

**Subject: [Fwd: Fwd: [Bulletin] Local Government Bulletin, No. 42, December 2003]**

**Date:** Mon, 15 Dec 2003 22:52:49 -0800

**From:** Brian Platts <bplatts@shaw.ca>

**To:** Corrie Kost <kost@triumf.ca>

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**Subject: Fwd: [Bulletin] Local Government Bulletin, No. 42, December 2003**

**Date:** Tue, 16 Dec 2003 00:38:35 +0000 (GMT)

**From:** Elizabeth James <cagebc@yahoo.com>

**To:** Mayor and Council <council@dnv.org>

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*John Sewell <j.sewell@on.aibn.com> wrote:*

From: "John Sewell"

Subject: [Bulletin] Local Government Bulletin, No. 42, December 2003

Date: Mon, 15 Dec 2003 12:50:42 -0500

LOCAL GOVERNMENT BULLETIN: NO. 42: DECEMBER 2003

The purpose of this bulletin is to focus debate on the need to increase local self-government in Canada and to help local communities achieve more autonomy. The local self-government web site is <http://www.localgovernment.ca>

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### 1. Police and local politics: two sagas

On November 10 Dave Bell was elected mayor of Marathon, a mining and lumbering town on the north shore of Lake Superior. It wouldn't be note-worthy except for the fact that Mr. Bell, who has lived in Marathon for two decades, is an officer with the Ontario Provincial Police, and the OPP has an agreement with the town to provide its policing services. Since his election, Bell has been charged under the Police Services Act by the OPP with discreditable conduct and insubordination. Bell is now suspended with pay, waiting for the first court date, January 14, to arrive.

These actions have put a new twist on Section 46 of the Police Services Act and regulation 554/91 which define the degrees of permissible political involvement of a police officer, as discussed in Bulletin 40 (October).

The OPP has placed Bell under a gag order, so he is unwilling to speak for himself, but apparently he was asked by others to run. Policing was not an election issue in Marathon, and even though this was his first foray into elected office, Bell handily defeated the incumbent. His lawyer, Leo Kinahan, has said Bell intends to recuse himself from discussion of policing matters at town council since he never had any intention of trying to make policing an election issue. "I could half understand what the OPP was doing, if Dave was a patrol officer," says Kinahan, "but he's a court officer, who carries files back and forth for the crown attorney." The OPP detachment for the Marathon area numbers about two dozen officers.

Kinahan points out that the regulation states that "a municipal police officer need not resign as a municipal police officer upon being elected .. if being a member of municipal council does not interfere with the police officer's duties as a police officer or does not place, or is not likely to place, the police officer in a conflict of interest." He says Bell has agreed not to be a member of the town policing committee.

"We don't want to interfere with the democratic process," says Sup't. Bill Crate of OPP Communications, "and we don't think we are interfering. We just don't think you can do both jobs without being in a conflict."

Crate points out that Section 10(9) of the Police Services Act, sets out a lengthy list of policing tasks which the local council must perform, including that of helping to select the detachment commander and then monitor his/her performance, determine objectives and priorities for police services including local priorities, and review the administration of the complaints system. He sees a substantial potential conflict for Bell in his duties as mayor and his duties as an officer. He also believes that the normal decision-making of a mayor — such as on the property tax rates — would cause distraction to the kinds of work a police officer must do.

There are examples of police officers serving as a local councillor, but Crate says in each case the officer was not serving with the force offering police services to the municipality to which the officer was elected. Crate says that, before the election Bell applied for permission for 'secondary employment' — officers are required to seek approval prior to taking on a second job, in this case as mayor, which would occupy a few hours each day — and was turned down. He believes that in offering himself as a candidate, Bell knew what he was getting into, and he thinks it makes more sense if Bell takes a leave of absence, which would preserve his right of return to policing any time during the next five years.

This case has all the hallmarks of taking several years to resolve, ultimately with a ruling by the courts under the Charter of Rights and Freedoms. Perhaps the law should be clarified to state that officers may not stand for election in a community to which the police force for which they work provides services. Like judges, one limitation of being a police officer may be that you are not permitted to exercise some rights and duties expected of other citizens.

Meanwhile, in Toronto, the saga outlined in Bulletin 40 about whether a police association is permitted to endorse candidates in an election has somewhat intensified. It was learned in late October that the Toronto Police Services Board had in its possession two legal opinions about the matter of political endorsements, and these opinions were suggested as the reasons why the Board had not pursued charges against the Police Association. Then, a week before the November 10 municipal elections, the Association endorsed a number of candidates including mayoralty candidate John Tory, and police chief Julian Fantino made very strong statements that more police officers were needed, which was widely interpreted as the chief's endorsement of Tory. The electors didn't see it that way, and elected David Miller as mayor.

Ten days after the election, the Board reluctantly released summaries of the two legal opinions. One opinion was from a law firm known for its work on behalf of management; the other from a firm known for its progressive stands. Both opinions reached the same conclusions: political endorsements by the Police Association were contrary to the law. Further, the Board had been in possession of these opinions since October 2000 - three years ago - and had been told by the Solicitor-General three years ago that its duty was to enforce the law. A number of people have pointed out that there wasn't much of a dispute about the meaning of the law — the Board simply didn't want to enforce it.

Three new board members, appointed by the newly elected Toronto City Council, will take their place on the 7-member board January 1, and they seem likely to address these questions in a more effective manner.

## 2. Water extraction as a 'use of land'

On December 9, one day before the matter was to be heard before the Ontario Court of Appeal, it was agreed that an appeal in a contentious case involving the power of a municipality to control the extraction of water would be abandoned. This means the November 2002 decision of the Ontario Divisional Court will stand as law in Ontario. "The installation of piping and pumps and other apparatus on land for the purpose of extracting water is a 'use of land' not only in common parlance but under the Planning Act as well," the decision reads.

The issue began shortly after Grey County had adopted a new Official Plan in 1999. This plan made no mention — and probably had no thought — of water extraction. The company, Artemesia Waters Limited, applied to the council of Artemesia Township (a local municipality in Grey County) for a rezoning to allow the extraction, but the council refused the request. The company then applied to Grey County council for an amendment to the Official Plan, redesignating the lands from Agricultural use to Commercial. Much pressure was mounted by local citizens and their organizations in opposition, and county council rejected the amendment application. The company then appealed the matter to the Ontario Municipal Board. In the interim, municipal amalgamations had occurred in the area and the succeeding municipality, Township of Grey Highlands, created its own Official Plan in which it attempted to control water extraction.

But the OMB decided in its inimitable way that water extraction was not a use of land, and therefore beyond the ability of a municipality to influence and control. The case was pursued to the courts by the Grey Association for Better Planning and a number of other groups in Grey County and Southern Ontario, and they were successful, with the positive decision already quoted.

One factor considered important in the decision by Artemesia Waters Limited to abandon the appeal, was the decision by the Court of Appeal in September to allow the Municipality of Grey Highlands to be added as a party in opposition to Artemesia. Chief Justice Roy McMurtry was one of the judges who heard this application, and apparently made it clear that the company was not being reasonable.

The fact that the lower court decision stands so that water taking is considered a land use, is important in Ontario, and perhaps in other jurisdictions. "This is a win for our environment, but also a win for communities and municipalities across Ontario who have been entrusted with protecting their environment through the land use planning process," said Peggy Hutchinson of the Grey Association of Better Planning.

## 3. A set-back for Winnipeg's New Deal

In late November Manitoba Premier Gary Doer rejected the request of Winnipeg's Mayor Glenn Murray for a share of the sales tax, or an increase in the tax from 7 to 8 per cent. Murray had wanted to incorporate sales tax revenue (worth about \$120 million annually) as part of the New Deal financial package that he has been touting for Winnipeg. (See Bulletin No. 40.)

Some commentators are saying that Premier Doer has done nothing more than re-iterate what he said last January, and that the mayor has been flogging a dead horse. Others note the pressure on the premier to hold the line on taxes — the opposition Tories have suggested there should be a referendum before taxes are increased. But Premier Doer has indicated he's willing to talk about other financial tools such as taxes on alcohol, a hotel levy, and the gas tax. Mayor Murray says he'll put together another proposal.

## 4. Embarking on new federal directions for cities.

When Prime Minister Paul Martin announced his cabinet on December 12, he made a point of outlining the process he would take to work out a new federal relationship with cities in Canada. He indicated the dossier would be handled in his office, and that John Godfrey would be his Parliamentary Assistant in charge of the matter. Godfrey is an MP from the Don Mills area of Toronto. He's progressive, a good listener with an open mind, and a traditional of good consultation. His focus in recent years has been policy around children.

Martin also said that Mike Harcourt, former mayor of Vancouver and premier of British Columbia, would chair an advisory committee within the Privy Council Office to work on the matter. The Privy Council is the senior staff arm of the federal government.

Adam Ostry has been heading up a task force within the Privy Council Office for the past 18 months. "A little think tank" is how he categorized his work in a recent interview. He said the work was internal to the government, and no discussions were held at the official level. No report of his work will be made public.

Ostry said his work had two prongs. One was to grapple with the reality that the Canadian public is not aware of federal involvement in cities, and he has helped pull together information so the federal government can better tell its story. (This is reminiscent of Judy Sgro's report — see Bulletin No. 32, November 2002 — but one wonders what benefits cities get from the public knowing how much the federal government is now doing for cities.) The other prong is to map urban issues and identify changes needed at the federal level. One assumes this will be the area of most interest to Mr. Harcourt.

Still to be made public is the process Messrs. Martin, Godfrey and Harcourt expect to follow, the time table they have in mind, and the scope of the exercise.

## 5. Subscribe to the Bulletin

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