A letter has been received from Mr. Jerome's wife, Barry, indicating that "The Jerome Family would be very pleased and honoured to have Lily Creek Sports Complex renamed the James Jerome Sports Complex."

The Council Naming Policy states that "All costs associated with the naming or renaming of the building, property or park will be paid by the originators of the naming request. In exceptional circumstances, this requirement may be waived by the Council of the City of Greater Sudbury." No resources have been budgeted for new plaques or signage at the Lily Creek Sports Complex. In the case of the newly named Korpela Park, the signage was donated by the originators of the naming request.

Attachments

BY-LAW 2003-126

A BY-LAW OF THE CITY OF GREATER SUDBURY TO ADOPT A BUILDING, PROPERTY AND PARK NAME POLICY

WHEREAS the Council of the City of Greater Sudbury deems it advisable to adopt a building, property and park name policy;

NOW THEREFORE THE COUNCIL OF THE CITY OF GREATER SUDBURY HEREBY ENACTS AS FOLLOWS:

1. The Building, Property and Park Name Policy, attached hereto as Schedule "A" and forming part of this By-law, is hereby adopted.

2. This By-law shall come into force and take effect immediately upon the final passing of same.

READ THREE TIMES AND PASSED IN OPEN COUNCIL this 29th day of May, 2003.

Mayor

Clerk

SCHEDULE "A"

to By-law 2003-126 of the City of Greater Sudbury

POLICY: BUILDING NAMING POLICY

The City of Greater Sudbury is located in a unique geographic setting and has a rich community history which has, over the past 120 years, been a source for many of the names used for community landmarks. Junction Creek derives its name from Sudbury Junction, the original name of the railroad camp that evolved into the City of Greater Sudbury. Azilda was named in 1891 by Joseph Belanger in honour of his wife. Bell Park was named after lumber magnate William J. Bell who donated 110 acres of land to the City of Sudbury for use as "a public park and recreation ground" while Centennial Park in Whitefish was named in honour of Canada's centennial. Many of our names reflect the aboriginal heritage of our community including Onaping which derives from a Cree word meaning "red paint" or 'Vermillion Place".

The City of Greater Sudbury wishes to retain our traditions of celebrating our unique heritage, history and geography in the naming of municipal buildings, property and parks while at the same time allowing for the introduction of new names that reflect and respect the community as a whole. The City of Greater Sudbury believes that existing names have an historical significance and are an important component of place recognition within the community and as such should not be changed except in exceptional circumstances when it can be proven that the majority of the community is in support of the name change. Examples of exceptional circumstances could include re-naming of a recreational facility as a requirement to attract an event of national or international significance.

It is a matter of policy that all naming and re-naming of municipal buildings, properties and parks and of elements of buildings and parks will require Council approval and that such naming will be governed by the considerations set out below. The only exception to this practice shall be for new neighborhood parks created as part of the subdivision development process, which if named based on geographical location would not require Council approval.

1. NAMING PRINCIPLES:

- Names shall be unique and distinctive. Names shall assist in emergency response situations by avoiding duplication and by avoiding the use of similar sounding names and by ensuring consistency between building and geographical naming conventions.

- Names should convey a sense of place and community and should celebrate the distinguishing characteristics of the City of Greater Sudbury.

- Names should be understandable, recognizable and explainable to the citizens of the community and should respect the values of all members of our community.

- Naming requests must come from community groups or organizations, rather than from individuals. Individual request for naming may be more appropriately addressed in commemorative programs or through founder or donor recognition programs.

2. NAMING PRIORITIES:

In naming buildings, properties and parks, consideration will be given to the following elements in order of priority:

- Names that place the building, property or park in its geographic context, so as to assist the community in locating the named facility. Names of this type include names that reflect significant ecological or natural resources features of the area.

- Names that reflect the purpose or use of the building, property or park.

- Names that reflect and respect the history, heritage and culture of the community.

- Names that reflect the particular contributions of community groups or organizations.

- Names that reflect an individual's significant contributions to public life in general and to the City of Greater Sudbury in particular and that are appropriate to the specific building, property or park so named.

When naming a building, property or park after an organization or individual, every care will be taken to ensure that the name selected reflects an individual of such extraordinary prominence and lasting distinction that no other individuals, families or organizations can come forward and suggest alternative names. Furthermore, the community will be consulted to ensure that there is community support for the proposed name. In the event that a naming request is proposed as a result of a significant financial donation towards the acquisition, construction or redevelopment of a property, consideration will be given to the value of the donation relative to the overall value of the project, the construction costs and operating costs. Consideration will be given to using a donor's name in conjunction with a community name as well as to having a specific sunset clause on a donor name which is associated with support that is finite in time or amount. Wherever possible, naming of an interior space or portion of a building, property or park will be preferred to naming of an entire building after an individual or organization. Where an individual or organization name is used, permission must be obtained from the individual, his or her family or the organization to be named, prior to selection of the name.

3. NAMING PROCESS

- *All requests shall be submitted in writing and shall include the rationale for the* proposed name. In the case of a proposal to honor an organization or individual, documentation of the individual or group's record of achievements, is required. Letters of support from appropriate organizations and individuals which provide evidence of substantial community support for the proposed name are required.

- All requests will be forwarded to the appropriate department for review within the framework of this policy. As part of the review, staff will ensure that the contributions of an organization or individual are well-documented and broadly acknowledged within the community.

- All requests for naming will be circulated to stakeholder groups, including all emergency responders, for their comments.

- Where the naming request is substantiated and has been documented to be supported by the community, it will be brought forward in an option package for City Council's consideration. Such an options package may include alternatives to the original request which could include naming an interior space or portion of a building, property or park rather than the entire facility.

- Where a request for naming or renaming has been initiated by a community group or organization and approved by Council, all costs associated with the naming or renaming of the building, property or park will be paid by the originators of the naming request. In exceptional circumstances, this requirement may be waived by the Council of the City of Greater Sudbury.

AUG. 23/04

CAROLINE HALLSWORTH
GENERAL MANAGER
CITIZEN AND LEISURE SERVICES.

DEAR CAROLINE:

THIS LETTER IS A REQUEST BY THE SUDBURY HISTORICAL PRESERVATION ASSOCIATION TO HAVE THE LILLY CREEK SPORTS COMPLEX NAMED AFTER THE HON. JAMES JEROME.

MR. JEROME SERVED ONE YEAR ON CITY COUNCIL.
MR. JEROME WAS ELECTED THE FEDERAL MEMBER OF PARLIAMENT FOR THE SUDBURY RIDING IN 1968 TO 1980.
MR. JEROME WAS ASKED BY PRIME MINISTER TRUDEAU TO BECOME THE SPEAKER OF THE HOUSE OF COMMONS IN 1974.
MR. JEROME ACCEPTED AND BECAME THE 28TH SPEAKER FOR THE 30TH AND 31ST PARLIAMENT.

IT IS ONE OF THE GREATEST HONOURS TO HAVE YOUR MEMBER OF THE FEDERAL PARLIAMENT OF CANADA BECOME THE SPEAKER OF THE HOUSE OF COMMONS.

MR. JEROME TURNED OUT TO BE ONE OF THE BEST SPEAKERS.

MR. JEROME AND SUDBURY WAS VERY RESPECTED BY ALL MEMBERS OF THE 30TH AND 31ST PARLIAMENT, AND SUDBURY WAS VERY PROUD OF MR. SPEAKER "THE HON. JAMES JEROME."

WHILE MR. JEROME WAS SPEAKER HE OBTAINED FOR SUDBURY THE 2ND LARGEST TAXATION CENTRE IN CANADA, WHICH BROUGHT WITH IT THOUSANDS OF GOOD JOBS.

WHEN INCO AND FALCONBRIDGE WERE LAYING OFF.

THE PROPERTY THE TAXATION CENTRE IS ON WAS BOUGHT FROM THE CITY OF SUDBURY FOR 2,925,000.00. THAT SITE WAS KNOWN AS THE SUDBURY STADIUM.

THE MONIES RECEIVED FROM THE SALE OF THIS PROPERTY DEVELOPED THE LILY CREEK SPORTS COMPLEX AND OTHER PARK PROPERTIES. ALSO AS A RESULT OF THE TAXATION CENTRE BEING ON THE CORNER OF NOTRE DAME AND LASALLE THE C.P.R. HAD AN OLD ABANDONED RAILWAY RIGHT AWAY ALONG NOTRE DAME ON THE EAST SIDE. THE CITY OF SUDBURY MADE MANY, MANY ATTEMPTS TO HAVE THE C.P.R RIGHT AWAY REMOVED WITH NO SUCCESS. THE PROVINCIAL GOVT. ALSO TRIED MANY TIMES TO HAVE THIS OLD RIGHT AWAY REMOVED ALSO WITH NO SUCCESS. THEN COME ALONG THE FEDERAL GOVT. AND BOUGHT THE SITE FOR THE TAXATION CENTRE AND THE C.P.R. REMOVED THE OLD RAILWAY RIGHT AWAY. CAROLINE JUST ASK FOR SWIDDLE ABOUT THE GREAT BENEFIT THIS WAS TO THE CITY OF SUDBURY. MR. JEROME WHILE BEING SPEAKER ASKED THE CITY OF SUDBURY IF IT WAS INTERESTED

IN HAVING THE ELDORADO NUCLEAR REFINERY LOCATED IN SUDBURY, BUT CITY COUNCIL WAS SORT OF WORRIED ABOUT THIS AND REFUSED. AN OFFER AGAIN THE MANY THINGS A SPEAKER CAN DO FOR ITS RIDING. THE REFINERY LANDED UP ON THE NORTH SHORE.

MR. JEROME DID SO MANY THINGS FOR SUDBURY. THE CITY OF SUDBURY OWES IT TO MR. JEROME TO HAVE THE LIBRARY NAMED AFTER HIM. MR. JEROME WENT ON TO BECOME THE ASSOCIATE CHIEF JUSTICE OF THE FEDERAL COURT OF CANADA ANOTHER GREAT HONOUR FOR SUDBURY.

THE LIST GOES ON.

NO OTHER FEDERAL MEMBER OF PARLIAMENT HAS EVER DONE AS MUCH AS MR. JEROME FOR SUDBURY. WE THE CITIZENS OF SUDBURY ARE VERY PROUD OF MR. JEROME. LETS DO A LITTLE TO RECOGNIZE THIS MANS EFFORTS FOR THE CITY OF SUDBURY. LETS NOT WAIT TILL THE GUY UPSTAIRS CALLS HIM TO HIS FINAL REWARD.

MR. JEROME HAS RETIRED FROM THE BENCH DUE TO HUNTINGTONS DISEASE. MR. JEROME IS NOW VERY ILL AND DESERVES THE RESPECT OF THE CITY OF SCARBURY NOW.

ATTACHED IS MR. JEROMES BIOGRAPHY

MR. JEROMES PERIOD OF TIME AS ASSOCIATE CHIEF JUSTICE OF THE FEDERAL COURT OF CANADA.

A NOTE OF THE AMOUNT OF MONEY PAID TO THE CITY OF SCARBURY FOR THE TAXATION SITE IN MAY 12/27 2,925.00.00

MANY LETTERS OF SUPPORT FROM MANY CITIZENS OF SCARBURY.

A LETTER FROM MRS JEROME ACCEPTING THE HONOUR OF THE NAMING THE LILLY CREEK AFTER MR. JEROME.

A PETITION WITH MANY NAMES IN SUPPORT.

A LIST OF NAMES OF THE SCARBURY HISTORICAL PRESERVATION ASSOC.

CAROLINE I HAVE SPOKEN TO ALL THE PEOPLE.

YOU HAVE UNDERLINED IN RED ON THE ATTACHED LIST OF YOUR LETTER OF JULY 9/04 NO ONE HAS REFUSED. I HAVE THE DATES AND THE TIMES AND THE PERSONS I SPOKE TOO.

THANKS YOU Lino Bacciarelli

62

HOUSE OF COMMONS
CHAMBRES DES COMMUNES
OTTAWA CANADA
K1A 0A6

HON. DIANE MARLEAU, P.C., M.P.
Sudbury

L'HON. DIANE MARLEAU, C.P., député
Sudbury

September 7, 2004

His Worship Mayor David Courtemanche
City of Greater Sudbury
P.O. Box 5000, Station A
Sudbury, Ontario
P3A 5P3

COPY
COPIE

Dear Mayor Courtemanche:

I am writing in support of the request which will be made by Sirio Bacciaglia before Council to have the Lily Creek Sports Complex re-named to recognize and honour the Honourable James Jerome, one of my predeceasors.

While he was the sitting Member, Mr. Jerome was extremely instrumental in having the federal government establish the Sudbury Taxation Centre (now the Sudbury Tax Services Office) in our community, which lead to the creation of over one thousand jobs - a tremendous accomplishment. It was also through the purchase of that property by the federal government that the city was able to establish several sports complexes. These jobs and recreational facilities were warmly welcomed and led to the enhancement of the quality of life in our city.

As a Member of Parliament, Speaker of the House of Commons and Associate Chief Justice of the Federal Court of Canada, James Jerome was a distinguished representative and I believe he has a place in the history of our community.

I sincerely hope that Mr. Bacciaglia's request will be granted.

Yours sincerely

Diane Marleau

Diane Marleau, P.C., M.P.
Sudbury

63

OTTAWA
Room 525/Bureau 525
Confederation Bldg./édifice Confédération
(613) 996-8962

SUDBURY
36, rue Elgin Street
Sudbury (Ontario) P3C 5B4
(705) 673-7107

Sudbury

Sept 1903

Dear Sirs,

I can support the re-naming of Lily Creek Sports Complex to the Honourable James Jerome Sports Complex.

M Buchanan

MARGARET ANNE BUCHANAN

Request for Decision
City Council

Greater | Grand Sudbury
www.city.greatersudbury.on.ca

Type of Decision

Meeting Date	October 14, 2004				Report Date	September 23, 2004			
Decision Requested	X	Yes		No	Priority	X	High		Low
		Direction Only			Type of Meeting	X	Open		Closed

Report Title

Appointment to Street Naming Committee

Policy Implication + Budget Impact

	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.

There is no policy or budget impact.

	Background Attached

Recommendation

THAT the Clerk be directed to advertise for three members of the public to be appointed as non-voting members to the Street Naming Committee for the term ending November 30, 2006.

	Recommendation Continued

Recommended by the General Manager

Doug Wuksinic
General Manager of Corporate Services

Recommended by the C.A.O.

Mark Mieto
Chief Administrative Officer

Report Prepared By	Division Review
Ron Swiddle Director of Legal Services/City Solicitor	Ron Swiddle Director of Legal Services/City Solicitor

BACKGROUND:

At its meeting of September 16th, Council directed that it wished members of the public to serve in conjunction with Councillor Rivest on the Street Naming Committee.

Some discussion was held at that time as to whether this should be an Advisory Panel or other body.

Given that Council has already established a Street Naming Committee, it would not be appropriate to have a second body, an Advisory Panel, meet and perform this same work. The public representation sought by Council can be obtained by having members of the public sit as non-voting members on the Street Naming Committee. It would not be appropriate for the public members to vote. Council is prohibited by law from delegating its decision making powers to others.

At this time, Council has one Councillor appointed to the Street Naming Committee, but could at any time appoint a second.

Accordingly, it is recommended that the Clerk advertise for candidates for Council appointment to this body. It is recommended that those with some familiarity with the topic or with Emergency Services be encouraged to apply.

Request for Decision
City Council

Greater | Grand Sudbury
www.city.greatersudbury.on.ca

Type of Decision

Meeting Date	October 14, 2004				Report Date	October 8, 2004				
Decision Requested	X	Yes		No	Priority	X	High		Low	
	Direction Only				Type of Meeting	X	Open		Closed	

Report Title

MUNICIPAL ACT REFORM

Policy Implication + Budget Impact

	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.

	Background Attached

Recommendation

THAT a Resolution be passed endorsing the AMO paper on Municipal Act Reform and requesting the Minister of Municipal Affairs and Housing to consider the requests for amending legislation set out in this report.

	Recommendation Continued

Recommended by the General Manager

Doug Wuksinic
General Manager of Corporate Services

Recommended by the C.A.O.

Mark Mieto
Chief Administrative Officer

Report Prepared By	Division Review
Ron Swiddle Director of Legal Services/City Solicitor	Ron Swiddle Director of Legal Services/City Solicitor

BACKGROUND:

As reported to Council earlier, the Ministry of Municipal Affairs and Housing has been undertaking a review of the *Municipal Act, 2001*. Staff has been working with the Ministry in recommending various proposals and considerations as part of this review.

ITEM 1: AMO REPORT

Much work has been accomplished through the Association of Municipalities of Ontario. Heather Salter from the Legal Services Division and other members of staff have been working with AMO in this regard. The recommendations arising from AMO and its draft report are attached as part of this report and Council should adopt these recommendations as its own for submission to the Province. The AMO report includes a number of items that have been previously requested by Council, including such things as electronic meetings, bonusing amendments, and open meetings.

The final date for submissions is the end of this week.

In addition to the AMO submissions, there are a number of specific requests that Council has made over the years, either in a formal or in an informal manner, and these should be reiterated to the Province at this time as part of its review of the relationship between the Province and its municipalities.

ITEM 2: MUNICIPAL ELECTIONS ACT AMENDMENTS

Earlier this year the City Clerk provided for Council's consideration the Final Election Review. This contained a number of Recommendations that were received by Council, including Recommendations for amendment to the *Municipal Elections Act, 1996.* The following Recommendations for amendment are repeated from that Review.

1. It is recommended that Elections Ontario (in particular, the Chief Electoral Officer), rather than the Ministry of Municipal Affairs and Housing, have responsibility for municipal elections in Ontario. And further that, the role of the Chief Electoral Officer include responsibility for certifying election voting equipment used in municipal elections as well as putting in place standardized procedures for their use.

2. It is recommended that Ontario Regulation 412/00 (as amended by Ont. Reg. 45/03) made under the *Education Act* be amended to require that District School Boards, when making their trustee determination and distribution for the 2006 Municipal Election, not include areas outside the geographic boundaries of major population centres such as the City of Greater Sudbury.

3. It is recommended that the minimum age to vote in Ontario Municipal Elections be "16 years of age or older" but that the minimum age to hold office remain at 18 years of age.

4. It is recommended that the *Municipal Elections Act, 1996* be amended to allow municipal councils to adopt, by by-law, the Provincial Voters' List for municipal elections.

5. It is recommended that the revision of the Voters' List for municipal elections start on January 1st of an election year.

6. It is recommended that should the Province continue the use of a voters' list produced by the Municipal Property Assessment Corporation, then the *Assessment Act* be amended to require landlords to provide updated tenants' lists prior to July 1st of an election year and that the Municipal Property Assessment Corporation be given the appropriate level of authority to enforce this requirement.

7. It is recommended that should the Province continue the use of a voters' list produced by the Municipal Property Assessment Corporation, then the Municipal Property Assessment Corporation should be held to the same level of data quality for electors on the voters' list at the correct address (80% to 85%) as the Federal Register of Electors.

8. It is recommended that the Province make provision for silent enrollment on the voters' list for those citizens who may be deterred from having their names and addresses added to the list because their whereabouts may become known to a person who may cause them some harm.

9. It is recommended that Sections 43(6) and 27(1) the *Municipal Elections Act, 1996* be amended to provide that it shall be the candidate's responsibility to notify the Clerk upon receipt of the Preliminary Voters' List that they require a copy of either or both the List of Advance Voters and the list of revisions.

ITEM 3: DELEGATION OF ADMINISTRATIVE APPEALS

As reported to Council earlier this year, the City appealed the property assessments respecting certain lands owned by Inco Ltd. for the years 2002 and 2003. A challenge to the authority of the City's Property Negotiator/Appraiser to initiate the appeals on behalf of the City had been raised by Inco before the Assessment Review Board (ARB). Before proceeding with the merits of the City's appeal, the ARB sought the direction of the Divisional Court of Ontario, by way of a stated case, on this threshold issue.

The proceeding came before the Divisional Court on April 5, 2004, which ruled that although the action of the City staff in filing the complaint forms was purely administrative in nature, at some point in time the decision to pursue the appeal must be that of Council. The court further ruled that a Council resolution subsequently confirming the Property Negotiator/Appraiser's authority was not sufficient to ratify the action taken by her. As a result, the court held that the complaints before the ARB were invalid and the assessment appeal process could not proceed.

Council subsequently directed staff to seek leave to appeal this Divisional Court decision to the Ontario Court of Appeal. The City of Ottawa felt this item was important, and sought leave to intervene in the matter. We have now received word that leave to appeal has been refused by the Court.

A more detailed report on this topic is being prepared for Council and should be on the Council Agenda soon. In the meantime, it is appropriate to bring this item to the attention of the Ministry requesting legislative change.

The main structure and philosophical underpinning of the *Municipal Act, 2001* was to allow Councils to delegate administrative functions to staff, allowing the Councils more time to deal with larger issues. However, if Councils are required to deal with every single low-level administrative item, it can be expected that the meeting times for Council will double, and items will be delayed.

It is hard to think of an item that could be more administrative than the subject matter of this Assessment Review Board matter. Indeed, some legal articles have been written based on the Divisional Court decision, expressing considerable concern and surprise. This decision could have substantial repercussions on municipalities' powers to delegate administrative matters.

Accordingly, it is recommended that the Province take this opportunity to clarify the provisions of the *Municipal Act, 2001* in order to make it clear for future court decisions that administrative items of this nature can be delegated to staff.

1. It is requested that the Province provide additional direction to the Court by way of amendments to the *Municipal Act, 2001* to clarify the ability of Councils to delegate purely administrative functions to staff, including such items as assessment appeals.

ITEM 4: HOMES FOR THE AGED COMMITTEES OF MANAGEMENT

In July of 2002 Council directed that a Brief be submitted to the Ministry of Health calling for amendments to the *Homes for the Aged and Rest Homes Act* and accompanying Regulations regarding Committees of Management. These are mandatory Committees with certain statutory duties that do not accord with other legislation and create various problems for municipalities.

No response has been received since the submission of the Brief. It is recommended that this request be repeated at this time through the Minister of Municipal Affairs and Housing's review of municipal legislation.

1. It is recommended that *the Homes for the Aged and Rest Homes Act* and accompanying Regulations be amended to delete references to Committees of Management.

ITEM 5: HOLIDAY PROCLAMATION

As discussed by Council earlier this year, the Mayor has a unique power under the *Municipal Act, 2001*. This is the ability to declare public holidays, and is traditionally used for days such as the August Civic holiday or Boxing Day. This section is unique in the Act, as all other powers must be exercised by the Council as a whole. It was Council's feeling that this section should be amended to provide for this power to be exercised by Council.

1. It is recommended that section 148 of the *Municipal Act, 2001* be amended to allow Councils, not Mayors, to proclaim public holidays.

ITEM 6: TOPSOIL BY-LAW

The former Regional Municipality of Sudbury requested changes to the *Topsoil Preservation Act* that were made in large measure when that Act was repealed and became part of the *Municipal Act, 2001*. Staff is currently working on a By-law for Council's consideration but a major flaw with the section has become apparent and should be addressed by the Province.

Under section 142, a person may apply to the City for a permit under the By-law, and if refused, may appeal the matter to the Ontario Municipal Board. This appeal method is fairly standard in such matters. For example, someone ordered to perform work under a Property Standards By-law by an Officer has an appeal to Council. Someone ordered to perform work under the *Building Code Act* has an appeal to Court. However, anyone ordered to perform work under a Topsoil By-law has no route of appeal whatsoever.

Accordingly, it is recommended that the Act be amended to provide this protection for the public.

1. That Sections 142 to 144 of the *Municipal Act, 2001* be amended to provide members of the public with a process to appeal Orders issued under those Sections.

ITEM 7: TERM OF COUNCIL

This is not an item that has previously been addressed by Council, but is included here as it is the writer's understanding that some Members of Council wish to raise the issue.

Briefly speaking, municipal Councils in Ontario were elected for one-year periods until 1956. Starting in that year they were elected for two-year periods until 1982, when the *Municipal Act* was amended to provide for three-year terms.

There are several arguments to be made for and against the idea of extending terms of Council to four-year periods.

The cost of municipal elections is substantial. Municipalities could save up to one-third of this cost if elections were on a four-year cycle. However, the public would not have the opportunity to voice their concerns in the ballot box as frequently.

The Province has indicated its intention to pass legislation to provide for Provincial elections on a regular, four-year schedule. It would be appropriate to have municipal elections on a similar schedule, but off-set from the Provincial scheduled year. In this way, there would be no conflicts between the two, as occurred in 2003 with two elections in a very short time.

It is recommended that the Ministry hold public hearings on this topic, and, after hearing from municipalities and the public, consider changing the term of Council to a four-year term.

1. That the Minister of Municipal Affairs and Housing be requested to hold public hearings around the Province relating to the term of Municipal Councils, and consider changing the term to a four-year term.

MUNICIPAL ACT REFORM

PAPER

**Prepared by Mary Ellen Bench, City Solicitor,
City of Mississauga, on behalf of the Municipal Law Departments Association of Ontario
("MLDAO") to the AMO Steering Committee**
September 30, 2004

INTRODUCTION

On June 29, 2004, Minister Gerretsen held a press conference to announce that the Province would be commencing its first review of the *Municipal Act, 2001* starting this Fall with the intent of introducing amendments to the Act into the Legislature in the Spring, 2005. The Minister specifically requested input from the Association of Municipalities of Ontario regarding what it felt needed to be changed. AMO established a steering committee consisting of its then president, Ann Mulvale, AMO staff (Pat Vanini and Brian Haley), AMCTO, MFAO, Ontario Good Roads Association, and MLDAO. AMO, with financial support from AMCTO and the Ontario Good Roads Association retained Fred Dean for the purpose of writing its report.

MLDAO has played a very important role in providing advice and information on significant matters that form the basis of the AMO report. Mary Ellen Bench represented MLDAO at the AMO Steering Committee meetings. Despite the fact that work had to done consolidating issues concerning the *Municipal Act, 2001* over the summer months of July and August, a tremendous level of support and participation was received from MLDAO members across the Province. Thank you to the following members for their participation: Jim Anderson, City of Toronto; James Barber, City of London; Saskia de Moree, City of Kitchener; Rosalie Evans, City of Thunder Bay; Bob Gray, Regional Municipality of Halton; Elaine Holt, City of Toronto; Wendy Kwok, City of Mississauga; Hal Linscott, City of Kingston; Lesley MacDonald, City of Kitchener; Anne Peck, City of Ottawa; Heather Salter, City of Greater Sudbury; and Wira Vendrasco, City of Windsor. Conference calls

were held weekly at first and then bi-weekly and our members came through with significant feedback and input. Fred Dean participated in our conference calls and the input of our membership will be very apparent to all of those who participated when they see the AMO Paper.

At the outset of this review certain sectors at the Province believed that the exercise would in effect be minor tinkering, however, AMO has made some very progressive recommendations that extend well beyond tinkering and focus on bringing a sense of reality to the language contained in section 2 of the *Municipal Act, 2001* stating: **"municipalities are** created by the Province of Ontario to be **responsible and accountable governments ...:**

The AMO position is grounded in the following nine principles:

1. Municipalities are responsible and accountable governments.
2. New legislation shall enhance existing municipal powers.
3. The province shall stop micromanaging municipal governments.

4. Where there is a compelling provincial interest the province shall when regulating municipal government define at the outset that interest.
5. Provincial legislation shall be drafted with the expectation of responsible municipal government behaviour and not as a remedial tool.
6. Accountability means mutual respect between municipal government, the province and other public agencies.
7. Resources for municipal governments shall be sustainable and commensurate with the level of responsibility.
8. *The Municipal Act* shall include principles that will protect *the Municipal Act* and municipal powers from all provincial legislation.
9. The province shall commit to increasing the understanding and awareness of municipal government within all ministries and provincial agencies.

MLDAO supports these principles.

In responding to the Minister's request for comments on *the Municipal Act, 2001*, this Paper is divided into two parts. Part I deals with comments on certain larger issues of general concern while Part II contains commentary on certain specific concerns with language in the Act as identified by our members. Given that municipalities have been operating under this new legislation for less than two years and key provisions have not been interpreted at all in the Courts, these comments cannot be taken as complete.

PART 1 – SPECIFIC ISSUES

NATURAL PERSON POWERS

Certain Underlying Premises

There is no clear definition of what types of powers or privileges are classified as natural person's power. "Natural Person" powers arise out of the essential nature of man, as distinguished from those created by statute. Since corporations have natural person status, often, natural person powers and corporate powers can be used/interpreted interchangeably to describe the same thing. Indeed, "Corporate Powers" is the title of section 15 in the *Ontario Business Corporations Act*, which gives corporations incorporated under that Act natural person powers.

Body Corporate

What about the meaning of a "body corporate"? Municipalities have always been a "body corporate" under the previous legislation and the current Act also uses this language in section 4. Does this add to or qualify the section 8 Natural Person's Powers? The term seems to suggest corporate powers for the municipality. But if corporate powers are the same as natural person's powers and municipalities never had such powers before, then a "body corporate" could not mean having corporate power. The concept is unclear.

It is recommended that Section 4 be removed and replaced with a general provision stating that **"a municipality is a corporation of the residents of its area"** as in subsection 6(1) of the BC Community Charter.

The "Powers"

Some typical examples of Natural Person's Powers include the ability:

- To own, sell, lease, rent, and otherwise acquire or dispose of assets
- To incur a debt
- To make investments
- To enter into contracts
- To sue and be sued
- To incorporate or to conduct business in any form at will
- To have a corporate seal (for corporations)
- To make by-laws (in the context of a corporation)
- To construct a given work
- To hire employees

Natural person's power does not in itself create any substantive powers for municipalities; it does not add to municipalities' powers as another "sphere of jurisdiction". Municipalities receive authority to act from the various spheres of jurisdiction, the specific powers listed in the *Municipal Act, 2001*, and other legislation. Rather, natural person powers speak to how a municipality can exercise its authority conferred by those legislation. For example, although a municipality has the power to enter into a contract as a result of having natural person's powers, the municipality may only enter into a contract to carry out a function that falls within the spheres of jurisdiction or other enumerated powers. Having natural person's powers is analogous to having the means to achieve the ends.

It would be rather interesting to see the interaction between the natural person's power concept and the common law doctrine of implied powers. "Implied powers" are necessary to make available and carry into effect those powers which are expressly granted or conferred, and which must therefore be presumed to have been given within the intention of the legislative intent. This doctrine should continue to exist to carry out the objectives of the Act, but questions arise regarding whether natural person's powers add anything more for municipalities that we did not already have before, particularly when many of such powers are restricted in the various sections of the Act, such as the financial powers? Or, in practice, is the Natural Person's Power simply a codification of the common law doctrine of implied powers?

Pursuant to Section 8 of the *Municipal Act, 2001* Natural Person's Powers can only be used for the purpose of exercising the municipality's authority under the Act or other legislation. In principle, this is not objectionable if one accepts that municipalities must be confined to their jurisdictions. However, to the degree that the areas of jurisdiction conferred are inadequate, Natural Person's Powers cannot fill any of the gaps.

For example, there are certain areas that are not identified in the jurisdiction conferred by *the Municipal Act* or other Acts. A clear example is the administration of the municipality itself. Many of the Natural Person's Powers traditionally exercised, e.g. hiring of employees, purchasing, entering into contracts, are to support the functions of Council or to provide general corporate services. Although some powers are granted in Parts VI and VII, not everything is. For example, if the municipality wishes to relocate its offices, where does it get the authority in the Act to enact a by-law for the purchase of that building? The logical answer is that the municipality is simply carrying out a power incidental to its corporate existence, or as a "natural person". However, with section 8 being that a municipality has natural person's powers "for the purpose of exercising its authority under this or any other Act" – can the municipality truly rely on that power to carry out these types of objectives?

While municipalities can contract out services under Section 8 so long as it falls within one of its spheres of jurisdiction or other specified powers, it cannot legally enter into agreements with other public authorities or municipal corporations to provide services to each other or on each other's behalf. For example, Greater Sudbury contracts out its streetlight maintenance and water billing functions to its municipal electrical utility (an OBCA corporation). These are services within the municipality's jurisdiction and the agreements are authorized under Section 8. But what if the utility wanted to purchase engineering design services from the municipality? Would that agreement similarly be authorized under Section 8? Again the problem is the qualifying language in Section 8. The engineering services would be in relation to the provision of the electrical utility, which is not within the authority of the municipality. Sections 19 and 20 do not appear to respond to this situation either. Agreements of this nature are intended to reduce costs and increase efficiencies all around for the benefit of the taxpayer and should be encouraged not impeded.

Natural Person's Powers are given only to municipalities – it is suggested that the status be given to local boards and municipal corporations as well. They require these powers to the same extent and for the same reasons as municipalities.

It is recommended that the qualifying words - "for the purpose of exercising its authority under this or any other Act" - be removed from section 8 and the power be extended to local boards and related corporations. Alternatively, section 8 should be expanded to include the use of natural person's powers for those matters related to the effective management and administration of the municipality and its local boards and related corporations.

Sections 20-23: agreement-making powers

If municipalities have natural person's powers, it would be assumed that they have powers to enter into agreements with other entities, including other municipalities and First Nations. Enumerating such powers would be suggestive that municipalities could only enter into agreements that fit within the stated categories.

The only necessary authorizing section is to clearly state that the agreements can be with respect to matters that are outside the territorial boundaries of the municipality entering into the agreement. That can be stated as an enumerated section under section 8 rather than having it repeated in sections 20-22.

Section 23: the wording is unclear as it is suggestive that municipalities may only enter into agreements with private parties to construct, maintain and operate a private road, water or sewage works. It is suggested that revisions be made to add a subsection in section 8 to clarify the powers of a natural person to contract as including – but not limited to – entering into agreements for private works.

The current sections enable municipalities to enter into agreements with different forms of governments. Clearly missing is the federal government. Though it makes no practical sense, an argument could be made to suggest that municipalities are therefore precluded from entering into agreements with the federal government.

The manner in which these sections are drafted create confusion regarding the scope of natural person powers in section 8. Entering into agreements is a natural person power and it would be clearer if these provisions were deleted and section 8 were amended to simply provide that the natural person powers may be exercised outside the boundaries of the municipality. Further, a new simplified section could be added to Part II providing that municipalities may provide a municipal service or system outside of its boundaries with the agreement of the government or other body having jurisdiction in that geographic area where that service or system is to be provided.

Section 5(3) natural person powers to be exercised by bylaw:

This requirement can be a procedural obstacle to speed and efficiency. However it is also an important requirement to ensure that the powers of the municipality are in fact exercised by Council not staff (unless delegated by bylaw) and that decision making is accountable and transparent.

RESTRICTIONS ON CORPORATE POWERS

Section 17 – Restrictions relating to Corporate Powers

Almost all types of financial powers associated with a natural person are excluded from the natural person's powers conferred to municipalities in section 8. A municipality is not a natural person - like a corporation incorporated under the OBCA, for example – when it comes to financial management:

Incorporation – the only possible exception is section 17(2) – if a municipality is exercising powers under a regulation under s. 203 that provides the powers to incorporate or to be a member of a corporation or hold securities in a corporation, it will be able to exercise natural person's powers for these purposes. Considering that no regulations relating to these powers have been enacted so far, it is unclear whether this exception will have any substantive meaning. An alternative way to create separate entities is to create municipal services boards under sections 194-202, as the boards are bodies corporate. However, the boards are not natural persons and their powers and mandates are restricted. One example is the original initiative of the Smartcard for GTA transit fare system. Municipalities cannot enter into a corporate arrangement with each other to procure and implement a joint initiative, or with GO Transit and the MTO. At best, we could enter into an unincorporated association, which would create other legal issues. Joint boards will not work as GO and the Province are not municipalities. Greater flexibility is needed to allow municipalities to engage with other parties to provide services.

Investments or ownership of shares of a corporation: municipalities do not have the power to own shares of a corporation, even if it is for a short period of time prior to selling them as a result of seizing assets from debt restructuring. For example, in Mississauga, we were unable to hold Air Canada shares although the issuance/allocation of shares was part of the court restructuring scheme for Air Canada to repay unsecured creditors.

The restrictions on financial management and powers to incorporate or hold shares significantly limit opportunities for municipalities to enter into public-private partnerships as a means to raise new revenues or reduce costs. Both of these objectives should be within the scope of the authority provided to municipalities.

The process mandated by section 203 and regulations to establish corporations is very detailed and goes beyond ensuring accountability. It is not workable as it will take years to meet all of the requirements necessary if the proposed Downtown Economic Development Corporation being pursued by the City of Brampton serves as an example.

It is recommended that rather than restricting natural person powers in this manner the Act should provide a procedural framework for their use only, which ensure openness and accountability.

NOTICE

The notice requirements found in the *Municipal Act* , 2001 are prescriptive and extremely detailed. A quick glance at the Act tells us that it contains over two dozen different notice provisions. The scope of these notice provisions vary from the obligation of a municipality to give notice of a public meeting in which a restructuring proposal will be voted on, to the requirement for municipalities to give notice of a by-law intended to name a highway. After enumerating the various notice requirements, in section 251, the Act sets out that any notice required under the Act shall be given in the form and time frame considered adequate by the individual municipal Council.

The prescriptive notice provisions found throughout the Act run in philosophical opposition with section 2 of the Act, which recognizes that Municipal governments are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction. As recognized responsible and accountable levels of government, it would be prudent provide municipalities the discretion to choose when public notice is necessary and when public notice is unnecessary.

Many municipalities have already taken steps as responsible and accountable levels of government with respect to public notice that support the recognition given by section 2 of the Act. A specific example of such responsibility and accountability is the budget process. In section 291, the Act sets out that public notice shall be given of a municipality's intention to adopt a budget. However, practically, such public notice is inadequate to ensure that input received from stakeholders can be carefully considered, and incorporated into the municipal budget. Municipalities are aware of the inadequacies found in the notice provisions in the Act relating to budgets, and as a result, have generally implemented more strict notice obligations than are found in the Act. This allows the input received from the public to be obtained in a useful and timely fashion.

In addition to the general prescriptive and detailed nature of the notice requirements found in the Act, it should be noted that many of these requirements are minor in nature. As is noted above, there are also notice requirements that are major in nature. In allowing municipalities to determine the necessity of public notice in each individual circumstance, a municipal structure that is responsive to local issues and concerns should be adopted with respect to public notice.

In conclusion, the Act currently provides municipalities with the discretion to determine, when public notice is necessary, the length of public notice and how such notice will be given. **To build on this discretion, and in accordance with recognizing municipalities as responsible and accountable governments, it would be prudent to delete the specific notice requirements found throughout the Act, and amend section 251 to give municipalities the full discretion to determine the who, when and how of their particular public notice policies.**

OPEN/CLOSED MEETINGS

Section 239 and 244 of the *Municipal Act, 2001* address the nature of the deliberations that can occur in relation to reports and documents presented in closed sessions by providing for a vote only in certain limited circumstances. The intent of these provisions are to ensure transparent municipal government however they are very restrictive and in part conflict with the requirements of the *Municipal Freedom of Information and Protection of Privacy Act*. The current provisions are unrealistic as they prevent councillors from asking the necessary questions to do the proper due diligence on matters that come before them. Councillors, like provincial or federal cabinet ministers or directors of a private sector corporation, need to be able to "ask dumb questions" without being worried about being quoted in the evening news. This need was aptly set out by Mr. Justice Lacourciere in the dissenting opinion in the case of *Southam Inc. v. Hamilton/Wenworth (Regional Municipality) Economic Development Committee* before the Court of Appeal:

> "The present issue, however, concerns gatherings of commissioners where no business is transacted; when, rather, they confer together and with each other; and when they collaborate in doing what may be called their "homework". It is important that they do so freely and without restraint. Like all who have the responsibility of making important decisions, they need an opportunity to express, exchange and test ideas, to deliberate freely, off the record, and without the restraint of outside influence. Freedom of discussion and the exchange of ideas is essential to an understanding of a problem. It cannot be satisfactorily accomplished under a spotlight or before a microphone."

Taken to the absurd, the current provisions in the Act could prohibit councillors gathering for lunch, chatting over coffee, attending a social function together or otherwise assembling for fear that it be considered a "meeting" under the Act.

Duty to Maintain Confidentiality

Another issue that has arisen with respect to closed meetings is the extent to which matters discussed in closed meetings are to be kept in confidence. There is no legislative requirement to keep in confidence matters that are discussed in private at a council or committee meeting until they are discussed at a meeting held in public and often this information is inappropriately made public. In fact, lobbyists often say that the only difference between public and in-camera discussions is three minutes. In the *RSJ Holdings Inc. and The Corporation of the City of London* case, Justice Kennedy concluded that:

> "I have not been referred to any authority by council who have presumably conducted exhaustive research which has persuaded me that the definition of a "in-camera" proceeding or meeting excludes public discussion after the fact about the deliberations which took place during the meeting.... Such a meeting is not cloaked with confidentiality and there is no restriction on publication that follows. Such a meeting is not cloaked with the like protection of s. 649 of the *Criminal Code* which refers to jury deliberations which take place outside public view nor is it similar."

Confidentiality of matters discussed behind closed doors has been held to be part of the fiduciary duties directors of private corporations at common law. While common law in Ontario has developed certain fiduciary duties owed by municipal councillors to the municipal corporation there continues to be debate as to what matters attract these fiduciary duties and what the scope of those fiduciary duties is. Legislative activities by councillors have generally not attracted fiduciary duties whereas activities by individual councillors concerning the property, contracts and litigation of the municipalities have been held in some cases to be subject to fiduciary duties.

LIABILITY CONCERNS

The provisions respecting municipal liability in PART XVI of the *Municipal Act, 2001* are a disappointment, particularly because they fail to provide any protection to municipalities against joint and several liability. Consideration of joint and several liability has been reviewed several times, including in submissions made by the Ontario Building Officials Association when commenting on Bill 124 where they recommended that provisions apportioning liability be included rather than relying on joint and several liability. Joint and several liability is extremely costly and unfair to municipalities. Municipalities are often inappropriately added as defendant and are perceived by the courts as having "deep pockets" often in circumstances where other defendants do not have an ability to pay. As a result, settlements are expensive and so is insurance protection against municipal liability. Several municipalities are considering eliminating joint and several liability including a number of American jurisdictions and most significantly to us, the new Winnipeg *Charter* adopted in 2002 eliminates the application of joint and several liability to the City of Winnipeg and also provides Crown immunity for City Council and its Council members.

ONE SIZE DOES NOT FIT ALL

Legislation must be drafted to address the most pressing concerns for the greatest number of people. However, given the great differences within the Province, especially Northern and Southern Ontario, it is important to recognize that the legislative solution for one area may not be appropriate, or helpful for another area and can actually be detrimental.

This is especially so for economic development, where the issue is not development pressure, but rather what can be done to encourage development. A related issue is the ability to attract medical practitioners to northern areas and the constraints the Act places on municipalities providing incentives for doctors and other medical practitioners to locate in the North. As a result it is recommended that cities in Northern Ontario be allowed by regulation to declare that certain provisions in the *Municipal Act* regarding economic development and bonusing shall not apply so long as any such actions otherwise meet the standards of procedure and transparency under the *Municipal Act*. The ability to meet road standards under Ontario Regulation is another issue that needs to be addressed differently in the North.

This issue, however, is not restricted to the North. Specific tools are also required to address the needs of large urban centres, and the needs of rural municipalities as well.

CASE LAW COMMENT

Shell Canada Products Ltd. v. Vancouver, (City) [1994], 1 S.C.R. 231

The *Shell Canada* case signified a shift in the way the courts look at the rule of municipal institutions. The City of Vancouver had determined by [resolution/by-law] not to do business with Shell Canada to protest what the City Council saw as exploitive activities by Shell in dealing with its holdings in Africa. While the court determined that Council's action were beyond its jurisdiction and usurped federal jurisdiction over international affairs, the case remains important for a number of principles set out in the dissent, written by now Chief Justice McLachlin of the Supreme Court of Canada. That case stands for the proposition that rules of construction should not be applied to usurp the legitimate role of municipal bodies as community representatives and consequently, unless a municipal decision is clearly beyond a council's powers, the courts generally will uphold the decision. Unlike the narrow approach taken by Justice Iacobucci in the *Greenbaum* case, Chief Justice McLachlin endorsed the position that the courts are willing to imply jurisdiction where powers are not expressly conferred.

Nanaimo (City) v. Rascal Trucking Ltd. [2000] 1 S.C.R. 342

This case involved interpretation of the powers granted to municipalities in British Columbia to deal with nuisances and in this case order the removal of a pile of soil from property owned by Rascal Trucking. The issue was whether the phrase "or other matter or thing" was intended to expand the scope of section 936 to allow municipalities to determine what is a nuisance. The case is important in that the Supreme Court of Canada states that the standard of review to be used by the courts in determining whether or not a municipal decision is within its jurisdiction is one of patent unreasonableness. The court recognizes that municipal councils are elected representatives of their community and are accountable to their constituents. It states that municipalities are often required to balance complex and divergent interests in arriving at decisions in the public interest and that such decisions must be reviewed using a deferential standard. In this case, the court determined that the city's decision to declare the company's pile of soil a nuisance was not patently unreasonable and upheld the city position.

This case has signified a new understanding of municipal government by the Supreme Court of Canada. Previously, the test applied by the Supreme Court set out in the case of *Greenbaum [1993] 1.S.C.R. 674* and *R. v. Sharma [1993] 1 S.C.R. 650* required municipalities to find an express authority in provincial legislation before it had jurisdiction to regulate. In *Greenbaum*, the court notes that "municipalities are entirely the creatures of provincial statutes. Accordingly, they can exercise only those powers which are explicitly conferred upon them by a provincial statute. The court then determines that it follows that the exercise of a municipality statutory powers then is reviewable to the extent of determining whether the actions are within their jurisdiction. This is a very narrow approach. Similarily in *Sharma* the court states that "...as statutory bodies, municipalities "may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation".

114957 Canada Ltee (Spraytech, Societe d'arrosage) v. Hudson (Town)[2001] 2 S.C.R. 241

Spraytech challenged the authority of the Town of Hudson, Quebec to enact a by-law controlling pesticide application arguing that the municipality lacked jurisdiction because of existing provincial and federal regulation in the field. The Town of Hudson argued that the by-law was a proper exercise of its authority to regulate in the interests of public health. The Supreme Court of Canada held that the municipal by-law was valid because it was not inconsistent with either federal or provincial regulation in the field, i.e., compliance with the municipal by-law did not lead to contravention of federal or provincial regulation. *Spraytech* gave meaning to broad authority to the clauses in most municipal acts allowing municipalities to pass by-laws relating to matters of health and safety, even where higher levels of government held concurrent authority to regulate.

United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City) [2004] S.C.J. No. 19

This decision of the Supreme Court of Canada builds upon the principles of *Spraytech*, finding that the provinces do not need to legislate municipalities prescriptively, except in relation to civil or common law rights. In this case, the court found that the proper approach to the interpretation of municipal powers had shifted away from a strict construction approach to an interpretive approach. The court also noted that "several provinces have moved away from the practice of granting municipalities specific powers in particular subject areas, choosing instead to confer them broad authority over generally defined matters... This shift in legislative drafting reflects the true nature of modern municipalities which require greater flexibility in fulfilling their statutory purposes."

MUNICIPAL ACTS ACROSS THE COUNTRY

In 1994 the Province of Alberta enacted its new *Municipal Government Act*, SA 1994, Ch. M-26.1. Alberta's *Municipal Government Act* defines the purpose of municipalities as:

a) to provide good government,
b) to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality, and
c) to develop and maintain safe and viable communities.

The *Alberta Act* was the first Canadian statute to give broad powers to municipalities to regulate, known as spheres of jurisdiction. It provided municipalities with limited natural person powers, including the corporate powers of a natural person, which have allowed Alberta municipalities greater flexibility and access to new financial tools. These changes have generated a recognition across the country that municipalities are accountable and responsible levels of government, and in so doing, have reduced the regulatory role of the provincial government.

A flaw with the Alberta *Municipal Government Act* is that it does not provide for general consultation with local government before Alberta amends legislation that impacts on municipalities. Alberta has, however, recently entered into a Memorandum of Understanding with the cities of Edmonton and Calgary providing a process for consultation on amendments that affect them.

In 1996 Manitoba enacted a new municipal act that followed the general approach of the Alberta legislation in providing municipalities with interpretation powers and broad spheres of jurisdiction in which they have authority. The Manitoba legislation is somewhat more restrictive than Alberta's in that it does not give municipal governments natural person powers and the range of matters over which municipalities have general authority is somewhat narrower.

The Manitoba *Municipal Act* has no express mechanism for consulting with municipalities before the province amends legislation that impacts them. In addition to the general *Municipal Act*, the City of Winnipeg has operated under its own municipal charter since 1959. On January 1, 2003 a new City of Winnipeg *Charter Act* came into force that granted Winnipeg authority under fourteen spheres of jurisdiction, that are very similar to those found in Alberta's *Municipal Government Act*, and gave Winnipeg natural person powers. Further legislative change respecting the City of Winnipeg, i.e., a phase 2 to the Winnipeg *Charter*, is anticipated shortly.

In 1996, the Government of British Columbia enacted the *Local Government Act* which again recognized local government as independent, responsible and accountable orders of government and provided them with broader powers to provide good government and the services, facilities and things considered necessary or desirable in their communities. The Act allowed municipalities to encourage economic development by granting them greater corporate powers and greater flexibility to enter into joint ventures, provide incentives and otherwise encourage development. A new and important feature of the British Columbia legislation is a statutorily recognized requirement for notice and consultation before the provincial government can change legislation that directly affects local government interests. While the *Municipal Act* amendments did not come into force until September, 1998, this recognition was first set out in a "Recognition Protocol" in 1996 between that province and the Union of British Columbia Municipalities (UBCM).

In May, 2003 the British Columbia legislature enacted the *Community Charter* governing all municipalities in British Columbia except for Vancouver, which retains its own *Charter*. The *Community Charter* came into force on January 1, 2004 and is the most empowering legislation to date, granting broad authority to provide any municipal service and to regulate in relation to eleven autonomous and five "provincial/municipal concurrent areas" of regulatory authority. The *Community Charter* was amended in the Fall of 2003 to provide for a number of additional revenue sources...

In December, 1998, The Yukon Territory enacted a new *Municipal Act* providing municipalities with the rights, powers and privileges of a natural person except that municipalities were limited in that they could not establish or hold shares or memberships in another corporation that does anything the municipality does not have the power itself to do. The Yukon legislation contains a purpose section defining the purpose of the legislation as "to provide local governments with the powers, duties and functions necessary for fulfilling their purposes and to represent and respond with flexibility to the various interests, needs, and changing circumstances of their communities."

In 1998 Nova Scotia enacted its *Municipal Government Act* which, while carrying forward the old laundry list approach to municipal powers, also provided a requirement for mandatory consultation with affected municipalities on planning and development matters and with the Union of Nova Scotia Municipalities (UNSM) respecting amendments to the *Municipal Government Act*. The Nova Scotia legislation also contains a discretionary provision whereby the Minister may consult with, assist or advise municipalities in the conduct and administration of municipal affairs.

One other clear distinction is that across the country there appears to be recognition that a model based on " one size fits all" does not work to the advantage of all municipalities. This recognition does not exist in the Province of Ontario outside of special legislation directed at an individual municipality and obtained through private members' bills. In fact, the enactment of the *Municipal Act, 2001* and the repeal of various other pieces of legislation, including regional acts, took away from a recognition of distinctiveness between areas. It is beyond question that the needs of Canada's largest city, the City of Toronto, and other cities with significant populations such as Ottawa or Mississauga, are and always will be different from the needs of small towns and villages in the Province. One way to recognize these differences is to create a separate *Cities Act* to deal with these large urban centres and their differences. Another approach is to provide municipalities with broad general powers based on the nine principles adopted by the Association of Municipalities of Ontario in August, 2004. In this way, municipalities that have the ability and are required to work in a more complex urban environment, can meet the needs placed upon them; those operating in the north where municipalities are often faced with greater demands to meet needs that might otherwise be provided by the private sector; and those municipalities that have a greater comfort level with maintaining a higher level of connectivity with the Province, can all meet their respective needs.

Newfoundland and Labrador enacted a new *Municipalities Act, 1999* however in doing so it did not adopt the Alberta model of providing broad spheres of jurisdiction. The Cities of Corner Brook, Mount Pearl and St. John's all have legislation specific to them in addition to the *Municipalities Act* and again, this legislation follows the older model of drafting and does not provide for spheres of jurisdiction or broad general authority for these municipalities.

Legislation similar to the Alberta model and closely resembling the Yukon legislation was enacted in Nunavut Territory in March, 2003. This legislation includes a purpose section and a section setting out the responsibilities of council. Under this Act, council is responsible for developing and evaluating plans, policies and programs of the municipal corporation, administering the affairs of the corporation and carrying out the powers, duties and functions given to it under legislation. The responsibilities of council members are set out in section 32.1 as follows:

a) to consider the welfare and interests of the municipality as a whole and to bring to council's attention anything that would promote the welfare or interests of the municipality;
b) to participate generally in developing and evaluating the policies and programs of the municipal corporation;
c) to participate in council meetings and council committee meetings and meetings of other bodies to which they are appointed by the council;
d) to keep in confidence matters discussed in private at a council or council committee meeting until they are discussed at a meeting held in public; and
e) to perform any duty or function imposed on council members by this or any other enactment or by the council.

These responsibilities clearly recognize the important policy making role council plays and the fact that council is best able to assess the needs of the public. Under this Act, certain powers, such as those relating to the acquisition and disposal of property are defined. Other powers, such as authority respecting economic development are broadly defined. In this respect, in section 53.9(2) states:

"(2) subject to limitations on its powers in this or any other enactment or by a by-law, a council may encourage local economic development in any matter it considers appropriate…"

Municipalities are also authorized to act within eight broad spheres of jurisdiction.

The Nunavut legislation recognizes municipalities as corporations with all of the rights and the liabilities or corporations within their spheres of jurisdiction and accordingly, municipalities would then have full natural person powers within their jurisdiction.

Saskatchewan enacted its new *Cities Act* in 2003. Section 3 of the Act recognizes cities as a responsible and accountable level of government within their jurisdiction and states as one of the purposes of the Act is

(c)to provide cities with the flexibility to respond to the existing and future needs of their residents in creative and innovative ways;
(d)to ensure that, in achieving these objectives, cities are accountable to the people who elect them and are responsible for encouraging and enabling public participation in the governance process."

Cities are given the rights, powers and privileges of a natural person in carrying out these duties and responsibilities. In the Saskatchewan legislation the purposes of cities are defined broadly including to develop and maintain a safe and viable community, to foster economic, social and environmental well-being and to provide wise stewardship of public assets. In carrying out these purposes and authority under the Act, cities have the rights, powers and privileges of a natural person. Section 6 states:

"6. The power of a city to pass by-laws is to be interpreted broadly for the purposes of :
(a) providing a broad authority to its council and respecting the council's right to govern the city in whatever manner the council considers appropriate, within the jurisdiction provided to the council by-law; and
(b) enhancing the council's ability to respond to present and future issues in the city."

Section 8 sets out eleven spheres of jurisdiction where council has authority to pass by-laws that are similar to those found in the Alberta legislation. Following the Alberta model, matters such as tax and assessment are defined much more specifically.

The *Municipalities Act* of Prince Edward Island predates the Alberta legislation and contains 26 defined areas in which municipalities can provide service. Despite this, section 64 contains several specific areas of regulatory authority. Section 57 contains a broad authority to make laws for the peace order and good government of the municipality. Specific notice provisions are required to elicit public opinion on matters affecting residential property.

The *Municipalities Act* of New Brunswick does not follow the Alberta model but instead continues the old listing of prescribed powers and authority. The Act was proclaimed in force in July, 1975 and does not appear to be significantly amended since 1985.

CONCLUSIONS

One of the key conclusions to be reached from comparing the municipal legislation across this country is the growing trend to recognizing municipalities as a level of government and in so doing, a movement away from micro-managing while maintaining the need for accountability. More and more provinces are incorporating provisions in their legislation providing this recognition and requiring a process for consultation with municipalities before the primary municipal legislation is amended. This protection needs to be amended so that municipalities are consulted, not only on amendment of their municipal acts, but also on amendments to other legislation, by other provincial ministries, that impact on the operations of municipalities as a level of government. For example, amendments to the *Electricity Act* that impact on the way a municipality can hold an interest in a public utility commission or corporation.

PART II

Section	Proposed Change	Rationale for Proposed Change
8 - Natural Person Powers	delete sections 17, 20-23, ... delete sections 276-282	· restrictions on natural person powers not justified ie. no provincial policy interest demonstrated · redundant as they are all natural person powers. At a minimum, should be redrafted to only state any restrictions required to meet a provincial interest · see comments under Part I
11 – Spheres of Jurisdiction	Delete assignment of sphere in Section 11 and delete and replace Section 13 with a conflict provision that provides priority to the by-law of a lower-tier municipality where the lower-tier municipality regulated within the sphere on December 31, 2002 delete section 59 delete section 103	· the assignments do not accurately reflect where regulatory authority lies within two-tiered jurisdictions in many cases · the effect of Section 11 and Section 13 is to transfer municipal power from area municipalities to upper tier municipalities · when read with subsection 11(2)5. suggests lower tier municipalities are restricted from regulating signs within 400 metres of an upper tier highway · covered by sphere of jurisdiction respecting animals
17 – Restrictions on Corporate and Financial Matters	delete	· restriction on natural person powers is not justified · restrictions limit municipal ability to participate in innovative financing, public private partnerships and use of business model for capital projects as well as interfere with ability to collect on debts owing · see detailed comments in Part I

34(1) – Highway Closing Procedures	Require lower-tier municipality to specifically notify upper-tier municipality when lower-tier municipality intends to close a highway.	· the upper-tier municipality may have infrastructure in the road unbeknownst to the lower-tier municipality. · the upper-tier municipality may need part of the road as a widening of its own road; · the closing might infringe the upper-tier municipality's Official Plan (e.g., re road access to shorelines).
44-Minimum standards for highway maintenance	Amend to allow municipalities to set the minimum standards	· in northern Ontario weather conditions, large geographic areas, and a small assessment base make it impossible to meet current minimum standards at a reasonable cost · prescription is not consistent with recognition of municipalities as responsible and accountable governments · in a "one size fits all" system there must be recognition of differences in ability to pay
106-Bonusing		· seriously impedes our ability to compete with American cities who can offer numerous incentives to business · restricts ability of under-serviced municipalities to attract doctors and other health and social services professionals · restricts ability to deal with Brownfields
108-Small business programs	Delete section 108(2)(a)	· this is a matter of local interest and requirement for approval · contrary to treating municipalities as responsible and accountable governments

109-Community development corporations	Clarification respecting bonusing	· need clear authority that CDC's can bonus · in the alternative, if bonusing is not authorized then need clear authority to allow municipalities to enter into agreements with provincial agencies and/or initiatives, such as the Northern Ontario Heritage Fund Corporation, where the terms of these agreement potentially place municipalities in violation of the *Municipal Act*, 2001
122 – Snow and Ice	add authority to require owners to remove snow and ice from sidewalks	· previously existed in section 210(60), *Municipal Act* R.S.O. 1990. If falls within highways sphere of jurisdiction, what happens along upper tier roads?
147- Energy Conservation Programs	Delete	· falls within natural person powers
238- Procedure By-law	Add a provision allowing for electronic meetings	· authorized under the Business Corporations Act and authorized for school boards under section of the *Education Act*

239-Open Meetings	Add as Section 239(2)(h) "any thing which a municipality is permitted or required to maintain in confidence pursuant to MFIPPA" Amend Section 1 to add a definition of "meeting"	· must be consistent with the *Municipal Freedom of Information and Protection of Privacy Act* · like private sector businesses, the provinces and federal government, municipalities need the ability to hold non-business meetings to be briefed- they must be able to "ask dumb questions" without fear of being misquoted or humiliated to prepare to deal with the complex issues facing them. Decisions would still be made in public
251- Notice	· Amend section 251 · Require municipalities to pass a By-law setting out the things Council will provide notice about, as well as the form and manner of such notice · Delete notice provisions in section 34(1), 34(2), 36(3), 37(1), 44(10-12), 47, 48, 57(2), 81(3), 91(6), 99(1), 110(5)(7)(14), 132(2), 135(6), 144(5)(13-14), 149(2), 150(3), 157(3), 173(3), 174(9-10)(12-13), 187(2), 206, 210, 211, 212, 216(4), 217(2), 219(1), 222(2-3), 238(4), 252(8), 291, 295(1), 300(1-2), 348(2-3), 350(1), 356(5), 357(6), 358(8), 359(4), 365(2), 365.2(6), 367(5-7)(13), 368(1)(3), 368(5-9), 368.3(2), 374(1), 379(1), 380(3), 381, 402(1), 431, 432(8), 433(3)(6)(12),	· section 2 recognizes municipalities as responsible and accountable governments and such prescription is not required as a result · most municipalities exceed notice requirements in any event i.e. budgets · see detailed comments in Part I
268 – Sale of Land	amend subsection (6)	· subsections (6) and (7) are inconsistent; if a certificate must be included in a deed or transfer then the clerk must issue a certificate

284 – Treasurer's Statement	clarification	· clearly captures what is paid directly to a member of council, but not what is paid on their behalf
150 – Business Licensing	delete subsection (3)	· benefit unclear. Unclear as to level of detail required · not consistent with treating municipalities as responsible and accountable governments · rationale for licensing can already be determined through council minutes and staff reports without exposure to potential challenge due to detail included to meet this requirement
	delete subsections (9) and (10)	· not consistent with treating municipalities as responsible and accountable governments · in any event most municipalities do not impose fees that come close to full cost recovery · restriction to direct costs creates an inequity between two-tier municipalities and single-tier municipalities where police, health and other inspection and enforcement costs are incurred at the upper-tier level while licensing is a lower-tier municipal function · amend subsection 8(k) to including indirect costs See comments above re costs of police and health services. · municipalities should be authorized to established fees to achieve policy objectives, such as conservation, and not be strictly limited to costs recovery

151 – Adult Entertainment Establishments	amend subsection 151(3) to provide right of entry to "Peace Officers"	· licensing municipalities rely on police to enforce the by-law, and in two-tier jurisdiction is again a problem
154 – Licensing Tow Trucks	amend to provide clear authority to regulate storage rates at a garage add clarification respecting licensing	· inconsistent if municipalities can regulate the towing rate but not the storage rate – can't achieve the intended public benefit · clarification is required that when licensing kennels as a business the entire dog-animal by-law is not subject to the licensing restrictions and sunsetting provisions (Section 163)
195-197 – Municipal Service Boards	amend delete requirement for council approval in Section 196(2) (a) (b) and (c)iii clarification required between subsections 197(1) and (2)	· clear authority for municipalities to determine the extent to which they wish to delegate powers to a municipal service board should be provided · if there is a mandatory requirement for council to pass a resolution under section 397, then this is not real delegation · clarify whether municipal services boards are in fact supposed to be self-funding and self-running · need to clarify municipalities' exposure to liability of MSB's, while abiding corporate, are their agent, particularly given restrictions on delegation · unclear what natural person powers municipal services boards have as a body corporate

390 – Fees and Charges	Expand definition of "local board"	· definition merely "includes" prescribed bodies; · definition ought to be clear and exhaustive – e.g., does this definition of "local board" differ from the definition of "local board" in section 1(1)?
448 – Liability and Immunity	· amend subsection 448(1) to provide immunity to municipal corporations · amend Section 448 to eliminate joint and several liability for municipal corporations	· even where municipalities are only minimally at fault, joint and several liability results in substantial awards against municipalities who are seen as the "deep pockets" by litigants and the courts. The end result is that insurance costs are beyond affordability for most municipalities. · what is the public interest in making municipalities in effect responsible for paying substantial costs to persons who are often substantially responsible for their own misfortune. These costs are really social welfare costs that should be picked up by the province and/or private insurance companies acting for these individuals. · See comments under Part I

312 – Local Municipal Tax Levies	· amend to provide authority to levy a destination marketing fee · amend provisions related to caps on commercial/industrial tax rates to allow implementation of a heritage tax rebate programme and clarify not bonusing · a local heritage preservation initiative · restore authority to charge "rent" to utility companies ie. telephone, cable, gas and hydro for the use of municipal property through a gross receipt tax or franchise fee	· this is a matter of local interest and is consistent with treating municipalities as responsible and accountable governments. In fact, in the GTA the hotel industry has already started paying a voluntary fee to be used to promote tourism · Previously authorized under the old *Municipal Act* and a matter of local interest – reimbursement for use of municipal property.
430 – Entry to Dwellings	amend Act to establish a single common uniform right of entry	· rights of entry into buildings and dwellings and entry into land are scattered throughout the Act and should be uniform for all regulatory offences, similar to that in place under the *Planning Act* and the *Building Code Act*
None	Re-enact section 147 of *the Regional Municipalities Act*	· upper-tier municipalities no longer have authority to appoint fire co-ordinators.

Achieving a Mature Relationship
Review of the Municipal Act, 2001

Recommendations Adopted By AMO

"Municipalities are... responsible and accountable governments ..."

Section 2, Municipal Act 2001

Setting the Context:

- *"Our review is intended to identify the legislative amendments that can provide local governments with more tools and greater flexibility to creatively serve their residents."*
- , *"It is my view, and the vision of the McGuinty government, that we no longer want to micro-manage municipal governments. They are a level of government, duly elected just like the provincial and federal levels."*

  - Hon. J. Gerretsen, June 22, 2004

Proposed Principles for Achieving a Mature Relationship

1. Municipalities are responsible and accountable governments.
2. New legislation shall enhance existing municipal powers.
3. The province shall stop micromanaging municipal governments.
4. Where there is a compelling provincial interest the province shall when regulating municipal government define at the outset that interest.
5. Provincial legislation shall be drafted with the expectation of responsible municipal government behavior and not as a remedial tool.

...continued

3

6. Accountability means mutual respect between municipal government, the province and other public agencies.
7. Resources for municipal governments shall be sustainable and commensurate with the level of responsibility.
8. The Municipal Act shall include principles that will protect the Municipal Act and municipal powers from all provincial legislation.
9. The province shall commit to increasing the understanding and awareness of municipal government within all ministries and provincial agencies.

The above principles ensure that all legislation empowers the evolution of municipal government.

4

Application of The Principles

- Will result in considerably different legislation affecting municipalities.
- Will result in recommendations that will make the rest of the Act consistent with current section 2, the Purpose Section...

"Municipalities are... responsible and accountable governments ..."

5

Micro-Management

Province must remove itself from micro-managing municipalities and NOT legislate detailed business practices for municipalities.

Benefits:

- Municipalities can be more timely and responsive when they are not micro-managed.
- Province sees legislative and cabinet time freed up for truly provincial needs.
- Specific legislative solutions to unanticipated situations will be reduced.

6

Recommendations

- Eliminate Provincial micro-management

Some examples will see removal of:

- Prescriptive requirements for public meetings
- Lists
- Content and form of tax bill
- Appointment of deputy clerks and treasurers
- And more…

7

Specifically:

It is recommended that the Municipal Act and Regulations be amended by deleting all requirements for "notice" and replace with a general provision allowing municipal councils to determine by by-law under what circumstances notice is required and the form, manner and timing of the notice.

8

Specifically:

It is recommended that the limitations on incorporating be repealed and replaced with a broad power permitting municipalities to incorporate corporations under either the Business Corporations Act or under Part III of the Corporations Act for any municipal purpose.

9

Specifically:

It is recommended that the restriction on the receiving and holding of shares of a corporation be removed.

10

Spheres of Jurisdiction

- Two new Spheres are being suggested by the Province:
  - health
  - environment.
- The areas of truly provincial interest need to be identified first so there is no confusion or conflict
- Tourism is an area that municipal government has taken a role yet is not identified in spheres

11

Specifically:

> *It is recommended that health and the environment be added as two new Spheres of Jurisdiction in section 11 and that the Principles be applied to all legislation affecting new spheres. This will require further discussion with the various Ministries to clarify the municipal responsibility from a provincial responsibility, among other matters contained in the Principles.*

12

Specifically:

It is recommended that Sphere of Jurisdiction 10 be amended to read "Economic Development and Tourism" and that it apply to all municipalities.

13

Natural Person Powers

- Provides municipalities with the capacity, rights, powers and privileges of a natural person for exercising its authority under any statute
- To be exercised by by-law
- Presently structured, Section 8 does not create any substantive powers for municipalities.

...continued

14

Natural Person Powers

- To be used once authority to act is found elsewhere in the Municipal Act, other statute or regulation
- To be interpreted broadly and confer broad authority to govern municipal affairs
- To enhance ability to respond to municipal issues
- Effect is reduced by the imposition of restrictions and limitations in section 17, among other sections.

15

Specifically:

It is recommended that Natural Person Powers be enhanced:

- *to include the use of those powers for matters related to effective management and administration of the municipality and local boards, and*
- *by the reduction or elimination of the restrictions and limitations currently in the act.*

16