

Told you so: AG's office

Tory government was warned years ago about user fees

By AMY SMITH Provincial Reporter

The Nova Scotia government was warned six years ago that it could be taken to court over user fees.

In 2001, then-auditor general Roy Salmon said it appeared a court challenge of the user fees could be successful because the fees aren't legislated.

At that time, Alan Horgan, then-senior audit director, said in most cases, the province didn't know the full cost of its services and, as a result, might not be able to prove there was a foundation for the fees it was charging.

"The problem is, if they are challenged on a fee, and this fee is not set by legislation, the government may be called to show that the fee is reasonable," Mr. Horgan testified before the legislature's public accounts committee in 2001. He is now the assistant auditor general.

The auditor general's 2000 report, released in March 2001, said the level of fees must meet the cost of providing the service or it could be classified as a tax.

The Supreme Court of Canada recently ordered New Brunswick to repay a bar owner for a special user fee that amounted to an unconstitutional tax on liquor because it was not related to the cost of delivering the service.

That has led Damian Byrne, the owner of the Split Crow pub in Halifax, to tell the province of his plans to launch a class-action lawsuit against the government to recoup what it contends was an unconstitutional tax on booze. Mr. Byrne hopes to recover more than \$250,000 he estimates the province has collected during the past six years.

Nova Scotia bar owners have paid a levy in addition to the regular retail price of liquor purchased from the Nova Scotia Liquor Corp. The fee, which was 10 per cent 10 years ago and dropped to 3.5 per cent in 2006, was scrapped this year.

Finance Minister Michael Baker said he couldn't comment on any specific lawsuits involving the province, but many fees are necessary, whether they are called a fee or a tax.

"Certainly, I am concerned because, frankly, I don't want to spend, or have our staff spend, an awful lot of time in court arguing over semantics," the minister said Tuesday, referring to the possibility that the province could face lawsuits over user fees.

NDP MLA Percy Paris said he suspects the province will go to court over the liquor levy and only pay back the money if the court forces it to do so.

He said the government appears so eager to gain revenue that it didn't care whether the charge was called a user fee or a tax.

"When you try to call something by another name, then that sometimes takes away from the whole concept of transparency," Mr. Paris said Tuesday. "If it's a tax, it's a tax."

Interim Liberal Leader Michel Samson said the former auditor general did his best to caution the Tories, but now it appears to be too late.

Mr. Samson said his party believes any increases to user fees or new user fees should be put to a vote in the legislature.

The Grit pointed to the 2002 increase in the application fee under the Freedom of Information and Protection of Privacy Act. The Tories raised the cost to \$25 from \$5, a jump of 400 per cent.

"It's left us with the impression that this was more of a means of, No. 1, getting more revenue and, No. 2, decreasing Nova Scotians interest in trying to get information out of the government."

But Mr. Baker said in many instances, fees are the most effective way to finance a program.

"There is a price to be paid," he said. "If you didn't have the revenue come from fees, then we might have to have general taxes go up in order to balance that off."

Mr. Baker said Nova Scotia's transportation system, for example, is very expensive to operate.

"If I'm a commercial trucker, for example, I'm obviously a major user of that transportation network and to ask that I make a small contribution, or a large contribution in some cases, to that network is not unreasonable," the minister said.

"Now, if you look at the isolated transaction of printing off a driver's licence, you are obviously never going to get anything appropriate, but in reality you have to look (at) a system."

In 2005-06, the Registry of Motor Vehicles collected \$26.7 million for passenger vehicle registration, \$31 million for commercial vehicle registrations and \$8.2 million for driver's licences.

Service Nova Scotia estimates it will spend \$23 million in this fiscal year for service delivery of programs and services, including Registry of Motor Vehicle offices, Access Nova Scotia offices, the Registry of Joint Stock Companies, the department's call centre and programs for land registration, the Residential Tenancies Act and debtor assistance.

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