



Municipal Legislative Reform

Report of
Municipalities Act Review Committee

June 2005



Municipal Legislative Reform

Report of

Municipalities Act Review Committee

June 2005

Municipalities Act Review Committee

31 Gordon Drive, PO Box 2000, Charlottetown PE C1A 7N8 Tel: (902) 368-4744 Fax: (902) 368-5526

June 14, 2005

Honourable Elmer MacFadyen
Minister of Community and Cultural Affairs
Fourth Floor, Shaw Building
95 Rochford Street
PO Box 2000
Charlottetown, PE C1A 7N8

Dear Minister MacFadyen:

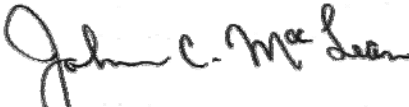
We are pleased to submit to you the final report of the *Municipalities Act Review Committee*. The report represents the consensus of the committee.

The committee's task was to review the Act to identify issues that may require legislative change. The recommendations contained in the report attempt to address many of the issues that have been identified. It is the committee's belief that these recommendations, if implemented, will greatly improve the present legislation.

We would like to thank you for having given us the opportunity to review and make recommendations respecting the *Municipalities Act*.

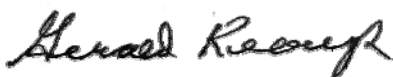
Respectfully,


Municipalities Act Review Committee


John C MacLean (Chair)


George Beck


Stan Campbell

Gerald Keough


Lorne Moase


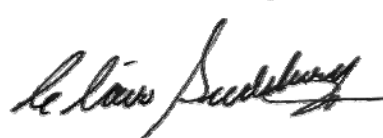
Clair Sudsbury


Table of Contents

1.0	<i>Acknowledgments</i>	1
2.0	<i>Introduction</i>	4
3.0	<i>History of Report</i>	5
3.1	Committee Structure	5
3.2	Review Process	6
4.0	<i>Approach</i>	7
4.1	Legislative Trends	7
4.2	Meetings and Consultation	8
5.0	<i>Actions and Recommendations</i>	9
5.1	Municipal Purpose	9
5.1.1	Municipal Purpose	10
5.2	Municipal Incorporation	12
5.2.1	New Formation	12
5.2.2	Who May Make a Request	13
5.2.3	Petitions and Requirements for Incorporation	14
5.2.4	Public Notification, Sharing of Information	15
5.2.5	Feasibility Study	17
5.2.6	Minimum Population Threshold	17
5.2.7	Number of Requests per Year	18
5.3	Municipal Restructuring	18
5.3.1	Restructuring	19
5.3.2	Who May Initiate a Restructuring	20
5.3.3	Process of Restructuring	20
5.3.4	Types of Areas That May be Joined Together	21
5.3.5	Principles, Standards and Criteria	22
5.3.6	Process Fostering Dialogue	23
5.3.7	No Increase to the Amount of Unincorporated Lands	23
5.4	Municipal Council	24
5.4.1	Role of Council	25
5.4.2	Duties and Decisions of Council	26
5.4.3	Voting by Council	27
5.4.4	Duties of Mayor or Chairperson	28
5.4.5	Deputy Mayor or Vice-chairperson	29
5.4.6	Council Composition	30
5.4.7	Taking Office	31
5.4.8	Meetings of Council	31

5.4.9	Absence, Disqualifications, Conflict	33
5.4.10	Resignation from Council	34
5.5	Municipal Administration	35
5.5.1	Administration, Style, Function and Duties	36
5.5.2	Training and Mandatory Certification	39
5.5.3	Classification and Appointment of Employees	40
5.5.4	Human Resource Authority	41
5.5.5	Dispute Resolution	43
5.5.6	Management and Destruction of Records	43
5.5.7	Fidelity Bonds – Liability Insurance	44
5.5.8	Development Control	45
5.5.9	Business Hours	45
5.6	Municipal Powers and Service Authority	46
5.6.1	Qualifying Statement	46
5.6.2	Municipal Services	47
5.6.3	Expropriation Powers Outside a Municipality	48
5.6.4	Services Outside a Municipality	49
5.7	Municipal Finance	50
5.7.1	Cost Estimate	51
5.7.2	Audit Review Engagement	52
5.7.3	Complaints Regarding Financial Affairs	53
5.7.4	Finance Ledger	54
5.7.5	Power to Expend Money	54
5.7.6	Decisions Over Municipal Budgets	58
5.7.7	Pre Budget Meeting	58
5.7.8	Preliminary Budget	59
5.7.9	Budget Preparation and Adoption	60
5.7.10	Reserve Fund	61
5.7.11	Reserve Fund Bylaw	62
5.7.12	Investment Fund	63
5.7.13	Capital Trust Fund	64
5.7.14	Budget and Financial Statement Filing	65
5.7.15	Deficit Budget	66
5.7.16	Public Accounting Standard	67
5.7.17	Application of Funds	67
5.7.18	Tax Rate	68
5.7.19	Area Rate	68
5.7.20	Identification of Authorization	69
5.7.21	Distinct Section	70
5.7.22	Licensing	71
5.7.23	Reconsideration of Council Decision	71

5.8	Municipal Elections	72
5.8.1	Elections PEI	73
5.8.2	Disqualification by Minister	73
5.8.3	Resolution of Tie Vote by Lot	74
5.8.4	Election at Large	74
5.8.5	Municipal Elections Legislation	75
5.8.6	Ballots	75
5.8.7	By-elections	76
5.9	Municipal Bylaws	77
5.9.1	Interpreting Power to Pass Bylaw	77
5.9.2	Entering a Property	78
5.9.3	Dangerous and Unsightly	80
5.9.4	Certification and Certified Copies of Bylaws	81
5.9.5	Public Inspection of Bylaws	82
5.9.6	Receipt by Minister	82
5.9.7	Utility Bylaws	83
5.9.8	Building and Site Development Bylaws	84
5.9.9	Readings	84
5.9.10	Inconsistent With Other Enactments	85
5.9.11	Person in Default, Ability to Ticket, Cost Recovery	85
5.9.12	Offences, Penalty, Enforcement	87
5.9.13	Consolidation of Bylaws	90
5.9.14	Bylaw Review	91
5.10	General Issues	91
5.10.1	Plain Language	91
5.10.2	Gender References	92
5.10.3	Municipal Name	92
5.10.4	Consolidation of Legislation	93
5.10.5	Compliance with the Act	94
5.10.6	Municipal Coverage	95
5.10.7	Plebiscite	95
5.10.8	Consultation	96
5.10.9	Memorandum of Understanding	97
6.0	<i>Conclusion</i>	98
7.0	<i>Appendices</i>	99
7.1	Terms of Reference	99
7.2	<i>Criminal Code of Canada S. 123, 124 and 125</i>	103

1.0 Acknowledgements

The committee wishes to acknowledge the many people and organizations that have assisted in the preparation of this report. The committee was fortunate to have had the support and expertise provided by the Department of Community and Cultural Affairs and the Federation of Prince Edward Island Municipalities. It was equally pleased to have received contributions from municipalities and other individuals with a knowledge and background in municipal governance. The committee has greatly appreciated this assistance which has given it greater insight into current and impending issues and trends in municipal governance.

Early in the process, both the department and federation assisted the committee in building an awareness of municipal governance within the province. Personnel organized and supplied resource materials relating to the provincial perspective and national legislative trends.

Municipalities made substantial input into the review process through written submissions and discussions held regionally in the fall of 2004. Municipal contributions identified areas of concern with the current legislation. Specific recommendations contained within this report result from those issues brought forward. Although not all municipalities chose to participate in the process, it is the feeling of the committee that the information brought forward is representative of the issues and concerns of elected leaders and municipal personnel across the province.

The committee would be remiss if it did not acknowledge both the solicited and unsolicited input it received from a number of other interested persons. Their contribution afforded the committee the opportunity to discuss issues that they believe need attention. This exchange of information helped to broaden the committee's perspective on issues facing municipalities.

The committee wishes to acknowledge the support of municipal officer, John Chisholm, who acted as its administrator/secretary during the review process and preparation of the report. The committee also appreciates the time that the following individuals and organizations took to share their experiences and concerns:

Department of Community and Cultural Affairs

Municipal Affairs Division

Albert MacDonald, Director

John Berry, Manager

Darlene Rhodenizer, Senior Municipal Officer

Bea Campbell, Administrative Assistant

Federation of Prince Edward Island Municipalities

John Dewey, Executive Director

Association of Municipal Administrators

Municipalities

Town of Alberton

Town of Georgetown

Town of Kensington

Town of Montague

Town of Souris

Community of Alexandra

Community of Bonshaw

Community of Borden-Carleton

Community of Clyde River

Community of Ellerslie-Bideford

Community of Hunter River

Community of Lot 11 and Area

Community of MiscoucheCommunity of Mount Stewart

Community of New Haven-Riverdale

Community of O'Leary

Community of Resort Municipality

Community of Tignish

Community of Union Road

Community of Victoria

Community of West River
Community of York

Individuals

Ginger Breedon

Allan Booth

Roger Langille

Don Lidstone

Dugald S. MacWilliams

Pat McGowan

Jeniene Peake

Don Smeltzer

2.0 *Introduction*

The minister of Community and Cultural Affairs, Honourable Elmer MacFadyen, appointed the *Municipalities Act* Review Committee in July, 2003. The committee's mandate was to examine the current legislation, consult with local municipalities and municipal interest groups, review legislation in other jurisdictions and develop recommendations that will build municipal authority and capacity, thereby providing clarification and modernize the Act. The guiding principle for any proposed changes, according to the mandate, should be that they be manageable and affordable.

The committee is pleased to present its report to the minister. The recommendations are aimed at reforming the *Municipalities Act* and offer suggestions for revision that will add clarity to and modernize the present statute. The committee believes that the recommendations are manageable and affordable.

The report is the culmination of a process which included an examination of the present statute as well as national trends in municipal legislation across Canada, a review of written submissions and consultation with municipal leaders. Recent trends of greater autonomy in municipal legislation nationally have fostered an interest for increased municipal autonomy here in Prince Edward Island. Local leaders who participated in the review process emphasized the need for greater empowerment of local governments.

From the outset, the committee's intent was to identify shortcomings in the Act and to make recommendations which will enable municipalities to provide improved service to their residents. The committee believes that if the government enacts these recommendations it will not only show confidence in the municipalities' abilities to govern but it will also provide the tools for them to govern more effectively. For a better understanding of the reasons for each recommendation, the committee has provided both a background and a rationale.

3.0 *History of Review*

The committee was formed in response to a formal request made by the Federation of Prince Edward Island Municipalities (FPEIM). Since the late 1990's, municipalities, the federation and other interest groups have requested amendments to the Act to reflect the ever-changing needs at the municipal level.

In the spring of 2003, in an effort to assist local governments, Executive Council provided direction to establish this committee to review the Act. The committee commenced the review process in the summer of 2003. Over an 18-month period the Committee met approximately 40 times.

The Act has guided municipal governance for the past 22 years. During this period, the Department of Community and Cultural Affairs has made several amendments to the Act. Increasing demands on municipal responsibilities and the need for additional services have grown beyond the enabling powers of the current Act. It is imperative that the revisions recommended enable flexibility and provide a means to address issues of concern and additional authority.

The committee understands that the desire of municipal governments to increase services has extended beyond the present authority granted under the Act. Additionally, the committee appreciates that government recognizes the need for legislation to reflect current as well as future municipal needs and autonomy.

3.1 **Committee Structure**

The committee is comprised of six members. All members of the committee have a strong understanding and appreciation for municipal governance. The committee members are:

- John C MacLean, *Chairperson*
- George Beck
- Stan Campbell, *FPEIM President*
- Gerald Keough
- Lorne Moase
- Clair Sudsbury

3.2 Review Process

The minister announced at the spring 2003 annual general meeting of the FPEIM that a review of the Act would be undertaken. This long-anticipated announcement was welcome news to many municipalities and the executive of the FPEIM. The initial meeting of the committee was held on the 9th of July, 2003. This meeting provided an opportunity for the members of the committee to become acquainted with each other and meet with resource persons from the department and the FPEIM.

The initial meetings held in the early summer of 2003 were devoted to awareness building. The committee took this opportunity to gain a greater appreciation and understanding of the various legislative documents that enable municipalities to provide specific services. At this time, resource personnel provided a broad overview of the Act, governance and issues of concern to municipalities.

The committee met monthly throughout the summer of 2003. This schedule was increased to accommodate bi-weekly meetings when practicable during the fall. It was the intention of the committee to seek input from municipal leaders and staff. The frequency of meetings and exchange of information have led to a comprehensive review.

Early in the review process, the committee met with Don Lidstone who has worked with other provincial authorities as well as the Federation of Canadian Municipalities to research and make recommendations that further municipal governance through legislation. The committee was pleased to have had the opportunity to discuss legislative trends with Mr. Lidstone.

The department extended an invitation to the committee to make a presentation at the Municipal Orientation session in January of 2004. At that time, the chairperson took the opportunity to explain the mandate of the committee and stress the need for municipal participation. At the FPEIM's semi-annual and annual meetings, the minister again emphasised the importance and need for municipal input. The committee appreciates the support of the minister to welcome municipal participation in the review process.

4.0 Approach

As indicated earlier in the report, the initial meetings of 2003 were devoted to awareness building. Upon concluding this component, the committee agreed upon a systematic approach to examine legislation and consult with stakeholders. It examined municipal legislation from other provincial and territorial authorities, which enabled the committee to identify trends in legislation. These trends have increased municipal powers, broadened financial flexibility and strengthened accountability. These reforms have been written in a manner that is easily read and understood.

4.1 Legislative Trends

Although each province is unique, many similarities exist respecting municipal legislation. The trend in legislation focuses on:

- I. increasing municipal authority enabling municipal governments to respond to local issues efficiently;
- II. facilitating greater service delivery, shared service delivery, and agreements with government and the private sector;
- III. broadening financial flexibility;
- IV. increasing accountability of elected leaders; and
- V. establishing greater intergovernmental relations and communications.

Changes to municipal legislation reflect a need for municipalities to gain a greater level of authority, and have altered municipal legislation from prescriptive to permissive. The committee compared these recent changes in legislation with each provision of the *Municipalities Act*.

The committee has considered the advantages of consolidating the various legislative documents that enable municipal services into one statute. The present national trend is to consolidate legislation relating

to municipalities. Consolidation assists in referencing material and tends to provide greater equality among municipalities.

4.2 Meetings and Consultation

During the awareness building aspect of the review, the committee met monthly. It decided additional time was needed to examine, discuss and debate issues in greater detail. Therefore, the committee increased the meeting frequency.

The committee sought input from local leaders and staff for their views as to how the Act may be revised. The committee valued the input of stakeholders as a key component to the development of recommendations. Input was gathered throughout the review process and included three meetings with municipal leaders. These meetings took place in Montague, Hunter River and O'Leary in the fall of 2004.

Municipal responses highlighted the need for clarity of the roles and responsibilities between elected leaders and employees. Additionally, municipalities identified the need to expand upon:

- I. powers and services provided by municipalities;
- II. municipal authority, jurisdiction and autonomy;
- III. financing services and fiscal year; and
- IV. elections procedures.

5.0 *Actions*

The committee conducted a systematic review process. Each part of the Act has been reviewed separately, and within these various parts, recommendations have been made. Recommendations have been put forward for the following parts of the Act:

- I. Municipal Purpose;
- II. Municipal Incorporation;
- III. Municipal Restructuring;
- IV. Municipal Council;
- V. Municipal Administration;
- VI. Municipal Power, Service and Authority;
- VII. Municipal Finance – Audit, Budget, Taxation and Fees;
- VIII. Municipal Elections; and
- IX. Municipal Bylaws.

In addition, general recommendations have been made.

5.1 **Municipal Purpose**

Municipal governments do not enjoy the same constitutional status as the provincial, territorial and federal governments. The *Constitution Act* of 1982 directed all government functions to either provincial, territorial or federal governments. As municipalities are creations of the provincial and territorial governments, they may only carry out the responsibilities as prescribed by those governments. The trend in legislative reform is to give greater responsibility to municipal governments. Providing municipal governments the authority to meet the expectations at the local level is one way for a municipality to guide and shape its destiny.

At present, the Act does not specifically highlight a statement of municipal purpose. A guiding statement should provide a stronger understanding and appreciation of municipal governance. It is suggested that this statement emphasise the authority of a council as the governing body and council govern in an appropriate manner within the jurisdiction granted by legislation, enabling council to maintain, control and direct the activities within the municipalities.

5.1.1 Municipal Purpose

5.1.1 Municipal Purpose (Proposed Addition to Legislation)

Background

Examining municipal legislation in various provinces revealed the use of a statement of purpose for municipal governance. At present, the function and purpose of municipal authorities are recognized in Part XI, section 57 of the *Municipalities Act*. The *Municipalities Act* states in general terms that municipalities are to provide good government, make laws that are not contrary to legislation and provide services within their jurisdiction.

Recommendation

The committee recommends that a provision respecting and defining municipal purpose be incorporated into the *Municipalities Act* recognizing that:

- I. municipal governments are created by the province;
- II. a municipal government has the authority, function and duties provided under legislation;
- III. the purpose of a municipal government is to direct the growth and development of the municipality through governance and the provision of services; and
- IV. municipal leaders are democratically elected, responsible and accountable for matters within their jurisdiction.

Further, the committee recommends that the legislation regarding municipal purpose be expanded to:

- I. grant the authority to a municipal council to govern in an appropriate manner within the jurisdiction granted to them;
- II. empower municipal governments to provide services through a limited category of spheres of jurisdiction;
- III. permit through bylaws the opportunity to maintain, control and direct the activities within a municipality;
- IV. develop and maintain safe and viable municipalities;
- V. recognize the function of the municipality to provide to the citizens:
 - a) good government;
 - b) stewardship;
 - c) economic, social, and environmental well-being;
 - d) services; and
 - e) facilities.

Rationale

Although the function and purpose of municipal authorities is recognized, emphasis should be placed on the purpose of municipal governance indicating in legislation that municipalities guide and shape the municipality. Local leaders and the public desire a clear and definitive statement of municipal purpose to guide municipal governance. Recognizing in legislation that municipalities have the authority to direct activities within their boundaries, strengthens municipal autonomy. Stating that municipalities direct the growth and development clarifies the parameters of autonomy and signifies the power, control, and jurisdiction of municipal authority over local matters. Acknowledging municipal governance as a democratic process, relays a message of accountability and transparency in the decision-making process.

5.2 Municipal Incorporation

The committee has given consideration to the formation of a new municipality. It is of the opinion that the present criteria should be expanded. Such an expansion should include an increase in the number of persons required to make a submission and a greater amount of detailed information to be supplied within a submission.

Greater public participation is desirable, therefore, the process should be open and transparent. The committee has also given consideration to the need for greater public accessibility to information. It supports the sharing of information with the proposed electors, neighbouring municipalities and the FPEIM. The committee is also of the opinion that greater emphasis be placed on notifying the public, consultation and gathering input from the proposed electors.

The committee also believes that the provincial authority responsible for reviewing submissions, conduct a feasibility study to ensure that any new municipality be sustainable. It is also advisable that population thresholds be established to ensure that adequate financial resources will be available to supply services to the citizens of a proposed municipality. Expanding the current requirements to form a new municipality will strengthen its capacity to provide a range of services to the residents.

5.2.1 New Formation

5.2.1 *New Formation* (Sections 5 to 8)

Background

The committee examined the way in which new municipal organizations can be improved. The committee also reviewed legislation in other Canadian jurisdictions with a view to identify areas for clarity and modernization within the current legislation. The committee noted that population numbers and geographical size are not currently used to determine municipal incorporation under the present legislation.

Recommendation

The committee recommends that the current requirement to form a new municipality be expanded and strengthened to ensure that future municipalities are vibrant, sustainable municipalities that have the capacity to provide a wide range of services to the residents.

Rationale

Strengthening and expanding the current requirements to form a municipality is essential. Future municipal organizations should be autonomous. Consideration should be given to the ability and capacity of municipalities to provide and perform a variety of functions and services that address the needs of residents.

5.2.2 Who May Make a Request (Section 5)

Background

There is an increased awareness related to municipal governance. Attention should be given to who can make a request to form a municipality. Currently, only residents, as defined in the *Municipalities Act*, qualify to present a petition. Consideration should be given to enable the minister to form new municipalities.

Recommendation

The committee recommends that legislation recognize that either the minister or eligible electors from within the boundaries of the proposed municipality be permitted to make a request to form a municipality.

Rationale

Strengthening legislation to enable electors to file a petition for incorporation and recognizing the authority of the minister to form municipalities are important steps that will improve the public's understanding of the incorporation process.

5.2.2 Who May Make a Request

5.2.3 Petitions and Requirements for Incorporation

5.2.3 Petitions and Requirements for Incorporation (Section 5)

Background

The Act identifies the minimum number of persons necessary to initiate an incorporation process. The Act also specifies the essential information needed to accompany the petition. Upon receipt of an application signed by twenty-five persons or greater, the minister will initiate discussion through a public forum to determine support for the formation of a new municipality. Information accompanying the petition for incorporation such as the number of persons making the request, their eligibility to vote in a municipal election should be clarified.

Recommendation

The committee recommends that the current requirements regarding petitions for incorporation be revised and the requirements be expanded to standardize the style, and content which is to be included as part of the application process.

Further, the committee recommends that the petition be signed by a minimum of 75 electors, or 30 per cent of the electors residing within the boundaries of the proposed municipality whichever is greater and must include:

- I. the full printed name, signature, signature of a witness, date of signing, home address and a declaration that the individual is an eligible voter;
- II. a statement indicating the reason for the request;
- III. a title at the top of the petition stating the residents' desire to form a municipality;
- IV. a map identifying the boundaries of the proposed municipality;
- V. the type of municipality the petitioners desire to form;
- VI. the name of the proposed municipality; and
- VII. the services to be provided to the residents of the proposed municipality.

Rationale

Population has a direct effect on a municipality's financial strength and ability to deliver services at a reasonable cost. Therefore, consideration should be given to an increase in the minimum number of petitioners. Requiring additional information to accompany the petition for incorporation will increase awareness among the residents of the implications of forming a municipality.

5.2.4 Public Notification, Sharing of Information (Section 6)

Background

The public desire for information and demand for access to information, full disclosure and accountability have increased. This increase for information should be reflected in the public notification process. The notification process for a public meeting, described in section 6 of the *Municipalities Act*, requires that a notice be published in the Royal Gazette and a local paper. The notice is to provide, in general terms, the content of the petition, date, time and place of the meeting and that residents may attend and make representation. Legislation should reflect society's desire for greater access to information and enable participation in the decision-making process. Additional criteria are needed to standardize the notification process.

Recommendation

The committee recommends a greater emphasis and consistent process be placed on notifying the public for public meetings or provisions respecting public consultation to ensure uniformity.

Further, the committee recommends that:

- I. Notices be published in the Royal Gazette and published twice in a local paper, once a week for two successive weeks indicating:
 - a) the content of the petition;**
 - b) the date, time and place of the meeting;****

5.2.4 Public Notification, Sharing of Information

- c) all written submissions or objections to be made at the public hearing must be received three working days prior to the public hearing;
 - d) any reports or studies regarding the proposal shall be made available for public inspection to all person(s) interested; and
 - e) residents of the area are invited to attend and make representations concerning the petition.
- II. inaccuracies or insufficient information or information found to be insufficient by a person(s) or alleged by a person(s) within the report be made known within 30 days after the feasibility report has been submitted.
- III. the minister may cancel a public hearing if no submissions or objections are received.
- IV. the minister will share information concerning a proposed municipal incorporation with the Island Regulatory and Appeals Commission, neighboring municipalities and the Federation of PEI Municipalities; and
- V. that this sharing of information be extended to a request for a change of status, corrections, adjustments, and restructuring process.

Rationale

Public notification is essential to ensure that all persons have an opportunity to become informed. It is essential that there be opportunities that enable awareness building and public input into the decision-making process. Providing residents the opportunity to be heard is a positive and proactive approach to building a strong, self-reliant municipality. Submissions made prior to a public hearing enable residents to raise and clarify issues. Standardizing the criteria to be followed during a public notification process ensures the timing and content of notices will be provided in a uniform manner.

5.2.5 Feasibility Study (Proposed Addition to Legislation)

Background

Analyzing an application, assessing cost implications and investigating areas of revenue generation help to determine sustainability. At present, 44 municipalities have a population of less than 400 residents. The likelihood of generating adequate revenue within these municipalities for services is questionable. Consideration must be given to the ability and capacity of municipalities to provide and perform a variety of functions that address the needs of residents. Having a large population base increases the tax base to provide services. A feasibility study will highlight existing and potential financial capabilities as well as desired service delivery by the residents.

Recommendation

The committee recommends that the minister review a municipal incorporation request through a feasibility study before making any recommendation to the lieutenant governor in council.

Rationale

It is important to build strong municipalities that will serve the future needs of residents. A feasibility study will examine the benefits of municipal governance, the provision of services and associated cost to ensure new municipalities are sustainable.

5.2.6 Minimum Population Threshold (Proposed Addition to Legislation)

Background

Local leaders desire municipal sustainability and the provision of affordable services. The number and type of services that can be provided by a municipality are directly proportional to the number of residents within the municipality.

Recommendation

The committee recommends that the minister give consideration to setting minimum population thresholds for new municipalities.

5.2.5 Feasibility Study

5.2.6 Minimum Population Threshold

5.2.7 Number of Requests per Year

Rationale

A minimum population base provides the opportunity for new municipalities to be vibrant and sustainable.

5.2.7 Number of Requests per Year (Proposed Addition to Legislation)

Background

Considerable time, money and energy are spent on reviewing an incorporation proposal.

Recommendation

The committee recommends that no similar request concerning specific boundaries for a proposed municipality be permitted for a period of one year.

Rationale

By limiting the number of requests, stakeholders will not continuously be expected to respond to an issue or interest group.

5.3 Municipal Restructuring

Expanding the boundaries of municipalities is an issue that has been widely debated. In the opinion of the committee, the present legislative criteria respecting boundary alterations require expansion.

A single process is desired. The term *municipal restructuring* encompasses annexation, amalgamation, dissolution, change in status, correcting errors in boundary descriptions, and changes to the name of a municipality.

It is important that reforms regarding this part of the Act be specific to reduce misunderstanding, misinterpretation or confusion. Clarification should include: who initiates the process; what information must be included in a submission; as well as the type and form of public notices and consultation required by a municipality submitting a request. Consideration should be given the identification of the agencies involved in the submission review process, and who should make the final determination.

A modern approach is suggested with regard to reforming the process permitting the joining of a portion or all of an incorporated area with another municipality or unincorporated land with a municipality. Trends in legislation reveal processes that enable a municipality to proceed with a submission without the consent of the affected municipality following open dialogue and discussion with the affected area.

Providing a municipality with clear direction from commencement through to conclusion is a critical aspect. Clarification through the establishment of principles, standards and criteria that are to be used during the evaluation process will assist greatly. These principles, standards and criteria will identify the necessary requirements by which all submissions are to be measured.

5.3.1 Restructuring (Sections 9 and 12)

Background

Traditionally, municipal boundary alterations transpired through change of status, correction, adjustment, dissolution, annexation and amalgamation processes as in sections 9 and 12 of the *Municipalities Act*. The process of annexation allows for the joining of a portion of unincorporated land to a municipality. Amalgamation allows for the joining of a portion or all of a municipality with another municipality. The latter may result in the dissolving of a portion or all of a municipality, directly affecting the geographic area of municipal governance.

Recommendation

The committee recommends that the term *restructuring* mean amalgamation, annexation or dissolution. That this term be outlined in the definitions section of the Act.

Rationale

Two clear separations can be made to municipal boundary alterations. One of these separations relates to the restructuring of the municipal unit covering amalgamation, annexation and dissolution. The other

5.3.1 Restructuring

5.3.2 Who May Initiate a Restructuring

deals with corrections or a change of status. Restructuring provides the opportunity through which municipalities may set a new direction addressing issues relating to economies of scale.

5.3.2 Who May Initiate a Restructuring (Sections 9 and 12)

Background

Within the *Municipalities Act*, the minister's authority to alter municipal boundaries is not identified. Additionally, the Act does not enable residents to effect change. The desire of residents to have greater participation in the decision-making process has altered the manner in which government operates. The *Municipalities Act* sets out the process for a change of status, correction, adjustment, reduction, change of name and restructuring (dissolution, amalgamation and annexation) in sections 9 and 12. These processes enable council to make application to the minister accompanied by a resolution to alter a municipal boundary.

Recommendation

The committee recommends that the current requirements for a change of status, correction, adjustment, reduction, change of name and restructuring be expanded to grant the minister, council and the electorate the ability to initiate the process.

Rationale

Recommended legislative changes will enable residents to initiate municipal boundary alterations. Equally as important, the trend in legislation is the recognition of the minister's authority to initiate boundary alterations.

5.3.3 Process of Restructuring

5.3.3 Process of Restructuring (Sections 9, 12, 13 and 14)

Background

Two sets of criteria of unique processes exist to alter the boundaries of municipalities. Currently Section 9 of the Act enables a change of status, correction, dissolution, adjustment, reduction, amalgamation or

change of name. Section 12 of the Act allows the joining of a portion of unincorporated lands to a municipality through an annexation process involving the Island Regulatory and Appeals Commission and a public hearing process.

Recommendation

The committee recommends that the Act be expanded and clarified to minimize the possibility for misinterpretation of the information by:

- I. identifying who initiates a process;
- II. elaborating on the required information necessary to arrive at a decision;
- III. identify the external agencies involved;
- IV. indicating who is involved, consulted or notified of a process;
- V. identifying who makes the final decision; and
- VI. specifying that a decision may be less or greater than the original request.

Further, the committee recommends that the current requirements associated with a change of status, correction, adjustment, reduction, change of name and restructuring be expanded and all necessary information associated be written and organized in a manner that provides the user with clear direction from commencement to conclusion.

Rationale

A single process and a set of criteria for altering municipal boundaries add clarity to the legislation.

5.3.4 Types of Areas That May Be Joined Together (Sections 9 and 12)

Background

Two distinct processes exist to alter a municipal boundary. The first process enables a municipality to join unincorporated land into the

5.3.4 Types of Areas That May Be Joined Together

**5.3.5 Principles,
Standards and Criteria**

municipality, and alter, correct or dissolve the boundaries of a municipality. The second process enables the joining of two or more municipalities together.

Recommendation

The committee recommends that a restructuring process allow the:

- I. joining of two or more incorporated areas together or a portion thereof;**
- II. joining of an incorporated area with an unincorporated area; or**
- III. dissolving of an incorporated area or portion thereof.**

Rationale

The altering of a municipal boundary should follow a consistent process. Regardless of the type of boundary alteration requested the criteria should remain uniform.

**5.3.5 Principles, Standards and Criteria
(Proposed Addition to Legislation)**

Background

The public has placed a high priority on open, transparent and accountable decision-making processes. Clarity is needed to guide the process of municipal restructuring. This process should be applied to interpreting and evaluating information that measures and directs decisions.

Recommendation

The committee recommends that the legislation concerning a change of status, correction, adjustment, reduction, change of name and restructuring be clarified by including the establishment of principles, standards and criteria that will be taken into account when reviewing a request.

Rationale

Establishing a standardized approach for the evaluation of a request ensures a fair, open and impartial process of evaluation.

5.3.6 Process Fostering Dialogue (Proposed Addition to Legislation)

Background

A variety of reasons promote municipal restructuring such as population, economic growth and the demand for services at an affordable cost. There is often a combination of public support and council consent from all municipalities involved. It is understandable that communication breakdowns occur as residents and councils consider potential mergers.

Recommendation

The committee recommends that an alternative process be developed that fosters dialogue when one or more municipalities do not support a restructuring request. This process should include a summarization, in writing, regarding the dialogue between municipalities, and should be included as a component of the restructuring request listing issues of agreement and disagreement.

Rationale

Agreement among municipal leaders and residents to combine efforts and share services may be difficult to obtain. The restructuring process, stalled by lack of communication, should be enabled to continue, allowing local decision makers the ability to discuss the opportunities and constraints for municipal mergers. It is, therefore, important that decisions continue regarding potential boundary alterations.

5.3.7 No Increase to the Amount of Unincorporated Lands (Proposed Addition to Legislation)

Background

There are 75 municipalities representing approximately 28 per cent of the provincial landmass. The 1990 Royal Commission on Land strongly suggested that the amount of unincorporated land be reduced. In addition, position papers, such as *The Geography of Governance* by the Institute of Island Studies, supports a reduction to the percentage of unincorporated land.

5.3.6 Process Fostering Dialogue

5.3.7 No Increase to the Amount of Unincorporated Lands

Recommendation

The committee recommends that a restructuring process involving the dissolution of part or all of a municipality not increase the amount of unincorporated area within the province.

Further, the committee recommends that an order to dissolve a municipality provide for the inclusion of the former municipality in an adjacent municipality.

It is also the committee's recommendation that the FPEIM be notified of a dissolution process.

Rationale

An increase to the amount of unincorporated area within the province will directly increase servicing levels for the provincial government. Therefore, all residents within the province pay for services previously delivered by a former municipality, increasing provincial budget requirements.

5.4 Municipal Council

It is the desire of the committee to focus the energy and efforts of elected leaders to govern. The contribution of local elected leaders is immeasurable. It is feared that the role of the elected leader will diminish should councillors participate in administrative matters.

The council is the policy setting body that provides leadership and direction to municipal staff. However, in some circumstances, councils have departed from the policy and leadership role and duties to participate in the day-to-day operations of the municipality. The participation in daily activities has obscured council's main function and led to confusion of council responsibilities. The committee is of the opinion that councils should govern through policy statements.

Therefore, reforms have been suggested to clarify the duties of the mayor or chairperson, as well as the deputy mayor or vice-chairperson and councillors. Reforms within this part of the Act are aimed at directing elected leaders to make decisions through resolution, policy

or bylaw-regulations, thereby, removing a councillor's involvement in daily operational activities.

Accompanying the reforms to council's duties, roles and responsibilities, the committee suggests that a greater emphasis be placed on council composition. Regardless of municipal type (town, community) the committee is of the opinion that the number of elected leaders should be standardized. This standardization process should also include the appointment of a councillor as deputy mayor or vice-chairperson in all councils.

Stringent controls, stronger enforcement and penalty mechanisms aimed at addressing violations of elected leaders are desired.

At present, the Act contains little to address the issue of violations of elected leaders operating outside legislation. Consideration has been given to increasing the powers at the municipal level to address and impose penalties to an elected leader in violation of the Act.

Accountability of the elected leader is of great importance.

5.4.1 Role of Council (Proposed Addition to Legislation)

Background

A municipal council provides leadership and direction through the setting of policy. There are councils that have departed from this policy-setting role and participate in operational management of the municipality. Participation in daily activities obscures council's function and leads to confusion of council responsibilities.

Recommendation

The committee recommends that the legislation be expanded to recognize the role of council as a policy setting body providing leadership and direction to staff, and recognize staff's role to ensure policies of council are accomplished through daily operations.

Rationale

The contribution of local elected leaders is immeasurable. Concerns have been raised that the role of the elected leader diminishes when

5.4.1 Role of Council

5.4.2 Duties and Decisions of Council

councillors participate in the administrative process. Council is responsible to make decisions through resolutions, policies or bylaw-regulations. Removing the involvement of an elected representative from daily operational activities focuses and directs the energy and efforts of the elected leader to that which it is intended, policy making and leadership.

**5.4.2 Duties and Decisions of Council
(Proposed Addition to Legislation / Expansion to Section 15)**

Background

A key role of council is to provide leadership through the setting of policy. As indicated in section 15(3) “The council is the governing body of the municipality.” However, the Act does not indicate the duties of council beyond conducting a minimum of one meeting per year and the provision of administration. The role and function of council and administration is interdependent but distinct.

Recommendation

The committee recommends that council exercise power and make decisions by resolution, policy and, or bylaw – regulation.

Further, the committee recommends that the duties of council be recognized within the legislative framework and expanded to include:

- I. consideration and promotion of the interest of the municipality as a whole;**
- II. participating in the development and evaluation of policies for municipal guidance;**
- III. participating in council meetings;**
- IV. participating in other appointed committee meetings; and**
- V. maintaining confidentiality of matters discussed.**

Rationale

The committee feels elected leaders need greater clarity regarding their roles and responsibilities within legislation. Emphasizing and

clarifying in legislation the authority of council to make decisions, and the manner, place and mechanisms through which decisions are made, should identify council as the policy maker. The administrator advises council on current and impending issues; council sets policy through resolutions and accompanying bylaws to address these issues. Administration implements the policies and accompanying bylaws. Clarifying council's roles and responsibility will in turn clarify the administrator's role, function and responsibilities.

5.4.3 Voting by Council (Section 21 [5,6])

Background

Limited information is provided within the *Municipalities Act* concerning voting by council. The absence of detail within legislation has led to difficulties and necessitated municipal governments to adopt procedural bylaws.

Recommendation

The committee recommends that the current provisions and procedures respecting council votes be expanded and clarified to include:

- I. that all members of council be required to vote on a question, with the exception of the mayor or chairperson;**
- II. votes must be made in a manner that is open and identifiable to the public;**
- III. any council member who fails or refuses to vote be deemed to have voted in the positive as a default;**
- IV. only those determined to be in conflict by council shall be permitted to abstain from voting;**
- V. that decisions be made by majority vote; and**
- VI. the mayor or chairperson shall vote in the event of breaking a tie vote.**

5.4.3 Voting by Council

5.4.4 Duties of Mayor or Chairperson

Rationale

Accountability and transparency are demanded of government. The demand of the public for responsible government includes identifiable decisions. Clarifying that elected representatives must vote, responds directly to the public's desire for transparency. Eliminating the opportunity for councillors to abstain, and counting a non-vote as a vote in the positive, further enforces accountability among the elected representatives.

5.4.4 Duties of Mayor or Chairperson (Section 16)

Background

Section 16 of the Act states that the mayor or chairperson is the chief executive officer of the council and shall preside at meetings of the council. The Act does not delineate the responsibilities of mayor, chairperson or chief executive officer. It is not mandatory for the mayor or chairperson to appoint a deputy mayor or vice-chairperson.

Recommendation

The committee recommends that the current legislative requirements respecting the duties of the mayor or chairperson be expanded to include:

- I. be vigilant and active;
- II. cause the laws of the municipality to be duly executed;
- III. oversee and maintain the conduct of council;
- IV. preserve the order and enforce the rules of council;
- V. communicate to council information and recommended measures that may improve the municipality;
- VI. appoint a deputy mayor or vice-chairperson, or in their absence, appoint a person to fulfill their duties during a meeting;
- VII. assign duties to a councillor;
- VIII. appoint a councillor to committee(s);
- IX. the mayor is an ex-officio member of each committee of

- council;
- X. the mayor or chairperson must leave the chair to take part in debate and appoint a designated member in their place as chair; and
- XI. the mayor or chairperson will vote only to break a tie.

Rationale

The present legislation provides little guidance as to the roles and responsibilities of the office of mayor or chairperson. Recently elected leaders have placed a greater emphasis on the identification of their roles and responsibilities, specifically the office of mayor or chairperson. Expanding the present legislation will add clarity for the role and responsibility of the office of mayor or chairperson. Identifying the duties and powers of the office, signifies to council and the public, the importance of the position.

*5.4.5 Deputy Mayor – Vice-chairperson
(Section 16[2])*

Background

Council processes and decisions depend on a well-defined organizational structure. The *Municipalities Act* does not mandate the council structure beyond the appointment or election at large of the chairperson or mayor as in section 16(1). It is not mandatory, however, that a vice-chairperson or deputy mayor be appointed as in section 16(2).

Recommendation

The committee recommends that the position of deputy mayor or vice-chairperson be mandatory for all municipalities. Additionally, another member of council should be selected to chair a meeting in the absence of the mayor, chairperson or deputy mayor or vice-chairperson.

*5.4.5 Deputy Mayor –
Vice-chairperson*

5.4.6 Council Composition

Rationale

Councils and municipal business are continuous. In the event that the mayor or chairperson is unable to act or is absent, the decision-making process should be able to proceed. The appointment of a deputy mayor or vice-chairperson defines a hierarchy to the council structure. Further, an organizational structure enables the continuation of municipal business during extraordinary circumstances and emergencies when decisions are of the highest importance.

5.4.6 Council Composition (Section 15)

Background

The legislative criteria set forward in section 15(1) identifies the maximum and minimum number of elected leaders necessary to govern a municipality. Also identified within section 15(1) is the distinct number of elected leaders necessary to govern a town and community. Recognition is given within the Act under section 15(6) for those municipalities that had a council composition different from that specified in section 15(1), and enables these councils to continue functioning unchanged although not uniform with legislation.

Recommendation

The committee recommends that:

- I. the composition of council be uniform regardless of municipal type; (community or town)
- II. a council consist of a minimum of five and a maximum of seven elected representatives; and
- III. an election at large be conducted to elect a mayor or chairperson.

Rationale

The composition of municipal council should be uniform in size across the province.

5.4.7 Taking Office (Section 15[5])

Background

Municipal elections occur on the first Monday of November every third year as indicated in section 48 and schedule 2 (1). Section 15(5) specifies that council take office on the first day of January following the election. Taking office coincides with the commencement of the fiscal year of the municipality as outlined in section 40.

Recommendation

The committee recommends that the time period between election day and taking office be reduced and that newly elected municipal leaders commence duties on the first day of December.

Rationale

A reduction in the time between election day and taking office allows the new council greater time to review financial information and institute new policy direction. Narrowing the gap between election day and taking office also allows the new council greater financial control prior to setting a new budget.

5.4.8 Meetings of Council (Sections 21 and 55)

Background

Currently a council is required to conduct a minimum of one meeting a year, sections 21 and 55. Absent from legislation are criteria addressing public notification of regularly scheduled council meetings, circumstances that dictate the necessity of a meeting without notification, and decisions made at meetings that do not meet the specified standard for a quorum.

Recommendation

The committee recommends that the legislative requirements concerning meetings of council be similar to the meeting structure identified in the Charlottetown area and Summerside municipal legislation. Therefore, the *Municipalities Act* should be expanded to include:

5.4.7 Taking Office

5.4.8 Meetings of Council

- I. all municipalities hold a minimum of quarterly meetings per year;
- II. municipalities determine through resolution the:
 - a) time, date, place of the regular meetings;
 - b) process to alter a regularly scheduled meeting;
 - c) process to cancel a meeting; and
 - d) prohibiting the cancellation of two consecutive meetings;
- III. permitting a council to hold special and emergency meetings; and
- IV. enabling a mechanism for council to function in the event that the number of councillors is reduced below that required for a quorum due to conflict of interest withdrawals.

Further, the committee recommends that meetings of council provided for by resolution adequately notify the public of a change to a meeting or notice of a meeting.

Rationale

A council's primary function is to provide peace, order and good government as set forward in section 57. Municipal governments respond to citizen needs by decisions. Decisions of council are made by resolutions. Resolutions of council are made at council meetings. The frequency in which a council meets is, therefore, critical.

The effectiveness of municipalities conducting a meeting once a year questions a council's primary function. One meeting a year implies inactivity and potentially an inoperative municipal government. It is important that legislation provide for greater meeting frequency. Increased meeting frequency, in conjunction with strengthened notification procedures, reflects a commitment toward strong, accountable, municipal governments committed to the public trust.

5.4.9 Absence, Disqualification from Office, Conflict of Interest, and Determination of a Conflict of Interest
(Sections 15[4.2] and 23)

Background

The *Municipalities Act* does not allow a council to extend the time frame for an elected leader to be absent from meetings. Additionally, councils may not make determinations of conflict and subsequently disqualify a member in conflict for participating in a decision-making process resulting in a pecuniary interest.

It is equally important to hold committees of council to the same level of accountability as councils for their decisions.

Recommendation

The committee recommends that the current legislation be revised to acknowledge and allow elected representatives to be absent from a municipality, municipal meetings and the duties of office upon request and with the approval of council for a period not exceeding six months.

Further, the committee recommends that legislation be enacted to disqualify a member of council if the:

- I. member is not eligible by reason of qualifications to take office;
- II. elected official becomes a judge, member of the Senate, House of Commons or Legislative Assembly;
- III. elected official is absent from meetings for three consecutive months without Council's authorization; or
- IV. elected official is convicted of an offence punishable by imprisonment for five or more years or an offence specified under sections 123, 124, and 125 of the *Criminal Code of Canada*.

5.4.9 Absence, Disqualification from Office, Conflict of Interest, and Determination of a Conflict of Interest

It is the committee's recommendation that the conflict of interest legislation be expanded to include non-elected person(s) appointed to council committees.

It is the committee's recommendation that the conflict of interest provisions be expanded to include:

- I. an elected leader disclose the nature of a conflict of interest to council;
- II. abstain from voting;
- III. abstain from discussion;
- IV. leave the meeting room during discussion and voting; and
- V. disclosure of interest will be recorded in the minutes.

It is the committee's recommendation that the council shall, by resolution, make a determination of all questions concerning a conflict of interest.

Rationale

Elected leaders and municipal staff desire greater authority to provide improved services to the public. Legislation should incorporate measures aimed at capacity building, affording municipalities the flexibility to address unforeseen circumstances at the local level. In the absence of a broad legislative framework, municipalities are unable to guide, direct and ensure the accountability of their elected leaders.

5.4.10 Resignation from Council

5.4.10 Resignation from Council (Sections 21[8] and 48[16])

Background

In section 48(16) of the Act, a member of council wishing to resign from council declares the intention in writing to the administrator, and is to be witnessed by another person. Further guidance is provided in section 21(8) of the Act indicating that council declare a seat on council vacant. The Act does not specify when this resignation should take effect – the date provided to the administrator or a date indicated within the letter of resignation.

Recommendation

The committee recommends that resignations from council occur immediately upon receipt of intent in writing delivered to the administrator or chief administrative officer.

Rationale

Clarifying the current provisions within the *Municipalities Act* should simplify the resignation process. Specifying that a resignation is presented to the administrator and is effective upon receipt by the administrator eliminates the need for a witness and enables the special election process to commence immediately.

5.5 Municipal Administration

The committee has reviewed the roles and responsibilities of municipal administration and has noted demands on municipal governments have impacted on municipal administration. Public expectations have risen, accountability is heightened and access to information is demanded. Therefore, consideration has been given to expanding the roles and responsibilities of administrators. Administrators should be granted greater authority under the Act to ensure the policies and regulations are carried out in an efficient and effective manner that is open to public scrutiny.

Presently, the Act specifies that each municipality is responsible for providing administrative services. Eliminating the role of elected leaders in the daily operations of a municipality may increase the daily activities of municipal employees. In an effort to resolve potential issues, the committee suggests that municipalities be permitted to share administrative management services. Sharing services can be an efficient use of resources, and a cost effective measure to provide service to the residents.

An understanding and appreciation of the *Municipalities Act* by administrators is of the utmost importance. Training to ensure municipal administrators are made aware of changes to the Act and their implications will be necessary. Consideration has been given to the development of a departmental training program. A program of

**5.5.1 Administration
Style, Function and Duties**

this nature would provide insight into reforms and requirements under the Act.

**5.5.1 Administration Style, Function and Duties
(Sections 24[1,3], 25 and 26)**

Background

The *Municipalities Act* identifies in section 24(1) that municipalities require an administrator. Section 26 of the Act identifies the limited functions for the administrator. The Act also enables a council to appoint other municipal officers to assist a municipality provide service as in section 25. Clarity is now desired in legislation to address the role of the municipal leader or other leaders appointed by council to assist in service delivery.

Recommendation

The committee recommends that council direct the management of a municipality by policy, and appoint a person who is not a council member to the position of administrator or chief administrative officer to carry out the duties of the municipality or appoint additional person(s) to carry out specific duties to ensure responsible, efficient, and effective governance.

Further, the committee recommends that the person appointed by council to fulfill the administrative functions of the municipality be granted the authority by:

- I. consent and resolution of the council to:
 - a) appoint other employee(s) to act as chief administrative officer when absent;
 - b) coordinate and direct the preparation and administration of the budget for council's consideration and approval;
 - c) collect revenues as directed by council;
 - d) perform the duties of clerk, treasurer, engineer and administrator with consent of council;

- e) all officers and employees of the municipality are accountable to the chief administrative officer unless otherwise directed in a bylaw;
- f) supervise, direct, and manage all staff on a daily basis;
- g) appoint, suspend and remove all employees upon consultation with council;
- h) classify municipal positions and authorize salaries and wages to be paid to municipal staff members;
- i) commence defense of a legal action or proceedings on behalf of council; and
- j) lease buildings, or municipal properties on behalf of council.

II. Bylaw to:

- a) ensure that all policies and programs of the municipality be implemented;
- b) advise and inform council on operational affairs of the municipalities;
- c) perform all duties, functions and exercise all powers required by other provincial and federal statutes;
- d) attend all meetings of council;
- e) record attendance of council members;
- f) record all decisions of council;
- g) record position taken by council on each vote taken by council;
- h) ensure accuracy of minutes of all council meetings;
- i) preserve minutes, documents and financial records of the municipality;
- j) review, draft, and prepare bylaws, policies, and recommend guidelines for council consideration and approval;
- k) maintain an indexed register containing certified

copies of all bylaws;

- l) make available for public inspection minutes, policies, guidelines, and bylaws;
- m) deposit revenues into a bank account in the name of the municipality;
- n) co-sign documents or other legal instruments with the appropriate council member;
- o) set-up and maintain accurate accounting of financial records;
- p) keep a ledger of financial information;
- q) report to the mayor, chairperson and council monthly or as often as council directs on the revenues, expenditures, capital budgets, and municipal debt;
- r) communicate council's policy directives to staff; and
- s) communicate with other government agencies, and leaders on behalf of council.

III. Communicate information to the public to:

- a) be the custodian and maintain custody of the municipal seal;
- b) prepare and transmit to the minister any statements and information that is required; and
- c) perform any other duties required by policy, resolution or bylaw.

Rationale

It is important that legislation reflect the roles and responsibilities of the municipal staff. A mandatory requirement of the Act is the appointment of an administrator. As indicated in section 25, additional personnel may be appointed to provide service. It would be beneficial to indicate that the person(s) appointed by council to

provide service are under the direction of the administrator. A council's authority to appoint additional staff may limit the authority of the administrator. The organizational structure should identify the administrator as the leading manager and provide the necessary authority to manage the affairs of the municipality.

It is important that council be given the authority to define the position of administrator and give the position an appropriate title signifying the position is leader of municipal officers and staff. Council should manage through policy and therefore, the appointment of additional municipal officers and staff should remain with administration. It is important that legislation acknowledge the authority of the administrator to delegate any of the positions, powers, duties or functions to a designated employee. Council by bylaw would identify designated officers supervised by the administrator.

The responsibilities of the administrator have increased greatly and continue to grow. It is important that legislation reflect the current and emerging role of the administrator as manager and caretaker of daily operations. Identifying in legislation the added functions of the administrator over the operational activities and implementation of policy is paramount to emphasising the overall role of the position.

5.5.2 Training and Mandatory Certification (Proposed Addition to Legislation)

Background

Present legislation identifies the functions of the administrator. However, legislation does not address the issue of minimum qualifications for the individual appointed to the position of administrator.

Recommendation

The committee recommends that the department offer an orientation session directed toward municipal personnel responsible for the management and administration of a local government.

5.5.2 Training and Mandatory Certification

5.5.3 Classification and Appointment of Municipal Employees

Further, the committee recommends that all personnel responsible for management and administration of a local government attend the administrative orientation session as part of the terms of accepting a position with a local government. Exemptions will be granted to individuals that provide to the minister accreditation from an approved local government management or public administration program.

Rationale

Municipal training refers to activities that promote the knowledge and skill development of municipal administrators through learning that is directly related to the municipal content and legislation. Training affords administrators the opportunity to gather the necessary knowledge to meet the diverse needs and complexities of municipal governance. Operating an effective local government demands a high level of understanding of legislation, and management.

5.5.3 Classification and Appointment of Municipal Employees (Section 26)

Background

Service delivery is one of the primary functions of municipal governments. The administrator carries out the policy directives and bylaws of council. Council may appoint additional personnel to assist in the delivery of services as directed through section 25.

Recommendation

The committee recommends that legislation acknowledge municipal responsibilities including staff's authority to perform and direct a variety of duties upon consent of council including, however not limited to:

- I. clerk;
- II. treasurer;
- III. development officer;
- IV. enforcement officer;
- V. engineer; and
- VI. recreation officer.

Further, the committee recommends that council adopt a bylaw establishing the powers and duties for the individual or individuals who will manage the daily affairs and ensure that the policies of council are implemented.

Rationale

Strengthening authority, functions and duties of the administrator through policy and bylaw adds greater clarity to the role and responsibility of the municipal staff member. Strengthening the roles and responsibilities of municipal staff directly, strengthens the roles and responsibilities of elected leaders.

*5.5.4 Human Resource Authority
(Proposed Addition to Legislation)*

Background

A council may address human resource administration as directed under section 64(a) of the Act. The provisions within section 64(a) enables, in general terms, that a bylaw may be enacted respecting the appointment, remuneration, benefits and functions of employees. Further clarity would be beneficial to provide council direction on areas of authority.

Recommendation

The committee recommends that the legislation regarding the appointment, classification or dismissal of a municipal employee, leader, or volunteer for just cause or attempting to influence any matter for which they have a conflict of interest be expanded to permit by resolution to:

- I. appoint;
- II. classify, reclassify or promote;
- III. confirm a suspension;
- IV. extend a suspension;
- V. dismiss; or
- VI. reinstate an individual, firm, contract or agreement for service.

*5.5.4 Human Resource
Authority*

Further, the committee recommends that the authority to appoint, classify, suspend or dismiss a municipal employee or volunteer for just cause be granted by resolution or bylaw to the:

- I. administrator;
- II. chief administrative officer;
- III. human resources officer; or
- IV. management personnel responsible for the affairs of a municipality.

It is the committee's recommendation that the authority to classify, alter a title, authorize salaries, wages, and honorariums to be paid to a municipal employee or volunteer, be granted in whole or part by resolution or bylaw to the:

- I. administrator;
- II. chief administrative officer;
- III. human resources officer; or
- IV. management personnel responsible for the affairs of a municipality.

Rationale

The attitude of the public concerning the involvement of elected leaders in matters related to human resources has changed dramatically since the adoption of the Act. The shift in public attitude accompanied by emerging trends in human resource management, necessitates a fundamental change in the involvement of elected representatives in human resource decisions. Human resource decisions should be addressed at a management level.

Expanding the areas of consideration is equally important. Enabling through legislation a greater range of issues that may be considered and determined, clarifies the Act, thereby adding further direction.

5.5.5 Dispute Resolution
(Proposed Addition to Legislation)

Background

Council as mediator for disputes between municipal management and staff is not addressed within the current legislation.

Recommendation

The committee recommends that any municipal employee or volunteer who has been suspended or dismissed should have an opportunity to have an objection heard by council regarding the suspension or dismissal. Upon hearing and reviewing the information provided, council should render a decision concerning an objection of a suspension or dismissal.

Rationale

Removing council from the decision-making role in human resources enables council to be impartial during a dispute between an employee and management. Enabling council to act as a facilitator and mediator creates an opportunity for a municipality to divert disputes from entering the court for consideration. Expanding council's role also increases council's autonomy.

5.5.6 Management and Destruction of Records
(Proposed Addition to Legislation)

Background

The retention and destruction of files, records and associated materials accumulated by a municipality is not addressed within the *Municipalities Act*.

Recommendation

The committee recommends that the legislation acknowledge the authority of council to manage and destroy dated records through the adoption of a policy, resolution or bylaw that:

- I. states the method of preserving an original copy of bylaws and minutes of council; (microfiche, electronically, CD,)

5.5.5 Dispute Resolution

5.5.6 Management and Destruction of Records

- II. indicates the appropriate time-frame after which documents may be destroyed, describing a hierarchy of documentation for destruction including but not limited to such items as personnel records, financial statements, letters, subdivision and building plans; and
- III. is in compliance with this or other statutes.

Rationale

In the absence of legislation enabling municipalities to destroy records accumulated yearly, a municipality is obligated to hold these materials, regardless of importance, indefinitely. Items such as general correspondence, flyers and notices need not be retained. The importance of retaining financial information, supporting documentation and research information from which council bases decisions, should be for a specified period of time.

**5.5.7 Fidelity Bonds –
Liability Insurance**

**5.5.7 Fidelity Bonds – Liability Insurance
(Proposed Addition to Legislation)**

Background

The present legislation does not address fidelity bonds or liability insurance.

Recommendation

The committee recommends that all municipalities have a fidelity bond or equivalent liability insurance.

Rationale

One measure of good government is the proactive approach to financially protecting the municipality. Bonding employees and securing liability insurance provide a level of protection for the municipality, elected leaders and others acting on behalf of the municipality for acts or omissions when carrying out municipal responsibilities and duties in good faith. A trend in municipal legislation is the mandatory requirement for all municipalities to carry liability insurance and fidelity bonds.

5.5.8 Development Control

(Section)

Background

Although the *Municipalities Act* does enable council to appoint person(s) to provide service, the Act does not address qualifications for the individual's appointed. Land use planning, subdivision, and development and building control, demand a high level of specialization. Application review and the determination of compliance with municipal, provincial and federal laws require that decisions are based on knowledge of legislation, regulations, policy and bylaw.

Recommendation

The committee recommends that the person(s) appointed by council to review and make decisions on an application regarding development for a municipality must have related experience in development control, enforcement of bylaws or land use planning.

Rationale

An underlying principle of sustainable development in relation to land use planning, subdivision, and development and building control, is the wise management and best use of land for development in urban and rural areas. Sustainable development practices take into account the protection of land for present and future generations. Conflicting land use demands are a component of the building and development control process. It is the role of the development officer to analyse and understand these demands in relation to municipal, provincial and federal laws. It is important that development control personnel be qualified to provide this service.

5.5.9 Business Hours

(Proposed Addition to Legislation)

Background

Legislation does not address business hours and the need for residents to have meaningful access to local administration.

5.5.8 Development Control

5.5.9 Business Hours

Recommendation

The committee recommends that all municipalities have fixed hours of operation every week at a set location within the municipality where public business is conducted.

Rationale

Demands have grown and the need for standardized business practices dictate the need for greater access to local administration. Municipal business hours should be scheduled to allow access for the public.

5.6 Municipal Power and Service Authority

The committee has considered the authority, powers and services presently available to municipalities. A trend in legislation has been to enable municipalities to move toward greater self-sufficiency and self-direction.

The committee recognizes that financial constraints limit the number of services many municipalities are able to provide. Limited detail and direction are provided within the current legislative framework regarding the sharing of services. Modifying legislation to enable the sharing of services should also be extended beyond an agreement between municipalities and include service into unincorporated areas. It is well recognized that combined services lead to uniformity in service delivery. Also the sharing of services can be a cost effective means to meet the needs of the citizens.

The powers and services identified in the Act vary depending on a number of factors. A special request to the minister should not be required for municipalities that desire and have the financial capability, to provide these services.

5.6.1 Qualifying Statement (Addition to Legislation)

Background

It was noted by the committee upon review of the various municipal statutes that there is a trend in the use of an opening statement to

5.6.1 Qualifying Statement

introduce a subject. The legislative provisions within the present *Municipalities Act* is a continuous collection of legislative provisions separated by subject.

Recommendation

The committee recommends that the Act be revised to provide those services that municipalities have the authority to provide under this Act and any other legislated Act which is necessary or desirable either directly or through another public authority, organization or person acting on behalf of the municipality and is in the best interest of the municipality.

Rationale

An introductory statement indicating that all municipalities have the authority to provide a full range of services directly or through another public authority or private organization expresses the authority, jurisdiction and autonomy of municipalities.

5.6.2 *Municipal Services*
(Sections 30 and 31)

Background

Part VIII of the *Municipalities Act* titled Municipal Powers identifies the services that may be provided by municipalities. Towns and former villages may provide the services listed in section 30 while former community improvement committees may provide the limited services indicated in section 31. However, these former community improvement committees may, by request as indicated under section 33, expand the services provided by the municipality to include any service specified in section 30.

Recommendation

The committee recommends that the services be the same for all municipalities; and

- I. this list of services be altered thereby, making it mandatory for all municipalities to provide administration services, and fire protection and other

5.6.2 *Municipal Services*

emergency services to its citizens within the municipality;
and

- II. the service of garbage and refuse collection and disposal, now provided across the province be removed from the list of services that may be offered to the citizens.

Rationale

A hierarchy of municipal types (city, town, community) exists within the province. The *Municipalities Act* sets forward two types of municipalities, one respecting urban areas, and towns; the second, respecting rural areas, and communities. These types of municipalities enable two distinct levels of authority and service. This hierarchy municipal type is evident in Part VIII sections 30 and 31 where a distinction in service delivery is established. Sections 30 enables urban municipalities to access a greater number of services than rural municipalities as in section 31.

Enabling municipalities to respond to the concerns of residents regardless of size, population or density should be the primary focus of municipal government. Providing elected municipal leaders the tools to respond to the needs of residents is of utmost importance. Enabling all municipalities greater access to the choice of services that may be provided to the residents will provide greater equality among municipalities.

5.6.3 Expropriation Powers Outside a Municipality

**5.6.3 Expropriation Powers Outside a Municipality
(Sections 51 and 52)**

Background

The enabling authority for municipalities to expropriate land is outlined in sections 51 and 52 of the *Municipalities Act*. These sections enable a municipality to expropriate land after attempting to negotiate acquisition by agreement for the purpose of providing services within a municipality. Similar rights and privileges are granted to the municipalities of Charlottetown, Summerside, Cornwall and Stratford, however, the legislative provisions relating to expropriation for these municipalities provide greater clarity with respect to process.

Recommendation

The committee recommends that all municipalities be granted the same privilege regarding expropriation powers. Additionally, it recommends, that this privilege be broadened to include lands or works required for utility operation or drainage or other requirements necessary to perform or safeguard municipal utility interests or the drainage of water within and outside a municipality's boundaries.

Rationale

Adoption of the provisions set forth in the legislation governing the municipalities of Charlottetown, Summerside, Cornwall and Stratford concerning expropriation provides greater clarity.

5.6.4 Services Outside a Municipality (Section 3)

Background

Although no direct reference is made, the *Municipalities Act* enables the sharing of services. Section 3 of the Act identifies that a municipality is a corporation. The powers of a corporation as defined by the *Interpretations Act* (section 16) enables the sharing of services.

Recommendation

The committee recommends that measures be introduced that will reduce the financial constraints of service delivery to municipalities. Enabling legislation that acknowledges and supports the sharing of municipal services by municipal governments shall permit services to be shared outside a municipal boundary. Two or more municipalities may make agreements respecting the:

- I. administration, activities and services within the municipal units;
- II. joint undertaking of activities and services within the municipal units, including corporations, boards, or organizations of the municipality;
- III. enforcement of bylaws and council's authority within the municipality; and

5.6.4 Services Outside a Municipality

- IV. the management of property or an interest in property held by a party to the agreement.

An agreement between municipal authorities and the administration, shared services, operation of services, enforcement of or exercise of services, powers, functions and duties may only be allowed upon the approval of all councils involved, by resolution.

Further, the committee recommends that the legislation permit a municipality to develop, establish and adopt the necessary terms and conditions to provide a service either directly, through another public authority, organization or person(s) acting on behalf of the municipality including but not limited to:

- I. the limits on the service to be provided in its area; and
- II. the process for terminating the service.

Rationale

The *Interpretation Act* allows the sharing of services by two or more municipalities. Amending the Act to incorporate the provisions of the *Interpretation Act* in the place of referencing the *Interpretations Act* will add clarity.

5.7 Municipal Finance

Financial management is a key component of government. Municipalities, regardless of size, are responsible for the development of budgets, setting the tax rate and ensuring that revenues are properly expended. The committee has identified a need for further legislative provisions regarding the financial management of municipalities.

A great public trust is placed on municipal leaders and staff to use public funds in the best interest of the citizens. In an effort to ensure this trust is not broken, audits are conducted. Not all municipalities are subject to the requirement to conduct audits. The committee understands the financial constraints under which most municipalities

operate, however, it suggests that all municipalities conduct audits unless the authority to provide a review engagement is granted.

A standardized approach for all municipalities is recommended. The authority of municipalities depends greatly on financial resources and management. A uniform approach to financial management and the inclusion of open accountable processes to guide municipalities is common in other jurisdictions in Canada. All municipal councils should conform to a uniform practice, elected leaders should develop and approve budgets.

The committee suggests that requirements be enacted to ensure municipalities adopt a preliminary budget early in January. The committee also suggests that all municipalities conduct either an audit or review engagement where permitted. Amending the financial mechanisms guiding municipalities should eliminate municipalities operating without a budget between the months of January and March; ensure an open accountable process; and may provide an added level of security and trust on the amount of money received and spent.

The committee has developed a list identifying areas that public funds may be spent, aimed at assisting and guiding municipal governments during budget deliberations. Prior to finalizing a municipal budget, the committee suggests that municipal councils be required to conduct a public meeting to provide an opportunity to the residents to identify issues or provide their view on areas of municipal spending. The protection of public funds is of great importance, expanding the areas in which reserve funds may be directed; how reserve funds are to be invested; eliminating the potential for municipalities to adopt deficit budgets; and ensuring that all municipalities file financial statements, will increase oversight protection.

5.7.1 Cost Estimate (Proposed Addition to Legislation)

Background

Municipalities are directed under section 27 of the *Municipalities Act* to appoint an auditor to audit the financial statements of the

5.7.1 Cost Estimate

**5.7.2 Audit or Review
Engagement**

municipality. Section 27 does not, however, set forward a process to be followed for the selection of an auditor.

Recommendation

The committee recommends that the appointment of an auditor be made after inviting cost estimates on a periodic basis.

Rationale

Managing public funds involves an investigation into the cost associated with the delivery of a service by private firms. This is often conducted through a tendering process. Expanding the provisions concerning the appointment of an auditor, to include a process that mandates an auditor is chosen after receiving cost estimates, would assist municipalities obtain a quality service at a fair price.

**5.7.2 Audit or Review Engagement
(Sections 27 and 27[4])**

Background

Section 27 of the *Municipalities Act* indicates an auditor will be appointed by each municipality to review the financial statements of the municipality. Municipalities having a total expenditure less than \$50,000 have the discretion to dispense with the audit requirement under section 27(4).

Recommendation

The committee recommends that those municipalities not requiring an audit shall conduct a review engagement each year.

Rationale

It is important to place strict controls on public funds. Municipal revenues and expenditures should be scrutinized by professional accounting firms through accepted practices of audits or review engagements to maintain the public trust through a transparent process.

5.7.3 Complaints Regarding Financial Affairs (Proposed Addition to Legislation)

Background

Currently, no process exists within the *Municipalities Act* enabling a resident to express concern over the financial management of the municipality.

Recommendation

The committee recommends that a process be established that enables an elector the opportunity to express concerns in writing to the council if the elector considers that an expenditure, liability, or transaction is not authorized by legislation, or there has been a theft, misuse, fraudulent use of funds or irregularity, in the accounts, assets liabilities and financial obligation of the municipality. The council may initiate a review and response to any expression of concern brought forward to council by:

- I. acknowledgment in writing;
- II. conducting a review by either the municipal finance officer or the municipal auditor as directed by council;
- III. commencing and concluding the review in a timely manner having regard to the expression of concern; and
- IV. concluding with a written response in the form of a report from the municipal auditor to the council. A copy of the report may be provided to the elector initiating the review.

Rationale

A trend in municipal legislation is the incorporation of a process to enable residents an opportunity to bring forward issues of concern, regarding financial matters. The desired effect of this legislative trend is to increase accountability through an open and transparent process.

5.7.3 Complaints Regarding Financial Affairs

5.7.4 Financial Ledger

5.7.4 Financial Ledger (Proposed Addition to Legislation)

Background

Financial recording and reporting is addressed as an administrative function under section 26 of the Act. However, Part IX, Municipal Finance does not address recording, itemizing and reporting revenues and expenditures beyond the specification placed on the report of the auditor as in section 27(3).

Recommendation

The committee recommends that legislation be expanded to require municipalities to keep and maintain financial ledgers.

Rationale

It is important that legislation ensures financial management of public funds. Amendments to the Act should provide for financial recording, itemizing and reporting of revenues and expenditures and public access to this information.

5.7.5 Power to Expend Money

5.7.5 Power to Expend Money (Proposed Addition to Legislation)

Background

The *Municipalities Act* does not identify areas for public spending.

Recommendation

The committee recommends that councils may spend public funds for:

- I. elections;
- II. insurance policies, damage to property, personal injury, liability, including liability of members of the council and employees of the municipality, volunteer members of fire departments, emergency services providers and volunteers in municipal programs;
- III. repayment of borrowed money, payment of interest and payment of sinking and reserve funds;

- IV. police services;
- V. emergency response services and systems;
- VI. festivals and events;
- VII. land use planning and development;
- VIII. snow and ice removal;
- IX. equipping and maintaining fire departments or emergency services providers;
- X. honoraria and training expenses for volunteer fire-fighters and emergency services volunteers;
- XI. providing school crossing guards;
- XII. emergency measures;
- XIII. recreational programs;
- XIV. advertising the opportunities of the municipality for business, industrial and tourism purposes and encouraging tourist traffic, with power to make a grant to a non-profit society for this purpose;
- XV. promotion and attraction of institutions, industries and businesses, the stabilization and expansion of employment opportunities and the economic development of the municipality;
- XVI. lighting any part of the municipality;
- XVII. public transportation services;
- XVIII. preventing or decreasing flooding;
- XIX. collecting, removing, managing and disposing of solid waste;
- XX. salaries, remuneration and expenses of the mayor or chairperson, councillors, officers and employees of the municipality;
- XXI. reasonable expenses incurred by the mayor or chairperson or a councillor for attendance at meetings and conferences, if the prior permission of the council is

- obtained or the attendance is in accordance with a policy of the council;
- XXII. the contribution of the municipality to a pension or superannuation fund;
- XXIII. payment to the board of a public utility owned or operated by a municipality;
- XXIV. annual subscription fees of the FPEIM and other municipal or professional associations;
- XXV. public libraries;
- XXVI. lands and buildings required for a municipal purpose;
- XXVII. furnishing and equipping any municipal facility;
- XXVIII. acquisition of equipment, materials, vehicles, machinery, apparatus, implements and plant for a municipal purpose;
- XXIX. streets, culverts, retaining walls, sidewalks, curbs and gutters;
- XXX. placing underground the wiring and other parts of a system for the supply or distribution of electricity, gas, steam or other source of energy or a telecommunications system;
- XXXI. a system for the supply or distribution of electricity, gas, steam or other source of energy;
- XXXII. pounds, or other means of animal containment;
- XXXIII. a fire alarm system;
- XXXIV. ponds, reservoirs, brooks, canals and other means of accumulating or directing the flow of water to be used in extinguishing fires;
- XXXV. playgrounds, trails, bicycle paths, swimming pools, ice arenas and other recreational facilities;
- XXXVI. public grounds, squares, halls, museums, parks, tourist information centres and community centres;
- XXXVII. public markets;

- XXXVIII. property held by trustees for the use of the public;
- XXXIX. wastewater facilities and storm water systems;
- XL. water systems;
- XLI. solid-waste management facilities;
- XLII. buildings for a medical centre to encourage medical doctors, dentists and other health professionals to locate in the municipality or a part of it;
- XLIII. industrial parks, incubator malls and land and other facilities for the encouragement of economic development;
- XLIV. parking lots and parking structures;
- XLV. landing strips and airports;
- XLVI. wharves and public landings;
- XLVII. carrying out agreements;
- XLVIII. grant or contribution to:
 - a) a society,
 - b) an exhibition held by an educational institution in the municipality
 - c) a club, association or exhibition,
 - d) any charitable, athletic, educational, environmental, cultural or social organization within the Province,
 - e) a registered Canadian charitable organization, but the total of the amounts so paid in a fiscal year shall not exceed one per cent of the taxes for general municipal purposes levied by the municipality for that year; and
- XLIX. all other expenditures:
 - a) authorized by an Act of the Legislature,
 - b) that are required to be made under a contract lawfully made by, or on behalf of, the municipality,
 - c) incurred in the execution of the duties, powers and responsibilities by law vested in, or imposed upon,

the municipality, its mayor or chairperson, council or officers.

Rationale

It is important that public funds be directed in areas within the jurisdiction of a municipal authority. The desire of municipal residents is to direct public funds toward appropriate areas of spending. Specifying in legislation areas that a municipality may expend money adds clarity and direction for municipal spending.

**5.7.6 Decisions over
Municipal Budgets**

**5.7.6 Decisions over Municipal Budgets
(Sections 34 to 36)**

Background

A town council prepares and approves the municipal budget. In contrast, a democratically elected community council does not have the same authority to approve the municipal budget.

Recommendation

The committee recommends that the current legislation be amended to provide all municipal councils the right to approve municipal budgets.

Rationale

Enabling elected leaders equal rights and privileges regardless of municipal size furthers municipal authority. Elected leaders are entrusted to make decisions that are in the best interest of the municipality, including financial decisions. Granting budgetary approval to community councils enables these elected leaders greater financial control over decisions that affects the municipality.

5.7.7 Pre Budget Meeting

**5.7.7 Pre Budget Meeting
(Proposed Addition to Legislation)**

Background

The *Municipalities Act* does not address the practice of conducting a meeting to gather information and input from the public concerning the municipal budget prior to the adoption of the budget.

Recommendation

The committee recommends that the legislative framework be expanded to ensure that council provide a pre-budget meeting at least one month prior to adopting the budget. This meeting shall be advertised once a week for two weeks prior to the meeting indicating that the residents have the opportunity to make representation concerning the budget.

Rationale

It is important to provide an opportunity to the residents to add input prior to finalizing the municipal budget. Enabling the public to make representation concerning the municipal budget provides council the opportunity to gain insight into issues of concern to the residents. Concerns, areas of focus and projects of importance may be brought forward for council consideration.

5.7.8 Preliminary Budget (Proposed Addition to Legislation)

Background

A time discrepancy exists within the current legislative framework between the financial year-end and adoption of a new budget. The financial year for a municipality is outlined in the Act under section 40 as January 1 to December 31. A municipal budget must be fixed on or before April 1 each year as directed under section 35.

Recommendation

The committee recommends that all municipal councils prepare and adopt a preliminary budget that identifies revenues and expenditures for the period between the fiscal year end and adoption of the new budget, ensuring that no expenditures are incurred during this period except those necessary for the day-to-day administration and operation of the municipality.

Further, the committee recommends that council set the preliminary budget on or before the first week of January and that council approve the final budget on or before April 1 each year.

5.7.8 Preliminary Budget

5.7.9 Budget Preparation and Adoption

Rationale

Municipalities operate without an approved budget between January 1 and April 1. Technically, municipal expenditures may not be paid unless approved, generally through the budgetary process. Therefore, general operating expenses incurred between January and April should not be paid. As general, monthly expenditures are similar from year-to-year, a preliminary budget would enable payment of expenditures necessary to fulfill the day-to-day operations of a municipality.

**5.7.9 Budget Preparation and Adoption
(Proposed Addition to Legislation)**

Background

The issue of budget preparation is not addressed within the *Municipalities Act*.

Recommendation

The committee recommends that as soon as practicable in each year, a council shall prepare a budget containing the estimated revenues and expenditures for the current year including:

- I. the monies necessary to meet instalment payments respecting all debts and the cost of debt servicing of the municipality due within the year including any amounts required to be raised for sinking funds;
- II. the monies required to meet administration and operating expenditures for municipal purposes for the current year;
- III. the monies necessary to meet financial responsibilities for:
 - a) a reserve fund;
 - b) the amount of any operating deficit incurred in the previous year;
 - c) all amounts that will be required or expended in that year for capital purposes;

- d) monies that the municipality, by statute, is required to raise by levying taxes;
 - e) allowance for the costs of collection of taxes, the abatement of and discounts on taxes and taxes that may not be collected; and
- IV. the probable revenue of the municipality to be derived from:
- a) government grants;
 - b) surplus of any previous year; and
 - c) all other sources of revenue.

Rationale

Various factors should be taken into consideration during budget deliberations such as debt, operating cost and probable revenues. Elected leaders and staff desire legislation that will clarify the process for preparing budgets.

***5.7.10 Reserve Fund
(Section 45)***

Background

Section 45 of the *Municipalities Act* enables municipalities to establish reserve funds for capital projects and the purchase, depreciation and replacement of machinery and equipment.

Recommendation

The committee recommends that a council may establish by resolution, reserve funds for any purpose within the powers or duties conferred on it by the Act or by any other Act relating to the general operations of the municipality.

Rationale

The financial complexities faced by municipalities require an expansion to the areas which reserves may be directed. Municipalities respond to emergency issues, over expenditures caused by natural forces such as snow removal, and general budgetary over expenditure.

5.7.10 Reserve Fund

**5.7.11 Reserve Fund
Bylaw**

The decision to deliver municipal services depends heavily on the financial resources and how revenues are raised and expended. A municipality, upon concluding the budgetary process having funds remaining, should be enabled to direct the remaining funds toward specific and general reserves.

Although the present legislation enables municipalities to set aside reserves, these reserves may only be used for capital projects and the purchase, depreciation and replacement of machinery and equipment. Enabling a municipal authority to direct surplus funds into specified and general reserves follows a trend in municipal legislation.

**5.7.11 Reserve Fund Bylaw
(Proposed Addition to Legislation)**

Background

Section 64 of the *Municipalities Act* addresses procedural bylaws for administrative purposes. However, there is no direct reference to a bylaw concerning financial matters.

Recommendation

The committee recommends that the current legislation be revised to permit a council to create a bylaw for reserve funds that will be held on account for the purpose of financing any expenditure the council is authorized to make:

- I. the reserve fund may be established or augmented:
 - a) from surplus monies of the municipality not presently required;**
 - b) by providing for the inclusion in the budget of the municipality of an amount or a rate specified in the bylaw, for the term of years that may be specified in the bylaw, and for the payment into the reserve fund of all monies realized as a result of the provision; and**
 - c) by monies received by the municipality from any other sources subject to any terms and conditions which may be attached to the use.****

- II. Any reserve funds formed may be invested:
- a) every municipality shall keep a separate account designating the purpose for which the reserve fund was created and showing at all times the state of any reserve fund created, but the council may provide that, instead of a separate account being kept for each reserve fund, one or more consolidated accounts may be kept in which may be deposited the monies raised for all reserve funds established in which case the accounts are to be kept in such a manner that it is possible to determine the true state of each reserve fund; and
 - b) a council may provide, by resolution that the monies raised for a reserve fund may be expended, pledged or applied to a purpose other than that for which the fund was established.

Rationale

Should a municipality direct financial resources toward a reserve, it is important that proper processes and procedures be followed to secure these public funds.

*5.7.12 Investment Fund
(Proposed Addition to Legislation)*

Background

The Act does not address investing of funds.

Recommendation

The committee recommends that surplus money, money held that is not immediately required for expenditures of the municipality, shall be invested. This investment of municipal funds shall only be invested or reinvested in securities guaranteed for principal and interest by a chartered bank or investment institution. The council may consolidate two or more investment funds into one account and securities may be purchased from that account as long as a record is maintained of the equity of each fund in the consolidated account and the securities so purchased.

5.7.12 Investment Fund

5.7.13 Capital Trust Fund

Rationale

An avenue should be available for municipalities to invest public funds in guaranteed securities that provide the highest security possible for the principal. Municipalities should be enabled to consolidate two or more investments to create greater growth potential and maximized interest over the investment term.

**5.7.13 Capital Trust Fund
(Proposed Addition to Legislation)**

Background

Currently the *Municipalities Act* does not address financial issues such as the establishment of operating and general reserve funds and capital trust funds, and the investment of funds.

Recommendation

The committee recommends that a council may by bylaw, create a capital trust fund:

- I. for constructing or acquiring capital works, including the purchase of machinery; and
- II. for any other municipal purpose that the council considers appropriate.

A council may by resolution:

- I. assign to the capital trust fund any surplus monies of the municipality; and
- II. assign to the capital trust fund, in whole or in part, monies that are payable to the municipality pursuant to any contract or agreement;

Provide:

- I. for an amount specified in the bylaw to be included in the annual budget of the municipality; and

- II. for the payment into the capital trust fund of all monies realized as a result of the inclusion.

A bylaw:

- I. remains in force for any period that may be stated in the bylaw; and
- II. may, by bylaw, be extended from time to time for additional periods.

A council may make expenditures from the capital trust fund for any of the purposes authorized. The establishment, reduction and use of the capital trust fund, including the purchase from it of securities and the sale of them, is subject to the control and approval of the council and to any rules that the council may make.

Rationale

Although capital reserve funds may be dedicated toward capital projects and the purchase, depreciation and replacement of machinery and equipment, consideration should be given to expanding legislation to add further clarity and direction regarding capital trust funds.

5.7.14 Budget and Financial Statement Filing (Section 28)

Background

Section 28 of the Act indicates that municipalities are responsible for submitting the financial statements, auditor's report and approved budget for the current fiscal year to the minister on or before April 1. However, section 27(4,5) states that a municipality may dispense with this requirement by resolution should the municipality have a budget of less than \$50,000. In the opinion of the committee, this creates an inconsistency in filing.

Recommendation

The committee recommends that municipalities file with the minister, on or before April 1, their financial statements with the

5.7.14 Budget and Financial Statement Filing

auditor's report or review engagement for the fiscal year just ended along with, the approved budget for the current fiscal year.

Further, the committee recommends that prior to the approval for any resolution to borrow money from the lending institution, the municipality is required to have filed its documentation with the minister and received confirmation of such filing in the form of a certificate.

Rationale

Municipal accountability should be mandatory for all municipal units. Municipalities should not be authorized to borrow funds unless the proper financial information has been filed with the Minister. Receipt of such filing in the form of a certificate will be provided to municipalities.

5.7.15 *Deficit Budget*

5.7.15 *Deficit Budget*
(Proposed Addition to Legislation)

Background

The *Municipalities Act* is vague with respect to projecting and approving a deficit budget. The legislative provisions relating to the municipalities of Charlottetown, Summerside, Cornwall and Stratford provide greater clarity with respect to projecting a deficit budget.

Recommendation

The committee recommends that no municipality shall approve a deficit budget.

Rationale

Consideration should be given to the adoption of the provision set forward in the legislation governing the municipalities of Charlottetown, Summerside, Cornwall and Stratford concerning deficit budgets. Expenses incurred beyond the revenue generating capacity of the municipality places a financial burden on future generations. These financial burdens may have detrimental impacts on a municipality. Clarifying through legislation that no municipality should project and approve a deficit budget eliminates debate on the question.

**5.7.16 Public Accounting Standard
(Proposed Addition to Legislation)**

Background

Although legislation indicates that the auditor shall report findings to council in a generally accepted manner, no mention is made of how the municipality shall record and report financial information.

Recommendation

The committee recommends that the legislation be amended to adopt the national standard of municipal public accounting practices as set out by the Public Sector Accounting Board.

Rationale

The national standard of municipal public accounting practices set out by the Public Sector Accounting Board is generally accepted and adopted throughout the country as the national standard for public accounting. A majority of provincial and territorial governments have adopted this standard for municipal governments.

**5.7.17 Application of Funds
(Proposed Addition to Legislation)**

Background

The *Municipalities Act* does not address the reallocation of funds borrowed for a specific expenditure to be redirected toward any other expenditure.

Recommendation

The committee recommends that no money, borrowed for a capital expenditure or held by the municipality as capital funds, are to be applied toward current expenditures.

Rationale

Funds borrowed for a specific use and directed toward an expenditure for which it was not intended is a misappropriation of funds. Legislation should specify that funds borrowed are to be directed for the sole purpose for which they were borrowed.

**5.7.16 Public
Accounting Standard**

**5.7.17 Application of
Funds**

5.7.18 Tax Rate

5.7.18 Tax Rate (Sections 36[1] and 37[1])

Background

The *Municipalities Act* makes many distinctions between towns and communities implying a hierarchy of governance. One distinction is specified in section 37(1) where a community council is directed to credit probable revenue and levy a rate sufficient to defray projected municipal expenditures for a given year. Unlike a community council, a town council is not subject to this requirement.

Recommendation

The committee recommends that councils be authorized to levy a tax rate and collect taxes and such rates that will be sufficient to raise the amount required to defray the estimated expenditures of the municipality.

Rationale

Revenue collected through taxation is the primary source of income for municipalities. The importance of strong fiscal management controls of this income is paramount to maintaining the public trust. Municipalities, regardless of type, should be held to the same legislative standards.

5.7.19 Area Rate

5.7.19 Area Rate (Section 37[2])

Background

Section 37(2) of the *Municipalities Act* enables municipalities to levy a separate rate of taxation to cover the expenses for municipal services provided only in certain districts within a municipality. The rate of taxation is based on frontage. The Act goes further to recognize these rates as a lien on real property.

Recommendation

The committee recommends that a council be authorized to impose a fee, an area rate or uniform charge. These charges are liens on the real property and may be collected in the same manner as taxes.

Further, the committee recommends that a council may be authorized to impose a fee payable respecting:

- I. all or part of a service of the municipality;
- II. the use of municipal property; and
- III. the regulation or prohibiting of any action not set out by legislation.

The fee may apply outside the municipality if in relation to a service provided outside the municipality, and the municipality may establish different rates or fees in relation to different services.

A council may not impose a fee:

- I. in relation to elections or other voting; or
- II. in relation to any other matter that the Act or any other Act of the government specifically imposes a fee.

Rationale

Financial resources may be directed to address an issue of concern within a specific area or district of the municipality. These issues may range from encouraging economic development and decreasing crime, to reducing the number of animals at large. The added cost associated with addressing an issue of concern should be gathered from those directly benefiting from the service. This may be accomplished by charging a rate, fee or tax specifically related to the service for the given area or district of the municipality.

5.7.20 Identification of Authorization (Section 18)

Background

At present, section 18 of the *Municipalities Act* states, all agreements, contracts, deeds and bylaws are to receive the municipal seal, be signed by the mayor or chairperson and the administrator of the municipality.

5.7.20 Identification of Authorization

5.7.21 *Distinct Section*

Recommendation

The committee recommends that any agreement, contract or loan authorized by the municipality concerning financial matters is to be stamped with the seal of the municipality and signed by the mayor or chairperson and treasurer, or administrator.

Rationale

Expanding this provision to specify that all financial documentation should be sealed and signed adds an additional level of security to eliminate misappropriation and fraud.

5.7.21 *Distinct Section*
(*Proposed Addition to Legislation*)

Background

Presently, information relating to all aspects of a municipality's financial management, such as budgets, audits, taxation and utility charges and fees have been grouped into Part IX Municipal Finance.

Recommendation

It recommended that a section of the act be devoted to utilities which shall include:

- I. broad structure, roles and responsibilities of members and administration of the utility;
- II. financial considerations and public reporting; and
- III. annual board meetings.

Rationale

Consideration should be given to arranging and organizing all information related to utility corporations that service municipalities into a distinct part or section of the Act.

5.7.22 Licensing
(Proposed Addition to Legislation)

Background

At present, a municipality may, by bylaw, control certain business activities through the issuance of a license.

Recommendation

The committee recommends that the Act enable municipalities to approve, license, regulate, suspend, refuse or prohibit any activity until a resolution of council has been granted. A decision of council may identify the start and end date, a set time period or time-frame and indicate that non-compliance or failure to meet any municipal bylaws will result in the suspension or cancellation of licenses, permits or approvals upon learning of the offence.

Rationale

Expanding legislation acknowledging a variety of measures to control or prohibit activities granted exclusively by resolution of council strengthens the authority of the council and municipality. Recognizing the need for these measures to be date sensitive, and contingent on full compliance with all municipal codes, directs the activity to follow strong management or business practices.

5.7.23 Reconsideration of a Council Decision
(Proposed Addition to Legislation)

Background

The current legislation does not enable a process by which a decision of council may be appealed by a resident.

Recommendation

The committee recommends that a process be adopted that will enable council to reconsider a decision of council made with respect to licensing, permit, approval, regulation, suspension, or refusal made by council.

5.7.22 Licensing

**5.7.23 Reconsideration
of a Council Decision**

Rationale

Enabling a process for an appeal of a council decision should add further accountability to the public for a decision of council.

5.8 Municipal Elections

Amendments made to the legislative provisions addressing municipal elections include standardized timing for all municipal elections. This amendment made in the mid-1990s identified the first Monday in November every third year as the date that municipal elections should be held. This uniformity simplified the process and increased awareness for the election process. Reforms to the election process can be traced back to the review process conducted during the 1970s where revisions had been made to the qualifications for nominations.

The need for reforms to the election process and procedures remains an issue. Municipal leaders and staff desire these issues to be addressed. The committee identified a need to appoint a chief overseer for municipal elections. Presently, Elections PEI oversees provincial and some municipal elections. Consideration should be given to an extension of this service to include all municipal elections.

Municipal leaders and staff identified concerns with the tossing of a coin to determine the victor as a result of a tie vote. Research concerning tie votes and the determination of a victor resulted in an overwhelming use of a draw by lot.

The committee sought the opinion and views of elected leaders and municipal staff members concerning the adoption of a uniform process to determine the head of council. A variety of views were expressed. These views have led to the committee's recommendation for municipal uniformity. The difference in the selection process for the head of council perpetuates the misconception that community councils are volunteer organizations. Persons elected to office are held to the same standard and responsibilities regardless of municipal size or financial resources.

5.8.1 Elections PEI
(Proposed Addition to Legislation)

Background

Presently, the *Municipalities Act* does not recognize a responsible authority to oversee municipal elections within the province.

Recommendation

The committee recommends that Elections PEI be recognized as the chief overseer for all municipal elections.

Rationale

Elections PEI is an impartial agency dedicated to the delivery of election services within the province. Elections PEI has long been recognized for its expertise and knowledge in training, organizing and delivering election services. The participation of Elections PEI in municipal elections will add further credibility to the election process.

5.8.2 Disqualification by Minister
(Proposed Addition to Legislation)

Background

The Act identifies in section 15(4) the qualifications for nomination to council. However, the Act does not address penalties should an individual not comply with the provisions of the Act.

Recommendation

The committee recommends that the authority of the minister be expanded to:

- I. disqualify nominees for election and elected leaders, if the nominee or elected leader has not complied with the elections provisions of the Act; and**
- II. name the time and the date for a special election if not called by council.**

5.8.1 Elections PEI

**5.8.2 Disqualification
by Minister**

5.8.3 Resolution of Tie Vote by Lot

Rationale

The minister's authority and responsibility to disqualify unqualified nominees or elected leaders and ensure the calling of special elections should be enshrined in legislation.

5.8.3 Resolution of Tie Vote by Lot (Section 48[7], Schedule 2, [48])

Background

The determination of a candidate for office in a community, in accordance with section 48(7), and in a town, in accordance with Schedule 2 (48), should the number of votes be tied is a toss of a coin. Elected leaders indicated to the committee concerns with the present method for determination of a candidate for office upon a tie.

Recommendation

The committee recommends that in the event that an equal number of votes are cast for two or more candidates for office, the returning officer shall determine the candidate or candidates to be declared elected by lot.

For the purposes of this recommendation, *lot* shall mean the method of determining the successful candidate by placing the names of the candidates on equal size pieces of paper placed in a box and one name being drawn by a person chosen by the Returning Officer for each vacancy.

Rationale

Upon reviewing municipal election legislation throughout Canada, it was noted that the standard for determining a candidate where there is a tie is by lot.

5.8.4 Election at Large

5.8.4 Election at Large (Section 48[11])

Background

The Mayor or Chairperson is the chief executive officer of council as set forward under section 16 of the Act. Two unique processes are

followed when selecting the mayor or chairperson. The residents in an open democratic process as in schedule 2 (1) choose a mayor. In contrast council appoints the chairperson within fifteen days of the election in accordance with section 48 (11) of the Act.

Recommendation

The committee recommends that mayors and chairpersons be elected at large.

Rationale

The residents of a municipality, regardless of type, should elect the chief executive officer of council through a democratic process.

***5.8.5 Municipal Elections Legislation
(Proposed Addition to Legislation)***

Background

The *Municipalities Act* provides the legislative processes and requirements that are to be followed when conducting a municipal election.

Recommendation

The committee recommends that the elections provisions contained in the *Municipalities Act* be revised to ensure greater parity with provincial election standards.

Rationale

Consideration should be given to an expansion of the present legislative requirements followed by municipalities to incorporate processes that elevate the standards of municipal elections to those followed during provincial elections.

***5.8.6 Ballots
(Proposed Addition to Legislation)***

Background

At present, each municipal returning officer is responsible for delivering sufficient ballots for a municipal election. Municipal ballots

***5.8.5 Municipal
Elections Legislation***

5.8.6 Ballots

may be a reproduction of the ballot prescribed by regulation. However, many are pieces of paper where the resident writes the name of the candidates. In other municipalities a show of hands concludes the democratic process.

Recommendation

The committee recommends that the election ballots prescribed by regulation be available electronically to administrators for use at general and special elections.

Rationale

Should an electronic version of a ballot be accessible to returning officers, copies may be printed for each municipality to ensure a secret voting process.

5.8.7 By-elections

5.8.7 By-elections

(Section 48[13], Schedule 2 (14))

Background

An imbalance exists within the present legislation concerning municipal by-elections. The requirements for by-election process for communities and towns are distinctly different. In the case of a community by-election, the council shall, within 60 days, set a date for a special election meeting to fill the vacancy or determine that the vacancy be filled at the next annual meeting as in section 48(13).

In the case of a town, a by-election shall take place within 60 days of a seat becoming vacant on council. Should candidates not come forward, the town shall continue the process until the vacancy is filled in accordance with schedule 2 (54).

Recommendation

The committee recommends that the approach to by-elections be consistent for both towns and communities requiring that:

- I. the municipality attempts through a by-election, on two separate occasions if necessary, the filling of vacancy(ies) on council; and**

- II. **the minister appoints a person(s) from within the municipality to fill any vacancy(ies) on council not filled through by-election.**

Rationale

Equality is desired within the legislative framework. Enabling two distinct processes for by-elections of municipal leaders obscures clarity. The review presents an opportunity to simplify and clarify the process thereby fostering greater equality among municipalities.

5.9 Municipal Bylaws

Legislation enables municipal governments the authority to enact bylaws as a means to control issues of concern to the residents. Debate continues between local and provincial governments as to the level of enforcement and authority of municipalities to write tickets.

Legislative clarity respecting municipal authority over local issues is needed. The issue of bylaw control has a direct bearing on municipal authority. The present requirements and jurisdiction of bylaws should be strengthened. This strengthening should enable the municipality to rectify a violation by fining, recouping cost or passing all repair cost onto property taxes.

5.9.1 Interpreting Power to Pass Bylaws (Section 57)

Background

Section 57 of the *Municipalities Act* indicates that a council may make bylaws for the peace, order and good government of the municipality. Municipalities are seeking further clarity of this statement.

Recommendation

The committee recommends that the power to pass bylaws be stated in general terms to:

- I. **give broad authority to councils and to respect their right to govern municipalities in an appropriate manner**

5.9.1 Interpreting Power to Pass Bylaws

- within the jurisdiction given to them legislatively; and
- II. enhance the ability of councils to respond to present and future issues in their municipalities.

Further, the committee recommends that a council may make bylaws for municipal purposes respecting:

- I. the safety and protection of persons and property;
- II. activities and things in, on or near a public place, and or a place that is open to the public;
- III. nuisances, activities and things that, in the opinion of the council, may be or may cause nuisances, including such things as noise, weeds, burning, odours, fumes and vibrations; and
- IV. services provided by, or on behalf of, the municipality.

Rationale

Expanding legislation to include a qualifying statement highlighting a municipality's authority and jurisdiction to address issues of local concern, adds clarity. Incorporating into the qualifying statement that municipalities have the authority to provide appropriate enforcement for violations to bylaws, strengthens municipal authority and autonomy.

5.9.2 Entering a Property

5.9.2 Entering a Property (Addition to Legislation)

Background

The current legislation does not address the authority and jurisdiction of a municipal employee or person acting on behalf of the municipality to enter onto private property to carry out inspection or enforcement duties.

Recommendation

The committee recommends that municipal personnel, or person(s) authorized by council to carry out the duties of the municipality, be

granted the power to enter onto any land within the municipality with or without the consent of the owner or occupier for the purpose of:

- I. investigating, recording, analyzing and documenting suspected violations, hazards, safety issues and emergencies;
- II. repairing, maintaining and constructing measures to remedy violations, hazards, safety issues and emergencies;
- III. removing unsafe, hazardous or emergency related conditions;
- IV. restoring and ensuring the safety of the general public; and
- V. enforcing the bylaws of the municipality at all times.

Further, the committee recommends that the provisions for enforcement of bylaws include:

- I. procedures to determine if bylaws are being complied with, including entering upon or into private property for the purposes of inspection, maintenance and enforcement;
- II. remedies for the contravention of bylaws, including undertaking or directing the remedying of a contravention, apprehending, removing, impounding or disposing, including the sale or destruction of animals, vehicles, improvements or other things and charging and collecting the costs as a first lien on the property affected;
- III. the creation of offences;
- IV. imposing a fine for each offence not exceeding \$10,000 including the imposition of a minimum fine;
- V. providing for the imposition of a penalty for an offence that is in addition to a fine if the penalty relates to a fee,

cost, rate, toll or charge that is associated with the conduct that gives rise to the offence;

- VI. providing that a person who contravenes a bylaw may pay an amount established by bylaw and if the amount is paid the person will not be prosecuted for the contravention;
- VII. providing, with respect to a bylaw, that in a prosecution for violation of the bylaw, evidence that one person is disturbed or offended is prima facie evidence that the public, or the neighborhood, is disturbed or offended; and
- VIII. the appointment of an enforcement officer by council who may be designated by the attorney general to exercise any powers of a peace officer.

Rationale

Municipal personnel should be enabled through legislation the ability to enter onto a property to inspect and enforce the bylaws of the municipality. The inability to enter onto a property for inspection and enforcement purposes curtails a municipality's ability to carry out its legislative responsibility.

5.9.3 Dangerous and Unsightly

*5.9.3 Dangerous and Unsightly
(Section 64[1])*

Background

Presently, municipalities are enabled under section 64(1) of the Act to regulate and control unsightly properties. The committee is of the opinion that legislation needs to be expanded to provide greater clarity.

Recommendation

The committee recommends that the chief administrative officer be responsible for the administration of municipal dangerous and unsightly bylaws including the:

- I. evaluation of a property;
- II. documentation of the violation under the bylaw;
- III. identification and notification of property owner;

- IV. method and permits required for reparations;
- V. time-frame to respond to notification;
- VI. time-frame to conclude repairs;
- VII. notification of provincial authorities necessary to fulfill the bylaw requirements;
- VIII. approval of any repairs or demolition work necessary to eliminate any dangerous, hazardous, unsafe condition or removal of unsightly materials or conditions associated with a property; and
- IX. designation of an individual or individuals who shall carry out duties upon request of the chief administrative officer.

Rationale

Expanding the current legislative requirements regarding the regulation and controlling of unsightly properties modernizes the Act. Identifying the chief administrative officer as the individual responsible for evaluating, documenting and notifying an offender of a violation, adds clarity to the process.

5.9.4 Certification and Certified Copies of Bylaws (Section 26[1a])

Background

As a function of the administrative office, the administrator is charged with the responsibility of maintaining a register of all bylaws adopted by council as in section 26(1a). The administrator is also charged with the duty of custodian of the corporate seal of the municipality as in section 26(1c).

Recommendation

The committee recommends that the administrator shall maintain a register containing all original copies of bylaws under the seal of the municipality certified to be true copies and shall certify all copies on behalf of the municipality.

5.9.4 Certification and Certified Copies of Bylaws

Further, the committee recommends that in the absence of the administrator, the mayor/chairperson or designate shall maintain the register of original copies of the bylaws under the seal of the municipality and may certify a copy of a bylaw to be true.

Rationale

Consideration should be given to expanding the current legislative requirements concerning the maintenance of municipal bylaws to include the certification of municipal bylaws on behalf of the municipality. In the absence of the administrator, a designate should be identified as having the same responsibilities for maintaining, certifying and registering bylaws.

**5.9.5 Public Inspection
of Bylaws**

**5.9.5 Public Inspection of Bylaws
(Section 62)**

Background

Public inspection of municipal bylaws is provided for in section 62 of the *Municipalities Act*. Legislation should be expanded to add greater clarity.

Recommendation

The committee recommends that the register of original copies of the bylaws under the seal of the municipality shall be available for public inspection at the office of the municipality during fixed business hours.

Rationale

The public should have access to inspect bylaws during fixed business hours.

**5.9.6 Receipt by
Minister**

**5.9.6 Receipt by Minister
(Section 60[c])**

Background

Municipalities are required under section 60(c) of the Act to file bylaws with the minister within seven days of adoption. The Act does not require the minister to acknowledge receipt or the filing of the bylaw.

Recommendation

The committee recommends that upon council's approval a bylaw shall be delivered to the minister within ten working days. Upon receipt the minister shall acknowledge in writing receipt and filing of the bylaw within seven working days.

Further, the committee recommends the minister establish penalties for non-compliance regarding filing of bylaws.

Rationale

Municipalities have experienced difficulties meeting the present filing requirements. The recommendation acknowledges a reasonable time frame for compliance.

5.9.7 Utility Bylaws (Section 64[f, h])

Background

Municipalities are enabled to regulate and control the construction, operation and maintenance of water and wastewater treatment systems as in section 64 (f) and (h) of the Act. Utilities are also subject to Island Regulatory and Appeals Commission legislation and regulations. However, there are no requirements for a municipal bylaw to conform to legislation managed by the Island Regulatory Appeals Commission.

Recommendation

The committee recommends that all bylaws concerning utilities conform to legislation managed by the Island Regulatory and Appeals Commission.

Rationale

The legislative authority to regulate and control the construction, operation and maintenance of municipal utilities is recognized under the *Water and Sewerage Act*. The *Municipalities Act* should recognize the authority of the commission over utilities.

5.9.7 Utility Bylaws

5.9.8 Building and Site Development Bylaws

**5.9.8 Building and Site Development Bylaws
(Section 64[i])**

Background

Municipalities are enabled to regulate and control the building and site development standards as in section 64 (i) of the *Municipalities Act*. Further legislative and regulatory authority to control site development standards is granted under the *Planning Act*. The current legislation does not reference the *Planning Act* and there are no requirements for a municipality's bylaw to conform to the *Planning Act*.

Recommendation

The committee recommends that all bylaws concerning land use, building and site development standards shall conform to the *Planning Act*.

Rationale

The *Municipalities Act* should recognize and reference the *Planning Act* and Subdivision Regulations.

5.9.9 Readings

**5.9.9 Readings
(Section 59)**

Background

Clarification of this section is desirable. The process to adopt a bylaw is provided under section 59 of the *Municipalities Act*.

Recommendation

The committee recommends that:

- I. the intent to consider a bylaw shall be published in a newspaper circulating in the municipality or posted in two conspicuous places within the municipality indicating:
 - a) the purpose of the bylaw; and
 - b) time, date and place of the meeting;
- II. the proposed bylaw be read at two separate meetings; and

III. the second reading take place a minimum of seven days after the first.

Rationale

Consideration should be given to expanding the current requirements when adopting a bylaw to include a public notification process. Decisions of council such as the adoption of a bylaw that affects the residents should include a public notification process to enable the residents the opportunity to be present and be heard with regard to a pending a council decision.

*5.9.10 Inconsistent with Other Enactments
(Proposed Addition to Legislation)*

Background

Presently the Act is silent with regard to inconsistencies with other provincial enactments.

Recommendation

The committee recommends that no bylaw shall be introduced that is inconsistent with any enactment of the province of Prince Edward Island or of the Parliament of Canada.

Rationale

There should be recognition in legislation that a municipality does not have the authority or jurisdiction to approve a bylaw that is inconsistent with other provincial or federal laws.

*5.9.11 Person in Default, Ability to Ticket, Recovery of Fees and Fines
(Proposed Addition to Legislation)*

Background

Municipalities are enabled to adopt a variety of bylaws for the peace, order and good government of the municipality as described in section 57. The municipality may create offences and prescribe penalties in accordance with section 58(1) of the Act. Should a municipality require prosecution for an offence or an injunction to prohibit an action, it is granted authority under section 58(1) and (3) of the Act to

*5.9.10 Inconsistent with
Other Enactments*

*5.9.11 Person in Default,
Ability to Ticket, Recovery
of Fees and Fines*

do so. The maximum fine allowable under the present legislation is \$1,500.

Debate continues among municipalities whether they have the authority under the *Summary Proceedings Act* to enforce municipal bylaws through the issuance of tickets. In addition, the willingness of municipalities to enforce bylaws and prosecute violators through court proceedings is diminished by the knowledge that the costs associated with these proceedings do not meet or exceed the cost associated with the prosecution.

Recommendation

The committee recommends that enabling mechanisms be incorporated into the legislation to enable municipalities to take remedial action and recover all costs associated with constructing, maintaining, repairing or restoring a violation, hazard, emergency work or safety issues located within the municipality through:

- I. billing the property owner for costs incurred by the municipality;
- II. recovering the costs incurred by debt of the property owner;
- III. placing a lien against the property for which action was required; and
- IV. a sale of the property.

Further, the committee recommends that legislation recognize municipal authority to issue tickets, stop work orders, injunctions and proceed with other judicial means for offences against municipal bylaws.

It is the committee's recommendation that fees imposed by bylaw for a contravention to the bylaw may be enforced and recovered on summary conviction payable to the municipality and the money collected form part of the general revenues of the municipality.

Rationale

A municipality's credibility weighs heavily on its ability to maintain order. Municipal order is often dependent upon the ability and willingness to regulate and enforce its bylaws. Should remedial action be necessary to rectify a violation, or repair a situation caused by a violation to a municipal bylaw, municipalities do not have the enabling authority or jurisdiction to enter a property to make such actions.

Modernizing legislation by granting authority to municipalities to enter onto properties to rectify a violation is desired. The recovery of costs associated with remediation by way of liens against the property, or sale of property or items on the property, will increase the compliance potential without the need for prosecution. In the absence of limiting enforcement authority and jurisdiction, those citizens who abide by the laws are penalized as taxes are increased to cover the cost associated with rectifying the violation.

5.9.12 Offences, Penalty, Additional Penalties, Enforcement (Section 64[n])

Background

A council is enabled under section 64(n) of the current legislation to enact bylaws to regulate and control animals for the safety of the residents. The municipal legislative trend granting further autonomy to municipalities has expanded the areas of authority concerning the adoption of municipal bylaws, enforcement of bylaws and penalties related to municipal bylaws.

Recommendation

The committee recommends that the legislation respecting animals be expanded to include:

- I. regulating the running at large of any animal;**
- II. imposing a registration fee upon the owner of animals prescribed by bylaw, the amount to be set by policy or specified by bylaw with the power to impose a larger fee based on gender, or for un-spayed or un-neutered vs.**

5.9.12 Offences, Penalty, Additional Penalties, Enforcement

- spayed or neutered dog, cat or domesticated house pets;
- a) requiring tags for the identification under the bylaw;
 - b) exempting from any registration fee a stray harboured for a period of time set by bylaw;
 - c) defining dangerous, fierce, or vicious animals, or animals bred for attack including defining them by breed, cross-breed, partial breed or type;
 - d) regulating the keeping of dangerous, fierce, or vicious animals, or animals bred for attack;
 - e) prohibiting the keeping of an animal that persistently disturbs the quiet of the neighborhood;
 - f) authorizing the enforcement officer to impound, sell, destroy or otherwise dispose of animals:
 - i. that run at large contrary to the bylaw;
 - ii. in respect of which the fee or tax imposed by a bylaw is not paid;
 - iii. that are fierce or dangerous;
 - iv. that are rabid or appear to be rabid or exhibiting symptoms of canine madness; and
 - v. that persistently disturb the quiet of a neighbourhood;
 - g) requiring the owner of an animal to remove the animal's faeces from public property and from private property other than the owner's.

Further, the committee recommends that where an enforcement officer believes that a person is harbouring, keeping or has under care, control or direction an animal(s) bred for attack or an animal that is dangerous, fierce, vicious, rabid or appears to be rabid, that exhibits symptoms of canine madness or that persistently disturbs the quiet of a neighbourhood or is otherwise contrary to a bylaw, the enforcement officer may:

- I. enter and search the place where the animal is, at any time;
- II. open or remove any obstacle preventing access to the animal; and
- III. seize and deliver the animal to the pound or other appropriate facility and for such purpose, break, remove or undo any fastening of the animal to the premises.

It is the committee's recommendation that legislation enable the municipality to charge an owner or keeper of an animal that is dangerous, fierce, or vicious or an animal bred for attack or that persistently disturbs the quiet of a neighbourhood, or that runs at large, or is contrary to a bylaw, in addition to the penalty described by bylaw, a judge may order that the:

- I. animal be destroyed or otherwise dealt with; and
- II. owner pay any costs incurred by the municipality related to the animal, including costs related to the seizure, impounding, or destruction, and it is not necessary to prove that the:
 - a) animal previously attacked or injured a domestic animal, person or property;
 - b) animal had a propensity to injure or to damage a domestic animal, person or property; or
 - c) defendant knew that the animal had such propensity or was, or is, accustomed to doing acts causing injury or damage.

It is the committee's recommendation that the provisions of the *Municipalities Act* be amended to authorize and empower an enforcement officer, based on reasonable grounds, to seize and deliver an animal to a pound or other appropriate facility and, if the enforcement officer is unable to seize the animal in safety, the enforcement officer may destroy the animal.

**5.9.13 Consolidation
of Bylaws**

It is the committee's recommendation that bylaws shall prescribe offences and penalties for a breach of any of the bylaws of the municipality and these penalties shall:

- I. impose a maximum fine not exceeding \$10,000;
- II. impose a different minimum and maximum with respect to a first, second or subsequent convictions;
- III. provide for a minimum and maximum daily fine in the case of a continuing offence; and
- IV. prescribe the means of enforcement.

Rationale

A desire exists to expand the current provision of the Act to grant municipalities the authority to enact stricter controls and penalties to ensure the safety of the residents with respect to animals.

**5.9.13 Consolidation of Bylaws
(Proposed Addition to Legislation)**

Background

The *Municipalities Act* does not address the need to consolidate municipal bylaws.

Recommendation

The committee recommends that a council may consolidate bylaws of a municipality and in doing so, shall incorporate all the amendments into one bylaw and omit any provisions that have been repealed or that have expired.

Rationale

Bylaws reflect and address the concerns of residents. Through time bylaws require amendments. The process of amendments is simplified when altering one document containing more than one bylaw.

5.9.14 Bylaw Review
(Proposed Addition to Legislation) Rec#113

Background

The present legislation does not require a municipal council to review its bylaws on a periodic basis. Municipalities are responsible and liable for enforcement of local bylaws regardless if these bylaws accurately reflect the current situation within a municipality.

Recommendation

The committee recommends that council review the bylaws of a municipality at least every ten years.

Rationale

In an effort to maintain current applicable municipal bylaws consideration should be given to a periodic review.

5.10 General Issues

Broad issues relating to municipal governance have been considered by the committee. These issues relate to municipal incorporation, minimum population thresholds, gender references, plain language and consolidation of legislation. The committee has brought forward these issues for the minister's consideration. The committee is of the opinion that these issues require attention.

5.10.1 Plain Language
(Addition to Legislation)

Background

Similar to many legislative documents drafted during the 1980s, the *Municipalities Act* when written, incorporated prescriptive language. The style of writing in concert with the division of topics is at times ambiguous and awkward to interpret. A number of provincial and territorial authorities have adopted legislation written in plain language and presented related information by sections similar to a chapter style format. It is believed that plain language legislation reduces ambiguity and directs attention to the true intent of the provisions of the statute.

5.9.14 Bylaw Review

5.10.1 Plain Language

**5.10.2 Gender
References**

Recommendation

The committee recommends that the revisions to the *Municipalities Act* include rewriting legislation in plain language so that members of the public may more easily understand it.

Further, the committee recommends that the Act be reorganized in a manner that enables the user to find and understand all the provisions associated with any specified topic within any given section or subsection.

Rationale

The trend to write legislation in plain language helps users to find and understand the processes and procedures governing municipalities.

**5.10.2 Gender References
(Addition to Legislation)**

Background

The orientation of the language used within the present Act does not reflect politically correct language.

Recommendation

The committee recommends that the *Municipalities Act* be rewritten in a manner that is gender neutral.

Rationale

Appropriate terminology commonly referenced as politically correct language should be considered for incorporation into the Act.

**5.10.3 Municipal
Name**

**5.10.3 Municipal Name
(Addition to Legislation)**

Background

The term *community* tends to be used to describe a variety of groups or organizations. The term *community* is used to describe former school districts, neighborhoods and municipalities of a rural nature.

Recommendation

The committee recommends that the designation *community* be replaced by the term *municipality*.

Further, the committee, recommends that the current legislation be revised and modernized by removing all references pertaining to municipal type.

Rationale

Consideration should be given to removing confusing terminology by removing the *community* designation and replacing this designation with the term *municipality*.

5.10.4 Consolidation of Legislation (Addition to Legislation)

Background

At present, many legislative documents apply to municipalities. These documents include the *Water and Sewerage Act*, *Planning Act*, *Municipal Debenture Guarantee*, *Charlottetown Area Municipalities Act*, *City of Summerside Act* and the *Municipalities Act* to mention a few. Three of these documents: the *Charlottetown Area Municipalities Act*, *City of Summerside Act* and the *Municipalities Act* relate directly to municipal governance. There are a great number of similarities among the three documents.

Recommendation

The committee recommends that future municipal governance would be better served by consolidating all municipal legislation into one Act.

Rationale

The aim of consolidation is to bring together legislation relating to municipal affairs into one document, thereby providing elected leaders, staff and the public easy access to municipal legislation. The national trend in governance reform is to simplify legislation through consolidation of municipal statutes. As indicated, many legislative documents apply to municipalities within the province. A total

5.10.4 Consolidation of Legislation

5.10.5 Compliance with the Act

consolidation of these documents may require considerable effort and time to complete. Therefore, consideration should be given to initiating this process through the consolidation of the three similar governance related documents.

**5.10.5 Compliance with the Act
(Addition to Legislation)**

Background

The *Municipalities Act* does not indicate penalties for an elected leader or staff member who is in noncompliance with the Act.

Recommendation

The committee recommends that the legislation be expanded to address situations of non-compliance by a council or an elected leader who neglects or refuses to comply with the provisions of the Act. Should such a contravention occur, the minister should intervene to:

- I. direct the elected leader or council to discontinue the noncompliance practice;
- II. direct the elected leader or council to take action to remedy the contravention;
- III. identify the time-frame in which to rectify the contravention; or
- IV. dismiss the elected leader or council from office.

Rationale

Society desires a higher level of accountability from their elected leaders and staff. The inclusion of penalties associated with noncompliance with the processes and procedures set forward in legislation elevates the level of accountability.

5.10.6 Municipal Coverage (Addition to Legislation)

Background

Approximately 68 per cent of the Island population resides within municipalities, and 28 per cent of the provincial land mass is incorporated.

Recommendation

The committee recommends that the provincial government prepare an implementation plan to expand the present geographical coverage of municipal government to all areas of the province.

Rationale

A plan to move toward municipal governance throughout the province would strengthen grassroots democracy and enable citizens of unincorporated areas to address local issues and to access municipal services.

Presently, a number of small municipalities struggle to provide local services due to the limited tax base. A planned approach would facilitate the creation and/or the expansion of municipal governments that are better positioned to effectively and efficiently serve the needs of residents and businesses. This would also lead to a more consistent level of municipal services throughout the province.

Since 1972-73, royal commissions and round tables have recommended greater municipal coverage. The suggestion to reduce the amount of unincorporated land has also been supported by other position papers such as *The Geography of Governance* by the Institute of Island Studies. The committee echoes the need for greater municipal coverage.

5.10.7 Plebiscite (Addition to Legislation)

Background

Only the provincial government has the authority under the *Plebiscites Act* to hold a plebiscite to determine the will of the residents of a given area or the province on a particular issue.

5.10.6 Municipal Coverage

5.10.7 Plebiscite

5.10.8 Consultation

Recommendation

The committee recommends that municipal governments may be enabled to conduct a plebiscite. The plebiscite will be conducted in accordance with the *Plebiscites Act*.

Rationale

A plebiscite is one avenue to gain insight and appreciation for the will of the residents on an issue of great importance within a municipality. Enabling municipalities to conduct plebiscites furthers the democratic process by involving the residents in the decision-making process.

5.10.8 Consultation (Addition to Legislation)

Background

As a component of municipal legislative reviews, provincial and territorial governments have incorporated into legislation a mandatory consultation process with municipalities. The underlying premise of incorporating a consultation process into legislation is to strengthen government efforts at both the provincial and municipal levels to provide residents the highest level of service delivery. Many jurisdictions throughout Canada have identified the effects that provincial decisions have on municipalities with respect to alteration in the areas of finances and legislation. At present, no formal process exists for consultation between the provincial and municipal government levels.

Recommendation

The committee recommends that the minister consult with municipal leaders at least six months prior to the municipal year-end to discuss any new or proposed amendments to legislation, regulation or financial consideration affecting municipalities.

Rationale

A formal consultation process provides a commitment on the part of municipalities and the province to work together for the interest of all.

5.10.9 Memorandum of Understanding (Addition to Legislation)

Background

The foundation for a meaningful, effective and efficient consultation process should be established between the municipal and provincial governments. Meaningful and effective consultation involves drawing on the knowledge and abilities of both levels of government to effect positive discussions. The trend in Canada to achieve this objective has been the use of a memorandum of understanding. A memorandum of understanding is a flexible agreement between parties on a process of commitment.

Recommendation

The committee recommends that the minister enter into a memorandum of understanding with the FPEIM regarding the process for which consultation will take place.

Rationale

Increasingly, the public expects governments to work together. Through consultation governments are in a better position to make informed decisions in the public interest. Entering into a memorandum of understanding would be consistent with a growing trend and would demonstrate a spirit of collaboration.

5.10.9 Memorandum of Understanding

6.0 Conclusion

The committee is pleased to have had the opportunity to participate in the review process and bring forward its recommendations to reform the *Municipalities Act*. The committee held many meetings and consulted widely. It has attempted to fulfill the terms of reference in a manner that will provide direction for government to implement positive reforms. The approach of the committee has been systematic, leading to recommendations that if implemented will respond to municipal challenges now and into the future.

In its review, the committee took an orderly approach whereby it carefully considered the present legislation, reviewed legislation and noted trends in other provincial and territorial jurisdictions, and gathered input from municipal leaders and staff through written submissions and consultation. From this comprehensive review, it is evident that many changes to the *Municipalities Act* are needed.

It has been stated often that municipal government is the government *closest to the people* and, therefore, it is in the best position to effectively and efficiently address the needs of the residents. The outcome of this review provides government the opportunity to grant municipalities the authority to meet the growing needs of Island residents. It is evident to the committee that changes are required to the *Municipalities Act* to respond in a meaningful way to the issues of today and the future. From its research, the committee believes that reforms to the Act are overdue and that the implementation of these recommendations can lead to a process of positive change.

The committee is most appreciative to all those who contributed and participated in the review process. It believes that the recommendations it has put forward for consideration, accurately reflect the issues brought to the attention of the committee. Those changes being recommended to the present legislation will have a very positive impact on municipal governance in Prince Edward Island.

7.0 Appendices

Appendix A

Review of the *Municipalities Act* Terms of Reference

July 2003

1.0 Committee

- 1.1 The minister of Community and Cultural Affairs has appointed a six-member *Municipalities Act* Review Committee consisting of the following:
- Ms. Carol Gallant*, former chair for the community of Wellington; (resigned and replaced by) Mr. Gerald Keough former chair for the community of Tignish;
- Mr. Clair Sudbury*, former councillor for the city of Summerside;
- Mr. George Beck*, former councillor for the town of Montague;
- Mr. Stan Campbell*, president for the Federation of Prince Edward Island Municipalities and currently councillor for the community of New Haven-Riverdale;
- Mr. Lorne Moase*, former deputy minister responsible for local governments; and
- Mr. John MacLean*, former councillor for the community of Sherwood.
- 1.2 The chair of the committee will be appointed by the minister.

1.0 Committee

2.0 Background

2.0 Background

2.1 It is important that provincial legislation reflect the current and future needs of the province as a whole. Periodic reviews are directed to strengthen present statutes through recommendations and alterations that ensure a framework for positive sustainable growth. This *Municipalities Act* review is aimed at building municipal capacity, and vibrant communities.

2.2 For the most part, the *Municipalities Act* provides a framework of governance for seventy-one of the seventy-five incorporated municipalities. Although, the remaining municipalities, the cities of Charlottetown and Summerside and the towns of Cornwall and Stratford receive their direction from other statutes, they must comply with the provisions of the *Municipalities Act* when dealing with change to municipal status, municipal boundary corrections and adjustments, amalgamations, name changes and annexation.

2.3 The *Municipalities Act* is intended to equip municipalities with the legislative authority to address the needs of their constituents in terms of local government. Changes in responsibilities and the desire of municipal governments to provide additional services have outpaced their authority to respond. Since the late nineties, municipalities, the Federation of Prince Edward Island Municipalities and other interest groups have requested amendments to the Act that range from substantive to housekeeping in nature.

3.0 Objective

3.0 Objective

3.1 Government acknowledges that Prince Edward Island is unique in both size and population density, and that a unique approach may therefore be required to resolve current municipal issues.

3.2 It is not the intent of the minister to suggest that the committee write new legislation, but rather the mandate of the committee is to make recommendations as to what

issues should be addressed and how to best come to terms with those issues.

3.3 It is the wish of the minister that the review committee to examine the current legislation to determine its shortcomings, consult with local municipalities and municipal interest groups to better understand their current and perceived future needs with respect to municipal legislation, and review municipal legislation from appropriate other jurisdictions with a focus on the way they deal with similar issues or problems as those identified in our legislation.

3.4 It is the desire of the minister that the review committee examine the current legislation and develop recommendations that will build municipal authority and capacity, thereby providing clarification and modernize the Act.

The review is to be comprehensive and may deal with any statutory matter, therefore the review committee may;

- a) identify existing, emerging and potential obstacles facing municipal governance;
- b) consult with local municipalities and municipal interest groups to gain a greater understanding of the current and perceived future needs;
- c) review the existing Act;
- d) investigate similar initiatives in other provinces and territories;
- e) give consideration to the form, structure, function, authority, power, management and financial matters of municipalities;

3.5 The review committee, after giving extensive consideration and complying with the above, shall make recommendations to the minister based on its findings and the guiding principle that any proposed changes should be manageable and affordable to municipalities.

4.0 Scheduling and Timing

3.6 The review committee will interpret the terms of reference broadly, being flexible to include as many issues of interest and importance during the review.

4.0 Scheduling and Timing

4.1 Although the review of the *Municipalities Act* is a high priority within the department, the minister appreciates the complexity of the matter and that many issues of concern will evolve as the review progresses. The minister expects the review to take 12 to 18 months, however, should the committee request additional time for just cause, it will be considered.

Appendix B

Criminal Code of Canada section 123, 124 and 125 is as follows,

123. (1) Every one who

(a) gives, offers or agrees to give or offer to a municipal leader, or

(b) being a municipal leader, demands, accepts or offers or agrees to accept from any person,

a loan, reward, advantage or benefit of any kind as consideration for the leader

(c) to abstain from voting at a meeting of the municipal council or a committee thereof,

(d) to vote in favour of or against a measure, motion or resolution,

(e) to aid in procuring or preventing the adoption of a measure, motion or resolution, or

(f) to perform or fail to perform an leader act,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(2) Every one who

(a) by suppression of the truth, in the case of a person who is under a duty to disclose the truth,

(b) by threats or deceit, or

(c) by any unlawful means,

influences or attempts to influence a municipal leader to do anything mentioned in paragraphs (1)(c) to (f) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(3) In this section, “municipal leader” means a member of a municipal council or a person who holds an office under a municipal government.

R.S., 1985, c. C-46, s. 123; R.S., 1985, c. 27 (1st Supp.), s. 16.

Municipal
corruption

Influencing
municipal
leader

Definition of
“municipal
leader”

Selling or
purchasing
office

124. Every one who

(a) purports to sell or agrees to sell an appointment to or a resignation from an office, or a consent to any such appointment or resignation, or receives or agrees to receive a reward or profit from the purported sale thereof, or

(b) purports to purchase or gives a reward or profit for the purported purchase of any such appointment, resignation or consent, or agrees or promises to do so,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 113.

Influencing or
negotiating
appointments or
dealing in offices

125. Every one who

(a) receives, agrees to receive, gives or procures to be given, directly or indirectly, a reward, advantage or benefit of any kind as consideration for cooperation, assistance or exercise of influence to secure the appointment of any person to an office,

(b) solicits, recommends or negotiates in any manner with respect to an appointment to or resignation from an office, in expectation of a direct or indirect reward, advantage or benefit, or

(c) keeps without lawful authority, the proof of which lies on him, a place for transacting or negotiating any business relating to

(i) the filling of vacancies in offices,

(ii) the sale or purchase of offices, or

(iii) appointments to or resignations from offices,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 114.