

## THE FALSE PANACEA OF CITY CHARTERS? A POLITICAL PERSPECTIVE ON THE CASE OF TORONTO

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### SUMMARY

Toronto is unlike any other city, as its local boosters will not hesitate to point out. That was the basis, after all, of the “charter movement” that demanded special rights for a mega-city that the movement’s backers insisted was so vital that it even warranted a status similar to that of an entire province. Their efforts culminated in the province’s passage in 2006 of the City of Toronto Act, which appeared on its face to grant the metropolis the power it believed it required and merited. In reality, the Ontario government may have actually set Toronto back, leaving it more at the mercy of provincial power than other smaller municipalities.

The few additional taxation powers that were granted by the ostensible Toronto “charter” — the City of Toronto Act — are, in reality, still overseen by the province, which retains the right to limit those revenue tools if it considers it “desirable in the provincial interest to do so.” But while Toronto may have been given just a small number of revenue tools, which it has used only sparingly, and the use of those tools is ultimately decided by Queen’s Park, their very existence has given the province licence to sidestep the city’s calls for more funding. The provincial Liberals have, in the past, insisted that Toronto make use of its own taxes before it demands more provincial funds.

Meanwhile, the City of Toronto Act did nothing to curtail the power of the Ontario Municipal Board (OMB). Because municipal zoning decisions made in Toronto can be appealed to the OMB, which can substitute its own idea of “good planning” for elected local government, the City of Toronto is ultimately left with limited control over its planning decisions.

In sum, virtually none of the desires that Toronto expected would be served by a city charter have been fulfilled. Quite the opposite, it would appear that the dreams once imagined by charter-city proponents have been snuffed out, and there is no longer any real political voice anywhere advocating for more autonomy and taxing authority for Toronto. In the pursuit of more funds for transit infrastructure, the current mayor, John Tory, has returned to the traditional model of attracting funds from higher levels of government, rather than seeking to use any of the revenue tools provided by the City of Toronto Act. It would be truly surprising if municipal leaders anywhere else in Canada sought to emulate Toronto’s experience with charter status. If that experience serves as a model for anything, it is as a way for provincial governments to cleverly defuse and deflect a major city’s demands for enhanced status.

There is much confusion in Canada about “charters” for cities. Whether or not a city has a charter has little or no connection with its functional authority or autonomy. Many American cities have charters. Such charters are usually provided for in written state constitutions that prescribe special mechanisms by which charter cities are established as governments whose internal institutions and/or functional authority cannot be changed by ordinary state legislation. Changing the provisions of the charter usually requires some form of local referendum, often both to establish a commission to propose charter revisions and to approve the commission’s recommendations. Changing the procedures to amend the charter requires amendments to the state constitution. American cities that have such charters are in one sense clearly more autonomous than any Canadian city because the legal status of Canadian cities is always directly subject to ordinary provincial legislation. This state of affairs cannot be changed unless or until provinces acquire entrenched, written constitutions.<sup>1</sup> If there were such entrenched provincial constitutions, and if municipalities were established therein, the authority of provincial legislatures to tamper with municipalities would be limited.

All Canadian provinces have general laws governing their respective municipalities. In addition, for most municipalities there are invariably different laws (public or private) that apply only to some relatively small part of their operations. Some larger or unusual municipalities are established by provincial laws that apply only to them; parts of the general municipal legislation for the province may or may not apply. Whenever a municipality is established by its own special law, it is common for such a law to be called a charter. Hence we have the Vancouver Charter, the Winnipeg Charter, and the Charter of the Ville de Montréal. Notably for this paper, there is no Toronto charter. But there *is* a City of Toronto Act, which fulfills exactly the same legal functions for Toronto as the charters do for Vancouver, Winnipeg, and Montreal. Unlike American charter cities, all of these Canadian cities remain just as subject to ordinary provincial legislation as is any small rural town or district.

So the practical questions are not about whether a particular Canadian city has a charter. The important questions are: What is the extent of the city’s legal jurisdiction? And; does such jurisdiction differ significantly from that of other municipalities in the province? Subsidiary questions relate to what might be called the “political culture” of the various provinces. To what extent is it generally accepted in a province that it is legitimate for the legislature to change laws for cities without extensive discussion and negotiation? Prior to the election of the Liberal government in Ontario in 2003, we could say that in Ontario, provincial laws about cities (including amalgamations) were changed frequently and (except in Toronto in 1997), opposition was limited. At the other extreme is British Columbia,

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<sup>1</sup> David M. Cameron, “Provincial Responsibilities for Municipal Government,” *Canadian Public Administration* 23, 2 (1980): 222-35. The Constitution of Alberta Amendment Act, 1990 guarantees certain land rights for the Métis people in Alberta that cannot be abrogated without the approval the Métis Settlements General Council or of settlement members through plebiscites. Could the Alberta legislature approve another law repealing this one, including the sections referring to how the original act is to be changed? If the answer is that it could not, then a potential opening is provided for “entrenched” city charters. But perhaps courts would treat the Métis and municipalities differently. For a discussion about whether the British Parliament can constrain its future actions, see Geoffrey Marshall, *Constitutional Theory* (Oxford: Clarendon Press, 1971), 43-53; and Iain McLean “Constitutionalism since Dicey,” in *Forging a Discipline: A Critical Assessment of Oxford’s Development of the Study of Politics and International Relations in Comparative Perspective*, ed. Christopher Hood, Desmond King and Gillian Peele (Oxford: Clarendon Press, 2014), 164-84. In 1996 the British Columbia legislature approved the Constitution Act for the province, but it can be amended by ordinary statute.

where no such arbitrary legislation has recently been approved, regardless of which political party happened to be in power.

This paper describes the origins of the “charter movement” in Toronto, the political factors behind the passage of the City of Toronto Act 2006, and the subsequent impact of the act on the city’s governance. Its purpose is to help policy-makers in other provinces determine if the Toronto experience merits replication.

## DUELLING CHARTERS

In the early 2000s in Toronto there were two quite different proposals for a Toronto charter, but even some of the proponents of one or other of the two proposals were confused about what they were asking for. The first proposal originated from a conference in 1999 on “The Evolution of Toronto” that was sponsored by Alan Broadbent, a prominent local philanthropist with close links to Jane Jacobs. The members of the Broadbent-Jacobs group were reacting against the forced amalgamation in Toronto in 1998. They resented arbitrary provincial legislation to absorb the old city of Toronto into a new city dominated by suburban interests. They also favoured strong new institutions for the governance of the larger Toronto city-region. In November 1999 it looked like they were receiving support from Mel Lastman, the first mayor of amalgamated Toronto. Upset with the dire financial position of his new city, he stated: “we can’t afford to stay part of the province of Ontario.” He noted that if the entire Greater Toronto Area joined together, it could be a separate province of “almost five million people.”<sup>2</sup>

In 2000, the Broadbent-Jacobs group published a collection of short essays entitled *Toronto: Considering Self-Government*, in which different authors approached the issue in many different ways. Some emphasized the need for large-scale regional approaches; others, especially former Toronto mayor John Sewell, were more concerned with regaining political control of the central city. “Who wants to live in the province of Toronto if its politics are the same as Mike Harris?” he asked.<sup>3</sup> In 2001, the group adopted “The Toronto Charter.” The first of its five articles stated “That the Toronto Region form an order of government that is a full partner of the Federal and Provincial Governments of Canada...”; the second effectively claimed all existing provincial areas of jurisdiction for “the Toronto Region, and its municipalities ... with the exception of those matters as are mutually agreed upon with other levels of government...”<sup>4</sup>

Notably, the Toronto Charter never defined the boundaries of the Toronto region. In 2002, Alan Broadbent attempted to excuse this omission by stating that another former Toronto mayor, David Crombie, had suggested that they “should be one of the last things to settle. He said that people would waste all their time and energy arguing about boundaries and

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<sup>2</sup> Quoted in Robert Benzie, “Toronto should be a province: Lastman,” *National Post*, November 21, 1999.

<sup>3</sup> John Sewell, “The City Status of Toronto,” in *Toronto: Considering Self-Government*, ed. Mary W. Rowe (Owen Sound, Ont.: The Ginger Press, 2000), 69.

<sup>4</sup> “The Toronto Charter” is reprinted in Alan Broadbent et al., *Towards a New City of Toronto Act* (Toronto: Zephyr Press, 2005), 40.

have nothing left for principles and policy.”<sup>5</sup> The idea of a charter for the Toronto region never gained much political traction, but it did form the intellectual base for Broadbent’s 2008 book, *Urban Nation: Why We Need to Give Power Back to the Cities to Make Canada Strong*.<sup>6</sup>

The second approach involved a charter relating only to the territory of the amalgamated city of Toronto. By May 2000, Lastman’s continuing discontent was reflected in the city council’s decision to ask its staff “to write a report exploring how the city’s relationship with the province could be changed to protect the city from a provincial government that has constantly passed expenses on to the city.”<sup>7</sup> The initial staff report was tabled in the council a month later. It reported that almost one-third of Canada’s gross national product (GNP) “is generated within a one-hour drive (of) Toronto’s Pearson International Airport.”<sup>8</sup> The report failed to note that part of Pearson airport was still outside the boundaries of the newly amalgamated city. It claimed:

“If Toronto is to continue to be a wealth creator that benefits Ontario and Canada in the face of severe competition from neighbouring North American cities in the context of NAFTA, the City requires: recognition as an independent, responsible and accountable order of government with power to act on local matters; and long-term fiscal sustainability.”<sup>9</sup>

For these reasons, the report argued that Toronto needed its own charter. A background supplement to the report rightly points out that, in the Canadian context, this simply means that a charter city “is governed by its own ‘stand alone’ legislation.”<sup>10</sup> The same document then helpfully outlines the legal procedures for Toronto to separate from Ontario and/or Canada.<sup>11</sup>

City council’s response to the main report was to approve a resolution demanding a charter for Toronto and calling for a plebiscite on the issue as part of the next municipal election. It also requested a more detailed analysis of five Canadian cities (Vancouver, Winnipeg, Montreal, Quebec City, and St. John’s) that arguably are governed by some form of charter from their respective provincial legislatures.<sup>12</sup> The subsequent report confirmed the desirability of “a Charter for the City of Toronto”:

“It would provide a fresh opportunity to create a modern Charter that incorporates such concepts as natural person powers, broad spheres of jurisdiction, consultation between

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<sup>5</sup> Alan Broadbent, “The Place of Cities in Canada: Inside the Constitutional Box and Out,” *Caledon Commentary* (Caledon Institute of Social Policy, June 2002): 3.

<sup>6</sup> Alan Broadbent, *Urban Nation: Why We Need to Give Power Back to the Cities to Make Canada Strong* (Toronto: HarperCollins, 2008).

<sup>7</sup> James Rusk, “Toronto to toughen provincial relations,” *The Globe and Mail*, May 12, 2000.

<sup>8</sup> City of Toronto, “Towards a New Relationship with Ontario and Canada,” Staff Report to the Policy and Finance Committee (June 6, 2000), 3.

<sup>9</sup> *ibid.*

<sup>10</sup> City of Toronto, “Powers of Canadian Cities – The Legal Framework,” Background Report 2 of “Towards a New Relationship with Ontario and Canada” (June, 2000), 3.

<sup>11</sup> *ibid.*, 8-9.

<sup>12</sup> City of Toronto, City Council Minutes, July 4 - 6, 2000, 45-61. See also Ron Levi and Mariana Valverde, “Freedom of the City: Canadian Cities and the Quest for Governmental Status,” *Osgoode Hall Law Journal* 44 (2006): 409-59.

levels of government, and the formal recognition of the City as an order of government ... If the Charter were to incorporate concepts such as these, it could be a document that would not grow old and heavy in the ensuing years, but one that would be flexible to future challenges. This new Charter would provide Toronto with the power and flexibility it seeks within the context of current provincial legislation.”<sup>13</sup>

At about the same time, city council received a report from its legal department stating that, as a result of recent regulations made under the Municipal Act, the city could not conduct any kind of referendum or plebiscite relating to the desirability of Toronto becoming a charter city.<sup>14</sup>

There were no significant public political developments until 2004, following the elections of Dalton McGuinty as premier of Ontario and David Miller as mayor of Toronto in late 2003. In mid-2002, however, there was another council report, this time focusing on the city’s lobbying efforts for a charter, often in conjunction with other cities and municipal associations across the country.<sup>15</sup> A report in mid-2003 was significant because it no longer used the term “charter.” The objective now was an “improved” or “enhanced legislative framework for Toronto.” This report listed “representative examples of burdensome, costly and/or inappropriate limitations on Toronto’s existing legislative authority that could be eliminated through an improved legislative framework.”<sup>16</sup> The examples were:

- Insufficient discretion to set property tax rates;
- No authority to levy a destination marketing fee;
- Provincial approval required to establish a lobbyist registry;
- Lack of full authority to set local speed limits;
- No clear authority over demolition and conversion of rental housing units;
- Council cannot delegate its authority without explicit legislative permission;
- No authority to determine ward boundaries and names;
- No discretion over bar hours, even for special events;
- Insufficient control over building design standards.<sup>17</sup>

This seemed a long way from “The Toronto Charter” advocated by Jane Jacobs and Alan Broadbent. Now the focus was only on what would be included in Toronto’s special legislation. At its meeting on May 23, the council invited the province to work with the city in developing a new legislative framework.<sup>18</sup>

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<sup>13</sup> City of Toronto, “The Relationship of 5 Charter Cities and their Provinces,” Staff Report to Policy and Finance Committee (September 5, 2000).

<sup>14</sup> City of Toronto, Policy and Finance Committee, Report 11 for Consideration by Council, Clause 1, “Implementation Strategy and Citizen Engagement Process to Establish a New Relationship with Ontario and Canada, and Legality of a Referendum on Charter City Status” (October 3, 2000), 7-13.

<sup>15</sup> City of Toronto, Policy and Finance Committee, Report 12 for Consideration by Council, “Establishing a New Relationship with the Federal and Provincial Governments — Progress Report on Toronto’s Initiatives” (July 30, 2002).

<sup>16</sup> Toronto City Council Policy and Finance Committee, Report #4 for Consideration by Council on 21 May 2003, “Achieving an Improved Legislative Framework for Toronto ‘The Right Deal for Toronto is a Great Deal for Ontario’” Appendix B, 1.

<sup>17</sup> *ibid.*

<sup>18</sup> Toronto City Council, Minutes, May 21-23, 2003.

## THE CITY OF TORONTO ACT, 2006

In September 2004, then premier McGuinty addressed a Canadian “Big City Mayors Summit” in Toronto. He announced

“... that the province and the city will undertake a joint review of the City of Toronto Act.

The object of this review is to:

- Make the City of Toronto more fiscally sustainable, autonomous and accountable
- Give it the tools it needs to thrive in the global economy and
- Reshape the relationship between the province and its capital city.”<sup>19</sup>

It is significant that McGuinty referred to a “*review* of the City of Toronto Act.” He did so because such an act already existed: it was the act that created the amalgamated city in 1998, and it had been amended a few times since then. But, in respect to items not covered in the act, the Municipal Act prevailed. What Toronto was seeking, and what the premier seemed to be agreeing to, was for the city to receive much more. The premier’s remarks were warmly received. Then mayor David Miller responded by saying “The Premier, by starting this process, is recognizing that Toronto is akin to a province in its size and importance. We don’t want to be a province, but we are akin to a province ... A charter is one way to describe this ... Independence. City state.”<sup>20</sup>

The province and city then established a joint task force co-chaired by the deputy minister of municipal affairs and the chief administrative officer of the city. The task force was to report in mid-2005 so that legislation could be introduced by the end of the year. Not surprisingly, we know little about what actually went on within the task force. Martin Horak quotes a city official involved in the process as saying:

“At the provincial level, the political arm was well ahead of the administrative side ... This was a good example of the Premier setting a ‘stretch goal’ ... The Ministry of Municipal Affairs staff were very conservative in this regard, and other ministries — the Ministry of Finance in particular — were extremely reluctant to see more authority and power devolved.”<sup>21</sup>

In February 2005 (and on various occasions thereafter), Miller attempted to lower expectations by reporting to his council that, despite great progress being made, the new

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<sup>19</sup> Ontario, Office of the Premier, “Remarks by Dalton McGuinty, Address to the Big City Mayors Summit,” September 17, 2004.

<sup>20</sup> Quoted in Royson James, “First step on T.O.’s road to adulthood,” *Toronto Star*, September 25, 2004.

<sup>21</sup> Martin Horak, *Governance Reform from Below: Multilevel Politics and the ‘New Deal’ Campaign in Toronto, Canada* (Nairobi: United Nations Human Settlements Programme, 2008), 29.

City of Toronto Act would not solve the city's fiscal problems.<sup>22</sup> A "Staff Progress Report" was released in May. Staff arrived at two main conclusions:

1. The modernized City of Toronto Act should effectively function as the city's "charter by replacing the *Municipal Act, 2001*, the *City of Toronto Act, 1997* ... and most (if not all) of the 350+ private acts that currently apply to the city."
2. The modernized City of Toronto Act should fundamentally change the way Ontario empowers Toronto. The new City of Toronto Act should start from the premise that Toronto can exercise broad permissive governmental powers within its jurisdiction, subject only to specific exceptions in the provincial interest.<sup>23</sup>

The "Final Staff Report," released on November 14, was anti-climactic: Toronto was no longer going to be subject to the Municipal Act, but the report listed 20 different provisions of the Municipal Act that would simply be re-enacted in the new Toronto statute. New powers and taxes were minimal. The city agreed to review its governance structures to make them more "accountable," and it was understood that some of these changes would be included in the new legislation.<sup>24</sup>

Public-policy analysts must never forget that often the most important issues are ones that are barely recorded on the public agenda.<sup>25</sup> In the public discussion about more autonomy for Toronto, the missing issue was the role of the Ontario Municipal Board (OMB). The City of Toronto, like other Ontario municipalities, has less direct control over its own zoning policies than the control enjoyed by even the smallest Canadian towns outside of Ontario. This is because all zoning decisions can be appealed to the OMB, which can simply substitute its own decision about "good planning" for the decision made by the elected council.<sup>26</sup> But the OMB is barely mentioned in any of the official documents. Toronto's former chief planner did raise the issue in a 2005 collection of essays sponsored by the Jacobs-Broadbent group:

"While an appeal body to a council decision may be justified, I believe the powers of the OMB need to be confined to the actual merits of the appeal, not the entire application. As such, if the OMB is retained it should eliminate its practice of holding 'de novo' hearings. However, I believe that if the changes to governance described in this paper are implemented, the Council should ideally make the final development decisions. It is simply a logical and normal power for the largest city in the country to be able to exercise...."<sup>27</sup>

<sup>22</sup> John Barber, "Is City's 'dramatic' change just an Act?" *The Globe and Mail*, February 8, 2005.

<sup>23</sup> Ontario and Toronto, "Staff Progress Report," Joint Ontario–City of Toronto Task Force to Review the *City of Toronto Act, 1997* and other Private (Special) Legislation, May 2005.

<sup>24</sup> Ontario and Toronto, "Final Staff Report: Building a 21<sup>st</sup> Century City," Joint Ontario–City of Toronto Task Force to Review the *City of Toronto Act, 1997* and other Private (Special) Legislation, November 2005. See also, City of Toronto, Governing Toronto Advisory Panel, *Report: The City We Want — The Government We Need* (November 2005).

<sup>25</sup> Matthew A. Crenson, *The Un-politics of Air Pollution: A Study of Non-decisionmaking in the Cities* (Baltimore: Johns Hopkins University Press, 1971).

<sup>26</sup> For a thorough discussion and analysis see Aaron A. Moore, *Planning Politics in Toronto: The Ontario Municipal Board and Urban Development* (Toronto: University of Toronto Press, 2013).

<sup>27</sup> Paul Bedford, "How to Get the City We Want," in *Towards a New City of Toronto Act*, Alan Broadbent et al., (Toronto: Zephyr Press, 2005), 26.

In his reporting of public hearings conducted by the joint Ontario-Toronto task force, the urban affairs columnist for *The Globe and Mail* stated that “Whether or not they favour outright abolition of the Ontario Municipal Board — and an extraordinary number do — Torontonians want a planning system that is more predictable and accountable than the current star-chamber mechanism.”<sup>28</sup> He went on to state what many observers suspected: interfering with the role of the OMB “would be difficult and, even more to the point, it would offend one of the most powerful vested interests in Ontario. Developers and their lawyers overwhelmingly prefer the status quo, which insulates them from the profit-straining perils of democratic decision-making.”<sup>29</sup> The key business interest groups were not much involved in the City of Toronto Act because their interests were never threatened. Nothing that happened in the future concerning the City of Toronto Act would make any difference to the role of the OMB. The city remains exceptionally weak with respect to control over its own land-use planning and zoning.

The City of Toronto Act, 2006 was introduced in the provincial legislature in December 2005. The minister of municipal affairs began the debate on second reading on February 13, 2006 by stating:

“Bill 53 will give the city a more effective accountability regime by establishing the requirement of an effective lobbyist registry, integrity commissioner, ombudsman and its own Auditor General. This will improve the governance and transparency of the city of Toronto.

It will allow Toronto city council more flexibility to delegate powers and responsibilities to committees, boards and its own staff. This could enable the city to expand local democratic participation.

It will give the city expanded authority when it comes to business licensing. Furthermore, the city would have the power to regulate store closings on holidays, in order to create a level playing field for all shopping districts and better reflect the needs of Toronto’s multicultural communities.

The city would have greater flexibility to establish speed limits on its local roads.

It will have the authority to control the demolition and conversion of rental housing, and have the ability to provide temporary housing accommodations to address housing emergencies without having to obtain provincial approval.

It would also give general authority to the city to raise revenues, but with limitations such as no tax on personal or corporate income, no tax on wealth or payroll, no capital tax, no tax on gas or hotel rooms; and no sales tax, except for a tax on the sale of entertainment, alcohol or tobacco.”<sup>30</sup>

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<sup>28</sup> John Barber, “City needs to grow up before it gets the reins,” *The Globe and Mail*, June 28, 2005.

<sup>29</sup> *ibid.*

<sup>30</sup> Canada. Ontario, Legislative Assembly, Debates, February 13, 2005.

This was hardly a radical change in the provincial-city relationship. In fact, provisions in the act made it possible for the provincial government, by regulation, to limit the city's actions with respect to its new powers if it "considers that it is necessary or desirable in the provincial interest to do so."<sup>31</sup>

Much of the time in the committee hearings on the bill was spent on hearing presentations from organizations representing restaurants, bars, and real-estate interests that were worried about the new taxing authority of the city. Other groups concerned with property tax issues pointed out that the new legislation did very little to improve the city's overall financial situation. The bill received third reading in June. Five months later, David Miller was re-elected as mayor of Toronto. On the day after his victory, he said it was time for a "true new deal" for Toronto that would involve gaining a share of federal and provincial sales tax revenue. Not surprisingly, the response from the Ontario minister of finance was that Toronto should use its own new taxation authority before asking for more.<sup>32</sup> After tumultuous debates in 2007, the city council finally approved motor-vehicle and land-transfer taxes in late October.

## **HOW IS TORONTO NOW DIFFERENT FROM OTHER ONTARIO MUNICIPALITIES?**

In 2011, under the leadership of then mayor Rob Ford, city council repealed its motor-vehicle registration tax. The only tax now levied by the City of Toronto that is not available to other Ontario municipalities is the land-transfer tax. If we are looking for practical results of the City of Toronto Act 2006 that have led to significant differences between Toronto and other Ontario municipalities, local taxation does not suggest promising results, regardless of the inherent merits or demerits of the city's land-transfer tax. But determining the other effects of the act is far from easy. This is because some of its more important explicit provisions were subsequently included in amendments to the Municipal Act and now apply to all Ontario municipalities; because some of the changes in Toronto stemmed indirectly from the act rather than from its explicit provisions; and because Toronto's municipal government continues to be covered by a multitude of other municipal statutes, some of which give special treatment to Toronto. Without getting too bogged down in excessive legal and institutional detail, five distinct features of Toronto's post-2006 status will now be outlined.

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<sup>31</sup> Canada. Ontario, City of Toronto Act, 2006, s.25.

<sup>32</sup> Jeff Gray, Jennifer Lewington and Karen Howlett, "Miller's sales-tax pitch gets cool reception," *The Globe and Mail*, November 15, 2006. For a comprehensive analysis of the effects of Toronto's enlarged taxation authority, see Harry Kitchen, "Is 'Charter-City Status' a Solution for Financing City Services in Canada — or Is That a Myth?" *SPP Research Papers* (Volume 9, Issue 2), January 2016.

## Spheres of jurisdiction

Section 6(2) of the act gives city council broad authority to enact bylaws:

- (2) The City may pass by-laws respecting the following matters:
  1. Governance structure of the City and its local boards....
  2. Accountability and transparency of the City and its operations and of its local boards...and their operations.
  3. Financial management of the City and its local boards....
  4. Public assets of the City acquired for the purpose of exercising its authority under this or any other Act.
  5. Economic, social and environmental well-being of the City.
  6. Health, safety and well-being of persons.
  7. Services and things that the City is authorized to provide under subsection (1).
  8. Protection of persons and property, including consumer protection.
  9. Animals.
  10. Structures, including fences and signs.
  11. Business licensing.

Whatever one might think about the significance of this list, the key point for our purposes is that an almost identical list was included in amendments to the province's Municipal Act that were enacted six months later.<sup>33</sup> Toronto therefore does *not* now have special status with respect to its spheres of jurisdiction. In any event, there does not appear to have been any radical change in how politicians and administrators in Toronto think about the city's new legal capacity.<sup>34</sup> Since the passage of the City of Toronto Act, the court challenge to the city's authority that has received the most attention is the one that contested the authority of city council to prohibit the sale, possession, or consumption of shark fins. In 2012, the Ontario Superior Court of Justice held that the prohibition was *ultra vires* of the Toronto city council because it neither served a "municipal purpose" nor addressed a "municipal issue," undefined phrases used in the act to delineate the permitted scope of the city's action.<sup>35</sup>

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<sup>33</sup> Canada. Ontario, Municipal Act, Section 10 (2). This list applies to single-tier Ontario municipalities (such as Ottawa, Hamilton, London, Windsor, Guelph, Greater Sudbury, Thunder Bay, etc.), which is also what the City of Toronto is. The provisions get more complicated where there are two tiers of municipal government (the top tier being counties or regions) and the spheres of jurisdictions need to be divided.

<sup>34</sup> Rachel Mendelson, "City of Toronto Act: Out of the straitjacket but still shackled by lack of imagination," *Toronto Star*, March 2, 2014.

<sup>35</sup> *Eng v. Toronto (City)*, 2012 ONSC 6818.

## Authority to delegate

Municipal authority is delegated authority; it derives from the jurisdiction assigned to provincial legislatures by Section 92 of the Constitution Act, 1867. In the past, courts have generally held that, in the absence of any statutory provisions to the contrary, municipal councils cannot in turn delegate their legal authority to some other institution. This is the standard explanation of why the agendas of municipal councils are generally full of all kinds of very detailed items. After the creation of the amalgamated City of Toronto in 1998, council agendas were grotesquely long and council meetings stretched over many days. In 2005, the Governing Toronto Advisory Panel reported that “In 2004 City Council sat a total of 39 days at 13 different sessions, considered 5,300 items, approved over 75% of these items on consent and held 868 items for debate. . . . For a typical City Council meeting over 20 centimetres of paper is presented to each Councillor for pre-read.”<sup>36</sup>

A natural way to fix this problem was to authorize the council to delegate some of its decision-making authority. The most obvious recipients of such authority were the four “community councils” comprising councillors from the four designated sub-territories (Etobicoke York, North York, Scarborough, and Toronto and East York). With an average population of over 600,000, most of these “communities” include more people than almost all other Canadian municipalities, including the city of Vancouver. Nevertheless, they were charged with providing a forum for the discussion of issues whose territorial impact was not citywide. Without delegated authority, however, they could do little to ease the burden on the full council, because all their decisions still had to be ratified by the full council. As a result of provisions in Section 20 of the City of Toronto Act, council can and does delegate decision-making authority to the community councils (and other specified bodies). Significantly, council still cannot delegate any of its authority under the Planning Act, which means that all local zoning decisions still must go the full council. In 2013, long after the delegation provisions had been implemented, city council still met on 32 different days.<sup>37</sup> In any event, the same delegation provisions as in the City of Toronto Act were included later in 2006 as Section 23.1 of the Municipal Act.

## Schedule B of the Stronger City of Toronto for a Stronger Ontario Act 2006

The City of Toronto Act 2006<sup>38</sup> was enacted by the Ontario legislature as Schedule A of the Stronger City of Toronto for a Stronger Ontario Act 2006. Schedule B enacted amendments to various other provincial statutes, most of which involved the provision of special arrangements for the City of Toronto. The irony here is that, if one considers the City of Toronto Act 2006 as the city’s “charter,” then the provisions of Schedule B are not included. If the wider act containing the schedules is the “charter,” then the document takes a very peculiar form, one certainly not envisioned by any of the original charter advocates.

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<sup>36</sup> *The City We Want — The Government We Need: The Report of the Governing Toronto Advisory Panel* (November 2005), 13.

<sup>37</sup> Derived from a count of the days on which council minutes are available for 2013 on the city website. See: <http://app.toronto.ca/tmmis/decisionBodyProfile.do?function=doPrepare&decisionBodyId=261#Meeting-2013.CC45>.

<sup>38</sup> *Statutes of Ontario*, 2006, Chapter 11, Schedule A.

In the real world perhaps these legal subtleties make little difference. The key fact is that anyone who wants to understand how Toronto's legal status was changed in 2006 needs to look at Schedule B of the Stronger City of Toronto for a Stronger Ontario Act 2006 as well as the City of Toronto Act 2006, which is Schedule A. Schedule B exempts the City of Toronto from some provincial laws and regulations applying to other municipalities. Notable examples relate to environmental assessments for traffic-calming measures, speed limits on municipal highways, extended hours for the sale of liquor for special events, management of social housing, retail business holidays, and the treatment of designated heritage properties.

Schedule B also amended the Municipal Elections Act by adding a new Section 70.1 stating: "The City of Toronto may by by-law prohibit a corporation that carries on business in Ontario or a trade union that holds bargaining rights for employees in Ontario from making a contribution to or for any candidate for an office on city council." Toronto city council approved such a bylaw to take effect prior to the 2010 municipal election. No other Ontario city has the authority to do this and no other Canadian municipality outside Quebec prohibits corporate or union donations to municipal election campaigns.

## Accountability officers

During the process leading up to the passage of the City of Toronto Act, the provincial government was very clear that, if the city were to receive additional grants of authority, there would need to be new "measures to promote transparency and accountability."<sup>39</sup> The act requires that the city appoint an auditor general, an integrity commissioner, and an ombudsman and that it establish a lobbyist registry.<sup>40</sup>

The amendments to the Municipal Act that were made later in 2006 gave other Ontario municipalities the *option* of appointing any or all of their own accountability officers and of establishing a lobbyist registry. Ironically, in these respects, other Ontario municipalities are *less* subject to provincial requirements than is the City of Toronto. In late 2014, however, the Ontario legislature amended the Ombudsman Act to provide that the provincial ombudsman would act as ombudsman for any municipality that did not appoint its own ombudsman.<sup>41</sup>

## The city's internal decision-making structures

It was obvious throughout the lead-up to the passage of the City of Toronto Act that the Ontario government wanted to provide more clarity about political accountability within the City of Toronto. This was an awkward objective because provincial intervention in the city's own decision-making structures would seem to run counter to the general direction of the entire enterprise. Nevertheless, this passage found its way into the final provincial-municipal staff report:

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<sup>39</sup> Ontario and Toronto, "Final Staff," 7.

<sup>40</sup> *Statutes of Ontario*, 2006, Chapter 11, Schedule A, sections 158-183.

<sup>41</sup> Ontario Legislature, *Public Sector and MPP Accountability and Transparency Act, 2014*, Schedule 9.

“The Government of Ontario has listened attentively to the many comments that have been made on the question of governance. The Premier has stated that his government would like to see a more effective governance model in place for the city. The government wants a new governance model with characteristics of a mature, responsible government, in which the public interest is paramount. The Government of Ontario favours a model that includes an executive committee chaired by the mayor with specific and defined authority, having the mayor responsible for a long-term strategic plan and budget and recommending to council the hiring of the city manager.”<sup>42</sup>

It was understood by all concerned that the city would have to “fix its governance model” or the province would do the job itself. In fact, Section 152 of the act contains the following draconian provisions that hardly seem consistent with a law designed to provide enhanced municipal autonomy:

- (1) The Lieutenant Governor in Council may make regulations,
  - (a) requiring the City to establish an executive committee from among the members of council and prescribing the composition, powers and duties of the committee, including, for example, requiring the committee to provide strategic directions for the City;
  - (b) requiring the head of council to appoint the chairs and vice-chairs of specified committees of council and specified local boards;
  - (c) requiring the head of council to appoint one or more deputy heads of council from among the members of council and prescribing the duties of the persons appointed;
  - (d) requiring the head of council to nominate or to appoint one or more persons who will have the prescribed responsibilities, powers and duties of a chief administrative officer for the City;
  - (e) establishing procedures for the appointment of persons who are nominated under clause (d) by the head of council;
  - (f) establishing procedures relating to the dismissal of persons who are nominated or appointed under clause (d);
  - (g) prescribing transitional matters relating to the exercise of powers and performance of duties under clauses (d) and (e);
  - (h) requiring council to appoint specified committees composed of members of council elected from specified geographic areas of the City and requiring the City to delegate prescribed powers and duties to the committees;
  - (i) specifying procedures for the adoption by the City of a budget under section 228 or the adoption or re-adoption of a budget under section 229;
  - (j) specifying the duties of the head of council in respect of the adoption or re-adoption of such a budget by the City.

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<sup>42</sup> Ontario and Toronto, “Final Staff Report,” 7

This provincial regulatory authority has never been used however, because in June 2006, city council amended the Toronto Municipal Code to provide that the mayor would appoint a deputy mayor and the chairs of the council's seven standing committees. The mayor, the deputy mayor, and the chairs of the standing committees are all members of the executive committee. Four other councillors are elected by the council to join the mayor and his eight appointees on the 13-member executive committee.<sup>43</sup> Because it was the council that acted to enhance mayoral authority, it was the council that was able to remove that authority from then mayor Rob Ford in November 2013. The authority was restored to Mayor John Tory when he assumed office in December 2014.<sup>44</sup>

There can be no question that the 2006 changes to enhance the authority of the mayor were made as a direct result of provincial pressure of a kind that was never apparent in any other Ontario city. However, despite the provisions (in Section 152.1 (d)) of the City of Toronto Act, the mayor has not received any additional authority with respect to the city manager: he or she still reports officially to the council as a whole. All things considered, the mayor of Toronto is more politically powerful now than in 2005. Whether or not this has contributed to making the Toronto municipal system more transparent and accountable is still very much open to debate. The fact that there was no mechanism (other than provincial legislation to amend or override the City of Toronto Act) to remove Ford from office in 2013 is just one indication of the system's ongoing shortcomings.

## CONCLUSION

It is exceptionally difficult to find anyone who claims that the City of Toronto Act 2006 represents any kind of model that merits emulation. Joseph Garcea, a political scientist very much concerned with chronicling recent legislative changes enhancing municipal autonomy in Canada, has recently managed to write an entire academic article without referring to any of the provisions of the City of Toronto Act.<sup>45</sup> In March 2014, John Honderich, one of the prime advocates for a "new deal" for Toronto in the early 2000s, stated this with reference to the city's potentially enhanced functional authority: "In some ways it is a tragedy... The tool is there, but we have not really used it much." Richard Joy, a political assistant to the minister of municipal affairs in 2006, looked back with these words:

"There were moments when we were having a beer during the more casual side of the process, and we were dreaming about just incredible things that could potentially come from this.... To be honest with you, here we are, how many years later, and not too many things have come forward."<sup>46</sup>

Since David Miller stepped down as mayor in 2010, there has been no political leader in Toronto strongly advocating for more city autonomy and taxing authority. Voters might support stronger municipalities in theory, but there is certainly no evidence that in practice

<sup>43</sup> Jennifer Lewington, "Council approves more clout for mayor," *The Globe and Mail*, June 28, 2006.

<sup>44</sup> Toronto, *Toronto Municipal Code*, Chapter 27: Council Procedures, 31.

<sup>45</sup> "The Empowerment of Canadian Cities: Classic Canadian Compromise," *International Journal of Canadian Studies* 49 (2014): 81-104.

<sup>46</sup> Honderich and Joy were both quoted in Mendelson, "City of."

they favour new varieties of municipal taxation. Rob Ford's mayoral victory in 2010 caused all local politicians to distance themselves from Miller's legacy, part of which was the City of Toronto Act 2006. No one is launching any new crusades; the new mayor, John Tory, seems focused on attracting federal and provincial funds for transit rather than implementing any of the modest new taxation authority that the 2006 Act provided.

The transportation crisis in Toronto clearly goes far beyond the city's fiscal capacity and its boundaries. Solutions will come from elsewhere, although the city itself must play a key role, especially by taking a firm position on fixed-rail public-transit investments that actually are within its boundaries. But regional approaches involving the provincial government and many other municipalities will be necessary for comprehensive solutions involving all modes of transport. Ironically, as we have seen, the original calls for a "Toronto Charter" were for the entire Toronto city-region, not just for the city of Toronto. The territorial focus — for transportation at least — might well be shifting back to the region, but this time no one is suggesting that some kind of charter is any way relevant to a solution.

It is difficult to see how or why political leaders in other Canadian cities would want to emulate the Toronto experience. If anything, the saga of the City of Toronto Act serves as a model to provincial officials outside Ontario for how to defuse and deflect demands for significant changes in the status of a province's major city.

## About the Author

**Andrew Sancton**, a native of Montreal, received his Honours BA from Bishop's University in Quebec and his doctoral degree in Politics from Oxford University. Most of his academic career has been spent as a Professor of Political Science at the University of Western Ontario in London. He was Chair of his Department from 2000 until 2005 and was for many years the director of its Local Government Program, which offers an MPA degree designed for local-government managers. He has published widely on Canadian municipal issues. He was an expert witness in both the Toronto and Montreal court cases that unsuccessfully challenged the municipal amalgamations in those cities. His 2008 book, *The Limits of Boundaries: Why City-Regions Cannot be Self-Governing* was one of five books shortlisted that year for the Donner Prize for the best Canadian book on public policy. His latest book is the second edition of *Canadian Local Government: An Urban Perspective*, published in 2015 by Oxford University Press Canada. His article "What is a Meeting? Municipal Councils and the Ontario Ombudsman" is in the September 2015 issue of *Canadian Public Administration*.

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