SECTION 1

PANEL CONCLUSIONS AND RECOMMENDATIONS RESPECTING GOVERNANCE IN INCORPORATED MUNICIPALITIES

The first section addresses the issues raised in respect of the legislation governing the incorporated cities, towns and villages in New Brunswick. For ease of reference, the Panel comments and recommendations on the various issues raised follow the order presented in the *Report of the Municipalities Act Review Advisory Committee*.

PLAIN LANGUAGE

Background

During their deliberations, the Review Advisory Committee concluded:

- ***The new Statute should adopt a plain language approach.***
- ***Every means possible should be employed to use language that would be easily understood by the public.***

Synopsis of Public Input

Universal support was expressed for this approach to legislative drafting. The general consensus was that the current act is vague and confusing and does not lend itself to ease of administration let alone public understanding.

Panel Comments

A plain language approach to legislative drafting has been recently adopted in a number of jurisdictions and for good reason. A plain language approach will enhance the public understanding of the roles and responsibilities of local government and consequently the accountability of those elected. Confusion, costly administration, needless mistakes and citizen hostility are the products of legislation that cannot be properly administered or understood by those it was meant to serve.

The requirement for plain language must be implemented in concert with a deliberate effort to ensure clarity of meaning. A provision can be written in plain language but yet be open to ambiguity and misunderstanding. The Panel was impressed with the clarity of language and ease of understanding in the Municipal Act adopted in Manitoba[18] (See Appendix 3, Note 1) and encourages the Province of New Brunswick to adopt a similar approach.

The Panel strongly endorses the adoption of a plain language approach that is clearly and easily understood by the public.

Panel Response to Recommendations:

Recommendation #2:	***The new Municipalities Act should be drafted in plain language so that it may easily be understood by members of the public.***
THE PANEL CONCURS.	
Recommendation #3:	***The new Municipalities Act should be divided into chapters and chapter headings should be used to identify each section of the Act.***
THE PANEL CONCURS AND FURTHER RECOMMENDS THE USE OF 'INFORMATION MAPPING' FOR EASE OF REFERENCE.	

MUNICIPAL ELECTIONS

WARDS

Background

The Municipalities Act authorizes a Council to enact a bylaw the effect of which would be to divide the municipality into wards. The legislation is entirely permissive and at the present time there are approximately sixteen municipalities in New Brunswick that are divided into wards for election purposes. The Municipalities Act is silent as to the criteria to be used by a municipal Council in determining the number and the size of municipal electoral wards. While in most municipalities that are divided into wards for election purposes only the residents of the ward elect the representative for that ward, voting restrictions do not automatically flow from the enactment of a ward division bylaw. In order to

[18] The Municipal Act, S.M. 1996, c. 58- Chap. M225

restrict voting rights, Council must enact an additional bylaw under the Municipal Elections Act.

During their deliberations, the Review Advisory Committee concluded;

- A ward system should not be made mandatory for any municipality.
- Council should retain its authority to elect Council members at large.

- The Council should be required to consider objective criteria when making ward divisions.

Synopsis of Public Input

With respect to wards, there was agreement that the decision to adopt a ward system should be a local matter. It was however suggested that the specific criteria to be used in determining the ward boundaries should be set out in the legislation. Population, topography, area and natural boundaries were suggested as considerations, with population being the prime determinant.

A requirement for periodic review to ensure that ward divisions continue to meet the criteria was mentioned and the need for wards in very small communities was questioned. Support was expressed for Councils comprised of a combination of members elected at-large and by wards.

There was also a general rejection of the notion that the constituency of a Councillor elected from a ward is solely that ward. Presenters argued that this would create a parochial atmosphere to the detriment of the well being of the community. They pointed out that while a ward Councillor could represent the interests and concerns of his/her ward, he/she had a primary obligation to address the issues at hand from a community perspective.

Panel Comments

The Panel noted that during the May 1998 municipal elections, one-hundred-and-five (105) Councillors were elected to eighty-four (84) wards out of a total of five-hundred-and-six (506) available Council seats.[19] The limited use of elections by ward indicates a preference for choosing Councillors on an at-large basis.

Citizen access to those elected can be enhanced using a ward system particularly in larger municipalities. A ward system also reduces campaign expenses and increases the ability for potential candidates to seek office in large urban areas. It should be made clear however, that a Councillor elected from a ward must always consider the broader community interest before purely ward interests.

Restricting the constituency of a ward Councillor solely to the ward creates a risk of developing a parochial approach to governance that focuses on 'sharing the

[19] pp. 18-21 Report of the Municipal Electoral Officer, Province of New Brunswick, May 11, 1998

pie' as opposed to striving to improve the well being of the entire community. The Panel believes this risk would be greatly increased if the legislation decreed that the constituency of the ward Councillor was indeed his/her ward.

The mix of Councillors chosen at-large and/or by ward in one community may not be appropriate for another community. The Panel concluded that the decision to use wards, at-large or combination thereof should continue to remain a matter of local choice.

The Panel believes that adopting standard legislated criteria for establishing ward boundaries would assist communities that decide to pursue a ward system. As with the Manitoba legislation, the Panel believes the legislation should consider population as the primary determinant of the size and number of wards and such other factors as population trends, settlement patterns, natural geographic boundaries, area and community or diversity of interest.[20]

The Panel agrees that the primary aim of a ward system is to promote a close relationship between the Councillor elected to represent a ward and the residents of that ward and therefore questions the need for using a ward system in very small communities.

The Panel agrees that a periodic review of ward boundaries should be made mandatory in order to maintain equilibrium in the size and characteristics of the wards. The Province of Nova Scotia legislation requires a review every eight years.[21] Given the emphasis on population, the Panel recommends that the review cycle take into consideration the release of the national census.

Panel Response to Recommendations

Recommendation #4:	***The division of a municipality into wards should not be made mandatory.*** **THE PANEL CONCURS. THE LEGISLATION SHOULD CONTINUE TO RECOGNIZE THE ESTABLISHMENT OF WARDS AS A MATTER OF LOCAL CHOICE.**
Recommendation #5:	***The capacity of a Council to enact a ward division bylaw should be contingent upon the municipality having a minimum population level of 1500.*** **THE PANEL CONCURS.**
Recommendation #6:	***The factors that are to be considered by Council when it establishes ward boundaries should be prescribed by legislation.***

[20] s. 88, The Municipal Act, S.M., c. M225
[21] s. 369, Municipal Government Act, S.N.S. 1998, c. 18

THE PANEL CONCURS AND RECOMMENDS THAT POPULATION BE THE PRIME CONSIDERATION IN ADDITION TO NATURAL GEOGRAPHIC BOUNDARIES, COMMUNITY OR DIVERSITY OF INTERESTS,

SETTLEMENT PATTERNS, POPULATION TRENDS AND LAND AREA.

THE PANEL FURTHER RECOMMENDS THAT THE LEGISLATION REQUIRE THAT WARD BOUNDARIES BE REVIEWED AND ADJUSTED AS NECESSARY IN CONJUNCTION WITH THE PERIODIC RELEASE OF THE NATIONAL CENSUS AFTER THE ADOPTION OF THE WARD BOUNDARIES.

Recommendation #7: ***When a municipality has been divided into wards, a candidate should be elected only by the residents of the ward that he or she has been nominated to represent.***

THE PANEL CONCURS

Recommendation #8: ***The legislation should specifically state that the constituency of a Councillor who has been elected to represent a ward is that ward and*** *the constituency of a Councillor elected at large is the entire* ***municipality***

THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THIS APPROACH BE REJECTED. THE PANEL BELIEVES THAT THE BEST INTERESTS OF THE ENTIRE COMMUNITY MUST BE THE RESPONSIBILITY OF ALL COUNCILLORS.

COUNCIL COMPOSITION

Background

The Municipalities Act currently prescribes the minimum number of Council members and authorises Council to enact a bylaw increasing the number of members of Council.

During their deliberations, the Review Advisory Committee concluded;

- The current flexibility in the Act should be retained.
- Council should retain its authority to determine the number of Councillors.

Synopsis of Public Input

A suggestion was made that a maximum number of Councillors as well as a minimum number should be prescribed. A clear definition of terms such as 'all of the members of Council' was also stressed. As it now stands this phrase is sometimes taken to mean all those present, all those elected or all those eligible to vote etc. depending on the practice in the different communities.

Panel Comments

The Panel believes that establishing a minimum number of Council seats ensures that there will be an effective decision making structure in place. On the other hand a suitable maximum would be difficult to define given the varying needs and characteristics of the municipalities in New Brunswick.

The Panel fully supports the need for careful definition of all key phrases in the legislation in the interests of promoting clarity of understanding and administration.

The proposed definition of 'all of the members of Council' could pose problems in that individual Councillors could thwart the decision making process of the entire Council by simply not attending a meeting. The principles of accountability, responsiveness and openness demand the participation of the individual Councillors, particularly in significant matters requiring a certain vote from all of the members of Council.

Panel Response to Recommendations

Recommendation #9:	***The current statutory minimum number of Council members should remain in place.***
THE PANEL CONCURS.	
Recommendation #10:	***The legislation should not impose a statutory maximum on the number of Council members, either by class of municipality or on the basis of population.***
	THE PANEL CONCURS.
Recommendation #11:	***The term 'all of the members of Council' should refer to the total number of members authorized by bylaw exclusive of any vacancy on Council and/or any member who has declared him or herself to be in a conflict of interest***
	THE PANEL CONCURS AND FURTHER RECOMMENDS THAT A LIMIT ON THE NUMBER OF TIMES THAT AN INDIVIDUAL COUNCILLOR CAN BE ABSENT FROM A MEETING REQUIRING A VOTE OF 'ALL OF THE MEMBERS OF COUNCIL' SHOULD BE INCORPORATED IN THE LEGISLATION.

PROCEDURAL MATTERS

Background

The Municipalities Act provides that both ward division and Council composition bylaws may not be amended or repealed within four years of the date of their enactment or last amendment, or within six months of a triennial election. The legislation specifies that any increase in the number of members of Council will not generate a vacancy but is silent as to the effect of any decrease in the number of seats on Council. No special procedural restrictions are imposed upon the enactment, amendment or repeal of either type of bylaw.

During their deliberations, the Review Advisory Committee concluded;

- Council should not have authority to enact a bylaw that would affect its own composition.
- The public should have adequate notice of any proposed change to ward divisions.
- A compulsory review of ward division and Council composition bylaws was not warranted.

Synopsis of Public Input

Public input was limited regarding these provisions. It was noted that in practice, the current time restrictions could preclude changes to ward divisions over two municipal elections.

Panel Comments

Protecting the public interest is the primary concern in these matters as ward divisions affect the democratic voting rights of citizens. Requiring public notice and preventing a Council from changing its own composition during its current term are reasonable and practical requirements.

Panel Response to Recommendations

Recommendation #12:	***A notice of intention should be published by Council prior to the enactment, amendment, or repeal of a ward division or Council composition bylaw.***
THE PANEL CONCURS.	
Recommendation #13:	***The enactment, amendment, or repeal of a ward division or Council composition bylaw should receive the affirmative vote of a majority of all of the members of Council.***

THE PANEL CONCURS.

Recommendation #14: ***Council should be required to notify the Municipal Electoral Officer of the enactment, amendment, or repeal of a ward division or Council composition bylaw no later than six months prior to the next triennial election in order to allow sufficient time for the necessary adjustments to polling divisions and other election matters to be made.***

THE PANEL CONCURS.

Recommendation #15: ***Failure to notify the Municipal Electoral Officer of the enactment, amendment, or repeal of a ward division or Council composition bylaw within the prescribed time frame should render the bylaw, or any change thereto, inoperative.***

THE PANEL CONCURS.

Recommendation #16: ***The current time restrictions on the enactment, amendment, or repeal of a ward division or Council composition bylaw should remain in place.***

THE PANEL CONCURS.

Recommendation #17: ***The enactment, amendment, or repeal of a ward division or Council composition bylaw should only come into effect at the next ensuing triennial election.***

THE PANEL CONCURS

VACANCIES AND BY-ELECTIONS

Background

The Municipalities Act currently provides that a vacancy on Council will result when fewer candidates than are required for office are nominated; a member resigns from office; a member dies while in office; a member is convicted of an indictable offence under the Criminal Code; a member fails to subscribe to the oath of office; a member ceases to be a resident of the municipality; a member is absent from the municipality (except in the case of illness or by leave of the Council) for more than two months at one time or from four or more consecutive regular meetings of the Council; or a member has been disqualified or declared incapable of holding office. The Municipalities Act requires that a by-election be held to fill each vacancy on Council but stipulates that no by-election may be held within one year of a triennial election.

During their deliberations, the Review Advisory Committee concluded;

- Any Council that refused to submit the budget of the municipality would have failed in its primary duty to the residents and that each member of the Council should forfeit his or her office.

- It should not be necessary to hold repeated by-elections in situations where there are an insufficient number of candidates.

Synopsis of Public Input

The Review Committee recommendation that Councillors should forfeit their seat in the event they refuse to submit a budget was an area of significant concern among presenters at the hearings. Several presenters felt that the measure was draconian and undermined the democratic will of the people when they elected the Councillors. It was also repeatedly pointed out that penalizing all Councillors for the action of some would be patently unfair. Others thought a distinction should be drawn between a Council's inability to come to a consensus on a budget for legitimate reasons and an outright refusal to submit a budget.

Panel Comments

The Panel believes that any action to remove a duly elected representative from office constitutes an extreme sanction and should be the sole prerogative of the courts after all other avenues at solving the problem have been fully explored. The penalty proposed seems disproportionate in relation to the matter at hand.

A Council may be unwilling or unable to conclude a budget for want of adequate information or a simple inability to achieve a political consensus. The Panel believes that it would be more appropriate to impose the same budget as the year previous (with a revised tax rate derived from the new assessment base) once a specific period of time or certain deadline date has elapsed.

Only in the rare circumstance that a Council overtly and expressly refuses to submit a budget should court action be commenced to have a Council seat declared vacant. Even in this instance, such a penalty should apply only to those Councillors who voted in support of the motion to refuse to submit a budget.

Panel Response to Recommendations

Recommendation #18:	***A vacancy on Council should not result when a Councillor elected to represent a ward ceases to reside in that ward but continues to reside in the municipality.*** **THE PANEL CONCURS IN THE INTEREST OF PRACTICALITY AND COST EFFECTIVENESS BUT NOTES THAT THIS PROVISION RUNS CONTRARY TO THE**

RATIONALE FOR INSTITUTING WARDS (AREA REPRESENTATION).

Recommendation #19: ***In situations where a Council neglects or refuses to provide the Minister with a budget for the municipality, the seat of every member of Council should be declared vacant.***

THE PANEL DOES NOT CONCUR AND RECOMMENDS THAT THIS PROVISION IS REJECTED AND THAT THE MUNICIPALITY'S BUDGET FROM THE YEAR PREVIOUS BE IMPOSED USING A REVISED TAX RATE.

THE PANEL FURTHER RECOMMENDS THAT THE LEGISLATION IMPOSING PENALTIES SHOULD APPLY ONLY IN THE RARE CIRCUMSTANCE THAT A COUNCIL OVERTLY AND EXPRESSLY REFUSES TO SUBMIT A BUDGET AND THEN ONLY TO THOSE COUNCILLORS WHO VOTE FOR SUCH ACTION.

THE PANEL RECOMMENDS THAT A COUNCIL SEAT SHOULD BE DECLARED VACANT ONLY AS THE RESULT OF A COURT ACTION INITIATED BY THE PROVINCE OR A RESIDENT OF THE COMMUNITY. EVEN IN THIS INSTANCE, SUCH A PENALTY SHOULD APPLY ONLY TO THOSE COUNCILLORS WHO VOTED IN SUPPORT OF A MOTION TO REFUSE TO SUBMIT A BUDGET.

Recommendation #20: ***Vacancies that result from an insufficiency of candidates offering at a triennial election should be dealt with in the following manner:***

- ***where quorum cannot be obtained, in addition to the powers of the Lieutenant-Governor in Council respecting the appointment of a supervisor under the Control of Municipalities Act, the Minister should be authorized to reduce the quorum requirements of Council pending the holding of a by-election to fill any vacancy;***
- ***where no candidate has offered for the position of mayor, the newly elected Council should be allowed to assume office. The first meeting of Council in this situation should be called by the clerk of the municipality and the Council should elect a Deputy Mayor at this first meeting to act in the capacity of mayor pending the holding of a by-election to fill the vacancy;***
- ***if, following two calls for the nomination of candidates to fill a vacancy arising from an insufficiency of candidates, no candidate has offered, any reduction in quorum requirements that may have been ordered by the Minister during the time period in which the by-election is to be held should remain in effect until the next triennial election. Notwithstanding the time restrictions currently in place regarding the enactment, amendment, or repeal of Council***

composition bylaws, the Council should also be required to amend its Council composition bylaw to reduce its numbers by the number of positions that remain unfilled. No Council, however, should be compelled to reduce its numbers below the present statutory minimum.

THE PANEL CONCURS.

Recommendation #21: ***The present prohibition against the assumption of office by a new village Council until such time as all vacancies attributable to an insufficiency of candidates have been filled should be removed from the legislation***

THE PANEL CONCURS.

SUSPENSION OF COUNCIL POWERS

Background

Read in tandem, the provisions of the Municipalities Act and the Municipal Elections Act contemplate that there can be as much as a six week gap between the date that a new Council is declared elected in a triennial election and the date that such Council is sworn in and assumes office. During that period of time, the outgoing Council continues to exercise full authority over the affairs of the municipality.

During their deliberations, the Review Advisory Committee concluded;

- Following polling day the authority of an outgoing Council should be limited to taking actions of a general care taking nature.

Synopsis of Public Input

The question of limiting Council powers to a caretaker role from polling day until the fourth Monday in May drew considerable comment. Some individuals supported total restrictions during the so-called 'lame duck period' while others insisted that municipal business should not grind to a halt for an extended period.

Presenters raised particular concerns about the consequences of halting time sensitive processes such as zoning applications and tender awards. There was a consensus that the municipality had to continue to pay its employees and day to day operational expenses and the outgoing Council should not be able to appoint or dismiss employees during the transition period. It was noted that the courts would set aside any Council decision taken in bad faith.

Panel Comments

The Panel sought to achieve a balance between the need to maintain the effective and efficient operation of local governments with the equally attendant need to avoid the possibility of an abuse of power.

The Panel believes that preventative action would be more effective than corrective action that could involve considerable time and resources. The Panel concluded that the outgoing Council should be prevented from enacting new bylaws, appointing or dismissing officers or employees and awarding new contracts or approving new capital expenditures during the transition period. The Panel concluded that these restrictions would prevent taking conclusive or irrevocable action during the lame duck period but allow the process of calling tenders and changing bylaws to begin during the transition period.

The Council should also be permitted to deal with zoning matters or matters initiated under the Community Planning Act that were already in process prior to the date for the close of nominations. Citizen and corporate interests may suffer unnecessarily as a result of delays in obtaining a decision of Council. As well, expenditures and payment for items included in the approved annual operating and capital budgets should be permitted during the transition period in order to allow for the continued operation of the municipality.

Panel Response to Recommendations

Recommendation #22:	***The powers of an outgoing Council should be restricted, from polling day until the fourth Monday in May, in regard to the enactment of bylaws, the payment of money, contracts and other legal obligations, and the appointment or dismissal of officers or employees.***
	THE PANEL CONCURS WITH THE NEED FOR SOME RESTRICTIONS AND FURTHER RECOMMENDS THAT THE OUTGOING COUNCIL SHOULD BE PREVENTED ONLY FROM ENACTING NEW BYLAWS, APPOINTING OR DISMISSING OFFICERS OR EMPLOYEES AND APPROVING NEW CONTRACTS.
	THE PANEL FURTHER RECOMMENDS THAT THE EXISTING COUNCIL BE EMPOWERED TO DEAL WITH ZONING MATTERS OR OTHER MATTERS INITIATED UNDER THE COMMUNITY PLANNING ACT THAT BEGAN PRIOR TO POLLING DAY. AS WELL, EXPENDITURES AND PAYMENTS FOR ITEMS INCLUDED IN THE APPROVED ANNUAL BUDGET SHOULD BE PERMITTED DURING THE TRANSITION PERIOD. THE RESTRICTIONS SHOULD NOT IMPEDE THE DAY TO DAY OPERATION OF THE MUNICIPALITY.

THE PANEL FURTHER RECOMMENDS THAT THE EXISTING COUNCIL BE PERMITTED TO PROCEED WITH PROJECTS PREVIOUSLY APPROVED IN THE ANNUAL CAPITAL BUDGET BUT THAT NO NEW CAPITAL CONTRACTS BE AWARDED DURING THE TRANSITION PERIOD.

OATH OF OFFICE

Background

The Municipalities Act anticipates that newly elected members of Council will be sworn in on or before the fourth Monday in May. Those elected by acclamation can take the oath at any time following the close of the nomination period while those who are successful in a contested election can take the oath following the end of the ten-day period for requesting a recount. In the event of illness or unavoidable absence, a member of Council may take the oath at any time following his or her election. A person who fails to take the oath within the prescribed time frame loses his or her seat on Council. Failure to subscribe to the oath is a Category B offence under the Provincial Offences Procedures Act. The oath of office is administered by the clerk of the municipality and the taking of the oath is entered into the minutes of the Council meeting.

During their deliberations, the Review Advisory Committee concluded;

- That a person other than the municipal clerk should be permitted to officiate at the swearing in ceremony.

- No person should take the oath of office at any time prior to the fourth Monday in May.

Synopsis of Public Input

The limited input received was in general support of allowing persons other than the municipal clerk to officiate at the swearing in ceremony. It was suggested that the Act set out which group of individuals is permitted to officiate and that it be up to local Councils to identify by bylaw which of those individuals they wish to allow to administer the oath. Others suggested that it should be purely a matter of local choice.

Panel Comments

The Panel concurs with the recommended approach of the Review Advisory Committee as it provides certainty and respects local choice. The current legislative provisions are too general and do not lend certainty to the process from the perspective of both citizens and those elected to office.

Panel Response to Recommendations

Recommendation #23:	***Newly elected members of Council should be sworn in no earlier than the first meeting of Council on the fourth Monday in May. In the event of illness or unavoidable absence, members of Council should be sworn in as soon as possible after the fourth Monday in May.***
THE PANEL CONCURS.	
Recommendation #24:	***The oath of office should be administered at the first meeting of Council and the legislation should provide that the oath may administered by the clerk of the municipality, a judge of any New Brunswick court, a notary public, or a commissioner of oaths.***
	THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE SELECTION OF THE OFFICIAL BE LEFT TO THE LOCAL COUNCIL TO DECIDE BY BYLAW. IN THE ABSENCE OF A BYLAW TO THE CONTRARY, THE CLERK SHOULD OFFICIATE.
Recommendation #25:	***In order that there may be certainty respecting the official that is to administer the oath, the designation should be made by way of municipal bylaw.***
	THE PANEL CONCURS.
Recommendation #26:	***Newly elected Council members should be given the option of making a solemn affirmation in lieu of an oath.***
	THE PANEL CONCURS.
Recommendation #27:	***Both a form of oath and a form of solemn affirmation should be prescribed by regulation under the Municipalities Act.***
	THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE STATUTORY OATH PREVAIL ONLY IN THE ABSENCE OF A BYLAW PROVIDING A FORM OF OATH AND A FORM OF SOLEMN DECLARATION.
Recommendation #28:	***The current penalties for a failure to take the oath should remain in effect.***
	THE PANEL CONCURS.

MUNICIPAL COUNCIL

ROLE OF MAYOR AND COUNCIL MEMBERS

Background

The Municipalities Act currently assigns a number of specific duties, such as presiding at meetings and signing documents, to the mayor of the municipality. The legislation also provides that the mayor is the chief executive officer of the municipality. The deputy mayor is to be 'elected' by Council and may act in the place of the mayor in the mayor's absence. The legislation does not deal with the situation in which both the mayor and the deputy mayor may be absent from the municipality. The Act also does not prescribe the roles and responsibilities of other members of Council.

During their deliberations, the Review Committee concluded:

- That the Mayor continues to exercise those powers and perform those duties currently provided for in the statute such as presiding at meetings and signing contracts.

- The new Act should codify the leadership responsibilities of the Mayor.

- The new Act should delineate the roles and responsibilities of members of Council.

- The procedures to be followed in making the selection of a deputy mayor should be prescribed by bylaw.

Synopsis of Public Input

The input on these matters was substantial and at times conflicting.

There were divergent opinions respecting the need for a statutory delineation of the roles and responsibilities of the Mayor and Councillors. Those who supported the notion contended that defining the roles would help 'raise the bar' as it were and compel those elected to step up to their responsibilities. Those who questioned the approach expressed concern that narrowly defined statutory roles could inadvertently restrict the Council from acting in the best interests of the community. Or yet still, the Council could be wrapped up in accusations of a failure to act according to the prescribed requirements.

Still other submissions questioned the practicality of fulfilling the roles being assigned. For example is it reasonable to expect the mayor to "communicate all information" to the Council.

It was also noted, during the consultation process that the responsibility set out for Councillors to keep in confidence matters discussed in private was a hollow requirement. The contention was that clear and effective penalties were required in the event of a breach of confidence.

Presenters noted that it is not clear what is meant to consider the Mayor as the 'Chief Executive Officer'. Another related concern was the role of the mayor as an ex-officio member of various committees. The general opinion was that the mayor should not exercise a vote or be considered for purposes of determining a quorum as an ex-officio member.

Panel Comments

The Panel shares the concern that a well meaning but poorly worded statutory definition of roles for mayors and Councillors may inadvertently give rise to unnecessary legal disputes or prevent Councils from acting in the best interests of the community.

Equally disconcerting is that it is not expressly clear what recourse a citizen or other elected official would have in the event of a perceived failure to fulfill the established role. Setting out the roles and responsibilities of elected members seems more appropriate in the context of a broad statement or principle rather than a specific legislative requirement.

It must be recognized however, that several other jurisdictions have opted to define the roles of mayors and Councillors. The Panel believes that adopting such a legislative approach should only be considered if the stated roles are framed in the broadest of terms or principles as opposed to setting specific requirements. The stated roles should be at most indicative and neither prescriptive, nor all-inclusive in nature.

The Panel agrees that the recommended roles would be next to impossible to apply in practice. For example, the requirement for a Councillor to 'bring to the attention of Council anything that would promote the well being of the community' is problematic.

The Panel also noted that there is no stated obligation on the Councillors to participate in the vote on matters before Council. Accountability dictates that the public should know the voting positions of the individual Councillors and any Mayor with voting privileges on the matters before Council.

The recommended provisions do not take into account that Councils act in a legislative role (enacting bylaws), administrative role (approving expenditures)

and sometime perform a quasi-judicial function (holding statutory public hearings or hearing labor grievances).[22]

As the current act states, the powers of a municipality are vested in and shall be exercised by its Council[23]. The Review Committee recommendation (#35) seeks to define roles for Councillors but does not address the separate but important matter of the responsibilities of a Council acting as a body. The Panel recommends that the responsibilities of the 'Council' should also be defined. The Manitoba legislation sets out and distinguishes the responsibilities of Council and the roles of each member of Council.[24] (see Appendix 3, Note 2)

Panel Response to Recommendations

Recommendation #29:	***The mayor should remain under a statutory obligation to preside at all meetings of Council at which he or she is present and to perform those other duties that are currently assigned to the head of Council by statute.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE TERM 'HEAD OF COUNCIL' AND 'CHIEF EXECUTIVE OFFICER' BE CLEARLY DEFINED.**
Recommendation #30:	***Council should be authorised to provide, by bylaw, that a person other than the mayor (in conjunction with the clerk) may sign contracts involving the payment of sums up to a specified amount.*** **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THIS DELEGATION BE RESTRICTED TO THE DEPUTY MAYOR BY BYLAW AND THEN ONLY IN THE EVENT OF THE DECLARED ABSENCE OF THE MAYOR.**
Recommendation #31:	***In addition to his or her duties as a Council member, and in addition to the specific duties assigned to the head of Council by statute, the mayor should:*** • ***provide leadership and direction to Council;*** • ***communicate to the Council all information and suggest any measures that may tend to the improvement of the finances and welfare of the municipality and its inhabitants;*** • ***act as the official head of the municipality for ceremonial purposes.*** **THE PANEL CONCURS BUT RECOMMENDS THAT THE WORD 'ALL' BE REMOVED FROM THE SECOND PHRASE. THE OBLIGATION SET OUT IS IMPRACTICAL.**

[22] p. 24, Democracy in the Municipality, F. R. Rodgers, City of Saint John 1992
[23] s. 9(1), Municipalities Act, R.S.N.B. 1992, c. M-22
[24] s. 82-83, The Municipal Act S.M. 1996, c. 58

THE PANEL NOTES THAT THE STATED ROLES APPEAR LIMITING AND MAY ACTUALLY IMPAIR THE LEADERSHIP ROLE OF THE MAYOR.

THE PANEL RECOMMENDS THE USE OF INDICATIVE LANGUAGE STATED IN THE BROADEST TERMS IN THE ACTUAL DRAFTING OF THE LEGISLATIVE PROVISION.

Recommendation #32: ***The mayor should be designated an ex officio member of all committees of Council created by Council under the Municipalities Act. As an ex officio committee member the mayor should have no voting rights and should not be included for the purposes of determining quorum.***

THE PANEL CONCURS.

Recommendation #33: ***Council should be authorised to provide, by bylaw, for the manner in which the deputy mayor is to be chosen and the term for which he or she is to serve. In the absence of a municipal bylaw providing for the manner in which the deputy mayor is to be chosen, the legislation should provide that Council must elect a deputy mayor by way of an open vote of Council.***

THE PANEL CONCURS.

Recommendation #34: ***Council should be authorised to enact a bylaw designating a member of Council to act as presiding officer at any meeting of Council where both the mayor and the deputy mayor are not in attendance. In the absence of such a bylaw, the legislation should provide that, where both the mayor and the deputy mayor are not in attendance, the clerk can call the Council meeting to order and can chair that meeting for the purposes of enabling the members present to select a person to act as presiding officer for that meeting.***

THE PANEL CONCURS.

Recommendation #35: ***The following roles and responsibilities of members of Council should be set out in the legislation:***

- ***to consider the well-being and interests of the municipality as a whole and to bring to the attention of Council anything that would promote the well-being or interests of the municipality;***
- ***to participate generally in developing and evaluating the policies and programs of the municipality;***
- ***to participate in Council meetings and Council committee meetings and meetings of other bodies to which he or she is appointed by Council;***
- ***to keep in confidence matters discussed in private at a Council committee meeting until such matters are discussed at a meeting held in public.***

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE PROVISION IN THE FIRST BULLET BE AMENDED BY SUBSTITUTING THE WORD 'ANYTHING' WITH THE WORD 'MATTERS'. THE OBLIGATION NOW SET OUT IN THE FIRST BULLET IS IMPRACTICAL.

THE PANEL FURTHER RECOMMENDS THAT CREATING A POSITIVE OBLIGATION TO MAINTAIN CONFIDENTIALITY BY STATUTE SHOULD BE ACCOMPANIED BY AN APPROPRIATE PENALTY MECHANISM FOR FAILING TO COMPLY.

THE PANEL FURTHER RECOMMENDS THAT THE RESPONSIBILITIES OF THE 'COUNCIL' BE SET OUT IN THE NEW LEGISLATION.

VOTING AT COUNCIL MEETINGS

Background

The Municipalities Act provides that each member of Council must announce his or her vote openly at a regular or special meeting of Council 'unless disqualified by interest or otherwise'. The Act also sets out the rules governing the declaration of a conflict of interest.

During their deliberations, the Review Advisory Committee concluded;

- There should be certainty in regard to the rules that govern Council procedures.
- Statutory provisions regarding procedural matters should only apply in the absence of a bylaw so as to provide a substantial degree of flexibility.
- The Mayor should not have the capacity to vote but may by bylaw be permitted to vote in the event of a tied vote.
- The Mayor should be permitted to vacate the chair in order to enter into Council debates.
- Councillors must vote openly on all issues before the assembly unless disqualified by reason of conflict and abstentions should not be permitted.

Synopsis of Public Input

Many submissions raised a concern about the provision regarding abstentions. It was generally held that abstentions should not be permitted and that silence should be deemed to be a vote in the affirmative. In effect, Councillors should be required to vote on all matters in the interest of accountability to the electorate.

The presenters also pointed to the need for specifying whether or not the Mayor must return to the chair at the time of a vote if he/she has vacated the chair to participate in the debate.

A number of strong opinions were expressed to the Panel respecting voting privileges of a mayor at Council meetings. There is a range of practices currently employed around the Province. It is perhaps not surprising then, that some would argue that the Mayor should register a vote on all matters while others suggested that the Mayor should be permitted to vote only in the event of a tie or not at all. Most presenters supported the current practice in their respective municipalities.

The presenters also endorsed the provision that statutory provisions dealing with procedural matters should apply only in the absence of a local bylaw.

Panel Comments

The Panel supports the notion of local choice, in the interest of promoting responsiveness and accountability, regarding procedural matters but also recognizes that there should be certainty in regard to the rules that govern all Councils in New Brunswick. The Panel recommends that explicit statutory provisions dealing with Council operations (i.e. minimum number of meetings, openness, reconsideration, retention of records, access to information etc.) in all municipalities would therefore be appropriate.

In the interests of openness and accountability, the Panel strongly supports a requirement to have all Councillors declare their vote openly in public. The question of whether or not a mayor should vote or participate in debates is not easily resolved.

If one accepts that a Mayor exercises a primarily leadership role that focuses on setting the community agenda and developing consensus support for various initiatives then the ability of a mayor to vote is less significant. From this perspective the Mayor should be obliged to leave the chair in order to participate in a debate.

If, however, one believes that the Mayor is elected directly by the electorate usually based on an explicit platform, then accountability dictates that the public knows the position of the Mayor on various issues. It could also be argued that as a member of Council, the Mayor should have the ability to influence the outcome of a vote by participating in the debate and casting a vote, as does any other Councillor.

The diversity of practices across the Province indicates that various approaches are acceptable to the electorate. The strong support for current practice in the

respective communities indicates that tradition is also very much an influencing factor.

The Panel concluded that in the interest of enhancing local autonomy the decision as to whether or not a mayor has the power to vote or participate in debates and on what matters the mayor may vote should be a matter of local choice. The voting privileges of the Mayor should be set out by bylaw. In the absence of such a bylaw, the Mayor should not be permitted to vote.

As to the question of abstentions, the Panel concluded that abstentions should not be permitted and that silence at the time of voting should continue to be construed as a vote in the affirmative. Again, in the interests of accountability and openness the only permitted exemption should be a declared conflict of interest. The public must know how individual Councillors vote on community matters. Councillors should not have an opportunity to escape the responsibilities of office.

Panel Response to Recommendations

Recommendation #36: ***The legislation should provide for a statutory 'default' position that would govern procedural matters in the absence of a bylaw.***

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT GENERAL PROVISIONS AFFECTING THE OPERATION OF ALL COUNCILS SHOULD BE INCLUDED IN THE STATUTE.

Recommendation #37: ***The legislation should provide that all members of Council, except the mayor, are required to announce their vote openly and individually except in situations where the conflict of interest provisions apply.***

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE REQUIREMENT FOR ALL MEMBERS TO ANNOUNCE THEIR VOTE OPENLY AND INDIVIDUALLY INCLUDE THE MAYOR (IF THE MAYOR HAS VOTING PRIVILEGES).

THE PANEL FURTHER RECOMMENDS THAT THE LEGISLATION PROVIDE THAT THE EXTENT OF THE VOTING PRIVILEGES OF A MAYOR SHOULD BE A LOCAL DECISION MADE BY BYLAW.

THE PANEL FURTHER RECOMMENDS THAT IN THE ABSENCE OF A BYLAW SETTING OUT THE VOTING PRIVILEGES OF THE MAYOR, THAT THE MAYOR NOT BE PERMITTED TO VOTE.

Recommendation #38: ***Council should be authorized, by bylaw, to determine the manner in which tie votes are to be resolved (including that all ties are to be resolved by the vote of the mayor). In the absence of a bylaw respecting the resolution of a tie vote,***

the legislation should provide that the resolution in question is defeated.

THE PANEL CONCURS.

Recommendation #39: ***Council should be authorised to provide, by bylaw, that the mayor may vacate the chair in order to enter into Council debate.***

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE DEPUTY MAYOR ASSUME THE CHAIR ON SUCH OCCASIONS.

Recommendation #40: ***The legislation should recognise the right of the mayor, in his or her capacity as the chair of Council meetings, to make general statements to Council.***

THE PANEL CONCURS.

Recommendation #41: ***Any Councillor who abstains from voting should be deemed to have voted in the negative with respect to the particular motion or resolution.***

THE PANEL DOES NOT CONCUR AND STRONGLY RECOMMENDS THAT ABSTENTIONS NOT BE PERMITTED EXCEPT IN THE CASE OF A DECLARED CONFLICT OF INTEREST.

THE PANEL FURTHER RECOMMENDS THAT THE LEGISLATION CONSIDER SILENCE A VOTE IN THE AFFIRMATIVE.

RECONSIDERATION

Background

The legislation is silent respecting the reconsideration of a vote of Council. Some municipal procedural bylaws do, however, deal with the manner in which a matter may be submitted to Council for reconsideration.

During their deliberations, the Review Advisory Committee concluded;

- The operation of a Council should not be impaired by the repeated consideration of a particular decision.

- It is necessary to achieve closure on issues in order to protect third party rights.

Synopsis of Public Input

The matter of reconsidering previous decisions of Council was raised during the public hearings. Municipal representatives pointed out that the one-year restriction was too long and that new and pertinent information may become available before the one-year period elapsed that would readily warrant the reconsideration of a previous decision. Some suggested a six-month period would be more appropriate while others contended that no prohibition on reconsideration was necessary. It was also suggested that only those present at the time of the previous decision should be called upon to decide if a matter should be reconsidered.

Panel Comments

The Panel believes it would be inappropriate to limit reconsideration of any matter for an extended period simply because new facts may emerge or circumstances may change such that a reconsideration is entirely appropriate. Otherwise, the community may suffer needlessly because of an arbitrary statutory time limit.

The Panel also recognizes the need to achieve closure so that citizens and businesses are not subject to a series of conflicting outcomes. A two-third-majority vote should be sufficient to warrant reconsideration of a previous Council decision. A requirement for a unanimous decision is considered an onerous burden.

Panel Response to Recommendations

Recommendation #42:	***Council should be expressly authorised to provide by bylaw for the manner and circumstances in which a decision of Council may be reconsidered. In the absence of such a bylaw the legislation should provide that no decision of Council may be reconsidered within one year of the making thereof without the unanimous consent of Council.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE STATUTORY DEFAULT PROVIDE THAT A MATTER MAY BE RECONSIDERED AT ANY TIME BUT ONLY UPON THE AFFIRMATIVE VOTE OF A 2/3-MAJORITY OF ALL OF THE MEMBERS OF COUNCIL. REQUIRING UNANIMOUS CONSENT IS ONEROUS AND RAISES THE POTENTIAL FOR MINORITY RULE.**

SPECIAL MEETINGS OF COUNCIL

Background

The Municipalities Act provides that Council may enact bylaws respecting the calling of special meetings. The legislation does not impose public notice provisions in regard to special meetings. The legislation does, however, appear to contemplate that a notice of meeting will to be issued and, in the absence of the unanimous consent of all of the members present, limits the matters that may be discussed at a special meeting to those specified in the notice.

During their deliberations, the Review Advisory Committee concluded;

- Procedures for calling a special meeting should be prescribed by legislation.

- Council should be required to give notice to the public prior to holding a special meeting.

Synopsis of Public Input

There were concerns expressed about the procedural requirements being recommended for the holding of special meetings. The proposed 48 hour minimum notice requirement was seen to be problematic in the event of an emergency. The requirement to publish a public notice in a newspaper 24 hours before a special meeting of Council was viewed as impractical given the newspaper deadlines and the reliance on weekly publications for local news in many communities. The need for a public notice was however supported. It was suggested that the public should be notified at the same time as Councillors that a special Council meeting had been called.

Panel Comments

The Panel believes that in the interest of promoting openness, the public has a fundamental right to be informed about all Council meetings including those special meetings called on short notice. The proposed requirement to publish a notice in a newspaper is restrictive and Councils may be able to identify equally effective alternatives. The key concern is that the general public is made aware of any Council meeting. The legislation should allow for the use of the newly developed communication technologies (e.g. voice mail, e-mail, Internet).

Panel Response to Recommendations

Recommendation #43:	***The legislation should provide that special meetings of Council may be called at any time by the mayor and that they must be called by the clerk upon the written request of at least three members of Council. Council should be authorized to provide, by bylaw, that the request for a special meeting must be made by more than three members of Council.*** **THE PANEL CONCURS.**
Recommendation #44:	***Notice of a special meeting should be given to members of Council at least 48 hours prior to the holding of the special meeting. Council should be authorized to specify a longer notice period by way of bylaw.*** **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE STATUTE PROVIDE FOR A <u>MINIMUM</u> 24 HOUR NOTICE PERIOD. THE PANEL FURTHER RECOMMENDS THAT THE PUBLIC BE ADVISED AT THE SAME TIME AS COUNCILLORS.**

THE PANEL FURTHER RECOMMENDS THAT THE 24 HOUR NOTICE REQUIRMENT BE WAIVED IN THE EVENT OF AN EMERGENCY.

Recommendation #45: ***The current restriction respecting the addition of matters to the agenda of a special meeting should remain in place.***

THE PANEL CONCURS. PUBLIC NOTICE WOULD BE OF NO VALUE IF THE COUNCIL COULD CHANGE THE AGENDA AT WILL PRIOR TO OR AT THE SPECIAL MEETING.

Recommendation #46: ***The legislation should require that a notice be published in a newspaper in general circulation in the municipality at least 24 hours***

prior to the holding of a special meeting of Council. Council should be authorized to prescribe an alternate method of notifying the public by way of bylaw.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE STATUTORY REQUIREMENT SPECIFICALLY ALLOW FOR NOTIFICATION USING A BROAD RANGE OF COMMUNICATION MEDIA INCLUDING PUBLIC BULLETIN BOARDS, OTHER TYPES OF COMMUNICATIONS TECHNOLOGY INCLUDING TELEPHONE, RADIO, TELEVISION AND THE INTERNET. THE PUBLIC HAS A RIGHT TO BE NOTIFIED OF ALL MEETINGS OF COUNCIL

CLOSED MEETINGS

Background

The Municipalities Act states that all meetings of Council are to be open to the public and that no decision of Council is to be taken outside a Council meeting. The statute also provides Council with broad discretion respecting the closure of a meeting to the public.

During their deliberations, the Review Advisory Committee concluded;

- The general rule should be that all matters should be discussed and decided upon at an open meeting of Council.
- The rules governing the closure of meetings should be prescribed by statute.
- The principles that govern the closure of Council meetings should be the same as those that govern access to information.

Synopsis of Public Input

Perhaps no one issue was more contentious than the question of a Council's ability to hold meetings closed to the public. This particular issue was raised not only from the municipal perspective but also from citizens and members of the media.

It was interesting to note that all agreed that the current legislative vacuum was no longer tenable as it was clearly open to abuse, perceived or actual.

The need for more openness in local government was rarely contested during the public hearings. There was broad agreement that the new Act had to establish clear and unequivocal rules governing a Council's ability to conduct business in private.

The scope of the proposed changes did draw the attention of several municipal presenters. It was stated that it appeared that the pendulum was now going to swing from the one extreme often marked by secrecy to the other extreme of absolute openness. It was suggested that both were inappropriate and that a more workable balance had to be identified.

The advocates for closed meetings believe that allowing Councils to hold discussions in private will not compromise effective accountability. In fact, they contend that an opportunity to hold free and frank discussions out of the public eye is necessary for effective decision making. They insisted that they were not advocating secrecy but merely noting that a practical necessity existed for elected officials to discuss matters in private. This, they argue, would limit political grandstanding, allow for consensus building and permit Councillors an opportunity to become more familiar with the issues at hand.

The interpretation of that need was sometimes very broad and other times very specific. Political expediency was undoubtedly a motive in some instances although all believed that citizen interests were not being compromised in any way.

Citizen and other presenters stressed that the current practice of Councils to use closed meetings to discuss and debate municipal business does not serve the public interest. Citizens are effectively denied their right to be apprised of all aspects of the matters at hand including the pertinent facts, the perspectives and positions of their elected representatives and the reasoning behind the decision that was finally adopted.

Several instances were cited where matters clearly in the public domain were considered behind closed doors. Presenters also pointed out that the proposed exemptions were so broad as to undermine the requirement for openness. There was also concern expressed that some Councils were using the standing committee system as a means of effectively conducting business out of public view without having to convene a committee of the whole meeting.

Consequently, these presenters strongly advocated the general rule that all matters should be discussed and decided upon at an open meeting of Council. To do otherwise, they argued, reduces the accountability of Councillors both individually and collectively.

There was however, general agreement that confidential items such as land, legal and labor matters as well as negotiations, consideration of certain commercial information, public security issues, instances where solicitor/client privilege applied and discussion of personnel and personal information should be appropriately held in private. There was as well, a general consensus that the same rules governing closure should apply to all municipal agencies, boards and commissions.

Panel Comments

The Panel is unanimous in its opinion that the current legislative provisions respecting closed meetings of Council are wholly inadequate. No other aspect of the renewal of the Municipalities Act has as much potential to improve the character and quality of local government in New Brunswick. Clear legislation restricting the use of closed meetings is considered necessary in the interests of accountability, openness and responsiveness.

Adopting a basic requirement for openness in all but consideration of very limited subject matters will greatly increase the accountability of those elected to the electorate, encourage meaningful and thoughtful debate at the Council table and provide citizens not only a better understanding of the issues but also a means of assessing the performance of those who govern their city and a knowledge of why they make the decisions they do. It will also have the effect of making local Councils far more responsive to the needs and priorities of their citizens.

The starting point for any legislative change should therefore be the principle that all the Council's business must be done in public. The legislative provisions should fully recognize that holding closed meetings of a Council or a committee of Council is a privilege, not a right and that this privilege can be exercised only in exceptional circumstances. These basic requirements are at a minimum, fundamental to ensuring openness, responsiveness and accountability at the local level.

The requirements for openness should apply to all aspects of a matter before Council including the facts, the advice, the debate and the decision. One of the greatest weaknesses in the current Act is the fact that only the decision is required to be made in open session.

Although several Councillors suggested that the matters discussed at closed meetings are rarely substantive, it is interesting to note they were opposed to conducting such meetings in public. The lack of public scrutiny during ‘political’ discussions seems to be the perceived advantage, however, this cannot be allowed to override the right of citizens to be apprised of their Council’s business.

The Panel drew a distinction between secrecy and confidentiality. The Panel recognizes that certain confidential matters are appropriately considered in private in order to protect the legal and financial interests of the community and the privacy of personal information. The only matters deemed appropriate for closed meetings (absent the public) should be those subjects considered confidential by their very nature. The exemptions for these specific subjects should be specifically and explicitly set out in the legislation. The Panel cannot support the broad exemptions contemplated in the Review Advisory Committee recommendation.
The ability of Councils to hold private teach-ins without debate or decision would address the need for familiarity with the questions before Council but the Panel believes that this information may also be of interest to the public and therefore does not support closed door meetings for this type of information.

The Panel suggests reinforcing the requirement for openness by insisting that the public must also be apprised of the general category of subjects that are being discussed in private by a Council. As well, the Panel supports the practice in other jurisdictions that prevents Councils from adopting resolutions in closed session so as to reinforce the principle that all Council business must be done in public[25].

The Panel stresses the importance of using clear and unequivocal language that is not open to broad interpretation or abuse when setting out both the requirement for openness and the related exemptions. The requirement for openness should apply to Council, all committees of a Council and all boards, commissions and agencies established or funded by a municipality.

Panel Response to Recommendations

Recommendation #47:	***The rules governing the closure of a meeting to the public should be prescribed by legislation.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT IN THE INTEREST OF IMPROVING ACCOUNTABILITY TO CITIZENS, THE LEGISLATION SHOULD REQUIRE THAT ALL MEETINGS OF COUNCILS AND COMMITTEES OF COUNCIL BE CONDUCTED IN PUBLIC.** **THE PANEL FURTHER RECOMMENDS THAT THE PROVISIONS REQUIRING OPEN MEETINGS BE CLEARLY SET OUT IN SPECIFIC AND EXPLICIT TERMS NOT OPEN TO BROAD INTERPRETATION.** **THE PANEL FURTHER RECOMMENDS THAT THE NEW ACT STATE EXPLICITELY THAT THE REQUIREMENTS FOR OPENNESS SHOULD APPLY TO ALL ASPECTS OF MATTERS PUT BEFORE COUNCIL OR A COMMITTEE OF COUNCIL INCLUDING THE FACTS, BACKGROUND**

[25] s. 152(4) The Municipal Act S.M. 1996, c. M225

INFORMATION, ADVICE PROVIDED TO COUNCIL, THE DEBATE ON THE MATTER AT HAND AND THE ACTUAL DECISION.

THE PANEL FURTHER RECOMMENDS THAT THE PUBLIC BE INFORMED OF THE NATURE OF EACH MATTER (PERSONNEL, LEGAL ETC.) CONSIDERED IN CLOSED SESSION.

Recommendation #48:

The legislation should state that a meeting, or a part of a meeting, of Council may only be closed to the public when the subject matter under discussion falls within the categories of information to which the public would be denied access.

THE PANEL CONCURS WITH THE STATED PRINCIPLE THAT CLOSED SESSIONS OF COUNCIL OR COMMITTEES OF COUNCIL BE PERMITTED FOR ONLY CERTAIN CATEGORIES OF INFORMATION.

HOWEVER, THE PANEL DOES NOT CONCUR WITH THE RECOMMENDED EXEMPTIONS. THE PANEL CONCLUDED THAT THE EXEMPTIONS CONTEMPLATED ARE SO BROAD AS TO RENDER THE REQUIREMENT FOR OPENNESS A MERE FICTION.

THE PANEL RECOMMENDS THAT THE STARTING POINT FOR ANY LEGISLATIVE CHANGE SHOULD BE THE PRINCIPLE THAT ALL THE COUNCIL'S BUSINESS MUST BE DONE IN PUBLIC AND ANY EXEMPTIONS SHOULD BE VERY NARROWLY DEFINED.

THE PANEL FURTHER RECOMMENDS THAT THE LEGISLATIVE PROVISIONS SHOULD FULLY RECOGNIZE THAT HOLDING CLOSED MEETINGS OF A COUNCIL OR A COMMITTEE OF COUNCIL IS A PRIVILEGE, NOT A RIGHT AND THAT THIS PRIVILEGE CAN BE EXERCISED ONLY IN RESPECT OF THE SPECIFIC CATEGORIES OF INFORMATION LISTED BELOW.

THE PANEL RECOMMENDS THAT THE REASONS FOR NON-DISCLOSURE SET OUT IN RECOMMENDATION #95 BE AMENDED TO ELIMINATE THE BROAD EXEMPTIONS FOR; DELIBERATIVE INFORMATION, ADVICE TO COUNCIL, AND INFORMATION PLACED BEFORE A CLOSED MEETING. (Bullets 3,5,8)

THE PANEL FURTHER RECOMMENDS THAT THE LEGISLATION PROVIDE THAT ALL MEETINGS OF A COUNCIL OR COMMITTEE OF COUNCIL SHALL BE OPEN TO THE PUBLIC EXCEPT WHEN DISCUSSING THE FOLLOWING SPECIFIC CONFIDENTIAL SUBJECT MATTERS:

1. **LAND TRANSACTIONS**
2. **LEGAL MATTERS WHEN SOLICITOR/CLIENT PRIVILEGE APPLIES**
3. **LABOR MATTERS**
4. **CONTRACT NEGOTIATIONS**
5. **PUBLIC SECURITY ISSUES**
6. **PERSONNEL AND PERSONAL INFORMATION EXCEPT WHEN IN STATISTICAL OR AGREGATE FORM**
7. **CONSIDERATION OF COMMERCIAL INFORMATION**

8. INTER-GOVERNMENTAL MATTERS

THE PANEL FURTHER RECOMMENDS THAT THE PUBLIC BE INFORMED WHICH OF THESE SPECIFIC CATEGORIES OF INFORMATION IS TO BE DEALT WITH IN A CLOSED MEETING.

Recommendation #49: ***Council should be authorized to conduct closed information sessions in regard to any matter provided that the purpose of such sessions is to brief Council in regard to matters to be considered and not to debate such matters.***

THE PANEL DOES NOT CONCUR. THIS RECOMMENDATION IS OPEN TO BROAD INTERPRETATION AND POTENTIAL ABUSE.

THE PANEL RECOMMENDS THAT, WITH THE EXCEPTION OF THE PRESCRIBED CONFIDENTIAL SUBJECTS, ALL THE FACTS AND OTHER BACKGROUND INFORMATION PERTAINING TO AN ISSUE BE CONSIDERED IN PUBLIC. THE ONLY VALID REASON FOR A COUNCIL TEACH-IN TO BE CONDUCTED IN PRIVATE IS IF IT RELATES TO A CONFIDENTIAL SUBJECT.

THE PANEL FURTHER RECOMMENDS THAT WHEN A MEETING IS CLOSED TO THE PUBLIC, NO RESOLUTION OR BYLAW MAY BE PASSED AT THE MEETING, EXCEPT A RESOLUTION TO REVERT TO A MEETING HELD IN PUBLIC.

Recommendation #50: ***The rules governing the closure of a meeting of Council should also govern the closure of a meeting of a board, agency, commission, or committee of Council created under the Municipalities Act as well as any meeting of the Board of Directors of any municipal or inter-municipal not-for-profit corporation and any commercial corporation in which one or more municipalities holds fifty-one per cent of the issued share capital.***

THE PANEL CONCURS BUT RECOMMENDS THAT THE OWNER SHIP PERCENTAGE BE SET AT TWENTY-FIVE PERCENT (25%).

RIGHT TO BE HEARD

Background

The Municipalities Act states that all meetings of Council are to be open to the public but does not provide members of the public with the statutory right to be heard at a Council meeting. The legislation allows Council to order a plebiscite on any matter within its powers but only requires that a plebiscite be held in the

context of borrowing or in regard to a proposed change to the name of the municipality.
During their deliberations, the Review Advisory Committee concluded;

- All members of the public should have the right to be heard by Council.

Synopsis of Public Input

The input regarding the recommended creation of a 'right to be heard' as opposed to a privilege 'to be heard', focused on two basic issues: the need for such a right and to whom it should apply. Virtually all communities now afford citizens an opportunity to appear before Council. The procedures that apply are either governed by bylaw or are simply a matter of tradition. Several presenters questioned whether there was indeed a problem that needed to be addressed.

There was a general concern raised by the presenters that creating a ‘right to be heard’ could result in Council business being bogged down by frequent, numerous or even frivolous demands to be heard. It was suggested that a procedural bylaw should be sufficient to ensure that citizens have an opportunity to express their views and in the absence of such a bylaw that a common statutory provision should prevail.

It was also noted that citizens should not be limited to discussing matters within Council's jurisdiction as other matters may be of community concern or have an impact on citizens (e.g. loss of rail service).

Strong opinions were expressed concerning who should be eligible to appear before a Council. Some said whether a right or a privilege, it should be available only to residents or just taxpayers, others the general public and still others only those persons that can establish that they may be somehow affected by a Council decision.

Panel Comments

The Panel is of the opinion that there is considerable merit in extending a so-called 'right to be heard' to citizens in the interest of accessibility and accountability. The very raison d’etre of a Council is to serve the public and accordingly the public must have access to their elected body. The Panel does not, however, believe that this right should be unfettered and considers it appropriate to permit practical restrictions on the exercise of this right.

Councils should be required to adopt a procedural bylaw dealing with citizen or interest group presentations to Council. From a practical perspective, the bylaw should establish the procedures for appearing before Council, time limits on the length of presentations and restrictions on the time and dates such presentations may be heard etc.

The Panel does not support the notion that one need be a resident or a taxpayer in order to be afforded an opportunity to appear before a Council. Local government decisions or equally inaction can have an impact on citizens living beyond the established boundaries of a municipality. Likewise, matters such as healthcare, airport operations or rail service may be well beyond municipal jurisdiction but yet be very much matters of local concern. The Panel believes the public should have a right to appear before Council to comment on any matter of concern.

Panel Response to Recommendations

Recommendation #51:	***The legislation should provide that any person has a right to be heard by Council. This right should be limited to being heard on matters that lie within the jurisdiction of Council.***
	THE PANEL CONCURS AND FURTHER RECOMMENDS AGAINST LIMITIING THE RIGHT TO BE HEARD ONLY ON MATTERS THAT LIE WITHIN THE JURISDICTION OF COUNCIL. OTHER MATTERS MAY BE OF COMMUNITY INTEREST BUT REMAIN OUTSIDE OF LOCAL JURISDICTION.
Recommendation #52:	***Council should be authorized to prescribe, by bylaw, the procedures to be followed in regard to submissions by members of the public.***
	THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THERE BE A STATUTORY REQUIRMENT FOR A LOCAL BYLAW SETTING OUT THE PROCEDURES WHICH ANY MEMBER OF THE PUBLIC MUST FOLLOW TO BE HEARD BY COUNCIL.
Recommendation #53:	***The current legislation in regard to the conduct of plebiscites by a municipal Council should remain unchanged.***
	THE PANEL CONCURS.
Recommendation #54:	***No additional public hearing requirements should be imposed under the Municipalities Act.***
	THE PANEL CONCURS.

PUBLICATION REQUIREMENTS

Background

The Municipalities Act requires that, unless certain publication requirements are met, each bylaw must be read at least once in its entirety at a Council meeting prior to enactment. Municipalities are also required to meet publication requirements under other statutes such as the Community Planning Act.

During their deliberations, the Review Advisory Committee concluded;

- Provided the requirement for certainty is met, municipalities should be allowed to meet statutory notice requirements in the most cost efficient and expeditious manner possible.

Synopsis of Public Input

Support was expressed for permitting the use of alternative methods of notification. Presenters stated that the current requirement for newspaper notices was difficult to comply with because of strict press deadlines and also a very costly system. Developing uniform notice requirements were deemed to have some merit though the practicality of such an arrangement was questioned.

Panel Comments

The Panel believes that the existing emphasis on newspaper advertising does not adequately reflect the range of effective media options now available. The important consideration is that the public is indeed notified and such notification is subject to objective verification.

Panel Response to Recommendations

Recommendation #55:	***The legislation should authorize the use of alternative methods of public notification such as radio and television announcements.***
	THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE LEGISLATION ALLOW FOR THE USE OF OTHER FORMS OF ELECTRONIC COMMUNICATION TECHNOLOGY.
Recommendation #56:	***The feasibility of providing a uniform procedure for the publication of all municipal notices, regardless of the statute under which such notices are required, should be explored.***
	THE PANEL CONCURS.
Recommendation #57:	***The legislation should authorise publication of a notice of a proposed bylaw in a weekly as well as in a daily newspaper.***
THE PANEL CONCURS.	

MISCELLANEOUS PROCEDURAL MATTERS

Background

The Municipalities Act specifies that certain actions are to be taken by way of bylaw or by way of resolution. In other instances, however, the statute is silent as to how Council is to proceed. The statute is also silent respecting the rules governing the amendment or repeal of a bylaw.

During their deliberations, the Review Advisory Committee concluded;

- A bylaw is required whenever a Council wishes to exercise its legislative function.

- The same procedural requirements attached to the initial enactment of a bylaw should apply during the process of any amendment or repeal.

Synopsis of Public Input

The comments the Panel received were limited to technical considerations. A need was identified for clear definitions of such terms as 'legislative function' and 'administrative capacity'. A concern was also expressed about the practicality of insisting that the requirements of the Municipalities Act apply to any municipal bylaw enacted pursuant to another act.

Panel Comments

The impact of proceeding legislatively by bylaw is not immediately evident. The Panel noted that an earlier recommendation called for the creation of the Chief Administrative Officer post by bylaw, which does not appear to be a legislative function. The Panel supports the need for clear definition of critical terms used in the Act such as 'administrative' and 'legislative'.

There also appears to be a contradiction between recommendations #58 and #59. Recommendation #59 would provide discretion to Councils on whether to proceed by bylaw or resolution. Conversely recommendation #58 obligates Councils to proceed by bylaw if they are exercising a legislative function. The Panel suggests that if the legislation is silent with respect to the exercise of a municipal power then recommendation #58 should prevail otherwise it has no merit. For example if the Motor Vehicle Act confers a power on a municipality then the municipality should exercise that power by way of bylaw if it is legislative or by resolution if the power is administrative.

Panel Response to Recommendations

Recommendation #58:	***When Council is exercising a legislative function it should exercise its power by way of bylaw. When Council is acting in an administrative capacity it should act by way of resolution. The legislation should reflect these basic tenets and should specify that a bylaw is required where the power to be exercised is legislative in nature.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE TERMS ADMINISTRATIVE AND LEGISLATIVE BE DEFINED IN THE ACT.**
Recommendation #59:	***Where the Municipalities Act, or any other statute that confers a power upon a Council, is silent as to the manner in which Council is to proceed, Council should have the discretion to decide as to the manner in which the power is to be exercised.*** **THE PANEL DOES NOT CONCUR AND RECOMMENDS THAT LEGISLATIVE POWERS BE EXERCISED BY BYLAW AND ADMINISTRATIVE POWERS EXERCISED BY RESOLUTION REGARDLESS OF WHICH STATUTE CONFERS THAT POWER.**
Recommendation #60:	***The amendment or repeal of a bylaw should be subject to the same conditions (such as special notice requirements or a special majority of Council) as its enactment.*** **THE PANEL CONCURS.**
Recommendation #61:	***Any statute that confers bylaw-making authority upon a municipality should specifically provide that the requirements of the Municipalities Act respecting the enactment, amendment, or repeal of a municipal bylaw apply.*** **THE PANEL DOES NOT CONCUR AND RECOMMENDS THAT EACH LEGISLATIVE PROVISION BE CONSIDERED ON A CASE BY CASE BASIS TO ENSURE THAT THE EFFECTIVENESS OF THE SOURCE OR ORIGINATING LEGISLATION IS NOT COMPROMISED BY ADOPTING THE REQUIREMENTS OF THE MUNICIPALITIES ACT.**
Recommendation #62:	***The minutes of a regular or special meeting of Council should be signed by the clerk and the presiding officer of the meeting at which the minutes are adopted.*** **THE PANEL CONCURS.**
Recommendation #63:	***The minutes of the last meeting of a Council prior to the swearing in of a new Council and the minutes of the last meeting of a Council of a municipality involved in amalgamation proceedings should be signed by the clerk alone.***

THE PANEL CONCURS.

MUNICIPAL OFFICERS

APPOINTMENT OF MUNICIPAL OFFICERS

Background

The Municipalities Act currently requires that Council appoint a clerk, a treasurer and an auditor. The statute is permissive in regard to the appointment of a manager and other municipal officers.

During their deliberations, the Review Advisory Committee concluded

- Council should be given the general authority to create such municipal offices and appoint such officers, by resolution, as are deemed necessary for the proper administration of the municipality.

- The term 'Chief Administrative Officer' should be used to designate the particular office rather than the term 'manager'.

- Councils should be obligated to appoint a clerk, treasurer and auditor.

- The appointment of a Chief Administrative Officer should be discretionary.

Synopsis of Public Input

The input received on these issues originated from municipalities, employees and the Association of Municipal Administrators. The comments tended to deal with specific technical aspects of the recommendations.

The municipalities favored the less restrictive requirements for appointing and dismissing officers and spoke in general support of the other recommendations. Meanwhile, the professional administrators advocated the status quo as they believed protection from politically motivated suspensions and dismissals is required. It was also suggested that the appointment of a Chief Administrative Officer be a mandatory requirement for all municipalities.

Panel Comments

The Panel supports the need for the mandatory appointment of a clerk, treasurer and auditor for the proper operation of the municipality. The Act should also continue to provide that the municipality may appoint a solicitor and such other officers that may be required for the proper administration of the municipality. Officers would include persons who hold positions of trust and who may have to

refuse to carry out an order of Council because of professional and/or statutory responsibilities (e.g. municipal engineer, solicitor, building inspector, heritage preservation officer, purchasing agent, planner).
The use of a bylaw approach to creating the office of Chief Administrative Officer will help to ensure that Councils give consideration to the intended roles and responsibilities of the position and will prevent arbitrary or frequent revisions. The Panel cannot support a mandatory requirement for the appointment of a Chief Administrative Officer given the varying operational requirements in the different municipalities.

Panel Response to Recommendations

Recommendation #64:	***Council should remain under a statutory obligation to appoint a clerk, a treasurer, and an auditor.***
THE PANEL CONCURS.	
Recommendation #65:	***Council should be specifically authorized to enact a bylaw creating the office of Chief Administrative Officer, but the appointment of a Chief Administrative Officer should not be made mandatory. The appointment of a person to the office of Chief Administrative Officer should be made by resolution of Council.***
	THE PANEL CONCURS
Recommendation #66:	***References to the appointment of other specific officers should be removed from the legislation and Council should be authorized to create any other municipal office, prescribe the powers and duties of the person holding such office, and appoint a person to occupy the office so created by way of resolution of Council.***
	THE PANEL DOENS NOT CONCUR BUT RECOMMENDS THAT THE ACT STATE THAT 'THE COUNCIL OF A MUNICIPALITY MAY APPOINT A SOLICITOR AND SUCH OTHER OFFICERS AS ARE NECESSARY FOR THE ADMINISTRATION OF THE MUNICIPALITY.'
Recommendation #67:	***A member of Council should not be eligible for appointment as a municipal officer or employee.***

THE PANEL CONCURS.

DUTIES OF MUNICIPAL OFFICERS

Background

The Municipalities Act sets out the primary duties and responsibilities of the clerk and the treasurer and allows for the imposition of additional duties by Council. Council is authorized to prescribe the duties and powers of a manager by bylaw or by resolution.

During their deliberations, the Review Advisory Committee concluded;

- The powers and duties of the Chief Administrative Officer should be prescribed by bylaw.

- Council should be authorized to delegate to the Chief Administrative Officer its authority to assign additional duties to the clerk and treasurer.

Synopsis of Public Input

A variety of views were expressed regarding the appropriate method for establishing the roles and responsibilities of the Chief Administrative Officer. Presenters suggested they be defined in a Council approved job description, by resolution, by bylaw or alternatively by statute. Clearly, some were suggesting maximum flexibility while others saw a need for maximum stability. The need for the provisions assigning specific tasks by statute to the treasurers and clerks as opposed to responsibilities was also questioned.

Support was expressed for the provisions that would allow the delegation of other duties and responsibilities to the clerks and treasurers by the Chief Administrative Officer.

Panel Comments

Both the Alberta and Manitoba legislation set out the statutory responsibilities of the Chief Administrative Officer separate from the duties assigned by Council[26] (see Appendix 3, Note 3). This is not a job description but the particular duties assigned by bylaw in the job description of each Chief Administrative Officer would have to fully consider these statutory responsibilities.

This approach serves to clarify the distinct statutory roles of the Mayor, Council and the Chief Administrative Officer. A statutory definition of basic responsibilities will also provide a standard Provincial framework from which to develop the local bylaws creating the Chief Administrative Officer position. This will offer the necessary balance between operational flexibility desired by Councils and certainty as to roles and responsibilities for the affected employees.

The Panel supports the Review Advisory Committee recommendation to have the Council assigned powers and duties of a Chief Administrative Officer set out by bylaw even though this is not viewed as a 'legislative function'. The Panel believes that the procedures required for bylaw amendment would largely prevent frequent or contradictory changes to job descriptions, yet provide some flexibility.

[26] s. 127(1), The Municipal Act, S.M. 1996, c. 58; s. 207, Municipal Government Act S.A. 1994, c. M-26.1

Legislating very specific duties to treasurers or clerks would seem to imply that unless a duty is specified the treasurer or clerk is under no obligation to act. Creating a broad statutory duty for a treasurer to manage the financial affairs of the municipality rather than itemizing specific responsibilities is considered more appropriate. A similar consideration applies to the duties of the Clerk. The Panel recommends the use of the approach that was adopted in the British Columbia legislation.[27] (see Appendix 3, Note 4)

The ability to assign additional duties to clerks/treasurers and for that matter, administrators supports the requirement to have sufficient flexibility to operate effectively at the local level. The additional duties should not, however, conflict with their statutory responsibilities.

Panel Response to Recommendations

Recommendation #68:

The powers and duties of a Chief Administrative Officer should be contained in the bylaw that creates the office.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE TERM 'CHIEF ADMINISTRATIVE OFFICER' BE DEFINED IN THE ACT.

THE PANEL FURTHER RECOMMENDS THAT THE BROAD STATUTORY RESPONSIBILITIES OF THE CHIEF ADMINISTRATIVE OFFICER BE SET OUT IN THE NEW ACT.

Recommendation #69:

In addition to those duties currently assigned to the clerk, the following duties should be included in the legislation:

- ***the clerk shall enter in the minutes the names of the members of Council present at a meeting of Council,***
- ***the clerk shall maintain an indexed register containing certified copies of all bylaws.***

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE AUTHORITY AND RESPONSIBILITIES OF THE CLERK BE SET OUT IN THE NEW ACT.

Recommendation #70:

In addition to those duties currently assigned to the treasurer, the following duties should be included in the legislation:

- ***a positive duty to deposit all funds received by the municipality with the financial institution designated by Council,***
- ***an obligation to provide for the bonding of those officers and employees designated by Council.***

THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE TREASURER BE GIVEN GENERAL STATUTORY

[27] s. 198-199, Municipal Act R.S.B.C. 1996, c. 323

AUTHORITY AND RESPONSIBILITY TO MANAGE PROPERLY THE FINANCIAL AFFAIRS OF THE MUNICIPALITY.

Recommendation #71:	***The legislation should be updated to recognize payments and transfers made by way of electronic means.***
	THE PANEL CONCURS.
Recommendation #72:	***Council should have the power to authorize the treasurer to establish bank accounts for the payment of salaries, wages, or for any other purpose, upon which cheques may be drawn or funds may be electronically transferred by the treasurer.***
	THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE TREASURER BE GIVEN GENERAL STATUTORY AUTHORITY AND RESPONSIBILITY TO MANAGE PROPERLY THE FINANCIAL AFFAIRS OF THE MUNICIPALITY.
Recommendation #73:	***Council should have the power to authorize the treasurer to establish and maintain a petty cash fund subject to such terms and conditions as the Council may provide.***
	THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE TREASURER BE GIVEN GENERAL STATUTORY AUTHORITY AND RESPONSIBILITY TO MANAGE PROPERLY THE FINANCIAL AFFAIRS OF THE MUNICIPALITY.
Recommendation #74:	***Council should have the power to assign additional administrative duties to the clerk or treasurer by way of resolution. Council should also be authorized to delegate this authority to the Chief Administrative Officer.***
	THE PANEL CONCURS.
Recommendation #75:	***The various statutory duties imposed upon the clerk should be listed in a single section of the Act. The same should apply to the manner in which the duties of the treasurer are set out in the legislation.***
	THE PANEL CONCURS.

DELEGATION OF AUTHORITY

Background

The Municipalities Act currently allows Council to create, alter and abolish committees, departments, bureaus, divisions, boards, commissions, officials and agencies and delegate administrative powers and duties to them. The legislation does not expressly authorize sub-delegation.

During their deliberations, the Review Advisory Committee concluded

- Council should be authorized to delegate to the Chief Administrative Officer any power or duty excepting those specifically identified.

- Delegation could be to the Chief Administrative Officer or any formally constituted board or commission.

- A Council may authorize the Chief Administrative Officer to further delegate such power or duty.

Synopsis of Public Input

The question of expanding the power to delegate authority to the Chief Administrative Officer was of concern to some. It was pointed out that the narrow limitations on the matters that could not be delegated risked allowing the Chief Administrative Officer to effectively move into the policy-making arena. Equally, the power to sub-delegate could confuse accountability for actions taken or not taken.

Panel Comments

The Panel believes that delegation and sub-delegation should be limited to 'administrative powers'. To permit Councils to delegate policy-making authority to administrative officials would weaken the accountability of those elected, to the electorate. As presented, the delegation provision is so broad that it would presumably allow a Council to authorize the Chief Administrative Officer to award contracts, create commissions or institute user charges unilaterally.

The Panel also notes that while duties can be delegated, the manager's responsibility and accountability to Council cannot be delegated.[28]

Panel Response to Recommendations

Recommendation #76:	***Council should be authorized to delegate any power or duty conferred upon it by the Municipalities Act, with the exception of the following:*** • ***the power to enact, amend, or repeal bylaws;*** • ***the power to adopt budgets;*** • ***the power to levy taxes;*** • ***the power to make, suspend, or revoke the appointment of the clerk or treasurer.***

[28] p. 23, Democracy in the Municipality, F. R. Rodgers, City of Saint John, 1992.

THE PANEL DOES NOT CONCUR AND STRONGLY RECOMMENDS THAT THE POWER OF A COUNCIL TO DELEGATE BE EXPRESSLY LIMITED TO

ADMINISTRATIVE MATTERS. POLICY JURISDICTION SHOULD REMAIN WITH THE ELECTED BODY.

Recommendation #77: ***Only a delegation to the Chief Administrative Officer or to a formally constituted board or commission created by Council pursuant to the Municipalities Act should be recognized by the legislation. Council should not be permitted to delegate its powers or duties to the clerk or treasurer.***

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE DELEGATION BE MADE BY RESOLUTION AT A PUBLIC MEETING.

Recommendation #78: ***The legislation should specifically authorize sub-delegation by providing that when delegating a power or duty to the Chief Administrative Officer, a Council may authorize the Chief Administrative Officer to further delegate such power or duty.***

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT ONLY ADMINISTRATIVE MATTERS BE ELIGIBLE FOR SUB-DELEGATION.

Recommendation #79: ***Council should be authorized to appoint an acting Chief Administrative Officer to act in the absence or inability of the Chief Administrative Officer in the exercise of a delegated power or the performance of a delegated responsibility.***

THE PANEL CONCURS.

SUSPENSION AND DISMISSAL

Background

The power of a Council to dismiss a municipal officer is limited by subsection 74(5) of the Municipalities Act. This subsection provides that municipal officers appointed under section 74 may only be dismissed for cause and then only upon the affirmative vote of at least two thirds of all of the members of Council.

During their deliberations, the Review Advisory Committee concluded

- A special majority should not be required to dismiss any municipal officer for cause.

- Any officer who, in the exercise of his/her statutory duty would be put in the position of refusing to carry out an order of Council should be protected from summary dismissal.
- The difficulty inherent in securing a two-thirds vote of all of the members of Council would afford sufficient protection to any municipal officer that Council wished to dismiss on notice.

Synopsis of Public Input

Elected municipal representatives stated that they recognized that senior staff were occasionally put in the delicate position of having to disagree with the Council or in limited cases having to refuse to carry out a Council directive. It was also recommended that the same statutory protection to be afforded the clerk, treasurer and administrator should of necessity apply to city solicitors because the ethical and professional obligations of solicitors could at times compel them to refuse to act on a Council directive.

On the other hand, the merit of relaxing the current standards required for dismissal was challenged, the argument being that the current requirement for a 2/3 majority vote for dismissal, with cause, should be readily obtainable if, indeed, there was just cause. It was noted the professional independence of senior officers was necessary for the proper administration of the municipality. The potential for politically motivated job loss could threaten and as a result compromise that independence. The result would be sub-standard decision making and less than objective advice to Councils.

Presenters also recommended that the provision allowing the terms of employment contracts to prevail over the statutory protections not be supported. They feared that senior officers employed by contract would be put in the position of having to curry the favor of Council in order to secure a contract renewal and this may compromise their independence.

Panel Comments

The Panel supports the need for job security for senior appointed officers of a municipality. Tensions do arise on occasion between elected and appointed officials over procedural matters, authority to act or refusal to carry out an order. There is a general recognition that the independence of professional staff and appointed officers should not be compromised by political pressure.

Note that the Panel is not advocating a 'job for life'. Performance should be the key criteria in determining the duration of employment of a senior appointed officer. Substandard performance is considered adequate cause for dismissal.

The Panel noted that those who took a position on this issue tended to focus more on to whom job security should apply and the appropriate mechanism to employ in providing such security. The Council representatives seemed to believe that the current protections are onerous but recognized a need for some protection while those affected did not see the need for any reduction in the current level of protection.
The Panel agrees that in the interest of good local governance, senior appointed officers must be able to exercise their professional responsibilities unfettered by the threat of politically motivated dismissal or penalty. Statutory protection against dismissal without cause for senior appointed officials protects the public interest by assuring that this group of employees can exercise their professional responsibilities, in the best interests of the community, without fear of political retribution.

The Panel also concluded that granting such statutory protection is a significant privilege and should therefore be narrowly applied. Statutory protection against dismissal without cause should automatically extend to chief administrative officers, clerks, treasurers and solicitors upon appointment.

The Panel believes that statutory protection for senior appointed officers is necessary due to the dynamic political environment in which these officers must function. The requirement for an affirmative vote of two-thirds of all of the members of Council for dismissal, with cause, should be retained in the case of the Chief Administrative Officer, Clerk, Treasurer and Solicitor. The Panel concurs that if cause exists then the required majority should not be difficult to obtain.

Permitting dismissal, on reasonable notice for Chief Administrative Officers, treasurers, clerks or solicitors is contradictory and would effectively undermine the statutory provision against dismissal except for just cause.

Dismissal on reasonable notice is appropriate for those other officers appointed by Council who, in the exercise of their statutory duty could be put in the position of refusing to carry out an order of Council (building inspector, planning officer, engineer etc.).

Again, the Panel recognizes a need to impose a sufficient burden on Council when exercising this authority to prevent dismissal merely because an officer is deemed uncooperative. A 2/3 affirmative vote of all of Council should be required for dismissal on notice so as to prevent indiscriminate use of this provision.

Dismissal on reasonable notice would allow Councils the flexibility to change the structure of the administrative apparatus of their community. To mitigate the financial impact on the employee and to ensure that Council's motives are proper, the Panel recommends that affected employees be dismissed only upon

reasonable notice and payment of one month's pay for each year of service, without limitation. Such payment should not preclude an employee from seeking civil damages for wrongful dismissal.

The Panel does, however, believe that the voting requirement for suspension with pay should be a simple majority of all of Council. This would permit a Council to address a problem situation on a timely basis and allow for investigations to proceed before a decision to dismiss (or not) is made. Indefinite suspensions may create undue hardship therefore any suspension should be for a specified and limited period.

The Panel supports the use of employment contracts. Councils should remain free to refuse to renew a contract at the expiration of the term of employment or terminate with cause during the term of the contract. The terms of the contract respecting termination of employment etc. should be a matter of negotiation between the parties.

Panel Response to Recommendations

Recommendation #80:	***Statutory protection afforded against dismissal should be limited to the clerk, the treasurer, and the Chief Administrative Officer (if Council has elected to appoint one) and should not be extended to protect other officers appointed by Council.*** **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE STATUTORY PROTECTION AVAILABLE TO CAOs, CLERKS AND TREASURERS ALSO APPLY TO SOLICITORS.** **THE PANEL FURTHER RECOMMENDS THAT OTHER APPOINTED OFFICERS BE GRANTED LIMITED STATUTORY PROTECTION AS PER RECOMMENDATION #82.**
Recommendation #81:	***Council should be authorized to dismiss a clerk, a treasurer, or a Chief Administrative Officer for just cause on the affirmative vote of a majority of all of the members of Council.*** **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE CURRENT REQUIREMENT FOR A 2/3 AFFIRMATIVE VOTE OF ALL COUNCIL FOR DISMISSAL WITH CAUSE BE RETAINED. THE PANEL BELIEVES THE 2/3 REQUIREMENT CAN BE EASILY MET WHEN CAUSE CAN BE ESTABLISHED.** **THE PANEL FURTHER RECOMMENDS THAT THIS PROTECTION ALSO APPLY TO SOLICITORS.**
Recommendation #82:	***Council should be authorized to dismiss a clerk, a treasurer or a Chief Administrative Officer on reasonable notice, or***

payment in lieu of notice, on the affirmative vote of two-thirds of all of the members of Council.

THE PANEL DOES NOT CONCUR. THIS RECOMMENDATION CONTRADICTS AND UNDERMINES THE RECOMMENDATION TO PROVIDE STATUTORY PROTECTION AGAINST DISMISSAL EXCEPT WITH CAUSE.

THE PANEL FURTHER RECOMMENDS THAT COUNCILS ABILITY TO DISMISS WITHOUT CAUSE APPLY ONLY TO OTHER APPOINTED OFFICERS (BUILDING INSPECTOR, ENGINEER, PLANNER, PURCHASING AGENT ETC.) AND THEN ONLY ON REASONABLE NOTICE AND PAYMENT OF ONE MONTH'S PAY FOR EACH YEAR OF SERVICE OR PART THEREOF, WITHOUT LIMITATION, ON THE AFFIRMATIVE VOTE OF 2/3 OF ALL OF THE MEMBERS OF COUNCIL.

THE PANEL FURTHER RECOMMENDS THAT SUCH PAYMENT NOT PRECLUDE SUCH APPOINTED OFFICER FROM SEEKING CIVIL DAMAGES.

Recommendation #83: ***Council should be authorized to suspend a clerk, a treasurer, or a Chief Administrative Officer, with pay on the affirmative vote of a majority of all of the members of Council.***

THE PANEL CONCURS WITH AUTHORIZING COUNCILS TO SUSPEND OFFICERS BUT RECOMMENDS THAT SUCH SUSPENSIONS REQUIRE A 2/3 AFFIRMATIVE VOTE OF ALL MEMBERS OF COUNCIL.

THE PANEL FURTHER RECOMMENDS THAT THIS PROVISION ALSO APPLY TO SOLICITORS.

THE PANEL FURTHER RECOMMENDS THAT THE PERIOD OF SUSPENSION BE SPECIFIED.

Recommendation #84: ***Statutory protection afforded against dismissal should be subject to any agreement between the clerk, the treasurer, or the Chief Administrative Officer and the municipality and the legislation should specifically authorize the entry into an employment contract for a fixed term of years.***

THE PANEL CONCURS.

Recommendation #85: ***Those who are currently protected by subsection 74(5) should continue to enjoy such protection regardless of any change to the legislation.***

THE PANEL CONCURS.

BONDING OF OFFICERS AND EMPLOYEES

Background

The Municipalities Act requires that each municipality provide, by bylaw, for the annual bonding of officers and employees. Council is required to have the bonds of each officer produced before it on or before February 15th of each year or, in the case of a newly appointed officer, at the first meeting following his or her appointment.

During their deliberations, the Review Advisory Committee concluded;

- The treasurer should be responsible to ensure that appropriate measures are taken with respect to bonding employees.

Synopsis of Public Input

It was suggested that the recommended provision remains excessive and it would be even more appropriate simply to allow for the treasurer to determine who should be bonded and make the necessary arrangements.

Panel Comments

The Panel concluded that the primary requirement should be that the municipality is adequately protected against loss. A statutory requirement that obliges every person who handles cash to be bonded poses practical difficulties. (e.g. students, grant employees, casual staff, acting staff, small dollar transactions etc.)

Panel Response to Recommendations

Recommendation #86:	***The legislation should require the bonding of the treasurer, every person who in the course of his or her employment receives or disburses cash, and such other municipal employees as Council considers necessary, but there should be no legislative requirement that this be done by way of bylaw.*** **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE LEGISLATION SHOULD REQUIRE THE BONDING OF THE TREASURER AND ASSIGN THE TREASURER THE RESPONSIBILITY TO DETERMINE WHAT OTHER EMPLOYEES SHOULD BE BONDED AND FOR WHAT AMOUNTS.**
Recommendation #87:	***The treasurer should be charged with the responsibility of ensuring that the appropriate bond is secured.***

THE PANEL CONCURS.

ACCESS TO INFORMATION

Background

The Municipalities Act currently provides for the disclosure of only specified types of information such as conflict of interest declarations, minutes of Council meetings, and municipal books of account. Access to such information is also limited to eligible voters.

During their deliberations, the Review Committee concluded:

- The governing principle in regard to public access to information should be complete disclosure unless a valid reason exists for non-disclosure
- Access to information is considered a necessary adjunct of the right of the public to be informed as to the actions of government.
- Individual privilege must, however, be balanced against the public interest in efficient government as well as the competing consideration of confidentiality.
- The right of the public to be informed outweighs the inconvenience that municipalities may experience in complying with requests for information.
- The rules governing access to information should be set out in the Municipalities Act.
- The rules governing disclosure should also apply to all boards, agencies, and committees created by a municipal Council pursuant to the Municipalities Act.

Synopsis of Public Input

The question of access to information was a predominant concern of those appearing before the Panel. It was argued that municipalities often seem to 'treat public records as though they were private property' thereby abrogating the public's right to be informed as to the actions of government. Presenters also pointed out a need for timely responses to their requests for information.

The folly of having different rules apply for the same information in different communities was noted, as was the consequent need for clearly stated, uniform rules. There was a general consensus that specific matters should remain confidential. However, concerns were raised that certain of the stated 'valid'

reasons for non-disclosure in the recommendations of the Review Advisory Committee Report were far too broad and open to abuse.

At the same time, the submissions made by municipalities raised concerns about the potential cost of providing unfettered access to municipal information, the need for limits on how many years back a municipality should be obliged to research documents, the need to be able to charge reasonable fees to cover out of pocket costs, concerns about frivolous requests for information, and the lack of staff resources to handle a demand for requests.

Finally, the issue of whether access to information should be limited to residents, taxpayers or open to the public was the subject of considerable comment, but no consensus emerged.

Panel Comments

The Panel believes that openness is a fundamental attribute of good local governance from the perspective of enhancing both effective accountability and responsiveness. This leads to the conclusion that the public should be easily able to scrutinize the workings of their local Councils as a matter of course. Openness must not only be protected and preserved as a basic principle of good local governance but also be fully reflected in the pertinent legislative provisions.

The Panel concluded that the principle of complete disclosure should therefore apply in all but very limited circumstances. By extension, this same standard should apply equally to municipal boards, commissions and agencies performing municipal functions.

Many small communities were concerned about the practical limits on staff time available to research information requests, as well as the associated costs that might be incurred. The arguments for restrictions or limitations on access to information due to administrative inconvenience, increased cost or lack of resources, though a legitimate concern, are not so persuasive as to override the right of the public to be informed as to the actions of government.

The Panel concluded that a provision for fair and reasonable fees, reasonable time limits for responding to access requests and limits on how many years back that information could be requested would address many of the financial concerns, as would exempting material that has already been archived with the Province. The Panel noted that there is a need to clarify and enforce the retention and disposition requirements for municipal records and the applicability of the Archives Act.

The Panel agrees that there is a generally accepted and practical need to maintain the confidentiality of certain types of information in order not to compromise the financial and legal interests of the municipality. Land, legal and

labor matters, negotiations, personnel and personal information, matters of public security, inter-governmental affairs and solicitor/client discussions are deemed valid subjects for non-disclosure.

The provisions exempting these particular types of information must of necessity be very limited, very specific, easily understood and straightforward to administer. The use of generalities in the legislative provisions should be avoided in order to prevent potential abuses or wide variations in interpretation and application at the local level.

The Panel considers the exemptions proposed by the Review Advisory Committee for material discussed in closed session, deliberative information and/or advice provided to a Council are so all encompassing as to undermine the spirit and effectiveness of the rule of complete disclosure.

A consistent statutory approach and a uniform and explicit set of rules regarding access to information are in the public interest and should apply to all Councils, committees of Council and municipal agencies, boards and commissions in the Province.

The rules governing access should be set out in the Municipalities Act as opposed to the Right to Information Act. This will allow for due recognition of the particular demands of municipal government, ensure uniform application across the Province and support the stated desire for legislative consolidation. A refusal by administrative staff to supply requested information should be subject to an objective and timely appeal process to the Council.

The Panel supports a need for an obligation to maintain the confidentiality of certain municipal information and the consequent requirement for penalties in the event of a breach. It is noted that a breach of confidentiality could also result in a financial loss to a third party (commercial information).

The term 'municipal information' must be clearly defined as should the penalty provisions that would apply when a pecuniary loss to the municipality or a third party actually resulted. The court should have sufficient discretion to determine the penalty.

The Panel concluded that access to information should not be restricted to taxpayers or residents because other citizens may be affected by, or have an interest in, a particular matter.

Panel Response to Recommendations

Recommendation #88

The rules governing public access to municipal information should be set out in the Municipalities Act.

THE PANEL CONCURS AND STRONGLY RECOMMENDS THAT THE RULES BE DRAFTED IN CLEAR AND EXPLICIT TERMS SO AS NOT TO BE SUBJECT TO VARIED INTERPRETATIONS.

Recommendation #89: ***Any member of the public should be provided access to municipal information.***

THE PANEL CONCURS.

Recommendation #90: ***The right of access to confidential information should only be exercised by Council as a whole.***

THE PANEL CONCURS.

Recommendation #91: ***The legislation should impose a duty upon all members of Council to maintain the confidentiality of municipal information.***

THE PANEL CONCURS AND RECOMMENDS THAT THE TERM MUNICIPAL INFORMATION BE CLEARLY DEFINED TO AVOID DISPUTES AND MISUNDERSTANDING.

Recommendation #92: ***Council should be authorized to apply to the courts for an order declaring the seat of a member vacant where, in the opinion of Council, the member has breached his or her duty of confidentiality and where such breach has or could reasonably be expected to cause the municipality to suffer pecuniary loss. Where the judge is satisfied that a breach has occurred and that a loss has or may reasonably be expected to occur, the judge should have the power to declare the seat vacant, prohibit the member from holding office for a prescribed period, and/or order the member to pay damages to the municipality.***

THE PANEL CONCURS AND RECOMMENDS THAT PENALTIES APPLY ONLY WHEN A PECUNIARY LOSS TO THE MUNICIPALITY OR A THIRD PARTY HAS BEEN ESTABLISHED TO THE SATISFACTION OF THE COURTS.

THE PANEL RECOMMENDS THAT THE COURTS BE GIVEN THE DISCRETION TO DETERMINE THE APPROPRIATE PENALTY TO BE APPLIED.

THE PANEL FURTHER RECOMMENDS THAT THIRD PARTIES BE GIVEN THE AUTHORITY TO SEEK REDRESS BEFORE THE COURTS FOR A BREACH OF CONFIDENTIALITY THAT RESULTS IN PECUNIARY LOSS.

Recommendation #93:

The definition of 'record' should include not only the traditional written form of record but records that are produced through electronic means as well.

THE PANEL CONCURS

Recommendation #94:

The rules that govern the disclosure of information by a municipality should apply to all boards, agencies, and committees created by a municipal Council pursuant to the Municipalities Act, as well as corporate entities that are created or wholly owned by a municipality.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE PROVISIONS ALSO APPLY TO;

- **ALL COMMITTEES OF COUNCIL,**
- **MUNICIPAL AGENCIES, BOARDS OR COMMISSIONS CREATED BY STATUTE**
- **REGIONAL SERVICE DELIVERY AGENCIES CREATED BY STATUTE**
- **COMMITTEES PROVIDING MUNICIPAL SERVICES COMPRISED OF APPOINTEES FROM MORE THAN ONE COUNCIL**
- **AGENCIES, BOARDS OR COMMISSIONS RECEIVING MORE THAN TWENTY FIVE PERCENT (25%) OF THEIR FUNDING FROM MUNICIPALITIES**

Recommendation #95:

The general principle to be observed respecting access to information should be complete disclosure of information unless a valid reason for non-disclosure exists. A valid reason for non-disclosure would exist when the record in question deals with the following information:

- ***commercial information, if disclosure would likely prejudice the commercial position of the person who supplied it, reveal a trade secret, likely prejudice the municipality's ability to carry out its***

activities or negotiations, or allow the information to be used for improper gain or advantage;

- ***information, unless the information was obtained for the purposes for which disclosure is sought, or is required so the municipality can carry out its functions and duties, or is in a statistical or other form so that the person's name or identity is not disclosed;***
- ***personal information, including personnel***
- ***deliberative information and draft reports that are likely to be released to the public in a final form;***
- ***information, the disclosure of which could prejudice security and the maintenance of law;***
- ***information placed before a closed meeting unless that information is subsequently disclosed at a public meeting;***
- ***information which is prohibited from release by statute;***
- ***information that would be subject to solicitor-client privilege;***
- ***information that consists of advice or recommendations to Council.***
-

THE PANEL CONCURS WITH THE GENERAL PRINCIPLE OF COMPLETE DISCLOSURE BUT CANNOT SUPPORT THE RECOMMENDED EXEMPTIONS AS PRESENTED. CERTAIN OF THE EXEMPTIONS CURRENTLY CONTEMPLATED (bullets 3,5,8) ARE SO BROAD AS TO UNDERMINE THE SPIRIT AND EFFECTIVENSS OF THE RULE OF COMPLETE DISCLOSURE.

THE PANEL FURTHER RECOMMENDS THAT THE REASONS FOR NON-DISCLOSURE BE AMENDED TO ELIMINATE BROAD EXEMPTIONS FOR; DELIBERATIVE INFORMATION, ADVICE TO COUNCIL, AND INFORMATION PLACED BEFORE A CLOSED MEETING. (Bullets 3,5,8)

THE PANEL THEREFORE RECOMMENDS THAT;

1. **LAND TRANSACTIONS**
2. **LEGAL MATTERS WHEN SOLICITOR/CLIENT PRIVILEGE**

APPLIES

3. **LABOR MATTERS**
4. **CONTRACT NEGOTIATIONS**
5. **PUBLIC SECURITY ISSUES**
6. **PERSONNEL AND PERSONAL INFORMATION EXCEPT WHEN IN STATISTICAL OR AGREGATE FORM**
7. **CONSIDERATION OF COMMERCIAL INFORMATION**
8. **INTER-GOVERNMENTAL MATTERS**

BE THE ONLY SUBJECTS APPROPRIATELY CONSIDERED FOR NON-DISCLOSURE.

THE PANEL STRONGLY RECOMMENDS THE USE OF CLEAR AND UNEQUIVOCAL LANGUAGE IN THE LEGISLATION THAT IS EASILY UNDERSTOOD AND ADMINISTERED. VAGUE PROVISIONS OPEN TO BROAD INTERPRETATION ARE INAPPROPRIATE.

Recommendation #96:

Any person requesting information should be required to accompany such request with sufficient detail to allow for the easy identification of the record to be accessed.

THE PANEL CONCURS BUT RECOMMENDS THAT NO REFUSAL OF A REQUEST FOR INFORMATION BE PERMITTED SOLELY BECAUSE OF A LACK OF DESCRIPTIVE INFORMATION IN SUCH REQUEST.

THE PANEL FURTHER RECOMMENDS THAT A 30 WORKING DAY TIME LIMIT TO RESPOND TO SUCH REQUESTS BE LEGISLATED.

THE PANEL FURTHER RECOMMENDS THAT THE RETENTION AND DISPOSAL RULES FOR MUNICIPAL RECORDS BE SPECIFIED IN THE MUNICIPALITIES ACT.

THE PANEL FURTHER RECOMMENDS THAT REQUESTS FOR INFORMATION UNDER THESE PROVISIONS BE LIMITED TO INFORMATION THAT HAS NOT ALREADY BEEN ARCHIVED WITH THE PROVINCE PURSUANT TO THE ARCHIVES ACT.

Recommendation #97:

The threshold decision in regard to access to a particular record or piece of information should be made by the senior administrative officer of the municipality.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE RULES GOVERNING SUCH DETERMINATIONS BE INCLUDED IN THE ACT TO ENSURE A CONSISTENT STANDARD IS USED IN ALL COMMUNITIES.

Recommendation #98:

The decision of a senior administrative officer to deny access to a particular record or piece of information should first be appealed to Council. Where a person who has requested access to a particular record or piece of information is not satisfied with the decision of Council to deny access to a particular record or piece of information, he or she should have the right to refer the matter either to the Ombudsman or to a judge of a court of competent jurisdiction.

THE PANEL CONCURS AND RECOMMENDS THAT RESPONSES TO REQUESTS FOR INFORMATION BE ACCOMPANIED BY A NOTICE OF A RIGHT OF APPEAL.

Recommendation #99:

The legislation should specify that the public is entitled to be provided with copies of any record to which access is permitted.

THE PANEL CONCURS.

Recommendation #100:

Council should be authorized to charge a reasonable fee for furnishing information to the public. The cost of furnishing such information may include, but should not exceed, the cost of gathering the information as well as the cost of reproducing the information.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE USE OF EXHORBITANT FEES BE PROHIBITED.

Recommendation #101:

The rules governing the preservation of documents and records of legal, historical, or social significance should continue to be governed by the Archives Act and the applicability of this Act to municipalities should be clarified.

THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE ARCHIVAL REQUIREMENTS FOR MUNICIPAL RECORDS BE SET OUT IN THE MUNICIPALITIES ACT IN THE INTEREST OF CONSOLIDATION.

Recommendation #102: ***The retention schedule for municipal records should be prescribed by regulation under the Municipalities Act.***

THE PANEL CONCURS.

CONFLICT OF INTEREST

Background

The rules governing municipal conflict of interest are set out in sections 90.1 through 90.91 of the Municipalities Act. These sections define the persons to whom the rules apply, create deemed conflicts and provide for exemptions in particular situations. The legislation also prescribes the procedures to be followed in declaring a conflict and the penalties that flow from the failure to do so.

During their deliberations, the Review Advisory Committee concluded:

- The current legislation meets the current needs of municipal Councils.
- A more expeditious process is required for Ministerial determinations of conflict.
- Conflict of interest provisions should apply to any board, commission, or agency and any corporate entity that is funded primarily through taxation that fulfills a municipal function or provides a municipal service
- The definition of family associate should be expanded.
- Conflict provisions should apply to situations in which a member or family associate could receive a financial benefit or avoid a financial loss as well.
- Declaration of known conflicts should be updated after a member assumes office.
- A member of Council should be able to raise a question of a potential conflict with another member.
- A member with a declared conflict must physically leave the room.

Synopsis of Public Input

The input received by the Panel reflected general support for the recommended changes. Again, strong emphasis was placed on the need for clear provisions

not open to broad interpretation. The need for legislation that functions well in practice was also stressed.

Support was expressed for the practice of Ministerial determinations. However, it was suggested that a mandatory time limit for responses be established. It was also proposed that a ministerial determination should act as a protection against future legal challenges.

Concern was raised that the provision including someone who normally resides with the member in the list of family associates was too broad. Students, boarders and people in special care or foster care would fall under this blanket provision for no apparent reason.

Presenters recommended that the Act should explicitly state that obligation to withdraw from the meeting room must take place before 'any' discussion of the matter takes place. Likewise, it was stated that a definition of 'senior appointed officer' was needed in the interest of certainty.

Finally, it was noted that while having the ability to challenge another member on a potential conflict might act as an effective deterrent it also raised the specter of acrimonious accusations and counterattacks at the Council table.

Panel Comments

The Panel fully supports the position of the Review Advisory Committee that no person should be permitted to benefit from the occupation of a position of trust. Strong and effective conflict of interest provisions are therefore necessary to prevent an abuse of privilege. The recommendations for improvement will for the most part assist in making the current legislative provisions even more effective.

The Panel supports the expanded definition of family associate but recommends that including 'a person who normally resides with a member' be tempered by adding the additional phrase, 'whose relationship could reasonably be perceived as influencing the judgement of such a member'. The 'deemed conflict' provisions dealing with union members should not apply to 'any' union member but only to those with an affiliation with a union that represents employees of a municipality.

The need for clear language was expressed repeatedly to the Panel particularly in regard to the conflict provisions. The Panel agrees that the language must be clear and unequivocal. The Province of Alberta[29] has done well in this regard and has gone further by including lists of situations in the statute in which a person is deemed to be in a conflict or not in a conflict (see Appendix 3, Note 5).

[29] s. 170, Municipal Government Act, S.A. 1994, c. M-26.1

The Alberta provisions are clear and understandable and could serve as a model for the Province of New Brunswick. The Alberta Act also deals effectively with the sometime awkward situation when a Council member is a partner in, or an employee of, a firm that deals with the municipality.

Finally, the Panel noted that other jurisdictions require that municipal elected officials must file a declaration of campaign revenues and expenses. There is no such provision in New Brunswick and the public is left unaware of the sources and uses of funding for municipal campaigns. The Panel considers this a major shortcoming of the current legislation that should be addressed in the new Act.

Receipt of substantial sums by a candidate from a particular donor could raise concerns about potential bias when they take their seat as a Mayor or Councillor. The Panel believes that a declaration of campaign expenses and receipts should be mandatory. It is suggested that records be maintained only for donations over a nominal sum ($75).

The Province of New Brunswick should consider adopting provisions similar to those of the British Columbia Municipal Act dealing with campaign financing[30] as they are thorough, easily understood and easily administered (see Appendix 3, Note 6).

Panel Response to Recommendations

Recommendation #103:

The conflict rules should apply to both full-time and part-time senior appointed officers as well as to persons who act as senior appointed officers on a voluntary basis.

THE PANEL CONCURS.

Recommendation #104:

In addition to those persons to whom they currently apply, the conflict of interest provisions set out in the Municipalities Act should apply to the following entities:

- ***any board, committee, commission, or other elected or appointed body that fulfills a municipal function;***
- ***solid waste corporations and water and wastewater commissions created under the Clean Environment Act;***
- ***police commissions created under the Police Act;***
- ***industrial and economic development commissions;***
- ***any municipal or Ministerial appointee to a board, committee, commission, or any other appointed body even in situations***

[30] s. 83 - s. 93, Municipal Act R.S.B.C. 1996, c. 323

where the board, committee, commission, or other body does not provide a municipal service.

THE PANEL CONCURS.

Recommendation #105:

The definition of family associate should be expanded to include the mother, father, sister or brother-in-law of a member, the common law spouse of a member, and any other person that normally resides with the member.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE PHRASE 'ANY OTHER PERSON THAT NORMALLY RESIDES WITH THE MEMBER' BE QUALIFIED BY THE PHRASE 'WHOSE RELATIONSHIP COULD REASONABLY BE PERCEIVED AS INFLUENCING THE JUDGEMENT OF SUCH A MEMBER'.

Recommendation #106:

A member should only be deemed to be in a conflict situation in regard to the interest of a family associate in situations where he or she knows or should reasonably have known of the existence of the interest.

THE PANEL CONCURS.

Recommendation #107:.

The conflict of interest rules should not only apply in situations in which a member or a family associate is in the position of receiving a financial benefit, but in situations in which a member or a family associate would be in the position of avoiding a financial loss as well.

THE PANEL CONCURS

Recommendation #108:

A member of a union should continue to be deemed to be in a conflict situation and be precluded from participation in any dealings between the municipality or board and the union. The legislation should provide that a conflict exists when the employment or membership of the member is with a local affiliate or with a national union.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE REFERENCE TO A NATIONAL OR LOCAL AFFILIATE BE LIMITED TO THOSE UNIONS THAT REPRESENT EMPLOYEES OF THE MUNICIPALITY, POLICE COMMISSION OR OTHER MUNICIPAL SERVICE DELIVERY

AGENCIES.

Recommendation #109:

In addition to completing a form declaring all known conflicts of interest upon assuming office, a person subject to the conflict of interest rules should be required to declare any *dealings* ***that he or she may currently have with the municipality, board, or agency.***

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT A STATUTORY DECLARATION OF CAMPAIGN REVENUES AND EXPENDITURES SIMILAR TO THAT USED IN BRITISH COLUMBIA, WHICH IDENTIFIES DONORS AND THE AMOUNT OF THEIR DONATION BE MADE MANDATORY AND OPEN TO PUBLIC INSPECTION.

THE PANEL FURTHER RECOMMENDS THAT PERIODIC UPDATES (ANNUAL) OF CONFLICT OF INTEREST FILINGS WITH THE MUNICIPAL CLERK BE REQUIRED.

Recommendation #110:

A member should be allowed to raise the question of the potential conflict of another member at a meeting and request that the response of the member to such query be entered into the minutes of the meeting.

THE PANEL CONCURS.

Recommendation #111:

In situations where the question of a conflict has been raised at a Council meeting by another member of Council and the member so questioned requests a determination from the Minister, the results of such determination should be made available to all of the members of Council.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT ANY REQUEST FOR A MINISTERIAL DETERMINATION OF CONFLICT BE SUBJECT TO A REASONABLE TIME LIMIT (30-45 DAY) FOR A RESPONSE.

Recommendation #112:

A member who has declared a conflict of interest at an open or a closed meeting should be required to leave the meeting room for the duration of the discussion and the taking of the vote on the matter in respect to which the conflict was declared.

THE PANEL CONCURS AND RECOMMENDS THAT THE PROVISION CLEARLY STATE THAT THE OBLIGATION TO LEAVE THE ROOM MUST APPLY BEFORE ANY DISCUSSION OF THE MATTER TAKES PLACE.

Recommendation #113:

The clerk should maintain a central register of the conflict declarations filed upon assuming office and of any conflict declarations made in the course of Council meetings.

THE PANEL CONCURS.

MUNICIPAL POWERS

MUNICIPAL SPHERES OF JURISDICTION

Background

The Constitution Act, 1867, makes no reference to municipalities except in subsection 92(8) where they are placed under Provincial jurisdiction. As a result, municipal governments are considered to be creations of the Provinces capable of exercising only those powers delegated to them by Provincial governments. In order for a municipal Council to enact a bylaw dealing with a specific matter, the enabling legislation must either expressly or by necessary implication set out the authority to do so.

During their deliberations, the Review Advisory Committee concluded:

- The primary disadvantage of the prescriptive approach used in the current legislation is that it impairs the ability of local governments to respond to changing circumstances.

- Under a permissive approach municipalities would retain their current powers and would also see their powers expanded to the extent that currently unregulated activities fall within the general heads of power.

- The permissive approach to legislative drafting would assist in striking an appropriate balance between legislative certainty in the delineation of municipal powers and the legislative flexibility that municipal governments want.

- The power of a municipality to regulate within prescribed spheres should be as broad as possible.

- Fourteen potential spheres of jurisdiction were identified.
- Municipalities should be given broad powers to enact bylaws respecting the regulation of unsightly premises.
- Housing, land assembly and community services should not be specified spheres.
- The legislation should differentiate between a service that a municipality is allowed to provide and matters in regard to which Council should be authorized to enact bylaws.
- Municipalities should not retain their current power to provide for the closing of business on days other than those prescribed by Provincial legislation.
- Municipalities and the Province should not share concurrent jurisdiction.

Synopsis of Public Input

The overwhelming majority of presenters favored the proposal to move from the prescriptive approach of legislating municipal powers to the permissive or sphere of jurisdiction model. The change was viewed as a significant and positive move forward. An enhanced ability to respond to local issues, in a manner deemed most appropriate by the local community, was considered particularly advantageous.

Eliminating the need to seek the permission or approval of the Province to deal with local issues not expressly addressed in the legislation had great appeal. Likewise, the flexibility to respond to emergent issues on a timely basis at the local level was also regarded as an improvement.

There were, however, a number of issues raised by the presenters in respect of the change to spheres of jurisdiction or permissive approach to legislating municipal jurisdiction and powers.

Once again, clarity of language was raised as a real concern. In essence, the point was made that whether it was a list of services or a sphere of jurisdiction it has to be absolutely clear where municipal jurisdiction begins and ends. It was argued that the spheres, as presented, are defined too broadly.

It was suggested that ambiguity would lead not only to confusion at the municipal level over roles and responsibilities but could also trigger costly legal actions as questions arise about the new-found municipal authority. Equally important is that the public knows and understands what legitimately can be expected of their local Council.

Creating an opportunity for more Provincial downloading was also raised as a risk of creating broadly stated spheres of jurisdiction. The fear was expressed that the Province could unilaterally decide that a service it long provided would now more appropriately fit into a municipal sphere of jurisdiction and appropriate funding would not follow.

The potential for creating an increased cost burden was also frequently raised by municipalities. A greater reliance on the use of bylaws to deal with procedural and regulatory matters will generate additional costs for both developing and enforcing the new bylaws. This was a particular preoccupation of the smaller communities that, for the most part, do not have in-house solicitors or the financial resources to engage new staff.

The financial impact of hiring a new bylaw enforcement officer or engaging the services of a solicitor is far more significant to a small village of 1500 residents than it would be to a city with 50,000 residents. It was suggested that the Province provide model bylaws and transition funding to help mitigate the impact of the change to permissive legislation.

Several municipalities also challenged the merit of excluding housing and land assembly from the identified spheres. It was noted that municipalities are active in these fields and that they should retain the authority to act as required. It was also suggested that the provision of community sport and recreational services should be considered mandatory if we are truly interested in building strong, healthy, vibrant communities.

Finally, it was proposed that an increase in municipal bylaw and regulatory authority should be accompanied by a statutory requirement to enforce any bylaw that a municipality enacts. The concern expressed was that Councils could enact bylaws in response to community pressure but not follow through with enforcement, as the issue became less of a public concern.

Panel Comments

The Panel noted strong support for the proposed permissive legislative approach that will serve to increase the responsiveness, accountability, autonomy and authority of locally elected governments.

Local autonomy was previously identified in this report as a critical element in a local government's ability to respond effectively to local needs and priorities. The use of a permissive legislative approach offers a significant opportunity to increase the responsiveness of local Councils to the electorate.

Councils realize that increased local autonomy will allow them to deal with matters in a manner that they believe the citizens of their communities deem

most appropriate. The expanded bylaw authority that flows from the permissive approach to legislative drafting will also enable Councils to respond to emergent issues that fall within a prescribed sphere in a timely and effective fashion.

Although the Panel frequently heard comments about the cost implications of moving to a more permissive legislative environment, it was noteworthy that there were relatively few concerns raised about the ability and desirability of municipalities to accommodate these changes.

It must be recognized that with increased local autonomy to legislate and regulate comes a consequent increase in local responsibility; one that applies to both large and small communities. The Panel is conscious of the fact that adapting to these new powers and responsibilities may be a greater challenge for some communities than for others because of limited resources and expertise.

The Panel notes that in all cases, municipalities will no longer be able to use the excuse that a lack of legislative authority prevents them from responding to emerging matters. Local autonomy means that Councils will have to accept the political challenges and legislative responsibilities that arise when confronted with controversial issues.

The Panel believes that in the course of time, as Councils and the public become more familiar with the legislative latitude available at the local level, these changes will improve the quality of local government in New Brunswick. Councils will have the requisite authority to act and accordingly will be able to be more responsive to citizen needs and desires.

The Panel also believes that the resulting flexibility will encourage experimentation at the local level that should lead to the development of new and innovative solutions to common municipal problems. All communities will benefit from the opportunity to learn from each other, and as appropriate, adapt the innovative actions of other municipalities to their own situations.

With rare exception, the concerns raised by the municipalities related more to the functional aspects of implementing a sphere approach than to the need for, or merit of, such a change. The Panel therefore fully concurs that the proposed permissive legislative approach to delineating municipal powers should be adopted.

The Panel wishes again to underscore the need for clarity of language in the actual legislative drafting of the particular spheres. Laxity could effectively undermine the value and effectiveness of the proposed changes. From an accountability perspective, citizens must be able to discern clearly the responsibilities of their local Council and what authority they have to fulfill these responsibilities.

Likewise, businesses and other agencies contemplating investments or entering into contractual obligations with communities must know and understand the powers, roles and responsibilities of the local Councils and what authority they have available to fulfill these obligations.

The Panel reviewed the legislation in other jurisdictions which have adopted the sphere of jurisdiction model and noted that they set out an interpretive clause and/or a clause setting out the purposes of a municipality in conjunction with the identified spheres.[31] The Panel supports this approach as it lends clarity to the legislative intent of the change from the prescriptive approach to the permissive approach and strongly urges the Province of New Brunswick to adopt similar provisions.

Providing increased autonomy and authority at the local level is an important development in the ongoing evolution of municipal government. This progression must however be accompanied by effective accountability to the electorate. The public must have the opportunity to know how and why legislative initiatives are developed and adopted, particularly in light of the increased bylaw authority that flows from the permissive model.

Granting increased bylaw and regulatory authority to municipalities in a permissive framework must flow hand in hand with an increased ability for citizens to scrutinize the exercise of that authority. **The Panel fully endorses the use of a permissive approach to legislating municipal powers and also concluded that increased municipal autonomy must be accompanied by increased accountability to the electorate through strong legislative provisions for openness and access to information.**
As the Panel noted elsewhere in this text, it is equally evident that given the diversity in size and availability of resources of different communities, the uniform legislation that sets out local powers must take into consideration a variety of local situations. Some communities must, of necessity, look for certainty in the Act while others consider increased flexibility the most significant advantage to be derived from the proposed changes.

The Panel therefore fully endorses and encourages the use of statutory default provisions with respect to procedural matters in the development of the new Act. These statutory default provisions would prevail only in the absence of a local bylaw.

It is hoped that this would provide a reasonable balance between the need for certainty in particular communities and the desire for flexibility in others. Providing statutory defaults would also address the reluctance of smaller communities to incur new costs, as communities could look to the Act rather than create their own bylaw(s).

[31] s. 3, s. 9 Municipal Government Act S.A. 1994, c. M-26.1; s.3, s.231 The Municipal Act S.M. 1996 c. 58

Given the extent of the contemplated changes, effective communication and adequate training must also accompany implementation of a new Municipalities Act. The Panel believes that the Province of New Brunswick has the responsibility to initiate a concerted communication exercise so as to ensure that the public and especially the municipalities are fully conversant with the changes and, more importantly, their impact on the operation of local government.

This communication effort could be supplemented with the use of a legislative guide similar to that employed in Nova Scotia[32]. The Panel recommends that these steps be undertaken in a comprehensive and coordinated manner prior to the enactment of the new legislation.

The concerns raised about potential cost impacts are speculative at this time as the actual financial impact on any one municipality will only be known with certainty as and when the community begins to utilize the new provisions. The specter of new costs may also act as an effective counterweight to an over zealous attempt to create a host of new bylaws and regulations. Identifying and isolating, in an objective manner, specific costs that could be attributed to the enactment of a new Municipalities Act will be very difficult.

The Panel concluded that the financial impacts should be monitored and documented at the local level and the need for financial support should be a matter for discussion and negotiation with the Province once the facts are known. However, the Panel believes that municipalities will incur new costs during the transition period. The Panel therefore recommends that the Province create a transition fund to assist municipalities experiencing financial hardship with the introduction of the new Act.

The Panel recommends that land assembly and housing be identified as specified spheres of jurisdiction. Community representatives cited the requirement to be able to assemble lands for recreational and development purposes without having to resort to expropriation. Equally, housing has been an area of active interest for some municipalities and continues to be a service offered in certain communities. The demands to recognize these spheres are reasonable as they come from a desire to preserve current jurisdiction as set out in the first schedule and not from a quest to increase municipal powers.

Likewise, the Panel concurs that the importance of providing 'community services' that promote the 'wellness' of the community and the health and well being of its citizens should be explicit and not left to become a notional idea that falls under some other general sphere. Building community has many dimensions and sport, recreation, cultural and other community programs are important elements in this endeavor.

[32] Information Bulletins, Municipal Government Act, S.N.S 1998, c. 18

The threat of downloading of additional service responsibilities by the Province to municipalities, with or without financial compensation, is one that will continue to exist regardless of the legislation in place at any given time. The reality is that Provinces have the constitutional authority to dictate the powers, duties and responsibilities of municipalities. The legislation governing municipalities can be changed unilaterally by the Province if it deems it necessary or appropriate.

The most meaningful protection available to municipalities is a close working relationship with the Province and on-going dialogue in a spirit of mutual respect and cooperation. It is unrealistic to believe that confrontation can be completely avoided but such should not be the order of the day. **The Panel strongly urges the Province to carry out extensive consultations with municipalities well in advance of any downloading or transfer of service responsibilities.**

The Panel concluded that the nature, extent and timing of bylaw enforcement are most appropriately left to the local Council to establish in light of their priorities and the resources available. It is impractical to require that all bylaws will be fully enforced at all times. The Council must be able to exercise some policy discretion in this regard.

Panel Response to Recommendations

Recommendation #114:

The 'spheres of jurisdiction' approach should be used to delineate municipal powers. The objective of the legislation should be to confer broad and general jurisdiction on municipalities to pass bylaws for municipal purposes in specified areas.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE LANGUAGE USED BE CAREFULLY CONSTRUCTED TO ENSURE CLARITY AND TO AVOID JURISDICTIONAL CHALLENGES.

THE PANEL FURTHER RECOMMENDS THAT THE SCOPE OF THE SPHERES OF JURISDICTION BE WELL DEFINED

AND EASILY UNDERSTOOD AND IN NO WAY DIMINISH OR RESTRICT THE CURRENT POWERS OF MUNICIPALITIES.

THE PANEL FURTHER RECOMMENDS THE USE OF INTERPRETIVE CLAUSES IN THE NEW ACT TO CLARIFY THE LEGISLATIVE INTENT OF THE MOVE TO A SPHERE OF JURISDICTION APPROACH.

THE PANEL FURTHER RECOMMENDS THE CREATION OF A TRANSITION FUND TO ASSIST MUNICIPALITIES EXPERIENCING FINANCIAL HARDSHIP WITH THE INTRODUCTION OF A NEW ACT.

Recommendation #115:

The legislation should confer bylaw making authority in broad and general terms and should not specify the matters that may be dealt with in any given bylaw.

THE PANEL CONCURS. THE FLEXIBILITY TO RESPOND TO LOCAL ISSUES IS A KEY ASPECT OF THE PROPOSED CHANGES.

Recommendation #116:

Council should be given the authority to enact bylaws respecting the following matters:

- ***activities or things that in the opinion of the Council are or could become a nuisance, which may include noise, weeds, odours, fumes, and vibrations;***
- ***animals and activities in relation to them, including bylaws differentiating on the basis of sex, breed, size, or weight;***
- ***businesses, business activities, and persons engaged in business;***
- ***drains and drainage on private or public property;***
- ***the sale and use of firecrackers and other fireworks, the use of rifles, guns, and other firearms, and the use of bows and arrows and other potentially dangerous weapons;***
- ***local transportation systems;***
- ***municipal roads, sidewalks, and street lighting;***
- ***parking and the regulation of traffic;***
- ***people, activities, and things in, on, or near a public place or place open to the public;***
- ***preventing and fighting fires;***
- ***private works on, over, along, or under municipal roads;***
- ***public utilities;***
- ***the safety, well-being, and protection of people, and the safety and protection of property;***
- ***unsightly premises.***

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE LIST BE REVIEWED FOR COMPLETENESS AND AMENDED AS REQUIRED ONCE THE DRAFTING OF THE LEGISLATION

RESPECTING THE SPHERES OF JURISDICTION HAS BEEN COMPLETED.

Recommendation #117: ***Housing should not be included as a specified sphere of municipal jurisdiction. The legislation should, however, provide for the continued operation of any housing commission currently operated by a municipality.***

THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT HOUSING BE IDENTIFIED AND INCLUDED AS A SPECIFIC SPHERE.

Recommendation #118: ***Community services should no longer be a specified sphere of municipal jurisdiction.***

THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE COMMUNITY SERVICES BE EXPRESSLY INCLUDED UNDER A SPECIFIED SPHERE SO AS TO RECOGNIZE THE IMPORTANCE OF DEVELOPING HEALTHY COMMUNITIES.

Recommendation #119: ***Land assembly should no longer be a specified sphere of municipal jurisdiction.***

THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT LAND ASSEMBLY BE IDENTIFIED AND INCLUDED IN THE LEGISLATION AS A SPECIFIC SPHERE.

Recommendation #120: ***Council should not retain its current power to provide for the closing of businesses on days other than those prescribed by Provincial legislation.***

THE PANEL DOES NOT CONCUR. THE PANEL BELIEVES THAT LOCAL CHOICE SHOULD BE RESPECTED.

Recommendation #121: ***Council should no longer be specifically authorized to enact enemy action bylaws.***

THE PANEL CONCURS.

Recommendation #122: ***The regulation and licensing of the erection and use of bill boards as well as the prohibition of overhanging signs should be regulated pursuant to the provisions of the Community Planning Act. The legislation should provide for the issuance of a license or permit on an annual or semi-annual basis for billboards and overhanging signs.***

THE PANEL CONCURS AS THESE ARE ESSENTIALLY LAND USE PLANNING MATTERS.

Recommendation #123:

The power to enact bylaws respecting mobile home sites and tourist camps should not be specifically conferred upon municipalities. The location of mobile home sites and tourist camps should be governed by the provisions of the Community Planning Act.

THE PANEL CONCURS AS THESE ARE ESSENTIALLY LAND USE PLANNING MATTERS.

Recommendation #124:

The placement or location of amusement devices should be governed by the provisions of the Community Planning Act.

THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THIS ISSUE BE GIVEN ADDITIONAL SCRUTINY.

Recommendation #125:

Unsightly premises bylaws should no longer require the approval of the Lieutenant-Governor in Council.

THE PANEL CONCURS.

Recommendation #126:

In the event of a conflict between a private act, municipal charter, or municipal bylaw, and any Provincial statute or regulation, the provision of the statute or regulation should prevail.

THE PANEL CONCURS BUT NOTES THAT IN LAW, PROVINCIAL REGULATIONS DO NOT PREVAIL OVER MUNICIPAL CHARTERS OR PROVINCIAL STATUTES NOR SHOULD THEY.

POWERS WITHIN A SPHERE

Background

Some sections of the Municipalities Act allow Council to regulate an activity while others permit both the regulation and the prohibition of an activity. The Municipalities Act authorizes only the adoption of specific codes. The National Building Code and the National Fire Code, or portions thereof, may also be applicable within municipal boundaries under the provisions of the Community Planning Act and the Fire Prevention Act respectively. While Council is

specifically authorized to establish classes of user in the context of utility services, there is no general provision in the Municipalities Act that authorizes the establishment of classifications or the differential treatment of persons or things based upon such classification. The statute also does not expressly authorize the imposition of user fees other than in relation to utility services.

During their deliberations, the Review Advisory Committee concluded:

- The specificity of the current legislation hampers the ability of municipalities to deal with emergent issues.

- Councils should be given broad and general powers to act within the prescribed legislative spheres.

- The power to regulate should also include the power to prohibit.

- Municipalities should have the power to adopt any Federal or Provincial code, in whole or in part, that it considers appropriate.
- Council should be authorized to deal with any development, activity, industry, business, animal, vehicle, plant, or thing in different ways, or divide any of them into classes and deal with each class in different ways.

- Council should be authorized to establish fees or other charges for services, activities or things provided for or done by the municipality or for the use of property under the ownership, direction, management, or control of the municipality.

Synopsis of Public Input

Limited and specific input was received with respect to these recommendations. The power to adopt a Provincial or Federal code 'in whole or in part' raised the question whether or not a municipality could adopt less stringent requirements for those sections not adopted.

Concern was expressed that the power to create different classes for regulatory purposes could lead to discriminatory actions. It was also proposed that municipalities be given the power to divide 'people' into different classes for regulatory purposes. Finally, several presenters noted that there should be no distinction permitted between residents and non-residents.

Broad support was expressed for the recommendation allowing municipalities to impose user fees. It was also recommended that the Provincial Blasting Code be administered and enforced entirely by the Province to ensure clear accountability and the use of consistent standards.

Panel Comments

The effectiveness of the sphere approach is predicated on a municipality's ability to exercise broad and general powers within the prescribed spheres. The Panel supports the recommendations presented by the Review Advisory Committee in the interest of promoting greater local autonomy, increased responsiveness and improved accountability.

The ability to charge user fees will allow municipalities to respond better to local requirements. The Panel notes, however, that increased revenues derived from user fees will have an impact on how much unconditional grant funding a municipality receives. As well, the ability to prohibit as well as regulate will address a shortcoming in the current Act that has proven problematic in recent years.

The Panel believes that the basic requirement to respect the Charter of Rights and Freedoms will serve as an effective control to prevent the creation of discriminatory provisions in the new Act or discriminatory application of the new provisions by municipalities. The Province may want to consider adopting a blanket prohibition against discriminatory exercise of regulatory powers.
The Panel concurs with the suggestion to have the Provincial Blasting Code fall in the Provincial domain in the interests of establishing clear accountability. As for building and fire codes, the Province may prefer to protect the public interest by not permitting municipalities to adopt less stringent provisions.

Panel Response to Recommendations

Recommendation #127:

Council should be authorized to exercise any of the following powers in the context of any bylaw that it is authorized to enact or any service that it is authorized to provide:

- ***the power to regulate or prohibit;***
- ***the power to adopt by reference, in whole or in part, a code or standard made or recommended by the Government of Canada or a Province and to require compliance with such code or standard;***
- ***the power to deal with any development, activity, industry, business, animal, vehicle, plant, or thing in different ways, or divide any of them into classes and deal with each class in different ways;***
- ***the power to establish fees or other charges for services, activities, or things provided for or done by the municipality or for the use of property under the ownership, direction, management, or control of the***

municipality.

THE PANEL CONCURS AND NOTES THAT THE PROPOSED BYLAW POWERS IN #116 INLCLUDES THE POWER TO ENACT BYLAWS RESPECTING 'PEOPLE' WHEREAS THIS RECOMMENDATION CONCERNING REGULATORY POWERS DOES NOT. THE LEGAL IMPLICATIONS ARE UNKNOWN TO THE PANEL.

Recommendation #128:

The Provincial Blasting Code and Maintenance and Occupancy Code should be reviewed and those sections of the regulations that prescribe a feasible minimum standard should be made applicable both within and outside municipal boundaries.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT ENFORCEMENT OF THE PROVINCIAL BLASTING CODE BE UNDERTAKEN SOLELY BY THE PROVINCE OF NEW BRUNSWICK.

Recommendation #129:

Council should be authorized to establish standards that are in addition to those minimums set out in the codes that are prescribed by regulation.

THE PANEL CONCURS.

MUNICIPAL LICENSING POWERS

Background

The Municipalities Act currently provides for the licensing of only specified activities. Council is authorized to provide for the licensing of: owners and operators of taxi cabs, transient traders, vendors of spring guns, exhibitions of natural or artificial curiosity, circuses, outdoor musical concerts, billiard rooms, pool rooms, bowling alleys, billboards, vending machines, problem punch boards, amusement devices, book agents, animals, pawnbrokers, peddlers, mobile home parks, tourist camps and trailer camps. Pursuant to section 112 of the Municipalities Act, where a municipality is authorized to make a bylaw providing for licensing, it may also: prohibit the doing without a license of anything for which a license is required, prescribe license fees not exceeding the maximum fees established in the Act or prescribed by regulation, prescribe the terms and conditions on which licenses are issued, limit the time during which a license remains in force, provide for the renewal, suspension or revocation of licenses, delegate to any officer of the municipality the authority to issue, renew, suspend or revoke a license, and require applicants to furnish information.

During their deliberations, the Review Advisory Committee concluded:

- Allowing Councils to institute a system of licenses in regard to any matter respecting which it may enact bylaws would provide greater latitude in the regulation of municipal affairs.

- Municipalities should have the authority to provide for a system of licenses, permits or approvals in regard to any matter or activity over which they have jurisdiction.

- The power to decide which businesses or activities should be licensed in the municipality should be subject to some form of regulatory control to ensure consistency between municipalities in regard to licensing matters.

- The aim of municipal licensing powers should remain the regulation of certain activities and enterprises for the general safety and well being of the residents of the municipality.

- Councils should not be authorized to generate revenue or to discourage a particular lawful activity by imposing an exorbitant licensing fee.

Synopsis of Public Input

Again, public input pertaining to these matters was limited and usually of a technical nature. It was suggested by some that the provisions of the current Act should prevail. This position was based on a concern that inspection and enforcement under the new provisions would be too costly and that some communities simply do not have the necessary resources available.

Because it was not stated explicitly in the recommendations, it was suggested that licensing powers be exercised only by bylaw. The appropriateness of being able to impose special conditions 'after' the issuance of a license was also questioned. Allowing Councils to delegate to any employee the power to 'prescribe the terms and conditions that may be imposed on any license' raised concerns about accountability and the potential for abuse of power.

An important issue was raised with respect to the need for regulatory control over licensing powers. It was argued that permitting Provincial regulatory control over municipal licensing powers was in direct conflict with the stated purpose of providing increased autonomy to local governments. Simply put, it was stated that either municipalities should have the regulatory and licensing powers or they should not.

Panel Comments

The Panel concurs that allowing a municipality to initiate a system of licenses in regard to any matter for which it may enact a bylaw is a necessary and important adjunct to increasing local autonomy. In the interest of promoting accountability and responsiveness, the Panel does not support the proposal for retaining Provincial authority to make regulations restricting municipal regulatory powers.

The Panel believes that licensing powers must be stated in broad enough terms sufficient to respond to the wide array of situations likely to be encountered in the day to day administration of a municipality. It should be expected that a broad range of differing local regulations would develop over time. If limitations on this regulatory power are deemed appropriate, these should be incorporated in the initial granting of power and in the actual drafting of the relevant legislative provisions.

The Panel concluded that it should not be left to the Province to override local licensing decisions after the fact. It would be entirely inappropriate for the Lieutenant-Governor-in-Council to be able unilaterally to restrict the regulatory powers set out in a municipal bylaw that was lawfully enacted by the duly elected Council of a community. The very notion flies in the face of the principles of enhanced autonomy and accountability at the local level. The Panel is also concerned that over time such action would defeat the stated goals of consolidation and the use of plain language in the interest of better citizen understanding.

An individual or business that feels it has been wronged should have recourse to the courts. The courts could then declare a bylaw or a section of a bylaw invalid if it deemed appropriate.

Accountability also dictates that the elected body should retain responsibility for the exercise of regulatory powers. The actions and decisions of municipal employees should therefore be governed by bylaw to avoid arbitrary or discriminatory activities. Employees should not be given the latitude to exercise their licensing or inspection powers in a discriminatory manner.
Finally, the Panel believes that the risk of increased costs at the local level is controllable by the municipality in that they will determine by bylaw which, if any, inspections are required, how and when they will be carried out and what, if any, fees apply. The availability of broad licensing and inspection powers does not constitute an obligation to exercise these powers.

Panel Response to Recommendations

Recommendation #130:

Council should be authorized to provide for a system of licenses, permits, or approvals in regard to any matter within its jurisdiction. The Lieutenant Governor in Council should, however, retain the authority to make regulations restricting

this power.

THE PANEL CONCURS WITH PROVIDING COUNCILS BROAD AUTHORITY TO PROVIDE A SYSTEM OF LICENSES AND PERMITS BY BYLAW WITHIN THE DEFINED SPHERES OF JURISDICTION.

THE PANEL DOES NOT CONCUR WITH ALLOWING THE PROVINCE TO RETAIN AUTHORITY TO MAKE REGULATIONS RESTRICTING MUNICIPAL REGULATORY POWER AND STRONGLY RECOMMENDS THAT THE POWER TO REGULATE AT THE LOCAL LEVEL BE UNFETTERED.

THE PANEL RECOMMENDS THAT ANY ACTION TO SET ASIDE A DECISION OF A LOCAL COUNCIL SHOULD BE LEFT STRICTLY TO THE COURTS.

Recommendation #131:

Council should be given the following powers within the context of licensing:

- ***the power to prohibit a development, activity, industry, business, or thing until a license, permit, or approval is granted;***
- ***the power to renew, suspend, or revoke licenses;***
- ***the power to define classes of businesses and to separately license, regulate, and govern each class. Council should, however, be expressly prohibited from dividing businesses into resident and non-resident classes;***
- ***the power to require applicants for, and holders of, licenses to provide such information as the Council deems necessary;***
- ***the power to impose terms and conditions, both before and after the issuing of a license, as a requirement of obtaining, continuing to hold, or renewing a license;***
- ***the power to impose special conditions, both before and after the issuing of a license, on a business in a class that have not been imposed on all of the businesses in that class as a requirement of obtaining, continuing to hold, or renewing a license for the business;***
- ***the power to license, regulate, or govern the place or premises used in the carrying on of the business and the persons carrying it on or engaged in it;***

- ***the power to limit the time during which***

a license remains in force;

- ***the power to provide for the posting of a bond or other security to ensure compliance with a term or condition imposed upon the issuing of the license;***
- ***the power to prescribe license fees not exceeding the maximum fee prescribed by regulation ($1,000 annually);***
- ***the power to delegate to any officer or employee of the municipality the authority to issue, renew, suspend, or revoke licenses or to prescribe the terms and conditions that may be imposed on any license, impose such terms and conditions, and/or to prescribe the amount of any bond or other security required.***

THE PANEL CONCURS WITH THE BROAD GRANTING OF REGULATORY POWERS TO MUNICIPALITIES AS RECOMMENDED BY THE REVIEW ADVISORY COMMITTEE.

THE PANEL DOES NOT CONCUR WITH PERMITTING THE IMPOSITION OF CONDITIONS, SPECIAL OR OTHERWISE, 'AFTER' THE ISSUING OF A LICENSE (bullet 5,6).

THE PANEL FURTHER RECOMMENDS THAT THE LEGISLATION PROVIDE THAT THE POWER TO PRESCRIBE TERMS AND CONDITIONS OF OBTAINING A LICENSE REMAIN A POLICY DECISION OF COUNCIL TO BE EXERCISED SOLELY BY BYLAW (bullet 11).

THE PANEL RECOMMENDS THAT THE LEGISLATION PROVIDE THAT STAFF BE RESTRICTED TO ENFORCING BYLAWS AND NOT BE PERMITTED UNILATERALLY TO PRESCRIBE THE TERMS AND CONDITIONS THAT MAY BE IMPOSED.

Recommendation #132:

Council should be specifically authorized to regulate the fares charged by the owners and operators of taxicabs.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE POWER TO REGULATE TAXI STAND OWNERS/OPERATORS BE ADDED TO THIS PROVISION.

MUNICIPAL SERVICES

Background

Section 7 of the Municipalities Act contemplates that a municipality has two options as to the manner in which it will provide a service: it may provide the service itself or it may contract with a service delivery agency. Council also has the general power to establish boards and commissions and may administer the provision of a particular service through such boards and commissions. The legislation also deals specifically with the creation of utility and public beach commissions. While the statute authorizes the entry into contractual relationships with corporate entities, it does not expressly authorize a Council to create a corporate entity.

Subsection 7(2) of the Municipalities Act states that a municipality may provide any of the services listed in the First Schedule. Subsection 7(3) purports to grant general bylaw making powers in regard to any service provided by a municipality.

During their deliberations, the Review Advisory Committee concluded:

- The services that a municipality may provide should no longer be prescribed by legislation.

- The legislation should differentiate between a municipal service and matters in regard to which Council should be authorized to enact bylaws.

- Municipalities should continue to be able to enter into agreements for the provision of services within its boundaries with other municipalities, other levels of government and third parties.

- Boards and commissions overseeing the administration of a municipal service should remain under the supervision of Council and should not be considered separate legal entities.

- A municipal Council should be authorized to create not-for-profit corporations and corporations that issue shares and pay dividends.

- Boards and commissions providing inter-municipal services should have independent legal status.

- The requirements for financial reporting, meeting notices, conflict of interest and access to information should apply to all municipal not-for-profit corporations and any corporations in which one or more municipalities holds 51% of the shares.

Synopsis of Public Input

A variety of concerns were expressed in relation to these particular recommendations. It was suggested that the removal of the requirement to list the services that a municipality is authorized to provide could increase municipal exposure to liability if municipalities start providing services for which they have no expertise or experience. On the other hand, it was noted that the presence of a list could effectively preclude providing a service not listed thereby undermining the intent of the more permissive spheres of jurisdiction approach.

A proposal was also made to list only mandatory or 'essential services' while others offered that recreation services should be deemed essential to the well being of a community and its residents. It was also noted that eliminating the 'list' of services would require other legislative adjustments as the list is referred to in the provisions dealing with Local Service Districts. It was also suggested that the meaning of the phrase 'municipal purpose' should be clearly defined.

There was general support expressed for the thrust of the recommendations regarding application of the conflict of interest, notice and access to information requirements etc. to municipal agencies boards and commissions. Reservations were expressed however, that implementation of these requirements may prove to be onerous for volunteer boards and agencies.

It was noted that the current Act allows for the creation of agencies, boards and commissions but limits the delegation of powers to purely administrative matters. The concern raised was whether or not these same restrictions would apply under the new Act in order to assure that Councils retained authority for policy decisions and would therefore be held accountable. The creation of an agency with independent legal status means that this body would also be given policy jurisdiction over the matters it is responsible for overseeing.

It was also stated that unless the requirements for conflict of interest, openness, access to information etc. applied to these bodies, the requirement for independent legal status for inter-municipal boards and commissions would impair accountability for the expenditure of municipal tax dollars and possibly result in the costly duplication of administrative services.

From a financial planning perspective, it was further suggested that the creation of capital maintenance and repair reserves be made a condition of receiving Provincial funding for regional (inter-municipal) recreation facilities so as to ensure the long-term viability of the infrastructure.

Finally, it was pointed out that there seems to be a gap in the recommendations as no comments were made regarding boards and commissions created by

Provincial statue (e.g. private member bills) that are now administering the delivery of municipal services (e.g. pensions, recreation facilities).

Panel Comments

Regarding the need for a list of services, the Panel carefully weighed the considerations of the Review Advisory Committee and the public comments received. The Panel concluded that, in the interest of enhancing local autonomy and responsiveness, the schedule of services should be eliminated. The Province may wish to continue to identify policing or other particular services as essential services that a municipality must provide. No additional services should be deemed mandatory without extensive prior consultation with the municipalities.

The Panel believes that municipalities should have maximum flexibility to determine which types of arrangements can be utilized to deliver municipal services. The Panel also recognizes that the ability to create agencies, boards and corporations could lead to the establishment of a vast array of special purpose agencies. While this, in itself, does not create a problem, accountability for the actions of these agencies is a concern.

The use of corporations or special purpose bodies should not become an easy opportunity to avoid political accountability. It has been said that the use of a multitude of special purpose boards and agencies limits accountability and creates a situation where it seems everybody is in charge and yet nobody is. Councils will defer to the agency on problem matters while the agency or the individual members will point in the direction of Council for resolution of these same issues. Citizens are left to wonder who is truly responsible for the agencies funded by their tax dollars.

The Panel fears that accountability to the public for actions taken and/or the expenditure of tax dollars by agencies, boards and commissions will be virtually non-existent without specific statutory provisions making them subject to the same municipal requirements for access to information, procedural requirements, conflict of interest, financial reporting, openness etc. Strict requirements should be made mandatory on all such agencies regardless of their legal status, ownership or service delivery area.

For this same reason, the Panel also questions the appropriateness of restricting the imposition of accountability requirements to those corporate entities in which one or more municipalities holds 51% of the issued share capital. It is difficult to accept that the reporting, conflict of interest and other requirements would not apply if a municipality limited ownership to 50% of the shares. The private sector has adopted strict reporting requirements when ownership reaches as little as the 10% level.

Substantial amounts of taxpayer funds could be involved even in situations with limited ownership. The Panel does not believe that municipalities should be able

to use a corporate veil to avoid the recommended requirements for assuring full accountability.

The Panel believes that the primary issue is to ensure effective accountability to citizens for actions taken and/or the expenditure of public funds and not to the level of ownership in a corporation, the service delivery area or the type of entity used to deliver or administer a municipal service.
Despite the concerns raised about the possible negative impact on volunteer boards and agencies the Panel concluded that ensuring accountability for the expenditure of public funds and actions taken must take precedence over the ability to secure volunteers.

The suggestion for requiring capital reserve funds for regional recreation facilities has merit and should be a required part of proper financial planning at the local level. The Panel does not, however, believe that the Province should dictate the method to be employed in the new statute as each municipality must be able to plan for its own financial needs (capital and operating) as it best sees fit. Instead, the Panel urges the Province to consider such a requirement as a condition for receiving Provincial funding for regional recreation facilities.

Panel Response to Recommendations

Recommendation #133:

The services that a municipality is authorized to provide should no longer be listed in the legislation.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT IF LISTING IS DEEMED NECESSARY, ONLY ESSENTIAL SERVICES BE LISTED.

Recommendation #134:

Municipalities should be authorized to construct, operate, repair, improve, and maintain works and improvements and acquire, establish, maintain, and operate services, facilities and utilities for 'municipal purposes'.

THE PANEL CONCURS AND RECOMMENDS THAT THE PHRASE 'MUNICIPAL PURPOSES' BE GIVEN AN EXPLICIT STATUTORY DEFINITION.

Recommendation #135:

A municipal Council should be authorized to enter into agreements for the provision of a service or facility in regard to any matter that falls within a defined sphere of jurisdiction or that serves a municipal purpose.

THE PANEL CONCURS.

Recommendation #136:

Where a service is provided by a single municipality to the residents of that municipality, Council should have the power to establish boards and commissions to oversee the delivery of the service. These entities should not have a legal status separate from that of the municipality.

THE PANEL CONCURS BUT QUESTIONS THE EXCLUSION OF A SEPARATE LEGAL STATUS FOR AGENCIES OVERSEEING LOCAL SERVICE DELIVERY.

THE PANEL RECOMMENDS THAT SEPARATE LEGAL STATUS SHOULD BE PERMITTED FOR SUCH AGENCIES PROVIDED THAT THE AGENCY IS FULLY ACCOUNTABLE FOR ITS ACTIONS AND IS SUBJECT TO THE MUNICIPAL RULES GOVERNING CONFLICT OF INTEREST, ACCESS TO INFORMATION, FINANCIAL REPORTING, OPENNESS AND PUBLIC NOTICE REQUIREMENTS.

THE PANEL FURTHER RECOMMENDS THAT THESE REQUIREMENTS SHOULD ALSO APPLY TO ALL AGENCIES WITH SEPARATE LEGAL STATUS THAT CURRENTLY PROVIDE MUNICIPAL SERVICES AND AGENCIES THAT RECEIVE MORE THAN TWENTY FIVE PERCENT (25%) OF THEIR FUNDING FROM ONE OR MORE MUNICIPALITIES.

Recommendation #137:

Council should be specifically authorized to create corporations, solely or in conjunction with other municipalities or third parties, for the provision of services within the territorial boundaries of the municipality.

THE PANEL CONCURS PROVIDED THAT THE CORPORATION IS SUBJECT TO ALL MUNICIPAL RULES GOVERNING CONFLICT OF INTEREST, ACCESS TO INFORMATION, FINANCIAL REPORTING, OPENNESS AND PUBLIC NOTICE REQUIREMENTS.

Recommendation #138:

Municipalities should be specifically authorized to create corporations, in conjunction with other municipalities or third parties, for the provision of municipal services on a regional basis. Where a service is to be provided on a regional

basis municipalities should be precluded from creating boards, commissions, or any other type of body that does not have independent legal status.

THE PANEL CONCURS PROVIDED THAT THE AGENCY IS FULLY ACCOUNTABLE FOR ITS ACTIONS AND IS SUBJECT TO ALL MUNICIPAL RULES GOVERNING CONFLICT OF INTEREST, ACCESS TO INFORMATION, FINANCIAL REPORTING, OPENNESS AND PUBLIC NOTICE REQUIREMENTS.

Recommendation #139: ***All municipal not-for-profit corporations and any commercial corporation in which one or more municipalities holds fifty-one per cent of the issued share capital should be subject to the same financial reporting requirements as municipalities.***

THE PANEL CONCURS BUT RECOMMENDS THAT THE OWNERSHIP PERCENTAGE BE SET AT TWENTY FIVE PERCENT 25%.

Recommendation #140: ***All municipal not-for-profit corporations and any commercial corporation in which one or more municipalities holds fifty-one per cent of the issued share capital should be subject to the rules governing municipal conflict of interest.***

THE PANEL CONCURS BUT RECOMMENDS THAT THE OWNERSHIP PERCENTAGE BE SET AT TWENTY FIVE PERCENT 25%.

Recommendation #141: ***All municipal not-for-profit corporations and any commercial corporation in which one or more municipalities holds fifty-one per cent of the issued share capital should be subject to the rules governing access to municipal information.***

THE PANEL CONCURS BUT RECOMMENDS THAT THE OWNERSHIP PERCENTAGE BE SET AT TWENTY FIVE PERCENT 25%.

Recommendation #142: ***All municipal not-for-profit corporations and any commercial corporation in which one or more municipalities holds fifty-one per cent of the issued share capital should be subject to the same requirements as Council in regard to the holding of meetings that are open to the public and the provision of adequate notice to the public of such meetings.***

THE PANEL CONCURS BUT RECOMMENDS THAT THE OWNERSHIP PERCENTAGE BE SET AT TWENTY FIVE PERCENT 25%.

Recommendation #143: ***All inter-municipal not-for profit corporations and any inter-municipal commercial corporation in which one or more municipalities holds fifty-one per cent of the issued share capital should be subject to the same financial reporting requirements as municipalities.***

THE PANEL CONCURS BUT RECOMMENDS THAT THE OWNERSHIP PERCENTAGE BE SET AT TWENTY FIVE PERCENT 25%.

Recommendation #144: ***All inter-municipal not-for profit corporations and any inter-municipal commercial corporation in which one or more municipalities holds fifty-one per cent of the issued share capital should be subject to the rules governing municipal conflicts of interest***

THE PANEL CONCURS BUT RECOMMENDS THAT THE OWNERSHIP PERCENTAGE BE SET AT TWENTY FIVE PERCENT 25%.

Recommendation #145: ***All inter-municipal not-for profit corporations and any inter-municipal commercial corporation in which one or more municipalities holds fifty-one per cent of the issued share capital should be subject to the rules governing access to municipal information.***

THE PANEL CONCURS BUT RECOMMENDS THAT THE OWNERSHIP PERCENTAGE BE SET AT TWENTY FIVE PERCENT 25%.

Recommendation #146: ***All inter-municipal not-for profit corporations and any inter-municipal commercial corporation in which one or more municipalities holds fifty-one per cent of the issued share capital should be subject to the same requirements as Council respecting the holding of meetings that are open to the public and the provision of adequate notice to the public of such meetings.***

THE PANEL CONCURS BUT RECOMMENDS THAT THE OWNERSHIP PERCENTAGE BE SET AT TWENTY FIVE PERCENT 25%.

Recommendation #147: ***The provisions of the Municipalities Act***

dealing with local improvement associations should remain unchanged.

THE PANEL CONCURS.

ACTIONS BY MUNICIPALITIES

BYLAW ENFORCEMENT

Background

The general powers of municipalities respecting the enforcement of bylaws are contained in sections 100 through 106.1 of the Municipalities Act. These sections provide for the imposition of maximum and minimum fines and for additional penalties for the contravention of licensing bylaws, bylaws relating to the operation of bicycles, and bylaws relating to animals. Council may also establish voluntary payment schemes. The legislation contains provisions respecting the burden of proof in the prosecution of certain types of infractions. The Provincial Offences Procedures Act governs the procedure to be followed in the prosecution of bylaw violations.

During their deliberations, the Review Advisory Committee concluded:

- The establishment of a single set of rules and/or mechanisms for the enforcement of municipal bylaws would simplify the enforcement process.

- The right to levy charges against land should continue to be restricted to matters such as unpaid user charges and local improvement levies.

Synopsis of Public Input

It was requested that, regardless of any changes being contemplated, the existing right to have overdue water and sewerage charges constitute a lien against property be preserved. In addition, it was requested that the priority standing of these claims should be legislated. It was also noted that the development of a single set of rules should not result in the reduction of the powers available under other statutes such as the Community Planning Act.

Panel Comments

The Panel believes that adequate and effective bylaw enforcement powers are an essential element in the move to a sphere of jurisdiction approach. Increased bylaw and regulatory powers are of little utility without the necessary means to enforce them.

Panel Response to Recommendations

Recommendation #148:

The same general remedies and enforcement mechanisms that are available in the prosecution of bylaws enacted under the Municipalities Act should be available in the context of municipal bylaws enacted under any other statute.

THE PANEL CONCURS PROVIDED THAT ANY ADDITIONAL AUTHORITY AVAILABLE TO MUNICIPALITIES PURSUANT TO OTHER ACTS SUCH AS THE COMMUNITY PLANNING ACT ARE NOT COMPROMISED.

THE PANEL FURTHER RECOMMENDS THAT EXISTING BYLAW ENFORCEMENT POWERS (E.G. WATER/SEWERAGE ARREARS) NOT BE DIMINISHED IN ANY MANNER.

INSPECTIONS

Background

The Municipalities Act contains no general provision respecting the authority of a Council to prescribe a system of inspections to ensure compliance with municipal bylaws. Inspections are specifically authorized only in the context of fire safety inspections. Building inspections are authorized under the Community Planning Act.

During their deliberations, the Review Advisory Committee concluded:

- The right to enter and inspect would be of particular value in the operation of a utility service.

- The legislation should expressly provide for inspection powers in relation to the enforcement of licensing bylaws.

- The right of individuals to be secure against unreasonable search required limitations be placed upon the power of inspectors to enter upon private property.

Synopsis of Public Input

The language used in the recommendations drew the attention of participants in the public hearings. They noted that the terms 'licensed premises' and 'regular business hours' required definition. The concern being that licensed premises should refer to those licensed by municipal bylaw and not liquor establishments. Likewise regular business hours could have many meanings.

Another concern was that the recommendations dealing with inspection powers did not address situations where the owner/occupant did not possess a license. It was also suggested that it would be preferable if the provisions would provide for inspections 'at any reasonable time'.

Panel Comments

The Panel recognizes the need to enter and inspect properties as part of the bylaw and licensing enforcement process but also strongly supports the Review Advisory Committee position that the rights of individuals to be protected from unreasonable search must be fully protected. Again, the necessity for clear language is noted.

Panel Response to Recommendations

Recommendation #149:

Council should be authorized to prescribe a system of inspections respecting any service it is authorized to provide and in relation to any matter over which it has bylaw making authority.

THE PANEL CONCURS.

Recommendation #150:

Inspectors should be authorized to enter and inspect licensed premises without notice during business hours.

THE PANEL CONCURS AND RECOMMENDS THAT THE TERM 'DURING BUSINESS HOURS' BE REPLACED WITH THE PHRASE 'AT ANY REASONABLE TIME'.

Recommendation #151:

Inspectors should be authorized to enter and inspect licensed premises, upon prior notice to the owner or occupier of such premises, at any other reasonable hour outside of regular business hours.

THE PANEL DOES NOT CONCUR AND QUESTIONS THE APPROPRIATENESS OF PRIOR NOTICE IN THE CONTEXT OF

COMPLIANCE INSPECTIONS PURSUANT TO LOCAL BYLAWS.

Recommendation #152:

Inspectors should be required to apply to the courts for an entry warrant in situations where entry to licensed premises is refused or in situations where the inspector has reason to believe that an unlicensed activity is being conducted on the premises.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT A REFUSAL TO PERMIT ENTRY CONSTITUTES AN OFFENCE IF THE COURTS PROVIDE THE ENTRY WARRRANT.

FINES AND VOLUNTARY PAYMENT PROVISIONS

Background

The Municipalities Act provides that Council may enact bylaws providing that a person who violates any provision of a bylaw is guilty of an offence and liable to a fine of up to $500. The statute also prescribes specific fines for the contravention of specific bylaws. Council may also provide that any fine can be paid in the manner prescribed by bylaw and that upon making such payment the person who committed the violation is no longer liable to prosecution.

During their deliberations, the Review Advisory Committee concluded:

- The same enforcement mechanisms should be available for the enforcement of any municipal bylaw created under any Provincial statute.

- Municipalities should be expressly authorized to prescribe a system of tickets in regard to bylaw enforcement.

- The ticketing system should be apart from the Provincial Offenses and Procedures Act.

- Voluntary payment amounts should not exceed the minimum fine imposed for violation.

- Municipalities should not be constrained to sue in debt in order proceed against an individual who has been convicted of a bylaw infraction.

Synopsis of Public Input

Again the input received focused on the technical aspects of the proposed recommendations. The primary interest was to ensure that the changes would fully respond to what were regarded as the shortcomings of the current system. The need for voluntary payments and effective enforcement of outstanding fines was not challenged.

There was support for the use of uniform forms and procedures however it was suggested that, in the interest of certainty and consistency, these be set out in the statute or by regulation.

In addition, it was suggested the use of voluntary payment of fines should apply only in the context of a prescribed ticketing system. Municipalities do not want to give up authority to seek other remedies for violation of bylaws (e.g. application for court order to cease violation) that may flow from the Municipalities Act or other statutes.

Finally it was suggested that a municipality should be given the authority to enforce the Certificate of Judgement by way of Order for Seizure and Sale otherwise the Certificate could remain unrealized for an indefinite period. For example a Certificate of Judgement against a property may only be realizable upon a sale by the owner.

Panel Comments

The input received was considered in the context of fairness, ease of administration and effective enforcement. The Panel concurs with the suggestions put forward during the public hearings. Municipalities should not be limited to imposing fines as a remedy for violation of bylaws. Ticketing and the related use of fines and voluntary payments should be just one aspect of the enforcement mechanisms available to municipalities. The use of uniform forms and procedures will simplify enforcement proceedings and the power of seizure and sale will allow for timely collection of outstanding amounts.

Panel Response to Recommendations

Recommendation #153: ***Council should be authorized to impose fines within the maximum limit prescribed by the Municipalities Act for the violation of any municipal bylaw.***

THE PANEL CONCURS PROVIDED THIS IS DONE PURSUANT TO A PRESCRIBED TICKETING/NOTICE OF VIOLATION SYSTEM. COUNCILS SHOULD RETAIN ALL OTHER BYLAW PENALTIES AND ENFORCEMENT POWERS CURRENTLY AVAILABLE PURSUANT TO OTHER ACTS.

Recommendation #154:

Council should be authorized to provide for the voluntary payment of fines in regard to any municipal bylaw.

THE PANEL CONCURS.

Recommendation #155:

The amount of any voluntary payment prescribed by Council should not exceed the minimum fine imposed for violation of the bylaw. Upon payment of the prescribed voluntary payment the person making such payment should no longer be liable to prosecution for the violation.

THE PANEL CONCURS.

Recommendation #156:

Council should be authorized to prescribe forms and procedures respecting the issuance of notices of violation and the making of voluntary payments.

THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT A UNIFORM SET OF FORMS AND PROCEDURES BE

FORMULATED AND ADOPTED BY REGULATION FOR USE IN THE ENTIRE PROVINCE.

Recommendation #157:

Fines owing to a municipality in respect of the successful prosecution of the violation of a bylaw should be deemed to be a debt owing to the municipality. A certificate should be issued from the court at the time the defendant is convicted of the offence and the municipality should be able to register this certificate in the same manner as a judgment of the court in debt.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT A MUNICIPALITY SHOULD BE GIVEN THE AUTHORITY TO ENFORCE THE CERTIFICATE OF JUDGEMENT BY WAY OF ORDER FOR SEIZURE AND SALE.

PARKING BYLAWS

Background

The Municipalities Act currently sets out in detail the subject matter that may be included in a parking bylaw as well as certain evidentiary requirements necessary to establish that a parking violation has occurred. Council also has the authority to provide for the payment of a voluntary penalty for the breach of a parking bylaw.

During their deliberations, the Review Advisory Committee concluded:

- The specificity of the current legislation operates as an impediment to the proper enforcement of parking bylaws.

- Council should be given the broadest possible authority to make bylaws regulating parking.

- The legislation should link the owner of the vehicle to the commission of the offence and should allow for the registration of the outstanding fines against the vehicle.

Synopsis of Public Input

The primary concern expressed in the submissions was the need for an appropriate and expedient system of collecting fine revenue. Parking violations are high volume offences but the fines prescribed are generally very small. It was pointed out, that costly systems and procedures undermine effective bylaw enforcement. The recommendation to enforce payment by way of a lien on the vehicle was not supported.

Presenters stated that the enforcement provisions for the collection of fines in the Motor Vehicle Act are superior to the provisions in the Municipalities Act. It was suggested that the same enforcement provisions for collection of fines in the Motor Vehicle Act be incorporated into the Municipalities Act. Creating an obligation to pay outstanding parking fines in order to transfer a vehicle registration or renew a driver's license was also proposed as an effective method to compel payment.

Panel Comments

The Panel supports the recommendations of the Review Advisory Committee in the interest of promoting local autonomy and streamlined administration. The Panel noted that at present traffic violations are enforced pursuant to the Motor

Vehicle Act while parking offenses come under the Municipalities Act. The enforcement provisions for the collection of fines are different in each Act. The suggestion to incorporate similar enforcement provisions as those available in the Motor Vehicle Act into the Municipalities Act has merit. The Panel recommends that the Province consult with the local parking authorities during the development of these particular provisions.

Panel Response to Recommendations

Recommendation #158:

Council should be given broad bylaw making powers respecting the regulation of parking.

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE PROCEDURES FOR THE COLLECTION OF FINES IMPOSED PURSUANT TO TRAFFIC AND PARKING BYLAWS IN THE NEW MUNICIPALITIES ACT BE THE SAME AS THE PROCEDURES SET OUT IN THE MOTOR VEHICLE ACT FOR THE COLLECTION OF FINES.

THE PANEL FURTHER RECOMMENDS THAT MUNICIPAL PARKING AUTHORITIES BE CONSULTED IN THE DRAFTING OF THESE PROVISIONS.

Recommendation #159:

The legislation should not deal with the proof of parking violations or the testing of meters.

THE PANEL CONCURS.

Recommendation #160:

The legislation should provide that the owner of a vehicle involved in a parking violation is deemed to be the person who parked the car in violation of the bylaw.

THE PANEL CONCURS.

Recommendation #161:

Judgments for outstanding parking fines should constitute a lien against the vehicle involved in the offence. When an individual is convicted of a parking offence in regard to a particular vehicle, a certificate should be issued by the court stating that there is a lien against that vehicle in regard to such fines.

THE PANEL DOES NOT CONCUR. THE ONGOING ADMINISTRATIVE COSTS AND PROCEDURES RELATED TO REGISTERING AND DE-REGISTERING LIENS WOULD BE

EXCESSIVE AND TIME CONSUMING FOR BOTH CITIZENS AND THE MUNICIPALITY.

Recommendation #162:

Judgments for outstanding parking fines should be able to be registered against the registration of the vehicle involved in the offence. No transfer or renewal of the registration of the vehicle should be permitted until such time as the fines are paid.

THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE PROCEDURES FOR THE COLLECTION OF FINES IMPOSED PURSUANT TO TRAFFIC AND PARKING BYLAWS IN THE NEW MUNICIPALITIES ACT BE THE SAME AS THE PROCEDURES SET OUT IN THE MOTOR VEHICLE ACT FOR THE COLLECTION OF FINES.

CONTINUING OFFENCES

Background

The Municipalities Act provides that a judge may make an order restraining the continuance or repetition of a contravention of a municipal bylaw. A judge may also order that a person do any act or thing necessary for the proper observance of a bylaw and the failure to comply with such an order is punishable as a category F offence. The legislation is silent respecting the authority of Council to deal with the continuous breach of a municipal bylaw.

During their deliberations, the Review Advisory Committee concluded:

- The absence of specific authorization in the Municipalities Act to create continuing offences is a defect in the enforcement scheme.

- The decision as to the time period during which an offence is deemed to be continuing should be left to the discretion of Council.

Synopsis of Public Input

The presenters noted that it would be preferable to have the Act define what constitutes a continuing offence and then allow Councils to prescribe by bylaw when such a continuing offence occurs and the penalty to be applied. In this way, the enforcement officer would be permitted to lay charges on a timely basis

without first having to seek Council permission and appropriate time periods could be applied to different types offences (unsightly, parking).

Panel Comments

The suggested improvements made during the public hearings appear reasonable and would allow Councils the flexibility to prescribe different standards to different offences. For example, the treatment of parking violations would not have to be the same as more serious unsightly premise violations.

Panel Response to Recommendations

Recommendation #163: ***Council should be authorized to provide for continuing offences.***

THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE ACT DEFINES WHAT CONSTITUTES A CONTINUING OFFENCE. COUNCIL COULD THEN BY BYLAW PRESCRIBE WHEN SUCH A CONTINUING OFFENCE OCCURS AND THE PENALTY TO BE APPLIED WITH RESPECT TO DIFFERENT VIOLATIONS.

Recommendation #164: ***The time period for which an offence is deemed to continue should be left to the discretion of Council.***

THE PANEL CONCURS.

CHARGES AGAINST LAND

Background

Prior to taking any steps to enforce an unsightly premises bylaw, the municipality must serve notice upon the owner or occupier of the premises. The notice must contain a full description of the property, the work that must be done respecting the property, and the time frame within which such work must be completed. A copy of the notice may be registered at the Registry Office and upon registration binds the land and is deemed to be notice to all subsequent owners or occupiers. In the event that the owner or occupier fails to comply with the notice, the municipality is authorized to enter the property without writ, warrant, or other legal process and do the work specified in the notice. All costs of remedying the condition of the property are recoverable by the municipality in an action in debt.

During their deliberations, the Review Advisory Committee concluded:

- The enforcement mechanisms regarding unsightly premises available to the Minister of the Environment under the Unsightly Premises Act are superior to those available to municipalities.

- To the extent possible municipalities should be afforded the same rights available to the Minister of the Environment under the Unsightly Premises Act.

Synopsis of Public Input

The Panel received significant input regarding the problems that arise when trying to enforce unsightly premise bylaws. There was a great deal of dissatisfaction expressed about the weaknesses inherent in the current provisions.

Enforcement pursuant to the current legislation is considered time consuming, costly, unwieldy and generally ineffective despite the attendant need to compel corrective action. There was a broad consensus that the process had to be streamlined and the municipal powers to enforce these bylaws had to be strengthened. For example, adding powers of seizure and sale were recommended. The Panel heard general support for the recommended changes.

Panel Comments

Unsightly premises not only detract from the aesthetics of the community but also impair the value and enjoyment of properties in their general vicinity. For example, the tax assessments and sales values of surrounding properties will naturally reflect the fact that property sales may be negatively impacted because of the nearby presence of dangerous or dilapidated property.

The oft repeated and consistent demands for more effective legislative tools to deal with unsightly premises led the Panel to conclude that significant revisions to the current legislation are in order.

The Panel noted that the Provinces of Alberta[33] and Manitoba[34] have adopted provisions whereby the person served with a notice of violation under a dangerous or unsightly premises bylaw may appeal to Council once an inspector has issued an order. Grounds for appeal to a court is essentially limited to determining if the owner is in violation of the order to rectify the problem and not whether the premises are in fact dangerous or unsightly.

Panel Response to Recommendations

[33] s. 547(1) Municipal Government Act S.A 1994, c. M-26.1
[34] s. 244(1) The Municipal Act S.M. 1996, c. 58

Recommendation #165:	***The giving of a notice by the municipality under subsection 190(3) should be deemed to be prima facie evidence of the facts stated therein as well as prima facie evidence that the person named in the notice is the owner or occupier of the premises.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT PROPERTY OWNERS SERVED WITH AN ORDER BE GIVEN AN OPPORTUNITY TO APPEAL THE ORDER TO COUNCIL.**
Recommendation #166:	***The failure to comply with such notice should be an offence punishable as a category E offence and the suspension of any penalty should be barred.*** **THE PANEL CONCURS.**
Recommendation #167:	***The judge should be authorized to impose the same penalty for each day the offence continues.*** **THE PANEL CONCURS.**
Recommendation #168:	***The costs of carrying out the clean-up of the premises should be made a debt due to the municipality and municipalities should be authorized to recover all expenses attendant upon recovering such costs.*** **THE PANEL CONCURS.**
Recommendation #169:	***The cost of carrying out the clean-up of unsightly premises should constitute a lien upon the property in priority to every claim, privilege, lien, or other encumbrance subject only to property taxes. The lien should, however, attach only upon registration.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE POWER TO OBTAIN AN ORDER OF SEIZURE AND SALE BE ADDED.**
Recommendation #170:	***Every lien that a municipality may have on real property pursuant to the provisions of the Municipalities Act should only attach to the property upon registration. In addition, the Unsightly Premises Act should be amended to provide that any lien that the Crown may have on real property pursuant to the provisions of that Act should only***

	attach to the property upon registration. **THE PANEL CONCURS.**

BYLAW ENFORCEMENT OFFICERS

Background

The power of a municipal Council to appoint a bylaw enforcement officer is currently set out in the Police Act. A bylaw enforcement officer has the powers and immunities of a police officer for the purposes of enforcing the bylaws that are stipulated in his or her appointment.

During their deliberations, the Review Advisory Committee concluded:

- Provisions governing the appointment of bylaw enforcement officers should be included in the Municipalities Act.

Synopsis of Public Input

Input was limited and generally in support of the recommendations. Limiting enforcement to specified areas of the municipality was questioned as it raises the potential for favoritism or selective enforcement.

Panel Comments

The Panel concurs with the recommendations, as they are consistent with the goal of consolidation. The current practice of appointing bylaw enforcement officers to enforce particular bylaws (parking) should continue. The need to provide Councils with the authority to restrict enforcement to specified areas of the municipality is proper if it flows from the nature of the bylaw. For example parking control and heritage preservation apply to only specific areas of a municipality. Discriminatory enforcement should not be permitted.

Panel Response to Recommendations

Recommendation #171:	***The power to appoint bylaw enforcement officers should be set out in the Municipalities Act rather than in the Police Act. Council should be given the authority to appoint bylaw officers by resolution.*** **THE PANEL CONCURS.**

Recommendation #172:	***The general powers of bylaw enforcement officers, such as the power to enter and inspect, should be prescribed by legislation.*** **THE PANEL CONCURS.**
Recommendation #173:	***Council should be given the authority to restrict the authority of bylaw enforcement officers to the enforcement of specified bylaws in specified areas of the municipality.*** **THE PANEL CONCURS BUT RECOMMENDS THAT SUCH ENFORCEMENT NOT BE PERMITTED TO BE EXERCISED IN A DISCRIMINATORY MANNER.**

ACTIONS AGAINST MUNICIPALITIES

APPLICATIONS TO QUASH MUNICPAL BYLAWS

Background

The Municipalities Act makes no specific provision respecting an application to quash a municipal bylaw or Council resolution.

During their deliberations, the Review Advisory Committee concluded:

- The legislation should deal specifically with applications to quash municipal bylaws.

- The time period within which an application to quash a bylaw or resolution may be brought should be prescribed by legislation.

Synopsis of Public Input

The input received centered mainly on the practicality and fairness of the recommended changes. For example, it was pointed out that there is considerable jurisprudence relating to this matter and it was questioned whether or not anything significant was to be gained from enacting specific legislative provisions.

Likewise the imposition of time limits raised the question of fairness, as it was pointed out that it was unlikely that a citizen would seek to quash a bylaw unless they had been affected by it.

It was also suggested that raising the issue of the validity of a bylaw should not be available as a defense during enforcement proceedings nor should minor technical or procedural deficiencies be sufficient grounds to set aside a bylaw. A concern was also expressed that under the new provisions non-residents would have an opportunity to seek to apply to have a bylaw quashed.

The question of whether or not a citizen/resident should be able to apply to the court to compel a municipality to enforce a bylaw or have it quashed was also raised. On the one hand, it was argued that it is pointless to have bylaws that are not being enforced while on the other hand, it was stated that a municipality has limited resources and that Council alone must be left to decide which matters are addressed and on what basis.

Panel Comments

The Panel believes that, because we live in a society governed by law and because citizens are expected to comply with those laws, it is essential that the process of developing and enacting those laws be subject to scrutiny and challenge.

It is necessary that the governing bodies act not only within their jurisdiction, but also do so in good faith following proper procedures. The mechanism for ensuring that this occurs can flow from the common law, as at present, or from a statute if deemed appropriate.

It is recognized that there already exist established common law principles respecting challenges to bylaws or resolutions. The common law position is that if a bylaw is illegal as a result of being either beyond the scope of the Municipality's activity or failing in some critical pre-condition to its enactment then it is void. That said, the citizens of a community are not aware of, or do not generally know, these principles. The Review Advisory Committee advocated a statutory approach in the interests of certainty and stability.

The Panel cannot accept the suggestion that the validity of a bylaw should not be a defense available in enforcement proceedings. The concern expressed to the Panel is that raising the question of validity delays the enforcement proceedings and creates additional costs, as the municipality must first respond to the issue of validity prior to proceeding with the matter of non-compliance. The Panel believes that the municipality must satisfy any pre-conditions for the exercise of its authority and challenges to the validity of a bylaw should be permitted at any time.

The Panel supports allowing non-residents to challenge a bylaw or resolution or seek to have it enforced as well as residents because they could also be affected by a bylaw provision. This is not a matter of protecting local choice but of

recognizing that legislative initiatives can have impacts beyond municipal borders and residents.

The Panel concluded that the time restrictions proposed for commencing an action are arbitrary and may preclude a reasonable and legitimate challenge to a bylaw or resolution. Citizens are not likely to raise such challenge until such time as they have been directly impacted. The recommendations appear to favor administrative convenience and ignore the valid interests of citizens. There does not appear to be any valid reason to ignore the provisions of the Limitation of Actions Act.

The Panel reiterates that the extent and nature of bylaw enforcement should be left to a local Council to decide as a matter of policy in light of their priorities and available resources. Councils should not however, be permitted to ignore enforcement of a bylaw to the detriment of a citizen or in a discriminatory fashion. Therefore some recourse should be available to citizens when Councils refuse to enforce a bylaw provision.

Panel Response to Recommendations

Recommendation #174:	***The legislation should expressly provide for the grounds upon which a bylaw or resolution may be quashed as well as for the procedure to be followed in applying to the courts. This procedure should apply to the quashing of bylaws made under the authority of the Municipalities Act or any other statute.*** **THE PANEL CONCURS.**
Recommendation #175:	***Any resident of a municipality should have the standing to apply to have a bylaw or resolution quashed or declared valid. Residents should also be authorized to apply to the court to compel a municipality to enforce a bylaw. In addition, non-residents who are directly affected by the enforcement or non-enforcement of a bylaw or resolution should be authorized to apply to have the bylaw or resolution quashed, declared valid, or enforced.*** **THE PANEL CONCURS.**
Recommendation #176:	***A challenge to a bylaw or resolution should be permitted on the following grounds:*** • ***that the Council acted in excess of its jurisdiction*** • ***that the Council acted in bad faith*** • ***that the Council failed to comply with a statutory requirement or with the provisions of the municipality's procedural bylaw***

	THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE STATED GROUNDS IN THE ACTUAL LEGISLATION SHOULD REFLECT THE COMMON LAW GROUNDS AVAILABLE.
Recommendation #177:	***No person should be authorized to apply to the courts to have a bylaw or resolution quashed on the grounds that it is unreasonable or not in the public interest.*** **THE PANEL CONCURS.**
Recommendation #178:	***No person should be authorized to apply to the courts to have a bylaw or resolution quashed on the grounds that it is discriminatory.*** **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT A CHALLENGE BASED ON THE GROUNDS THAT THE BYLAW OR RESOLUTION IS DISCRIMINATORY SHOULD BE PERMITTED.**
Recommendation #179:	***A bylaw or resolution should be immune from challenge on the basis of an irregularity in the qualifications or the election of any person sitting or voting on the bylaw or resolution as a Councillor or as a member of a Council committee, or any defect in the appointment of a Councillor or other person to a Council committee.*** **THE PANEL DOES NOT CONCUR. THE RULE OF LAW MUST PREVAIL IF THE LAW ITSELF IS TO HAVE ANY WORTH. COUNCILS MUST BE OBLIGATED TO FOLLOW THEIR PROCEDURAL REQUIREMENTS. A VOTE ON A RESOLUTION OR BYLAW MAY HAVE FAILED IF AN UNQUALIFIED MEMBER PARTICIPATED IN THE AFFIRMATIVE VOTE.**
Recommendation #180:	***Where the grounds upon which an application is brought to challenge the validity of a bylaw or resolution relate to a procedural defect, the proceedings should be commenced within sixty days of the enactment of the bylaw or the taking of the impugned action.*** **THE PANEL DOES NOT CONCUR. THE PANEL QUESTIONS THE APPROPRIATENESS OF IMPOSING TIME LIMITS.**
Recommendation #181:	***Where an application to challenge the validity of a bylaw or resolution is based upon grounds other than that of a***

	procedural defect, the proceedings should be commenced within a year of the enactment of the bylaw or the taking of the impugned action. **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE PROCEEDINGS BE COMMENCED WITHIN ONE YEAR AFTER THE PERSON BECOMES AWARE THAT THEY HAVE BEEN AFFECTED BY A PARTICULAR BYLAW.**
Recommendation #182:	***Failure to commence proceedings within the specified time frame should constitute an absolute bar to any further challenge.*** **THE PANEL DOES NOT CONCUR. THE PANEL RECOMMENDS AND URGES THAT, IN THE PUBLIC INTEREST, THIS PROVISION BE RECONSIDERED. ADMINISTRATIVE CONVENIENCE SHOULD NOT SUPERSEDE CITIZEN INTERESTS.**

MUNICIPAL LIABILITY - NUISANCE

Background

The Municipalities Act contains no provision restricting municipal liability for damages resulting from the operation of water and sewerage utilities. There are, however, several municipalities in New Brunswick that enjoy partial immunity from nuisance claims by virtue of the provisions of their charters or other private acts.

During their deliberations, the Review Advisory Committee concluded:

- The risk of loss for damages resulting from the back up of water and/or sewerage and the consequent obligation to insure should reside with both the property owner and the municipality.

- A municipality should not be protected from the consequences of its own negligence.

Synopsis of Public Input

The question of nuisance claims was a significant concern for municipalities. Municipalities object both to the fact that they can be held liable regardless of their conduct and that the cost of covering claims is substantial and continues to grow.

The fact that certain municipalities already enjoy statutory exemptions from nuisance claims added to demands for uniform treatment for all municipalities across the Province. There was no objection to being held liable when a loss resulted from negligence on their part.

It was also suggested that the term 'negligence' was already the subject of considerable case law and there was no need or advantage to be gained from trying to define the term in the Act.

The fact that some insurers are now charging premiums to homeowners for protection from damages for water and sewerage back up but seek full compensation for any claim from the municipalities was also cited as a need for changing the current system.

Panel Comments

Municipalities do not bear the cost of damage claims on their own account instead they become costs that must be recovered from all taxpayers in the community. The Panel noted that support for the municipal position was evident in the fact that Alberta, Nova Scotia and Manitoba already provide for findings of liability only in the event that negligence is proven. This approach requires individual property owners to protect themselves with adequate insurance protection in the event of a loss.

The public interest is also a matter of concern for the Panel. Should a citizen be held liable for damages arising from a water and sewer system over which he has absolutely no control? Clearly, adequate insurance would be a fundamental necessity. A citizen would be compelled to rely on the expertise available to insurers in order to establish negligence, as it is unlikely he/she would have the personal expertise or the financial resources to pursue a claim for damages.

The municipal requests for protection from nuisance claims for water and sewerage damage were based on a desire for equitable treatment across the Province, a desire to avoid the associated costs and a desire to shift the burden to insurers who could charge premiums for protection against loss.

The Panel agreed with the Review Advisory Committee that the risk of loss and the consequent obligation to insure should reside with both the property owner and the municipality. The current common law standard effectively makes a municipality the guarantor of its water and sewerage systems irrespective of its conduct in operating the system. On balance, the Panel concluded that municipalities should be given limited protection against nuisance liability related to water and sewerage backups. Liability should prevail in cases of negligence.

Panel Response to Recommendations

Recommendation #183:	***The legislation should provide municipalities with limited protection against nuisance liability.*** **THE PANEL CONCURS PROVIDED THE LIMITATION RELATES SOLELY TO IMMUNITY FROM ACTIONS FOR DAMAGES RESULTING FROM THE BACKUP OF WATER AND/OR SEWERAGE.**
Recommendation #184:	***A municipality should remain liable where it can be established that the damage caused was a result of negligence on the part of the municipality. Negligence should include a failure to repair or remedy a defect in a water or sewer system that is known or ought reasonably to be known to the municipality.*** **THE PANEL CONCURS, BUT QUESTIONS THE NEED TO ATTEMPT TO DEFINE NEGLIGENCE GIVEN THE EXTENSIVE CASE LAW AVAILABLE.**

NEGLIGENCE

Background

The New Brunswick Municipalities Act contains no provision that would limit municipal liability for negligence in the context of road or sidewalk maintenance or the maintenance of recreational facilities.

During their deliberations, the Review Advisory Committee concluded:

- It is in the public interest that building and other types of inspections are conducted.
- It is anticipated that inspection practices of municipalities will increase.
- It is unreasonable to expect a municipality to act as a guarantor for the safety, construction and/or operation of facilities or activities for which they have undertaken an inspection regime.
- Municipalities should be provided with some protection against liability for inspections.

Synopsis of Public Input

Strong support was expressed for a need to protect municipalities from liability for inspections. It was noted that the current burden on municipalities is onerous. It was suggested that if a municipality could establish that it undertook the inspection with a 'reasonable duty of care' then no liability should arise. This is the practice employed in several other jurisdictions.

Panel Comments

The Panel acknowledges the input in support of the proposed changes and concurs with the recommendations of the Review Advisory Committee. The Panel is not advocating sub-standard inspections, supports the need for a reasonable duty of care to apply and believes that municipalities must be prepared to accept liability for negligence arising in that connection.

Panel Response to Recommendations

Recommendation #185:	***A municipality should not be liable for a loss related to the manner or extent of an inspection or the frequency, infrequency, or absence of an inspection unless the inspection was requested at the appropriate time and with reasonable advance notice before the inspection was required, and the municipality failed to conduct the inspection or conducted it in a negligent manner.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THERE BE A REQUIREMENT IN THE APPLICABLE MUNICIPAL BYLAW TO SET OUT A SCHEME FOR REQUESTING INSPECTIONS AT SPECIFIED STAGES.**
Recommendation #186:	***An inspection should be considered to have been negligently performed if the defect that it fails to disclose is one that could reasonably have been detected and one that falls within the scope of the inspection.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE STANDARD OF 'A REASONABLE DUTY OF CARE' APPLY.**
Recommendation #187:	***A municipality should be entitled to rely on the advice or certification of professionals and should not be liable for the negligence of such professionals.***

	THE PANEL CONCURS.
Recommendation #188:	***If a municipality imposes conditions in the course of an inspection, the municipality should not be liable to any person who suffers damage as a result of a failure to comply with such conditions unless the municipality knew of the failure to comply and had the power to compel compliance but failed to do so.*** **THE PANEL CONCURS.**
Recommendation #189:	***A municipality should not be liable for damage resulting from an inspection or a failure to inspect if the person claiming the loss knew or ought to have known of the thing or matter that caused the loss and failed to take reasonable steps to limit or prevent the loss.*** **THE PANEL CONCURS.**

PROCEDURAL PROTECTION

Background

The Municipalities Act imposes no obligation on a potential plaintiff to notify the municipality following the occurrence of an event that could give rise to a claim. Unless otherwise specifically limited by statute, the time frame within which an action may be brought is governed by the Limitation of Actions Act.

During their deliberations, the Review Advisory Committee concluded:

- Other jurisdictions provide procedural safeguards to municipalities in the context of possible legal actions.

- The safeguards should not act to shield municipalities but to ensure that claims for damages are filed in a timely manner and that the municipality can rectify the situation and gather evidence for any subsequent court action.

- Failure to give notice should not act as an absolute bar to an action for damages.

Synopsis of Public Input

There was very limited input received respecting this matter. The time restrictions for filing claims etc. were objected to on the basis that no consideration was being given to citizen interest and it appeared to be merely an attempt to legislate administrative convenience. Others gave passing mention in support of the provisions.

Panel Comments

The Panel concluded that reasonable notice provisions do not impose an excessive burden on claimants and provide an opportunity for municipalities adequately to defend themselves and take needed corrective action. However, the recommended provisions appear onerous and impractical.

The Panel concurs that the proposed time restrictions appear to be an attempt to legislate administrative convenience. For example, the 10 day notification limit does not adequately consider cases in which a child may have a claim or when a person is incapacitated or is simply away from the municipality. There has to be a balance between a citizen's ability to seek recourse for damages and the City's ability to protect its interests.

The Panel notes that the *Limitation of Actions Act* [35]prescribes specific time limits for commencing certain actions. The Panel also considers it essential that failure to give notice within the prescribed time should not constitute an absolute bar for filing a claim.

Panel Response to Recommendations

Recommendation #190:	***A potential plaintiff should be required to notify the municipality within ten days of the occurrence of the event giving rise to the claim. The notice required should be in writing and should set out the time, place, and manner in which the damage complained of has occurred.*** **THE PANEL CONCURS WITH THE NEED FOR REASONABLE NOTICE REQUIREMENTS BUT NOTES THAT THE DAMAGE MAY NOT BE APPARENT AT THE TIME OF THE INCIDENT.** **THE PANEL FURTHER RECOMMENDS THAT THE RELEVANT PROVISIONS OF THE LIMITATION OF ACTIONS ACT CONTINUE TO PREVAIL.**
Recommendation #191:	***An individual should be allowed to proceed with a court action, even when there has***

[35] Limitation of Actions Act, R.S.N.B. c. L-8

	been a failure to comply with the notice requirement, provided that no one has been prejudiced by his or her failure to provide the required notice. **THE PANEL CONCURS AND NOTES THAT THE TERM 'PREJUDICED' MAY BE A MATTER OF BROAD INTERPRETATION.**
Recommendation #192:	***Any action against a municipality should be brought within one year of the date upon which the act or omission giving rise to the damage occurs. Where the damage sustained did not become evident within this one-year period, the action should be commenced within one year of the damage becoming known to the plaintiff.*** **THE PANEL DOES NOT CONCUR AND RECOMMENDS THAT THE RELEVANT PROVISIONS OF THE LIMITATION OF ACTIONS ACT CONTINUE TO PREVAIL.**

LIABILITY OF COUNCILLORS AND OFFICERS

Background

The Municipalities Act does not limit the personal liability of members of Council for acts done in the performance of their duties. The statute is also silent respecting the right and/or obligation of a municipality to indemnify Council members for legal costs incurred in defending a legal action.

During their deliberations, the Review Advisory Committee concluded:

- The liability of Council members should be determined in accordance with existing legal principles and that the legislation should not attempt to limit such liability.

- The threat of court proceedings could act as a disincentive to assuming public office.

Synopsis of Public Input

There was unanimous support for indemnification for those reasonable legal costs incurred in the defense of a civil action. Likewise, it was frequently suggested that indemnification should not be based on outcomes as a Councillor

could be acting in good faith but yet be found liable for his actions. It was also recommended that this protection should apply to municipal officers as well. There was no discussion of indemnification in the context of criminal proceedings.

Panel Comments

The Panel agrees that indemnification in civil actions should not be based on outcomes and ought to apply whether the defense was successful or not. Equally, municipal officers are subject to the same exposure and should be afforded the same protection.

Though not suggested in the hearings, the Panel believes a reasonable dollar limit should be prescribed so as to avoid a situation where a Councillor or officer has access to unlimited legal resources to defend an action.

In the case of criminal proceedings, the Panel does not believe that the municipality should indemnify an elected official or municipal officer for costs incurred if the person is found guilty of a criminal offence.

Panel Response to Recommendations

Recommendation #193:	***Members of Council should be provided with a statutory right to indemnification for those reasonable legal costs that are incurred in the successful defense of a legal action brought in connection with anything done or said in the performance of their duties as members of Council.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE STATUTORY RIGHT TO INDEMNIFICATION ALSO APPLY TO AN UNSUCCESSFUL DEFENSE OF A CIVIL ACTION.** **THE PANEL RECOMMENDS THAT THE SAME INDEMNIFICATION APPLY TO THE APPOINTED OFFICERS OF A MUNICIPALITY.** **THE PANEL RECOMMENDS THAT THE INDEMNIFICATION FOR LEGAL FEES BE LIMITED TO A REASONABLE AMOUNT.** **THE PANEL FURTHER RECOMMENDS THAT INDEMNIFICATION NOT APPLY IN THE EVENT THAT A COUNCILLOR IS CONVICTED OF A CRIMINAL OFFENSE RESPECTING THE EXERCISE OF THEIR AUTHORITY AS A MEMBER OF COUNCIL.**

MUNICIPAL FINANCES

Background

Municipalities in New Brunswick currently operate on the calendar year while the Provincial fiscal year runs from April 1st to March 31st.

The provisions governing the municipal budget process are set out in section 87 of the Municipalities Act. According to this section, every municipal Council must adopt a resolution setting out an estimate of the money required for the operation of the municipality, the amount of that estimate that is to be raised on the municipal tax base, and the tax rate. The budget must then be submitted to the Minister on or before November 30th of each year. The Department of Municipalities and Housing conducts an annual review of the budgets submitted for Ministerial approval. Upon receipt of approval by the Minister the rate adopted by Council becomes the rate fixed for the purposes of the Real Property Tax Act.

The Municipalities Act currently contains no express provision authorizing Council to provide grants.

Sections 89 and 189 of the Municipalities Act set out the borrowing powers of municipalities. Where a municipality seeks to borrow for capital expenditures it is required to apply to the Municipal Capital Borrowing Board for authorization. The legislation governing the operation of the Municipal Capital Borrowing Board is set out in the Municipal Capital Borrowing Act.

Sections 117 to 148 of the Municipalities Act provide for the classification of particular types of public work as local improvements and allow for the financing of such improvements by way of a special frontage assessment levied on the property that directly benefits from such work. Works such as the widening, grading or surfacing of streets, the construction of sidewalks and curbs, as well as work on sewers and water mains currently fall within the statutory definition of a local improvement.

During their deliberations, the Review Committee concluded:

- The harmonization of the municipal and Provincial fiscal years would facilitate calculation of the unconditional grant.

- Adequate time frames are established for preparing the municipal budget and submission deadlines should be based on specific triggering events.

- Councils should not be authorized to provide financial incentives other than grants to charitable organizations.

- A more streamlined capital borrowing process should be available for communities that choose to adopt a capital budget.
- The process through which a local improvement levy is imposed should be streamlined but the rights of persons affected by the levy to express their views should be preserved.

Synopsis of Public Input

There were varied opinions expressed on the merit of having the municipal and provincial fiscal year ends coincide. The advantages were not readily apparent or seemed speculative at best, but the presenters did cite potential disadvantages. The majority favored the status quo i.e. a December 31st year-end.

The comments relating to the budget process centered on the practical problems that arise when the assessment base and unconditional grant amounts are not available to municipalities on a timely basis. The notion of triggering events was considered a potential solution if the trigger was receipt of the tax base and grant amounts.

There were strong representations regarding the consequences for refusing to submit a budget. As noted previously, removal from office is considered an extreme sanction and is deemed an inappropriate penalty. At worst, it was suggested that a refusal should result in the adoption of the previous year's budget. It was also suggested that any sanctions that are imposed should apply only in the event that there is an explicit and expressed refusal to submit a budget.

While some smaller municipalities thought that the ability to offer municipal financial incentives would provide the larger urban centers with an unfair advantage others countered that the large centers would not have any more advantage than they already have.

The vast majority of the comments indicated a need for municipalities to have the flexibility to offer some form of incentives to trigger development in their communities. In fact, it is apparent that many communities are actively providing such incentives. These range from land transfers at nominal cost to providing needed infrastructure. Direct tax rebates were not considered essential but it was noted that any incentive is usually based to some extent on the potential for increased property tax revenue.

Several issues were raised in the context of local improvement levies. The first suggestion was that all references to notice and petition requirements should be to property owners and not persons. The second comment was that petitions and objections should require a majority of the affected property owners to start or abandon a local improvement project. Responsibility for cost overruns was

also raised as a concern as was a general requirement for clarity in the various provisions.

Panel Comments

The Panel heard no evidence that would support a definitive need to change the fiscal year end of municipalities and supports the majority view that the status quo should prevail.

The Panel believes that the current difficulties with budget submission deadlines are symptomatic of a more fundamental problem-- namely a lack of information. The deadline date for providing municipalities with the requisite tax base and unconditional grant amounts should be specifically legislated and the date for submission of municipal budgets should be set as being so many days from this deadline date. Alternatively, the budget deadline should be established as being so many days after the actual receipt of this information by the municipalities.

The Panel has earlier expressed its reservation about any penalty or sanction that would result in the removal of a Council member from office. This is an extreme penalty and should be regarded as a last resort for the courts to impose and not as a departmental prerogative to be imposed on a Council for failing to cooperate. Imposing the previous year's budget with a derived tax rate is sufficient recourse.

Regarding local improvement levies, the Panel agrees that property owners are those who will be obligated to pay any levy imposed therefore they are the group to be consulted. Likewise the notion of a simple majority is given broad currency in any democracy and should apply when a financial burden on property owners is the likely result of the proposed improvements.

Finally, given that local improvement levies will have a financial impact on property owners in the affected area, the Panel concluded that certainty with respect to such matters as cost, timing, reconsideration, approval etc. is a fundamental necessity.

The Panel considered the advisability of permitting municipal incentives from the perspective of the rationale for their use and the impact of being able or not being able to offer such incentives.

The rationale is predicated on the notion that some financial consideration that helps to reduce the cost of a development will act as an incentive to make a particular municipality more attractive in which to do business. The development or expansion of a business will then lead to an increased tax base and new employment opportunities.

The risk posed is that bidding wars for a prospective business development, based on a ‘winner takes all mentality’, can erupt between municipalities at the expense of the taxpayers of the communities involved. Direct property tax rebates are not permitted under the current legislation.

It is also recognized that incentives other than direct tax rebates are commonly used across the Province to help trigger new investment in communities.
The Panel concluded that municipalities should be given the latitude to offer development incentives but should continue to be prohibited from offering direct property tax rebates as incentives for development. Likewise the Panel endorses the proposal to allow municipalities to offer grants to community and charitable organizations.

Panel Response to Recommendations

Recommendation #194:	***The municipal fiscal year should be the same as that of the Provincial government.*** **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE STATUS QUO PREVAIL.**
Recommendation #195:	***The time frames for budget submission should be established in the context of triggering events rather than by way of specific dates.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE DATES FOR THE RELEASE OF TAX BASE INFORMATION AND UNCONDITIONAL GRANT FUNDING BE SPECIFICALLY IDENTIFIED AND LEGISLATED. THE DATE FOR SUBMISSIONS OF MUNICIPAL BUDGETS SHOULD EXTEND FROM THESE DATE(S).**
Recommendation #196:	***Where a Council neglects or refuses to provide the Minister with a budget for the municipality within the prescribed time frame:*** • ***the tax rate for the preceding year should be deemed to be the tax rate for the year in regard to which no budget has been submitted;*** • ***the seat of every member of a Council that fails to submit a budget should be declared vacant and the members of Council so removed should be precluded from running in any subsequent by-election held to fill the vacancy caused by his or her removal from office;*** • ***a supervisor should be appointed to manage the affairs of the municipality until such time as a new Council has been elected.*** • **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT;**

	1. THE BUDGET FOR THE PRECEDING YEAR SHOULD BE DEEMED TO BE THE BUDGET FOR THE YEAR TO WHICH NO BUDGET HAS BEEN SUBMITTED. **2. THE NEW TAX RATE SHOULD BE DERIVED FROM THE CURRENT YEAR TAX ASSESSMENT AMOUNT.** **3. THE PROVINCE BE GIVEN AUTHORITY TO SEEK TO HAVE THE COURTS DECLARE THAT THE SEATS OF ONLY THOSE MEMBERS WHO VOTED TO REFUSE TO SUBMIT A BUDGET BE DECLARED VACANT.** **4. THE COURTS BE GIVEN THE LATITUDE TO IMPOSE OTHER PENALTIES DEEMED APPROPRIATE UNDER THE CIRCUMSTANCES.**
Recommendation #197:	***Council should be expressly prohibited from offering rebates or other incentives that are linked, either directly or indirectly, to the annual amount payable with respect to property tax.*** **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT MUNICIPALITIES BE GIVEN THE AUTHORITY TO OFFER DEVELOPMENT INCENTIVES (LAND, SERVICES IN KIND, WATER AND SEWERAGE SERVICE EXTENSIONS, ROAD INFRASTRUCTURE ETC.) BUT BE EXPRESSLY PROHIBITED FROM OFFERING DIRECT PROPERTY TAX REBATES OR CONCESSIONS.** **THE PANEL FURTHER RECOMMENDS THAT THE AUTHORITY OF A MUNICIPALITY TO PROVIDE GRANTS TO FUND THE OPERATIONS OF COMMUNITY AND CHARITABLE ORGANIZATIONS BE MADE EXPLICIT IN THE LEGISLATION.**
Recommendation #198:	***Council should not be required to submit a capital budget to the Minister.*** **THE PANEL CONCURS.**
Recommendation #199:	***Public notice should be given of Council's intention to adopt a capital budget. The notice should indicate the time and place of the meeting at which the budget will be considered. Council should not, however, be required to publish the particulars of the proposed capital budget.*** **THE PANEL CONCURS.**

Recommendation #200:	***Where the Minister has approved an annual capital budget for a municipality, that municipality should be exempted from the public notice and hearing requirements prescribed by the current municipal capital borrowing process.*** **THE PANEL CONCURS.**
Recommendation #201:	***The definition of a local improvement should include the planting of trees along a street and street lighting and other types of work that are capital in nature and specific to the parcel of land upon which the levy will be imposed.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT LOCAL IMPROVEMENT LEVIES APPLY ONLY TO CAPITAL WORKS I.E. THOSE SERVICES NOT GENERALLY INCLUDED IN THE LOCAL TAX RATE.**
Recommendation #202:	***Except in situations where the work in question has been ordered pursuant to health legislation, Council should not have the power to override the wishes of the persons directly affected by the imposition of a local improvement levy. Where a majority of the persons*** ***affected by the levy file a notice of objection with the clerk, no further steps in regard to the imposition of the levy should be taken by Council for a period of one year following the final date for the filing of objections. No petition respecting the same work should be accepted by Council for the same one-year period.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE REFERENCES TO PERSONS BE CHANGED TO PROPERTY OWNERS.**
Recommendation #203:	***The current requirement that only property owners be permitted to petition to Council for the undertaking of a work as a local improvement should remain in place.*** **THE PANEL CONCURS.**
Recommendation #204:	***A petition requesting that a work be undertaken as a local improvement should contain the name and address of each petitioner as well as a general description of the proposed work. The form that the petition should take should be prescribed by regulation.***

	THE PANEL CONCURS.
Recommendation #205:	***A sufficient petition should bear the signatures of one third of the property owners in the area.*** **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE REQUIRMENT FOR SUPPORT BE A MAJORITY OF THE PROPERTY OWNERS IN THE AFFECTED AREA.**
Recommendation #206:	***The same process should be followed in response to the receipt of a petition as is followed when Council proposes to undertake a work as a local improvement on its own initiative.*** **THE PANEL CONCURS.**
Recommendation #207:	***A notice of intention to undertake a work as a local improvement should be in the form prescribed by regulation and should be published in a newspaper in general circulation in the municipality. The notice should also be provided to the property owners who will be affected by the proposed levy.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE LEGISLATION MAKE PROVISION FOR NOTICE USING OTHER TELECOMMUNICATION TECHNOLOGIES.**
Recommendation #208:	***The notice of intention should contain sufficient information for the persons affected by the proposed levy to identify themselves and to determine the amount that would be owed in respect of the levy. The following information should be included in a notice of intention:*** • ***a general description of the work;*** • ***the estimated cost of the work;*** • ***the manner in which the cost of the work is to be apportioned as between property owners and the municipality;*** • ***the formula by which the owners' portion of the cost will be calculated;*** • ***the payment options available (i.e. annual or semi-annual installments or such other payment schedule as is approved by Council).*** **1. THE PANEL CONCURS BUT RECOMMENDS THAT: THE REFERENCE TO PERSONS BE**

	CHANGED TO PROPERTY OWNERS. **2. THE 'AREA' TO BE AFFECTED ALSO BE IDENTIFIED.** **3. THE PRESCRIBED NOTICE OF OBJECTION BE INCLUDED WITH THE NOTICE OF INTENTION.**
Recommendation #209:	***The sufficiency of a petition should be determined by an officer or employee of the municipality designated by Council or, in the absence of such designation, by the clerk.*** **THE PANEL CONCURS.**
Recommendation #210:	***The current procedure (which requires the filing of a petition objecting to the undertaking of a work as a local improvement) should be replaced with a procedure that allows for the filing of individual notices of objection with the clerk of the municipality.*** **THE PANEL CONCURS BUT RECOMMENDS THAT THE REFERENCE TO 'PERSONS' BE CHANGED TO 'PROPERTY OWNERS'**
Recommendation #211:	***A notice of objection should set out the name and the address of the person objecting to the undertaking of the work. The form that a notice of objection is to take should be prescribed by regulation.*** **THE PANEL CONCURS BUT RECOMMENDS THAT THE REFERENCE TO 'PERSONS' BE CHANGED TO 'PROPERTY OWNERS'**
Recommendation #212:	***The decision as to the validity of a particular notice of objection and the determination as to whether a sufficient number of objections have been received in regard to a particular work should be made by the officer or employee of the municipality designated by Council or, in the absence of such designation, by the clerk.*** **THE PANEL CONCURS.**
Recommendation #213:	***The costs of a local improvement should be deemed to include the costs of all professional services directly relating to the work as well as all advertising and mailing costs.*** **THE PANEL CONCURS.**
Recommendation #214:	***Council should be authorized to assess a local improvement levy based upon the frontage of an abutting parcel, the total area***

	of an abutting parcel or the assessed value of an abutting parcel. The method of assessment to be used in regard to any particular work should be set out in the notice of intention. **THE PANEL CONCURS.**
Recommendation #215:	***The following procedure should be followed in regard to local improvement levy bylaws:*** • ***Council should pass a single bylaw authorizing the undertaking of a work as a local improvement and authorizing the imposition of the levy;*** • ***the bylaw should specify the estimated maximum cost of the work;*** • ***the bylaw should contain the same information as that set out in the notice of intention published in regard to the work.*** **THE PANEL CONCURS.**
Recommendation #216:	***The current three-year limitation period imposed upon the enactment of a local improvement levy bylaw should remain in place. The legislation should not specify the time frame within which the work in regard to which a local improvement levy is to be imposed be commenced.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE TIME FRAMES FOR COMMENCING THE WORK BE INCLUDED IN THE BYLAW AND THE REQUIRED NOTICES.**
Recommendation #217:	***The current authority of Council to exempt certain properties from the imposition of a local improvement levy should remain in place.*** **THE PANEL CONCURS PROVIDED SUCH DISCRETION CANNOT BE EXERCISED IN A DISCRIMINATORY MANNER TO THE ADVANTAGE OR DISADVANTAGE OF THE AFFECTED PARTIES.**
Recommendation #218:	***In situations where the actual cost of the work exceeds the maximum estimated cost set out in the bylaw authorizing the levy, Council should either be required to amend the local improvement bylaw prior to collecting the levy (such amendment being subject to the same requirements as the enactment of the bylaw), or the municipality, through its General Funds, should assume responsibility for the full amount to which the actual cost exceeds the maximum authorized by the local***

	improvement bylaw. **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE MUNICIPALITY ASSUME THE RESPONSIBILITY FOR COST OVERRUNS ON THE BASIS THAT THE PROPERTY OWNERS APPROVED A LEVY BASED ON A CERTAIN RATE AND THE RATE SHOULD NOT BE SUBJECT TO CHANGE AFTER THE COMPLETION OF THE WORK.**
Recommendation #219:	***Where circumstances change so dramatically following the enactment of a local improvement bylaw that the work in regard to which the levy is proposed to be imposed is no longer viable, Council should be authorized to amend or repeal (such amendment or repeal being subject to the same requirements as the enactment of the bylaw) the local improvement levy bylaw.*** **THE PANEL CONCURS.**

CONSOLIDATION

Background

There are currently a number of statutes that govern the operation of municipalities in New Brunswick. These statutes include the Municipalities Act, the Municipal Elections Act, the Municipal Capital Borrowing Act, the Community Planning Act, the Municipal Heritage Preservation Act, the Business Improvement Areas Act, the Municipal Thoroughfare Easements Act, the Municipal Assistance Act, the Municipal Debentures Act and the Control of Municipalities Act.

During their deliberations, the Review Advisory Committee concluded:

- Consolidation of various statutory provisions that relate to municipal affairs into one statute will provide both Councils and the public with easy access to the legislation governing municipalities.

- Given the number of statutes that impact on municipalities, total consolidation would not be possible.

- The statute to be consolidated with the Municipalities Act should be of importance to municipalities and be of such a length that it may easily be integrated into the Act.

Synopsis of Public Input

There was broad support for this initiative. In fact, it was even suggested that a more aggressive approach than that recommended should be pursued. It was suggested that those Acts relevant to municipalities that were not incorporated into the legislation should be shown in an index or appendix in the new Act for ease of reference. It was also pointed out that consolidation should not result in any loss of privileges or powers contained in the originating act.

Panel Comments

There are over 20 different pieces of legislation affecting the operation of local governments in New Brunswick. This situation makes the law governing municipalities difficult to understand and administer. It also risks compromising effective citizen participation in local government affairs in so far as citizens do not fully understand the operation of their local government.

The Panel suggests that consideration be given to incorporating the relevant provisions of the Archives Act into the Municipalities Act in conjunction with the new requirements for access to information. Mandatory retention and disposition schedules for municipal records would ease the burden on municipalities to research historical information.

As with a plain language approach, comprehensive legislation will enhance the public understanding of the roles and responsibilities of local government and consequently the accountability of those elected. The Panel fully endorses the recommended consolidation and supports the suggestion for including a supplementary index of other pertinent acts.

Panel Response to Recommendations

Recommendation #220:	***The provisions of the Business Improvement Areas Act should be incorporated into the Municipalities Act.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT THE PROVISIONS OF THE ARCHIVES ACT RESPECTING MUNICIPALITIES BE INCORPORATED INTO THE MUNICIPALITIES ACT.**
Recommendation #221:	***The provisions of the Municipal Thoroughfare Easements Act should be***

	incorporated into the Municipalities Act. **THE PANEL CONCURS.**
Recommendation #222:	***The provisions respecting municipal budgeting and financial matters that are set out in the Municipal Assistance Act, the Municipal Debentures Act, and the Municipal Capital Borrowing Act should be incorporated into the Municipalities Act.*** **THE PANEL CONCURS.**
Recommendation #223:	***The Community Planning Act, the Municipal Elections Act and the Police Act should not be consolidated with the Municipalities Act.*** **THE PANEL CONCURS AND FURTHER RECOMMENDS THAT AN APPENDIX BE INCLUDED IN THE NEW ACT LISTING ALL OTHER PERTINENT LEGISLATION AFFECTING MUNICIPALITIES.**
Recommendation #224:	***The Municipal Heritage Preservation Act should be consolidated with the Community Planning Act.*** **THE PANEL CONCURS.**

CONTROL OF MUNICIPALITIES ACT

Background

The Control of Municipalities Act creates the office of Commissioner of Municipal Affairs and prescribes standards for municipal accounting practices. The statute provides for the appointment of municipal inspectors as well as for the appointment of supervisors. Once appointed a supervisor may exercise any or all of the powers of the Council in regard to the municipality depending upon the terms and conditions of his or her appointment.

During their deliberations, the Review Advisory Committee concluded:

- There have been several instances in recent years in which a supervisor has been appointed to oversee the affairs of a municipality.

- The statute is generally considered to be outdated and out-of-step with current practices.

- The current requirements for the submission of audited financial statements, the approval of borrowing and municipal budgets provide adequate

safeguards for the financial affairs of municipalities and render the appointment of municipal inspectors nugatory.

- Failure to submit a budget should constitute a ground for appointing a municipal supervisor.

- Councils should be held accountable when the mismanagement or misconduct of Council members necessitates the appointment of a supervisor.

Synopsis of Public Input

Comments were submitted about the role and powers of a municipal supervisor. The appointment of a supervisor should always be considered a temporary situation. It was suggested that the appointment of a supervisor therefore be for a specified and limited time period. It was also suggested that a supervisor should have no mandate to deal with matters that could have a permanent effect on a municipality such as regionalizing services or initiating amalgamation studies.

Again, it was stated that imposing penalties on all of Council for what might be the actions of a few and precluding all of Council from seeking office again was viewed as not only excessive but completely unwarranted. It was pointed out that a Councillor might decide to refuse to support a budget because he/she actually believes it is not in the best interests of the community.

Finally, the use of terms like 'political paralysis' was considered difficult to define and could provide an open door for the Province to appoint a supervisor when not really necessary.

Panel Comments

In the interest of accountability, the appointment of a municipal supervisor to oversee the affairs of a community should be a rare occurrence and considered a last resort. The appointment of a supervisor risks undermining the express will of the people by replacing the duly elected body with an administrative appointee. It is not inconceivable, however, in cases of dereliction of duty, rank incompetence or lack of a quorum that the public interest could be served by the temporary appointment of a supervisor.

Consequently, the roles and responsibilities of that position should be explicit and specific. The Panel questions the merit of authorizing the supervisor to 'exercise any and all of the powers of a Council'. Likewise the term of the supervisor's mandate should be explicit and the primary goal of the supervisor should be to restore a duly elected Council to oversee the affairs of a community as soon as possible.

The Panel regards the proposed penalties draconian and far in excess of what is required to resolve the problems identified. Immediate suspension of powers and removal from office, if a court deems that there has been some malfeasance on the part of a Councillor, are considered more appropriate punishment, if indeed punishment is warranted.

The Panel also draws a distinction between a refusal to vote in support of a budget and a refusal to submit a budget to the Province. Penalties should not apply in the first instance.

Panel Response to Recommendations

Recommendation #225:	***The provisions of the Control of Municipalities Act should be incorporated into the Municipalities Act.*** **THE PANEL CONCURS.**
Recommendation #226:	***The Office of the Commissioner of Municipal Affairs should be abolished and those powers that are currently exercised by the*** ***Commissioner of Municipal Affairs respecting municipal accounts, statistics, and audits should be transferred to the Minister of Municipalities and Housing.*** **THE PANEL CONCURS.**
Recommendation #227:	***The legislation should no longer make provision for the appointment of municipal inspectors.*** **THE PANEL CONCURS.**
Recommendation #228:	***Creditors should no longer have the standing to request the appointment of a supervisor.*** **THE PANEL CONCURS.**
Recommendation #229:	***The Lieutenant-Governor in Council should be authorized, on the recommendation of the Minister, to appoint a supervisor for a municipality where:*** • ***due to vacancies, a Council cannot obtain quorum;*** • ***the Council has been dismissed due to its refusal to submit a budget;*** • ***the municipality is in demonstrable financial difficulty;*** • ***due to political paralysis, the Council cannot act in an appropriate manner*** **THE PANEL CONCURS WITH**

	RESERVATION (bullets 2,4) AND RECOMMENDS THAT THE APPOINTMENT OF A SUPERVISOR BE REGARDED AS A LAST RECOURSE.
Recommendation #230:	***Where a supervisor is appointed for any circumstance other than a temporary inability to obtain quorum due to vacancies, the entire Council should be dismissed from office and a by-election should be held to elect a new Council.*** **THE PANEL DOES NOT CONCUR. FINANCIAL DIFFICULTIES MAY NOT BE THE RESULT OF THE ACTIONS OF THE INCUMBENT COUNCILLORS. LIKEWISE FAILURE TO SUBMIT A BUDGET OR BRING CLOSURE TO MATTERS BEFORE COUNCIL COULD BE THE RESULT OF LEGITIMATE CONCERNS AND DIFFERENCES OF OPINION.** **THE PANEL RECOMMENDS THAT THE PROVINCE BE GIVEN AUTHORITY TO SEEK TO HAVE THE COURTS DECLARE VACANT THE SEATS OF ONLY THOSE MEMBERS WHO VOTED TO REFUSE TO SUBMIT A BUDGET.**
Recommendation #231:	***Members of Council who have been dismissed from office should be precluded from running in any by-election called to fill the vacancies created by their dismissal.*** **THE PANEL CONCURS ONLY IF SUCH DISMISSAL IS THE RESULT OF AN ORDER OF THE COURT.**
Recommendation #232:	***Where a supervisor has been appointed because a quorum of Council cannot be obtained, the appointment of the supervisor should terminate as soon as the newly elected members of Council have taken the oath of office. Where a supervisor has been appointed because the Council has been dismissed from office, the appointment of the supervisor should also terminate upon the taking of the oath of*** ***office by the new members of Council. The Minister should, however, have complete discretion as to when to request that the Municipal Electoral Officer call the by-election required to fill the vacancies created by the dismissal.*** **THE PANEL CONCURS BUT RECOMMENDS THAT THE MINISTER BE OBLIGATED TO TAKE THE NECESSARY ACTIONS TO**

	RESTORE A DULY ELECTED COUNCIL AS THE LOCAL GOVERNING BODY AS SOON AS POSSIBLE. **THE PANEL FURTHER RECOMMENDS THAT THE TERM OF APPOINTMENT OF A SUPERVISOR BE SPECIFIED IN THE ORDER MAKING THE APPOINTMENT.**
Recommendation #233:	***A supervisor should be authorized to exercise any or all of the powers of a Council during the currency of his or her appointment. The powers of the supervisor should be set out in the order appointing the supervisor.*** **THE PANEL DOES NOT CONCUR BUT RECOMMENDS THAT THE POWERS OF THE SUPERVISOR BE SET OUT IN THE ORDER AND SHOULD BE LIMITED TO MAINTAINING THE DAY TO DAY OPERATIONS OF THE MUNICIPALITY.**
Recommendation #234:	***A supervisor should be authorized to exercise any power that Council may have in regard to any incorporated entity in which the municipality participates.*** **THE PANEL CONCURS.**

OTHER ISSUES

The Panel heard concerns and received a number of comments and suggestions about matters that were not addressed in the Review Advisory Committee Report. The Panel has already responded to some of these matters in the context of related recommendations. There are, however, a number of issues that warrant specific mention.

RESOURCES

A repeated concern of both large and small municipalities was their inability to incur additional costs without resorting to tax rate increases. The smaller communities pointed out that they have very limited numbers of staff and it will create problems to take on additional responsibilities for access to information or bylaw preparation and enforcement.

They did not suggest that the proposed changes be abandoned but rather that the Province support the transition to the new Act by preparing model bylaws, offering transition funding for training or engaging lawyers and conducting detailed teach-ins at the local level prior to the enactment of the new Act.

Other communities expressed reservations in that the use of the spheres of jurisdiction approach may create opportunities for downloading of service responsibilities from the Province. They insisted that any new service responsibilities shifted from the Province to Municipalities should be accompanied by sufficient funds to offset any negative financial impact.

The Panel recommends that the Province of New Brunswick supports the transition to the new Municipalities Act with in-depth training and orientation programs and the preparation of model bylaws and that financial support be provided only in cases of financial hardship.

Many also pointed to the need for stable and sufficient Unconditional Grant Funding. The universal complaint was that the reductions in the Unconditional Grant coupled with a change to the grant formula itself were putting undue financial pressure on municipalities.

The Panel agrees that a sufficient level of Unconditional Grant Funding is necessary for municipalities to fulfill their governance responsibilities, however, consideration of the formula for distributing such funding is beyond the mandate of this Panel.

MUNICIPALITIES AS A THIRD ORDER OF GOVERNMENT

Certain presenters suggested that it was necessary for the Federal and Provincial levels of governments to fully recognize the municipal level of government as a legitimate third order of government in Canada as opposed to a so-called "creature" of the Province. It was suggested that only then would municipalities be able to take their place at the table and represent the broad range of interests affecting their constituents.

The Panel agrees that only when Municipalities are recognized as true political partners (as opposed to a local service delivery agency) with the Federal and

Provincial governments will the full range of community interests be adequately represented.

The Panel concluded that the issue of the constitutional status of municipalities is an important and relevant matter that should be pursued by New Brunswick municipalities working in concert with other municipalities across the country independent of this legislative review. It raises significant legal and jurisdictional issues that are well beyond the scope of the Panel mandate.

MUNICIPAL RELATIONSHIPS WITH LSDs

Both Local Service Districts and incorporated municipalities cited the need for a more effective working relationship. The lack of LSD Advisory Committees, extended decision making processes and non-existent powers at the LSD level were presented as problems for municipalities trying to develop cost sharing arrangements for regional projects.

The municipalities and other presenters also urged the Panel to recommend mandatory cost sharing by the LSDs for the use of municipal recreation facilities and services. The need for a detailed study to determine how to best resolve the issue was also identified. Municipalities believe that they are currently subsidizing LSDs at the expense of municipal residents. The possible cost sharing models suggested by presenters ranged from rates based on buffer zones, to negotiated amounts, to amounts determined by the Municipal Services Representative based on municipal costs incurred.

The Local Service District Advisory Committees complained about a lack of consultation by the municipalities and having last minute demands made for cost sharing when the LSDs had no input into the quality, character or scope of regional projects. They also contend that their ongoing patronage of businesses in the municipalities helps to support the municipal tax base, which in turn helps to fund services commonly used by non-residents.

The disparity in the tax rates between incorporated municipalities and unincorporated areas was also put forward as the major factor contributing to urban sprawl. Population shifts to unincorporated areas not only reduces municipal revenues but increases Provincial costs for highway maintenance, busing, ambulance services etc. The ability of citizens living in areas immediately adjacent to municipalities to secure essentially the same services at sometimes half the tax rate encourages out migration at the expense of municipalities.

The different nature of the LSDs in terms of character, size and proximity to urban areas are important factors to be considered in attempting to resolve the

issue. A separate and detailed study of the financial relationship between incorporated and unincorporated regions was suggested in order to develop a comprehensive solution to the many inter-related issues.

Both groups agreed that other mutually advantageous opportunities for co-operation and regional planning that were being lost due to a lack of on-going and effective communication.

The Panel observed that the type and nature of municipal recreation services offered by municipalities varies considerably across the Province. It also noted that it is very common for municipalities to negotiate cost sharing agreements for fire services. It is equally significant that municipalities rarely need to negotiate with just a single LSD for funding for regional projects. Likewise the absence of LSD Advisory Committees in many LSD's creates a vacuum when funding or service decisions are required.

The Panel concluded that cost sharing for community and recreation services should continue to be a negotiated matter resolved at the local level until such time as a more equitable and permanent framework can be identified for cost sharing which would have broad application.

Many of the communication and related problems noted above by the municipalities and LSD's are symptomatic of structural shortcomings in the current LSD legislation. These structural problems impact decision-making, budgeting and the formation of LSD Advisory Committees. Suffice it to say that without a fundamental redefinition of the roles and responsibilities of Local Service Districts, these problems will persist to the disadvantage of all concerned. These issues are dealt with at length in Section 2 of this report.

The Panel recommends that the Province of New Brunswick undertake a detailed analysis of all aspects of the financial relationship between municipalities and unincorporated areas including but not limited to taxation and cost sharing for common services.

The Panel further recommends that pending completion of the above, that cost sharing for services should continue to be a matter for negotiation and resolution at the local level.

AMALGAMATION INITIATIVES

The need for prior consultation with local communities that may be the object of an amalgamation exercise was put forward during the public hearings. It was suggested that there was a need to establish a well-defined and structured process to identify the appropriate communities of interest before any such

undertaking. As well, a requirement was cited for a municipal guide setting out the methods and procedures necessary to successfully implement a decision to amalgamate.

The Panel considered the need for a more structured amalgamation process and reviewed the legislation in other Provincial jurisdictions. The recommendations made to the Panel are reasonable and worthy of support.

The Province can be no less accountable than local governments when it initiates action at the local level that will have a major impact on the quality and character of a community. The Panel believes that citizens have a right to know and understand on what basis municipal restructuring decisions are to be made. The Panel concluded that the Province should elaborate specific principles, standards, and criteria that are to be taken into account in a municipal restructuring exercise.

The Panel recommends that the legislation provide explicit requirements for initiating municipal restructuring initiatives including;

- **a structured process to identify the appropriate communities of interest before any such undertaking.**
- **notification and consultation requirements**
- **stated procedures, principles, standards and criteria for evaluating such proposals.**

A Provincial guide setting out the actions and sequence of events required to implement a decision to amalgamate should also be prepared to support the affected communities.

NEED FOR ONGOING CONSULTATION

Both individual municipalities and their associations noted that the success and support of the current revision exercise is due in large part to the concerted effort on the part of the Province to consult with the municipalities prior to making any decisions.

They went on to recommend that the balance of the revision of the Municipalities Act be accompanied by ongoing consultation citing a particular need for municipalities to have an opportunity to review the final version of the new Act prior to enactment.

The general theme of the comments and discussions was that the Province had to begin moving from a controlling role to a more facilitative role that recognized local abilities, prerogatives and priorities. The current departmental emphasis on consultation was praised as being both healthy and positive and regarded as a foundation for improved cooperation and communication.

The Panel strongly recommends that ongoing consultation with the municipalities and unincorporated areas be employed as an essential element in the development of the new Municipalities Act legislation.

DEFINITIONS AND LANGUAGE

As noted throughout the report, the Panel was pressed on the need for clarity of language so as to avoid confusion, legal challenges or costly administrative mistakes. Several examples were presented where terminology in the Review Advisory Committee report remained undefined and thus open to interpretation and dispute.

An absolute requirement to set out the meaning of phrases such as; all of Council, municipal purposes, municipal services, municipal information, Chief Executive Officer, Chief Administrative Officer and Senior Appointed Officer was identified by different presenters.

Similarly, several inconsistencies in the translations were brought to the Panel's attention. For example the French treatment of the term 'Head of Council" is inconsistent with the apparent meaning in the English text in the Review Advisory Committee Report. The need for careful attention to detail and accuracy in both official language versions of the Act was highlighted.

Given that the vagaries in the present Act occasionally lead to confusion and misunderstanding, it is perhaps not surprising that the Panel heard so many comments on the need for clarity and accuracy.

The Panel considers clarity an issue separate from, but related to, the recommended use of a plain language approach. Legislative provisions using plain language can still be vague or unclear to the user of the Act unless a deliberate effort is made to avoid such situations. The use of interpretive clauses and user guides may also assist in this regard.

The Panel recommends that:

Clear and precise definitions be given to all key terms including but not limited to;

All of Council, municipal purposes, municipal services, municipal information, administrative, legislative, Chief Executive Officer, Chief Administrative Officer and Senior Appointed Officer.

Great care should be taken to ensure that both official language versions of the new Municipalities Act are consistent regarding definition, intent and application.

MOMENTUM AND NEED FOR ACTION

The Review of the Municipalities Act was announced in the 1995 speech from the Throne and the process has been ongoing since then. The review exercise has received the full support of the Union of Municipalities of New Brunswick, L'Association francophone des municipalités du Nouveau Brunswick, the Cities of New Brunswick Association as well as the Association of Municipal Administrators, based on an identified need for improvement. The Panel believes that the efforts undertaken thus far have created a real expectation for meaningful and timely change.

Not one presenter argued for maintaining the status quo. In fact, many went to great lengths to identify the practical difficulties encountered on a day to day basis when trying to govern or administer their communities under the current legislative regime. At the same time, media and citizens recounted their frustration in trying to access local governments or to secure public information.

There is a broad level of interest in the outcome of the renewal of the Municipalities Act given the extensive participation in the review and consultation processes. The public consultation conducted in the most recent phase has reinforced the need for change and created a tangible desire to move forward to develop the new Act.

The Panel urges the Province to build on the public interest and momentum generated thus far in the review process and to continue to move forward on a timely basis with the development of a new Municipalities Act. The risks are few and the opportunities are many.