



Municipal Infrastructure Funding – Political Leadership Required

'Trust the public with a referendum'

By Chris Lorenc, B.A., LL.B.
MHCA President & Infrastructure Funding Council Chair

The Infrastructure Funding Council's (IFC) report entitled 'A New Balance, A New Order, A balanced role in funding Manitoba's Municipal Infrastructure' (download full report at www.winnipeg.ca or at: www.mhca.mb.ca) was released on May 18, 2011. This was a full year after it was appointed to offer comprehensive strategies and approaches to begin addressing the burgeoning municipal infrastructure deficit faced not just by Manitoba, but all municipalities across Canada.

The IFC recognizes that the infrastructure deficit took decades of policy and funding neglect to create. It will also take decades of discipline, courage, new and dedicated, accountable, transparent revenue streams as well as political leadership at all levels to address a necessarily surmountable challenge.

The challenge is real. At current funding levels the total Manitoba municipal infrastructure deficit is projected to reach \$13.4 billion within the next 10 years.

Quite apart from determining the real numbers which will be influenced by assessing the need, the approach offered by the IFC to begin addressing the deficit is quite simple.

The report suggests, as was offered in the Strategic Infrastructure Reinvestment Reports (SIRP) of 1998 and 2000, that disciplined municipal policy and dedicated revenue streams are required by municipalities.

As much as municipalities can legitimately complain that they raise only 8 cents of every tax dollar collected, yet host 80 per cent of the population and the bulk of Canada's infrastructure, only asking for more money and not changing the manner in which infrastructure as an asset is treated, maintained, rehabilitated and built for future needs, is an incomplete and inadequate approach.

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Simple things like asset management systems, regional infrastructure service delivery, intergenerational debt financing, real adherence to sustainable development principles, focusing on public transit as a solution to mass public movement needs, focusing on existing asset renewal, and life cycle and cost benefit analyzing, are but a few accountable expectations.

These decisions do not require intergovernmental collaboration. What they do require is political will and leadership at the municipal level. Were that to happen, municipal leaders would come to the table with greater moral leadership credibility and authority.

But intergovernmental change is also required. The current approaches and tri-level government fiscal relationships are clearly deficient and in serious need of adjustment.

Provincial and federal governments have seized and jealously guarded unto themselves almost exclusive access to growth taxes – corporate, income and consumption taxes – which grow as the economy grows. They leave to the municipalities as the poor cousin in government hierarchy, to the 'avails' of largely regressive realty taxes as the principle source of municipal revenue.

A comparison of these revenue trends is illustrative of the problem.

While federal 'growth taxes' increased from \$117 billion to \$180 billion per year (1998-2008) and Manitoba's from \$2.4 to \$4.3 billion, the combined realty taxes for all of Manitoba's municipalities increased by only \$136 million per year. Divide that by Manitoba's 198 municipalities to appreciate how little that is.

So while provincial and federal coffers dramatically increased thanks to economic growth enabling tax rate reductions, populations and the hosting of infrastructure which platforms our economy and quality of life exploded at the municipal level without a corresponding revenue growth to handle the additional responsibilities.

Essentially – with very few exceptions – municipalities were starved of access to growth taxes. Provinces and the federal government essentially kept them all, and our infrastructure has crumbled in the process.

And 'crumbled' is an understatement. The Federation of Canadian Municipalities (FCM) estimated this 'crumbling' will cost Canadians \$243 billion at the current rate of decline with the current funding allocated to Canada's municipal infrastructure.

The IFC recognized the above and suggested a three year transition into a new sharing reality, tied to economic growth, public education and referendum.

Municipalities should do without waiting on senior levels of government, that which exists within their authority. The province should, as it has already committed, gradually stop taxing property as the source to fund education. The latter is a provincial responsibility, and the province should, as the government levying this tax, use its own sources and not disable municipal access to revenues. It should also allocate an additional penny of PST to municipalities for infrastructure. Each of these revenues streams should be dedicated to infrastructure by legislation so there is no question of transparency or accountability or purpose.

But more is required. Municipalities and the province should – as the report suggests – strike an implementation committee to review the elements of a municipal infrastructure funding strategy, agree on its elements, and offer it as a package in a provincial referendum for the public to decide.

Collaboratively, municipalities and provincial governments should press Ottawa to make permanent the full transfer of federal fuel taxes to municipal infrastructure and not just its portion. As the largest beneficiary of economic growth the federal government not only has an interest but a funding responsibility.

Finally, all levels of government need primarily to focus on growing the economy, without which, discussions around revenue sharing and allocation are moot.

The public is owed an explanation of the problem. It needs a transitioned long term, transparent and accountable plan and the right through a province – wide referendum to decide how it wishes to address the challenge.

The current practices must stop. The public must be taken into the elected branch confidence; the elected leaders must trust that the public can and will make informed decisions in the context of a referendum.

The facts are there for anyone to see. The need for attention is available to witness on virtually every street in any municipality.

Leadership. We need it, we want it, we are entitled to expect it from those who have offered and been entrusted by the public to lead public policy governance.

There will be an opportunity this fall to put these questions to those aspiring to the office of premier.

Mssrs Selinger, McFadyen and Gerrard -- what say you?

Manitobans are waiting; they will be watching; they will be listening; and they will be voting.

See page 4 for the article "Poor Relations" from The Economist for more on this subject.



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Mayors need more money and more powers

Courtesy of The Economist

WITH glistening office towers rising between broad beaches and forested mountains, big parks and waterfront residences, Vancouver often comes at the top of lists of the world's best cities in which to live. This week, amid much triumphalism from civic leaders, Vancouver is celebrating the 125th anniversary of the moment when a scruffy wooden lumber camp burned to the ground, and the foundations of what is now western Canada's largest city were laid. But for all its picture-postcard image, Vancouver, like other Canadian cities, faces some pressing problems and lacks the means to deal with them.



Those headaches include Downtown Eastside, a ghetto of crime, poverty and drug addiction that is the country's sickest urban area. Soaring house prices intermingle with homelessness. The middle class is being squeezed out to the suburbs. Although the city has lost corporate head offices to Calgary, in oil-rich Alberta, the population of Greater Vancouver is set to rise from 2m to 3.4m by 2041, according to the planners. The city faces a steep bill to expand public transport, upgrade sewers and water systems and repair crumbling civic buildings, roads and bridges.

Vancouver's difficulties are mirrored across the country. Provincial governments have neglected their responsibility for such matters as social housing, welfare, mental illness, drug addiction and policing. All told, Canada's big cities need at least C\$238 billion (\$243 billion) to repair and expand infrastructure, according to the Federation of Canadian Municipalities. But municipal governments lack both money and powers. They get only eight cents out of every tax dollar. Their revenues come mainly from property taxes. Under constitutional arrangements that date back to the time when Canada was largely rural, mayors have fewer powers than their counterparts in some other developed countries.

The result is that mayors must constantly go cap-in-hand to the provincial and federal governments for money for capital projects. The response has been an array of ad hoc funding for urban schemes. For example, such arrangements gave Vancouver a new convention centre, sports facilities and a fast rail link to the airport, all built for the 2010 winter Olympic games. But municipal leaders across the country want more stable and predictable finances. They have lobbied the federal government to make permanent C\$2 billion in annual funding programmes for roads, housing and police set to expire in 2014. In its budget this week the government promised to do so.

Businessmen are starting to worry about urban neglect. The Toronto Board of Trade, a business lobby, recently criticised traffic congestion in the city; it is backing a C\$50 billion plan to expand roads and public transport in the Toronto-Hamilton conurbation over the next 25 years.

If federal politicians have hitherto largely ignored this festering urban problem, that may be in part because rural areas continue to be over-represented in the House of Commons. But four out of every five Canadians now live in a city, and most economic activity takes place in them. Unless they receive the public investment they need, Canadian cities will slowly become less desirable places in which to live and work.

No Heavy News Weekly Next Week

As most of you are aware, the MHCA is moving into a new office the week of June 27th, therefore we will be unable to publish an issue next week. Our new office opens on Monday, July 4th and the Heavy News Weekly will return on July 7th, 2011.

Featuring articles from two of Winnipeg's largest law firms, Thompson Dorfman Sweatman and Tapper Cuddy, each of which are engaged by many in our industry.

Master Agreements

By Rob Olson, Thompson Dorfman Sweatman LLP

If you or your organization have a Master Agreement (MA) for large construction projects, or are considering entering into one, you need to consider how smoothly the project will run once the agreement is in place, and what will affect your bottom line.

Large construction projects need a centralized agreement and structure in place to ensure the project is completed on time with the smallest amount of physical or financial disruption. MAs create employer associations and union councils as "umbrella" groups to help streamline dispute processes and facilitate typical day-to-day matters which arise between the various employers, employees and unions.

Most MAs therefore act as collective agreements. The employers and unions assign their rights to bargain, execute and administer the MA to the umbrella association or council. The assignment is, however, sometimes subject to an understanding, often not found in the MA itself, that the employers and unions, not the umbrella groups, are responsible for issues such as the disputed discipline of employees.

The intent, of course, is that the union which receives dues from the employee will ultimately be responsible for bringing disputed grievances to arbitration, at its own cost and on behalf of its member. The employer responsible for paying the employee will similarly defend the disputed grievance. However, an umbrella association/council may well be deemed to be the employer or union for the employee if the MA is not worded properly (as is sometimes the case).

For instance, if no grievance is pursued on the employee's behalf, the employee might bring an action against the union for its failure to act on his/her behalf in seeking to overturn the discipline, and an action against the employer for unjust discipline.

A difficult question might arise as to who has the responsibility to the employee/union member in that scenario: the umbrella organization, or the employer/union?

This is [of course] a more serious issue for the umbrella union group, which arguably failed to act on behalf of the employee, even though the group might think it was the individual union's responsibility. It also affects all employers under these agreements, however, as well as the umbrella employer group, because they will be forced to expend time and money in defending their interests before the Manitoba Labour Board. Employer groups also have an interest in the unions having a degree of stability and certainty on MA projects, because otherwise the projects will slow down.

The Labour Relations Act of Manitoba says that a "union" is any organization of employees formed for the purpose of regulating relations between employers and employees. Umbrella union councils are formed for that purpose! Also, umbrella union councils often receive a portion of dues from employees under the MA, to pay for "bargaining, executing and administering" the agreement. Umbrella groups are almost certainly therefore "unions", even though they might not intend to have that level of responsibility.

Furthermore, since the umbrella "union" was assigned the rights to bargain, execute and administer the agreement, which would include matters of discipline and termination, then the umbrella "union" may well be stuck acting on behalf of discipline, or terminated employees, even if it never intended to do so.

The simple answer is to include language in the MA specifically excluding the assignment of duties and obligations with respect to, for instance, disputed grievances. The MA must be clear that any umbrella associations/councils are excluded from that responsibility, and that the individual employers or unions retain that responsibility. This will not only clarify matters down the line, it will also avoid costly resource and time consuming difficulties for the umbrella groups, which would negatively affect the project.

So if you think your existing or proposed MA requires clarification, contact a lawyer and ensure that the appropriate clauses are included in the agreement, taking into account the appropriate considerations arising under *The Labour Relations Act*.

Rob's practice is focused in the areas of labour and employment, health law, and civil litigation. He acts as counsel and provides advice to clients, including a number involved in the construction industry. He can be reached at 204.934.2347 or by email at rwo@tdslaw.com.

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WE'RE MOVING! (but just down the street...)

THE MHCA is moving to a new location. After over 21 years in our current building, we are out of space (as some of you might have noticed)!

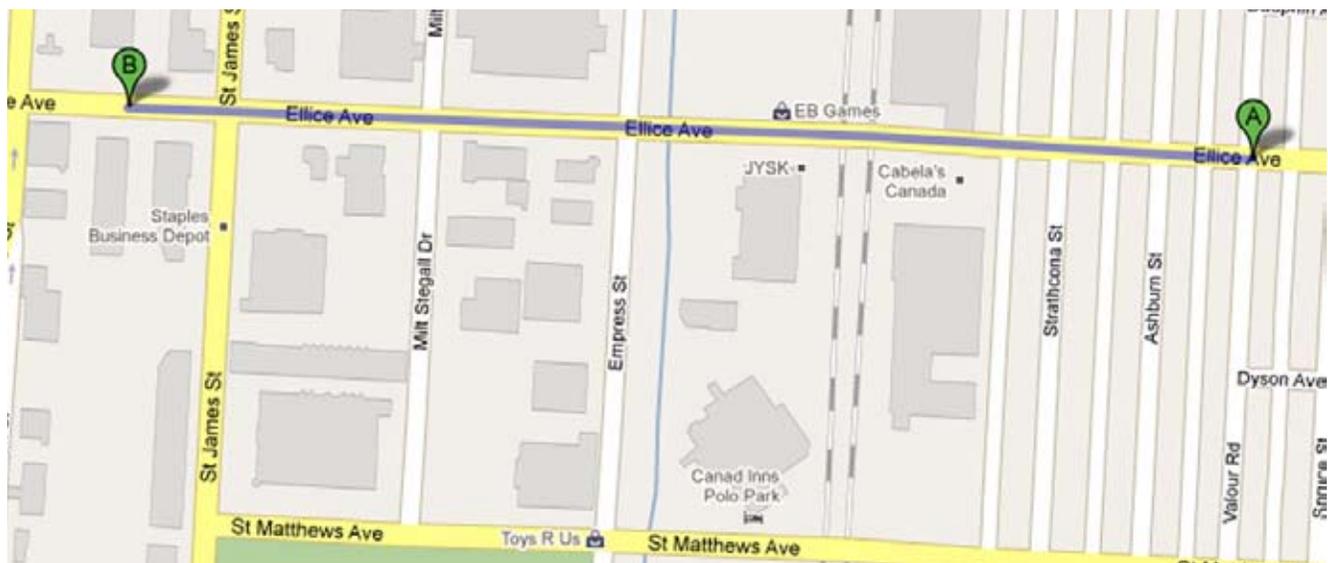
Effective July 4th, 2011 our new address will be:

Unit 3 — 1680 Ellice Avenue, Winnipeg, MB R3H 0Z2

The building is located at the corner of Ellice Avenue and Century Street. The new location will benefit our members with an in-house training facility, expanded meeting spaces, and ample parking.

OUR OFFICE WILL BE CLOSED ON JUNE 23RD, REOPENING AT OUR NEW LOCATION ON JULY 4TH, 2011. PHONE AND EMAIL ACCESS WILL BE VERY LIMITED. WE APOLOGIZE FOR ANY INCONVENIENCE.

Map: (A) Current MHCA Office (B) New Location of MHCA Office





Construction Safety Excellence™

Top tips for Workplace Safety Due-Diligence

By Vanessa Chris

What is Due-Diligence – Due diligence is not just a legal concept. It is a standard by which employers can judge the content and effectiveness of their safety and health programs. By applying due diligence to workplace safety and health, not only will the standards of safety and health in the workplace be improved, but employers will also provide themselves with a defense in the event of charges under the Workplace Safety and Health Act.

The process of keeping your workers safe can often seem like an overwhelming — and sometimes impossible — task. Depending on your work environment, any number of things can go wrong at any given time, and under the law it's your responsibility, as an employer, to ensure you covered every possible step to prevent that "wrong" thing from happening.

While it may be tempting to simply ignore the issue, ignorance is not an excuse in the eyes of the law — and failure to take efficient due diligence measures can end up costing both you and your employees. Here are some tips to simplify the due diligence process, and implement an effective health and safety plan:

1. Set the tone from the top.

When an employee is injured — or worse, killed — many companies don't realize that a failure to act rests on the shoulders of all involved. That means directors and officers also have a responsibility to ensure the proper steps were taken to prevent the accident, and the appropriate resources were provided. It's important, therefore, to ensure those at the top are invested in health and safety, thus setting the tone for the rest of the company.

With management involved, it will be much easier to get employees on board. Because most people want to work in a safe environment, they can help identify potential health and safety risks and make suggestions for procedures that management might not typically catch.

2. Get it in writing.

Just because nothing has gone wrong in the past doesn't mean nothing ever will. Yet, many companies still rely on their senior employees to spread the word about health and safety procedures.

"These companies typically have one senior guy and everyone takes their cues from him on the safe way to work," says Landon Young, a partner at the law firm Stringer Brisbin Humphrey. "In this scenario, safety procedures are inconsistent — and in many cases, incorrect — because they're not written down."

Young says it's important for every company to have their health and safety procedures properly documented, and easily accessible to all employees. Not only will this ensure everyone is taking the appropriate safety precautions, but it will serve as proof of the company's due diligence if something were to happen.

Workplace Safety & Health Act Chapter W210 - Section 57 (1)

In any proceedings for an offence under any of the provisions of this Act or regulations consisting of a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, or to use the best practicable means to do something, it shall be for the accused to prove that it was not practicable or not reasonably practical to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

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Top Tips for Workplace (continued from page 7)

3. Devise a plan.

If you don't have formal health and safety procedures in place, start with the basics.

"See which legal requirements apply to you and learn about what your minimal requirements are," says Jan Chappel, senior technical specialist at the Canadian Centre for Occupational Health and Safety. "Develop a plan and break it into simple steps. The most important thing is to get the process started."

Don't be afraid to ask for assistance while creating your health and safety program. Your safety advisor can help you with this.

4. Train, train and train again.

It's important to ensure all your supervisors have the appropriate certification and training required for your particular work environment. Refresher courses should be offered as required, or as the workplace changes. All employees should also be trained on the equipment they will be using, as well as introduced to the company's health and safety procedures — and this includes temporary employees and sub-contractors.

"Some employers think they're not responsible for agency and temporary workers, but they are," says Young. "All outside agency workers need training and need to be kept abreast of health and safety policies. The agency must, in writing, provide basic health and safety training."

Young suggests requesting access to the employee's training certificates, or conducting a quick quiz to ensure they know the basics. They should also be provided an equipment training session on anything they will be using.

5. Don't be afraid to be the bad guy.

Discipline is an important aspect of any company's worker safety due diligence practices. Not only does it set the tone and enforce proper workplace behaviour, but it shows that breaking the rules is not tolerated. This is something that will be vital in the company's defense if an employee is injured because he or she broke the rules.

It's important, then, to have a solid disciplinary procedure in place that includes verbal warnings, written warnings, suspensions and discharges.

6. Appoint a health and safety committee.

A designated health and safety committee that is made up of both management and employees will ensure that all health and safety-related matters are addressed on a regular basis. This committee should be responsible for ensuring an accident response system is in place, and for conducting internal response investigations after accidents occur. It should also stay abreast of any changes in the workplace, as well as the addition of potential hazards.

"Remember that the workplace changes all the time — even if you're just bringing in a new cleaning chemical — so make sure you assess the hazards of each change and respond accordingly," says Chappel.

She adds that once health and safety is a designated company priority, you may see a spike in accident reports. Don't take this as a bad sign — it's actually a good thing, because employees are identifying potential hazards before they become a bigger problem, which can only make your workplace a safer one in the long run.

Vanessa Chris is a freelance writer based in Toronto



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August 18	COR™ Auditor Refresher (1/2 day AM)
August 19	First Aid 1 — CPR
August 19	Excavating & Trenching (1/2 day AM)
August 19	Flagperson (1/2 day PM)

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