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**THE ALBERTA MUNICIPAL GOVERNMENT ACT:  
HOW WE GOT THERE**

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# THE ALBERTA MUNICIPAL GOVERNMENT ACT: HOW WE GOT THERE

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*for the*

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## SYNOPSIS

In 1986 the Alberta Government announced a wide-ranging review of the *Municipal Government Act* and related legislation. In 1987, the Municipal Statutes Review Committee began a broad-based consultation with anyone who was interested. The Committee issued a recommended Municipal Policy Statement in 1989. This policy statement provided the basic philosophy for the new Act. The Committee proposed a recommended new Municipal Government in its 1991 report, *Municipal Government in Alberta: A Municipal Government Act for the 21st Century*. The new Act was passed by the Alberta Legislature in 1994 and fine-tuned in 1995.

*"It must be considered that there is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things."*

*- Machiavelli*

### KEY DATES

<b>1986</b>	Review is authorized
<b>1987</b>	Municipal Statutes Review Committee appointed
<b>1989</b>	Recommended Municipal Policy Statement
<b>1991</b>	Committee proposes new Municipal Government Act
<b>1992</b>	Bill 51 dies on Order Paper
<b>1994</b>	Bill 31 passed enacting a new Municipal Government Act
<b>1995</b>	Bill 32 passed expanding the Municipal Government Act

## A DECADE OF PREPARATION

This paper tells the story of the process used to develop Alberta's new *Municipal Government Act*. To be effective, a public consultation process has to be developed to fit the jurisdiction in which it is being carried out. Readers are welcome to adopt the whole process, or any parts of it, but before doing so should be sure that it fits the context of the jurisdiction in which it will be used.

### The "Old" Legislation

The "old" Alberta *Municipal Government Act* was enacted in 1967. Before it was passed, separate Acts governed towns and villages, municipal districts and cities. The 1967 reforms combined these separate Acts into three new Acts - the *Municipal Government Act*, the *Municipal Taxation Act* and the *Municipal Election Act*. Those active in municipal life at the time report that this was basically a "cut and paste" exercise, the only policy review occurring when conflicts had to be resolved between sections in the former Acts. Bill Wood, Legislative Counsel, had less than a month to do the drafting.

Although Alberta had regularly amended its municipal legislation over the years to match the times, the basic legislative scheme in 1967 (and therefore in 1987) was substantially the same as it had been in the 1940s.

The *Municipal Government Act* had been amended regularly since its initial passage in 1967. The amendments had been *ad hoc*, with consequent gaps and overlaps. The Act had become outdated, e.g. it assumed paper-based transactions in a time when electronic data storage and transmission were in wide use. In addition, a variety of other Acts affecting municipalities displayed a similar variety of approaches to municipal government, depending on the viewpoint of the provincial department responsible for administering the Act.

### How It Got Started

The story of the new Act begins in 1977. For one of its cyclical reviews of municipal finance, Alberta had established a Provincial Municipal Finance Council (PMFC). In one of its submissions to the PMFC, the City of Edmonton suggested that the time had come to redraft the *Municipal Government Act* to bring it in tune with the times. That suggestion was largely ignored while municipalities and the province coped first with unprecedented growth and then with no growth. But the issues raised by Edmonton continued to be echoed from time to time by municipalities, their associations, and by individuals.

In the early 1980s, a renewed partnership thrust became apparent in the relationship between Alberta Municipal Affairs (AMA) and municipalities under the leadership of the new Deputy Minister, Archie Grover. AMA put considerable emphasis on prior consultation with the municipal associations and began confidential reviews of drafts with the Associations' executive groups before introducing new legislation. AMA also began to meet regularly with the senior administrators of the larger municipalities (prior to this, the larger municipalities had tended to ignore AMA and *vice versa* except in times of crisis).

In 1982 Alberta Municipal Affairs (AMA) convened a group of provincial and local officials and basically gave them a free hand to develop a new *Local Authorities Election Act*. This was intended to replace the *Municipal Election Act*, the *School Election Act* and the regulations under the *Hospitals Act* which previously governed local elections. The report of this group was distributed for public comment and with only minor wording changes eventually became the *Local Authorities Election Act*. It was used for the first time in the 1983 local elections for municipal councils, school boards and hospital board members (where applicable).

So Edmonton sowed the seed of the idea and AMA showed that a consultative process could work in developing municipal legislation.

### **The Review is Authorized**

Then, in 1986, the Mayor of Grande Prairie, Oscar Blais, asked a seemingly routine question about when there was going to be a review of the *Municipal Government Act*. The new Premier, Don Getty, during his leadership campaign had indicated his intention to consult with municipalities on matters of mutual interest. The Minister of the day, Julian Koziak, was willing and the 1986 Throne Speech contained an innocent little paragraph that said the government was going to undertake a complete review of the *Municipal Government Act* and related legislation.

Shortly thereafter a provincial election was called following which Neil Crawford became Minister. He continued to support the review but not long after his appointment he was diagnosed with Lou Gehrig's disease and it wasn't until 1987 that the subsequent Minister, Dennis Anderson, finally signed the Ministerial Order establishing the Municipal Statutes Review Committee and its terms of reference.

### **The Municipal Statutes Review Committee (MSRC)**

The Committee initially consisted of an MLA as chair (Eric Musgreave), 2 members of the public selected by the Minister (Ross Alger, Bob Matheson), and 5 representatives of the municipal associations (Gary Browning, Frank Lambright, Ty Lund, Dick Papworth and Craig Reid) all appointed as individuals by the Minister.

The terms of reference required the Committee

*“to review and make recommendations on the Municipal Government Act and any other relevant legislation, in light of emerging trends in Alberta and other jurisdictions, with a view to recommending legislation appropriate to Alberta municipal government in the last decade of the 20th century and into the 21st century”*

In carrying out its work the Committee was authorized to

- invite public submissions
- hold public hearings
- consult with other jurisdictions
- consult with any person or group

- issue discussion papers and one or more preliminary reports in order to obtain public comment
- do any other thing reasonably necessary to ensure a complete and comprehensive review

The 1989 provincial election affected the Committee's membership. Chairman Eric Musgreave did not run. Ty Lund was elected as an MLA. So, following the election, the Committee's membership was restructured to a total of 11 members: 2 MLAs (Glen Clegg as Chair and Ty Lund as Vice-Chair), 3 public representatives (Ross Alger, Bob Matheson, Eric Musgreave) and 6 local elected officials (Gary Browning, Ken Kozak, Frank Lambright, Dick Papworth, Laverne Sorgaard and Craig Reid).

All of the original and subsequent members had sat or were sitting as municipal councillors - a total of more than 170 years of experience in municipal elected office.

Because of the volume of material being reviewed, it was critical to the Committee's work that the members have sufficient time available to thoroughly consider all the issues. This was a particular issue for the elected officials whose caucus and councils (and the Associations for the four local elected officials who were Association directors) had to adjust work allocations to allow the members to take full part in the Committee's work.

AMA budgeted about \$300,000 annually for the Committee's work which included honoraria and expenses for members, meeting costs, printing and mailing costs for materials, expenses for AMA staff serving as secretariat to the Committee, and consultant's fees. Actual expenditures were about \$750,000 (excluding staff time) over the approximately 4 year life of the Committee.

The review was carried out during the terms of two Premiers and 6 Ministers of Municipal Affairs and encompassed two provincial elections and two municipal elections.

## **NEWSPAPER AD FLOPS BUT DISCUSSION PAPERS LEAD TO MUNICIPAL POLICY STATEMENT**

### **The Newspaper Ad**

In the summer of 1986, thinking that the Committee's appointment was imminent, AMA placed an ad in every newspaper in Alberta which read:

*"Your municipal government is involved in much of your everyday life. Many of these activities fall under a variety of provincial legislation. While improvements are made constantly, it's been a while since the last major revision.*

*In the next year and a half we will be putting together many of these changes, with existing legislation, into a new Municipal Government Act.*

*But, first, we want your ideas.*

*Whatever opinions or suggestions you may have on any aspect of municipal government will be looked at by the Municipal Statutes Review Committee.*

*Send your comments as soon as possible, in writing, to ... “*

The ad resulted in about 120 letters all focused on particular issues, for example: whether vacation trailers permanently parked at lakes should be taxed; and, what was termed the exorbitant cost of licenses for door-to-door salespeople in some municipalities. But as far as generating any material input to a serious discussion of municipal government in the 21st century, the ad can most kindly be described as a flop.

There seemed to be two main reasons for this. First, the text of the ad was “non-committal”, i.e. it did not clearly indicate the substantive kind of review that was contemplated from the very beginning. This may have been a primary factor in major organizations tending to view the Committee as just more government window dressing. Secondly, most people have an easier time commenting on proposals or responding to specific questions than they do filling up a blank piece of paper. Since it wasn't clear what the ad was requesting, basically only those with an axe to grind bothered to put pen to paper.

### **The Secretariat**

The first task of the Committee, therefore, was to decide how it would proceed to drum up enthusiasm and participation in its work both among its stakeholder groups and, if possible, the wider public. Indicative of the way it approached its work, its initial action was to consult with provincial and municipal officials in the neighbouring provinces of Saskatchewan and British Columbia, where legislative reviews had recently been undertaken.

The Saskatchewan people suggested that it was important to establish from the beginning that the Committee, not the civil service, was in charge of the review. The Ministerial Order establishing the Committee directed AMA to provide secretariat service and designated Tom Forgrave, Assistant Deputy Minister, Municipal Administrative Services, as secretariat coordinator. Deputy Minister Archie Grover agreed that Forgrave and any other department staff would separate their government service from their secretariat duties so that in the Committee's work they would take direction from the Committee. He also agreed that AMA should be treated as one of the major stakeholder groups with which the Committee would consult.

The secretariat eventually included Forgrave, Norm Milke (a senior municipal advisor seconded from the AMA Municipal Services Branch) and Margaret Suelzle as administrative support. From 1988 to 1991 Forgrave and Milke spent about three-quarters of their time on the Committee's work.

The secretariat was responsible for drafting all discussion papers and providing advice. It also looked after travel, meeting and other administrative arrangements for the Committee. A close working relationship between the Committee Chair and the Coordinator was maintained throughout the life of the Committee.

## No Interference

The Deputy Minister's arm's length agreement was reflected in the approach of the various Ministers to the Committee. Throughout its life the Government did not direct either Forgrave or the Committee on anything that had to be included in or excluded from the Committee's reports. The Premiers and Ministers of Municipal Affairs were continuously supportive of the Committee's work and referred a number of issues (which had to be dealt with prior to the final report) to the Committee for advice.

Because it operated at arm's length from the Government, the Committee was able to raise a number of fairly controversial issues for public discussion that might otherwise have been difficult for the Government to raise. Opposition Members of the Legislative Assembly did not try to make the Government Members defend any of the ideas floated by the Committee.

A prime example of this was the Committee's suggestion that property assessment might be done by an Alberta Assessment Authority. This suggestion aroused the ire of the Alberta Assessor's Association which tried to have political pressure exerted to abandon any further discussion. The MLAs refused to become involved until the Committee had reached its own conclusion.

In short, this approach allowed municipalities to get public discussion of issues that had been festering for them and allowed resolution of these issues to evolve without the Government getting boxed into positions before the debate had concluded.

## The General Approach

The Committee then concentrated on "how to get its arms around this elephant it had been handed", as one wag put it. The terms of reference mentioned "the *Municipal Government Act* and any other relevant legislation", "emerging trends in Alberta and other jurisdictions", and "legislation appropriate to ... the last decade of the 20th century and into the 21st century".

The "relevant legislation" most notably would include the *Municipal Government Act*, *Municipal Taxation Act*, *Local Authorities Election Act* and the *Planning Act* which had been referred to as the four gospels of the municipal legislation Bible in Alberta. In addition, however, more than 100 other Acts affected the way that municipalities in Alberta operated. From their experience as councillors, the Committee members knew that a variety of understandings of the nature and purpose of municipal government were reflected in those Acts.

With the approach of the last decade of the 20th century, in the late 1980s there was a popular interest in "futurist" studies. There was no shortage of speculation on "emerging trends". In particular, the annual conventions of the national and provincial municipal associations included presentations by a variety of experts intended to provoke future-oriented thinking by municipal leaders. In Alberta a Vision 2020 project was also being promoted by Minister of Municipal Affairs Dennis Anderson.

The Committee decided that its first task should be to develop a recommended statement of municipal policy. This policy would guide its own work in considering the legislation and, if

adopted by the government, could serve as a guide to all provincial/municipal relationships. Concurrently the Secretariat would be asked to provide an overview of the emerging trends.

When these two tasks were completed, the Committee would then primarily focus on the *Municipal Government Act* and *Municipal Taxation Act*. It decided to ignore the *Local Authorities Election Act* since it was relatively new, affected all local jurisdictions and was regularly reviewed in consultation with the primary users. It also decided to ignore the *Planning Act* since a review of the whole land use planning system would be too much to tackle along with its primary focus. The other 100 or so Acts would be left in abeyance for the responsible departments to review once the Committee's major report had been adopted by the Government.

The approach to all of this work would be broadly consultative. Anyone who was interested would be able to take part. The Committee wanted to complete its work in about 3 years and so it wanted a consultation process that would allow broad-based participation, would allow the Committee members to continue their normal daily activities (i.e. not become full-time Committee members) and would enable a final report in about 3 years.

### **The Discussion Papers**

With all of this in mind (together with the memory of the newspaper ad flop) the Committee decided to adopt a three-phased Discussion Paper process to develop its recommended statement of municipal policy. This basically involved the preparation of written material which would be distributed to all municipalities and anyone else who was interested in providing comments or suggestions for the Committee to consider. A response time of 2 to 3 months was allowed so that there would be time for municipal administrators to provide recommendations for councils to consider at their meetings, although individual responses were also encouraged.

"Preliminary Drafts" were prepared which discussed broad concepts and raised questions in the hope of encouraging debate of policy issues. After considering the comments received, "Second Drafts" were produced. These were essentially a draft of what the Committee envisioned as its final recommendation. The Committee also held a series of public forums at 10 locations around the province. Finally, after considering the comments received on the second drafts, a report recommending a municipal policy statement was presented to the Minister of Municipal Affairs.

Over 3000 copies of each discussion paper were mailed out. The normal response rate was about 1/3 of the municipalities and 10% of the non-municipal recipients of the papers.

The topics to be examined in the Discussion Papers were:

- 1) a definition of the purpose of municipal government in Alberta and of provincial legislation related to municipal government. These statements would be fundamental to the development of concepts/policies on municipal government.



- 2) public services and their delivery to people. What services should be delivered as a municipal responsibility and which, while the responsibility of another order of government, might most appropriately be delivered by municipalities?
- 3) municipal own-source revenue generation authority, both existing and potential, including issues related to property assessment and taxation
- 4) the forms of municipal government, the political and administrative organization of municipalities and the roles and responsibilities of elected and appointed officials which are addressed in legislation.
- 5) relations of municipalities outside their borders - regional, provincial, national and international - and the implications of emerging trends in these relations for an understanding of the emerging nature of local governments
- 6) specific issues raised with the Committee in written submissions and at forums.

The Committee issued an information paper advising of the schedule for these papers and inviting input prior to their preparation with little response.

### **As MSRC Saw the Environment**

While the responses were coming in, the Committee was noting what was going on in the world around it to identify the trends demanded by the terms of reference. Some of the trends which attracted attention were:

- changing population mix with increased immigration
- aging of the population
- shorter tenures for elected officials
- the Meech Lake lesson - people want a chance to be part of the action - and freedom of information legislation = more open government and a more consultative style of governing and less opportunity to exercise control by hoarding information
- technological advances raise expectations for speedy response
- growing impatience with departmentalized and specialized bureaucracy requiring several referrals (even between governments) to get an answer
- at or close to the threshold beyond which the burden of taxation will become generally unacceptable (remember, this was 1988!)
- government assistance only to the truly needy
- growing emphasis on user fees

- inter-governmental bickering is a waste of taxpayers' money
- governments need to learn how to say "no" - shift of concern from quantity to quality of government services
- legislation needs to anticipate the unexpected

## The Policy Statement

In April 1989 the Committee presented its recommend policy statement to Minister of Municipal Affairs Ray Speaker.

The report recommended a statement defining what municipal government is:

*"A municipality, a body corporate, is the local unit of government established by the province on the request of the residents of a clearly defined geographical area*

- (a) to facilitate the provision of necessary or desirable services for people and property, and*
- (b) to develop a viable and pleasing community for the residents.*

*The powers, authority and access to resources needed by a municipality to achieve these purposes are confirmed in provincial legislation and may be carried out in cooperation with other municipalities, the provincial and federal governments and/or other public and private agencies/institutions."*

The report also established several principles for municipal legislation such as:

- empower municipalities to deliver services at standards deemed appropriate by the residents
- provide flexibility for municipalities to operate effectively and efficiently appropriate to their size
- facilitate non-adversarial resolution of inter-municipal disputes
- facilitate inter-municipal cooperation in service delivery
- facilitate the role of council in policy determination and of the administration in policy implementation
- all the finance provisions should be in one Act
- all the assessment provisions should be in one Act the related Acts repealed

The Committee also concluded that there was general support for the existing system of municipal government in Alberta but that areas of the system required revision or fine-tuning to prepare for the foreseeable future and facilitate current municipal operations - a "fix it before it breaks" approach.

In its covering letter, the Committee advised the Minister that it would be "proceeding to review legislation on the assumption that the policy statement would be accepted substantially as proposed" unless the Government directed otherwise. Since no such direction was received, the Committee then proceeded with its legislation review.

## **LEGISLATION PAPERS LEAD TO RECOMMENDED NEW ACT**

### **The Legislation Papers**

The Committee once again had to decide what kind of consultative process it would use to develop the legislation. Since the Discussion Paper process had been accepted by the stakeholders in developing the policy statement and had provided some substantial input to the Committee's deliberations, a similar, three-phased Legislation Papers process was implemented to develop a new *Municipal Government Act* in consultation with all the stakeholders. Initially the general scheme was to develop the Act in six Parts:

- Interpretation and Consultation
- Establishment of Municipalities
- Organization of Municipalities
- Authority of Municipalities
- Finance of Municipalities
- Legal Proceedings

The Committee envisioned its secretariat preparing a layman's draft of each Part. These drafts were to be written in simple language and the test would be how many words required definition. The language was to be "inclusive" or gender-neutral, i.e. written so that "he" or "she" did not need to be used. The sections were to be simple, avoiding as far as possible the use of long, involved sections with subsections and clauses. As much detail as possible was also to be excluded.

These layman's drafts were to be reviewed by the Legislative Counsel Office prior to publication. Each Paper would include a disclaimer type of statement noting that this was the Committee's draft and did not necessarily reflect what the final legal wording would look like. While the Chief Legislative Counsel, Peter Pagano, originally agreed to this approach, it soon became apparent that his staff, given the volume of other work they were facing, could not keep pace with the Committee's proposed schedule for the publication of the Papers. Therefore, Pagano recommended that the Committee retain the services of a Legislative Planner.

David Elliott, a lawyer who had previously worked in the Legislative Counsel Office, was retained. Elliott has both a professional and a hobby interest in state of the art ways of

writing legislation. He was also an enthusiastic participant in the Committee's discussions of new ways of empowering municipalities.

The idea had been that each Legislation Paper would cite the portions of the policy statement applicable to it. Preliminary Drafts would start discussion and get feedback. Second drafts would move closer to what the Committee was intending to recommend. A final draft would be a proposed new *Municipal Government Act*. However, many stakeholders commented that they found it difficult to review the legislation proposals in chunks, particularly without knowing what the later chunks would include. Therefore, the Second Draft Legislation Papers were all combined as an initial draft of a new Act reflecting Elliott's drafting work.

A significant increase in the response participation rate by municipalities was evident in the Legislation Paper process. The Committee's files occupy about 24 feet of shelving and about 18 feet is occupied by Legislation Paper responses.

During this process the City of Calgary took an active interest in the Committee's work. It made Mike Facey, Norm Carruthers and Dale Stanway available to attend Committee meetings and provide various background papers. The City of Edmonton later made Yost van Schaik available to provide some assistance.

### **The Natural Person Concept**

The Committee made one group trip outside of Alberta. Marcia Sypnowich, an Assistant Deputy Minister in Ontario Municipal Affairs, arranged for several days of briefing with Ontario officials. The Committee also arranged to have Robert Cournoyer, an official in the Quebec Ministry of Municipal Affairs, travel to Toronto to join the meeting.

Legislation has traditionally been written to detail the powers of municipalities. The guiding principle has been "if you can't find the line that says you have the authority to do something, then you don't". Committee member Bob Matheson began to suggest that the Committee's recommended Act should take the reverse approach, basically that a municipality could do anything it wanted to do unless it was restricted by legislation. In other words, the idea growing among the Committee members was that the province should practise management by limitation rather than by authorization.

Concurrent with but separate from the MSRC exercise, Canada, Alberta and the people of Banff were negotiating the incorporation of the Town of Banff. Everyone agreed that the Town of Banff should not seem different from any other town in Alberta in its operation to the average person on the street. Canada, however, wanted to retain land use planning control. Professor Fred Laux, University of Alberta, provided the solution when he proposed essentially that the federal Minister should adopt Alberta's *Planning Act* as the planning regulation for Banff with the exception of those provisions of the Act which Canada wanted to control directly. This was an important reinforcement of the management by limitation idea.

When the idea was raised in the Toronto meetings, Ontario said it had not considered such a scheme. Quebec said that it had started to draft such an Act but had abandoned the

project when the list of restrictions became longer than the existing Act. Nevertheless, the Committee began to become excited about the idea. The question was how to do it. The trigger to the answer came in thinking about the municipality as a corporation.

Legislation affecting business corporations had been rewritten to give these corporations the powers of a natural person for much the same reasons as the Committee had in mind. David Elliott prepared a paper suggesting this approach, if used for municipalities, could eliminate much of the administrivia from the *Municipal Government Act*. It would not affect the bylaw-making function of councils since ordinary persons do not have the power to make laws.

Individuals, of course, can enter into agreements; borrow money; buy, rent or sell property; hire employees and provide for their remuneration and benefits; invest; organize their affairs; delegate responsibilities to others; and sell goods and services at whatever the market will bear. The existing *Municipal Government Act* used about 90 sections to describe those powers for municipalities.

The Committee foresaw that some restrictions would be necessary on these powers related to relations with other municipalities, the province's responsibilities and the general public interest.

The Committee saw this idea as being "power neutral". That is, it would neither expand nor contract municipal powers but rather would provide administrative flexibility and make it easier to take advantage of new technologies and new management styles.

One issue the Committee did not foresee was the confusion that would arise from the traditional power of municipalities to do anything by bylaw that they are authorized to do by resolution. Sometimes a municipality wants to use the bylaw form, with its three readings rather than one simple motion, because it is seen as more permanent and as a stronger indication of the council's intent.

### **Spheres of Jurisdiction for Bylaws**

The "old" *Municipal Government Act* had about 120 sections listing all the bylaws that a municipality could or had to pass, often prescribing details of what the bylaw must say. Having resolved the issue of administrative detail with the natural person concept, the Committee began looking for ways to resolve the same problem with the bylaw authority sections.

While the issue of making law is much more complex than the day-to-day administration of a municipality, the idea began to evolve that if municipal councils are thought to be responsible then a similar approach could be taken. Brand Inlow of the City of Calgary Law Department provided the seed that evolved into the spheres concept. The new *Municipal Government Act* could set out some general areas, or "spheres of jurisdiction", in which municipalities could make bylaws unless the power was limited by some Act. A bylaw would not be of any effect to the extent that it was inconsistent with an Act. And, since in providing the power to make bylaws the Legislature is essentially delegating some of its own power to make law, bylaws should have the same force and effect as provincial Acts.

So, instead of pages of detail about the regulation of roads, the Committee was going to recommend that the new Act contain a sphere of jurisdiction "regulation of transportation systems". This could include traffic control, pedestrian malls, behaviour on transit vehicles, transit fares, speed limits and so on which were not regulated provincially. The advantage was seen to be that the Act would not have to be amended every time something new arose within the general sphere of a transportation system.

The Committee recognized that there were risks in this kind of approach for both municipalities and the province. Since it is much easier to pass a bylaw than an Act, the potential existed for municipalities to adopt a variety of approaches to a new issue before the Government could establish a policy and enact related legislation. There could be political backlash when the municipal bylaws became ineffective as a result of the new provincial law. Municipalities also were accustomed to pointing to specific sections in an Act to find their authority for bylaws. That would no longer be available. But the Committee concluded that the spheres approach would provide the greatest flexibility to develop a style of municipal government that suited the community and would put councils in the driver's seat in achieving the purpose of municipal government.

### **Local Governance Commission**

To address the issue of non-adversarial resolution of inter-municipal disputes, the Committee proposed the establishment of a Local Governance Commission. The primary focus of the Commission would be doing whatever was necessary to facilitate local resolution of issues arising between municipalities and would operate at arm's length from both the province and municipalities. Negotiation between the affected municipalities and input from other affected local authorities would be the primary focus for dealing with issues like incorporation, annexation, change of status, dissolution, intermunicipal agreements and resolution of disputes. This Commission was proposed to replace the Local Authorities Board and assume the AMA role in mediation and advice on incorporation, dissolution and change of status.

### **The Assessment Controversy**

In both written submissions and in presentations at its public forums, the Committee heard about concerns with system of property assessment. At the time land was assessed at market value and improvements at replacement cost depreciated. General assessments could be used for up to seven years (and longer if a Ministerial extension was granted), resulting in significant shifts between types of property when a new general assessment came on the roll. Also, since for many purposes, particularly education taxes, costs were shared according to assessment, the province had had to establish a complicated system of equalized assessment (bringing all assessments to the same base year) so that the cost-sharing would be equitable. People didn't understand the regulated assessment system to start with and threw up their arms in horror when trying to get their minds around equalized assessment.

In its discussions with British Columbia officials, the Committee had heard about the British Columbia Assessment Authority and, prodded by Ross Alger, began to consider its application to Alberta. A similar process was being developed in Saskatchewan but it was the British Columbia model that got the attention of the Committee members. In particular, the extensive automated systems of the B.C. Authority permitted annual market value assessments which, according to all reports, were widely accepted by the real estate community, the province, municipalities and property owners. Calgary sent an administrative task force to research the acceptance in B.C. and reported favourably.

Annual market value assessment would eliminate the need for equalized assessment in Alberta. The Committee thought that homeowners would have an easier time understanding and accepting assessed values that were close to what they thought their homes were worth. Annual assessments would, except in extreme cases, eliminate the shifts experienced under the existing system. So the Committee issued a paper suggesting that it would be a good idea if the whole property assessment function was handed over to an assessment authority.

Market value assessment was generally supported but the idea of an assessment authority proved extremely controversial. Responses to the Committee indicated support for the Authority concept but considerable debate was raised outside the Committee process, particularly in rural Alberta, focusing on loss of control over the assessment process and the feared increased cost of assessment services.

The Committee decided to put the assessment issues in a separate Act, proposed as a new Property Assessment Act, so that this debate would not jeopardize the major proposals for a new *Municipal Government Act*. The taxation portion of the *Municipal Government Act* proposal, however, was written anticipating a new assessment process.

### Other Innovations

The Committee's proposal also included the following innovations for Alberta municipalities

- **council meetings** could be held by electronic communication (e.g., conference telephone call) provided that all members could participate fully and the public could hear the proceedings if it wished
- the Lieutenant Governor in Council could approve "**provincially authorized municipal taxes**" - new types of taxation that could be authorized for an individual municipality, a geographic area or for all municipalities
- **municipal accounting standards** would be based on the principles for local government accounting being recommended by the Canadian Institute of Chartered Accountants
- **access to information** and protection of privacy provisions

In addition the Committee not only allowed but encouraged David Elliott to prepare a draft that would be as unique as the ideas it contained. The draft in the proposal was written in

such simple language that only 25 words and three phrases were given special definition. It included:

**footnotes** to provide cross-references within the Act and to other Acts and to provide interpretation hints

**flow charts** to provide a guide to various processes described in the words as an aid to understanding the intent of the Act

**schedules** to provide detail in instances where that was thought advisable and one to provide a tie-back from the proposal to the existing Act. This was intended to both show the spheres of jurisdiction encompassed everything in the old Act and also to help administrators adjust to the transition.

The proposal was intended to replace the 447 section "old" *Municipal Government Act* and more than 150 sections then included in other Acts with 403 sections mainly dealing with single points.

MSRC submitted its recommendation to the Minister of Municipal Affairs on March 14, 1991, and concurrently it was publicly released. The most common reaction from the user community was "This can't be the Act. It must be the drafting instructions. It's too easy to understand!" By contrast the legal community immediately expressed reservations to the effect that the courts would have a difficult enough time getting their minds around the content innovations without compounding the confusion by using this dramatically different drafting style.

### **The Regretful Non-Participants**

MSRC had assumed that issuing an invitation for anyone interested to participate and showing by its actions that it was willing to listen to anyone and consider any idea would be sufficient to draw all of the major groups into the discussion. In fact, that did not happen. Some groups decided that this was just another government "p.r." exercise which would produce a report that would collect dust on filing shelves somewhere. They failed to recognize the commitment of the government, the committee and AMA to the process.

When the Committee report was published and it became apparent that the Government would take it to the Legislative Assembly, some of these groups began to mount a political campaign intended to discredit the Committee's process and consequently the results. In effect staff of these organizations were trying to cover their own mistaken advice four years earlier that the process could be ignored. Because the Minister and all MLAs had been kept fully informed of the Committee's activities, these protest were to little avail.

They did however point to a short-coming in the process. When these groups did not voluntarily participate, the secretariat should have become more active in recruiting their participation.



## 1992 BILL 51

The Minister turned the report over to AMA to work with the Legislative Counsel Office in drafting the necessary Bill to be considered by the Legislative Assembly. This proved to be a somewhat lengthy and arduous task. The initial response from the staff member assigned to the drafting from the Legislative Counsel Office was about 15 legal size pages filled with questions needing to be answered before any drafting could begin. AMA took the position that what the report said was far more important than how it said it (even though Australia used all the ideas and more!) and eventually the normal drafting process took over.

In the middle of this process Ray Speaker resigned as Minister and as MLA in order to pursue a federal nomination. The new Minister, Dick Fowler, a lawyer, former mayor and former President of the Alberta Urban Municipalities Association, recognized the commitment to proceed but was far less enthusiastic than the Committee had been. His own office advised him that the Committee proposal detracted from the authority of the Minister. This was the first indication of any serious policy reservations within the government.

The farther the drafting proceeded, however, the more it became apparent that significantly more work needed to be done to give life to the Committee's ideas. The decision was taken, therefore, to produce a Bill which would embody the substance of the Committee's recommendations but would be allowed to die on the Order Paper. This would honour the Government's commitment to the review but would also allow time for more work to be done both within the government and with stakeholder groups.

Eventually 1992 Bill 51 was introduced, sponsored by the MSRC Chairman, MLA Glen Clegg. As promised, it had first reading along with the request for all interested parties to provide their comments. At the same time, a White Paper on the Property Assessment Act was tabled to get formal comments on market value assessment and the assessment authority concept.

## 1994 BILL 31

### AMA Reorganization

Just prior to the introduction of Bill 51, Archie Grover retired as Deputy Minister and a new Deputy, Jack Davis, was appointed who had no experience in Municipal Affairs. He proved a fast learner but also brought some different perspectives to the discussions.

Shortly after the introduction of Bill 51, AMA underwent a significant reorganization. Tom Forgrave was re-assigned to the Housing Programs Division (eventually to include Consumer Affairs). Rene Gagne, Assistant Deputy Minister for Assessment Services left the government service. John McGowan was appointed as Assistant Deputy Minister, Local Government Services, including the former responsibilities of both Forgrave and Gagne.

McGowan could not devote the time necessary to lead the *Municipal Government Act* process himself. So, he appointed Larry Austman as the coordinator of a team of department officials

charged with responsibility to produce the new Act. The membership included Norm Milke, now finished with his secondment to the MSRC.

## **Re-Consultation**

Building on the MSRC experience, this team set about a renewed consultation process which included at least

- 14 Associations, Boards and special interest groups
- a wide variety of municipal administrators
- the major players in the assessment community (both public and private)
- 18 industries and industry groups
- municipal associations
- provincial departments

With the assistance of the municipal associations, focus groups were established to assist in the review and drafting process. Peter Pagano, Chief Legislative Counsel, assigned Alex Fyfe and Elaine Callas to the project and participated personally from time to time.

Calgary continued its active involvement, led by Mike Facey. Edmonton took a more active role, coordinated by Mike Langstone.

The team originally intended to respond individually to each comment received. However, the volume rendered that impractical. All of the comments were entered in a database which could be sorted by topic to ensure that all comments were considered as the drafting process continued.

In the midst of this process, Premier Getty resigned and was replaced by Premier Klein. Dr. Steve West was appointed Minister of Municipal Affairs, the sixth Minister in the Koziak-Crawford-Anderson-Speaker-Fowler-West chain during the life of the project.

The Canadian Bar Association, Legislative Review Committee, under the leadership of Sonny Mirth for many years has traditionally commented on relevant Bills after their introduction. This often resulted in hurried House Amendments to deal with identified concerns. On a confidential basis, the CBA Committee was invited to review and comment on drafts of the Bill as they were prepared. Although the Committee had difficulty keeping pace with the drafting process, it made valuable contributions to the preparation of the Bill.

## **The Major Issues**

The mandate given Premier Klein and the total commitment of Minister of Municipal Affairs, Steve West, to assist in fulfilling the mandate were watershed factors in eventually getting the new Act passed. It was similar to the watershed factor of the 1986 election which enabled the review to be authorized. The importance of these two windows of opportunity cannot be exaggerated.

Premier Klein's priorities included, in addition to deficit elimination, no new taxes and de-regulation. No new taxes meant that the "provincially authorized municipal tax" proposed by

the MSRC was no longer acceptable. In Dr. West's view deregulation included limiting the number of Acts and so he directed that the assessment provisions be rolled into the *Municipal Government Act* and also that any other Act possible be included.

The administrators of many small municipalities began to realize that they would have to provide rationale to their councils for recommendations not to undertake some proposed action. They would no longer be able to rely on the excuse of "no authority in the Act". They expressed concerns about what their councils might do with this newfound freedom of action.

Municipalities generally began to question what having "the capacity of a natural person and the rights, powers and privileges of a natural person" actually meant. But, the more they discussed and understood the concept, the more they accepted it.

Provincial departments, on the other hand, had significant difficulty with the natural person concept. They thought this would destroy their existing control. It took more than a year for the team to convince the departments that management by limitation could achieve the same results as management by authorization had done in the past. It was basically a matter of expressing things differently.

Other provincial departments, many of which were then still having difficulty embracing the government's new direction, were also extremely wary of the spheres of jurisdiction for bylaw-making authority. Jack Davis provided the solution to this concern by changing the name of the concept to general bylaw-making authority, even though it meant the same thing. Eventually some further definition was included in the rewritten Bill.

One issue raised by the "regretful non-participants" mentioned above was that the MSRC membership was stacked with people whose perspective was slanted by their service in municipal elected office. Eventually some MLAs began to suggest that the Act was too focused on municipal interests and should provide more of a provincial and citizen perspective. The response was some subtle changes in wording intended to achieve an appropriate balance between the authority of municipalities, the limitations put on municipal powers and protection of the public interest.

One example of this is that the Local Governance Commission proposed by the MSRC became the Municipal Government Board. Some things on which it was proposed to have decision-making authority, for example annexation, were changed to recommending authority with the Executive Council retaining the final decision-making authority.

Both the MSRC report and Bill 51 had contained a statement of the purpose of the Act. In Bill 51 it read:

*The purpose of this Act is to provide a framework for municipal government in Alberta that will enable municipalities*

- (a) *to provide necessary and desirable services and facilities for the benefit of people and property generally,*

- (b) *to promote safe, viable and pleasing communities, and*
- (c) *to be effective and efficient and also responsive and accountable.*

Many thought this statement was too broad. The new Bill would include a purpose statement but it would refer to the purpose of municipalities, not of the Act. The wording in Bill 31 was:

*The purposes of a municipality are*

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

The Minister's direction to include any other Acts possible resulted in Bill 31 including the repeal of 21 Acts and the incorporation of their provisions in the Municipal Government Act.

### **Finally an Act**

After seven years of consultation and hard work, Bill 31 was finally introduced at the 1994 Spring Sitting of the Alberta Legislative Assembly, sponsored by MLA Judy Gordon, former Mayor of Lacombe. The value of the extensive consultative process was demonstrated by the relatively minor debate that this major Bill received. The Bill received Royal Assent on June 1, 1994, with an effective date of January 1, 1995.

Alberta finally had a new *Municipal Government Act*, included as Chapter M-26.1 in the Revised Statutes of Alberta! While it "looks and feels much different" the major concepts developed by the Municipal Statutes Review Committee have now become not only government policy but the law in Alberta.

### **1995 BILL 32**

#### **Why More Changes?**

*"The reason there are erasers on the ends of pencils  
is that it is human to make mistakes" - Anonymous*

As anyone who has worked with drafting legislation knows, the repeal and replacement of an Act is a complicated process during which there are bound to be some things which are omitted and some conflicts which go unnoticed until people start working with the legislation. This is particularly true for an Act as comprehensive as the new *Municipal Government Act*. It had been anticipated as far back as the MSRC report and was reinforced by the concurrent rapid evolution of government policy and practice.

AMA had planned to deal with these oversights in two ways:

- (1) the MSRC proposal, 1992 Bill 51 and 1994 Bill 31 all included broad regulation-making authority so that
  - the Lieutenant Governor in Council could make regulations for any matter not provided for or insufficiently provided for in the Act (effective until the last day of the next session of the Legislature)
  - the Minister could make regulations respecting any difficulty in the transition from the old Acts to the new Act
- (2) an amending Act would be proposed to the 1995 Legislature session to deal with the issues arising from 1994 Bill 31.

As events unfolded, AMA began to work on the amending Act before 1994 Bill 31 was introduced. The wide consultation on Bill 31 prompted a stream of comments and suggestions as the recognition dawned on participants that there really would be a new *Municipal Government Act*. AMA decided that it had to stop revising the drafts of the Bill and collect the subsequent comments for consideration in drafting the amending Act.

In the meantime, Alberta Education had proceeded with regionalizing school authorities which resulted in many changes to municipal legislation, including the repeal of the *County Act*. Alberta counties were responsible for both municipal and school administration in rural areas. The new regional school authorities encompassed several existing jurisdictions so the county concept was no longer relevant. Nor was the *Municipal and School Administration Act* which allowed combined municipal and school administration in urban municipalities. In addition the government had decided that there should be a standard "supplementary school" requisition mill rate on all property throughout the province which required amendments to the property assessment and taxation portions of the *Municipal Government Act*.

Municipal Affairs Minister Steve West also directed that the *Planning Act* and the *Regional Municipal Services Commissions Act* be merged in the *Municipal Government Act*, continuing the MSRC policy that all legislation affecting municipalities should be in one Act as far as possible. Dealing with the land use planning legislation had considerable urgency since the AMA Business Plan called for funding of planning agencies to cease in 1995.

In addition there were a host of "house keeping" or "fix up" types of amendments identified by municipalities as they began to work with the new Act - including a 45 page submission from the City of Calgary!

### **More Consultation**

These amendments were dealt with in two parts:

- the issues relating to the education system were the responsibility of an interdepartmental team representing Treasury, Education and AMA. Mary Gibson from Treasury was seconded to work full time on the project

- the planning, regional services commission and house-keeping provisions were the responsibility of an AMA team coordinated by Gerald Thomas.

Land use planning issues were dealt with using a discussion paper process (similar to the MSRC process). The process involved

- an initial paper reviewing alternatives,
- considering comments
- a second paper reviewing proposals
- consideration of comments
- drafting of amendments.

These discussion papers were sent to all municipalities and identifiable stakeholder groups and were available on a request basis to anyone else. Concurrent rewriting of the *Subdivision Regulation* involved distributing proposals for a new regulation, meetings with interested parties and finalizing the new regulation after considering all the comments.

Existing regional municipal services commissions were provided with drafts of the proposed legislation for review and comment. This consultation concluded that the legislation could be included in the *Municipal Government Act*. Consistent with the MSRC municipal policy statement, the purposes for which a commission could be formed were broadened in order to facilitate intermunicipal cooperation.

The house-keeping amendments were the subject of intensive work in AMA in consultation with the municipalities which had identified the issues.

Throughout all of this the Boards of the municipal associations were regularly updated on progress and made significant contributions to the work.

During the process a seventh Minister of Municipal Affairs, Tom Thurber, became involved. He was a former Reeve of the County of Wetaskiwin and brought his own perspectives to the tasks. The presentation made by Mr. Thurber to the Standing Policy Committee was very detailed resulting in both specific policy direction from the government caucus members but also a more thorough understanding by them of the consequences of their decisions.

### **Municipal Government Amendment Act, 1995**

1995 Bill 32 was sponsored by MLA Richard Magnus, a former Calgary alderman. Including consequential and transitional provisions it was 105 sections long but, since two of the sections dealt with the integration of the former *Planning Act* and *Regional Municipal Services Commissions Act*, it was almost as thick as 1994 Bill 31! Bill 32 received Royal Assent on May 17, 1995.

The Amendment Act had four distinct effective dates: it was retroactive to December 31/January 1 for assessment and education-related issues; some portions came into effect on Assent, some on September 1 (to allow for transition) and one section was left for proclamation.

The end result of 1994 Bill 31 and 1995 Bill 32 was that 25 former Acts were combined into a one source document - a result beyond the wildest dreams of the Municipal Statutes Review Committee when it made its original municipal policy statement recommendation. The volume of Regulations has also been reduced - in the property assessment area alone 23 regulations (900 pages) have been reduced to 8 regulations (30 pages).

The process, however, is unending. AMA has always held that municipal legislation should not be considered as carved in stone. It should be thought of as evolving to meet new situations and to revise provisions that are no longer relevant or workable. Work is now underway, therefore, on "Bill 33" or the next set of amending provisions, planned for the 1996 Session of the Legislature.

## **WHAT DID WE LEARN ABOUT CONSULTATION?**

Those involved in the entire process, beginning with the Municipal Statutes Review Committee through to Bill 32, offer the following observations:

- don't fall victim to the "Royal Commission Syndrome". Don't start a process unless you really intend to do something with it, get that confirmed in writing by the highest authority possible and have senior people (elected and administrative) constantly reaffirm that the process will result in action
- if it's possible get some government members involved in the process so that they buy into the results and can assist the relevant Minister in taking the proposals through the decision-making process
- keep all elected officials regularly informed of what is happening in the consultation process
- line up groups and organizations that are important participants and actively recruit their participation. Give them copies of the written confirmation that action will result and keep them regularly informed of the re-affirmations. These people are all getting busier all the time and won't take part in a process that they don't think is going anywhere
- don't hand people a blank page of paper and ask them to fill it with good ideas. It is far more productive to discuss issues, review alternatives, and ask for comments
- if you want meaningful participation, don't ask for comments unless you intend to listen to them, consider them and let the respondent know what you did with the comment and why. Be prepared to revise your own positions
- if you can manage it, keep the "blue skying" part of the process at arm's length from the government (even though some government members may be on your steering committee) so that it is not forced into taking a position before all the discussion has taken place

- have a team of administrative people, including the Legislative Counsel people who will be drafting the legislation, dedicated to the process and, if humanly possible, keep it intact throughout (as long as it doesn't get internally focused)
- being rushed isn't all that bad providing you have a mechanism to correct errors. More gets done when you don't have time to spin your wheels
- don't be vague when you're asking for government policy approval. Be specific (use "bitable bits") so that the elected officials will know what they're being asked to approve

## **Conclusion**

The whole process of producing the new *Municipal Government Act* in Alberta has been exciting for those interested in municipal policy and legislation. It has been challenging for those involved in preparing instructions and drafting the legislation. It has demonstrated the benefits of broad-based consultation during preparation of legislation proposals. It has resulted in an Act that uses flexible empowerment to enable Alberta municipalities to function in the rapidly changing public sector environment.

With the benefit of hindsight, the general view is that all the discussion and "burning of the midnight oil" were worth it.

## ***Appreciation***

*Larry Austman, David Elliott, Norm Milke and Gerald Thomas were significant contributors to the preparation of this paper. Their assistance in reviewing the initial drafts and providing helpful comments and suggestions enabled a complete telling of the story. Sheri Baron consulted on the production of the paper and the presentation materials.*

## ***About the Author***

*Tom Forgrave has been involved in Alberta municipal life for 25 years, holding a number of positions with the City of Edmonton and serving as an Assistant Deputy Minister, Alberta Municipal Affairs for 14 years. Although he has retired from the public service, he retains an active interest in municipal and public sector management issues and is developing a consulting practice in these areas.*