.
- Council should decide penalty.
- A range of penalties should be available.

- o Penalties should be appropriate to the harm caused.
- o Penalties should be progressive for repeated violations.
- Available penalties should be clearly laid out in legislation.
- Appropriate penalties could include:
 - o Verbal reprimand;
 - o Education or awareness training;
 - o Public report;
 - o Public apology;
 - o Fines;
 - o Report to Minister;
 - o Suspension; and
 - o Dismissal.
- Penalties should be severe enough to deter violations.
- Penalties should be applied for malicious false allegations.
- Penalties should be recommended by an independent third party.
- Certain types of violations should result in automatic requirement for council to vacate seat of offender.

Regarding the appeals process, participants made the following recommendations:

- There should be a body to appeal to before initiating a court process.
- Appeals must be made to a body independent of the body involved in making a determination.
- Public should be able to appeal a decision.
- The Department of Municipal Affairs and Environment may have a role in reviewing decisions or hearing appeals.

Regarding oversight, participants made the following recommendations:

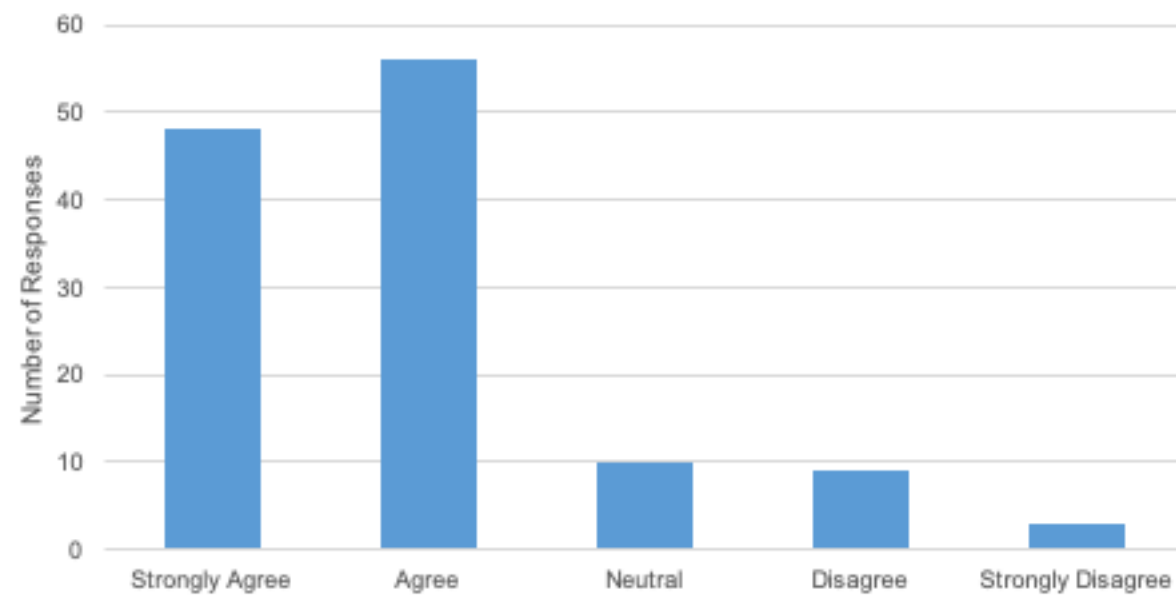
- Provincial Government should have an oversight role.
- The Department of Municipal Affairs and Environment should be reviewing decision processes.

Municipal Services

Local governments provide services, facilities and amenities to residents within their communities. The types of level of services provided can vary greatly depending on the municipal structure.

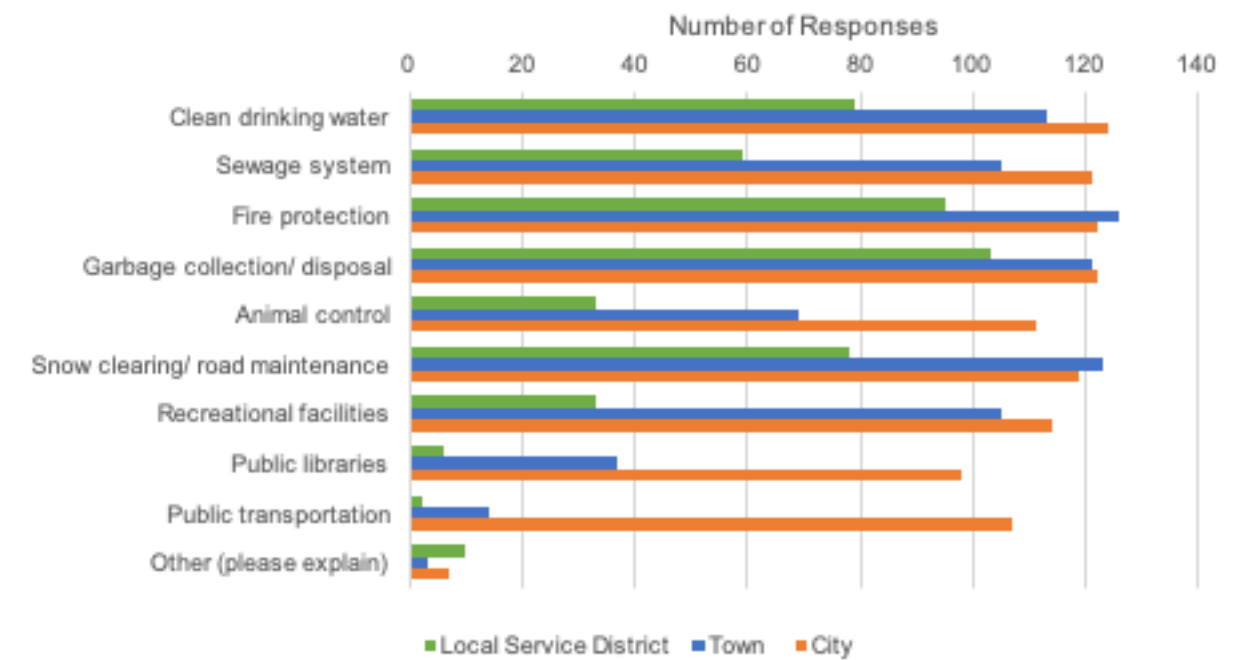
Local service districts are only permitted to offer a limited number of services. Towns are able to provide more services. Of these various services, only waste collection/removal is required to be provided by municipalities. The remaining services are discretionary, meaning a municipality can choose whether to provide this service. The Cities of Mount Pearl and Corner Brook can provide all the same services as towns, with some additional authorities. The City of St. John's can provide an even broader range of services.

POLL: Minimum standards for services should be established to improve consistency of service delivery throughout the province.



Most (83 per cent) of participants agree or strongly agree that minimum service standards should be established to improve the consistency of service delivery throughout the province, One online participant added a comment that clear policies on responsibilities of the province and municipalities with respect to service delivery would help ensure improved consistency and fewer gaps in service access.

POLL: What core services should residents be able to expect from a LOCAL SERVICE DISTRICT/ TOWN/ CITY?



Participants of the in-person sessions and online questionnaire were asked about what set of core services residents should be able to expect to receive in each of our current municipal structures (LSD, town, city). Generally, participants indicated that residents should be able to expect more services from cities than from towns, and more services from towns than from LSDs. Fire protection and garbage collection and disposal were clearly identified as core services for all types of municipal structures. Most participants identified clean drinking water, sewage systems, snow clearing and road maintenance, and recreational facilities as core services for towns and cities. Participants additionally identified animal control and public transportation as likely core services for cities.

Of the participants who live in LSDs, a large majority identified fire protection (93 per cent) and garbage collection and disposal (86 per cent) as core services that residents of an LSD should be able to expect.

Of the participants who live in towns, a large majority agreed identified garbage collection and disposal (91 per cent), snow clearing and road maintenance (90 per cent), fire protection (87 per cent), clean drinking water (85 per cent), recreational facilities (79 per cent), and sewage systems (77 per cent) as core services that residents of towns should be able to expect.

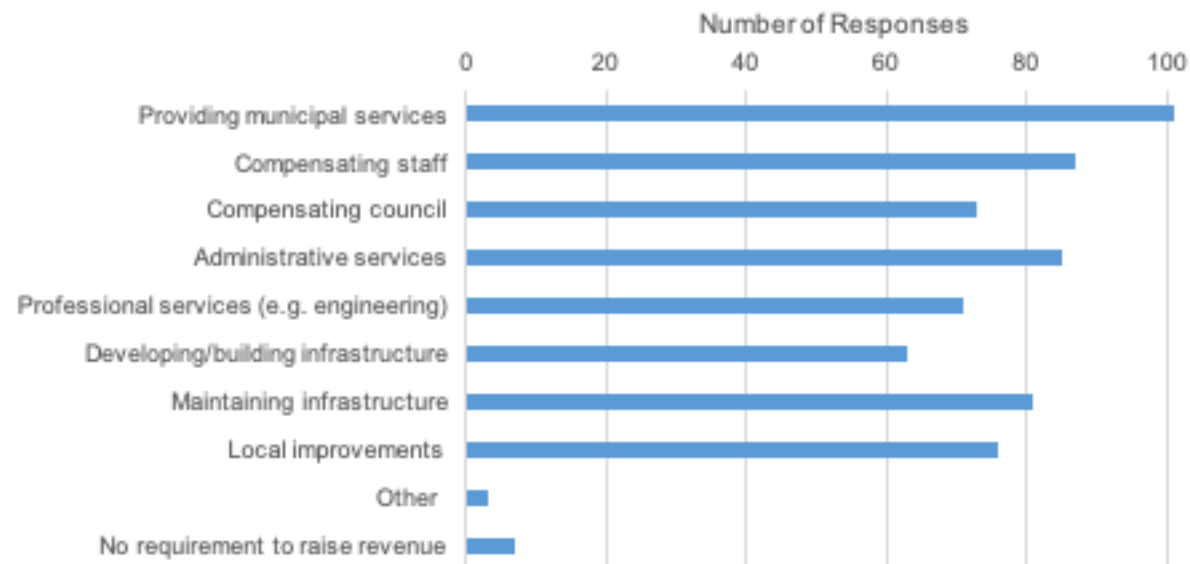
There were very few participants from cities, but all agreed that clean drinking water, sewage systems, fire protection, garbage collection and disposal, animal control, snow clearing and road maintenance, recreational facilities, and public transportation are core services that residents of cities should be able to expect.

Municipal Revenue Sources

The municipal legislation provides cities and towns with ways for them to raise money in order to pay for the services they provide, including taxes, improvement assessments, service levies, and fees for licences and permits. Certain types of properties such as public properties and places of worship are exempt from taxation. Local service districts may charge a cost-recovery fee for services provided in the local service district. Local service districts do not have taxation authority.

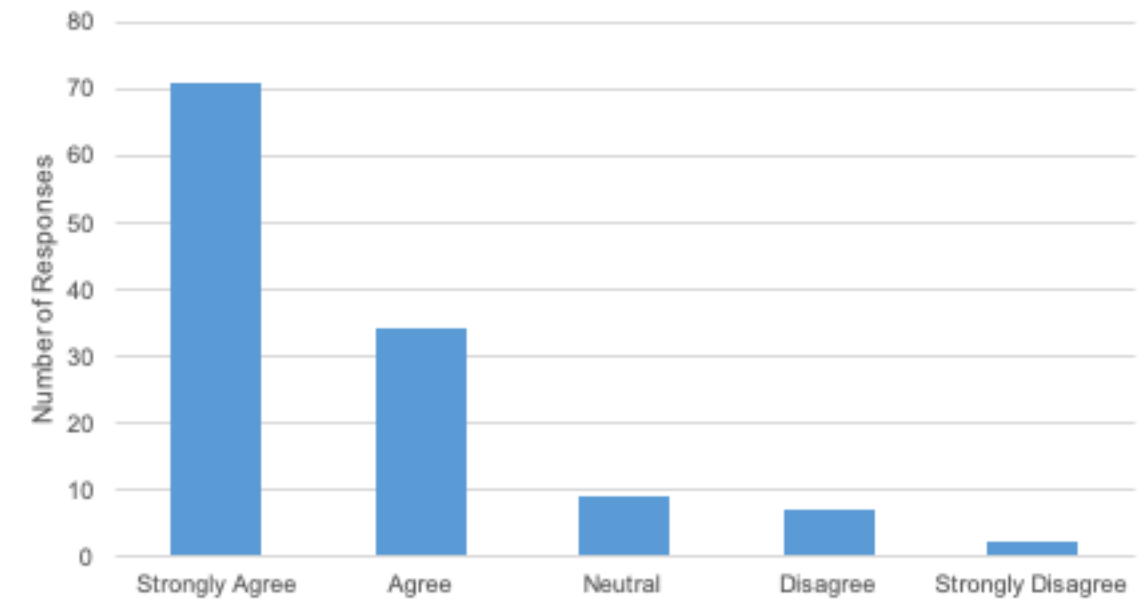
Newfoundland and Labrador is the only province where municipalities are not required to collect property tax. Newfoundland and Labrador is the only jurisdiction in Canada where poll taxes are levied.

POLL: Municipalities should be required to raise own-source revenues adequate for: (Choose all that apply)



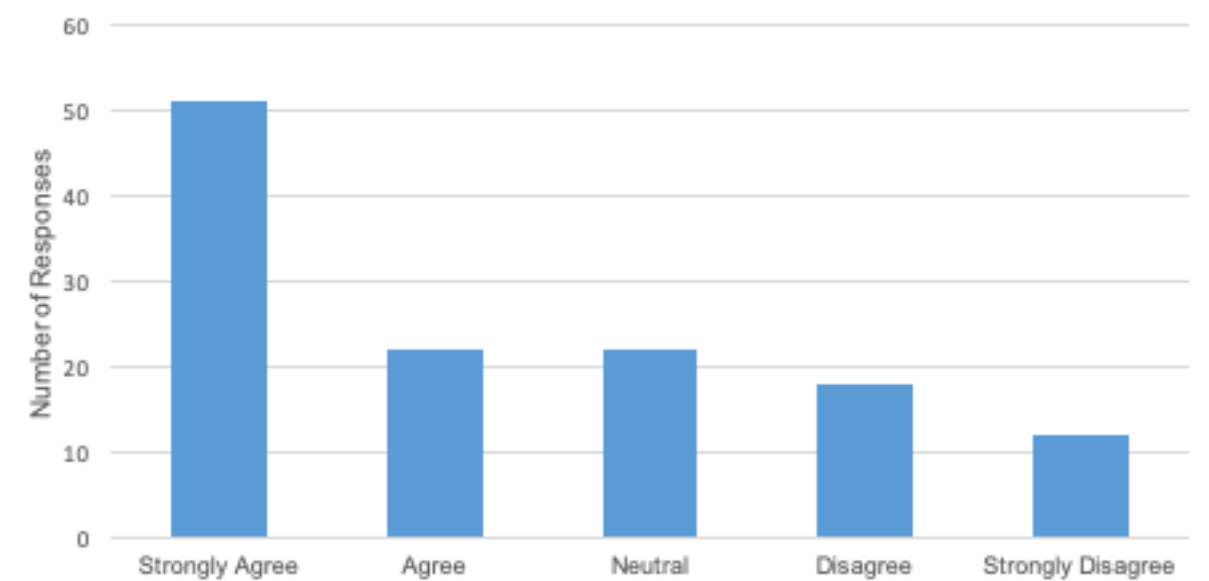
Participants of the in-person sessions and online questionnaire demonstrated high support for municipalities being required to raise their own revenues to cover the costs of providing municipal services, compensating staff, administration, and maintaining infrastructure. Participants showed less support for municipalities being required to cover the full cost of compensating council, professional services (such as engineering or planning), making local improvements, and developing and building infrastructure.

POLL: Municipalities should be required to collect property taxes.



A strong majority (85 per cent) of participants of the in-person sessions and online questionnaire agreed or strongly agreed that municipalities should be required to collect property taxes. About five per cent that disagreed with a mandatory property tax and less than two per cent indicated strong disagreement.

POLL: The option to collect poll taxes should be eliminated.



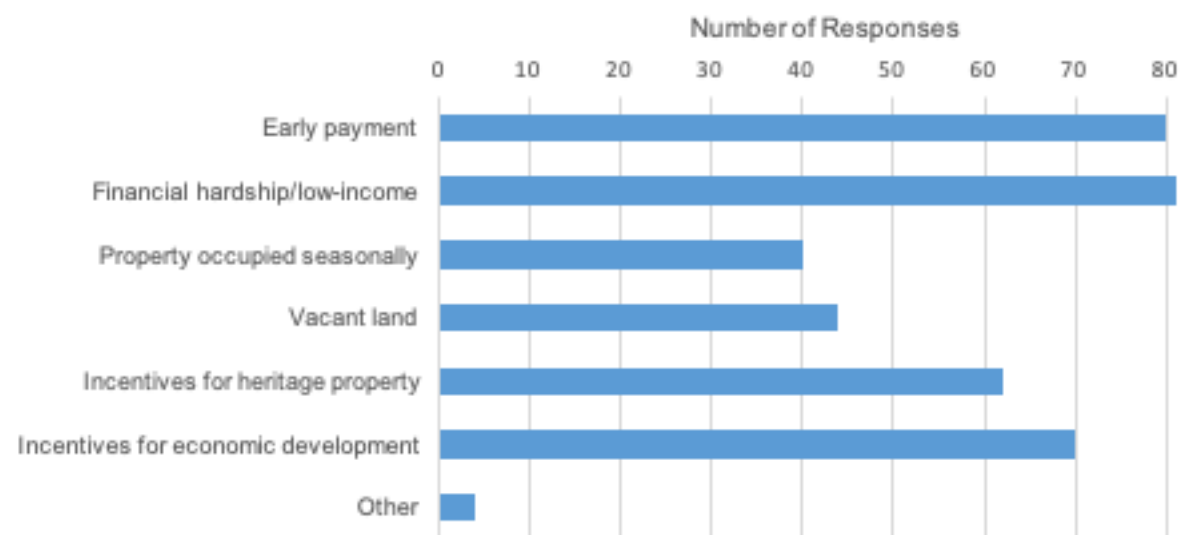
Most (59 per cent) participants of the in-person sessions and online questionnaire strongly agreed or agreed that the poll tax should be eliminated. Nearly one-quarter of respondents disagreed or strongly disagreed.

QUESTION: Are there circumstances where municipalities should have the ability to levy taxes or fees on individuals, businesses, or properties residing outside of municipal boundaries but using municipal services? Please be as specific as possible.

This question was only posed through the online questionnaire, thus very few participants contributed to the discussion. Comments made included:

- Yes, for fire protection services, water supply, and sewage systems.
- Yes, for commercial use of water or similar resources.
- Yes, for recreation facilities.
- Should not be charging individuals who enter municipality to use recreation facilities differently than residents using recreation facilities. This additional use makes facilities more cost effective and brings traffic into municipalities.
- Only if specific and measurable services are provided to individuals.
- LSDs should be charged if using services of a town or city.

POLL: Municipalities should have the authority to apply tax exemptions or discounts for: (Choose all that apply)



Participants of the in-person session and online questionnaire indicated good support for allowing tax exemptions or discounts for early payment and financial hardship (that is, low-income individuals). Participants were generally favourable to the idea of allowing tax exemptions or discounts to provide incentives for economic development or as incentives to protect and maintain heritage property. Less support was indicated for allowing exemptions or discounts for vacant land or property that is only occupied seasonally.

QUESTION: What provisions or mechanisms are needed to facilitate the recovery of unpaid taxes and/or fees? Although we heard during the Phase One consultation that collecting unpaid taxes and fees was a significant issue, participants at the in-person sessions largely indicated this is not a major concern. A significant number of comments suggested that the current legislation provides appropriate and sufficient tools.

Participants shared what works for their municipalities, including:

- Cutting services, such as water.
- Offering payment plans.
- Offering discounts for early payment.
- Property liens.
- Use of third party collection agencies.
- Use of small claims court.
- Warning letters or notices regarding service cut-off or small claims court.
- Collecting poll taxes directly from employers.

Participants identified a number of challenges in collecting unpaid taxes and fees, including:

- Lack of resources to dedicate to collections.
- Lack of money in the community can result in times when many cannot afford to pay.
- Protection of privacy rules make collection more difficult.
- Difficulty recovering money not directly tied to property (for example, service fees or poll taxes) because a lien cannot be put on property.
- Small claims court works, but is expensive and inefficient.
- Cutting services is not always practical. Some services cannot be cut off, such as garbage collection.
- Identifying property owners can be problematic.
- Tax sales are complicated, time consuming, and expensive.
- LSDs have very few mechanisms to collect unpaid fees.

Participants made a number of recommendations to make the recovery of unpaid taxes and fees simpler and easier, including:

- Legislatively designate the responsibility for collections to an administrative staff position.
- Provide a mechanism that allows municipalities to publish names of individuals in arrears (public shaming).

- Ability to apply all unpaid taxes and fees should be tied to property through a lien.
- Ability to include, at minimum, expenses incurred by municipality on a property (for example, cost of removing dilapidated buildings) to that property through a lien.
- Allow property tax to be inclusive of service fees, such as garbage collection fee.
- Ability to send email reminders.
- Improve the tax sales process. Suggestions for this included:
 - o Remove the cap on the number of years of overdue monies which can be recovered;
 - o Streamline the process so it takes less time; and
 - o Provide the ability to provide clear title with sale.
- Provide authority to garnish wages.
- Municipal taxes and fees should be collected by Provincial Government rather than municipalities.
- Provincial Government should act as collection agency and remit recovered amounts to municipalities.

Mechanisms suggested included:

- o Recover unpaid taxes and fees through the personal income tax process;
- o Tie unpaid taxes and fees to other government services, such as driver's licence renewal or moose licences; and
- o Return to system where Provincial Government makes payments on behalf of income support recipients.
- Provincial Government should help LSDs directly with collection.
- Provincial Government should provide additional support and training on recovery options.

Additional Comments

QUESTION: Do you have anything else to add about any aspect of municipal legislation?

Participants of the in-person sessions and the online questionnaire contributed additional suggestions and ideas, including:

- Local governments need more requirements for public engagement.
- Councils need to be more transparent and need to be mindful of accountability to residents.
- Need provisions describing just cause for suspending or dismissing employees.

- Oath of office should persist; there should be severe repercussions for breaching confidentiality after leaving council.
- Small towns need help from Provincial Government to manage operations.
- The Department of Municipal Affairs and Environment needs to do a better job communicating with LSD committees.
- Local government should be denied funding if they are not in compliance with legislation.
- LSDs need the authority to provide more services.
- LSDs are working fine the way they are.
- New legislation needs to be user-friendly and in plain language.
- New legislation should be relevant for future too.
- Mechanisms are needed to ensure everyone using services is contributing to them.
- Unincorporated areas should be disallowed and included in nearest incorporated community.
- Being a member of council or committee is a thankless job, which is part of why it is difficult to find people to volunteer.
- Need to have authority to use modern media tools for public notices.
- Provincial Government should be assisting financially for mandatory services.
- Provincial Government should not assist with non-mandatory services.
- Clean water should be a municipal priority.
- Emergency management plans should be mandatory for every community.
- Incentives should be provided for sharing services or sharing governance.
- Business taxes should apply to fishing enterprises.
- A minimum poll tax should be payable in the community where you work, even if you pay taxes or fees elsewhere.
- Enforcement and penalties need to be updated to be realistic.
- All communities above a minimum size should be incorporated.



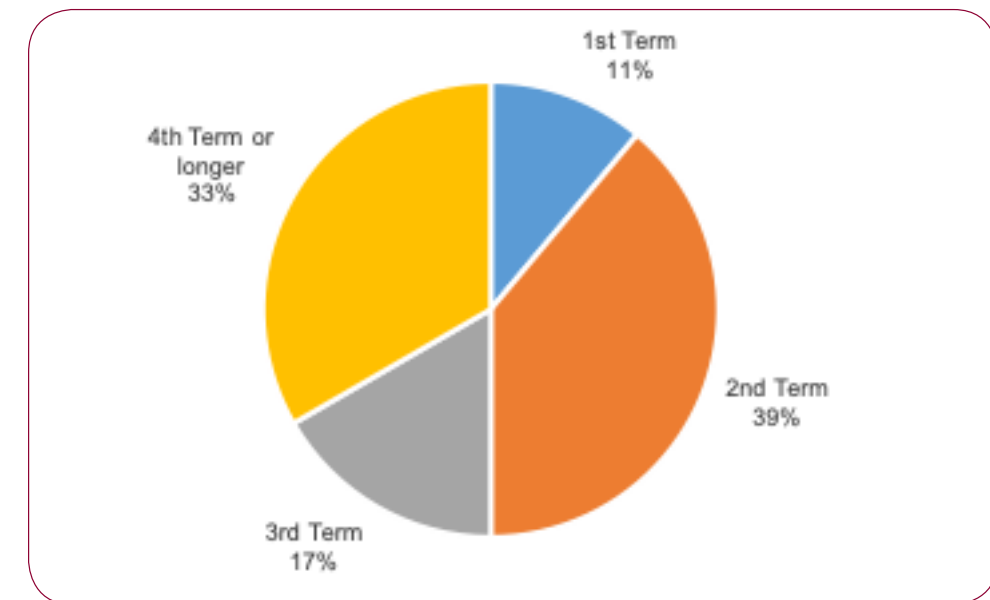
Premier's Forum on Local Government

The review of municipal legislation was selected as the topic for the third annual Premier's Forum on Local Government, held on October 4, 2018. Following the extensive stakeholder engagement, it was apparent that no clear consensus exists regarding the best approach to conflict of interest and code of conduct processes. Further, despite the clear message that municipalities need to have more flexibility and autonomy in decision-making, it was clear that substantial apprehension exists about the ability of municipalities to use an enabling legislative framework. The program for the forum was designed to take advantage of the experience and knowledge of the delegates in the room in order to gain some additional insight into these key issues.

Delegates were introduced to alternative approaches to conflict of interest provisions, then asked to work collaboratively in small groups to develop a framework for conflict of interest. Participants then discussed whether the same processes could be applied to a code of conduct as for conflict of interest. Finally, delegates were presented with a simplified enabling legislation framework and asked to use this framework to develop solutions for some sample municipal issues. Participants then reflected on both the opportunities and challenges presented by more permissive and enabling legislation.

Who Participated

The Premier's Forum on Local Government was attended by 52 delegates, half of which identified as mayors or deputy mayors, about one quarter identified as municipal councillors, and the remaining quarter of delegates identified as municipal administrators. Approximately half of the delegates had previously attended an in-person consultation session.



Participants' experience as elected municipal officials by percentage.

Half of the elected officials (mayors, deputy mayors, and councillors) in attendance are serving their third term or longer, and relatively few (11 per cent) are in their first term as an elected official.



What We Heard During the Premier's Forum on Local Government

Conflict of Interest

Delegates at the forum examined alternative approaches to four legislative elements of conflict of interest provisions. These elements included the definition of a conflict of interest, the process for determining whether a conflict exists or has occurred, penalties for acting in a conflict of interest, and the process for appeals of decisions.

Through polling and a workshop activity tasking delegates to collaborate in small groups and develop a framework for conflict of interest provisions, a number of themes emerged.

- Delegates identified fairness, flexibility, and clarity as the primary priorities for conflict of interest provisions.
- In general, there is a preference for a highly specific and descriptive definition of conflict of interest, with

little room for interpretation.

- Some preference was expressed for a more general definition which could be interpreted broadly.
- Many of the groups liked the idea of having a conflict of interest committee to help council make determinations based on the result of investigation. Suggestions for how that committee should be comprised included:
 - o a fully internal municipal committee (e.g. one councillor, one administrator, and one community member);
 - o a regional committee (e.g. three or more councillors from several communities); or
 - o a fully external committee (e.g. representatives from MNL, PMA, and the Department of Municipal Affairs and Environment).
- Other groups felt strongly that determinations of conflict should be made in council chambers.
- Groups were divided on preference between maintaining a harsh penalty but providing a leniency clause for genuine error, and introducing a range of penalties varying in severity.

- Nearly all participants agreed that either the introduction of a leniency or a range of penalties would improve the current provisions.
- There was general agreement that there needs to be a mechanism for appeal prior to seeking a court decision. Suggestions put forward included formation of a regional committee or expanding the mandate of the regional appeal boards.

Code of Conduct

When asked if the same procedures used for conflict of interest could be applied to a code of conduct, the majority of participant agreed they could but with some qualification. Commentary included the following suggestions:

- Definitions for code of conduct items need to be clearly stated.
- Professional standards could include expectations around language and attendance, but if grouped with conflict of interest in the same code, professional standards should not include things like a dress code.
- Penalties should be the same and include a range to be applied in a progressive manner.
- Council should have the authority to resolve issues internally, but the ability to involve a third party to resolve if necessary.
- The process should be consistent throughout the province.
- A code of conduct should apply equally to council and staff.

- There should be mandatory training for councillors and administrators on a code of conduct.

Enabling Legislation

Acknowledging the apprehension expressed, particularly with respect to small municipalities, regarding the capacity to operate with more permissive legislation, delegates were introduced to an example of a simplified legislative framework drafted in an enabling manner. Delegates were given the opportunity to work in small groups to apply this simplified framework to resolve a realistic municipal issue.

All groups were able to arrive at a resolution or identify a few alternative ways to resolve the issue. All groups were able to identify what powers provided the authority for action and how those actions met municipal purposes. The solutions varied between groups, demonstrating the legislative capacity for flexibility. Many groups were able to identify enforcement activities that could or should work, but not all groups thought those solutions were practical for the real-world circumstances in municipalities.

When asked to reflect on the opportunities and challenges presented by a shift toward more enabling legislation, a number of items were identified.



Opportunities

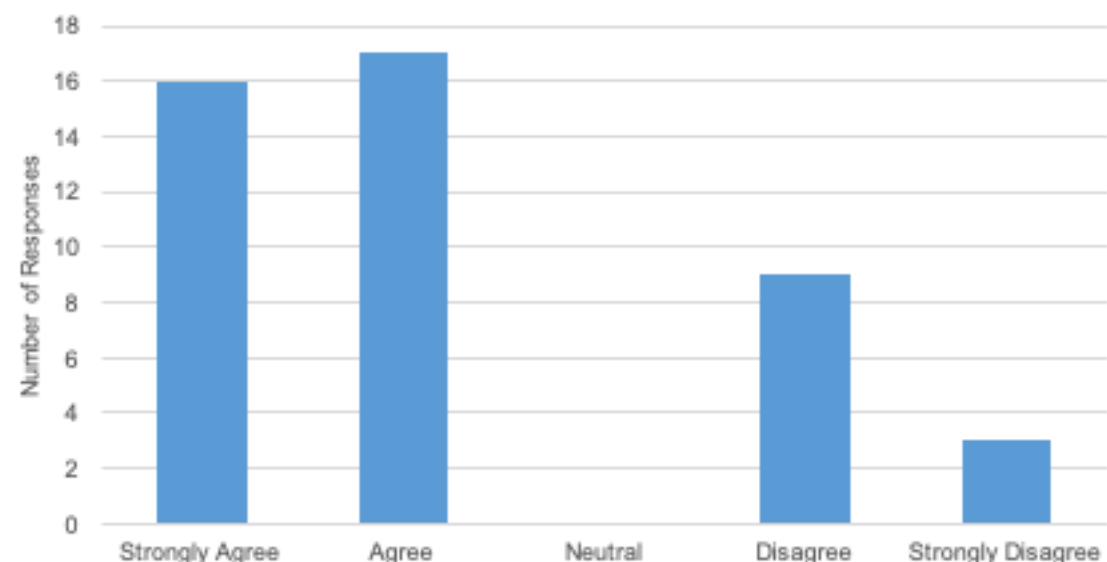
- Greater flexibility for problem-solving.
- Easier and more efficient process.
- Ability to make immediate decisions and respond with urgency.
- Increased autonomy.
- May provide incentive to develop regional enforcement services.
- Increases the ability to incorporate new technology into municipal operations.

Challenges

- Enforcement issues that already exist are resource issues, not authority issues, and are not solved with an enabling framework.
- What works for one situation may not work for another; it may be tempting to create specific solutions to individual issues when general solutions for a range of potential issues may be more appropriate.
- Enabling legislation will require municipalities to do more legal analysis.
- May lead to frequent changes in by-laws.
- Increased power necessitates increased accountability.

Following the workshop activity and discussion about opportunities and challenges, delegates were asked the polling question posed at all in-person events about capacity.

POLL: My community has the professional and operational capacity to use enabling legislation.



Of the delegates answering the polling question, a large majority (74 per cent) agreed or strongly agreed that capacity exists to use enabling legislation (compares with 53 per cent in agreement or strong agreement during the second phase of consultation, where participants did not have the opportunity to try to use enabling legislation prior to answering the poll). A significant number of respondents (26 per cent) indicated disagreement or strong disagreement that capacity currently exists to make use of enabling legislation.





Newfoundland
Labrador

