

Federation of Canadian Municipalities

**Assessment of the Municipal Acts of the Provinces
And Territories**

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ASSESSMENT OF THE MUNICIPAL ACTS OF PROVINCES AND TERRITORIES

1.0 INTRODUCTION

*It is an injustice and at the same time a grave evil and a disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do.- Encyclical 'Quadragesim Anno', quoted in *Small is Beautiful* by E.J. Schumacher*

The Supreme Court of Canada has held that legislating, and executing policy, are often best carried out at a level of governance that is not only efficacious but “also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity.” [L’Heureux-Dube J., in *114957 Canada Ltee (Spraytech, Societe d’Arrosage) v. Hudson (Town)*, 2001 SCC 40]. Nevertheless, the provincial and colonial governments in Canada for at least 130 years have failed to provide adequately for communities to be able to deliver local services, works facilities and governance. Municipalities in Canada do not have adequate powers or financial or other resources to meet the existing or future needs of their citizens.

The comparison of municipal acts of the provinces and territories indicates the diversity and complexity of the municipal system across Canada. Noting that legislation is generally the product of a consultative process among interest groups, including the provincial and municipal governments, provincial ministries and agencies, the business sector, electors and others, the ambitions of municipalities alone cannot dictate the final content. The trend in federal and provincial legislation and case law is toward decentralization, reflecting the increased stature of municipalities and the increasing role they play in our lives.

1.1 ASSESSMENT PROCESS

At the meetings of the Federal of Canadian Municipalities Standing Committee on the Future Role of Municipal Government held in Regina, Saskatchewan on March 6, 2003, Windsor, Ontario on September 5, 2003 and Gatineau, Quebec on November 28, 2003, the Committee present resolved to review the municipal government statutes of the provinces and territories. The Committee determined that the assessment criteria should be the principles of local self government approved by the Union of British Columbia Municipalities (“UBCM”) in 1991, as amplified by the policy statement adopted by the Federal of Canadian Municipalities (“FCM”) in 1998. These principles were included in the precepts adopted by the International Union of Local Authorities in 1993. They were endorsed by the Association of Municipalities of Ontario (“AMO”) in 1994. Similar principles are set out in the 2001 British Columbia *Community Charter Council Act* and the European Charter of Local Self-Government, 1985.

The committee approved the review of the *Municipalities Act*, S.N.L. 1999, c. M-24 (Newfoundland), the *City of St. John's Act*, R.S.N.L. 1990, c. C-17 (Newfoundland), the *Municipal Government Act*, S.N.S. 1998, c. 18 (Nova Scotia), the *Municipalities Act* (Prince Edward Island), the *Charlottetown Area Municipalities Act*, the *City of Summerside Act*, the *Municipalities Act* (New Brunswick), the *Charter of the Ville de Montreal*, R.S.A. c. C-11.4, the *Municipal Code* (Quebec), the *Municipal Act, 2001*, S.O. 2001, c. 25 (Ontario), the *Municipal Act*, C.C.S.M. c. M225 (Manitoba), the *City of Winnipeg Charter*, S.M. 2002, c. 39 (Manitoba), the *Cities Act*, S.S. 2002, c. C-11.1 (Saskatchewan), the *Municipal Government Act*, R.S.A. 2000, c. M-26 (Alberta), the *Community Charter*, Bill 14, 2003 (British Columbia), the *Municipal Act*, R.S.Y. 2002, c. 154 (Yukon), the *Municipal Statutes Replacement Act*, Bill 25, 2003 (Northwest Territories) and the *Cities, Towns and Villages Act*, R.S.N.W.T. 1988, c. C-8 (Nunavut).

Not included are the draft *Cities Act* (Newfoundland) developed by Mount Pearl and Corner Brook or *City Charter* (Winnipeg) developed by Winnipeg. Although the proposed *Cities Act* and *City Charter* are in the form of draft legislation and are the subject of consultation between the municipalities proposing them and the provinces that would adopt them, the review is restricted to bills given royal assent or to enacted statutes. Some of the older legislation, such as the Prince Edward Island *Municipalities Act*, does not measure up under any of the evaluation criteria. Since all of the legislation, other than the British Columbia *Community Charter*, would receive a below-average or failing grade under the assessment criteria, the assessment is a subjective review and commentary as opposed to a set of letter grades.

1.2 The First Municipal Legislation

In 1839, Lord Durham recommended that municipal institutions be an order of government under the Canadian Constitution. The *British North America Act* of 1867 and its successor, the *Constitution Act, 1867*, however, created federal and provincial governments, with the provinces having exclusive responsibility for making laws relating to municipal institutions. At the time of Confederation in 1867, less than 20 per cent of Canadians lived in urban areas. Today, more than 80 per cent of Canadians live in urban areas.

Municipal legislation of the provinces and territories derives from the legislation enacted in Upper Canada in 1849. That legislation first established the role, function and structure of local authorities in the British North American colonies. Subsequently, provincial legislatures granted express, detailed powers based on the so-called "*Baldwin*" model. In 1849, the local government issues were drunkenness, profanity, charivaries (post-wedding celebrations), the running of cattle or poultry in public places, itinerant salesman, and the prevention or abatement of noises or nuisances. Today, municipalities own and operate telecommunications systems, hydroelectric plants, public transportation, waste treatment plants, airports, toxic waste remediation facilities and other works or services never contemplated in 1849.

1.3 Constitution

Section 92(8) of the *Constitution Act, 1867* delegates powers to the provinces respecting “municipal institutions in the Province”. The provinces have delegated to local governments some powers to control local matters.

Municipal institutional authority to regulate private use of land is a provincial power under the "property and civil rights" heading in Section 92(13) of the *Constitution Act, 1867*. Accordingly, the laws controlling land use are primarily provincial, although there are exceptions created by federal control over land used for First Nation reserves, airports, railways, harbours and other purposes regulated by federal law.

The delegation to local governments is subject to powers retained by the provinces. The Province of British Columbia, for example, has retained power to regulate subdivision and land use through its own officers in rural areas, subject to the authority for regional local governments to take on this function in the future.

Although the primary source of authority for local government is a form of “municipal act” in most provinces, there are also hundreds of other provincial statutes and regulations that delegate power to communities. "Approximately 150 pieces of provincial legislation dictate the operation of municipal government in Ontario" (AMO, 1994, p. 7). Many financial and accountability provisions affecting local governments are found in other provincial and territorial statutes.

Individual municipalities also receive specific powers through special Acts. The City of Vancouver has a unique system of land use control under the *Vancouver Charter* S.B.C. 1953, c. 55. The *Charter* planning powers are substantially different from those applicable to other British Columbia municipalities. The City of Winnipeg has natural person powers under the *City of Winnipeg Charter*, S.M. 2002, c. 39. The City of Corner Brook has unique authority to provide incentives to attract industry under the *City of Corner Brook Act*, R.S.N.L. 1990, C-15.

A province may confer on a local government only the powers the province holds under the *Constitution Act, 1867*. Municipal corporations are merely instrumentalities of the senior level of government for the more convenient administration of local government [*Lynch v. Can N.W. Land Co.* (1891) 19 S.C.R. 204 (Supreme Court of Canada)].

There is no constitutional recognition of municipal institutions as a level of government, (although British Columbia and Yukon Territory in their municipal legislation have recognized municipalities as if they were orders of government within their jurisdiction). They are creatures of provincial statute with only the powers conferred on them by the province. Municipal authority is restricted either through the withholding of powers or the imposition of limits on the exercise of the powers granted to them [*McCutcheon v. Toronto* (1983) 41 O.R. (2d) 652].

Limits on the exercise of municipal powers include the requirement to obtain the approval of the provincial Lieutenant Governor in Council, Minister or other authority and express prohibitions

or conditions applicable to the exercise of powers. Accordingly, a municipality under the traditional regime of provincial "municipal acts" is nothing more than a "public corporation created by the government for political purposes and having subordinate or local powers of legislation": *Hatch v. Rathwell* (1909) 12 W.L.R. 376 (Manitoba Court of Appeal).

1.4 Municipal Acts

Some provinces have recently enacted new legislation that moves in the direction of local self government. In 1994, Alberta enacted the *Municipal Government Act*, R.S.A. 2000, c. M-26 which gives municipalities "natural person" powers and broadly enables municipalities to exercise, in their discretion, a wide range of permissive powers (as opposed to a limited number of express powers, as found in the legislation of other provinces). The Alberta approach does not fundamentally change the Alberta Constitution, there is no entrenchment of the municipal legislation (e.g., by way of an amending process), there is no statutory commitment to consultation prior to future change, and many powers require provincial approvals. Municipal legislative power may be limited by the decision of the Alberta Court of Appeal in *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary*, discussed in Section 2.6.17.

The view of the Province of Alberta is consistent with the approach taken by the other provinces when considering new municipal legislation. Alberta maintains that the provinces have been vested with constitutional responsibility for providing legislative and regulatory processes for local government and that a statutory requirement for consultation prior to future change could be interpreted as a delegation of power sharing as opposed to collaborative consultation in carrying out its constitutional authority. [Honourable Guy Boutillier, Alberta Minister of Municipal Affairs, address to FCM Conference on Future Role of Local Government, Toronto, Ontario, November 22, 2001].

In October 1996, Manitoba enacted the *Municipal Act*, C.C.S.M, c. M225. The Manitoba legislation is less empowering than Alberta's: the Manitoba statute does not give municipal governments "natural person" powers, and, although the Manitoba legislation is intended to enable municipalities to exercise their discretion broadly by way of a wide range of permissive powers, the range is narrower in scope than in Alberta.

The *City of Winnipeg Charter Act*, S.M. 2002, c. 39 came into force on January 1, 2003. The Act granted powers under 14 spheres of authority similar to those set out in the *Alberta Municipal Government Act*. The Act also gave the City "natural person" powers. The City of Winnipeg has proposed a Phase 2 of the *Winnipeg Charter*, summarized in the paper entitled "Model Framework for a City Charter" which can be found at www.canadascities.ca/background/htm. This proposed *Charter* is based on the FCM assessment criteria.

Nova Scotia enacted the *Municipal Government Act*, S.N.S. 1998, c. 18 on December 3, 1998, further to a review of a "Working Paper in Legislative Form" proposed in 1997. The stated purpose of the Act is to "give broad authority to councils" respecting bylaw making and to enhance their ability to respond to present and future issues. It does not give municipal governments "natural person" powers, or broad spheres of jurisdiction, but does provide for omnibus powers to make bylaws for "health, well being, safety and protection of persons" and "safety and protection of

property” in addition to a limited number of express powers.

British Columbia executed a "Recognition Protocol" in 1996 with the Union of British Columbia Municipalities (UBCM) that recognized local government as an "independent, responsible and accountable order of government". During the same year, however, the province unilaterally eliminated municipal grant guarantees, reduced grants, transferred major highway responsibilities and closed local court houses without meaningful prior consultation with municipalities. The wording of the Protocol was incorporated in *Municipal Act* amendments which came into force September, 1998.

On May 8, 2003, the British Columbia legislature enacted the *Community Charter*, Bill 14, 2003 governing all municipalities in British Columbia (except Vancouver which would retain its *Charter*). The *Charter* came into force January 1, 2004. The legislation grants broad authority to provide any municipal service and to regulate in relation to 11 autonomous and 5 “provincial-municipal concurrent areas” of regulatory authority, as well as express authority to act in respect of a number of other matters.

On December 12, 2001 the Ontario legislature gave royal assent to the *Municipal Act, 2001*, S.O. 2001, c. 25. The legislation gives Ontario municipalities broader general authority in respect of service delivery and strictly local regulatory activities. Other areas that relate to significant provincial interests as well as local interests are subject to limits with respect to specific powers for municipal bylaws dealing with natural environment, economic development, health and welfare, and nuisance. The legislation gives municipalities “natural person” powers. The City of Toronto is working with the Ontario government to develop legislation that would address for Toronto deficiencies in the *Municipal Act, 2001*.

The *City of St. John's Act*, R.S.N.L. 1990, c. C-14 was enacted in 1990. It provides the City of St. John's with a number of unique financial and revenue sources. The *Municipalities Act*, S.N.L. 1999, c. M-24 was enacted by the Legislative Assembly of Newfoundland and Labrador to govern the small municipalities (other than the City of St. John's and the other cities that have special Acts).

In 1998, the former Newfoundland Minister of Municipal and Provincial Affairs agreed to consider legislation proposed by the Cities of Mount Pearl and Corner Brook. Under the draft legislation, any city may elect to be subject to its provisions once it is enacted. The draft legislation is similar to the Alberta legislation, except it provides for more omnibus powers, provincial-municipal consultation and additional revenue sources, and there is express authority to regulate in respect of civil and common law matters. The cities of Mount Pearl and Corner Brook will present the final draft of the Bill to the Minister for the consideration of the recently elected government.

Yukon Territory's Bill 69 received royal assent in December 1998. The *Municipal Act*, R.S.Y. 2002, c. 154 states in its preamble goals of establishing "partnership, mutual respect and trust between the Government of the Yukon and the Association of Yukon Communities". Section 2 of the Act provides that the purpose of the Act is to provide local governments with the powers, duties and functions necessary for fulfilling their purposes and to represent and respond with flexibility to

the various interests, needs, and changing circumstances of their communities.

Nunavut Territory has amended the *Cities, Town and Villages Act*, R.S.N.W.T. 1988, c. C-8 as of March 28, 2003. In terms of empowerment, the legislation is similar to the Yukon and Alberta legislation. The spheres of jurisdiction and legal tools are the same as those found in the Yukon and Alberta legislation. Municipalities have limited corporate powers, but not “natural person” powers. There are no new major financial tools or revenue sources. The Northwest Territories government gave royal assent to the *Municipal Statutes Replacement Act*, Bill 25 on October 10, 2003.

In Saskatchewan, the *Cities Act*, S.S. 2002, c. C-11.1 was introduced in the legislature on June 12, 2002. It received royal assent on July 3, 2002 and came into force on proclamation on January 1, 2003. The *Cities Act* contains spheres of jurisdiction similar to those found in the Alberta legislation. The legislation gives the cities “natural person” powers.

After the amalgamation of cities located on the Island of Montreal enactment of the *Charter of the Ville de Montreal*, R.S.A., Qc. C-11.4, the former government of Quebec and the new Ville de Montreal executed in January 2003 a joint statement to indicate their desire to enter into a partnership agreement or “City Contract” to set forth terms and conditions of an association based on new rules of partnership. The contract is intended to result in harmonization of services and regulations, establishment of partnership to define basic strategies respecting socio-economic issues, and the grant of new sources of revenues to the City. The relationship is not based on new legislation. The new Liberal government has suggested it may extend greater autonomy and additional revenue sources to municipalities, possibly in the context of further decentralization of powers.

1.5 Recent Trends

The Canadian courts and the federal government have recently changed the way they look at the role of municipal institutions, and most provinces and territories have enacted new municipal legislation since 1995.

The courts have during the past decade declared that the law must respect the responsibility of elected municipal bodies to serve the people who elected them, and exercise caution to avoid substituting the courts’ views of what is best for the citizens for those of municipal councils. Unless a municipal decision is clearly beyond a council’s powers, the courts generally will uphold the decision. Further, the courts are willing to imply jurisdiction where powers are not expressly conferred. “Whatever rules of construction are applied, they must be not used to usurp the legitimate role of municipal bodies as community representatives” [Chief Justice McLachlin (dissenting), *Shell Canada Products Ltd. v. Vancouver (City)* [1994] 1 S.C.R. 231, at p. 244, quoted in *Spraytech*].

The courts have also clarified that a municipality may rely on its overarching, omnibus powers (e.g., peace, order, good government, health) for regulatory authority subject to any express powers that limit such authority [*Spraytech*]. Accordingly the provinces do not need to legislate

prescriptively, except in relation to civil or common law rights [*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary* 2002 ABCA 131 (currently on appeal to Supreme Court of Canada)].

The Prime Ministers' Caucus Task Force on urban issues published a report in November, 2002 that addressed numerous issues of interest to local government. Winnipeg and Vancouver have entered into tripartite program and funding agreements directly with the federal and provincial governments. For example, Winnipeg entered into the Winnipeg Development Agreement (which ended in 2001) and the Canada-Manitoba Infrastructure Agreements. The Green Municipal Enabling Fund and the Green Municipal Investment Fund were set up between the federal government and FCM. In June 2003, Canada agreed to afford the FCM the same treatment as the provinces in relation to international trade agreement consultations.

Most provinces and territories have adjusted their municipal legislation to provide for more local autonomy. The quality and education of professionals contracted and employed by cities and the extraordinary levels of public participation make it questionable whether the provinces need to approve bylaws or require cities to ask for new powers on an ad hoc basis.

Future trends portend additional powers, responsibilities, duties and costs for municipalities, without new or adequate powers or resources.

There is a renewed cycle of amalgamations of former municipalities. Sidney, Halifax, Montreal, Longueuil, Toronto, Sudbury, Ottawa, Hamilton and others have witnessed this phenomenon. Ontario amended its former municipal act in 1996 to facilitate local restructuring agreements. Since then, the number of municipalities in Ontario has decreased by 368. Toronto, Hamilton, Greater Sudbury, Ottawa, Haldimand and Norfolk were legislated by the Province. Further to the 1996 legislation, most (more than 90 percent) of the restructures occurred through local government agreements. Eight provincial commissions facilitated the making of local restructuring agreements among less than 10 percent of the restructured municipalities. (Significantly, Section 279 of the British Columbia *Community Charter*, entitled "No Forced Amalgamations", requires the participation of a municipality and its citizens in decisions respecting future amalgamations.)

The recent trend toward amalgamations is a result of disengagement and globalization [John Saywell, "*Whither Municipalities*", Symposium of Municipal Governance Institute, June 25, 1995]. The thesis is "bigger is better". Amalgamations are a tool for carrying out disengagement, since massive municipalities that have populations and budgets greater than most provinces can take over programs from which their parent provinces withdraw and pick up the pieces resulting from off-loading. (See, for example, Toronto, City of "The Time is Right for a New Relationship with Ontario and Canada", 2002). Nonetheless, the provinces have failed to grant adequate new powers or resources to accommodate the offloading.

Other trends include the need for addressing new classes of services every year. During the past year municipalities have become involved in or have been affected by fiber optic networking and communications convergence; Olympic and other sports infrastructure; environmental cleanups;

increased health care costs arising from aging and pollution; increased tort and other liability for building inspection; increased public sector wage costs; alternative fuel and transit technology; airport rescue; and others.

1.6 Why Municipalities Seek Change

Municipalities have criticized the legal and institutional restrictions on their decision making powers and ability to raise revenue. Every year they ask the provincial and territorial governments for amendments to enable municipalities to do their jobs. Many specific requests have been refused by the governments since Confederation (e.g., municipal requests to have the power to prohibit “nuisance” businesses or business activities in British Columbia, despite such a power to prohibit in most other municipal acts). Nonetheless, over the years the provinces have made hundreds of other amendments to municipal legislation, with the existing municipal acts each comprising hundreds of provisions. Numerous other provincial statutes also deal with municipal powers, duties and responsibilities.

In 1993 the International Union of Local Authorities published the Principles of Local Self Government which included the principles that municipalities must have adequate powers and financial resources to respond to communities needs, other orders of government must respect municipal authority in areas of municipal jurisdiction, and other orders of government must consult with municipalities before taking actions that affect them. These principles were contained in the 1998 Model Resolution of the Federation of Canadian Municipalities.

Municipalities’ concerns have been elevated by the widespread acceleration of federal and provincial delegation of duties and responsibilities to local governments (e.g., airports, harbors, policing, health, welfare, highways, bridges, economic development, public transportation, affordable housing, environmental protection, etc.) without consultation or adequate legislation or financial tools to deal with these duties and responsibilities. The federal government is withdrawing from many former urban policy and program areas. This has compromised the economic and social stability of many urban governments. This trend accompanies devolution of financial responsibilities from many provincial governments. The withdrawal of other orders of government from municipal programs and the devolution of financial responsibilities has occurred without an adequate expansion of local government powers, resources and autonomy.

An emerging problem for municipalities is the fact they are providing, or are expected to provide, new services and facilities to fulfill local citizens’ expectations, without required financial tools or revenues. Municipalities must finance new services as a result of other governmental off-loading or abdication, yet municipalities continue to rely principally on the property tax and user fee powers and depend on governments’ transfers. Municipal reliance on own sources revenues has risen in relative importance over the past decade and reliance on grant funding has declined. (Harry Kitchen, Report to FCM, May 2002). In many places, property taxes have hit a glass ceiling. Services such as transit are threatened by the absence of adequate financial resources. Municipalities do not have the money they need to replace infrastructure, promote or allow growth, treat sewage and drinking water, sustain transportation and transit systems, or provide the off-loaded services.

These problems arise at a time when large urban communities are competing in a global economy with cities in the United States and elsewhere that have greater powers and financial tools.

1.7 Local Self Government

"Local self government" refers to the liberty of a local governing body to act autonomously to provide for local needs (IULA, Article 2; European *Charter*, Article 3(1)).

The principles of local self government are summarized as follows:

1. local governments may act or exercise power in relation to any matter that is not expressly excluded from their competence or exclusively delegated to another entity:

[Article 3(2) IULA: "Local authorities shall have a general right to act on their own initiative with regard to any matter which is not exclusively assigned to any other authority nor specifically excluded from the competence of local government";

Article 4(2) European Charter: "Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority."]

2. local governments must participate in decision making by other levels of government which has local implications:

[Article 3(6) IULA: "Local authorities shall have a reasonable and effective share in decision making by other levels of government which has local implications.";

Article 4(6) European Charter: "Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision making process for all matters which concern them directly."]

3. powers given to local bodies must be complete and exclusive so as not to be subject to adverse intervention by other levels of government:

[Article 3(3) IULA: "The basic responsibilities of local authorities as well as the procedures for changing these responsibilities shall be prescribed by the constitution or by statute."

Article 4(4) European Charter: "Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law."]

4. local governments must have full discretion to exercise their powers to meet local conditions and the powers must be adequate to meet local needs:

[Article 3(5) IULA: “Where powers are delegated to them by a central or regional authority, local authorities shall be given discretion to adapt the implementation of legislation to local conditions.”];

Article 4(5) European: “Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.”]

5. the dissolution of local elected bodies or changes in local authority boundaries must only be made in accordance with due process of law, with full consultation with the local authority, and by way of a referendum where permitted by the law:

[Article 4, IULA: 1. “If the constitution or national law permits the suspension or dissolution of local councils or the suspension or dismissal of local executives, this shall be done in accordance with due process of law. Their functioning shall be restored within as short a period of time as possible which shall be prescribed by law.” 2. “Changes in local authority boundaries shall only be made by law and after consultation of the local community or communities concerned, including by means of a referendum where this is permitted by statute.”];

Article 5 European Charter: “Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possible by means of a referendum where this is permitted by statute.”]

Generally, these principles of local self government have not been recognized in the Canadian Constitution or in the provincial or territorial legislation governing local authorities, other than in part in the British Columbia *Community Charter Council Act* (2001) and *Community Charter* (2004).

The Canadian obsession with the constitutional division of powers has focused the attention of local governments on their subordinate legal and constitutional status. Local authorities' concerns have been elevated by the widespread acceleration of delegation of duties and responsibilities to local governments. In response to these trends, the UBCM 1991 to 1993 conventions approved a policy paper entitled "Local Government and the Constitution" (UBCM, 1991) which recommended elements that would constitute recognition of local government:

1. consultation on all matters affecting local governments, and negotiation of conflicts, including in respect of dissolution or amalgamation;
2. an amending formula for local government legislation;
3. joint decision making in areas of shared responsibility;
4. ensuring local government jurisdiction is respected by provincial ministries, crown

- corporations and agencies;
- 5. adequate legislative powers; and
- 6. ensuring adequate financial resources are provided for any new delegated responsibilities.

Current UBCM policy may be viewed at <http://www.civicnet.bc.ca>.

In response to concerns about subordinate legal and constitutional status of local authorities and about federal and provincial downloading, AMO in 1994 published the "Ontario *Charter: A Proposed Bill of Rights for Local Government*". "The *Charter* would ... establish a municipal agenda for reform which would be implemented through provincial legislation, policies, programs and practices" (AMO, 1994, p. 1). This agenda was similar to the UBCM principles. The AMO principles have evolved and in 2001 AMO executed a memorandum with the Province of Ontario respecting ongoing consultation.

Local authorities may only accede to autonomy and recognition as an order of government through constitutional change. Most of the principles of local self government enunciated by IULA and the Council of Europe can only be realized as a result of an amendment to the *Constitution Act, 1867*. To the extent there is no public appetite for such change during the next round of constitutional talks, local citizens and authorities will have to be satisfied with protocols and entrenchment structures that strive to approximate the international principles of local self government in the context of the existing constitution, pursuant to which local governments suffer a subordinate, delegated legal status.

2.0 ISSUES

2.1 Introduction

Whether a provincial enactment gives effective legal recognition to local government under the principles of local self government may be determined by looking at the criteria developed by the UBCM in the policy paper *Local Government and the Constitution*, UBCM 1991. These are, to paraphrase, whether the delegating statute provides for:

1. consultation on matters affecting local government,
2. amending local government legislation,
3. joint decision-making powers in areas of shared responsibility,
4. provincial compliance with municipal regulations, and
5. delegation of adequate powers, including revenue sources and financial powers

2.2 Consultation on Matters Affecting Local Government

Further to the principles of local self government, municipalities must be recognized as authoritative within their sphere of delegated power in the eyes of the populace they serve. On the other hand, accountability is enhanced through decision making in respect of which local governments are invited to a consultative process.

While numerous statutes provide for consultation between the province enacting the legislation and parties affected, provincial statutes cannot remove the provincial prerogative to act, despite the outcome of the consultation. Under the existing constitution, the discretion of the provincial legislatures cannot be fettered. The provinces may, however, impose procedures on themselves.

The British Columbia *Miscellaneous Statutes Amendment Act*, Bill 55, 1995, for example, provides in Section 3, with respect to an amendment to the *Assessment Act*, that the Lieutenant Governor in Council may make related regulations only after consultation with the UBCM. It should be noted, however, that this mention of consultation does not remove the provincial prerogative to act. Instead, it prescribes how the legislation is to be implemented and how affected communities may minimize negative implications. Under the British Columbia *Community Charter*, the minister responsible and the UBCM are required to engage in negotiations respecting arrangements for consultation and must use all reasonable efforts to reach agreement. The minister responsible is obligated to consult with representatives of the UBCM before the province imposes the amendment or repeal of municipal legislation or reduces the amount of revenue transfers. As well, the minister responsible and the UBCM may enter into an agreement respecting consultation on other matters affecting local governments. If the UBCM requests, the Minister must engage in negotiations respecting an arrangement that has been made and must use all reasonable efforts to reach agreement in negotiating an arrangement. A municipality may apply to court to enforce a statutory or agreed obligation between the province and a municipality or the UBCM.

2.2.1 Nova Scotia Municipal Government Act

Section 190 states one of the purposes of Part 8 (Planning and Development) is to identify and protect the interests of the province. It also purports to establish a consultative process which would serve the public's interest in accessing information and participating in planning. Another purpose of Part 8 is to permit municipalities to assume primary authority for planning within their jurisdiction.

The Minister must seek the views of a municipal council when adopting or amending a statement of provincial interest. Consultation with municipalities respecting statements of provincial interest appears to be mandatory under Section 196. Section 199 provides that a provincial department must *consider* a municipality's planning documents before carrying out or authorizing any development in a municipality. Sections 196 and 199 do not indicate the weight to be given to a council's views or plans.

Part 19 of the Act, "Municipal Affairs", empowers the Minister to unilaterally do various things which detract from local government independence. Ministerial approval is required for temporary

borrowing resolutions, several classes of bylaws that are within the jurisdiction of other provincial departments, or if planning instruments collide with the “statements of provincial interest”. Section 457(1) empowers the Minister to "order a municipality to do anything required by law or by agreement with the Minister or Her Majesty, or necessary or desirable in the interests of the municipality, or necessary or desirable for the due accounting for, collection or payment of any of a municipality's assets, liabilities, revenues, funds or money".

Under Section 452, the Minister has discretion to consult with municipalities on matters affecting local government for the purpose of allowing the Minister to have a hand in “improving” municipal government in Nova Scotia.

Section 519 requires the province to give one year’s notice to Union of Nova Scotia Municipalities of any legislation, regulation or administrative action that would have the effect of decreasing municipal revenue or increasing required expenditures. The Section does not apply to legislative or administrative action that is general in nature. The one-year lead time allows municipalities to budget in a more predictable and certain manner without surprises. The question arises whether the Union of Nova Scotia Municipalities would be successful in an application to a court for an order in the nature of *mandamus* to require the province to “fetter its discretion” by not preceding with legislation or regulation for a year. This concept runs contrary to the common law to date.

2.2.2 Charlottetown Area Municipalities Act

Part III of the Act deals with inter-municipal coordination. The object of this Part is to provide a forum for discussion of common matters and issues among local governments, and the Minister, or a delegate, is one of the members of the coordinating committee.

2.2.3 Municipalities Act (New Brunswick)

Section 14(1.1) of the *Municipalities Act* provides that the amalgamation of two or more municipalities shall be effected by an Act of the Legislature unless the councils of the municipalities that would be affected adopt a resolution in favour of the amalgamation (in which case, only a regulation change is required). Sections 24 and 25 of the *Municipalities Act* outline a public meeting process for citizens of unincorporated areas to address matters relating to proposed boundary changes and adding or removing local services.

2.2.4 Charter of the Ville de Montreal

The *Quebec Act* respecting the Ministère des Affaires Municipales et de Métropole provides in Article 21.1 that the Table Quebec-Municipalities must advise the Minister on any question submitted to the Table by the Minister. The Table Quebec-Municipalities includes representatives from the Ministère des Affaires Municipales, Du Loisir et Du Sport, the Fédération Québécoise des Municipalités and the Union des Municipalités du Québec. The “City Contract”, not mandated by legislation, also provides for provincial-municipal consultation. It

should be noted that under Article 4 of the *Charter of the Ville de Montreal*, the provisions of the *Cities and Towns Act* apply to the Ville de Montreal.

2.2.5 Municipal Code and Cities and Towns Act of Quebec

Section 10.5 of the Municipal Code provides that a municipality may enter into an agreement with the provincial government under which certain responsibilities previously assigned by an enactment to the provincial government are transferred to the municipality. The municipality and a minister or provincial entity may enter into any agreement necessary for the application of the agreement that delegates the responsibilities.

2.2.6 Ontario Municipal Act, 2001

The Ontario Municipal Act, 2001 background papers refer to ongoing consultation between the province and municipalities. A consultation “memorandum of understanding” has been executed between the Minister of Municipal Affairs and Housing and the president of the Association of Municipalities of Ontario, further to Section 3(1) of the statute (which provision requires meaningful consultation).

Particular sections allow for municipalities to make proposals to provincial authorities about matters affecting them. For instance, under “municipal restructuring” a municipality or local body in a geographic area may make a restructuring proposal by submitting to the Minister a restructuring report containing a number of specific pieces of information including evidence of public consultation and local government support. If a restructuring proposal and report meets the requirements of the section, the Minister may by order implement the restructuring proposal in accordance with the regulations. However, the Lieutenant Governor in Council may make regulations setting out the powers the Minister may exercise in relation to implementation of a restructuring proposal, so the Minister's authority might be expanded in this area. As well, this process only applies to restructuring that is prescribed by Cabinet, and does not apply to the larger cities or the regional municipalities.

2.2.7 Manitoba Municipal Act

There is no explicit provision for consultation between the province and municipalities on matters affecting local government.

Nonetheless, Manitoba has traditionally consulted with its municipal associations and municipalities.

2.2.8 Winnipeg Charter

The Act eliminated a number of existing requirements for approvals by the Province. Under the *Charter*, matters that do not affect the provincial interest significantly do not require provincial approval (e.g., issuance of debentures, creation of sinking funds or appointment of special constables). If there is a clear provincial interest, provincial approval is required.

2.2.9 Saskatchewan Cities Act

Although there is no formal statutory mechanism for consultation under the *Cities Act*, the cities and the province have established a consultative forum. As well, in regard to amalgamations or restructures, a council may submit an application for boundary alterations or for amalgamation or restructuring, or a number of municipalities may prepare a restructuring agreement and submit it to the Minister. If there is no application made by a municipality, the Minister must consult with the councils of the city and other municipalities affected by proposed alteration of boundaries before altering the boundaries.

2.2.10 Alberta Municipal Government Act

There is no provision for consultation with the province on matters affecting local government. It should be noted the Act reserves to the Minister numerous powers respecting local government authority (e.g., grants in aid). Part 4 of the Act, "Formation, Fundamental Changes and Dissolution", contains several sections which provide for permissive consultation with local authorities regarding various changes to a municipality's status. For instance, Section 94 deals with the status of a municipality. The sections on amalgamation and dissolution of municipalities require provincial notification to the affected municipalities.

2.2.11 British Columbia *Community Charter*

Section 2(2) sets out the principles governing the relationship between municipalities and the provincial government, including that of mutual respect. Further to this principle, the provincial government has announced it will cause Crown corporations to pay the equivalent of municipal taxes, charges, fees and levies. The provincial government, prior to preparation of the draft *Charter*, directed Crown corporations to comply with local government bylaws and develop a long term compliance program.

The second principle of municipal-provincial relations in the *Community Charter* calls for consultation between the municipalities and the province on matters of mutual interest. The *Charter* provides for consultation in relation to changes to the *Charter*; changes to other legislation or regulations, policies or programs; revenue transfers; interprovincial, national or international issues or agreements; or other matters that affect local governments. As well, the Minister responsible and the UBCM are required to engage in negotiations respecting arrangements for consultation and must use all reasonable efforts to reach agreement.

The Minister responsible is obligated to consult with representatives of the UBCM before the Province proposes the amendment or repeal of municipal legislation or reduces the amount of revenue transfers. As well, the Minister responsible and the UBCM may enter into an arrangement respecting consultation on interprovincial, national or international issues or agreements; provincial or municipal enactments, policies and programs, or any other matter that affects local governments. If the UBCM requests, the Minister must engage in negotiations respecting an arrangement made and must use all reasonable efforts to reach agreement in negotiating an arrangement. Any municipality affected may apply to court to enforce a statutory

or agreed obligation between the Province and the municipality or the UBCM.

Cabinet may not use its power to amalgamate two or more existing municipalities unless the incorporation is approved by a vote in each of the existing municipalities.

There are new dispute resolution provisions ranging from mediation and conciliation to binding arbitration and final proposal arbitration for disputes between municipalities or between one or more municipalities and the province, its agencies or Crown corporations.

2.2.12 Yukon Municipal Act

Section 11 of Bill 69, amending the *Municipal Act*, assented to in December 1998, provides that the Government of the Yukon must consult with the Association of Yukon Communities on any direct amendments the Minister proposed to the Act.

2.2.13 Northwest Territories

No formal consultation process is established. (The new *Cities, Towns and Villages Act* and *Hamlets Act* provide for consultation if the minister is considering appointing an administrator. In an emergency, the minister can make an order effective for 45 days to appoint an administrator prior to consultation. The new *Charter Communities Act* continues the consultation requirements from the previous legislation for the establishment of a charter community and requires a vote by residents of the charter community approving any amendments to the *Community Charter*.

2.2.14 Other Legislation

City of St. John's Act, *Municipalities Act* (Newfoundland), *Municipalities Act* (Prince Edward Island), *City of Summerside Act*, and *Cities, Towns and Villages Act* (Nunavut) do not provide for consultation.

2.3 Amending Local Government Legislation

As the entity nearest to the needs and expectations of local citizens, local governments must have input into the amendment of local government legislation. Consultation lends legitimacy to the actions of both the provincial authorities and the local governments they empower. Nova Scotia, British Columbia and Yukon Territory have provided in provincial local government legislation that the provincial or territorial government, as the case may be, must consult with the affected municipalities in respect of new legislation affecting the municipalities [Section 518 and 519, Nova Scotia *Municipal Government Act*; Sections 276 and 277, British Columbia *Community Charter*; and Section 11, Yukon *Municipal Act*].

Ironically, legislation that includes consultation mechanisms may give rise to false expectations if a province is seen by the municipalities to ignore their submissions and impose change that has been condemned by the municipalities. According to the president of the UBCM, Frank Leonard, this is

the impression municipalities have in relation to proposed Bill 75-2003, (British Columbia), the “*Significant Projects Streamlining Act*”. In some provinces, on the other hand, a collaborative approach without legislation can be effective if there is a positive working relationship between the Province and its municipalities and associations. According to the Province of Manitoba, this approach has been effective to date.

The Province of Alberta consulted voluntarily with the public, including local governments, by way of the government’s Red, Amber, Green Book. After enactment of the Alberta *Municipal Government Act* in 1995, the legislature made 315 amendments. Of these, 220 were for clarification or interpretation, 22 were repeals, and 73 were substantively new. Many amendments to the *Municipal Government Act* resulted from integration of three other acts into the new municipal statute.

2.3.1 City of St. John’s Act, Municipalities Act (Newfoundland), Municipalities Act (Prince Edward Island), Municipalities Act (Charlottetown Area), City of Summerside Act, Charter of the Ville de Montreal and Cities and Towns Act (Quebec).

These Acts have no express mechanism for consultation with municipalities respecting amendment of the Act.

2.3.2 Municipalities Act (New Brunswick)

The Act has no express mechanism for consultation with municipalities respecting its amendment. A consultation agreement, however, has engendered an effective participatory process respecting the recently enacted legislation.

2.3.3 Nova Scotia Municipal Government Act

Part 21 of the Act, "General", refers to the right of municipalities to consult with the province regarding amendment of local government legislation *per se*. Section 518 provides:

518. The Minister shall consult with the executive of the Union of Nova Scotia Municipalities respecting any proposed amendment to this Act.

This reflects a change from the Working Paper of September 1997, which used permissive rather than mandatory language.

2.3.4 Ontario Municipal Act, 2001

The province and municipalities may consult on matters of mutual interest under the memorandum of understanding signed between the Minister responsible and the Association of Municipalities of Ontario. As well, Section 3(2) of the *Municipal Act, 2001* provides that a review of the Act must be initiated within five years of the previous review.

2.3.5 Manitoba Municipal Act

The Act has no express mechanism for consultation with municipalities respecting its amendment. Manitoba relies on a consultative and collaborative approach to relations with local governments. The City of Winnipeg, Association of Manitoba Municipalities, Manitoba Municipal Administrator's Association and other entities are consulted on major legislative, regulatory and program changes. These entities appear to be satisfied with the existing approach to consultation and do not believe that legislated consultation is required at this time.

2.3.6 Winnipeg

The *City of Winnipeg Charter* was developed between the city and the province in full partnership. The next phase of legislation affecting the City of Winnipeg will be undertaken on the same basis.

2.3.7 Saskatchewan Cities Act

The non-legislative consultative forum will be available for the cities to consult with the province.

2.3.8 Alberta Municipal Government Act

There do not appear to be provisions allowing for general consultation with a local government before amending local government legislation. The province is currently consulting with the municipal associations to establish a formal "amendment management plan". Recently, the province has entered into a memorandum of understanding with Edmonton and Calgary respecting proposed amendments affecting them.

2.3.9 British Columbia Community Charter

The legislation contains a principle in section 2 that there will be consultation in relation to changes to the *Charter*, changes to other legislation or regulations, policies or programs, or other matters that affect local governments. As well, the minister responsible and the UBCM are required to engage in negotiations respecting arrangements for consultation and must use all reasonable efforts to reach agreement. Section 276 provides that the minister responsible *must* consult with representatives of the UBCM before the provincial government proposes the amendment or repeal of municipal legislation. Consultation is defined as the provision of sufficient information respecting the changes and allowing the UBCM representatives sufficient time to consider the proposed changes and provide comments to the minister. Section 276 (3) obligates the minister to consider the comments provided by the representatives and, if requested, to respond to the comments.

2.3.10 Yukon Municipal Act

The new *Municipal Act* of the Yukon at Section 11 provides:

"The Government of the Yukon must consult with the Association of Yukon Communities on any direct amendments that a Minister proposes to this Act."

2.3.11 Nunavut and Northwest Territories

There is no express statutory mechanism for consultation with respect to amendments. (Any amendments to a *Community Charter* in the Northwest Territories require the approval of the residents of the Charter community. Under the Tlicho final agreement, the legislation creating communities may only be amended with the Tlicho government).

2.4 Joint Decision Making in Areas of Shared Responsibility

If a matter falls within the purview of both the provincial and local governments, the local government's empowering statute should be explicit as to shared responsibility. It should also ensure the local government is involved in decision making on such matters. It should provide mechanisms by which joint planning and decision making takes place, and for dispute resolution. It should be noted that Section 207 of the *Municipal Government Act* (Nova Scotia) provides for joint public hearings.

It is open to provincial legislatures to enact laws to enable communities and groups of communities to enter into bilateral agreements and policy consultations with the province or other entities.

Section 16 of the *British Columbia Constitution Act* provides that the Lieutenant Governor in Council may authorize an official on behalf of the province or an agency of the province to enter into an agreement authorized by an enactment with a municipality or other local authority.

Municipalities in British Columbia and the UBCM have entered into bilateral agreements with provincial ministries, evidencing that it is possible to achieve major elements of recognition by agreement as well as by legislation, or as a preliminary step toward legislative amendments. In the preamble to the *Protocol on Sharing Environmental Responsibilities, 1993*, the province recognized that local governments are an "independent, responsible and accountable level of government". Consultation requirements were set out in the document. The agreement did not bar the province from acting, since no bilateral agreement can have the legal effect of fettering the discretion of the Legislature to act.

The consultative language in the agreement suggests that there are opportunities to implement elements of a bilateral agreement policy, if the provincial will exists to recognize the contribution of local government. The new British Columbia *Community Charter* requires consultation on new legislation or alterations to grants, and where municipalities enter into a consultation agreement at their request. British Columbia's former *Local Government Act* spoke of consultation as a need, rather than a right or a requirement. Other examples in British Columbia include the formal

invitation from the province to local governments to participate in the First Nations treaty making process by acting as formal participants to advise and make recommendations to the Crown provincial.

2.4.1 Nova Scotia Municipal Government Act

Section 48(3) authorizes council to adopt policies "on any matter that the council considers conducive to the effective management of the municipality" in addition to matters specified in the Act or another statute. Read with Section 47(1), this could conceivably be interpreted as providing municipalities with some autonomy to regulate in a consistent manner with provincial authority as long as their policies were not in conflict with provincial policy. Section 173(2) of Part 7 "Bylaws" appears to affirm this principle in stating

"A by-law shall not be inconsistent with an enactment of the Province or of Canada."

In developing or amending the statements of provincial interest, Section 196 provides the municipalities with a right to make submissions. Section 199 provides that a provincial department must consider a municipality's planning documents when considering developments occurring within a municipality.

Section 518 requires the Minister to consult with the Union of Nova Scotia Municipalities respecting proposed amendments to the Act.

The Act contemplates that municipalities should develop management strategies in regard to the various areas of provincial interest laid out in Schedule B, with an eye to the stated goals in those statements. In this regard, there is some implicit suggestion that municipalities should consult with the province in terms of implementing plans that will impinge upon the areas of stated provincial interest, although the statements themselves are not intended to be rigid rules but rather guidelines.

Section 198(1) provides that municipal "planning documents adopted after the adoption of a statement of provincial interest shall be reasonably consistent with the statement". Section 198(2) empowers the Minister to make an order that council adopt or amend its planning documents so that they are reasonably consistent with the statements of provincial interest.

The Minister may also by order establish an "interim planning area" for a prescribed area when a council does not comply with a request that they amend planning documents to be consistent with a statement of provincial interest.

Although other sections provide for some consultation with local authorities, Section 200 establishes that the province's decision is determinative on issues that affect both provincial and municipal interests. Section 207(1) provides for joint public hearings.

2.4.2 Ontario Municipal Act, 2001

There is no mechanism in the Act that contemplates joint decision making in areas of shared responsibility between the province and local government. Section 14 provides that municipal bylaws are without effect to the extent they conflict with a provincial or federal act or regulation or other legislative instrument issued under the provincial or federal enactment. Municipal bylaws under the spheres of jurisdiction or natural person powers would be subject to express restrictions specified in provincial enactments (including the new Act itself). In regard to the matters that are of significant provincial interest as well as local interest, limits would be imposed with respect to specific powers for municipal bylaws dealing with the natural environment; facilitation of economic development; health, safety, protection and well being of people and protection of property; and nuisances, noise, odour, vibration elimination and dust.

2.4.3 Alberta Municipal Government Act

The Act does not refer explicitly to any joint decision making between municipalities and the province, except as regards restructures and activities which a municipality may carry out with the "authorization" of the Minister. *Spraytech* applies without pre-emption.

2.4.4 British Columbia Community Charter

Section 10 is a codification of the rule in *Spraytech*. That is, a municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw, by this, does not contravene the other enactment. In other words, the council can "meet or beat" the provincial statute or regulation, subject to express legislative language to the contrary.

In addition to the spheres of independent and autonomous jurisdiction within which a council may regulate, prohibit or require, there are five areas of provincial/municipal concurrent regulatory authority (public health, building regulation standards, protection of the natural environment, wildlife and prohibition of soil removal or deposit). In these areas, the UBCM or individual municipalities may make an agreement with the applicable minister authorizing one or more municipalities to exercise authority within the concurrent sphere, subject to conditions and restrictions in the agreement (e.g., air pollution). In lieu of an agreement, the UBCM or a municipality could, further to the consultation provisions in the *Charter*, develop with the minister a regulation under which the municipality could exercise authority in an area of concurrent regulatory authority subject to the regulation (e.g., building standards). In lieu of an agreement or regulation, an individual municipality can obtain approval for a specific bylaw in one of the areas of concurrent regulatory authority. Aside of the areas of concurrent authority, the codification of the rule in *Spraytech* applies to the relationship with provincial laws.

2.4.5 Yukon Municipal Act

Part 2 of the Act, dealing with the formation, dissolution and alteration of boundaries, provides for input from a local council and from the electorate under Section 17.

Under Section 27, municipalities may establish common administrative or planning structures within a community, region or area of the Yukon with other local governments, First Nations, provincial and federal governments. The participating governments retain control of the structures according to agreed-upon processes and include direct representation by participating governments.

The Yukon Municipal Board, established pursuant to Section 328, has representation from the Association of Yukon Communities and the Council of Yukon First Nations as well as appointees nominated by the Minister. It has jurisdiction to perform duties assigned to it under the *Municipal Act* and other Acts, to hear appeals, make inquiries, adjudicate and recommend generally under Section 330 and as to specific areas in Section 331. It may negotiate respecting municipal expropriation and make recommendations on boundary changes.

As well, *Spraytech* applies without pre-emption.

2.4.6 Other Jurisdictions

The rule in *Spraytech* applies without pre-emption. In regard to the Quebec municipalities, *Spraytech* arose from the decision of the Town of Hudson council to control pesticide application despite federal and provincial regulation in the field.

2.5 Provincial Compliance with Municipal Regulations

It is contrary to the principles of local self government for crown corporations or provincial agencies to be exempt from local government property taxes, land use regulations or other exercises of power. Although some statutes, such as land use and assessment acts, provide for compliance in expressly articulated circumstances, the general rule is that the crowns and agencies do not comply. Legislation which empowers municipalities should make explicit reference to the responsibility of the province or territory to comply with municipal regulations, subject to necessary exemptions to this general rule (such as exemption of crown corporation-owned hydroelectricity dams from local government expropriation). This is preferable to a provincial statute (such as the *Interpretation Act* of most of the provinces) simply stating the province will not be bound by local government enactments.

2.5.1 Manitoba *Municipal Act*

The Province has a long history of complying with municipal regulations and paying property tax “equivalencies” on land and improvements held by the Provincial Government, its crown corporations and agencies.

2.5.2 British Columbia *Charter*

The provincial government is causing crown corporations to pay the equivalent of municipal taxes, charges, fees and levies. Prior to the enactment of the *Community Charter*, the provincial government directed crown corporations to comply with local government bylaws and to develop a long term compliance program. This is to be reflected in an amendment to the *Interpretation*

Act to remove in most cases crown corporation immunity.

2.5.3 Yukon Municipal Act

The effect of the new Act is set out in Section 5. The Government of the Yukon is bound by the by-laws of a municipality, except as otherwise established by the Commissioner in Executive Council by regulation.

2.5.4 Other Provinces and Territories

There do not appear to be any mechanisms compelling provincial compliance with municipal regulations under the other new or proposed Acts. The common law and provincial *Interpretation Acts* provide for when and where the province and provincial agents are not bound by delegated legislation. A number of provinces have instituted programs (including special statutory provisions) requiring provincial, Crown corporation or provincial agency compliance with municipal enactments (including in relation to assessment, land use, and other matters).

2.6 Delegation of Adequate Powers

Provincial legislatures have a number of options for granting powers to the local governments they create. These include the grant of provincial residual powers in addition to traditional municipal powers, the transfer of general powers within spheres of jurisdiction or the express grant of rigid regulatory or other powers.

2.6.1 Grant of Broad Provincial Powers

Assignment to local governments of the plenary powers of the province, or of the residual powers of the province in addition to traditional municipal powers, would provide local governments with more autonomy and power. This option would be nearest to the concept of local self government if the constitution remains unchanged. Under this option, a province could grant its powers to local governments, except where the exercise of a power by a local government would be inconsistent with a lawful statute or regulation of the province or expressly pre-empted by provincial legislation. This approach is based on the decisions of the Judicial Committee of the Privy Council in *Hodge v. The Queen* (1883) 9. App. Cas. 117 and *Shannon v. Lower Mainland Dairy Products Board* [1938] A.C. 708.

The proposed *Community Charter* introduced as a draft Member's Bill by the Hon. Gordon Campbell, Leader of the Official Opposition, in the 1995 British Columbia Legislative Session (*Community Charter*, 1995), stated (on the basis of *Hodge* and *Shannon*) that a local government may act or exercise power in relation to any matter that is not expressly excluded from its competence by an enactment or limited by the *Charter* itself, within the legislative competence of the province, and not inconsistent with an enactment of the province or Canada. The *Charter* then went on to enumerate illustrative spheres of jurisdiction without limiting the ambit of the broad, plenary and residual powers. A similar proposal was set out in the AMO *Ontario Charter* (AMO,

1994, p. 8). The concept was also proposed in a 1989 policy statement published by the Alberta Municipal Statutes Review Committee.

Alberta local governments expressed concern that this approach would result in the transfer to local governments of former provincial duties and responsibilities. Some Alberta local government leaders were concerned that the transfer of broad powers would give rise to increased calls from the public for services and facilities (Inlow, Brand, *“The Municipal Government Act”*, Continuing Legal Education, 1994, p. 2).

The broad grant of the plenary powers of the province [as in the *“Model City Charter”* proposed by the City of Winnipeg] is the option nearest to the concept of local self government under the existing Constitution. It is also the option that is nearest to the “home rule” concept prevalent in the United States. Home rule is a statutory, express grant of authority by the state to municipalities and an acknowledgement in the legislation that there are certain areas of purely local concern in which local governments may operate free from state interference. As stated, most of the home rule schemes are based on state statutory and constitutional provisions under which municipalities, subject to the assent of the electors, adopt home rule authority to pass local laws relating to municipal affairs, governance and property, so long as the laws are consistent with the constitution and general statutes of the state. The details of home rule authority are as different as the thousands of cities and dozens of states involved. Home rule is defined as “... an essential part of a flexible dialectic of autonomy, interdependence, and reciprocity between centre and periphery (*i.e.*, between the state and the local government)”. (Libonati, Michael, “Home Rule: An essay on pluralism”, 1989, Washington Law Review, at page 51).

The dialogue between the municipalities and the state governments is complex. Three case studies, Chicago, New Jersey and New York, are of interest in relation to “broad powers”.

Under the Illinois Constitution, Article VII, Section 6(i), “home rule units may exercise and perform concurrently with the state any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the state’s exercise to be exclusive”. There must be a deliberate act of the legislature to displace home rule authority.

In *Chicago v. Pollution Control Board* (1974), Chicago failed to convince the Supreme Court that the City under home rule was exempt from Illinois pollution controls. Although pollution control is not exclusively a state concern, the court found that the home rule city could at most enact ordinances currently to meet the minimum standards established by the state. In *Des Plaines v. Chicago and North Western Railway Company* (1976), the court found that regulation of train whistles was a matter of state-wide concern and not a local matter that related to municipal governance and affairs under home rule. The state had enacted the 1975 Illinois Environmental Protection Act, establishing a state-wide concern. In *Cook County v. John Sexton Contractors* (1979), the court found that sanitary landfill operators were subject to a Cook County ordinance, noting that a home rule local government may legislate concurrently with the state on environmental control so long as the minimum standards established by the legislature are met.

In 1988, the Supreme Court applied three tests for establishing “state-wide concern”:

1. To what extent does the conduct in question affect matters outside home rule?
2. What units of government have the more vital interest in its solution?
3. What role is traditionally played by local, as opposed to state wide authorities in dealing with it?

The court held that the municipality could not under its home rule jurisdiction pre-empt the state minimum wage legislation even in respect to the municipality’s construction of its own intake extension for its water treatment plant. In regard to the first test, the court found that reduced wages for public works could depress prevailing wages in the county and thereby affect matters outside the home rule municipality. In regard to the second test, the court found that the state has a more vital state-wide interest in respect of minimum wages, as established under the state minimum wage legislation. In regard to the third test, the court confirmed that the state traditional role in respect of minimum wages superseded any interest of the municipality.

The New Jersey approach is based on two precepts. First, the state legislature can pre-empt local regulatory authority. Second, on the other hand, home rule municipalities can be given local veto authority over specified matters, such as the location of hazardous waste facilities. The state legislation further provides for state grants to capacitate municipalities (*eg.*, to obtain consultants and lawyers to participate in the administrative tribunal hearings dealing with hazardous waste facility siting).

In the State of New York, home rule is based on the bill of rights for local governments recognized in the constitution of the state. The bill of rights sets out express powers, privileges and protections for local governments which are to be “provided for by the legislature and liberally construed by the courts” (*Stinson, Joe* “Home Rule Authority of New York Municipalities in the Land Use Context”, 1997, Pace University School of Law Review, at page 2). According to Stinson, home rule municipalities have the authority to pass local bylaws under home rule and the authority to supersede certain general state statutes. The state legislation supersedes municipal legislation if the state statute specifies it is applicable only to certain municipalities, if the state statute does not apply similarly to all cities, or where the state legislature has pre-empted local authority by stating an express or implied intention to do so. It is Mr. Stinson’s opinion that the home rule authority of municipalities is a more flexible source of authority for regulating locally than is found under the older general municipal legislation that expressly delegates regulatory authority.

In New York, local laws must not be inconsistent with the constitution or general state laws. The state may pre-empt local authority by expressly stating that it wishes to occupy the field or by setting out a comprehensive detailed statutory scheme. For example, the New York Court of Appeals declared a municipal ordinance invalid which required power plant developers to obtain a licence from the municipality. The court found that the ordinance was pre-empted by general state law and inconsistent with other state enactments.

In New York, as well, there are limited circumstances where a municipality may exercise “supersession” authority even if the local ordinance is inconsistent with a general state statute. In *Kamhi v. Town of Yorkton* (1989), the Court of Appeals found, first, that a municipal parkland dedication ordinance was inconsistent with the state law. The court, second, had to determine whether the municipal ordinance is a proper exercise of “supersession” authority. That is, the home rule authority contemplates a limited exception for municipal laws that fall within constitutional authority to supersede state laws. Supersession is allowed only in a very narrow, expressly defined area of purely local concern. In *Kamhi*, the court found that the local parkland dedication requirement was permitted under the narrow wording of the municipal home rule supersession authority.

Under the New York State Constitution, municipal powers may be diminished by approval of the governor during one calendar year and reapproved in the following year [*New York Constitution*, Article IX, Section 1(a)]. The state may pre-empt local regulatory authority by an act of the legislature, subject to public debate [*New York Constitution*, Article IX, Section 2(b)(ii)]. One of the leading home rule cases in the United States is the New York Court of Appeals’ decision in *Adler v. Deegan* (1929). In that case, the court considered the relationship between the state *multiple dwelling law* of 1929 and the municipality’s authority under home rule. The court found that the home rule provisions of the constitution do not restrict the power of the legislature to enact laws relating to matters other than property, affairs or government of cities, if the subject is substantially a matter of state concern. The legislature has the authority to act even if the subject matter is “intermingled with” issues of a parochial nature. The court held further that if a matter is partly of state-wide interest and partly of local interest, the municipality is free to act until the state has intervened. Nonetheless, the power of a municipality is, in the case of dual jurisdiction, subordinate to the power of the state, and the state power may be exerted without restraint to the extent that the two can work in harmony together.

2.6.2 Spheres of Jurisdiction

The second approach to granting powers to local governments is to prescribe spheres of jurisdiction within which local governments are free to regulate, require or prohibit. This approach was promoted in the 1990 policy statement of the Alberta Municipal Statutes Review Committee. The paper recommended that instead of detailing express powers the provincial legislation should merely enumerate areas of jurisdiction and then set out a code of regulatory powers.

The Alberta *Municipal Government Act* describes the “purposes” of a municipality as providing good government, providing necessary or desirable services and other things, and developing and maintaining safe and viable communities (MGA, Section 3, S.A. 1994 cM26.1). Section 7 then provides that a council may pass bylaws for “municipal purposes” respecting a number of enumerated matters, such as the “safety, health and welfare of people and the protection of people and property”. This “spheres of jurisdiction” approach is found in the recently enacted legislation in Ontario, Manitoba, Winnipeg, Saskatchewan (Cities Act), British Columbia, Yukon Territory, Northwest Territory and Nunavut Territory. As well, the Nova Scotia *Municipal Government Act* gives broad authority to councils including to enact bylaws and to govern themselves in such fashion as their councils deem appropriate within their jurisdiction.

This approach was received in Alberta "with reluctance by smaller centres which were beginning to see the Provincial Government withdrawing its historical rural support service such as model bylaws and regulatory advice. Now even the legislation would be providing no guidance as to regulatory content" (Inlow, 1994, p. 2). Nonetheless, the Alberta *Municipal Government Act* sets out in Section 7 the spheres of jurisdiction which must be approached from the perspective of the "municipal purposes" defined in Section 3.

Legislation in British Columbia and the Yukon provides that the purposes of local government are to provide "good government" and the services, facilities and things that the local government considers are necessary or desirable for all or part of its community (B.C. *Community Charter*, s.2; Yukon *Municipal Act*, Section 3).

2.6.3 Express Detailed Powers

The traditional approach to granting powers to local governments is to provide in a provincial statute for detailed, express empowering provisions for each type of local bylaw or resolution. This is the approach described in *Re Howard and Toronto* [1928] 1 D.L.R. 952 (Ontario Court of Appeal).

This approach is the furthest from the concept of local self government in terms of autonomy, jurisdiction, capacity to meet local needs, and freedom from direct control by a provincial government. It dominates the provincial municipal acts in Newfoundland and Prince Edward Island.

2.6.4 Corporate Natural Person Powers

A province or territory may constitute a municipality as a corporation that has the capacity, rights and powers of a natural person. This enables the courts to construe municipal corporate powers on the basis of court precedents respecting natural person powers. The courts have held that natural person powers include the powers to "purchase, own and use property, sue and be sued, enter into contracts ... and enter into contracts of indemnity" (Liteplo, Ron, *The Municipal Government Act*, Continuing Legal Education, 1994, p. 4).

Corporate natural person powers allow local governments to meet local needs and emerging issues in more ways than under the traditional grant of conditional corporate powers. With such powers, a local government could incorporate a subsidiary, buy shares in an existing corporation or create or buy shares in not-for-profit organizations. As well, a corporation with natural person powers may (subject to other provincial legislation) give grants in aid or transfer municipal resources in order to meet local needs.

Generally, natural person powers do not give municipalities more jurisdiction than they otherwise have: such powers merely amplify the corporate capacity in relation to already delegated powers. From a policy perspective, greater corporate powers are generally balanced by greater "shareholders'

remedies" (i.e., public participation, accountability, transparency). For example, the new British Columbia legislation provides that if a local government intends to incur liability through entering a public-private partnering agreement for longer than 5 years, an elector approval opportunity must be provided.

Most existing *Municipal Acts* do not facilitate public private partnerships between municipalities and the private sector. The limitation on lease or service contract terms, requirements for the assent of the electors, prohibitions against aiding private commercial enterprises and other provisions have resulted in many proposed public private partnerships not proceeding except where the applicable province has enacted special enabling legislation. (It should be noted that Section 61 of the *Municipal Government Act* (Nova Scotia) expressly provides for public private partnerships).

The Alberta *Municipal Government Act*, Section 1(1)(t) defines "natural person powers" as "the capacity, rights, powers and privileges of a natural person". The British Columbia *Community Charter* and other recently enacted municipal acts provide for similar powers. In 1995 the Columbia Basin Trust was vested with natural person powers under Section 2 of the *Columbia Basin Trust Act* (British Columbia), as 81 other entities had been previously.

Under the Alberta Act, the "scope for innovative new 'partnership' arrangements is vastly increased. For example, under the old MGA, a public housing project had to be wholly owned by the municipality or a statutorily authorized housing authority or "municipal housing company": Sections 128, 129. Under the new MGA a municipality could form a partnership or joint venture with a private enterprise for the same purposes, and tailor the obligations to suit the individual circumstances" (Liteplo, 1994, p. 8). The Minister of Municipal Affairs has the authority under Section 603(1)(a) of the Act to make regulations to restrict the ambit of municipal grants.

The new Yukon *Municipal Act* provides under Section 4 for municipalities as corporations to have the rights, powers and privileges of a natural person, although it may not establish or hold shares or memberships in another corporation that does anything the municipality does not itself have the power to do.

Under the *Cities and Towns Act* and the *Charter of the Ville de Montreal*, municipalities in Quebec are "legal persons". The *Civil Code Act* provides as follows:

301. Legal persons have full enjoyment of civil rights.
302. Every legal person has a patrimony which may, to the extent provided by law, be divided or appropriated to a purpose. It also has the extra – patrimonial rights and obligations flowing from its nature.
303. Legal persons have capacity to exercise all their rights, and the provisions of this Code respecting the exercise of civil rights by natural persons are applicable to them, adapted as required.

They have no incapacities other than those which may result from their nature or from an express provision of law.

2.6.5 Entrenchment of Legislation

A number of the principles of local self government are based on basic powers being prescribed by constitution or statute without being undermined or limited by central or regional authorities. In the absence of amendments to the Canadian Constitution, entrenchment of legislation granting powers to municipal institutions is unprecedented.

2.6.6 City of St. John's Act

The Act contains express, detailed powers prescribed by the legislature. These powers are limited and the city would have to ask the legislative assembly for new powers when new requirements arise. There are no powers of a natural person and corporate powers are limited.

2.6.7 Municipalities Act (Newfoundland)

The Act contains express, detailed powers prescribed by the legislature. These powers are limited and the city would have to ask the legislative assembly for new powers when new requirements arise. There are no powers of a natural person and corporate powers are limited.

2.6.8 Nova Scotia Municipal Government Act

The statute's purpose statement in Section 2 recognizes that a local council needs broad authority to pass bylaws and an enhanced ability to respond to present and future issues. The Act provides for omnibus authority to make bylaw for "health, well being, safety and protection of persons" and "safety and protection of property". Such powers, to the extent not limited by express, detailed grants of power in other sections of the Act, may be interpreted in the context of the Supreme Court of Canada's interpretation of the omnibus powers in the Quebec legislation in *Spraytech*. This is subject to the regulation of civil and common law rights being limited by the Alberta Court of Appeal decision in *United Tax Drivers* (discussed in Section 2.6.17 of this paper).

The Act is specific as to purposes and procedures by which council may regulate through bylaws. Section 172 lists categories of purposes for which council may make by-laws, which are stated broadly, as in 172(1)(e), "transport and transport systems"; or narrowly as in 172(1)(j)(ii), where "council may make by-laws, for municipal purposes. The Union of Nova Scotia Municipalities expressly requested the Province to limit jurisdiction over pesticides to what is set out in Section 172(1)(j)(ii) (allowing regulation by not prohibition of pesticide applications); on the other hand, the Province gave Halifax Regional Municipality broader powers to regulate pesticides (under Section 533) at the request of the municipality.

Under Section 47(5) of the *Municipal Government Act*, municipalities may levy property taxes and impose licence and other fees. Municipalities are given the power to contract and carry out other "corporate" powers.

2.6.9 Municipalities Act (Prince Edward Island)

The Act contains express, detailed powers prescribed by the legislature. These powers are limited and the city would have to ask the legislative assembly for new powers when new requirements arise. There are no powers of a natural person and corporate powers are limited.

2.6.10 Municipalities Act (Charlottetown Area) and City of Summerside Act

These Acts contain expressed, detailed powers prescribed by the legislature. These powers are limited and the city would have to ask the legislative assembly for new powers when new requirements arise. There are no powers of a natural person and corporate powers are limited.

2.6.11 Municipalities Act (New Brunswick)

The Act contains expressed, detailed powers prescribed by the legislature. These powers are limited and the city would have to ask the legislative assembly for new powers when new requirements arise. There are no powers of a natural person and corporate powers are limited.

2.6.12 Charter of the Ville de Montreal and Quebec Cities and Towns Act

These statutes contain express, detailed powers prescribed by the legislature as well as omnibus powers. The *Cities and Towns Act*, which applies to Montreal under Section 4 of the *Charter* of the Ville de Montreal contains “omnibus” powers (e.g., “peace, order, good government, health ...”), which moved the Supreme Court of Canada to find authority for pesticide control in *Spraytech*. Article 410 of the *Cities and Towns Act* provides: “The council may make by-laws: (1) To secure peace, order, good government, health and general welfare in the territory of the municipality, provided such bylaws are not contrary to the laws of Canada, or of Quebec, nor inconsistent with any special provision of this Act or of the Charter.” Montreal and all other municipalities governed by the *Cities and Towns Act* are legal persons with legal person powers as determined by the *Civil Code Act*, Article 298 to 320 (see section 2.6.4).

2.6.13 Ontario Municipal Act, 2001

The province of Ontario in an August 2001 brochure accompanying the introduction of the Act stated municipalities will have “broader areas of authority, or ‘spheres of jurisdiction’ reflecting current municipal activities but expressed in a more general form to give councils more flexibility to deal with local circumstances. This would avoid the need for amendments to the act every time a new local issue emerges”.

There are areas of authority, focusing on service delivery and strictly *local regulatory activities*. The province has removed from the 1998 draft three “areas” where the potential for overlap with provincial jurisdiction is the greatest. Accordingly, municipalities may exercise powers within 10 areas (primarily service areas), including, for example, waste management, transportation systems, drainage and flood control, parking, economic development services, structures not

covered by the building code, animals, etc. In regard to the areas that are of provincial interest as well as local interest, restrictions are imposed with respect to specific powers for municipal bylaws dealing with the natural environment; facilitation of economic development; health, safety, protection and well being of people and protection of property; and nuisances, noise, odour, vibration elimination and dust. The legislation is subject to the problems created by the *United Taxi Drivers* case (see Section 2.6.17).

The legislation provides that a municipal bylaw cannot conflict with a provincial act or regulation. Municipal bylaws under the areas of jurisdiction or natural person powers are subject to express restrictions specified in provincial enactments (including the new municipal act). As well, there are express limitations on licensing and user fee powers.

2.6.14 Manitoba Municipal Act

A Manitoba municipality is, under this Act, endowed with the rights and subject to the liabilities of a corporation and may exercise these powers for municipal purposes. Without limiting the generality of that endowment (which is found in Section 250), the sections following go on to delineate some particular powers which are inherent in this corporate power. This part also goes on to address powers more particular to municipalities such as expropriation, collection of fees, the ability to enter upon land, etc.

Part 7, which deals with bylaws, indicates the spheres of jurisdiction in which a council may pass bylaws for municipal purposes. Section 231 of that part states:

231. The power given to a council under this Division to pass bylaws is stated in general terms
- (a) to give broad authority to the council and to respect its right to govern the municipality in whatever way the council considers appropriate within the jurisdiction given to it under this and other Acts; and
 - (b) to enhance the ability of the council to respond to present and future issues in the municipality.

Section 231 should be helpful in terms of how courts will interpret the broad powers conferred under Part 7 as it shows a legislative intention to grant the municipalities powers that are broad and remedial. The legislation as drafted is subject to the problems created by the *United Taxi Drivers* case (see Section 2.6.17).

2.6.15 Saskatchewan City Act

Saskatchewan takes the same approach as Alberta, with spheres of jurisdiction and natural person powers.

2.6.16 Winnipeg

Winnipeg takes the same approach as Alberta, with spheres of jurisdiction and natural person powers.

2.6.17 Alberta Municipal Government Act

The Alberta Act defines the purposes of a municipality. Section 3 describes them as:

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

Under Section 6 of the Act, Alberta has given municipalities natural person powers except to the extent they are expressly limited in the Act or any other enactment. Section 5 also states that municipalities have powers granted by "both this and other enactments of the Alberta Legislature". Part 2, "Bylaws", deals with the matters for which council may pass bylaws and what those bylaws may do. Both the jurisdiction and the powers under the Bylaw section are extremely broad. This is confirmed in Section 9, as follows:

9. The power to pass bylaws under this Division is stated in general terms to
 - (a) give broad authority to councils and to respect their right to govern municipalities in whatever way the councils consider appropriate within the jurisdiction given to them under this or any other enactment; and
 - (b) enhance the ability to councils to respond to present and future issues in their municipalities.

The two concerns about this approach under the Alberta legislation are that

1. if the courts continue to uphold local government bylaws or resolutions where supported by express authority, as opposed to taking a liberal and remedial interpretation of the broad authority or upholding by necessary implication, delegated municipalities will only be able to act pursuant to the eight specific powers, as those powers are expressly articulated, and
2. the restriction of Section 7 to "municipal purposes" may be construed to limit the legislative powers of local governments to only the three enumerated purposes.

In the first major court case [*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary*] addressing the validity of a municipal bylaw under the recently enacted *Municipal Government Act* of Alberta (the "MGA"), the Alberta Court of Appeal has found that the new legislation fails to grant the authority to municipalities to limit the number of taxi business licenses. The Court of Appeal stated that the licence limitation likely would have been upheld under the former express, detailed legislation. The Alberta Court of Appeal held that a number of portions of the City of Calgary *Taxi Business Bylaw* were beyond the powers of the City under the MGA. In effect, the Court found that the City acted beyond its jurisdiction by making laws to freeze and limit the number of taxi plate licenses and transfers or assignments of them in a manner that was not authorized by the MGA. The court decision raises serious issues for the municipalities in provinces and territories that are subject to, or are about to subject to, the Alberta approach to delegation of powers to municipalities. This case raises serious questions about the efficacy of the "spheres of jurisdiction" language in the Alberta MGA and in the Yukon, Nunavut, Saskatchewan, Manitoba and Ontario municipal legislation which is modeled on the Alberta MGA.

The Court of Appeal found that it could not sever the bad portions of the bylaw from the remainder, so the Court suspended the entire bylaw to allow the City to "reconsider and determine its course with respect to the impugned portions". The City is concerned that the new MGA repealed the express, detailed provisions of the old MGA which likely would have allowed the enactment of the bylaw. Since the old MGA is gone and the new MGA does not grant adequate powers, the City cannot provide for the freezing and limiting of the taxi business licenses or control the transfer or assignment of the licenses. Accordingly, the City has appealed to the Supreme Court of Canada. Officials from the other provinces and territories where the new legislation is modeled on the Alberta MGA filed affidavits in the Supreme Court of Canada to confirm the significant national importance of the appeal. The appeal was heard by the Supreme Court of Canada in December 2003.

The Court of Appeal construed the bylaw in accordance with the interpretation rules laid down by the Supreme Court of Canada. First, courts should not find that a municipal bylaw is beyond the Council's powers in the absence of a clear demonstration to the contrary. Second, a court may imply powers that are not expressly conferred, in which case the courts must apply the "benevolent construction" approach and confer adequate powers by implication. Third, rules of interpretation do not allow the courts to substitute their views for those of elected council members: *Spraytech*.

Applying these rules of construction, the Court considered whether it could interpret the phraseology of the new MGA to allow a bylaw to limit the number of taxi plate licences in the City of Calgary. In the absence of express, detailed powers to limit the number of licences (as existed under the old MGA), the question was whether a benevolent construction of the new MGA would allow the bylaw to limit the number of licences by implication. The trial judge, and O'Leary, J.A. in dissent, found that the new MGA provisions are broad enough to empower the City to limit the number of licences on the basis of the legislature's intent that the general powers in the MGA are to be given a broad and generous interpretation, and that the City Council has the discretion to determine how to exercise its power to prohibit.

The majority decision of the Court of Appeal turns on its finding that the power to prohibit does not encompass the power to limit the number of licences; the *MGA* does not by implication give the City the authority to limit the number of business licences issued. Further, the statutory power to prohibit carrying on a trade without a licence does not go so far as to confer the authority to prohibit the business activity. The Alberta Court of Appeal referred to the Supreme Court of Canada decision in *Greenbaum v. Toronto*. In that case, the Supreme Court of Canada found that a municipality's jurisdiction is limited to authority expressly delegated by the provincial Legislature and that the benevolent construction is to be employed *except* where the power restricts common law or civil rights. In the *Greenbaum* case, the Supreme Court of Canada quoted Davies J. in *Hamilton v. Hamilton Distiller Co.* (1907) 39 S.C.R. 239, at p.249:

In interpreting this legislation I would not desire to apply the technical or strict canons of construction sometimes applied to legislation authorizing taxation. I think the sections are, considering the subject matter and the intention obviously in view, entitled to a broad and reasonable if not, as Lord Chief Justice Russell said in *Cruse v. Johnson* [[1898] 2 Q.B. 91], at p.99, a "benevolent construction", and if the language used fell short of expressly conferring the powers claimed, but did not confer them by a fair and reasonable implication I would not hesitate to adopt the construction sanctioned by the implication.

As a result, the Alberta Court of Appeal looked at the purpose and wording of the Alberta *Municipal Government Act* to determine whether or not Calgary had been empowered to enact the bylaw, and applied the stricter rule of construction as Calgary was attempting to use a power which restricts common law or civil rights.

This "somewhat stricter rule" was also applied by the British Columbia Court of Appeal in *Denman Island Local Trust Committee v. 4064 Investments Ltd.* (2001) BCCA 736.

As stated, the decision of the Supreme Court of Canada will be important for most of the provinces that have "spheres of jurisdiction". The *Taxi Business Bylaw* may well be saved by the existence of Section 715 and 717 of the *Municipal Government Act* (which have not be rescinded). These sections provide that a bylaw or licence, permit approvals and authorizations passed by a council under the former municipal legislation (as in the case of this bylaw) continue with the same effect as if passed under the existing MGA. If the Supreme Court of Canada finds that the spheres of jurisdiction and "regulate and prohibit" powers are inadequate to authorize the taxi licence restrictions, but that the bylaw is saved by the transition provisions, municipalities relying on the spheres of jurisdiction and "regulate and prohibit" powers of their provincial and territorial statutes will in the absence of similar transition provisions face uncertainty with respect to the scope of their legislative authority.

2.6.18 British Columbia Community Charter

Section 8 and the other general powers set out in the rest of Part 2 of the British Columbia *Community Charter* replace over one hundred express, prescriptive sections of the *Local Government Act* with respect to regulatory authority. The result is "one-stop shopping" for basic

municipal service and regulatory powers, authority and jurisdiction. The *Charter* provides for broader authority instead of detailed, prescribed powers. Municipalities are able to use the fundamental and general building blocks (such as the authority to regulate or require within a sphere; establish conditions and variations; require a permit; impose a fee; and require security), rather than acting only pursuant to a particular power where all of those modalities are spelled out in relation to that power (e.g., where the former *Local Government Act* specifically authorized regulation of the sale of wildflowers).

Section 8(3) creates spheres within which a council may by bylaw regulate, prohibit or impose requirements (e.g., “animals and activities in relation to animals”). These spheres are intended to enable municipalities to respond to future needs to regulate without requiring *ad hoc* amendments to the *Charter* in the future. These omnibus provisions are more generous than in any other provincial or territorial municipal legislation (other than the proposed *Winnipeg City Charter*), and are worded on the basis of the empowerment thesis of the reasons for judgment in the Supreme Court of Canada decision in *Spraytech v. Hudson (Town)*.

There is a new general authority to “require” by bylaw. This would empower a council, for example, to require persons to undertake work or incur expenses as provided in the bylaw (e.g., clear ice and snow from sidewalks in front of business premises). It also includes the power to require persons to use a municipal service (e.g., to connect to a sewer system) or to have insurance if providing a service on behalf of or in lieu of the municipality. Councils could impose requirements in relation to regulating, prohibiting or providing a service, or they could impose bare requirements.

Section 8(2) states that a municipality may provide any service. There are no limitations in regard to what services a municipality may provide (subject to the *Charter* and constitutionality). There are restrictions and limitations on services in the recent municipal legislation of other provinces. A municipality may provide any service directly or through another person. This, combined with natural person powers, facilitates public private partnerships, contracting out, cooperation with other municipalities or public authorities, and other approaches that the council considers desirable. A council is no longer required to establish every service by bylaw.

One of the spheres of regulatory authority (in respect of which a council may regulate, prohibit or require) is that of “municipal services”. Accordingly, a council could by bylaw impose prohibitions or requirements in relation to roads, parks, recreation facilities, solid waste, or other services.

In addition to the spheres of independent and autonomous jurisdiction within which a council may regulate, prohibit or require, there are five areas of provincial-municipal concurrent regulatory authority (public health, building regulation standards, protection of the natural environment, wildlife, and prohibition of soil removal or deposit) [section 9]. Concurrent authority is discussed in greater detail in Section 2.4.4.

2.6.19 Yukon Municipal Act

The spheres of jurisdiction are the same as under the Alberta *Municipal Government Act*.

Through amendments in Bill 69 assented to on December 7, 1998, the Act provides at Section 4:

4. (1) A municipality is a corporation and has, for the exercise of its powers under this or any other Act, all the rights and liabilities of a corporation.
- (2) A municipality has, for the exercise of its powers under this or any other Act, the capacity and, subject to this Act, the rights, powers and privileges of a natural person.
- (3) Despite subsections (1) and (2), a municipality cannot establish, or be a shareholder or member of, another corporation that does anything that the municipality does not itself have the legal power or right or duty to do.

2.6.20 Nunavut and Northwest Territories

Nunavut and Northwest Territories take the same approach as Alberta.

2.7 Delegation of Adequate Financial Resources

It is a principle of local self government that municipalities have adequate financial resources to carry out their responsibilities as they see fit. No community should be obliged to accept a transfer of new power or duties from the province unless the community consents to that transfer on the basis of allocation of new financial or other resources required by the community to exercise the new power or fulfil the new duty. This is consistent with the principles of consultation and participation in the legislative process.

The IULA and the European Charter principles in relation to municipal financial resources read as follows:

IULA, Article 9:

“1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.”

“3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.”

“6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.”

European Charter, Article 8:

“1. Local authorities shall be entitled to adequate financial resources of their own, distinct from those of other levels of government and to dispose freely of such revenue within the framework of their powers.”

Municipalities in Canada for a number of reasons do not have adequate financial resources to provide good government and services locally. A comparison of the provincial and territorial legislation across Canada that empowers municipalities indicates that Canadian municipalities do not have financial powers or resources comparable to those of their counterparts in the United States and Europe. Municipalities in Canada rely principally on the real property tax, user fees, and a number of other tools that raise comparatively small amounts compared to the property tax and user fees.

According to Harry Kitchen, [Harry Kitchen, Department of Economics, Trent University, Report to FCM, May 2002] municipal “own source revenue” increased significantly between 1988 and 2000, from 77 percent to 82 percent. At the same time, provinces gave municipalities no new sources of revenues. According to Harry Kitchen, property taxation increased from 48.6 percent of all municipal revenues to 53.3 percent between 1988 and 2000. In Nova Scotia, property taxes in 1998 accounted for 70.4 percent of all municipal revenues.

In the 2003 submission to the House of Commons Standing Committee on Finance, the FCM stated that:

“Canadian municipal governments have far fewer tools with which to raise revenue as compared to other orders of government. The fiscal tool kit available to municipal governments in the United States and other organizations for economic cooperation and development (OECD) countries is much more generous and flexible than that available to Canadian municipalities [FCM, 2001 “Early Warning: Will Canadian Cities Compete?” Ottawa: Federation of Canadian Municipalities and the National Roundtable on the Environment and the Economy and FCM 2002: A Partnership for Competitive Cities and Healthy Communities: Ottawa: Federation of Canadian Municipalities].

User fees, according to Harry Kitchen, grew from 20 percent of all municipal revenues in 1988 to 21.3 by 2000. Since 1998 the provinces have further reduced grants. (In 2001 the federal infrastructure program was initiated. Infrastructure Canada agreements are in place with the provinces and territories to administer the program and recommend projects for funding. The program will not, however, enable municipalities in a major way to catch up with the infrastructure capital deficits, to displace property taxation or user fees, or to expand revenues from new sources.)

2.7.1 Disengagement From Services

The federal and provincial governments are, in the context of their debts and deficits, withdrawing from areas of public policy and service. They are privatizing, downloading, and disengaging from certain functions, such as highway maintenance, bridges, policing, court

services, administration of justice, airports, wharves and harbours, and social programs. In order to meet emerging local needs, the municipalities are forced, by legislation or practicality, to fill the void resulting from the federal and provincial abdication.

In the report prepared for the Union of British Columbia Municipalities on September 27, 1999, Harry Kitchen, of the Department of Economics, Trent University came to the following conclusions:

1. the federal and provincial governments have disengaged from a number of areas of spending and the municipalities have filled the vacuum in the absence of other transferees; the size of the municipal sector as a percentage of gross domestic provincial product fell from 4.6 to 4.3 percent from 1988 to 2000 while federal spending declined from 23 to 17.2 percent and provincial spending from 21.3 to 19.1 percent;
2. the property tax has “increased noticeably in relative importance as a revenue generator”;
3. user fees fund a growing proportion of public transit and recreation;
4. provincial grants to municipalities have declined, causing municipalities to increase reliance on property taxes and other “own source revenues”;
5. in the future, property taxes and user fees will become even more important as a revenue source for municipalities;
6. nonetheless, municipalities are constrained by provincial legislation, centralized approvals, legislation and policy [Kitchen, 1999, *Provincial-Municipal Fiscal Trends*].

From 1999 to 2003, federal government revenues increased 16%, provincial/territorial revenues 21% and municipal governments only 4%. [FCM budget submission to Minister of Finance Ralph Goodale, January 2004]

“The reason for this slow revenue growth is that the property tax is relatively unresponsive to economic performance unlike the “growth taxes” other governments collect [FCM 2003 “Fiscal Gap Continues to Grow, Municipalities Need New Deal” (based on Statistics Canada daily report dated June 18, 2003)].

Since 1995, Ontario shifted some previously provincial responsibilities or provincial-municipal responsibilities to the municipalities, including property assessment; airports; ferries; GO transit; municipal transit; social housing; and other services and facilities. According to Harry Kitchen, although Ontario off-loaded increased liability, the municipalities in return received negligible control over public policy or standards with respect to most of these responsibilities (especially social housing, ambulance services, highways, policing and assessment). At the same time, grants

were reduced significantly. This resulted in greater pressure on the property tax and user fees.

In British Columbia, the province eliminated municipal taxation on railways and confiscated revenues from speeding ticket fines.

The federal government has also transferred services and responsibilities to municipalities, including airports and ports and harbours. In many cases, this imposition has had a significant effect on the affected communities. In Port Hardy, four and a half hours from the next nearest airport, keeping the airport open and taking on its deficits as of the year of transfer would cost the equivalent of an annual property tax increase of 24 per cent.

The increased transfer of government services and the reduction or elimination of revenue sharing or transfer payments have eroded the capacity of municipal institutions to manage local public affairs.

2.7.2 Infrastructure and Service Upgrades

Capital for municipal infrastructure has fallen far behind need. Most municipal infrastructure has served nearly 80 percent of its useful service life [Canadian Council of Professional Engineers, 2003, “Civil Infrastructure Systems Technology Roadmap: A national consensus on conserving Canadian community lifelines” (www.ccpe.ca)]. The requirements of residents for municipal works and services, including transportation, transit, water supply, wastewater treatment, solid waste disposal, and recreation and cultural facilities, cannot be satisfied by municipal financial capacity. The difference between the needs of citizens and current fiscal capacity exceeds \$60 billion, increasing at a rate of 3.3 percent per annum [Federation of Canadian Municipalities, 2003, “A New Deal for Community Prosperity and Well Being: Submission to the House of Commons Standing Committee on Finance – Pre Budget Consultations, September 2003” (www.fcm.ca/newfcm/java/hoc.htm)].

Examples of capital investment deficits are (as of 2000): water facilities - \$16.5 billion (Canadian Water and Wastewater Association); waste water facilities - \$36.8 billion (Canadian Water and Wastewater Association); roads - \$9 billion (National Research Council); public transit - \$6.8 billion for the period 2002-2006 (Canadian Urban Transit Association, 2002) and affordable housing - \$10 billion (FCM, Report on Homelessness and Affordable Housing, June 1999).

As well, policing and fire fighting service costs increase as a function of labour relations, population growth and the emergence of such new issues as hazardous material fires or explosions.

While business corporations generally create reserves against future capital, repair and maintenance costs, municipalities are struggling to catch up with overwhelming existing needs for replacing, repairing and maintaining infrastructure.

2.7.3 City of St. John’s Act

The City of St. John's Act contains authority for business tax; water tax; fuel oil tax; entertainment tax; poll tax and the "rates, assessments, taxes, rents, fees, duties, appropriations and other" sources provided in the Act. The City has adequate collection mechanisms. There is no provision for fees in the nature of the tax, motor vehicle fuel tax, user fees for unlimited purposes or sharing in the sales tax/income tax of the province.

2.7.4 Municipalities Act (Newfoundland)

A municipality may impose an annual poll tax, direct sellers tax, water and sewage tax and property tax.

2.7.5 Nova Scotia Municipal Government Act

The Nova Scotia *Municipal Act* sets out express, limited authority for expenditures. The Act provides authority for property tax; charges for services; a rate for a water system; charges for waste water or storm water system; water system capital costs; highway and transportation infrastructure, and future expenditure; and sewage system supercharges for "over users".

Under Section 65 of the Municipal Government Act, municipalities have broad authorities to make expenditures. Municipalities may impose user fees, sell services to other governments, enter into public private partnerships and carry out corporate powers.

2.7.6 Municipalities Act (Prince Edward Island)

The Act provides for property tax and some user fees.

2.7.7 Municipalities Act (Charlottetown Area) and City of Summerside Act

Taxing powers in addition to property taxes include user rates for water, sewer and other services provided by the City and Town Council.

2.7.8 Municipalities Act (New Brunswick)

The Act provides for property tax and some user fees. Section 87 of the *Municipalities Act* (in combination with Section 5(2)(a) of the *Real Property Tax Act*) provides municipal authority for property taxation. The *Municipalities Act* also authorizes the imposition of user fees for services related to water and wastewater, garbage collection and disposal, and recreational and sports programs and facilities.

2.7.9 Charter of the Ville de Montreal and Municipal Code/ Cities and Towns Act (Quebec)

The *Charter* makes reference to other statutes that allow for broader taxation powers. Taxation

powers and other revenue sources are not necessarily included in the municipal legislation but are found in other enactments as well as programs managed by other departments or ministries. The “City contract” discussed in section 1.4 is not part of the legislation. The current government has confirmed that financial commitments for 2003 and 2004 will be carried out under the City contract.

2.7.10 Ontario Municipal Act, 2001

Under the Ontario legislation, there is no new authority to impose taxes, fees or charges and there are restrictions affecting the operations of municipal services. [Federation of Canadian Municipalities “Early Warning: Will Canadian Cities Compete?”, May 2000, prepared for the National Round Table on the Environment and the Economy]. There are some additional financial tools, however, such as the authority to impose tolls in some cases.

2.7.11 Winnipeg Charter and Manitoba Municipal Act

The *Charter* does not contain any significant new revenue items. The *Charter* does provide for tax incentives (tax increment financing). It also facilitates public private partnerships. All Manitoba municipalities, including the City of Winnipeg, share a personal and corporate income tax received by the province under the *Provincial-Municipal Tax Sharing Act*. Section 2 of the Act provides for the allocation and distribution of tax revenue received by the province under the *Income Tax Act (Manitoba)* and specified under that Act to be for municipal purposes or directed by that Act to be allocated and distributed. Sections 3(4) and 7(4.1) of the *Income Tax Act* provide that an amount equal to 2.2 points of the percentage of personal tax otherwise payable under the *Income Tax Act (Canada)* and an amount equal to 1 percent of the taxable income of corporations earned in Manitoba (net of capital gains refunds) must be allocated and distributed to municipalities.

Under the *Provincial-Municipal Tax Sharing Act*, Section 3 provides that a Manitoba municipality, including the City of Winnipeg, may enact bylaws imposing taxes on persons in a municipality who purchase or consume motel and hotel accommodations, or meals at a restaurant or dining room, or liquor. Section 4(2) provides that such a bylaw has no force until approved by the Lieutenant Governor in Council. According to the province, no municipalities have formally requested the province to consider a bylaw to impose a hotel, food or liquor tax.

2.7.12 Alberta Municipal Government Act

The legislation does not give municipalities any greater financial resources. The MGA does provide greater capacity for a municipality to enhance its self-reliance. For example, a municipality may control a subsidiary “for profit” corporation from which dividends may be paid directly to the shareholder-municipality. Edmonton and Calgary have executed agreements with the province respecting future financial needs and revenue, and have executed a transit funding agreement in particular (which in 2000 was unilaterally amended by Alberta to reduce payments to the cities).

2.7.13 British Columbia *Community Charter*

In 1999, Professor Harry Kitchen presented a report to the UBCM identifying new revenue sources to allow municipalities to diversify (that is, to become less reliant on the property tax and user fees). Most of the recommendations in the Kitchen Report were included in by the recommendations in the 2001 white paper. In the white paper, the provincial government acknowledged that municipalities require a more diverse spectrum of revenue sources. These include fuel tax, local entertainment tax, resort tax, parking stall tax, fees in the nature of a tax, road tolls and additional hotel room tax. The province has advised that new revenue sources will not be introduced in a new bill, and are under review.

The provincial government has reiterated its 2001 commitment to transfer 75 percent of traffic fine revenue to municipalities and to require Crown corporations to pay property taxes, fees and charges.

It is anticipated as well that the new forum for bylaw infractions (commonly referred to as the “bylaw courts”) will generate more revenues to participating municipalities. The *Charter* white paper was silent on the issue of sharing provincial sales or income taxation.

2.7.14 Yukon Territories

The Act provides for property taxes and user fees.

2.7.15 Northwest Territories

The Act provides for property tax and some user fees. Under the new *Cities, Towns and Villages Act*, the *Hamlets Act* and the *Charter Communities Act*, municipal governments will have increased powers of investment and the ability to create “for profit” corporations or to provide services on a commercial basis. These new powers may provide municipal governments with more financial resources.

2.7.16 Nunavut

The Act provides for property tax and some user fees.

3.0 CONCLUSION

Local governments are witnessing integration, resulting in fewer and larger local government units reflecting different communities of interest; devolution of federal and provincial government responsibilities without the financial resources or legal powers; and incremental additions to existing powers. In the context of the objects of the International Union of Local Authorities and the Council of Europe, and in comparison with the “home rule” model, the existing and proposed new statutes do not allow Canadian municipalities to compete in the new globalized environment.

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6.0 SCHEDULE - FCM ASSESSMENT OF PROVINCIAL/TERRITORIAL MUNICIPAL ACTS - OUTLINE OF FINDINGS

Municipal Act	6.1 Consultations on Matters Affecting Local Government	
	+	-
St. John's		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Newfoundland		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Nova Scotia	<ul style="list-style-type: none"> ▪ Minister must consult on provincial interest statement ▪ Province must consider municipal plans before approving development ▪ Minister may consult on matters affecting municipalities to improve municipal government ▪ Province must give one year's notice to UNSM for decreasing revenue/ increasing expenditures (except general legislation/ administration) 	<ul style="list-style-type: none"> ▪ Approval of minister required for several matters ▪ Minister may order municipality to act re accounting for collection or payment of assets
PEI		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Charlottetown	<ul style="list-style-type: none"> ▪ Intermunicipal coordination committee includes minister 	
Summerside		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Ville de Montreal	<ul style="list-style-type: none"> ▪ Municipal associations must advise minister on questions submitted by minister ▪ City Contract provides for consultation ▪ See Quebec 	
Quebec	<ul style="list-style-type: none"> ▪ Political consultation on <i>Cities and Towns Act</i> ▪ Municipal-provincial agreement for municipality to assume provincial duties 	
Ontario	<ul style="list-style-type: none"> ▪ Act requires meaningful consultation; MOU entered into ▪ Where restructuring prescribed by Cabinet, local body may make restructuring proposal to minister 	
Manitoba	<ul style="list-style-type: none"> ▪ Province traditionally consults with municipal associations and municipalities 	<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Winnipeg	<ul style="list-style-type: none"> ▪ Province traditionally consults; ongoing consultation re Charter Phase II 	<ul style="list-style-type: none"> ▪ Act does not provide for

Municipal Act	6.1 Consultations on Matters Affecting Local Government	
	+	-
		consultation
Saskatchewan	<ul style="list-style-type: none"> ▪ Consultative forum established ▪ Council(s) may proposed restructuring; minister must consult with Councils before altering boundaries 	<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Alberta	<ul style="list-style-type: none"> ▪ Province may consult re municipal status 	<ul style="list-style-type: none"> ▪ Act does not provide for consultation (except re municipal status) ▪ Province must notify but not consult re amalgamation or dissolution
British Columbia	<ul style="list-style-type: none"> ▪ Minister must consult re changes to legislation or reduction of grants ▪ Minister and UBCM may make agreement re consultation on any matter; if UBCM requests, minister must negotiate arrangement and make reasonable efforts to agree; municipality may enforce such obligations in court ▪ Province must not amalgamate municipalities without a vote in each ▪ New dispute resolution provisions re disputes between province and municipalities 	
Yukon	<ul style="list-style-type: none"> ▪ Yukon must consult with AYC on legislation changes 	
Northwest Territories		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Nunavut		<ul style="list-style-type: none"> ▪ Act does not provide for consultation

Municipal Act	6.2 Amending Local Government Legislation	
	+	-
St. John's		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Newfoundland		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
PEI		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Charlottetown		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Summerside		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
New Brunswick	<ul style="list-style-type: none"> ▪ Consultation agreement re new legislation 	<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Nova Scotia	<ul style="list-style-type: none"> ▪ Minister must consult with UNSM Executive before amending Act 	
Ville de Montreal		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Quebec		<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Ontario	<ul style="list-style-type: none"> ▪ Act encourages consultation, resulted in MOU on consultation ▪ Review of Act must be initiated within five years of a previous review 	
Manitoba	<ul style="list-style-type: none"> ▪ Existing consultative and collaborative approach re legislation, regulations or programs 	<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Winnipeg	<ul style="list-style-type: none"> ▪ Winnipeg Charter developed in provincial-municipal partnership; next phase undertaken on same basis 	
Saskatchewan	<ul style="list-style-type: none"> ▪ Consultative forum available for cities to consult 	<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Alberta	<ul style="list-style-type: none"> ▪ Province consulting with municipal associations re Amendment Management Plan ▪ MOU between province and Edmonton/Calgary 	<ul style="list-style-type: none"> ▪ Act does not provide for consultation

Municipal Act	6.2 Amending Local Government Legislation	
	+	-
British Columbia	<ul style="list-style-type: none"> ▪ Minister must consult before province proposes amendment or repeal of municipal legislation (“consultation = provision of sufficient information respecting changes and allowing UBCM time to consider and make submissions) ▪ Minister must consider municipal submissions and respond 	
Yukon	<ul style="list-style-type: none"> ▪ Yukon must consult with AYC on any direct amendments 	
Northwest Territories	<ul style="list-style-type: none"> ▪ Amendments to Community Charter require approval of residents ▪ Under Tlicho agreement, legislation amended in consultation with Tlicho government 	<ul style="list-style-type: none"> ▪ Act does not provide for consultation
Nunavut		<ul style="list-style-type: none"> ▪ Act does not provide for consultation

Municipal Act	6.3 Joint Decision-Making on Areas of Shared Responsibility	
	+	-
St. John's	▪ <i>Hudson</i> case applies	
Newfoundland	▪ <i>Hudson</i> case applies	
PEI	▪ <i>Hudson</i> case applies	
Charlottetown	▪ <i>Hudson</i> case applies	
Summerside	▪ <i>Hudson</i> case applies	
New Brunswick	▪ <i>Hudson</i> case applies	
Nova Scotia	▪ <i>Hudson</i> case applies	
Ville de Montreal	▪ <i>Hudson</i> case applies	
Quebec	▪ <i>Hudson</i> case applies	
Ontario		<ul style="list-style-type: none"> ▪ Bylaws are without effect to the extent of any conflict with provincial or federal act or regulation or other legislative instrument ▪ Bylaws and natural person powers subject to express statutory restrictions ▪ Limits imposed re specific powers for municipal bylaws re environment, economic development, health, safety/protection, nuisance matters
Manitoba	▪ <i>Hudson</i> case applies	
Winnipeg	▪ <i>Hudson</i> case applies	
Saskatchewan	▪ <i>Hudson</i> case applies	
Alberta	▪ <i>Hudson</i> case applies	
British Columbia	<ul style="list-style-type: none"> ▪ <i>Hudson</i> case applies ▪ <i>Hudson</i> case codified in <i>Community Charter</i> 	<ul style="list-style-type: none"> ▪ Five areas of concurrent regulatory authority require minister's approval (or agreement with minister or regulation of minister: health, building standards, environment, wildlife, prohibition of soil removal/deposit)
Yukon	<ul style="list-style-type: none"> ▪ Common administrative/planning structures ▪ Yukon municipal board has representation from AYC and CYFN ▪ <i>Hudson</i> case applies 	
Northwest Territories	▪ <i>Hudson</i> case applies	

Municipal Act	6.3 Joint Decision-Making on Areas of Shared Responsibility	
	+	-
Nunavut	▪ <i>Hudson</i> case applies	

Municipal Act	6.4 Provincial/Territorial Compliance with Municipal Regulations (A number of provinces have instituted programs or legislation requiring provincial, crown corporation or provincial agency compliance with municipal enactments, including in relation to assessment, land use and other matters, even though such is not reflected in the applicable “municipal acts”)	
	+	-
St. John’s		▪ No provision
Newfoundland		▪ No provision
PEI		▪ No provision
Charlottetown		▪ No provision
Summerside		▪ No provision
New Brunswick		▪ No provision
Nova Scotia		▪ No provision
Ville de Montreal		▪ No provision
Quebec		▪ No provision
Ontario		▪ No provision
Manitoba	▪ Province pays property tax equivalencies re real property of province, crowns and agencies	
Winnipeg	▪ Province pays property tax equivalencies re real property of province, crowns and agencies	
Saskatchewan		▪ No provision
Alberta		▪ No provision
British Columbia	▪ Crown corporations instructed to pay equivalent of municipal taxes, charges, fees and levies and to comply with local government land use regulations	
Yukon	▪ Territory bound by municipal bylaws, except as otherwise established by territorial regulation	
Northwest Territories		▪ No provision
Nunavut		▪ No provision

Municipal Act	6.5 Powers	
	+	-
St. John's		<ul style="list-style-type: none"> ▪ Express, detailed, limited, prescribed powers ▪ Corporate capacity powers limited
Newfoundland		<ul style="list-style-type: none"> ▪ Express, detailed, limited, prescribed powers ▪ Corporate capacity powers limited
PEI		<ul style="list-style-type: none"> ▪ Express, detailed, limited, prescribed powers ▪ Corporate capacity powers limited
Charlottetown		<ul style="list-style-type: none"> ▪ Express, detailed, limited, prescribed powers ▪ Corporate capacity powers limited
Summerside		<ul style="list-style-type: none"> ▪ Express, detailed, limited, prescribed powers ▪ Corporate capacity powers limited
New Brunswick		<ul style="list-style-type: none"> ▪ Express, detailed, limited, prescribed powers ▪ Corporate capacity powers limited
Nova Scotia	<ul style="list-style-type: none"> ▪ Omnibus authority for health, well-being, safety and protection of persons and safety and protection of property ▪ Some limitations on omnibus powers requested by UNSM 	<ul style="list-style-type: none"> ▪ Limited corporate capacity powers ▪ Many omnibus powers limited by express, detailed powers/ limitations
Ville de Montreal	<ul style="list-style-type: none"> ▪ Legal person powers under <i>Civil Code Act</i> ▪ Omnibus powers under <i>Cities and Towns Act</i>, peace, order, good government, health, etc. 	
Quebec	<ul style="list-style-type: none"> ▪ Legal person powers under <i>Civil Code Act</i> ▪ Omnibus powers under <i>Cities and Towns Act</i>, peace, order, good government, health, etc. 	

Municipal Act	6.5 Powers	
	+	-
Ontario	<ul style="list-style-type: none"> ▪ Ten spheres of jurisdiction 	<ul style="list-style-type: none"> ▪ Provincial clawbacks of municipal jurisdiction in statute and regulations ▪ Significant clawbacks in areas of environment, economic development, health/safety/protection of people/property, and nuisance matters ▪ Uncertainty per <i>United Tax Drivers</i> case
Manitoba	<ul style="list-style-type: none"> ▪ Spheres of jurisdiction ▪ Interpretation provisions indicate broad authority to council 	<ul style="list-style-type: none"> ▪ Limited corporate capacity powers ▪ Uncertainty per <i>United Tax Drivers</i> case
Winnipeg	<ul style="list-style-type: none"> ▪ Spheres of jurisdiction broader than in other acts ▪ Interpretation provisions indicate broad authority to council ▪ Natural person powers re corporate capacity 	<ul style="list-style-type: none"> ▪ Uncertainty per <i>United Tax Drivers</i> case
Saskatchewan	<ul style="list-style-type: none"> ▪ Spheres of jurisdiction ▪ Interpretation provisions indicate broad authority to council ▪ Natural person powers re corporate capacity 	<ul style="list-style-type: none"> ▪ Uncertainty per <i>United Tax Drivers</i> case
Alberta	<ul style="list-style-type: none"> ▪ Spheres of jurisdiction ▪ Interpretation provisions indicate broad authority to council ▪ Natural person powers re corporate capacity 	<ul style="list-style-type: none"> ▪ Uncertainty per <i>United Tax Drivers</i> case ▪ “Municipal purposes” may limit powers
British Columbia	<ul style="list-style-type: none"> ▪ Spheres of jurisdiction ▪ Interpretation provisions indicate broad authority to council ▪ Natural person powers re corporate capacity ▪ Recognition as an order of government ▪ Authority to impose requirements re most regulatory matters 	<ul style="list-style-type: none"> ▪ Uncertainty per <i>United Taxi Drivers</i> case ▪ Provincial clawbacks of municipal power in areas of concurrent jurisdiction requiring ministerial approval (or ministerial order or regulation) in five areas: health, building standards, environmental, wildlife, prohibition of soil removal/deposit ▪ No power to prohibit, or impose requirements, re business ▪ No power to prohibit re signs ▪ Business bylaws require notice, “hearing”

Municipal Act	6.5 Powers	
	+	-
	<ul style="list-style-type: none"> ▪ Ownership of highways, parks ▪ Powers to regulate, prohibit, impose requirements re works, facilities, services ▪ Power to protect environment ▪ Power to remediate by nuisance/safety orders 	
Yukon	<ul style="list-style-type: none"> ▪ Spheres of jurisdiction ▪ Interpretation provisions indicate broad authority to council ▪ Recognition as an order of government ▪ Natural person powers re corporate capacity 	<ul style="list-style-type: none"> ▪ Uncertainty per <i>United Tax Drivers</i> case
Northwest Territories	<ul style="list-style-type: none"> ▪ Spheres of jurisdiction ▪ Interpretation provisions indicate broad authority to council ▪ Natural person powers re corporate capacity 	<ul style="list-style-type: none"> ▪ Uncertainty per <i>United Tax Drivers</i> case
Nunavut	<ul style="list-style-type: none"> ▪ Spheres of jurisdiction ▪ Interpretation provisions indicate broad authority to council ▪ Natural person powers re corporate capacity 	<ul style="list-style-type: none"> ▪ Uncertainty per <i>United Tax Drivers</i> case

Municipal Act	6.6 Delegation of Adequate Financial Powers (Numerous provincial/territorial statutes and regulations provide for municipal revenues or financial arrangements and such are not necessarily included in municipal acts of the provinces/territories or in this section)	
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St. John's	<ul style="list-style-type: none"> ▪ Business tax, water tax, fuel oil tax, entertainment tax, poll tax and rate, assessment, taxes, rent, fees, duties, appropriations and other revenues provided in the Act 	<ul style="list-style-type: none"> ▪ No provision for fees in nature of tax, motor vehicle fuel tax, user fees for unlimited purposes or sharing sales tax /income tax, hotel tax, or others
Newfoundland	<ul style="list-style-type: none"> ▪ Authority for property tax, poll tax, direct sellers tax, water and sewer tax 	<ul style="list-style-type: none"> ▪ No provision for fees in nature of tax, motor vehicle fuel tax, user fees for unlimited purposes or sharing sales tax /income tax, hotel tax, or others
Nova Scotia	<ul style="list-style-type: none"> ▪ Authority for property tax, service charges, water system rates, charges for waste water or storm water systems, water systems, capital costs, highway and transportation infrastructure (expenditure charges), sewer system surcharges for over users ▪ User fees ▪ Municipal Finance Authority under municipal authority 	<ul style="list-style-type: none"> ▪ No provision for fees in nature of tax, motor vehicle fuel tax, sharing sales tax /income tax, hotel tax, or others
PEI	<ul style="list-style-type: none"> ▪ Authority for property tax and some user fees 	<ul style="list-style-type: none"> ▪ No provision for fees in nature of tax, motor vehicle fuel tax, sharing sales tax /income tax, hotel tax, or others
Charlottetown	<ul style="list-style-type: none"> ▪ Authority for property tax and some user fees 	<ul style="list-style-type: none"> ▪ No provision for fees in nature of tax, motor vehicle fuel tax, sharing sales tax /income tax, hotel tax, or others
Summerside	<ul style="list-style-type: none"> ▪ Authority for property tax and some user fees 	<ul style="list-style-type: none"> ▪ No provision for fees in nature of tax, motor vehicle fuel tax, sharing sales tax /income tax, hotel tax, or others

Municipal Act	6.6 Delegation of Adequate Financial Powers (Numerous provincial/territorial statutes and regulations provide for municipal revenues or financial arrangements and such are not necessarily included in municipal acts of the provinces/territories or in this section)	
	+	-
New Brunswick	<ul style="list-style-type: none"> ▪ Authority for property tax and some user fees 	<ul style="list-style-type: none"> ▪ No provision for fees in nature of tax, motor vehicle fuel tax, sharing sales tax /income tax, hotel tax, or others
Ville de Montreal	<ul style="list-style-type: none"> ▪ Numerous statutes allow for broad tax powers ▪ City Contract financial provisions ▪ Portion of provincial fuel tax/ vehicle registration fee to Montreal Transit Agency ▪ Business tax and hotel tax 	
Quebec	<ul style="list-style-type: none"> ▪ Numerous statutes provide for broad tax powers 	
Ontario	<ul style="list-style-type: none"> ▪ Authority for property taxes, user fees, tolls ▪ Tax-exempt Ontario bonds for municipal infrastructure 	<ul style="list-style-type: none"> ▪ No provision for fees in nature of tax, motor vehicle fuel tax, sharing sales tax /income tax, hotel tax, or others
Manitoba	<ul style="list-style-type: none"> ▪ Authority for property tax and user fees ▪ Share personal and corporate income tax and Video Lottery tax 	<ul style="list-style-type: none"> ▪ Hotel tax, meal tax, liquor tax not in force (no municipality has formally requested, one has informally requested) ▪ No authority for other revenue
Winnipeg	<ul style="list-style-type: none"> ▪ Authority for property tax and user fees ▪ Share personal and corporate income tax and Video Lottery tax ▪ Tax Increment Financing 	<ul style="list-style-type: none"> ▪ Hotel tax, meal tax, liquor tax not in force (no municipality has formally requested, one has informally requested) ▪ No authority for other revenue
Saskatchewan	<ul style="list-style-type: none"> ▪ Property tax and user fees 	<ul style="list-style-type: none"> ▪ No authority for other revenue

Municipal Act	6.6 Delegation of Adequate Financial Powers (Numerous provincial/territorial statutes and regulations provide for municipal revenues or financial arrangements and such are not necessarily included in municipal acts of the provinces/territories or in this section)	
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Alberta	<ul style="list-style-type: none"> ▪ Authority for property tax and user fees ▪ Edmonton/Calgary agreement with province for transit funding / receive portion of provincial fuel tax ▪ Other municipalities receive portion of provincial fuel tax per formula 	<ul style="list-style-type: none"> ▪ No other authority for revenue
British Columbia	<ul style="list-style-type: none"> ▪ Authority for property tax and user fees ▪ Provincial commitment to transfer 75 percent of traffic fine revenues ▪ Provincial commitment to require Crown corporations to pay municipal taxes, fees and charges ▪ Portion of provincial fuel tax to GVRD/ Greater Victoria transit agencies ▪ Municipal Finance Authority under municipal authority 	<ul style="list-style-type: none"> ▪ Other revenues discussed in 2001 Community Charter White Paper still under review
Yukon	<ul style="list-style-type: none"> ▪ Authority for property tax and user fees 	<ul style="list-style-type: none"> ▪ No provision for fees in nature of tax, motor vehicle fuel tax, sharing sales tax /income tax, hotel tax, or others
Northwest Territories	<ul style="list-style-type: none"> ▪ Authority for property tax and user fees 	<ul style="list-style-type: none"> ▪ No provision for fees in nature of tax, motor vehicle fuel tax, sharing sales tax /income tax, hotel tax, or others
Nunavut	<ul style="list-style-type: none"> ▪ Authority for property tax and user fees 	<ul style="list-style-type: none"> ▪ No provision for fees in nature of tax, motor vehicle fuel tax, sharing sales tax /income tax, hotel tax, or others