

Bill 33 – *The Municipal Modernization Act (Municipal Amalgamations)*

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I. INTRODUCTION

Manitoba's 197 municipalities were the subject of contention and legislative focus during the Second Session of the Fortieth Legislature. The New Democratic Party (NDP) government introduced Bill 33-*The Municipal Modernization Act (Municipal Amalgamations)*¹ which began the restructuring of small municipalities. The objective behind Bill 33 was to modernize governance through amalgamations of municipalities with populations below 1,000. *The Municipal Modernization Act* altered the existing process for amalgamations contained within *The Municipal Act*² by requiring all affected municipalities to present amalgamation plans and by-passing the usual investigative and reporting stages.

The Bill encountered significant opposition in both the Legislative Assembly and the public discourse. Notably, few voices opposed municipal restructuring. Rather, the criticism was levelled at the lack of consultative processes in the time leading up to the introduction of the Bill and in the implementation of the amalgamations. Neither the

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¹ Bill 33, *The Municipal Modernization Act (Municipal Amalgamations)*, 2nd Sess, 40th Leg, Manitoba, 2013 (assented to 13 September 2013) [The Bill or Bill 33].

² *The Municipal Act*, CCSM, c M225.

Progressive Conservatives nor the Association of Manitoba Municipalities (AMM) opposed amalgamations in theory. Increasing the length of time before amalgamation plans were due or adding in mechanisms for greater consideration of public opinion would have removed the wind from the sails of opponents to Bill 33.

This paper will consider the context of the development of Bill 33 and its passage through the Legislature. Particular focus will be placed on amendments made to the Bill in response to criticism by stakeholders. The authors advance the theory that the provincial government attempted to balanced their commitment to this particular public policy initiative with a need to appear to take into consideration the vocal criticisms of opponents. A detailed analysis of the amendments adopted during committee and report stage reveals that the government may have been acting politically rather than legislatively. Finally, this paper will examine the proposed effectiveness and supporting research of the amalgamation plan. This review will show that the research used to support the legislation was flawed and that there are significant doubts as to the effectiveness of the legislation as written.

II. SUMMARY OF BILL

Through the Bill, any municipalities with less than 1,000 residents are required to develop amalgamation plans jointly with their neighbours.³ Adjacent municipalities are required by the Bill to work cooperatively to determine which municipality would be the best amalgamation partner with preference being given to municipalities with the strongest community of interest.⁴ Community of interest is not defined in the Bill. Plans were to be submitted by December 1, 2013, with the aim being amalgamations completed prior to 2014 municipal elections.⁵ Provisions were put in place to extend the December 1st deadline, where the minister “is satisfied that a municipality’s amalgamation presents significant complexities which cannot be adequately considered and addressed by the deadline.”⁶ The

³ *Municipal Modernization Act*, SM 2013 c 10, s 3(1) [The Act].

⁴ The Act, *ibid*, s 4(1) – 4(2).

⁵ The Act, *ibid*, s 3(4).

⁶ Bill 33, *supra* note 1, s 3(5).

anticipated amalgamation completion date is January 1, 2015. Amalgamations themselves would take place through regulation.

Of Manitoba's 197 municipalities, 85 were below the 1,000 threshold and were required to submit amalgamation plans. Once each of those municipalities is restructured, there will be a 30% reduction in the total number of Manitoba municipalities.⁷ The impact of this bill is wide reaching directing impacting the 425,000 Manitobans living in rural communities.⁸

III. BACKGROUND OF AMALGAMATION

A. Municipal & Various Acts Amendment Act

In 1996, *The Municipal Act* received a complete overhaul⁹ as the result of years of public consultation and consideration.¹⁰ The structure of municipalities and their relationship with the provincial government was significantly altered. For the purposes of this paper, the most vital structural changes was the creation of a 1,000 person threshold for the creation of new municipalities¹¹ and the centralizing of the Municipal Board in the amalgamation process.¹² Under the post-1996 model all proposed amalgamations must be made to the Municipal Board, which has expansive powers to investigate and consider amalgamation proposals.¹³ Additionally, the minister must refer the Board's report to the Lieutenant Governor in Council for its consideration in ordering the amalgamation.¹⁴ These powers still exist under *The Municipal Act* but have been overwhelmed by Bill 33, which have provided an alternative mechanism for amalgamations.

⁷ "Fourteen RMs make amalgamations official", *The Winnipeg Sun* (18 December 2013) online: Winnipeg Sun <<http://www.winnipegsun.com/>>.

⁸ Manitoba Bureau of Statistics, 2011 Census of Population: Manitoba Population and Dwelling Counts, online: MBS <<http://www.gov.mb.ca/mbs/census2011/index.html>>.

⁹ *The Municipal and Various Acts Amendment Act*, SM 1996 c 58.

¹⁰ Manitoba, Legislative Assembly, *Debates and Proceedings*, 36th Leg, 2nd Sess, Vol 59 (3 October 1996) (Rosann Wowchuk).

¹¹ *Municipal and Various Acts Amendment Act*, *supra* note 9, s 4(1-2).

¹² *Ibid*, sub-div 4.

¹³ *The Municipal Act*, *supra* note 2, s 39(1).

¹⁴ *Ibid*, s 41.

B. Justification for Immediate Action

The need for Bill 33 was justified in the media by two interrelated financial considerations; the inability of many municipalities to capitalize on provincial and federal grant programs, and the gross overrepresentation of administration costs in municipal budgets. The province pointed to the \$14 million of gas-tax revenue in federal accounts that were not claimed by Manitoban municipalities because they failed to file the necessary paperwork.¹⁵ The NDP government claimed larger municipalities would have the capacity to claim these monies. Similarly, the province claimed 61% of smaller municipalities spend at least 1/5 of their budget on administration. Amalgamations, it was suggested, would directly reduce those expenditures by eliminating duplication in administrative positions.¹⁶ Whether amalgamations will in practice result in cost-savings and increased efficiency will be considered below in Part 6.

Putting aside the numerous debates over whether amalgamations result in cost-savings overall, there was no explanation offered for the urgency of the restructuring. Given that previous amalgamations in this province have taken several years to accomplish¹⁷ there is little explanation for the January 1, 2015 deadline.

IV. LEGISLATIVE ASSEMBLY

A. Throne Speech

The Throne Speech was the first mention by the Selinger government of municipal amalgamations. As a part of a broader discussion on economic development across the province, the issue of amalgamations was framed a necessary part of modern governance. The model of municipalities was described as hindrance to economic

¹⁵ Bruce Owen, "Small RM resists push to Integrate" *Winnipeg Free Press* (23 January 2013) A 7. The federal government's Building Canada Fund was also frequently mentioned.

¹⁶ *Ibid.*

¹⁷ Interestingly one of the 'success stories' listed on the Manitoba website, the amalgamated municipality of Killarney- Turtle Mountain, took over six years to complete the amalgamation process, not including nearly a decade of joint action between the municipalities to reach the decision, Manitoba Legislative Assembly, *Standing Committee on Social and Economic Development*, Vol 8 (9 September 2013) at 460 (Rick Pauls) [Committee hearing]. Mayor Pauls credits the success to the careful consideration and planning.

growth and service delivery in rural communities.¹⁸ The purpose outlined at the time by the Administrator of Manitoba, Chief Justice Scott was to “ensure communities are able to meet the challenges of the next century,” and “lay the groundwork for new opportunities for rural economic development, population growth and investment.”¹⁹ The government intention to reduce the number of municipalities was met with significant public concern by the Association of Manitoba Municipalities as will be discussed below.

In the Question Periods following the Throne Speech, there was limited discussion of the proposed amalgamations. Premier Greg Selinger spoke to the need to create more efficient units for economic developments.²⁰ Comparisons were made to the recent merging of the Manitoba Liquor and Lotto Corporations, and regional health authorities to emphasize the potential cost savings.²¹

Even prior to the First Reading of Bill 33 the proposed amalgamations caused controversy in the Legislature. In his comments on the Throne Speech, Mr. Nevaskonoff, NDP member for Interlake, lauded the amalgamation effort, describing municipalities that did not cross the 1,000 person threshold as “dysfunctional”.²² Other members seized the comment, demanding apologies for the disrespectful comment.²³

B. First Reading

Minister of Local Government, Ron Lemieux, introduced Bill 33 on May 1, 2013.²⁴ Mr. Lemieux described the bill as ‘visionary’ but offered little other description. The purpose was again reiterated as being to

¹⁸ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 1 (19 November 2012) at 5 (Throne Speech). Traditionally, Lieutenant Governor presents the Speech from the Throne. In his absence, the most senior judge of highest court of the province.

¹⁹ Throne Speech, *ibid.*

²⁰ Manitoba, Legislative Assembly, *Debates and Proceedings*, 30th Leg, 2nd Sess, Vol 2 (20 November 2012) at 22 (Premier Greg Selinger).

²¹ *Ibid.*

²² Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 4 (22 November 2012) at 105 (Tom Nevakshonoff).

²³ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 7 (27 November 2012) at 192 (Brian Pallister).

²⁴ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 34 (1 May 2013) at 883 (Ron Lemieux).

“modernize municipalities and create conditions for stronger municipalities and, [...] a stronger Manitoba through modernization.”²⁵ The Bill passed First Reading on a recorded vote, foreshadowing the opposition the Bill would face in the Legislature and in the court of public opinion.

Following First Reading, Bill 33 was the subject of an ‘Opposition Day’ motion. Opposition Days are limited to three days per session and historically are used for the most important issues before Legislature. By using this procedural mechanism the Progressive Conservatives were able to dedicate an entire sitting day to criticizing the municipal amalgamation proposal.

The motion itself called for:

the Legislative Assembly of Manitoba urge the provincial government to begin working co-operatively and respectfully with Manitoba municipalities, rather than in an adversarial and dictatorial fashion.²⁶

Mr. Blaine Pedersen, sponsor of the motion, spoke of the unrealistic nature of the December 1, 2013 deadlines and the lack of consultation with cities. Highlighting his own consultation, Mr. Pedersen spoke of the concerns of Plum Coulee, a town just under the population threshold.²⁷ The motion was defeated at the conclusion of the sitting day.

C. Second Reading

On May 21, 2013, seconded by Hon. Peter Bjornson, Minister for Entrepreneurship, Training and Trade, Ron Lemieux moved to have Bill 33 read a second time.²⁸ Speaking in support of the Bill, Lemieux spoke to the benefits of larger municipalities: large, diverse populations, increased tax base, and better opportunities for economic development. His remarks at the time included mention of the (then) current municipal boundaries having been established “more than a century ago” but that municipalities have seen considerable change, both internally and in the world around them since that time. Two studies by Brandon University’s Rural Development Institute were also cited at

²⁵ *Ibid.*

²⁶ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 42 (15 May 2013) at 1291.

²⁷ *Ibid* at 1292.

²⁸ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 44B (21 May 2013) at 1540 (Ron Lemieux).

that time as indicating that “strong municipalities comprise larger geographic regions,” and that “municipalities of populations of at least 3,000 and a tax base of at least 130 million (dollars) are best positioned for long term viability.”²⁹

Mr. Lemieux went on to acknowledge apprehension from municipal leaders rising as a result about concern for local culture. He also mentioned that he had had multiple dialogues with mayors, reeves, and chief administrative officers at a meeting of the Association of Manitoba Municipalities.³⁰

Following the introduction, Mr. Lemieux outlined the features of Bill 33. He described how municipalities with fewer than 1,000 residents would be required to develop a plan for amalgamating with one or more neighbouring municipalities by December 1 2013, in time for the general municipal elections of 2014.³¹ He also listed multiple avenues of support that the provincial government would provide for assisting the municipalities in this process.³²

Following Lemieux’s introduction of the Bill, Liberal member Hon. Dr. Jon Gerrard took the floor to put his views on the record. He began by suggesting that the government was, ironically, (given the anti-bullying provisions of Bill 18 that was also before the Legislature at that time,) bullying municipalities. Gerrard highlighted the rigidity of the amalgamation plan looking specifically at the provision of services and the potential impact on cost. Gerrard advocated for a case-by-case consideration of municipalities with an eye to those two factors.³³ While not explicitly opposed to municipal amalgamation, the focus of the criticism was the hurried nature of the amalgamation plans and the involuntariness of the amalgamation.³⁴

Debate on Bill 33 resumed May 27th as Local Government Critic Blaine Pedersen voiced his criticism of the amalgamation plans. Like all those who would speak about against the Bill from the Progressive Conservative Party, Pedersen focused upon the lack of respect the

²⁹ *Ibid.*

³⁰ *Ibid* at 1541.

³¹ *Ibid.*

³² *Ibid* at 1541-1542.

³³ *Ibid* at 1543.

³⁴ *Ibid.*

forced amalgamations demonstrate. The Opposition member went so far as to call the undemocratic, and evidence of “dictatorship”.³⁵

Following Pedersen, Opposition House leader Kelvin Goertzen made a “hoist motion,” moving that Bill 33 not be read for a second time now but be read six months from hence.³⁶ This would have significantly altered the Bill as its reintroduction would have been just ten days prior to the amalgamation plan deadlines. Speaking to this motion was its seconder, Larry Macguire, who benefited from the transfer of unlimited speaking time. Under the rules of the Manitoba Legislature, leaders of recognized opposition parties may transfer their unlimited speaking time provided the Speaker receives written notice.³⁷ The purpose of the hoist motion was ostensibly to “give the government a chance to change their mind” about the general form of this municipal restructuring.³⁸ One has to question whether the motives may have been less pure as the Member for Arthur-Virden used a large portion of his unlimited speaking time to criticize the PST increase.³⁹ Debate on the hoist motion and the Second Reading were adjourned to a later date.

Debate did not resume on the hoist motion until September 3rd, the lengthy delay due to several other controversial bills before the Legislature but Bill 33 was a frequent topic during Question Period. As debate continued, the focus of the criticism was mainly on the forced nature of the amalgamations and the hurried nature in which they were to take place. Three members of the Official Opposition spoke in support of the hoist motion. Interestingly, no member of the government spoke against this motion, although these authors suspect that may have been a result of ‘legislative fatigue’ so to speak as the Legislature had sat some twenty weeks by this point. The motion failed that day, by a vote of 29 to 16.⁴⁰

³⁵ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 47 (27 May 2013) at 1693 (Blaine Pedersen).

³⁶ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 47 (27 May 2013) at 1700 (Kelvin Goertzen).

³⁷ *Rules, Orders and Forms of Proceedings of the Legislative Assembly of Manitoba*, s 43(2).

³⁸ *Supra* note 36 at 1704.

³⁹ For example his home town of Virden, which is very close to the Saskatchewan border, will suffer from the tax increase as there will be an incentive for individuals and businesses to shop in the neighbouring province whose tax rate is less than half the Manitoban.

⁴⁰ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol

Second Reading debate continued immediately following the defeat of the hoist motion. Like much of the previous comments, members of the Opposition spoke against Bill 33 focusing on the forced nature of the amalgamations and the unrealistic deadlines. Each commentator told anecdotes about partnerships or amalgamations in their constituency. For example, Iain Wishart spoke of the informal resource sharing arrangements between Portage-La-Prairie and surrounding municipalities that took over ten years to sort out.⁴¹ These individual stories carried a theme of existing cooperation between municipalities and highlighted the importance of taking the time to ensure that resource sharing was workable. Debate concluded on September 5th in accordance with an agreement between the government and Official Opposition to allow Bill 33 to move forward.⁴² The Bill passed on division 30 to 18.

D. Committee Hearings

On September 9 and 10, 2013 Bill 33 went to the Standing Committee on Social and Economic Development. Sixty-one people made presentations to the Committee and ninety-three written submissions were received and entered into the record.⁴³ Aside from multiple private citizens giving oral and written submissions, many of both groups of people were present to represent rural municipalities, villages, and towns.

First to address the Committee was Doug Dobrowolski, president of the Association of Manitoba Municipalities. Mr. Dobrowolski's comments addressed the undemocratic nature of the forced reform, the additional stress created by the deadlines, and the artificiality of the population threshold.⁴⁴ Additionally, Dobrowolski raised technical aspects of the Bill which had not figured prominently in the debates in the Legislature. The reduced role for the Municipal Board and the potential for ministerial discretion over municipal policing services in

101B (3 September 2013) at 4736.

⁴¹ *Ibid* at 4748.

⁴² Reference to this agreement was made by Ralph Eichler in his comments on September 5, "In fact, we know that under our interim agreement, that this legislation will pass." Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 103B (5 September 2013).

⁴³ Manitoba, Legislative Assembly, *Standing Committee on Social and Economic Development*, (8 September, 2013).

⁴⁴ Committee hearing, 9 September 2013, *supra* note 17 at 457.

the future were just some of his concerns.⁴⁵ The AMM called for four compromises: 1) an assessment of the viability and sustainability of communities at current provincial funding levels, 2) elimination of the thousand population threshold requirement, 3) provision of support to those municipalities working toward the amalgamations before the next municipal election, and 4) work with struggling municipalities on acceptable timelines that will result in better service to citizens.⁴⁶

Other presenters from municipalities stressed the impact that even the discussion about amalgamation had caused. Mr. Archie Heinrichs,⁴⁷ the mayor of Plum Coulee raised the issue of local developers in his town who were considering stopping building housing developments over concerns that amalgamation would devalue the property in the town. Additionally, he stated that the town's local credit union had taken away the town's line of credit over uncertainty of "where we're going to stand legally."⁴⁸ Many other speakers such as Mr. David Sutherland questioned the value of the potential cost savings generated by the proposed amalgamations and raised concerns about the loss of identity that many of the areas would face.⁴⁹ A great many speakers spoke about cottage communities, though some, such as Garrett Surcon acknowledged Mr. Lemieux's public statements prior to the hearings regarding exemptions but chose to underline the point regardless.⁵⁰

The written submissions covered many of the same points. Aside from Mr. Bill Ashton of Brandon University who spoke to the Rural Development Institute study, only one speaker, Mr. David M. Sanders spoke in support of Bill 33, though he did note that he lives in Winnipeg and was not directly affected.

The members of the Committee engaged with presenters to a limited degree. Minister Lemieux commonly just thanked presenters for their time. Opposition member, Stuart Briese posed a standard question to a majority of presenters: can you speculate as to why the Provincial government is forcing amalgamations? And do you anticipate another step in the future?⁵¹ Clearly, the purpose of the line

⁴⁵ *Ibid.*

⁴⁶ *Ibid* at 458.

⁴⁷ Committee hearing, 8 September 2013, *supra* note 43.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ See generally, Manitoba Legislative Assembly, *Standing Committee on Social and*

of questioning was to highlight the lack of consultation and insufficiency of the reasoning for Bill 33.

Following the numerous presentations, the Committee proceeded to clause-by-clause consideration of the Bill. During the voting, Minister Lemieux introduced three amendments to the Bill which were no doubt in reaction to the extremely strong public reaction to displayed over the preceding months.

The first amendment sought to further clarify when the Minister would consider extensions to the December 1st deadline.⁵² Expanding subsection 3(5) criteria for ministerial discretion through reference to municipalities which has been negatively affected by recent disaster was a concession to rural municipalities, particularly in Western Manitoba, which continued to be affected by the 2011 flooding. Mr. Lemieux explained the proposed burden on municipalities as “an onus to show how exactly this [disaster] has stopped you from working with your neighbours to put together a plan”.⁵³ Although the amendment aimed to pacify concerned municipalities, the language of the amendment was little more precise than the original phrasing. The amendment passed.

The second and third amendments addressed the widespread anger over potential amalgamations in ‘resort communities’. Communities like Victoria Beach and Dunnottar had been distinguished in *The Municipal Act* as they had been extended different election dates to accommodate citizens who only reside in the communities only during the summer months.⁵⁴ These amendment made those municipalities not subject to the Act and maintained their summer municipal elections.⁵⁵

With those amendments, Bill 33 was passed and reported to the Legislative Assembly.

Economic Development, Vol 8-9 (9-10 September 2013).

⁵² Manitoba Legislative Assembly, *Standing Committee on Social and Economic Development*, Vol 9 (10 September 2013) at 639 [Committee hearing, September 10].

⁵³ *Ibid* at 641.

⁵⁴ *The Municipal Act*, *supra* note 2, s 86(3).

⁵⁵ Committee Hearing, September 10, *supra* note 52 at 643.

E. Report Stage Amendments

Opposition member Stuart Briese used the report stage to introduce a number of amendments which were met with varying results. The first two amendments, which were supported unanimously, altered the consideration for selecting an amalgamation partner and for ministerial recommendation of amalgamation. Both amendments broadened the categories of consideration. Of particular note is the second amendment which called for the minister to have regard for findings of the Municipal Board where the amalgamation had been referred to them.⁵⁶ The fact that the government supported this amendment is slightly ironic given that they opposed the following two amendments which would have maintained the Municipal Board's influence in restructuring process.

Mr. Briese brought forward amendments that would force the minister to refer the matter to the Municipal Board should the municipal council oppose the amalgamation.⁵⁷ The amendments also proposed a number of criteria before the Board could recommend in favour of amalgamation. The Opposition spoke in favour of the amendments by pointing to the expertise of the panel and the need for "some sober second thought".⁵⁸ These amendments were not passed, on division.

The most controversial of the amendments proposed by the Progressive Conservatives was to add a definition of 'resident' which included any person eligible to vote in municipal elections. The effect of this would be to include in the population those who would not be included in the census data. Essentially, it would recognize all property owners, benefitting other cottage communities beyond those falling under the resort communities designation. By inflating the population Lemieux claimed it would "fundamentally gut this bill."⁵⁹ Inevitably, the amendment was not passed.

The next proposed change to the Bill would have also significantly altered the entire amalgamation scheme by moving the implementation of the amalgamations from January 1, 2015 to January 1, 2019, and the

⁵⁶ See The Act, *supra* note 3, s 5(2)c.

⁵⁷ For the exact text of the motion to amend see Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 107B (12 September 2013) at 5040.

⁵⁸ *Ibid* at 5041.

⁵⁹ *Ibid* at 5044.

extension date to January 2021. An amendment to move the deadline for amalgamation plans back by four years was also put forward. These amendments were not passed.

Further amendments were brought forward to require the Municipal Board hold public consultations should they be referred the matter, and to maintain existing police servicing arrangements. These were not passed.

The fourth successful amendment extended the deadline for unified police services in newly amalgamated municipalities from three to five years.

F. Third Reading and Royal Assent

Third reading on Bill 33 was conducted on September 13, 2013.⁶⁰ The Third Reading saw renewed debate as both Mr. Lemieux and Opposition members took the last opportunity to speak on the record. Mr. Lemieux lauded the Bill for modernizing and opening Manitoba municipalities to new possibilities.⁶¹ He also emphasized the flexibility his party had shown in modifying the Bill in response to the concerns of various stakeholders.⁶² Predictably, Opposition members spoke to the forced nature of the amalgamations and the lack of meaningful consultation over the past several months.⁶³ Royal Assent was granted by His Honour Philip S. Lee, Lieutenant Governor of Manitoba on September 13, 2013.

V. POLITICALLY STRATEGIC AMENDMENTS

Having briefly described the context of Bill 33's passage into law, we will now turn a consideration of the politicized nature of the legislative process. We will address the numerous amendments made to Bill 33 and suggest that these amendments were aimed at appeasing stakeholders' concerns but did not result in any meaningful change. Rather amendments were merely permissive, token efforts with the exception of the 'resort communities' amendment which resulted out of political necessity.

⁶⁰ September 13, *supra* note 40 at 5096.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ See the remarks of Cliff Graydon, *supra* note 57 at 5101-2.

From the outset of the debate surrounding municipal amalgamations, the NDP government and Minister Lemieux were dead set in the Bill in its introduced form. In fact Lemieux is quoted as saying “[s]ometimes you have to take a cattle prod and say there is good reason for doing this. Yes this is going to happen”.⁶⁴ Yet as time wore on and all municipalities continued to exhibit more pressure the governing party softened their stance to some degree. However, we will argue that the amendments introduced by the Minister in committee were politically strategic and designed to appeal to NDP supporters. Furthermore, the amendments supported by the government during Report Stage were additional attempts to appear flexible but made without any serious intention to address the concerns of stakeholders.

A. Committee Stage Amendments

Amalgamation Plan Extension

In committee Minister Lemieux introduced an amendment to section 3(5) which expanded the considerations in the exercise of discretion to extend the December 1st deadline for amalgamation. The original provision read:

3(5) The minister may, by written order, extend the deadline under subsection (4) if he or she is satisfied that a municipality's amalgamation presents significant complexities which cannot be adequately considered and addressed by the deadline. An extension may be made subject to the terms and conditions specified by the minister.

The successful amendment resulted in the following provision:

3(5) The minister may, by written order, extend the deadline under subsection (4) in respect of a municipality if he or she is satisfied of the following:

- (a) the municipality's amalgamation presents significant complexities which cannot be adequately considered and addressed by the deadline;
- (b) the municipality's ability to participate in preparing an amalgamation plan has been negatively affected as a result of a recent natural or other disaster, such as flooding.

An extension may be made subject to the terms and conditions specified by the minister.

⁶⁴ Jim Mosher, “Lemieux Sticking to Guns on Amalgamation” *Interlake Enterprise* (12 April 2013) online: Interlake Enterprise <<http://www.enterpriseneews.ca/index.php/news/politics/1512-lemieux-sticking-to-guns-on-amalgamation>>.

The amendment, as discussed above, was intended to provide greater clarity about when extensions may be granted.⁶⁵ No doubt this amendment was desired to appeal to municipalities who continued to experience long lasting impacts from the flood of 2011.

The amendment's drafting is problematic. Because legislative interpretation principles requires that provisions be read to avoid redundancy, section 3(5) a and b should be read as both mandatory requirements. This would mean that a municipality would need to make out that its ability to participate in amalgamation planning was negatively affected by a disaster and the amalgamation presents significant complexities. The lead in phrase of "the minister must be satisfied of the following" supports such an interpretation. This is at direct odds with the Minister's claim that this amendment increased flexibility, how do additional requirements make it easier for municipalities to prove the need for an extension?⁶⁶

Despite this language concern, it is unlikely that the amended provision would have any significant impact on the decision making process as the minister retains sole discretion to grant the extension. Furthermore, Minister Lemieux's statements when introducing the amendment suggest that extensions would be rarely granted despite this 'flexible' provision:

there is an onus, though, on those local governments to show how are you negatively affected and how has this negatively affected you in a way that you can't put together and you're not working—not able to work with your neighbours because it's so catastrophic that you can't work with your neighbours. Your—all your energies have been dedicated to something that has negatively affected you so much that over the past—the nine months or so, you have not been able to work with your neighbours, consult with your neighbours and put a plan together.⁶⁷

The burden described is very high and likely not to be met by many municipalities. Notwithstanding the rhetoric this amendment was an attempt to appear to be acting without actually altering the power of the minister to grant and withhold extensions.

Resort Communities

The clearest evidence of the strategic use of amendments came in the form of the resort communities designation. In introducing the

⁶⁵ Committee hearing, September 10, *supra* note 52 at 639.

⁶⁶ Committee Hearing, September 10, *ibid* at 641.

⁶⁷ *Ibid.*

amendment, Lemieux spoke to the “unique situations” that these resort communities present pointing to the 5,000 people that reside in these communities in the summer and the some \$130 million tax base.⁶⁸ As noted above, the potential amalgamation of these municipalities received a fair amount of criticism because of their unique characteristics.⁶⁹ Census calculation of population excludes the hundreds of people who reside in the area during the summer months. These seasonal residents are very involved in the community and have in the past been considered and accommodated.⁷⁰ Crediting his colleagues who represent River Heights, Selkirk and Gimli, Lemieux called the amendment an example of the flexibility of the NDP government.

Opposition MLAs picked up on the strategic nature of the amendment. While speaking to the limited exception for resort communities, Mr. Briese had this to say

the minister is so worried about his Winnipeg vote, he's forgot about the rest of the province. He need to recognize he is Minister of Local Government for the entire province, not just for where his voters are being—are threatening him.

There is a kernel of truth in this partisan comment. Of the NDP's 34 seats in the Legislative Assembly, 27 are held in Winnipeg. Without broad support in the capital region the NDP would be facing significant difficulty in the 2015 election. During the committee stage cottage owners in the Victoria Beach and Winnipeg Beach areas were very vocal. These owners for the most part, maintain full time residences in Winnipeg. The hard line with amalgamations only extended as far as was politically viable for the NDP.

Further evidence that this amendment was tailored to cottage owners who reside in Winnipeg can be seen in the NDP's failure to support an amendment brought forward during the report stage. Mr. Briese proposed an inclusion of a broader definition of resident which would have included all property owners. Essentially, the amendment would have included seasonal residents in the population making it easier for municipalities to reach the population threshold. This would

⁶⁸ *Ibid* at 642.

⁶⁹ See for example the Committee Hearing, September 9, *supra* note 16 at 493 (Tom Farrow).

⁷⁰ Municipal elections in are held in July in these cottage communities to increase participation and ease for property owners, see *The Municipal Act*, *supra* note 2 at s 86(3).

have the recognized seasonal residents in other communities beyond Victoria Beach, Winnipeg Beach and Dunnottar. The government refused to pass the amendment. It is difficult to explain this refusal to recognize part-time residents in other communities when a similar exclusion had already been granted. The amendment introducing section 9(2) is an excellent example of bending public policy to appease core voters.

B. Report Stage Amendments

During the report stage, Minister Lemieux promised that amendments which are “reasonable and make sense” would be accepted. Yet the two Opposition amendments accepted by the government had, in this author’s opinion no practical effect and were aimed at the appearance of compromise. The first amendment changed the consideration of community interest when selecting an amalgamation partner from mandatory to permissive. By moving from “preference is to be given” to “preference may be given” Mr. Briese hoped to show more respect for municipalities.⁷¹ In actuality the change has does not alter the total discretionary power of the minister to recommend amalgamations.⁷²

The second successful opposition amendment requires the minister to have regard for recommendations of the Municipal Board when recommending amalgamation.⁷³ This amendment recognizes the fundamental role that the Municipal Board has had in amalgamations in the past and in theory shows deference to their unique expertise. The NDP’s support for this amendment however, was an empty gesture. Lemieux in one breath spoke of his great respect for the Board and in the next refused an amendment that would require consultation of the Board before amalgamations.⁷⁴ As discussed above under *The Municipal Act*, the Board had sole discretion over expropriations and amalgamations. The nod to the Board through in the amended section 5(2) was the final attempt by the NDP to appear malleable without significantly deviating from their original plan.

The amendments made to Bill 33 were not serious concessions to concerns raised by the public but minor tokens which did nothing to

⁷¹ *Ibid* at 5039.

⁷² The Act, *supra* note 3, s5(1).

⁷³ The Act, *ibid*, s5(2).

⁷⁴ September 12, *supra* note 57 at 5041.

alter the minister's ability to control the municipal restructuring process.

VI. PURPOSE AND PROJECTED EFFECTIVENESS

Finding efficiencies by amalgamating Manitoba municipalities is not a new idea. Municipal amalgamation has been studied and considered by at least two previous governments.⁷⁵ Mandatory amalgamation, such as that arising from *The Municipal Amalgamations Act* comes at great political cost.⁷⁶ It is important, then, to ensure that any legislation designed to improve municipalities will not just be brought forward with good intentions but will unequivocally provide the benefits that it purports to create. The next section examines the rationale behind the legislation and some of the conflict that it generated. Additionally it examines the research that was used in justifying the criterion for amalgamation, namely the population threshold of 1,000 people. Finally it suggests potential areas for further research in the area.

A. Purpose

Arguably the purpose of any legislation is to be effective in meeting its purpose. The purpose behind Bill 33 was stated "to modernize municipalities and create conditions for stronger municipalities."⁷⁷ While a vague purpose to be sure, the RDI study commissioned by the Ministry of Local Government, "Indicators and Criteria for Strong Rural Municipalities in Manitoba," set out a series of indicia for strong municipalities based on both original research and previous research done across the country.⁷⁸ As the study was commissioned with Bill 33 in mind it, arguably, forms a solid baseline to examine the potential for the legislation to be successful.

The criteria for "strong municipalities" in the RDI study was developed from examining three previous studies: i) A study by the Commissioner on the Future of Local Governance of New Brunswick;⁷⁹

⁷⁵ September 13, *ibid* at 5096.

⁷⁶ For example the large amount of debate, newspaper engagement, and the generally negative tone of the speakers at Committee as discussed above.

⁷⁷ May 1, *supra* note 60 at 883.

⁷⁸ B. Ashton et al. "Indicators and Criteria for Strong Rural Municipalities in Manitoba" April 25, 2013.

⁷⁹ Finn, Jean-Guy. (2008) *Building Stronger Local Governments and Regions: An Action Plan for the Future of Local Governance in New Brunswick*, Report of the

ii) a “Municipal Health Checklist” from the Association of Manitoba Municipalities⁸⁰ and iii) a study that identified “functional economic areas.”

In order to determine the size and scope of a “strong municipality” several municipalities were selected based on the criteria in the listed studies. Additional municipalities were selected for inclusion in the RDI report via two other methods: i) “field experience of Manitoba Local Government staff”⁸¹ and “administrative efficiency” which was a function of per-capita administrative expenditure.⁸² A list of 30 municipalities was generated that met the criteria of one or more of the methods.

The study then went about determining thresholds for their baseline indicators of population levels and tax assessment so that they could report on what would be target goals in terms of those baseline indicators for municipalities looking to become “strong.” The study determined that, using the indicia selected, “strength is determined in this case by the capacity of the municipal jurisdiction to assess and to implement strategic economic development investments.” By examining the numbers for the median municipality for population and tax assessment levels (1/2 of the communities in each factor group were above the median and 1/2 were below)⁸³ in the determined “strong” municipalities, RDI determined that in order to meet this threshold in the current Manitoba economy, a strong municipal jurisdiction should have a 3,000 population threshold and a \$130MM taxable assessment threshold.⁸⁴

Commissioner on the Future of Local Governance (Fredericton: Government of New Brunswick).

⁸⁰ Association of Manitoba Municipalities. Municipal Health Checklist: Manitoba Municipalities: Embracing 21st Century Challenges. Retrieved by the study Feb 23, 2013 from <http://www.anmm.mb.ca/PDF/Tools%20for%20Change/checklist.pdf>

⁸¹ Stabler, Jack C. and M. Rose Olfert. (2002) Functional Economic Areas of the Canadian Prairie Region (Agriculture Canada), retrieved by the study authors Feb 23, 2013 from <[http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/csi12110/\\$FILE/functional_economic_areas_2002.pdf](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/csi12110/$FILE/functional_economic_areas_2002.pdf)>.

⁸² *Ibid* at 11.

⁸³ *Ibid* at 14.

⁸⁴ *Ibid* at 16.

B. Working the Commissioned Study Into Legislation

It is interesting to note that while two baseline indicia were set out for the indication of strong economies, it is only the population figure that achieves a codified place in the legislation. While the population and taxable assessment numbers do not appear to exist independently of each other in the study, no mention of taxable assessment is included in Bill 33. Moreover, the population figure put into the legislation is not one of post-amalgamation numbers (e.g. “municipalities will have post-amalgamation populations of no less than 3,000”) but one of pre-amalgamation numbers.⁸⁵ Part of this is explained by the fact that the population number was decided on prior to the commissioning of the study. The RDI study was commissioned on February 25, 2013 and was received on April 25, 2013. The Speech from the Throne on November 12, 2012 contained reference to the 1,000 person number⁸⁶ and it was with that number that a commitment to the Association of Manitoba Municipalities was made. The legislation took “a lot longer than a couple of weeks to draft,” and so had to be written prior to the receipt of the report in order to be introduced for May 1, 2013.⁸⁷

C. Concerns with the RDI Criteria and Bill 33

The RDI study is curious in that it uses pre-existing Manitoba municipalities to attempt to determine what factors can be targeted to create strong municipalities. On one hand this is laudable: Manitoba municipalities face unique challenges. There is no telling if what has worked in other provinces or countries would work here and so the sole use of Manitoba data, and extrapolating indicia from it may be the best method to achieve the aims of the study and ultimately the aims of the legislation. On the other hand however, correlation, famously, does not always, (or arguably even usually,) imply causation.

Examining already strong municipalities and searching for common factors among them may not result in those discovered factors being causative. There is no research to suggest that, in Manitoba, municipalities with populations of over 3,000 always score well on the “strength factor” scales.

⁸⁵ Bill 33, *supra* note 3, s. 3(1).

⁸⁶ *Supra* note 18.

⁸⁷ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 69B (4 July, 2013) at 3106.

Even if causality can be found, it is also important to note that the data set examined (already larger, strong municipalities) may have vastly different factors at play than municipalities that are artificially amalgamated.

All of this, however, overlooks the larger concern: there seems to be very little evidence that population thresholds are any indication of municipality strength by any measure. The RDI study does not appear to cite a study that supports the idea that population thresholds are directly tied to any municipal benefit.

It suggests the population metric in reference to the New Brunswick study from which some of the evaluative criteria were pulled⁸⁸ but it is important to examine what is indeed referenced.

The presumption appears to come from a part of the New Brunswick study that states

to ensure that the proposed entities would not find themselves with immediate or long-term issues related to viability, or both, and in particular problems of financial capacity and civic participation⁸⁹

and goes on to state that “[b]ased on this analysis the different approaches and the focus on strength as capacity, the judgment in this report is that in the current Manitoba economy, a ‘strong’ municipal jurisdiction is required to have [...] a 3,000 population threshold.”⁹⁰

While these studies are of value because of the fact that their data is Canadian, neither of these, however, reference population as a factor, nor do they compare relative populations in determining relative efficacy of the amalgamation process. Large-scale municipal amalgamation that took place in Sweden has been examined in the literature where it was determined that in that instance there was either a null or positive effect (depending on the factors examined,) in amalgamations that reduced the number of municipalities below a 2,000 person threshold.⁹¹ It is, however, important to note that in this case the municipalities were amalgamated over 50 years ago, and took place at a time of massive national social upheaval, in particular the development of the national welfare state.⁹²

⁸⁸ *Supra* note 79.

⁸⁹ *Ibid* at 84.

⁹⁰ *Ibid.*

⁹¹ Michael Nelson “Municipal Amalgamation and the Growth of the Local Public Sector in Sweden” (1992) 32:1 *Journal of Regional Science* at 49.

⁹² Niklas Haines, “Amalgamation Impacts on Local Public Expenditures in Sweden”

By contrast, studies of Australian rural municipal amalgamation have examined amalgamation as a whole, though not related to population. At least one study found that while, as a general rule, benefits can accrue in the form of increased potential for service delivery, significant reduction in costs to taxpayers was not observed.⁹³ Again, population was not examined but the study is one of many examples of large scale municipal amalgamations that showed negligible benefits to the amalgamated communities and the people who live in them.

It is of tremendous importance to note that, (as referred to above as a positive feature of the RDI study,) the more detailed rural amalgamation studies above are not based on Manitoba data which may be, and likely is, unique in the world. As a result, there truly is no reliable method to predict with any degree of certainty the possibility of success to be found in amalgamating municipalities with populations under 1,000.

VII. CONCLUSION

To date forty-seven regulations have been enacted that merged 107 rural municipalities and towns. There has been very little information about the success of these amalgamations or about the pace at which further amalgamations may occur.⁹⁴ The long-term concern is, however, that the legislation, while well intentioned, may not provide the benefits that were intended by it. There appears to be little support for the activation thresholds found within the legislation and, albeit limited, examination of other data on amalgamations provides an absence of truly strong support to suggest that mandatory amalgamations of rural municipalities is worth the financial and identity cost to the municipalities in question, or to the Government enacting the legislation in terms of political capital. Suggested topics for further research in this area includes a thorough analysis of the correlation of population numbers to community strength indicators in Manitoba, as well as a large scale meta-analysis of pre- and post-

(2014) *Local Government Studies* at 3.

⁹³ Chris Aulich, Graham Sansom & Peter McKinlay "A Fresh Look at Municipal Consolidation in Australia" (2014) 40:1 *Local Government Studies* at 10.

⁹⁴ September 3, *supra* note 40 at 4732.

amalgamation population levels as compared to community strength indicators in global samples.

In early December 2013, the AMM announced it would be bringing an action in the Court of Queen's Bench to force the government to reconsider its decisions regarding amalgamation. In October the province sent out letters to 32 municipalities outlining the details of the forthcoming amalgamation including partners, name of the new municipality and proposed location of new municipal offices.⁹⁵ These letters containing the Minister's decision to make certain recommendations on amalgamation were sent out prior to submission of the plans required by section 3 of the Act.⁹⁶ Under the Act the minister must consider the plans before making a recommendation.⁹⁷ The AMM calls on the Court to set aside the decision with regard to those 32 municipalities on the basis that the minister failed to consider the relevant factors outlined in the Act.⁹⁸ Oral arguments were heard before Justice Dewar on March 10th and 11th, 2014. The application was rejected as the letters were found not to constitute a ministerial decision capable of review.⁹⁹

The lack of consultation before the introduction of the bill, and the failure to substantially alter the bill in response to public concerns together raise a serious issue of public consultation in the formation of legislation. When is the appropriate time for consultation with stakeholders? At the centre of most democratic theory is some form of public input in policymaking process.¹⁰⁰ Manitoba, however, is unique in that it allows public input on every piece of legislation before the Legislature in committee hearings. This procedure is an example of the democratic nature of the legislative process.

⁹⁵ "Manitoba Sued by Municipalities over forced amalgamation", *The Globe and Mail* (11 December 2013) online: The Globe and Mail <<http://www.theglobeandmail.com/>>.

⁹⁶ The Act, *supra* note 3, s 3.

⁹⁷ The Act, *ibid*, s 5(2).

⁹⁸ Association of Manitoba Municipalities, News Release, "AMM Legally Challenges the Amalgamations Act" (13 December 2013) online: AMM <<http://www.amm.mb.ca/documents/Amalgamationrelease-December11.pdf>>.

⁹⁹ *The Association of Manitoba Municipalities et al v Manitoba et al*, 2014 MBQB 64 at para 53, available on Canlii.

¹⁰⁰ James Fishkin, Robert Luskin, and Roger Jowell, "Deliberative Polling and Public Consultation" *Parliamentary Affairs* (2000) 53 657-666 at 657.

Yet despite this much of the criticism over Bill 33 was over the lack of consultation with municipalities and the AMM prior to the Throne Speech and introduction of the Bill.¹⁰¹ One member goes so far as to accuse the NDP government, “they did not—the minister and his department—did not go through the regular process when you're creating a bill or making some changes to an act, and that would be consulting with Manitobans.”¹⁰² But what is this ‘regular process’? There is no formal obligation of public consultation in Canada, the parliamentary system of representative government allows for the electorate to speak through government.¹⁰³ And when necessary a government must balance public opinion and its ability to act quickly and decisively in implementing public policy.

Obviously, in this case, discussion with the AMM and individual municipalities would have slowed the process of municipal restructuring. But the trade-off of delayed implementation may have been an easier passage of Bill 33 through the Legislature. Bill 33 was a contentious piece of legislation, subject to many hours of debate and public presentations, which raised a number of concerns. Some of those concerns were addressed either by explanation or by legislation amendments. The larger concern is, however, that the legislation, while well intentioned, may not provide the benefits that were intended by it. There appears to be little support for the activation thresholds found within the legislation and, even cursory, examination of other data on amalgamations provides an absence of truly strong support to suggest that mandatory amalgamations of rural municipalities is worth the financial and identity cost to the municipalities in question, or to the government enacting the legislation in terms of political capital.

¹⁰¹ See for example the comments of Wayne Ewasko (Lac du Bonnet) on September 3, *supra* note 40 at 4734.

¹⁰² *Ibid.*

¹⁰³ James Fishkin, Robert Luskin, and Roger Jowell, “Deliberative Polling and Public Consultation” *Parliamentary Affairs* (2000) 53 657-666 at 658.