

Municipal Systems great escape clause

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We examine the legal effect of section 110 of the Local Government: Municipal Systems Act ("the Systems Act") in relation to a municipality's burden of proof during litigation. The (very alarming) section reads as follows:



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Certain certificates to be evidence

110. In legal proceedings against a municipality, a certificate which purports to be signed by a staff member of the municipality and which claims that the municipality used the best known, or the only, or the most practicable and available methods in exercising any of its powers or performing any of its functions, must on its mere production by any person be accepted by the court as evidence of that fact.

Face value

This section allows a municipality to produce a document that it describes as a certificate, which is 'purportedly' signed by any staff member of the municipality, which claims that the municipality did its best in performing any of its powers or functions, and this 'certificate' must, "on its mere production" be accepted by the Court as evidence of this fact.

In essence, it allows a municipality to simply produce a piece of paper signed by anyone who works there saying that it did its best, and that must be accepted by the court as evidence of this fact. Taken at face value it allows a municipality to escape liability for any alleged wrong doing, simply by producing a piece of paper that says it did its best, or used the best known or only known method to carry out its functions. If this were accepted as conclusive proof by the court, this would destroy any claim by any person for damages based on the municipality's failure to comply with any of its obligations in law, because the municipality could simply 'prove' that it did comply (or rather that it did its best to comply) by producing this document.

Proof v evidence

Before we go any further, it is worth noting that the section does not say that this document must be accepted as

conclusive proof of the fact, but rather that it must be accepted as evidence of the fact. This means that it is open to the municipality to produce other evidence alongside it, to prove that it complied with its obligations. It also means that it is open to the person suing the municipality (or otherwise attempting to prove that the municipality failed to comply with its obligations) to produce evidence that counters this document and proves that the person who signed the document was wrong inasmuch as the municipality did not do its best, or comply, or use the best or only known method of complying.

Conclusion

For a court to understand or interpret the section such that the mere provision of the 'certificate' constitutes proof of the fact in question, would completely destroy the ability of any litigant to succeed in any claim against a municipality where the claim turns on the municipality's failure to comply with its obligations, and that would fly in the face of our common law, legislation that expressly holds municipalities liable for their failures, as well several other established principles that form the basis of our law, such as natural justice, unjust enrichment and most importantly the rule of law.

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