

REGIONAL MUNICIPALITY OF OTTAWA CARLETON

REPORT

MUNICIPALITÉ RÉGIONALE D'OTTAWA CARLETON

RAPPORT

Our File/N/Réf. Your File/V/Réf.	L.1.1.84.3
DATE	20 April 1998
TO/DEST.	Co-ordinator, Corporate Services and Economic Development Committee
FROM/EXP.	Regional Solicitor
SUBJECT/OBJET	<b>PROPOSED NEW MUNICIPAL ACT - EXECUTIVE SUMMARY OF STAFF REPORT</b>

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### **DEPARTMENTAL RECOMMENDATIONS**

**That Corporate Services and Economic Development Committee approve in principle that Council approve:**

- 1. That the Regional Municipality express its appreciation to the Minister of Municipal Affairs and Housing for the fact that the Government of Ontario has at last undertaken a comprehensive review of the *Municipal Act* on the basis of commitments by the Government to produce flexible, less prescriptive, understandable and broad enabling legislation utilizing the natural person concept to enable municipal governments to function with initiative, imagination and greater autonomy and efficiency;**
- 2. That the Regional Municipality further express its disappointment to the Government of Ontario that the draft new *Municipal Act* circulated for consultation and comment has fallen far short of the government's own responsible goals in that the new draft is possibly more prescriptive than the present legislation and provides for major interference in municipal functions by government Ministries by regulation;**
- 3. That the Regional Municipality recommends to the Minister that it is vital that the process of legislative consultation and review be continued so that the present draft legislation be used as a base for the production of a new *Municipal Act* that will be consistent with the legislative goals already established by the Government;**
- 4. That the Regional Municipality further recommends that in the preparation of the new draft *Municipal Act*, the Provincial Government shall have regard to the issues,**

**concerns and recommendations set forth in detail in the staff report and that legislation not proceed on the basis of the existing consultation draft document;**

- 5. That this report and the accompanying staff report be forwarded to the Minister of Municipal Affairs and Housing for consideration as the position of the Regional Municipality of Ottawa-Carleton.**

## BACKGROUND

On February 11, 1998, a consultation document, consisting of a policy outline and a 408 section draft statute was released by the Provincial Government. Municipalities have been requested to submit their comments on this version of the document by **May 8, 1998**. This report summarizes those aspects of the proposed *Municipal Act* (hereinafter, the *Act*) which are thought to be significant from the Regional Municipality of Ottawa-Carleton's perspective.

It should be noted that the document being commented upon is not intended to become the first reading version of the new *Act*. Discussions are ongoing with Ministry of Municipal Affairs and Housing staff. The Ministry may also make amendments on its own initiative, as a result of consultation with affected groups. There will also be companion amendments to other statutes, the details of which have not yet been made available. Finally, regulations will play a key role in the operation of the new *Municipal Act* and these have yet to be drafted.

## LEGISLATIVE GOALS

Since 1849, with its introduction as the "Baldwin Act," the *Municipal Act* has not been revised in a substantial and meaningful way. For many years, the Provincial Government made the promises that a new *Act* would be:

- **more flexible**, giving municipalities new tools for action and the raising of revenue;
- **less prescriptive**, allowing municipalities to act without the necessity for specific legislative authority; and
- **comprehensive and understandable**.

Although, the Premier and Minister of Municipal Affairs promised that a new *Municipal Act* would do all that, it is the Legal Department's opinion that this draft *Act* has fallen short of its goals. In this *Act*, municipalities are being asked to trade one prescriptive framework for another. The *Act* fails to live up to the Government's promise to remove itself from the business of local government.

## OVERVIEW

### Natural Person and Government Powers

With respect to the spheres of jurisdiction conferred by this *Act* or any other *Act*, municipalities will have the powers of a ‘natural person’. ‘Natural person’ powers amount, essentially, to the powers of a business corporation. These include the ability to enter into contracts, purchase, own and dispose of property; hire, pay and dismiss employees, delegate administrative responsibilities, provide and charge for goods and services and sell or otherwise dispose of assets. The *Act* does not increase the substantive authority of municipalities as municipal authority will continue to be derived from the *Act* and not from the legal status of a “natural person”.

Since natural persons do not have the power to direct the activities of other persons, municipalities will be given certain ‘governmental powers’ to be applied to matters under their jurisdiction. Government powers include the power to regulate or prohibit, and provide for a system of licenses, permits and approvals, make grants or loans, impose fees and charges, levy taxes, enforce by-laws, create offences, apply for injunctions, impose fines, license businesses, enter private lands and expropriate.

### Spheres of Jurisdiction

Under the proposed *Act*, municipalities will exercise their natural person and government powers with thirteen enumerated “spheres of jurisdiction”. In order to act, a municipality must first determine that the proposed exercise of authority falls within the specific words of a sphere and then confirm that the balance of the *Act* contains no procedural or substantive limitation. This approach is inconsistent with the Province’s statements that it wished to devolve to municipalities increased powers and flexibility in the administration of services they provide.

Had the *Act* included a “Purpose” section, the need for detailed spheres of jurisdiction would have been greatly reduced, if not eliminated completely. AMO recommended an effective Purpose clause that states:

The purpose of municipalities is:

- to provide good government;
- to provide services, facilities and other things that, in the opinion of council, are necessary or desirable for all or part of the municipality;
- to develop and maintain safe and viable communities; and
- to organize and operate in an effective and efficient manner.

### Provincial Regulation-Making Authority

Of great concern, is the extent of the Province's open-ended regulatory powers enshrined in the *Act*. As drafted, this regulatory approach has the potential to significantly impinge on municipal authority without the requirement for municipal input or an evaluation of competing interests and their impacts. The Legal Department, as well as many other municipalities and the Association of Municipalities of Ontario (AMO), remains deeply concerned with the breadth and depth of this restrictive provincial authority.

The ability of the Provincial Government to make regulations in virtually every area of municipal authority, without mandated municipal consultation will contribute to an atmosphere of distrust on the part of municipalities. It is our opinion that only in areas of clear Provincial policy interest is such provincial interference justified.

### Prohibition on Municipal Regulation of Systems

The *Act* proposes to stop municipalities from passing a by-law where the effect of that by-law is to prohibit or regulate a public utility, waste management system or facility or "transportation system other than a highway" that is not owned by the municipality passing the by-law.

This is especially problematic with respect to public utilities and waste management. As drafted, the Region may lose future consent-granting ability over waste disposal facilities. As well, the Region would lose any fees associated with the granting of these consents. It is difficult to conceive of the Region retaining enough effective power over waste management in its sphere of jurisdiction, when the *Act* specifically restricts our ability to prohibit and regulate both private systems as well as those systems owned, operated by or on behalf of its lower-tier municipalities.

The apparent policy behind these limitations is to prevent municipalities from regulating in areas governed by provincial regulation. However, the language of the draft goes far beyond this purpose. In practical terms, the Region would lose its ability to promote pollution control at source. As well, under our current system, the Region has the authority to regulate sewers owned and operated by any person (including lower-tier municipalities). In the interest of the environment and proper operation of our sewage treatment plant, the Region has passed a by-law regulating the discharge of sewage into private sewers and the sewers of lower-tier municipalities. Such actions are prohibited under the draft *Act*.

### Creation of Corporations and Ownership of Shares

One of the stated objectives of the proposed *Act* is to allow municipalities greater flexibility to deal with local issues. In this regard, municipalities may consider commercial ventures (such as public/private partnerships) with private sector firms to decrease the cost of municipal services, and/or to raise revenues for the municipality. One method favoured by the private sector in organizing such ventures is the establishment of a corporation managed by a board of directors

composed of representatives of both the private firm and the municipal corporation. Such corporations provide the advantage of responsive and timely decision making processes, as well as protecting the municipality and the private sector partner in the event of losses arising out of the business venture (limited liability). The proposed *Act*, however, prohibits municipalities from incorporating companies or owning securities in a company.

### Business Licensing

The business licensing provisions of the *Act* set out an extremely restrictive framework for municipalities. The *Act* restricts municipalities to setting licence fees that include cost recovery and enforcement. Not only does this remove a traditional source of small municipal revenue, it virtually eliminates one of the incentives for business licensing. By setting out a restrictive framework with the further possibility of provincial regulatory intervention in this area, the Provincial Government has indicated that it does not trust municipalities to set licensing fees at levels appropriate to each municipality. This also indicates a lack of understanding on the part of the Ministry of Municipal Affairs and Housing on the full scope of reasons for business licensing.

### Municipal Restructuring

The proposed *Act* deals with transfers of powers between upper and lower-tier municipalities and the ability of municipalities to restructure by carrying forward the existing provisions. In both cases, the proposed legislation does not take into account the special needs and considerations of upper-tier municipalities. The legislation is silent on restructuring specifically for regions and special considerations or criteria that could be imposed to ensure that restructuring and services migrate in an objective, organized and coherent manner. For two-tier systems where the upper-tier is directly elected, such as Ottawa-Carleton, the triple majority formula is less likely to produce voluntary agreements on restructuring or service migration. All decisions on changes to municipal governance and structure of service delivery responsibility should be unfettered local decisions.

### Municipal Fees and Charges

The proposed *Act* places many new conditions and restrictions on the imposition of municipal fees and charges. No fee or charge is to exceed cost recovery unless the establishing by-law includes an explanation. Further, the *Act* ties the creation and amendment of fees and charges to the adoption of the budget. Every municipality must maintain a public list of every fee and charge and that list must include an explanation of how it was calculated, how the municipality intends to use the revenue generated and the amount each fee would have to be to recover costs. No fee or charge can be amended or added in a calendar year unless there is a companion amendment to the municipality's budget.

At present, such fees and charges are stated in by-laws establishing them. If the Province wants to ensure that the public understands calculation formulae and intended use, then the proposed *Act* could simply make this a requirement of the by-law. A separate public list is superfluous. Furthermore, it overcomplicates matters to tie fees and charges to a municipality's budgeting process. The fact that a fee must be set by by-law creates a satisfactory public forum and avoids the need to re-open the budget process to address every fee and charge issue.

## CONCLUSION

The proposed new *Municipal Act* does not represent the promised bold step in municipal empowerment. Uncertainty abounds with respect to how the new provisions will be interpreted by the courts, and whether there will be a propensity on the part of senior government to restrict municipal powers through the use of statutory amendment, regulations, or minor enactments such as orders and approvals.

While the proposed *Act* was compiled with the best of intentions, the end result is not what was promised. It is not better than the present legislative scheme and may, in fact, be worse. It introduces a whole new degree of uncertainty which is not appropriate at this point in municipal history. Staff recommend that Regional Council express to the Minister of Municipal Affairs and Housing their disappointment with the proposed *Act* and their commitment to continue with a process that will result in an open, enabling statute.

*Approved by*  
*J. Douglas Cameron*

JDC/KDM/JJJ/pc

REGIONAL MUNICIPALITY OF OTTAWA CARLETON  
 MUNICIPALITÉ RÉGIONALE D'OTTAWA CARLETON

REPORT  
 RAPPORT

Our File/N/Réf. L.1.1.84.3  
 Your File/V/Réf.

DATE 20 April 1998

TO/DEST. Co-ordinator,  
 Corporate Services and Economic Development Committee

FROM/EXP. Regional Solicitor

SUBJECT/OBJET **PROPOSED NEW MUNICIPAL ACT - MINISTRY OF  
 MUNICIPAL AFFAIRS AND HOUSING CONSULTATION  
 DOCUMENT**

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**DEPARTMENTAL RECOMMENDATIONS**

That Corporate Services and Economic Development Committee approve in principle that Council approve:

1. That the Regional Municipality express its appreciation to the Minister of Municipal Affairs and Housing for the fact that the Government of Ontario has at last undertaken a comprehensive review of the *Municipal Act* on the basis of commitments by the Government to produce flexible, less prescriptive, understandable and broad enabling legislation utilizing the natural person concept to enable municipal governments to function with initiative, imagination and greater autonomy and efficiency;
2. That the Regional Municipality further express its disappointment to the Government of Ontario that the draft new *Municipal Act* circulated for consultation and comment has fallen far short of the government's own responsible goals in that the new draft is possibly more prescriptive than the present legislation and provides for major interference in municipal functions by government Ministries by regulation;
3. That the Regional Municipality recommends to the Minister that it is vital that the process of legislative consultation and review be continued so that the present draft legislation be used as a base for the production of a new *Municipal Act* that will be consistent with the legislative goals already established by the Government;

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 APRIL 21, 1998

4. **That the Regional Municipality further recommends that in the preparation of the new draft *Municipal Act*, the Provincial Government shall have regard to the issues, concerns and recommendations set forth in detail in the staff report and that legislation not proceed on the basis of the existing consultation draft document;**
5. **That this staff report be forwarded to the Minister of Municipal Affairs and Housing for consideration as the position of the Regional Municipality of Ottawa-Carleton.**

## BACKGROUND

On March 10, 1997, the Ministry of Municipal Affairs and Housing released a consultation document setting out a proposed legislative framework for a new *Municipal Act*. Municipalities were invited to review the document and submit commentary by May 9, 1997. Since very little of the proposed framework had been reduced to statutory language, municipalities, in submitting their comments, also sought the opportunity to review the proposed statute once drafting was complete.

On February 11, 1998, a more substantial consultation document, consisting of a policy outline and a 408 section draft statute was released. Municipalities have been requested to submit their comments on this version of the document by May 8, 1998. This report summarizes those aspects of the proposed *Act* which are thought to be significant from the Regional Municipality of Ottawa-Carleton's perspective, and lists at Annex B a series of suggested amendments.

It should be noted at the outset that the document being commented upon is not intended to become the first reading version of the new *Act*. Discussions are ongoing with Ministry of Municipal Affairs and Housing staff, and recommendations of a technical nature have already been submitted by Legal Department staff. Likewise, the Ministry may make amendments on its own initiative, having engaged in consultation with affected groups. There will also be companion amendments to other statutes, the details of which have not yet been made available. Finally, regulations will play a key role in the operation of the new *Municipal Act* and these have yet to be drafted.

## LEGISLATIVE GOALS

Since 1849, with its introduction as the "Baldwin *Act*," the *Municipal Act* has not been revised in a substantial and meaningful way. For many years, the Provincial Government made the following promises for a new *Act*:

- that it should be more flexible, giving municipalities new tools for action and the raising of revenue;
- that it would be less prescriptive, allowing municipalities to act without the necessity for specific legislative authority; and
- that it would be more comprehensive and understandable.

Although, the proposed draft *Act* was intended to do all that, it is the Legal Department's opinion that this draft *Act* has fallen short of its goals. In this *Act*, municipalities are being asked to trade one prescriptive framework for another.

## DISCUSSION

The proposed new *Municipal Act* is divided into 19 Parts, namely:

Part I	General	Part XI	Tax Collection
Part II	Municipal Powers	Part XII	Sale of Land for Tax Arrears
Part III	Business Licensing	Part XIII	Fees and Charges
Part IV	Miscellaneous Powers	Part XIV	Debt and Investment
Part V	Transfer of Powers	Part XV	Enforcement
Part VI	Municipal Restructuring	Part XVI	Municipal Liability
Part VII	Municipal Councils	Part XVII	Regulations
Part VIII	Practices and Procedures	Part XVIII	Transition
Part IX	Financial Administration	Part XIX	Repeals
Part X	Municipal Taxation		

As was anticipated in March of last year, the proposed *Act* will incorporate many of the significant changes made to municipal statutory law in recent years, including recent amendments to the existing *Municipal Act* made through the enactment of Bills 26 (*Savings and Restructuring Act*), 86 (*Better Local Government Act*), and the *Fair Municipal Finance Acts, 1997 (No.1 & 2)*. Other statutes which will be incorporated into the new *Act* include the *Community Recreation Centres Act*, the *Ferries Act*, a substantial portion of the *Local Improvement Act*, the *Municipal Boundary Negotiations Act*, the *Municipal Interest and Discount Rates Act*, the *Municipal Tax Sales Act*, the *Ontario Municipal Support Grants Act*, the *Public Parks Act*, much of the *Public Transportation and Highway Improvement Act*, the *Snow Roads and Fences Act*, the *Telephone Act*, the *Regional Municipalities Act*, plus numerous statutes or portions thereof which pertain to specific municipalities and regions, including the *Regional Municipality of Ottawa-Carleton Act*.

Attached at Annex A to this report is a point-form summary of many of the significant aspects of the proposed legislation from the perspective of an upper-tier municipality such as the Regional Municipality of Ottawa-Carleton. For the most-part, the summary is restricted to new features and does not speak to the most recent amendments to the existing *Act*.

### Municipal Forms, Responsibilities:

The proposed *Act* substitutes "lower-tier municipality", "upper-tier municipality" and "single-tier municipality" for the current method of categorizing regional municipalities, cities, towns, counties, etc., although municipalities will have discretion in how they describe themselves. The Regional Municipality of Ottawa-Carleton would be considered an upper-tier municipality and the proposed *Act* would allocate powers amongst lower and upper tiers, and provide for a mechanism to transfer most of those powers. Municipal restructuring, the allocation and transfer of powers

remains at status quo within the draft *Act*: there are no significant changes to the “triple majority” approval formula and no significant criteria enumerated for these changes to regions.

The proposed *Act* provides Councils with broad discretion to determine their own procedures and arrangements. Municipal Councils would therefore have broad authority to arrange their committee structures and configure their procedural by-laws. Many of the current statutory notice provisions will be removed from the *Act* and replaced with a requirement that Councils establish and adhere to policies governing how they will consult with the public, and in what manner Council will give notice to the public concerning the various matters which come before it.

The proposed *Act*, however, will not empower municipalities to establish new local boards, excepting hydro-electric boards.

With the exception of the Clerk and Treasurer, the new *Act* does not mandate particular municipal staff positions, but sets out the administrative duties and responsibilities of the municipality (as outlined above). This would leave a Council with broad authority to determine what staff positions it requires and to appoint such staff.

#### Municipal Powers:

The proposed *Act* is intended to be less prescriptive than the current *Act*. Whereas the current *Act* confers specific authority for each power to be exercised by a municipality, much of the proposed *Act* takes the reverse approach and grants broad powers to municipalities, subject to limitations which would be imposed by statute, regulation, or other ‘enactments’ (a discussion concerning which appears below). Single-tier municipalities, however, would enjoy this broad grant of power for the most-part only within the following 13 enumerated spheres of jurisdiction:

- (a) health, safety, protection and well-being of people and the protection of property;
- (b) public utilities;
- (c) waste management;
- (d) public highways, including parking and traffic on highways;
- (e) transportation systems other than public highways;
- (f) natural environment;
- (g) culture, parks, recreation, and heritage;
- (h) economic development;
- (i) nuisances, noise, odour, vibration illumination and dust;
- (j) drainage, and flood control, except storm sewers;
- (k) structures, including fences and signs;
- (l) parking, except on public highways; and
- (m) animals.

Upper-tier and lower-tier municipalities have been assigned portions of each of the 13 spheres of jurisdiction, within a table reproduced for your convenience in Annex A. This table is intended to describe the current division of powers for upper-tier municipalities. In some “non-exclusive”

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areas, both upper and lower-tier municipalities are entitled to pass by-laws with respect to the specific subject matter. In cases of “exclusive” assignment to an upper-tier municipality such as Ottawa-Carleton, its lower-tier municipalities do not have the power to pass by-laws respecting matters within that sphere or part. Should there be a conflict between a lower-tier by-law and a by-law enacted by an upper-tier pursuant to an assigned area of responsibility, the by-law of the upper-tier will prevail to the extent of the conflict. Special provisions will be provided where other statutes confer authority directly upon upper-tier municipalities.

With respect to authority conferred by this *Act* or any other *Act*, municipalities will have the powers of a ‘natural person’, and certain ‘governmental powers’. ‘Natural person’ powers amount, essentially, to the powers of a business corporation. These include the ability to enter into contracts; purchase, own and dispose of property; hire, pay and dismiss employees; delegate administrative responsibilities; provide and charge for goods and services; and sell or otherwise dispose of assets.

Since natural persons do not have the power to direct the activities of other persons, municipalities will be given certain ‘governmental powers’ to be applied to matters under their jurisdiction, which would include the power to:

- regulate or prohibit, and provide for a system of licenses, permits, approvals or registrations, and to deal differently with different classes of persons, businesses, activities, services, things or geographic areas;
- make grants or loans (however bonusing restrictions will continue);
- impose fees and charges, and levy taxes (subject to current restrictions) ;
- enforce by-laws, create offences, apply for injunctions, and impose fines;
- expropriate;
- without court order, enter lands or buildings which are not dwellings, for the purpose of inspecting compliance with law;
- enter private lands for certain specific purposes, such as erecting snow fences; and
- license businesses similarly to the manner provided for in the current *Act*.

The powers (and duties) related to the financial aspects of municipal government in the draft *Act* are described in much greater detail than the powers associated with the general areas of authority.

#### Restrictions upon Municipal Powers:

The proposed *Act* will impose certain restrictions on the exercise of both natural person powers and governmental powers within certain named areas of authority. For example, no municipality would be able to regulate another person’s (i.e. private sector or another municipality’s) facilities by exercising a power within the ‘public utilities’, ‘waste management’, or ‘transportation systems other than public highways’ areas of authority, (although a municipality would still be able to regulate by exercising a power under another area of authority or express provision - unless in doing so it creates a conflict with a power of another jurisdiction). Ottawa-Carleton remains

concerned that this restriction may significantly affect the current and future operations of our recycling, waste management, sewage and industrial waste disposal programs.

The enabling “natural person powers” approach was not carried throughout the *Act*. The result is the retention of many prescriptive provisions and limits on municipal governments’ authority to manage their affairs. Unless specifically authorized, a municipality will not be permitted to incorporate a corporation, acquire an interest in a security of a corporation, become bankrupt or make an assignment or proposal as an insolvent person. The *Act* will not permit municipalities to use natural person powers to impose fees and charges, however that authority is both provided and circumscribed by other provisions of the *Act*. It is the Legal Department’s position that the natural person powers given to municipalities, combined with the subsequent limits on those powers, are of no significant assistance to Ottawa-Carleton.

The proposed *Act* will reserve to the Lieutenant Governor in Council a very broad power to pass regulations to restrict the authority of municipalities to pass by-laws, and specifically to pass by-laws which are in the opinion of the Lieutenant Governor in Council “unnecessary” or which “represent duplication”, or to restrict a municipality’s ability to engage in commercial (which is undefined) activity, especially commercial activity which in the opinion of the Lieutenant Governor in Council represents ‘inappropriate competition with private commercial activities’. A statutory amendment would be required to maintain such a restriction for a period longer than three years from the effective date of the regulation.

The Legal Department, as well as many other municipalities and the Association of Municipalities of Ontario (AMO), remains deeply concerned with the breadth and depth of restrictive provincial authority found in the proposed *Act*. The ability of the Provincial Government to make regulations in virtually every area of municipal authority, without mandated municipal consultation, will contribute to an atmosphere of distrust on the part of municipalities. It is our opinion that only in areas of clear Provincial policy interest are provincial regulations needed. Otherwise, a new legislative regime may be created wherein municipalities are governed extensively by regulations, not legislation.

#### Interpretation:

Direction will be given to interpret the “natural person powers” and the authority given within the spheres of jurisdiction of the proposed *Act* broadly, so as to:

- enable municipalities to govern their affairs as they consider appropriate;
- enhance their ability to respond to municipal issues; and
- in the event of ambiguity, include, rather than exclude, municipal powers that existed on the day before the new powers became available to municipalities.

Unfortunately, the draft statutory language does not direct that municipal powers granted in the rest of the statute (not falling within the 13 spheres of jurisdiction) and by other municipal statutes be interpreted in the same broad manner.

Municipal by-laws will be subordinate to enactments (including regulations) made by the provincial or federal governments. Indeed, municipal authority will be subordinate to any instrument of a legislative nature, which will include any order, licence or approval made under a provincial or federal statute or regulation. Furthermore, except with respect to by-laws:

- prohibiting or regulating with respect to systems and facilities owned or operated by or on behalf of the municipality;
- licensing businesses (except perhaps with respect to conditions imposed on businesses through such by-laws);
- specifically authorized by provincial regulation (including special legislation),

where a matter is subject to provincial regulation (including orders, approvals or licences), a municipal licensing by-law or one supported by a sphere of jurisdiction is without effect to the extent that it prohibits or regulates the matter in substantially the same way as or in a more restrictive way than the provincial regulation. Since the breadth of our senior government's legislative areas are vast, this may give rise to increased challenges to municipal by-laws.

Municipalities are also to be specifically prohibited from passing by-laws respecting human rights, workplace health and safety, employer/employee relationships, and welfare/social assistance programs that are cost-shared with the Province. Having said this, where municipalities currently have by-laws in place that could conflict with any of the afore-mentioned provisions, the proposed *Act* provides that such by-laws will continue in force until repealed or until the new *Act* has been in place for three years.

## CONCLUSION

The proposed new *Municipal Act* does not represent the promised bold step in municipal empowerment. Uncertainty abounds with respect to how the new provisions will be interpreted by the courts, and whether there will be a propensity on the part of senior governments to restrict municipal powers through the use of statutory amendment, regulations, or minor enactments such as orders and approvals. While the proposed *Act* was, likely compiled with the best of intentions, the end result is not what was promised. It is not better than the present legislative scheme and may, in fact, be worse. It introduces a whole new degree of uncertainty which is not appropriate at this point in municipal history. The proposed *Act* should be reviewed and the process be continued to produce an open, enabling statute.

Discussions are continuing with staff at the Ministry of Municipal Affairs and Housing with respect to technical issues arising from the draft. Significant policy changes which might be adverse to the interests of Ottawa-Carleton have been identified in this report, and in that respect a number of suggested amendments to the proposed *Act* are set out at Annex B.

## PUBLIC CONSULTATION

There has been no public consultation in the preparation of this report.

FINANCIAL IMPACT

There is no financial impact associated with the recommendations of this report.

*Approved by*  
*J. Douglas Cameron*

JDC/KDM/JJJ/wcm

## ANNEX A

### Summary of Significant Provisions Proposed new *Municipal Act*

The proposed new *Municipal Act* introduces a number of changes from the current *Act*. Although it is not possible to highlight every change, the following is a list of what are considered to be the most significant changes from the perspective of an upper-tier municipality such as the Regional Municipality of Ottawa-Carleton. Items marked with an asterisk (\*) have companion recommendations set out at Annex B to this report.

#### GENERAL:

- The proposed *Act* will distinguish the responsibilities of Council from those of municipal staff:

#### Responsibilities of Council:

- representing the public and considering the well-being and interests of the municipality,
- developing and evaluating the municipality's policies and programs,
- determining the services the municipality should provide
- ensuring that there are administrative practices and procedures in place to implement Council's decisions effectively,
- maintaining the municipality's financial integrity, and
- carrying out other duties set out in legislation.

#### Responsibilities of Head of Council:

- presiding over Council meetings;
- representing Council at official functions; and
- carrying out other duties assigned by legislation.

#### Responsibilities of Staff:

- implementing Council's decisions and establishing administrative practices and procedures to carry out Council's decisions;
  - undertaking research and providing advice to Council on the policies and programs of the municipality, and
  - carrying out other duties set out in legislation or assigned by Council.
- it is interesting to note that with respect to the role of the head of Council especially, there is a distinct change from the current *Act*, which reads:

“It is the duty of the head of the Council,

- (a) to be vigilant and active in causing the laws for the government of the municipality to be duly executed and obeyed;
- (b) to oversee the conduct of all subordinate officers in the government of it and, as far as practicable, cause all negligence, carelessness and violation of duty to be prosecuted and punished; and
- (c) to communicate to the Council from time to time such information and recommend to it such measures as may tend to the improvement of the finances, health, security, cleanliness, comfort and ornament of the municipality.”

- by-laws which no longer are authorized by *Municipal Act* provisions will be grand fathered for a three year period, or until repealed, and may not be amended during such period.

#### SPHERES OF JURISDICTION:

- 13 basic areas of authority are set out for single-tier municipalities.
- upper and lower-tier municipalities find their authority to act within the 13 spheres of jurisdiction within a table set out at section 11 reproduced below. The table is intended to reflect the *status quo* authority currently possessed by upper and lower-tier municipalities:

#### T A B L E

SPHERE OF JURISDICTION	PART OF SPHERE ASSIGNED	UPPER-TIER MUNICIPALITY (IES) TO WHICH PART OF SPHERE ASSIGNED	EXCLUSIVE OR NON-EXCLUSIVE ASSIGNMENT
1. Health, safety, protection and well-being of people and the protection of property	A communication system for the provision of emergency response services	All	Non-exclusive
	Enforcement of the <i>Building Code Act, 1992</i>	Haldimand-Norfolk, Sudbury	Exclusive
2. Public Utilities	Sewage treatment	All counties, Niagara, Ottawa-Carleton, Waterloo, York	Non-exclusive

SPHERE OF JURISDICTION	PART OF SPHERE ASSIGNED	UPPER-TIER MUNICIPALITY (IES) TO WHICH PART OF SPHERE ASSIGNED	EXCLUSIVE OR NON-EXCLUSIVE ASSIGNMENT
		Durham, Haldimand Norfolk, Halton, Hamilton-Wentworth, Muskoka, Oxford, Peel, Sudbury	Exclusive
2. Public Utilities (cont'd)	Collection of sanitary sewage	All counties, Niagara, Ottawa-Carleton, Waterloo, York	Non-exclusive
		Durham, Haldimand Norfolk, Halton, Hamilton-Wentworth, Muskoka, Oxford, Peel, Sudbury	Exclusive
	Collection of storm water and other drainage from land	All upper-tier municipalities	Non-exclusive
	Water production, treatment and storage	All upper-tier municipalities except counties	Exclusive
	Water distribution	Niagara, Waterloo, York	Non-exclusive
		Oxford, Durham, Haldimand-Norfolk, Halton, Hamilton- Wentworth, Muskoka, Ottawa-Carleton, Peel, Sudbury	Exclusive

SPHERE OF JURISDICTION	PART OF SPHERE ASSIGNED	UPPER-TIER MUNICIPALITY (IES) TO WHICH PART OF SPHERE ASSIGNED	EXCLUSIVE OR NON-EXCLUSIVE ASSIGNMENT
3. Waste management	Whole sphere, except waste collection.	Durham, Haldimand Norfolk, Halton, Hamilton-Wentworth, Lambton, Ottawa-Carleton, Oxford, Peel, Sudbury, Waterloo, York	Exclusive
4. Highways, including parking and traffic on highways	Whole sphere	All upper-tier municipalities	Non-exclusive
5. Transportation systems other than highways	Airports	All upper-tier municipalities	Non-exclusive
	Ferries	All upper-tier municipalities	Non-exclusive
	Disabled passenger transportation system	Peel, Halton	Non-exclusive
	Passenger transportation system, except airports, ferries	Hamilton-Wentworth, Ottawa-Carleton	Exclusive
6. Natural environment	Tree conservation	All upper-tier municipalities	Non-exclusive
7. Culture, parks, recreation and heritage	Whole sphere	All upper-tier municipalities	Non-exclusive
8. Economic development	Promotion of the municipality	Durham, Haldimand Norfolk, Halton, Hamilton-Wentworth, Oxford, Sudbury	Exclusive

SPHERE OF JURISDICTION	PART OF SPHERE ASSIGNED	UPPER-TIER MUNICIPALITY (IES) TO WHICH PART OF SPHERE ASSIGNED	EXCLUSIVE OR NON-EXCLUSIVE ASSIGNMENT
		All counties, Muskoka, Niagara, Ottawa-Carleton, Peel, Waterloo, York	Non-exclusive
	Industrial, commercial and institutional sites	Durham, Haldimand Norfolk, Halton, Hamilton-Wentworth, Ottawa-Carleton, Oxford, Peel, Sudbury	Exclusive
		Lambton	Non-exclusive
9. Nuisance, noise, odour, vibration, illumination and dust	None	None	
10. Drainage and flood control, except storm sewers	Whole sphere	All upper-tier municipalities	Non-exclusive
11. Structures, including fences and signs	Whole sphere, except fences and signs	Haldimand-Norfolk, Sudbury	Exclusive
		Oxford	Non-exclusive
12. Parking, except on highways	Municipal parking lots and structures	All upper-tier municipalities	Non-exclusive
13. Animals	None	None	

- lower-tier municipalities share the same 13 basic areas of authority possessed by single-tier municipalities and may legislate in those areas where upper-tier municipalities are not exclusively allowed to do so.
- under the “health, safety, protection and well-being of people and the protection of property” sphere, and under the “nuisance, noise, odour, vibration, illumination and dust” sphere, a matter falls within the sphere so long that it is Council’s opinion that the sphere applies.
- municipal powers will be subject to specific enumerated conditions (sections 17 through 142), the conflict provisions of the *Act*, the *Charter of Rights and Freedoms*, judicial determinations of bad faith on the part of municipal Councils, as well as to the province’s own legitimate jurisdiction under the *Constitution Act*.\*

#### NATURAL PERSON POWERS:

- natural person powers relate to how a municipality may exercise its jurisdiction, not to the extent of such jurisdiction, which is to be derived from either a sphere of authority, or other statutory provision.
- unless there is a specific statutory provision allowing a municipality to incorporate or acquire an interest in a corporation, impose fees or charges, incur debt or make an investment, provide for pensions, become bankrupt or make an assignment for the benefit of creditors, the municipality cannot undertake such steps, even though a ‘natural person’ might be able to do so.\*

#### DELEGATION OF AUTHORITY:

- there is no specific provision enabling municipalities to delegate administrative functions to staff, because that would be considered to be part of a natural person power. Neither is there a specific provision enabling the delegation of non-administrative activity.\*
- the proposed *Act* does not assist in determining the meaning of “administrative”, giving rise to potential litigation.

#### PRACTICES AND PROCEDURES:

- municipalities will no longer be subject to the cumbersome notice provisions of the existing *Act*. Instead, there will be mandatory notice (respecting when and in what manner the municipality will give notice of a by-law about to be, or having been, enacted) and consultation by-laws.
- municipalities will be permitted to hold in-camera meetings for any purpose, provided the purpose is identified in the Council’s procedural by-law, or meets the criteria set out in subsection 248(8) of the proposed *Act* (i.e. property or labour matters...).

- municipalities will be required to enact a by-law establishing the organizational structure of the municipality. The proposed *Act* provides little guidance as to how detailed such a by-law must be, nor in respect of the threshold criteria mandating that such a by-law be amended.
- the proposed *Act* does not state expressly that all municipalities should be governed by an official plan (the *Planning Act* states that ‘regional’ and ‘metropolitan’ governments must have such a plan, but municipal nomenclature will be changed by the proposed *Act*).\*
- the new *Act* would make applicable to all municipalities what are commonly referred to as the “lame duck” provisions of the current *Act*, thereby restricting Council’s ability after voting day.

#### HIGHWAYS:

- no longer will municipalities be susceptible to becoming responsible for highways as a result of the expenditure of money or carrying out work on them (former ‘statute labour’ rule). Highways must be assumed by by-law.
- where a highway is mistakenly constructed on land which is not road allowance, the lands occupied are deemed to be expropriated and the owner is entitled to compensation.
- municipalities will no longer be obliged to rebuild bridges
- cumbersome and expensive alteration and closing by-laws will be replaced with the provisions of the municipality’s notice by-law.
- the concept of controlled-access highways does not appear explicitly in the proposed *Act*.

#### TRANSIT:

- although prohibited under section 20 of the proposed *Act* from regulating or prohibiting systems owned by or operated by or on behalf of a person other than the municipality by resorting to the “transportation systems other than highways” sphere or jurisdiction, section 99 provides that a local municipality may by by-law provide that no person except the municipality may operate a passenger transportation system within all or part of the municipalities specified.
- section 105 provides that Ottawa-Carleton may by by-law provide that no person except the municipality may operate a passenger transportation system within the region and no lower-tier municipality has the power to pass a by-law under section 99. Exempt from such regulation are such things as sightseeing vehicles, school buses, private buses, charters, cabs (which are subject to licensing), railway companies and ferries. Municipal regulation will

also not be broad enough to regulate passenger transportation systems which only originate in or terminate in the municipality.

- specific sections address the continuation of the Ottawa-Carleton Regional Transit Commission (OC Transpo), its' powers and deemed delegation to operate a passenger transportation system within the area in which it is operating on the day before this section came into force.

#### FINANCE AND TAXATION:

- the proposed *Act* will permit area rating, a means by which an area which derives an additional benefit not received in other areas of the municipality as a result of being a "special service", is made the subject of a special levy. "Special services" must first be prescribed by the province before they can become the subject of an area rating by-law, unless the by-law is being passed by a restructured municipality (which would include the City of Toronto) with respect to a service which was provided in the year before restructuring within one of the merged areas of the restructured municipality, and continues to be provided in the year after restructuring.
- similarly, a higher tax rate may be levied to deal with an otherwise unfair advantage to the merged area by off-loading liabilities brought into the restructured municipality. Such an increase is permissible for a limit of 7 years after the year of restructuring.
- the area rating power can be restricted, and in any event will be governed, by regulations the form of which are not yet known.
- the provisions of the *Fair Municipal Finance Act, 1997 (No.1)*, the *Fair Municipal Finance Act, 1997 (No. 2)* and the *Tax Credits to Create Jobs Act, 1997* are carried forward. Continued is the requirement with respect to tax deferrals for low income seniors and persons with disabilities, making it mandatory that upper-tier municipalities make provision to alleviate financial hardship for these two groups of property owners. The extent of the relief, however, is not prescribed.
- the proposed *Act* will allow municipalities to enter into agreements with taxpayers providing for alternative installment and due dates, such as monthly billing plans, such agreements however, remaining in force until revoked by the taxpayer; the municipality cannot revoke them in the case of default, for example.
- a new provision will enable the Treasurer to direct a tenant of property which is in tax arrears to pay the rent to the Treasurer.
- the language of section 312 of the proposed *Act* leaves open the potential that the province may direct that the municipality must collect taxes for any body it specifies (as opposed to the typical case where the municipality would impose taxes for itself and its school

board(s)). This new provision opens up the potential for the province to levy against the property tax base for its own purposes, or for any other 'body' it specifies.\*

- although not yet in the draft legislation, it is understood that the province will be requiring municipalities to pass by-laws which would require landlord and tenants to negotiate the implications of the removal of business tax provisions.

#### FEES AND CHARGES:

- fees and charges must be considered as part of the annual budget process. A fees by-law cannot be amended without a companion amendment to the budget.
- a by-law to impose fees or charges which would raise revenue in excess of full cost recovery must explain why the fee or charge exceeds cost recovery. Although the by-laws are not appealable, such statements could give rise to arguments that a by-law was not enacted in good faith, or was beyond the statutory jurisdiction.\*
- fees and charges may be imposed for the capital costs (of non-growth related) sewer and water services. Certain fees and charges may by regulation be deemed to be taxes and be subject to an appeal process, thus substituting for the provisions of the *Local Improvement Act*.
- as with the other powers provided by the proposed *Act*, the province retains the ability to invoke regulations which would restrict the ability of municipalities to charge fees.\*

#### BUSINESS LICENSING:

- the proposed *Act* continues recent amendments to the *Municipal Act* which provided for broad licensing power, and will provide that a municipality having jurisdiction over licensing will be able to regulate any business, whether wholly or partly carried on within the municipality. As usual, there are limitations attached to these broad powers. In this case, the power to license will not be available in respect of:
  - (a) a manufacturing or an industrial business, except to the extent that it sells its products or raw material by retail;
  - (b) the sale of goods by wholesale;
  - (c) the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources;
  - (d) a courier business wherein parcels and documents are conveyed in vehicles used for hire, other than buses and cabs, nor the vehicles used in such a business
  - (e) a transportation business wherein property is conveyed in vehicles used for hire, other than buses, cabs and tow trucks;
  - (f) the operation of a group home; and
  - (g) the rental of a residential housing unit.

- licence fees for each class of business cannot exceed the cost of administering and enforcing the licensing by-law with respect to that class of business.\*
- each licensing by-law must contain a statement as to why the municipality is licensing that class of business.
- the *Act* will provide for a regulation making power which would enable the Minister to exempt any business or class of business from any part of the licensing by-law, and imposing conditions and limits on the power a municipality might have to pass a licensing by-law. The regulation can be retroactive in effect for up to 2 years, and could require the return or special use of fees collected before the regulation was enacted.\*
- the licensing provisions in the proposed *Act* will apply to any licensing power provided by any statute. To the extent there is a conflict, the least restrictive on the power of the municipality will prevail.

#### BUSINESS IMPROVEMENT AREAS:

- the proposed *Act* will continue many of the current BIA provisions, including the recent Bill 106 amendments. Carried forward is the obligation for landlords to notify their tenants within 14 days of notice given by the municipality that it intends to pass a by-law designating a BIA. Only the landlord, however, will be entitled to object to the by-law. Note that BIA charges are deemed to be taxes, and therefore the landlord may be responsible for their payment if recovery from tenants is unsuccessful.
- even though BIAs establish their own budgets, the proposed *Act* will enable the municipality to levy higher assessments against parts of the BIA that in Council's opinion derive special benefit from improvements, as well as to establish minimum and maximum charges applicable to BIAs.
- the proposed *Act* does not provide for the imposition of an interim BIA levy.

#### ECONOMIC DEVELOPMENT:

- the existing prohibition against bonusing is continued, however a new exception with respect to community improvement plans under section 28 of the *Planning Act* is to be introduced.
- the *Act* would enable a school board to exempt from both school and municipal taxes certain properties designated as school capital facilities, without any consent required so to do on the part of the municipality.\*

#### TAX SALES:

- the *Municipal Tax Sales Act* will be repealed, and its provisions incorporated into the proposed *Act*.
- municipalities will not be able to write off taxes until they go through an unsuccessful tax sale. Should the tax sale be unsuccessful, the municipality is not obliged to register a vesting certificate. This will avoid the municipality having to become responsible for properties which have been abandoned by owners rather than clean up contamination to provincial standards.

ENFORCEMENT:

- the new *Act* would create an offence for any person who might “hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this *Act* or a by-law under this *Act*.”
- the *Act* would also introduce an ability for the municipality to conduct administrative inspections at any reasonable time to inspect land and structures to determine whether its by-laws made pursuant to *Municipal Act* powers were being complied with. The provision does not extend to by-laws which are authorized by other *Acts*, such as the *Planning Act*. The right to enter a dwelling unit is subject to a number of conditions, one of which is that the delay necessary to obtain a warrant or the consent of the occupier of the dwelling unit would result in an immediate danger to the health or safety of any person.

**ANNEX B**Suggested Amendments to  
Proposed new *Municipal Act*

1. For single-tier municipalities, the proposed *Act* will confer the power to enact by-laws within the 13 spheres of jurisdiction or areas of authority assigned by the *Act*. For upper-tier municipalities, the proposed *Act* will confer the power to enact by-laws within specific spheres or parts of the spheres of jurisdiction assigned by the section 11 table in the *Act*. It is submitted that municipal authority is often exercised without the need for the enactment of a by-law, especially where administrative powers have been delegated to staff, or in the case of operating and policy decisions made by a local board in respect of matters within its jurisdiction. The *Act* should be modified so as to clarify that the 13 areas of authority describe the subject matter within which municipalities may carry out their natural person and governmental powers (in addition to the powers provided by other statutes), and not merely the areas within which they may pass by-laws.

**It is recommended that the proposed *Municipal Act*, in assigning powers within the 13 prescribed spheres of jurisdictions or areas of authority, not restrict the exercise of such powers to the enactment of by-laws.**

2. Under section 3 of the proposed *Act*, the powers of a municipality are to be exercised by its Council, as is now the case. Section 3(3) of the proposed *Act* states that municipal powers, including their rights as a “natural person”, shall be exercised by by-law, unless the municipality is specifically authorized to do otherwise. A literal interpretation of this section would mean that nothing that could be done by a natural person could be done by a municipality unless its Council passes a by-law specifically for that purpose. It is submitted that there is no justifiable policy reasons for this section as worded especially in the current municipal context with the delegation of items to municipal staff. It is more the imposition of a duty or responsibility than the delegation of a power by which a council by-law becomes implemented.

**It is recommended that current wording of the proposed section 3(3) be amended as follows:**

**“A municipal power, including a power exercised pursuant to section 8, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise.”**

3. The proposed *Act* does not have a purpose section. Alberta’s *Municipal Government Act* incorporates the following purpose section:

“The purposes of a municipality are

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

A purpose section, along with a consolidation of the spheres of jurisdiction would improve the *Act* and make it simpler. The purpose section purposed by AMO during the initial consultation should continue to be advanced. It stated:

“The purposes of municipalities is:

- to provide good government;
- to provide services, facilities and other things that, in the opinion of council, are necessary or desirable for all or part of the municipality;
- to develop and maintain safe and viable communities; and
- to organize and operate in an effective and efficient manner.”

**It is recommended that a purpose section, as noted above, be incorporated into the draft *Act* for greater clarity.**

**It is further submitted that a municipal purposes section combined with effective natural persons powers allowing municipalities to act as natural persons would allow the Province to eliminate at least 30 of the remaining, prescriptive sections of the draft *Act*.**

4. The interpretation section of the proposed *Act* is drafted in such a way as to instruct the courts to interpret any ambiguity arising out of the provisions which introduce the powers of a natural person, and allocate the 13 areas of authority, in a manner so as to confer broad authority on municipalities. It is submitted that in order to give the interpretation section its intended effect, the *Act* should contain the simple statement that all municipal powers should be interpreted broadly.

**It is recommended that the proposed interpretation provision be modified so as to provide that municipal powers, whether they be derived from the new *Municipal Act* or any other statute, be interpreted broadly so as to:**

- enable municipalities to govern their affairs as they consider appropriate,
- enhance their ability to respond to municipal issues, and
- include, rather than exclude, municipal powers that existed on the day before the coming into force of the new *Act*.

**This can be accomplished by the deletion of the introductory words to subsection 9(2) up to the word “broadly”.**

5. The proposed *Act* does not repeat the current requirement for certain municipalities to have an official plan.

**It is recommended that the new *Act* contain a provision making it a requirement that at a minimum all single-tier and upper-tier municipalities maintain official plans.**

6. Section 14 of the proposed *Act* would restrict upper-tier municipalities with respect to systems owned or operated by or on behalf of its lower-tier municipalities in the following spheres of jurisdiction:
- public utilities;
  - waste management;
  - transportation systems other than highways;
  - culture, parks, recreation and heritage;
  - economic development;
  - drainage and flood control, except storm sewers; and
  - parking, except on highways.

This section is especially problematic with respect to public utilities and waste management in terms of an upper-tier municipality, such as the Region, regulating the sewer systems of its lower-tiers that meet our trunk sewers. The Region may lose future consent-granting ability over waste disposal facilities operated by a lower-tier municipalities. As well, the Region will lose any fees associated with the granting of these consents. It is difficult to conceive of the Region retaining enough effective power over waste management and planning associated with waste management in its sphere of jurisdiction, when section 14 specifically restricts our ability to prohibit and regulate with systems owned, operated on or behalf of its lower-tier municipalities.

**It is recommended that the Ministry of Municipal Affairs and Housing hold an extended technical discussion session with upper-tier municipalities in relation to the areas of public utilities and waste management. The Ministry of Municipal Affairs and Housing has actually sought the participation, in the past, of legal advice pertaining to roads and public transit. It is vital that this same advice be sought in relation to the above-noted areas, prior to this *Act* becoming a Bill.**

7. Section 20 of the proposed *Act* would restrict municipal regulatory authority with respect to systems owned by, operated by or on behalf of a person other than the municipality. This section could limit municipal ability to prevent third-party collection of curbside recyclables, importation of waste and endanger the Region's ability to monitor the integrity of our sewer system. The apparent policy behind section 20 is to prevent municipalities from regulating in areas governed by provincial regulation.

Under our current system, the Region does have the authority to regulate sewers owned and operated by any person (including lower-tier municipalities) and the Region has passed a by-law regulating the discharge of sewage into private sewers and the sewers of lower-tier municipalities. If the Region loses this ability, each of the Region's eleven lower-tier municipalities would be required to pass the same by-law to ensure region-wide uniformity and a twelve-party agreement would be required. Under the proposed legislation, the Region would only be able to regulate lower-tier municipal discharges into Regional trunk sewers. This does not promote pollution control at source. As well, under the current system, the Region can regulate the design, construction and maintenance of local works as well as regulating private works. This is also prohibited under the draft *Act*.

**It is recommended that section 20 be drafted in such a way as to meet its narrow policy objective without restricting existing municipal powers. Again, it is recommended that the Ministry of Municipal Affairs and Housing enter into technical discussions with upper-tier municipalities with respect to these matters.**

8. One of the stated objectives of the proposed *Act* is to allow municipalities greater flexibility to deal with local issues. In this regard, municipalities are considering commercial ventures (such as public/private partnerships) with private sector firms to decrease the cost of municipal services, and/or to raise revenues for the municipality. One method favoured by the private sector in organizing such ventures is the establishment of a corporation managed by a board of directors composed of representatives of both the private firm and the municipal corporation. Such corporations provide the advantage of responsive and timely decision making processes, as well as protecting the municipality and the private sector partner in the event of losses arising out of the business venture (limited liability). The proposed *Act*, however, prohibits municipalities from incorporating companies or owning securities in a company.

**It is recommended that municipalities be permitted to incorporate companies or own shares in companies, subject to specific provisions to be established by regulation which would preserve municipal accountability and financial responsibility, such as provisions requiring that:**

- a certain percentage of shares always be owned by the municipality;
- meetings of the board of directors or any committees of the board be subject to the 'open meeting' provisions of the *Municipal Act*;
- the articles of incorporation describe the purposes of the corporation, and that the articles cannot be amended without consent of the municipal Council;
- the *Municipal Freedom of Information and Protection of Privacy Act* have (at least limited) application to such corporations;
- the municipal auditor have access to the books and records of the corporation, and that such records otherwise comply with the relevant provisions of the *Municipal Act*;

- **municipal assets may not be transferred to the corporation except as permitted by regulation; and**
- **there be certain statutory clauses to be included in shareholder agreements (such as clauses restricting the transfer and ownership of shares).**

9. It is also submitted that in order for municipalities to deal effectively with local issues, they require the ability to delegate certain non-administrative functions to either a committee or a special purpose local board. This would allow a municipal Council to distribute its workload in a manageable yet accountable manner. By way of example, municipalities should be permitted to:

- consolidate into a new local board existing local boards which carry on similar activities; or
- establish committees with the authority to hear and determine final appeals from decisions made pursuant to authority delegated to an official (such as permit appeals).

**It is recommended that municipalities be permitted to establish local boards to have certain prescribed responsibilities, subject to criteria to be established by regulation, which might include:**

- **restrictions on the matters for which a local board may be created;**
- **methods of appointment to the board;**
- **restrictions on the transfer of assets of the municipality to the board;**
- **matters pertaining to the financial records of the local board; and**
- **matters pertaining to the conduct of meetings of the local board.**

10. Part III dealing with business licensing sets out an extremely restrictive framework in which municipalities are entitled to license businesses. A licensing by-law limits municipalities to the setting of licence fees to those which are limited to cost recovery and enforcement. Not only does this remove a traditional source of small municipal revenue, it virtually eliminates one of the incentives for business licensing. By setting out a restrictive framework with the possibility of regulatory intervention in this area, the Provincial Government has indicated that it does not trust municipalities to set licensing fees at levels appropriate to each municipality. This also indicates a lack of understanding on the part of the Ministry of Municipal Affairs and Housing on the reasons for business licensing.

**It is recommended that the restriction on earning business licensing revenue be removed from the Act and that this Part be redrafted to reflect the Ministry's narrow policy concerns without discouraging municipalities from one of their important purposes, being agents of business licensing.**

11. In Part XIII dealing with Fees and Charges by-laws, a municipality is required to state the reasons for any profit which may ensue from the imposition of these by-laws. This concerns municipalities as being a potential new source of legal challenges to municipal by-laws.

**It is recommended that the Ministry of Municipal Affairs and Housing redraft this Part to clearly enunciate its policy interest balancing the need for municipalities to raise municipal revenue from sources other than those based on property assessment.**

12. Section 289(1) of the proposed *Act* states that a Council of a municipality, other than a lower-tier municipality, may pass a by-law providing tax relief for certain enumerated persons. Section 289(2) states that a council of a municipality, other than a lower-tier municipality shall pass a by-law under subsection (1).

**It is recommended for more concise drafting that the proposed *Act* clearly state in section 289(1) that a Council of a municipality, other than a lower-tier municipality, shall pass this type of by-law.**

13. Section 402 of the proposed *Act* contains broad authority for the Province to restrict the powers of municipalities by regulation, allowing this regulatory power to be applied both retroactively and in a different way against different municipalities. In addition, sections 17 and 18 provide additional restrictions on municipal regulatory powers and provide that municipal by-laws will be subordinate to provincial enactments, defined to include legislation, regulation and orders, approvals and licences. These provisions raise a concern that municipal regulation in almost any area could be challenged on the basis that the province has already occupied the field; the proposed *Act* fails to draw a clear line between provincial and municipal powers that could result in municipal regulation being struck down as the Province occupies almost every field to one extent or another. Examples of potential conflict include smoking in the workplace, noise, dust or other pollution control, municipal purchasing policies such as fair wage, licensing of special rooming houses, etc.

**It is submitted that the regulatory power of the Province provided in the proposed *Act* is so broad that it should be a sufficient mechanism for the Province to restrict municipal authority where it deems it to be appropriate or necessary. It is submitted that section 17 in particular should be deleted as it causes unnecessary concern that municipal by-laws will be struck down wherever the Province has regulated in the area, even where a field inspector has issued an order or a clerk has issued an approval under a regulation. Additionally, it will be nearly impossible for municipalities to keep track of all orders, licences and approvals issued by provincial staff. One alternative to the proposed section 17 would be to broaden the list of specific areas where municipalities are prohibited from regulating set out in section 18.**

**In the alternative, it is submitted that at the very least section 17 should be restricted in its application to include only provincial legislation or regulation and not orders, licences or approvals.**

14. Part V of the proposed *Act* deals with transfers of powers between upper and lower-tier municipalities subject to regulations and a “triple majority” consent process. Part VI deals with the ability of municipalities to restructure through the imposition of a commission or through a municipal by-law approval process subject to a “triple majority” consent process. In both cases, the proposed legislation does not take into account the special needs and considerations of upper-tier municipalities. The legislation is silent on restructuring specifically for regions and special considerations or criteria that could be imposed to ensure that restructuring and services migrate in an objective, organized and coherent manner. For two-tier systems where the upper-tier is directly elected, such as Ottawa-Carleton, the triple majority formula is unlikely to produce voluntary agreements on restructuring or service migration. All decisions on changes to municipal governance and structure of service delivery responsibility should be unfettered local decisions. Ottawa-Carleton is also troubled as to the specifics of how Part V will operate given the new approach of granted spheres or parts of spheres of jurisdiction to upper and lower-tier municipalities.

**It is recommended that the Ministry of Municipal Affairs and Housing consult with upper-tier municipalities to determine appropriate models for restructuring and service migration powers for directly and indirectly-elected Councils.**