



Our Towns, Our Future:

supporting municipal success
from finance to operations

Municipal Act Review Findings Report - Volume I 2014



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Message from Chair of Municipal Act Review Committee

Welcome to the Municipal Act Review Findings Report. I invite you to read about the culmination of a year of work consisting of community consultation, research and debate. The work was completed by the Municipal Act Review Committee, who met regularly and worked hard on all aspects of this review.

As this is a comprehensive review it covers all of the current *Municipal Act* and brings in inter-jurisdictional research to provide context and new perspectives. At times, the Committee requested input from policy and legislative experts to provide us with analyses of other jurisdictions legislative experiences across Canada – this information is retained in volume two.

In summary, the principled approach of the committee using the Our Towns Our Future model and the review process endorsed by the government meant we had very candid and collaborative discussions that resulted in the observations in this findings report. It is important to note that findings are in fact strictly observations and not recommendations.

Christine Smith



Director, Community Affairs

Chair, Municipal Act Review Committee



Introduction

The *Municipal Act* provides the legislative basis for local governance in the Yukon and is crucial to the sustainability of Yukon communities. The current *Municipal Act* was enacted in 1999 and is still considered a benchmark for Canadian municipal legislation. Minor amendments were made in 2003 and 2008. However, new trends have emerged across the country and improvements could be made to ensure Yukon municipalities are sustainable and continue to provide good government. In addition, municipalities and members of the public have continued to bring forward potential issues to be addressed and have made clear that, in their view, a full, comprehensive review of the Act is required.

In early 2012 Yukon government authorized the Department of Community Services to undertake a comprehensive review of the *Municipal Act*, including consultation with Yukon municipalities, the Association of Yukon Communities (AYC), local advisory councils, First Nations, and the public.

Municipal Act Review Committee

The MARC is comprised of:

- Three representatives selected by the Association of Yukon Communities (AYC).
 - **Cory Bellmore** – CAO, Village of Carmacks
 - **Jeff Renaud** – CAO, Dawson City
 - **John Streicker** – City Councilor, City of Whitehorse
- Three Yukon Government (YG) representatives selected by the Minister.
 - **Christine Smith**, Community Services, Chair of MARC
 - **Michael Draper**, Energy, Mines and Resources
 - **Catherine Poole**, Economic Development

Purpose and Timing

With the intent of reviewing the *Municipal Act*, the Municipal Act Review Committee, (MARC), has been established by the Minister of Community Services (the Minister). MARC will complete its work and provide its findings to the Minister no later than Spring 2015.

Mandate

To conduct a broad review of the *Municipal Act*, including seeking input from municipalities, First Nations, and the general public, and to review, analyze, and research issues raised and provide findings for potential amendments for the Minister's consideration.

Guiding Principles

When performing its duties, the MARC considers the following principles:

Inclusive: The review process will strive in its design and implementation to engage all governments, stakeholders and individuals who have interest in the review.

Engaging: The review will provide multiple, flexible and creative avenues for two-way communications and meaningful dialogue.

Practical: The review will strive to develop findings that can be realistically accomplished.

Accountable: The MARC will regularly report on its activities to the partners, other interested stakeholders and individuals. It will also be fiscally accountable for its work.

Evidence-based: The review will draw from best available research and analyses and will involve subject-area experts to inform decision-making throughout the review.

Partnership-led: The Government of Yukon and AYC will work collaboratively towards a common purpose while respecting the autonomy and mandates of each party.

Innovative: MARC will encourage and apply innovative thinking and actions in the review.

Inspirational: The review will strive to inspire people to think long-term about local governance.

Open communications: The review will ensure consistent communications to all stakeholders to facilitate engagement and help to generate shared understanding.

Reporting

MARC will provide advice to the Minister. Its findings are not binding on the Minister or the Government of Yukon.

MARC will provide regular updates to the Minister, Association of Yukon Communities (AYC) and municipalities to keep them informed of progress.

Criteria

These criteria will be used as a screening mechanism to determine what will be included in the *Municipal Act Review*.

1. Partnership

- Collaboration with First Nations
- Public Participation
- Respect

2. Healthy

- Financial Solvency
- Resilient & Sustainable Communities
- Affordable Public Services
- Safe

3. Flexible

- Innovative
- Empower Municipal Governments
- Responsive

4. Responsible

- Trust
- Accountable
- Good representation
- Orderly

The Findings

The findings in this report are *not recommendations, they are observations*. These observations are based on what was seen and heard during community visits, other public meetings, the opinion and experience of the committee members, and the research conducted by experts in the policy and legislative fields.

It is important to note that these findings are in no way binding on the Yukon government or the Association of Yukon Communities (AYC). The MARC does not have the mandate to make decisions; they are tasked with informing and reporting to the Minister of Community Services.

The 51 findings fall into 12 themed areas of the current *Municipal Act*.

1. General Observations
2. Elections
3. Petitions, Referendums & Plebiscites
4. Conflict of Interest
5. Revenue Generation & Financial Matters
6. Non-Resident User Fees
7. Utilities
8. Corporate Status and Municipal Powers
9. Local Governance
10. Bylaw Enforcement
11. Official Community Plan (OCP)
12. Yukon Municipal Board

GENERAL OBSERVATIONS

During the community consultation and line-by-line analysis of the current Act it became apparent that there is a need for a general update of the Act which includes modern language to reflect the current era and legislative environment, and to provide clarity on some more generally worded sections of the Act.

Throughout this issues-based review, municipalities raised the question about what happens when a particular section of the *Municipal Act* is in conflict with, or contradicts, another act. Clarification in some sections of the *Municipal Act* might help remove these conflicts or inconsistencies.

Municipal Act practitioners have observed that common subject matter is scattered throughout the Act. For example, if someone read the Yukon Municipal Board (YMB) section of the Act, they may not be aware of the fact that the YMB is mentioned in other parts of the Act.

The issue of social housing arose during this review. Municipalities govern zoning and official community plans that can assist in developing the framework that would support social housing, while the authority and mandate to provide programming remains with Yukon government.

Findings

- In certain sections, the language and content of the current Act is perceived as being out of date and some sections may contradict or are perceived to be unclear about how they are interpreted in conjunction with other YG legislation.
- It would enhance the ability of the person who uses the Act if common and related subject matter located in various parts of the Act were identified, either in the Act itself or within a type of user manual.
- Municipal governments have a role to play with respect to zoning and official community planning as it relates to social housing. The mandate for housing programs resides with Yukon government.

ELECTIONS

Qualifications of Candidates

Yukon is a large jurisdiction with a small population. As such, residents in communities may run for municipal office while also volunteering for key community organizations or societies.

Section 50 of the *Municipal Act* outlines the qualifications for candidates, including the requirement that employees of a municipality must take a leave of absence to be eligible to run for office (s. 50(2)).

However, the Act is not clear in cases where a community volunteer, such as a volunteer firefighter, decides to run for election. Is that firefighter considered a municipal employee, and if not, should they also be required to take a leave of absence in order to be an eligible candidate? The Act is also unclear about what happens once an elected official is in office, and to what extent that person can or cannot continue with volunteer work outside of elected official duties.

Another issue that arose is whether a council member or a person running for council may also stand for office in a territorial election or campaign during a territorial election period. In other jurisdictions, there are no legal constraints around municipal council members standing for provincial or territorial elections or campaigning in those elections. As well, there is no prohibition on sitting as both a council member and an elected territorial or provincial member. Generally, these issues are left to the political arena and are not constrained by legislation.

An information session or workshop could be made available to potential candidates wishing to run for office. YG continues to work with partners to educate candidates and elected officials.

Nomination Papers

Current requirements in the *Municipal Act* for the contents of candidates' nomination papers (S. 76 and 77) are minimal. These sections could be made more prescriptive and could include the need for candidates to understand what is involved in the role of an elected official. Some municipalities have suggested a requirement for a criminal records check.

Campaign Financing

The current *Municipal Act* addresses neither campaign financing nor public disclosure of campaign contributions. It has been suggested that it may be timely to include language around this issue, as other Canadian jurisdictions have done. In Manitoba, for example, campaign expense limits are required under provincial legislation, but the specific amount is determined by each municipality by bylaw.

Municipalities are interested in passing bylaws on campaign financing, including campaign expense limits, disclosure, financial agents, filing periods, and election advertising.

Election Offences

In the rare case of an election offence, the Act (Division 17) allows authorities two months after the election to commence a proceeding against a potential offender. As many election offences are not

typically discovered until well after an election has occurred, it may be prudent to look at lengthening the time within which such a proceeding can take place. Also, there was concern raised regarding whether there may be a need for returning officers to have an increased level of authority to allow for more efficient and effective enforcement of election rules.

Non-resident Voters

The issue of granting voting rights to non-resident property owners was raised during the community consultation. Opinion was divided, with some Local Advisory Councils (LACs) in favour of granting voting rights to non-fulltime residents of unincorporated areas, including non-Canadian citizens, who own property in that area. Allowing non-residents to vote provides property owners a say in decisions about the community in which they have invested and may own a business. However, such voting privileges may grant property owners (but not renters) the right to vote in two places: their place of permanent residence and the place where they own property.

In Canada, voters must be Canadian citizens aged 18 or over. At the provincial and territorial level, jurisdictions have differing regulations regarding the length of residency required to qualify as an elector. In Yukon, a person is eligible to vote in a territorial election if they have been a resident for the previous 12 months.

At the municipal level, four provinces (BC, Manitoba, Ontario, and Quebec) permit non-resident property owners to vote, while Alberta and Saskatchewan allow limited non-resident voting (to property owners and their spouses in summer/resort villages). Four provinces (New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland/Labrador) and the three territories do not allow non-resident property owners to vote in municipal elections. The laws in these latter jurisdictions generally state that, for the purposes of voting, a person may be a resident of only one place at a time, and must designate one place of residence for the purposes of the act governing municipal elections. The length of residence required varies from one day in Alberta to 30 days (Newfoundland/Labrador) to one year (Yukon, NWT, Nunavut). The most common length of residence is six months.

Voter eligibility in municipal elections continues to be a debate in Yukon. Although some areas in Yukon would not welcome non-resident voting, the case can be made that if someone owns property, whether it be a business or a vacation home, they are invested in, and affected by, decisions made by local officials.

Eligible Voter Lists

There is concern about privacy issues when posting eligible voter lists. These lists include voter names and addresses and are typically posted in very publicly accessible areas. Suggestions from municipalities include: posting voter names only; limiting posting to more discreet areas; or having candidates sign a confidentiality note to access voter addresses. Modernization, such as posting eligibility lists on the Internet, was also suggested.

Length of Term of Office

During the last *Municipal Act* review in 2008, there was interest in exploring the idea of changing the term of office for municipal councils from a three-year to a four-year term. The issue was also raised during this consultation. A four-year term reduces election costs and also allows councillors more time to gain expertise, which in turn reduces the demands on CAOs and municipal staff.

Eight jurisdictions (Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, and Newfoundland/Labrador) have four-year terms in their municipal legislation. Prince Edward Island provides for four-year terms for urban municipalities and two-year terms for rural ones.

Four jurisdictions (BC, Northwest Territories, Nunavut, and Yukon) have three-year terms. However, NWT and Nunavut also provide for a flexible approach whereby a council may alter the length of the term of office by bylaw, or bylaw and public vote. In NWT, the term may be reduced to two years by bylaw, or increased to four years by bylaw plus public vote. In Nunavut, the term may be reduced to two years by bylaw, with no option to lengthen the term.

When Term Begins and Ends

There is uncertainty in Yukon around exactly when a councillor's term starts. The current *Municipal Act* states that the term begins immediately on the swearing-in of a new member after the election. However, what if a newly elected councillor is not sworn in when the other councillors are? Does a previous councillor sit until the new one is sworn in?

In NWT and Nunavut, the term begins at noon on the first Monday in November following the election, or when councillors are sworn in, whichever is later, and ends at noon on the first Monday in November following the election. Other jurisdictions link the beginning of the term either to the first council meeting after the election or to a specific time (noon). In BC, Alberta, and Saskatchewan, the term begins on the first meeting *after* election and ends immediately *before* the first regular council meeting after the next election. In Manitoba, the term begins at noon on the day following the election and ends at noon on the day following the next election.

Date of Election

Some municipalities are interested in moving the date of municipal elections to the spring, so that the new council develops its own budget rather than voting on one prepared for the previous council (which is now the case with fall elections). Moving to a spring election date would also avoid potential overlap with territorial elections, which are usually held in the fall.

The only jurisdiction in Canada with a spring municipal election date is New Brunswick, which votes in May. All other jurisdictions, with very limited exceptions, vote in the fall, usually in October or November.

Findings

- Some municipalities want to clarify whether a municipal volunteer (such as a firefighter) must take a leave of absence to be eligible to run for office.
- Some municipalities have requested guidelines as to whether a council member or a person running for council may also stand for office in a territorial election or campaign in a territorial election period.
- Municipalities have suggested that nomination papers could include information for candidates about these requirements, and that a criminal records check could be required.
- Municipalities are interested in being able to pass bylaws on campaign financing.
- The time period in which election offence proceedings can be commenced against any person for committing a municipal election offence could be lengthened.
- Yukon would benefit from clarifying when elected terms of office begin and end.
- The principle that only residents are permitted to vote in municipal elections is supported by many Yukon citizens.
- Updating the section on the posting of eligible voter lists to ensure increased privacy of voters would modernize the municipal government election process.
- Opinion from Yukon communities on lengthening the term of office was divided.
- Moving municipal elections to spring would alleviate potential overlap with territorial elections, however this had little support.

PETITIONS, REFERENDUMS AND PLEBISCITES

Petitions

Nationally, Yukon has one of the highest requirements for the number of voters needed to start a petition – at least 25% of electors or 2,000 eligible electors, whichever is less (unless no voter list has been prepared in the past three years, in which case 15% of the total population is required). In Alberta, the requirement is 10% of total population. Yukon municipalities are interested in simplifying petition requirements to 15% of total population.

However, the perception exists within the Yukon that on certain financial and technical matters the petition requirements are not high enough. It may be possible to define a more stringent petition process when modifying matters that require specific, technical knowledge in order to make a decision.

Referendums and Plebiscites

Though they can mean the same thing, the current Act makes a distinction between plebiscites and referendums. A plebiscite, which does not bind council, is used to obtain public opinion on any matter. A referendum is a binding vote on a proposed bylaw.

Municipalities have expressed an interest in eliminating this distinction, creating a broader provision – similar to that in Alberta, BC, and other jurisdictions – which has no binding effect on a council except where the Act requires assent of the electors for a specific matter. Decreasing the uncertainty surrounding the referendum process would be reassuring to both citizens and municipal governments.

In BC, a council may provide a counter-petition opportunity in lieu of a referendum by proposing a matter, then giving voters one month to petition against it. This saves significant amounts of money, given the high cost of running a referendum, and provides a reasonable opportunity for the public to prevent a matter from proceeding. In Alberta, voters have the right to petition a council to hold a public hearing on a matter of importance. In Nova Scotia, a council may direct that a public hearing be held, or use alternative processes similar to those in British Columbia.

Findings

- Municipalities are interested in establishing a consistent method for determining the number of voters needed to start a petition.
- Municipalities are concerned that referendums can be binding yet may create a situation where a council is in conflict with other public processes and existing bylaws. The public is concerned that referendums do not yield the desired results.
- Municipalities are interested in providing voters with the right to petition council to hold a public hearing, and/or the opportunity to counter-petition a motion put forward by council.
- Clarity on the referendum process, when it applies, and under which parts of the Act, could reassure both citizens and municipal governments.

Linkages

- **Official Community Plan**
- **Land Planning**
- **Elections**

CONFLICT OF INTEREST

While all jurisdictions in Canada have conflict of interest provisions covering municipal councillors, Yukon's conflict of interest provisions are among the weakest. Councillors in Yukon must declare a pecuniary interest (see definition below) at a council meeting, and then must not take part in discussion or voting on an issue affected by this interest.

By contrast, in BC a councillor:

- must declare both direct and indirect pecuniary interest¹;
- must not attempt to influence the vote before or after the meeting;
- must declare gifts and contracts with councilors or former councilors; and
- is prohibited from using inside influence (influencing a municipal employee) or insider information.

Manitoba requires councillors to disclose the pecuniary interests of dependents. A number of jurisdictions require a statement of disclosure within a set number of days after the election, as well as an annual update.

Feedback from Yukon municipalities and members of the public indicated that the existing conflict of interest provisions under the *Municipal Act* are so vaguely worded that it is difficult for citizens or elected officials to determine if a conflict exists. They have requested provisions dealing with inside and outside influence, accepting gifts, and the relationships between a councillor and a former elected official.

Municipalities feel the Act does not explain how to manage the effect of a conflict on the potential validity of a bylaw or resolution when a council member has a conflict of interest. Related to this, municipalities are also interested in a way that would allow the business of the council to proceed if a quorum cannot be formed due to members declaring conflicts of interest, and therefore having to abstain from that conversation. Both these situations could be dealt with using a publicized public hearing where the public is invited to discuss the bylaw or resolution with council. The councillors that have a conflict would disclose their conflict and in that arena still be able to vote with the public witnessing this whole process.

Concern was also raised about the difficulty of dealing with conflicts of interest where a councillor is also a director of a society or corporation. The BC Court of Appeal (which sits as the Court of Appeal for Yukon Territory) has held that a councillor may be disqualified from office if s/he votes on a financial matter affecting a society or corporation where the councillor is also a director of the entity. Municipalities have asked for suggestions as to how to address this issue.

The case law in Canada refers to disqualification of council members for having a direct or indirect pecuniary interest in a matter, but these terms are not included in the existing *Municipal Act*. Addressing the issue of pecuniary interest may help to bring clarity to municipalities and citizens alike.

¹Note: Pecuniary interest is not defined in the BC legislation. However, the following description from the Government of Saskatchewan's Municipal Relations website may be helpful.

What is Pecuniary Interest?

A member of council has a pecuniary interest in a matter if:

- the member or someone in the member's family has a controlling interest in or is a director or senior officer of a corporation that could financially profit or be adversely affected by a decision of council, a council committee or a controlled corporation; or
- the member or a closely connected person could make a financial profit from or be adversely affected by a decision of council, a council committee or a controlled corporation.

Definitions

- **closely connected person** means the agent, business partner, family or employer of a member of council.
- **controlling interest** means an interest a person has (direct or indirect) if the person owns or has control of more than 25% of the voting rights of a corporation.
- **senior officer** means the chairperson or vice-chairperson of a board of directors; the president, vice-president, secretary, treasurer or general manager of a corporation.
- **Family** means the spouse, parent or child of a member of council.

Pecuniary Interest - Exceptions

Some exceptions include an interest the member (or closely connected person) may have:

- as a voter, tax payer or utility customer of the municipality.
- by reason of being appointed by council as a director of a company incorporated to carry on business for or on behalf of the municipality or as a representative of council on another body.
- with respect to any remuneration, allowance or honorarium as a member of council or as a representative of council on another body.
- as an employee of the Government of Canada, the Government of Saskatchewan, a federal or provincial Crown corporation or agency.
- by being a publisher of a newspaper who publishes advertisements for the municipality.
- by being appointed as a volunteer fire chief or officer of a fire or ambulance service or EMO.

Findings

- Municipalities are interested in clear guidance as to when a conflict exists and what procedures are to be undertaken in the event of a conflict or perceived conflict.
- Municipalities would like comprehensive provisions regarding all circumstances under which disqualification from office will occur.
- Municipalities would like clarity around which circumstances warrant a bylaw or resolution to be declared invalid, and which circumstances don't, including where a council member is disqualified from voting.
- Municipalities are interested in clear guidelines when it comes to the acceptance of gifts by local government officials.
- Declaration of conflict of interest may present quorum issues, which could be effectively addressed by establishing a public hearing and disclosure of the conflict in a public forum, allowing those councilors who have a conflict of interest to vote.

REVENUE GENERATION AND FINANCIAL MATTERS

Municipalities across Canada today are faced with increasing expenditures and responsibilities, coupled with limited capacity to access revenue-raising tools. Therefore, a key concern for Yukon municipalities is methods for generating revenue.

The primary source of revenue for most municipal governments across Canada is property tax. When a municipality is revenue-dependent on a single large industrial or commercial taxpayer and the industry ceases to exist, the local government loses the majority of its tax revenue. In jurisdictions with a small tax base, it is extremely difficult to increase property taxes to the extent required to cover the cost of municipal services. However, communities that have quality infrastructure and services tend to attract new industry and new taxpayers.

In other Canadian jurisdictions, municipalities have been granted the ability to generate revenue through other means such as franchise fees, a hotel tax, sales tax, parking tax, a motor vehicle levy, tolls, entertainment tax, and a property transfer tax. Yukon municipalities could also benefit from broadening the types of fees they charge to generate revenue for their communities. Yukon municipalities have indicated a preference for a “user fee” model, whereby additional means of revenue could offset some of the burden currently experienced by the municipal property tax payer. It is important to note that service fees imposed must not exceed the estimated costs of overhead or administration (*Eurig Estate (Re)*, 1998 CanLII 801 (SCC), [1998] 2 SCR 565).

Where a development increases the density of residents in an area, adding to the demand for services, one way to counter-balance this effect is to establish off-site levies. Off-site levies provide a mechanism for municipalities to recover capital costs incurred for infrastructure improvements required for new development. Off-site levies may only be collected once in respect of lands subject to development or subdivision for those items initially outlined (transportation, drainage, water, sewer). The developer then helps offset the increased costs associated with the new levels of servicing. Some jurisdictions have established a fee scale that clearly outlines how the fee is calculated.

One way municipalities in southern Canada ensure that their communities acquire amenities like parks, trail systems, and swimming pools is to negotiate, with contractors or developers, to provide such amenities as part of a development. For example, a developer of a new subdivision might be required to provide a new playground. Yukon municipalities are interested in having this type of arrangement prescribed in the *Municipal Act* to ensure its transparency and legitimacy.

The idea of borrowing money to stimulate economic growth was suggested during the first phase of the Yukon Community Consultation. The *Municipal Act* establishes that the total principal amount of debt that a municipality may owe at any time shall not exceed three per cent of the current assessed value of all real property of a municipality, unless approved by the Minister. It has been argued by some municipalities that increasing this debt limit would allow them to invest in projects such as corporations and utilities that would stimulate economic development and/or revenue generation.

Since municipalities have taxing powers and insurance, courts often take the “deep pockets” approach and find municipal liability, and by extension liabilities relating to municipally owned and/or operated utilities. These liability provisions could be rendered more predictable and certain by providing that municipalities are protected from nuisance or Rylands v. Fletcher claims (see note below) if the damages arise out of the breakdown or malfunction of a service or utility or if the defence of statutory authority applies.

The Act does not authorize municipalities to grant exclusive franchises in return for franchise fees. This can be done in Nunavut or British Columbia with voter approval and in Alberta and Saskatchewan subject to commission/board approval.

1 Note: The Rylands v. Fletcher case established the rule that a landowner who brings anything onto his/her land likely to cause harm if it escapes (such as water in a reservoir, barrels of oil, or treated sewage in a lagoon) keeps it on the land at the owner’s peril, and if there is an escape of the thing onto other property, the owner of the land containing the thing is strictly liable for the damage. In such case, the “intent” aspect of negligence law does not need to be established, although there are some due diligence defences to strict liability claims. That is why the revisions might contain a provision protecting municipalities from the mischief created by this case.

Findings

- Yukon municipalities wish to have an increased number of options for revenue generation. The Yukon *Municipal Act* is limited in this area when compared with other jurisdictions. Options for revenue generation could include franchise fees, hotel tax, sales tax, parking tax, motor vehicle levy, tolls, entertainment tax, and property transfer tax.
- Other jurisdictions in Canada have legislation that provides an increased level of flexibility for fees that can be imposed by a municipality (for example, municipalities would like to be able to charge fees for the extraction of resources they own), provided such fees do not exceed the municipality's costs for such work, facility, service, or activity.
- To harmonize with some other jurisdictions, Yukon municipalities would like to have consideration given to having utility fees for services provided by municipalities not subject to approval by any entity other than the municipal council and the Yukon Utilities Board.
- Some Canadian municipalities have the authority to establish levies to enhance the economic viability of an area (for example, a business redevelopment fee).
- Municipalities are interested in options to help offset increased municipal service costs (for future capital upgrades) when a development project increases population density. One option that was identified was the establishment of off-site levies which other jurisdictions have been using.
- Legislation that explicitly permits municipal councils to negotiate amenity contributions from developers helps a municipal government to offset development costs. This arrangement promotes the development of amenities for citizens.
- Increased municipal borrowing limits in particular circumstances, could enhance economic development opportunities efforts.
- Municipalities will like to be able to grant exclusive franchises in return for franchise fees.

NON-RESIDENT USER FEES

In general, infrastructure such as recreation centres are funded through capital investments (covered in part by property taxes), and recreation programming is then offset by service fees. Municipal residents pay both property taxes and service fees. Non-resident users pay only service fees. Some jurisdictions have attempted to balance this inequity through legislation.

Across Canada, six jurisdictions (BC, Alberta, Manitoba, Nova Scotia, Nunavut, and Yukon) have language in their municipal legislation that appears to provide for the setting of different fees for non-resident users of municipal facilities.

BC has the most explicit language regarding non-resident user fees. Its *Community Charter* states that councils have the authority to impose a fee by bylaw, to base the fee on any factor specified in the bylaw, and to establish different rates or levels of fees in relation to different factors. BC municipalities have accordingly established higher user fees for non-residents; for example, Whistler adds a 33 per cent surcharge for non-resident users of a local sports centre.

Alberta, Manitoba, and Nova Scotia state that a council may regulate any activity in different ways, may divide the activity into classes, and may deal with each class in different ways. This language appears to allow councils to establish different user-classes for recreational and other facilities and to charge different fees for each user-class. For example, Nunavut charges higher fees for non-residents for licences, permits, and approvals. NWT's legislation provides for the setting of terms and conditions applicable to users of facilities, but is not specific about different classes or levels of users.

While it is possible to impose such fees under the *Municipal Act*, the authority to do so is less specific than in other jurisdictions.

Finding

- Specific language on non-resident fee authority can provide clarity and enhance municipal authority to balance inequities between funds received from and services provided to resident users, and funds received from and services provided to non-resident users of municipal facilities.

Linkages

- **Municipally Controlled Corporations**
- **Revenue Generation and Financial Matters**

UTILITIES

In the Yukon *Municipal Act* definition, municipal utilities include systems for provision of water; sewage treatment; public transportation; heat; waste heat; waste management; and services or products for the consumption, benefit, or convenience of the public considered necessary or desirable for the public by the council (Section 248 (1)). Some Yukon municipalities perceive this as being a prescriptive list and not inclusive of all necessary and reasonable classes of utilities. In order to comply with the *Municipal Act*, the municipality's Official Community Plan must address the provision of these services (Section 279 (1) (b)) and transportation services (Section 279 (1) (d)). "Services" is not defined, whereas "utilities" is defined.

A municipality, through a bylaw, may enter into agreements with Canada, the territory, First Nations, or other municipalities or rural governments to provide services that it has the power to provide within their region, for the mutual benefit of the municipalities or other governments involved (Section 229-232). This might be simplified by stating that a municipality could provide any work, facility, activity, or service under natural person powers by agreement with the other affected government.

It could also be noted that the Act excludes municipalities from liability arising from the provision of services where negligence or intent is not proven. It is unclear whether this protection (under Section 356(1)) includes operation of utilities and the services they provide.



Findings

- Municipalities are interested in using the term “service” which can be defined to include any work, facility, activity, or other provision provided by or on behalf of a municipality (if consistent with the purposes of a municipality in Section 3). This could replace the definition of utilities.
- Municipalities would like to be able to provide any work, facility, activity, or service under its natural person powers by agreement with any other affected government.
- Municipalities are interested in being able to create and operate utilities with reasonable risk.

Linkages

- **Corporate Status and Municipal Powers**
- **Revenue Generation**

CORPORATE STATUS AND MUNICIPAL POWERS

Section 4(1) of the *Municipal Act* provides that a municipality is a corporation and has all the rights and liabilities of a corporation. Under section 4(2), it also has the capacity, rights, powers, and privileges of an individual. This approach to corporate powers is different from Quebec, Ontario, Saskatchewan, Alberta, and British Columbia, as well as the City of Winnipeg. Use of the term “natural person powers” (not an “individual”) is consistent with the nearly universal approach in common law countries to give various classes of corporations the capacity and powers of a natural person of full capacity. Accordingly, there is a significant body of case law dealing with the notion of “natural person powers.” Under the existing *Municipal Act*, the concept of having the powers of an “individual” has not been considered by the courts, so there is little guidance, predictability, or certainty about the current wording.

Municipalities perceive that the *Municipal Act* does not clearly give them the authority to provide any service that council considers necessary or desirable. They have asked for specific authority to provide any service (including any work, facility, activity, or other service). They also would like authority allowing council by bylaw to regulate, prohibit, or impose requirements, such as the requirement for residents to do upgrades on their property, in relation to municipal services, and to impose fees or taxes to pay for the services. They feel that municipal governments in Yukon would then be as explicitly empowered with respect to services as any other jurisdiction in Canada.

In regard to regulatory powers, the authority, jurisdiction, and control of Yukon municipal councils is comparatively limited. The Act could provide more clarity by explaining the fundamental “omnibus” powers that cover the areas falling under municipal jurisdiction, while protecting areas that the territory wishes to reserve to its exclusive jurisdiction. Revised legislation could empower municipal councils with flexibility to regulate, prohibit, and impose requirements.

Municipally Controlled Corporations

Section 4(3) of the *Municipal Act* provides that a municipality cannot establish, or be a shareholder or member of, another corporation that does anything that the municipality itself does not have the legal power or right or duty to do.

There are a variety of approaches in other jurisdictions:

- In Nunavut and the Northwest Territories, the legislation allows a municipal corporation to establish or acquire shares in a corporation for a municipal purpose, subject to approval by the Minister.
- In Quebec, municipalities are not permitted to establish corporations that are “for profit.” A Quebec municipality may establish non-profit bodies to provide technical support to a local enterprise and regulate their own utilities.

- In Ontario, municipalities may establish a municipal service or economic development corporation. The corporation may provide economic development services or services that the municipality itself could otherwise provide.
- In Manitoba, the City of Winnipeg may control certain corporations. Outside of Winnipeg, Manitoba municipalities may form a for profit community development corporation with the approval of the Minister.
- In Saskatchewan, municipalities may provide public utilities through a controlled corporation.
- In Alberta and British Columbia, municipalities may incorporate corporations controlled by the municipality or a group of municipalities for the purpose of providing a service. This is subject to approval of the inspector of municipalities in British Columbia and subject to the control of a corporation's regulator in Alberta.

Some advantages of a municipally controlled corporation are:

- a) May provide protection of the municipality from financial and legal liability.
- b) The ability to invest the board of directors with business or other expertise as opposed to political decision making.
- c) Some labour issues are addressed by having separate group of employees.
- d) Facilitation of public-private and public-public partnerships.
- e) Facilitation of independent private capitalization of projects.

Linkages

- **Utilities**

Findings

- Yukon municipalities are interested in having the capacity, rights, powers, and privileges of a natural person of full capacity.
- Municipalities are enticed by the idea of being able to deliver any work, facility, activity, or other service that the council considers necessary or desirable (subject to municipal purposes under Section 3). In addition (and in the interest of public private partnerships) municipalities are interested in being able to do this directly or through another public authority or another person or organization.
- Municipalities would like to clarify their authority to “impose requirements”, such as the requirement for persons to do things with their property, to do things at their own expense, and to provide security for fulfilling requirements.
- Municipalities would like the spheres of jurisdiction in which a council may enact a regulatory bylaw to be expanded, subject to express exceptions where the territorial government wishes to reserve jurisdiction or have concurrent jurisdiction.
- Municipalities would like to be able to acquire shares in a corporation, subject to the approval of the Minister.
- Some municipalities have requested the authority to create their own development corporations, using specific and prescriptive language to explain how this could be done. The Act would need to consider whether to place any limitations on this type of activity, what the purpose of the corporation would be (e.g., for profit or not-for-profit), and the impact on competition.

LOCAL GOVERNANCE

There are a wide variety of local governance structures for unincorporated areas across Canada, with a confusing choice of terminology. For example, unincorporated areas are known as Electoral Districts in BC, Improvement Districts and Municipal Districts in Alberta, and Local Urban Districts in Manitoba.

Yukon's Local Advisory Councils (LACs) are established through an OIC that outlines their boundary, the size of the council and election of members, and the works or services to be provided in the area. The duty of the Local Advisory Council is to provide advice to the Minister on works or services required in their area, regulations considered desirable, or any other matter of local concern.

In the Yukon, some Local Advisory Councils are pleased with their access to the Minister, while other Local Advisory Councils want more control over local service delivery, in particular, local area planning.

In most other jurisdictions, it appears that councils or other governing bodies for unincorporated areas are given more power than in Yukon, either directly or indirectly. In BC for example, a representative of the electoral area (unincorporated community) is elected by residents, and sits as a director on the Regional Board for the regional district to which the electoral area belongs. Services to the electoral area are provided by the regional district, which is responsible for administration, local governance, and local services; or alternatively are funded by the district and administered through another agency (e.g., by contract with a municipality). Residents pay only for those services provided to their electoral area. The electoral area thus has direct input into the decisions of the regional board (albeit through only one representative).

In Alberta, a local improvement district council, consisting of five members, guides the activities of the improvement district manager and staff. The formal power rests with the Minister of Municipal Affairs, but most power and responsibility is delegated to the councils. The provincial government is still responsible for the levy and collection of taxes.

In Manitoba, local urban districts (LUDs) are represented by a local urban district committee, which is a committee of the municipal council, made up of a councillor appointed by council and not more than three members elected by the LUD. The committee is responsible for preparing and adopting a service plan (water, sewage, etc.) for the local urban district and submitting the service plan to the council before it adopts its operating and capital budgets. The municipal council must levy taxes against property in the LUD to pay for the service plan. This allows the unincorporated area direct access to council and the opportunity to design and approve its own service plan.

New Brunswick and Newfoundland/Labrador have local service districts governed by local service district committees (called local advisory districts in New Brunswick). Newfoundland has the power to set fees and to offer such municipal services as water supply, sewer systems, etc. In New Brunswick, although local advisory districts have no contractual authority, they advise and assist regional local service managers in the preparation of yearly budgets, the establishment of local annual tax rates, and the day-to-day administration of the district.

NWT and Nunavut both have settlements (unincorporated communities). In the NWT they are administered through the territorial government and the local band council. In Nunavut they are administered by the Minister of Community and Government Services, who has the power to establish a settlement corporation if the residents wish.

Findings

- In Canada there are a variety of options for local governance over a large geographical area. Progressively responsible governance models, such as local improvement districts in Alberta, obtain control over staff and district management of services but do not yet possess tax levy or collection authority. This type of governance acts as a proving ground en route to municipal status.
- Yukon LAC's are interested in increasing their ability to have influence over their areas, in particular when it comes to local area planning.
- The current Municipal Act has only two local government categories which may not allow for a broad spectrum of local government options to respond to the needs of the citizens in each unique Yukon community.



BYLAW ENFORCEMENT

In Part 10 of the *Municipal Act*, entitled “Legal Matters,” municipalities are empowered to enforce their own bylaws, appoint their own enforcement officers, obtain court orders of compliance, recover unpaid charges, and enter on property to inspect, remedy, or enforce the Act in certain circumstances. Municipal officers may also order offenders to remedy contraventions of the Act.

However, administration of this part of the Act may be an expensive, time-consuming process for some municipalities.

Potential changes to this section would provide additional tools that municipalities could use to assist them in enforcing bylaws, recovering fines, or preventing such infractions in the first place.

Currently, a ticket must be served in the manner of a summons in order to begin prosecution proceedings. In other jurisdictions, municipalities use a “municipal ticket information” system. If a bylaw is contravened, a ticket is issued through this system. Fines are collected in the same way as property tax. If someone wishes to contest a ticket, he/she must do so within 30 days.

A mechanism used by some jurisdictions is known as a “bylaw dispute adjudication system.” This system provides for an expedited administrative process for settling tickets within limited time frames, outside of the court process. If any amounts become due, they can be collected in the same manner as property taxes.

In situations where building regulations are in non-compliance, or where there is an unsafe condition, a municipality may want to place a notice on the property title. This power would be subject to procedural fairness rules, including notice and an opportunity for the property owner to make submissions to council before the notice is registered.

Finding

- Municipalities are interested in exploring options that would decrease costs and time spent administering bylaw enforcement.



OFFICIAL COMMUNITY PLAN (OCP)

Under the *Municipal Act*, a community's OCP must address:

- future development and use of land in the municipality;
- provision of municipal services and facilities;
- environmental matters in the municipality;
- development of utility and transportation systems; and
- provisions for the regular review of the OCP and zoning bylaws, with each review to be held within a reasonable period of time.

The OCP may also address any other matter the council deems necessary.

The relationship between the OCP and the zoning bylaw should ideally be seamless. The zoning bylaw should support all content of the OCP. Currently, municipalities are required to update zoning bylaws within two years following the adoption of an OCP.

Unfortunately, zoning bylaws are often challenged in court by community groups for perceived and/or real inconsistencies with the OCP, and the two-year lag time allowed for updating zoning bylaws increases the risk of court challenges. In order to reduce such challenges, some Yukon municipalities have suggested that OCPs and zoning bylaws be required to be done in tandem. Most municipalities currently operate this way, as it alleviates the need to regulate development in the timeframe between adopting an OCP and a new zoning bylaw.

A Yukon Supreme Court case (*City of Whitehorse v. Darragh*, 2008 YKSC 80) found that public votes, such as referendums and plebiscites, cannot apply to planning, land use, and development (Part 7 of the Act) as this part of the Act already has public hearing processes.

At times municipalities experience confusion with S. 280(3)(1), which states: "A copy of the notice and the proposed OCP shall be given to the Minister and the Yukon Municipal Board." There is no indication whether the municipality needs to await a response before moving on to second reading of the OCP. A brief explanation of YG process could provide some clarity. It would also be beneficial to determine the value added by the Yukon Municipal Board (YMB) in this situation, as it provides no response to the proposed OCP.

Councils are currently required to host a public meeting to discuss the proposed OCP no earlier than 21 days after posting a notice of that meeting (S. 281(2)). In the interests of keeping the public engaged, it has been suggested that that timeframe be shortened.

Most councils see the advantage of reviewing their OCP regularly, although the current Act is not prescriptive in advising them how much time can or cannot go by between OCP revisions. However, some councils have not revisited their OCP for a decade or longer and may find them out of date. A regulated time period for review might be warranted in the revised Act.

Other acts, such as the *Subdivision Act*, are relevant for municipalities in dealing with land planning. It is important that subdivision planning remains consistent with the OCP and that all processes remain transparent and accessible for the public.

Findings

- When municipalities update their zoning bylaws in tandem or immediately following an OCP amendment, public engagement and transparency are improved; however, it can take time to update zoning bylaws.
- Municipalities would like clarity that referendums and/or plebiscites do not apply to Part 7 of the Act.
- The provision requiring councils to provide the YMB with proposed OCPs may represent an outdated obligation.
- In the interests of keeping the public engaged, municipalities are interested in shortening the timeframe between posting a notice for a public meeting on a proposed OCP and the actual hosting of that meeting.
- Municipalities are open to regulating timeframes for reviewing and/or renewing of their OCP's.
- Municipalities would like subdivision planning to remain consistent with their OCPs and that all processes remain transparent and publicly accessible.

Linkages:

- Referendums, Plebiscites and Petitions

YUKON MUNICIPAL BOARD

The Yukon Municipal Board consists of five members: a chair, a vice-chair, an AYC representative, a CYFN representative, and a member nominated by the Minister of Community Services. Their main role is to hear appeals related to land issues (e.g., OCPs, zoning).

The Yukon Municipal Board has been subject to criticism in a number of areas. Firstly, appeals from decisions of municipal councils on subdivision matters can create delays for the affected municipality and owner, as well as additional costs. Secondly, members of the Board are not elected but are appointed by Cabinet, and may therefore not be seen as independent. Thirdly, decisions of the Board are not transparent. Finally, the decisions and meeting records of the Board are perceived as being not easily accessible, and therefore not transparent in Yukon.

In general, municipal boards may not be necessary to guarantee consideration of all parties' interests and, in fact, may prove to be a limitation in community planning. Other provinces, such as BC, Quebec, and Newfoundland, do not have municipal boards. Alberta's municipal board has limited powers.

It may well be that the current governing legislation, which states that the Supreme Court of Yukon can be used to aid in municipal dispute management, is a more appropriate and effective check on the authority of a municipality than an appointed board. Section 331(e) in the current *Municipal Act* may also constitute an unlawful sub-delegation of powers: "The Board has jurisdiction under this Act specifically to perform any other duties the Commissioner in Executive Council may delegate to it under this Act."

Finding

- Municipalities are interested in investigating options to support the transparent, orderly, fair, timely and financially efficient operations of the YMB or to remove the requirement of the YMB completely.

NEXT STEPS

The Municipal Act Review Committee provides this findings report to the President of the Association of Yukon Communities and the Minister of Community Services.

It is expected that the Yukon government will consider the findings and provide direction to the committee on the possible *Municipal Act* amendments.

The committee looks forward to the following phase when we will connect with local governments and Yukon citizens on their perspectives of those possible amendments.

Complete Findings List

General Observations

1. In certain sections, the language and content of the current Act is perceived as being out of date and some sections may contradict or are perceived to be unclear about how they are interpreted in conjunction with other YG legislation.
2. It would enhance the ability of the person who uses the Act if common and related subject matter located in various parts of the Act were identified, either in the Act itself or within a type of user manual.
3. Municipal governments have a role to play with respect to zoning and official community planning as it relates to social housing. The mandate for housing programs resides with Yukon government.

Elections

4. Some municipalities want to clarify whether a municipal volunteer (such as a firefighter) must take a leave of absence to be eligible to run for office.
5. Some municipalities have requested guidelines as to whether a council member or a person running for council may also stand for office in a territorial election or campaign in a territorial election period.
6. Municipalities have suggested that nomination papers could include information for candidates about these requirements, and that a criminal records check could be required.
7. Municipalities are interested in being able to pass bylaws on campaign financing.
8. The time period in which election offence proceedings can be commenced against any person for committing a municipal election offence could be lengthened.
9. Yukon would benefit from clarifying when elected terms of office begin and end.
10. The principle that only residents are permitted to vote in municipal elections is supported by many Yukon citizens.
11. Updating the section on the posting of eligible voter lists to ensure increased privacy of voters would modernize the municipal government election process.
12. Opinion from Yukon communities on lengthening the term of office was divided.
13. Moving municipal elections to spring would alleviate potential overlap with territorial elections, however this had little support.

Petitions, Referendums and Plebiscites

14. Municipalities are interested in establishing a consistent method for determining the number of voters needed to start a petition.
15. Municipalities are concerned that referendums can be binding yet may create a situation where a council is in conflict with other public processes and existing bylaws. The public is concerned that referendums do not yield the desired results.
16. Municipalities are interested in providing voters with the right to petition council to hold a public hearing, and/or the opportunity to counter-petition a motion put forward by council.
17. Clarity on the referendum process, when it applies, and under which parts of the Act, could reassure both citizens and municipal governments.

Conflict of Interest

18. Municipalities are interested in clear guidance as to when a conflict exists and what procedures are to be undertaken in the event of a conflict or perceived conflict.
19. Municipalities would like comprehensive provisions regarding all circumstances under which disqualification from office will occur.
20. Municipalities would like clarity around which circumstances warrant a bylaw or resolution to be declared invalid, and which circumstances don't, including where a council member is disqualified from voting.
21. Municipalities are interested in clear guidelines when it comes to the acceptance of gifts by local government officials.
22. Declaration of conflict of interest may present quorum issues, which could be effectively addressed by establishing a public hearing and disclosure of the conflict in a public forum, allowing those councilors who have a conflict of interest to vote.

Revenue Generation and Financial Matters

23. Yukon municipalities wish to have an increased number of options for revenue generation. The Yukon Municipal Act is limited in this area when compared with other jurisdictions. Options for revenue generation could include franchise fees, hotel tax, sales tax, parking tax, motor vehicle levy, tolls, entertainment tax, and property transfer tax.
24. Other jurisdictions in Canada have legislation that provides an increased level of flexibility for fees that can be imposed by a municipality (for example, municipalities would like to be able to charge fees for the extraction of resources they own), provided such fees do not exceed the municipality's costs for such work, facility, service, or activity.
25. To harmonize with some other jurisdictions, Yukon municipalities would like to have consideration given to having utility fees for services provided by municipalities not subject to approval by any entity other than the municipal council and the Yukon Utilities Board.
26. Some Canadian municipalities have the authority to establish levies to enhance the economic viability of an area (for example, a business redevelopment fee).
27. Municipalities are interested in options to help offset increased municipal service costs (for future capital upgrades) when a development project increases population density. One option that was identified was the establishment of off-site levies which other jurisdictions have been using.
28. Legislation that explicitly permits municipal councils to negotiate amenity contributions from developers helps a municipal government to offset development costs. This arrangement promotes the development of amenities for citizens.
29. Increased municipal borrowing limits in particular circumstances, could enhance economic development opportunities efforts.
30. Municipalities will like to be able to grant exclusive franchises in return for franchise fees.

Non-Resident User Fees

31. Specific language on non-resident fee authority can provide clarity and enhance municipal authority to balance inequities between funds received from and services provided to resident users, and funds received from and services provided to non-resident users of municipal facilities.

Utilities

32. Municipalities are interested in using the term “service” which can be defined to include any work, facility, activity, or other provision provided by or on behalf of a municipality (if consistent with the purposes of a municipality in Section 3). This could replace the definition of utilities.
33. Municipalities would like to be able to provide any work, facility, activity, or service under its natural person powers by agreement with any other affected government.
34. Municipalities are interested in being able to create and operate utilities with reasonable risk.

Corporate Status and Municipal Powers

35. Yukon municipalities are interested in having the capacity, rights, powers, and privileges of a natural person of full capacity.
36. Municipalities are enticed by the idea of being able to deliver any work, facility, activity, or other service that the council considers necessary or desirable (subject to municipal purposes under Section 3). In addition (and in the interest of public private partnerships) municipalities are interested in being able to do this directly or through another public authority or another person or organization.
37. Municipalities would like to clarify their authority to “impose requirements”, such as the requirement for persons to do things with their property, to do things at their own expense, and to provide security for fulfilling requirements.
38. Municipalities would like the spheres of jurisdiction in which a council may enact a regulatory bylaw to be expanded, subject to express exceptions where the territorial government wishes to reserve jurisdiction or have concurrent jurisdiction.
39. Municipalities would like to be able to acquire shares in a corporation, subject to the approval of the Minister.
40. Some municipalities have requested the authority to create their own development corporations, using specific and prescriptive language to explain how this could be done. The Act would need to consider whether to place any limitations on this type of activity, what the purpose of the corporation would be (e.g., for profit or not-for-profit), and the impact on competition.

Local Governance

41. In Canada there are a variety of options for local governance over a large geographical area. Progressively responsible governance models, such as local improvement districts in Alberta, obtain control over staff and district management of services but do not yet possess tax levy or collection authority. This type of governance acts as a proving ground en route to municipal status.
42. Yukon LAC's are interested in increasing their ability to have influence over their areas, in particular when it comes to local area planning.
43. The current Municipal Act has only two local government categories which may not allow for a broad spectrum of local government options to respond to the needs of the citizens in each unique Yukon community.

Bylaw Enforcement

44. Municipalities are interested in exploring options that would decrease costs and time spent administering bylaw enforcement.

Official Community Plan (OCP)

45. When municipalities update their zoning bylaws in tandem or immediately following an OCP amendment, public engagement and transparency are improved; however, it can take time to update zoning bylaws.
46. Municipalities would like clarity that referendums and/or plebiscites do not apply to Part 7 of the Act.
47. The provision requiring councils to provide the YMB with proposed OCPs may represent an outdated obligation.
48. In the interests of keeping the public engaged, municipalities are interested in shortening the timeframe between posting a notice for a public meeting on a proposed OCP and the actual hosting of that meeting.
49. Municipalities are open to regulating timeframes for reviewing and/or renewing of their OCP's.
50. Municipalities would like subdivision planning to remain consistent with their OCPs and that all processes remain transparent and publicly accessible.

Yukon Municipal Board

51. Municipalities are interested in investigating options to support the transparent, orderly, fair, timely and financially efficient operations of the YMB or to remove the requirement of the YMB completely.