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EMPOWERMENT THROUGH COMMUNITY GOVERNMENT LEGISLATION

A Discussion Paper on Proposed Changes to Community Government Legislation

March, 1997

NWT Municipal & Community Affairs

N.W.T. Association of Municipalities

Northwest Territories

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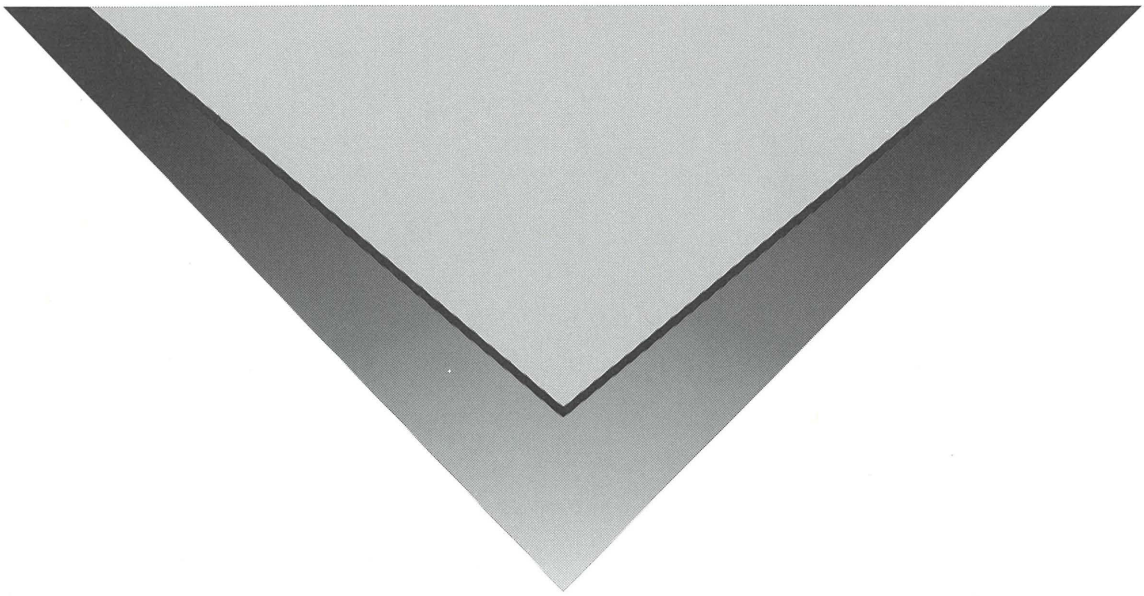

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Table of Contents

Executive Summary

The Department of Municipal and Community Affairs (MACA) is considering changes to the legislation that provides for the organization and powers of community governments. The Acts under review are the: *Settlements Act, Hamlets Act, Charter Communities Act* and *Cities, Towns and Villages Act*. The review also involves the *Property Assessment and Taxation Act* and the *Local Authorities Elections Act*.

This review is a joint effort with the NWT Association of Municipalities (NWTAM).

Concerns that the current municipal legislation does not adequately address issues affecting communities have been raised by the NWTAM, municipal councils, senior administrative officers, aboriginal and land claimant groups, the GNWT and various interest groups. These many concerns, coupled with the fast changing environment dominated by Division, the GNWT's Community Empowerment Priority and Aboriginal self-government and land claims processes, clearly establish the need for a comprehensive review of the NWT's municipal legislation.

This discussion paper presents proposals and options for change under a number of themes.

The **Flexible, Simple and Modern Legislation** section of this paper encourages consideration of how broader powers and greater flexibility in legislation could help community governments to respond to unique local needs more effectively and creatively. It is proposed that legislation be amended to clarify community and territorial roles and responsibilities, and to remove unnecessary controls, details and difficult wording.

The **GNWT Authorities** section proposes the elimination of reporting requirements and Ministerial powers not justified by territorial interests.

The **Strengthen Rights and Powers** section proposes expanding community governments' current corporate powers, and permitting community governments to establish local boards, agencies and commissions. Options for expanding borrowing and taxation powers, particularly for hamlets and settlements, are also presented.

The **Accountability and Legal Liability** section proposes options for reducing community governments' accountability to the GNWT while increasing their accountability to residents. As well, the section invites discussion on how and whether legislation should be amended to decrease community governments' legal liability.

The **Responding to the Future** Section is intended to encourage input on how municipal legislation can best respond to the changing political environment, which includes Division, Western constitutional development, and the negotiation of aboriginal self-government agreements.

The sections on the **Local Authorities Elections Act** propose new requirements to report large campaign contributions and campaign expenses, and provisions for local decision-making on issues such as voter requirements and restrictions on candidate eligibility.

The sections on the **Property Assessment and Taxation Act** propose options for the transfer of some assessment responsibilities to community governments, changes to the procedures and timing for the hearing of assessment appeals to improve efficiency, changes to the current assessment base, limitations on the number of mill rates and property classifications that can be set by a taxing authori-

ty, and changes to the way certain special types of properties, such as pipelines and agricultural properties, are assessed.

It is the Review Committee's intention to use the views, opinions and suggestions obtained in response to this discussion paper to develop a final report with recommendations, which will be presented to the Minister.

The Minister of Municipal and Community Affairs has made public her intention to submit new or amended legislation to the Legislative Assembly based on the recommendations of the Review Committee.

ᓴᓐᖏᕆᕐᑎᒃᐸᓪᓚᐊᑎᑦᓯᓂᖅ ᓄᓇᓕᓐᓂ ᑲᕙᒪᐅᔪᑦ ᒪᓕᒐᖕᒐᕐᑎᒍᑦ ᐊᐅᓚᑦᓯᔾᔪᑯᓐᓂᑦ ᓇᐃᓈᖅᑕᐅᓯᒪᔪᖅ

ᓄᓇᓕᓕᕆᔨᒃᑯᑦ ᓄᓇᓕᓐᓂᓗ ᑲᕙᒪᓕᕆᔨᒃᑯᑦ ᐃᓱᒪᒃᓴᖅᓯᐅᕈᑎᖃᕐᓯᒪᒻᒪᑕ ᐊᓯᔾᔩᒐᔭᓇᐊᒃᓴᖅ ᒪᓕᒐᕐᓂᒃ ᐊᑐᐃᓐᓇᕈᖅᑎᑦᓯᔾᔪᑕᐅᕙᒃᑐᓂᒃ ᑲᑐᔾᔨᖅᑎᕇᒃᓴᓂᒃ ᐊᒻᒪᓗ ᓴᓐᖏᓂᖅᑖᖅᑎᑦᓯᔾᔪᑕᐅᕙᒃᑐᓂᒃ ᓄᓇᓕᓐᓂ ᑲᕙᒪᐅᔪᓄᑦ. ᒪᓕᒐᐃᑦ ᕿᒥᕐᕈᔭᐅᔪᑦ ᐅᑯᐊᖑᕗᑦ: ᓄᓇᓕᐊᓖᖑᓂᖅᓴᐃᑦ ᒪᓕᒐᖏᑦ, Hᐊᒻᓚᐅᔪᑦ ᒪᓕᒐᖏᑦ, ᐃᓕᑕᕆᔭᐅᓯᒪᔪᑦ ᓄᓇᓖᑦ ᒪᓕᒐᖏᑦ ᐊᒻᒪᓗ ᓯᑏᑦ, ᑕᐅᓐᖑᔪᑦ ᐊᒻᒪᓗ ᕚᓕᔾᔩᑦ ᒪᓕᒐᖏᑦ. ᕿᒥᕐᕈᔭᐅᒥᕗᑦᑕᐅᖅ ᐅᑯᐊ ᓄᓇᐃᑦ ᓇᖕᒥᓂᕆᔭᐅᔪᑦ ᖃᐅᔨᓴᖅᑕᐅᓂᖏᑦ ᐊᒻᒪᓗ ᑖᒃᓯᔾᔭᐃᔭᖅᑎᑦᓯᔾᔪᑕᐅᕙᒃᑐᑦ ᒪᓕᒐᖏᑦ ᐊᒻᒪᓗ ᓄᓇᓕᓐᓂ ᑲᑎᒪᔨᒃᓴᓂᒃ ᓂᕈᐊᖅᑐᓕᕆᓂᕐᒧᑦ ᒪᓕᒐᖅ.

ᑕᒪᓐᓇ ᕿᒥᕐᕈᓂᐅᔪᖅ ᑲᑐᔾᔨᓇᔭᐅᕗᖅ ᐱᓕᕆᖅᑎᕆᔭᐅᓪᓗᑎᒃ ᓄᓇᑦᓯᐊᕐᒥ ᓄᓇᓖᑦ ᑲᑐᔾᔨᖅᑎᕆᖕᒐᑦ.

ᐃᓱᒫᓘᑕᐅᔪᑦ ᑖᒃᑯᐊ ᒫᓐᓇ ᐊᑐᖅᑕᐅᔪᑦ ᓄᓇᓕᓐᓄᑦ ᒪᓕᒐᐃᑦ ᓈᒻᒪᒃᑐᒃᑯᑦ ᐱᓕᕆᐊᖅᑲᓪᓗᐊᖅᑲᑦᑕᖅᓯᒪᓐᖏᒻᒪᑕ ᐃᒃᐱᓐᓂᕈᑕᐅᕙᒃᑐᓂᒃ ᓄᓇᓕᓐᓄᑦ ᐅᖃᐅᑕᐅᖃᑦᑕᖅᓯᒪᕗᑦ ᓄᓇᑦᓯᐊᕐᒥ ᓄᓇᓖᑦ ᑲᑐᔾᔨᖅᑎᕆᖕᒐᓐᓄᑦ, ᓄᓇᓕᓐᓂ Hᐊᒻᓚᐅᔪᑦ ᑲᑎᒪᔨᖏᓐᓄᑦ, ᐊᖏᔪᖅᑲᐅᑎᓄᑦ ᑎᑎᕋᖅᑎᒥᔭᐅᔪᓄᑦ Hᐊᒻᓚᓄᑦ, ᓄᓇᖅᑲᖅᑳᖅᓯᒪᔪᑦ ᓄᓇᑖᖅᓯᒪᔪᓪᓗ ᑲᑐᔾᔨᖅᑎᕆᖕᒐᓐᓄᑦ, ᓄᓇᓯᐊᑉ ᑲᕙᒪᒃᑯᖏᓐᓄᑦ ᐊᒻᒪᓗ ᐊᔾᔨᒌᖏᑦᑐᕈᔫᔭᓄᑦ ᑎᒥᐅᔪᓄᑦ. ᑕᒃᑯᐊ ᐊᒥᓱᑦ ᐃᓱᒫᓘᑕᐅᔪᑦ, ᐱᖅᑲᓯᐅᑎᔭᐅᓪᓗᑎᒃ ᑐᐊᕕᖅᑐᓪᓚᕆᒃᑯᑦ ᐊᓯᔾᔨᖅᐸᓪᓚᐊᔪᑦ ᓴᖅᑭᓚᖅᑭᑎᑕᐅᓯᒪᔪᑦ ᓄᓇᓯᐊᑉ ᐊᕕᓐᓂᐊᕐᓂᖓᓄᑦ, ᓄᓇᓯᐊᑉ ᑲᕙᒪᒃᑯᖏᑦᑕ ᓄᓇᓕᓐᓂᒃ ᓴᓐᖏᕆᕐᑎᒃᐸᓪᓚᐊᑎᑦᓯᔾᔪᑎᒥᓇᓱᐊᕐᑕᖏᓐᓄᑦ ᓯᕗᓪᓕᖅᐸᐅᔾᔭᐅᓯᓇᐊᓖᑦ ᐊᒻᒪᓗ ᓄᓇᖅᑲᖅᑳᖅᓯᒪᔪᑦ ᓇᖕᒥᓂᖅ ᑲᕙᒪᖅᑭᒪᓂᖏᑦ ᐊᒻᒪᓗ ᓄᓇᑖᕈᑕᐅᕙᓪᓕᐊᔪᑦ, ᓇᓗᓇᐃᖅᓯᔾᔪᑕᐅᓯᒪᕗᑦ ᐃᓗᐃᒃᑲᐅᓈᖅᓯᒪᓗᒋᑦ ᕿᒥᕐᕈᔭᐅᓴᐊᖅᑲᓐᓂᕐᓂᖏᓐᓂᑦ ᓄᓇᓯᐊᑉ ᓄᓇᓕᐅᔪᓄᑦ ᒪᓕᒐᖁᑎᒋᔭᐅᔪᑦ.

ᐅᓇ ᐅᖃᐅᖅᑎᕐᔪᐊᑎᒃᓴᖅ ᐸᐃᑉᐹᖅ ᓴᖅᑭᑎᑦᓯᕗᖅ ᓴᖅᑭᑕᐅᒐᓱᐊᕈᒪᔪᓂᒃ ᐊᒻᒪᓗ ᓇᓛᕿᕈᑎᒃᓴᓂᒃ ᐊᓯᔾᔨᓂᖁᑦ ᐊᒥᓱᑲᓪᓚᓂᒃ ᑕᐃᔫᓯᖅᑐᓂᒃ.

ᐃᓱᒪᖅᔫᑕᐅᓂᖅᓴᐅᓗᑎᒃ, ᐱᔭᓇᐊᑭᓐᓂᖅᓴᐅᓗᑎᒃ ᐊᒻᒪᓗ ᓄᑖᖑᓂᖅᓴᐅᓗᑎᒃ ᒪᓕᒐᐃᑦ ᑎᑎᕋᖅᑕᐅᓯᒪᔪᑦ ᑕᕝᕙᓂ ᐸᐃᑉᐹᒥ ᐃᓱᒪᒃᓴᖅᓯᐅᕈᑕᐅᔪᑦᑕᐅᖁᔭᐅᕗᑦ ᖃᓄᖅ ᑕᒃᑯᐊ ᓴᓐᖏᓂᖅᓴᐅᔪᑦ ᐊᒻᒪᓗ ᐃᓱᒪᖅᔫᑕᐅᔪᓐᓇᕐᓂᖅᓴᐅᓗᑎᒃ ᒪᓕᒐᓇᔭᐅᒐᔭᖅᑐᑦ ᐃᑲᔪᖅᓯᓂᖅᓴᐅᔪᓐᓇᕐᓂᖏᓐᓂᑦ ᓄᓇᓕᓐᓂ ᑲᕙᒪᐅᔪᓂᒃ ᑭᐅᑦᑕᕈᓐᓇᖅᓯᓂᖅᓴᐅᔾᔪᑎᕆᔪᓐᓇᖅᑐᓂᒃ ᓄᓇᓕᓐᓂ ᐱᐊᓪᓚᓯᓇᓴᐅᔪᓂᒃ ᐊᑑᑎᖃᕐᓂᖅᓴᒃᑯᑦ ᐃᓱᒪᑐᓇᕐᓂᖅᓴᒃᑯᓪᓗ. ᐊᓯᔾᔨᒐᓱᐊᕈᒪᕗᑦ ᒪᓕᒐᕐᓂᒃ ᐋᖅᑭᒋᐊᓇᓗᑎᒃ ᓇᓗᓇᐃᖅᓯᔾᔪᑕᐅᓂᐊᖅᑐᓂᒃ ᓄᓇᓕᓐᓂ ᐊᒻᒪᓗ ᓄᓇᓯᐊᑉ ᑲᕙᒪᐅᔪᑦ ᐱᓕᕆᐊᕆᓴᓇᐊᖅᑕᖏᓐᓂᑦ ᑲᒪᒋᔭᓇᐊᖅᑕᖏᓐᓂᓪᓗ, ᐊᒻᒪᓗ ᐲᔭᐃᓗᑎᒃ ᐊᑑᑎᖃᓪᓗᐊᖏᑦᑐᓂᒃ ᐊᐅᓚᑦᓯᔾᔪᑕᐅᓯᒪᔪᓂᒃ, ᓇᓗᓇᐃᔭᖅᑕᐅᓯᒪᔪᓂᒃ ᐊᒻᒪᓗ ᒪᓕᒐᐃᑦ ᐅᖃᐅᓯᖅᑕᖏᑦᑕ ᐱᔭᓇᐊᑐᓂᖓᐅᑕᖏᓐᓂᑦ.

ᓄᓇᓯᐊᑉ ᑲᕙᒪᒃᑯᖏᓐᓂ ᓴᓐᖏᓂᖅᑐᑎᐅᔪᓄᑦ ᑎᑎᕋᖅᑕᐅᓯᒪᔪᑦ ᓴᖅᑭᑎᑦᓯᒐᓱᐊᕐᐳᑦ ᐲᔭᖅᑕᐅᖁᓪᓗᒋᑦ ᐅᓂᒃᑲᓇᐊᖅᑲᑦᑕᕐᓂᐅᔪᑦ ᐊᒻᒪᓗ ᒥᓂᔅᑕᐃᑦ ᓴᓐᖏᓂᖅᑐᑎᕆᐊᒃᑕᖏᑦ ᑐᕌᖓᓗᐊᖅᓯᒪᓐᖏᑦᑐᑦ ᓄᓇᓯᐊᒥᐅᓄᑦ ᐊᑑᑎᖃᓇᐊᒃᓴᖏᓐᓂᑦ.

ᓴᓐᖏᕆᑦᑎᕆᐊᖅᑕᐅᓯᒪᔪᑦ ᐱᔪᓇᐅᑏᑦ ᓴᓐᖏᓂᖅᑐᑎᐅᔪᓪᓗ ᑎᑎᕋᖅᑕᐅᓯᒪᓂᖏᑦ ᓴᖅᑭᑎᓯᒐᓱᐊᕐᐳᑦ ᓯᐊᒻᒪᒃᑎᑕᐅᒋᐊᖅᑯᓪᓗᓂᑦ ᓄᓇᓕᓐᓂ ᑲᕙᒪᐅᔪᑦ ᒫᓐᓇᐅᔪᖅ ᓴᓐᖏᓂᖅᑐᑎᓯᔭᖅᑦ, ᐊᒻᒪᓗ ᓄᓇᓕᓐᓂ ᑲᕙᒪᐅᔪᑦ ᓴᖅᑭᑎᓯᔪᓐᓇᓯᖅᑯᑦᓯᒃᑐᑦ ᓄᓇᓕᓐᓂ ᑲᑎᒪᔭᖅᓱᐊᖅᒍᓗᒐᔭᖅᑐᓂᒃ, ᑭᒐᖅᑐᐃᕆᓯᔭᐅᒐᔭᖅᑐᓂᒃ ᑲᒥᓴᕆᔭᐅᒐᔭᖅᑐᓂᓪᓗ. ᓇᓛᕿᕈᑕᐅᓇᖅᑐᑦ ᓯᐊᒻᒪᒃᑎᑕᐅᒋᐊᖅᑯᓪᓗᓂᑦ ᐊᑐᖅᑐᐊᕈᓇᖅᓯᖅᑯᑦᓯᒃᑐᑦ ᑖᒃᓯᔭᐃᔭᖅᑎᑦᓯᔭᓇᖅᓯᖅᑯᑦᓯᒃᑐᑦ ᓴᓐᖏᓂᖅᑐᑎᓯᔪᑦ, ᐱᓗᐊᖅᑐᒥᒃ Hᐊᒻᓚᐅᔪᓄᑦ ᓄᓇᓕᐊᓖᖑᓂᖅᓴᓄᑦ, ᓴᖅᑭᑕᐅᒐᓱᐊᕆᕗᑦ.

ᐅᓂᒃᑳᕈᓐᓇᖃᑦᑕᕆᐊᖃᕐᓂᐅᔪᑦ ᐊᒻᒪᓗ ᒪᓕᒐᑎᒍᑦ ᐊᑭᓖᑎᑕᐅᑐᐃᓐᓇᕆᐊᖃᕐᓂᐅᕙᒃᑐᑦ ᑎᑎᕋᖅᑕᐅᓯᒪᓂᖏᑦ ᓴᖅᑭᑎᑦᓯᒐᓱᐊᕐᐳᑦ ᓇᓛᖅᑮᑕᐅᔭᓐᓇᕐᑐᓂᒃ ᓄᓇᓖᑦ ᒐᕙᒪᒋᔭᖏᑦᑕ ᐅᓂᒃᑳᕈᓐᓇᖃᑦᑕᕆᐊᖃᕐᓂᖏᑦ ᓄᓇᑦᓯᐊᑉ ᒐᕙᒪᒃᑯᖏᓐᓄᑦ ᒥᑭᓕᒋᐊᖅᑎᑕᐅᓂᖅᓴᐅᖁᓪᓗᒋᑦ ᐃᓄᖁᑎᒥᓐᓄᑦ ᓄᓇᒥᔭᖏᓐᓂ ᐅᓂᒃᑳᕈᓐᓇᖃᑦᑕᕐᓂᖅᓴᐅᓕᖁᓪᓗᒋᑦ. ᐊᒻᒪᓗᒃᑕᐅᖅ, ᒪᓕᒐᒃᓴᐅᑉ ᐃᓚᖓᓂ ᑎᑎᕋᖅᑕᐅᓯᒪᔪᖅᑕᖃᓇᕗᖅ ᖃᓄᖅ ᐅᖃᖃᑎᒌᔾᔪᑎᖃᕈᓐᓇᖅᒪᖔᑕ ᐊᒻᒪᓗ ᖃᓄᖅ ᒪᓕᒐᐃᑦ ᐋᖅᑭᒋᐊᖅᑕᐅᔪᓐᓇᖅᒪᖔᑕ ᑕᒪᒃᑯᐊ ᓄᓇᓖᑦ ᒪᓕᒐᑎᒍᑦ ᐊᑭᓖᑎᑕᐅᑐᐃᓐᓇᕆᐊᖃᖅᓴᖅᓂᖏᑦ ᒥᑭᓕᒋᐊᖅᑕᐅᔭᕆᐊᖃᖅᓯᖅᑯᓗᕐᒥᒃ.

ᑭᐅᓂᖅ ᓯᕗᓂᒃᓴᒧᑦ ᑎᑎᕋᖅᑕᐅᓯᒪᓂᖏᑦ ᐃᓚᖔᑎᑕᐅᒐᓱᐊᕐᓯᒪᕗᑦ ᑎᓕᐅᓴᔾᔭᐅᒐᓱᐊᕐᓯᑎᒃ ᐃᓚᒥᔭᐅᓂᕐᒧᑦ ᑕᒪᒃᑯᐊ ᓄᓇᓕᖕᓂ ᒪᓕᒐᕐᑯᑎᒥᔭᐅᔪᑦ ᐱᐅᓂᖅᐹᖑᔪᒃᑯᑦ ᑭᐅᔪᓐᓇᖅᓴᕐᒪᖔᑕ ᐊᓯᔾᔨᖅᐸᓪᓕᐊᔪᓄᑦ ᒐᕙᒪᓕᓴᔾᔭᐅᕙᒃᑐᓄᑦ, ᐱᖅᑯᓯᐅᑎᒍᑦ ᓄᓇᖃᐊᑉ ᐊᕕᓐᓂᐊᕐᓂᖓ, ᐅᐊᓕᓂᖅᐸᓯᒪᒥ ᑐᓐᖓᕕᒡᔪᐊᒃᓴᐅᑉ ᐱᕙᓪᓕᐊᑎᑕᐅᓂᖓ, ᐊᒻᒪᓗ ᐋᕿᖅᑎᕐᔾᔪᑕᐅᓂᖏᑦ ᓄᓇᖅᑲᖄᖅᓯᒪᔪᑦ ᓇᖕᒥᓂᖅ ᒐᕙᒪᖅᑲᓂᖓᑦ ᐊᖏᖅᑎᕆᓕᐅᕈᑎᒃᓴᐃᑦ.

ᑎᑎᕋᖅᑕᐅᓯᒪᔪᑦ ᐱᔾᔪᑎᒋᓪᓗᒋᑦ ᓄᓇᓕᖕᓂ ᑲᑎᒪᔩᒃᓴᓂᒃ ᓂᕈᐊᖅᑐᓕᖓᓂᖓᑦ ᒪᓕᒐᖅ ᓴᖅᑭᑎᑦᓯᒪᓂᐊᕈᑕᐅᕗᑦ ᓄᑖᓂᒃ ᐱᔭᓇᐊᖅᑎᒋᔾᔪᑕᐅᒋᔭᖅᑐᓂᒃ ᐅᓂᒃᑲᐅᑕᐅᖅᑕᖅᑯᓪᓗᒋᑦ ᐅᓄᖅᑐᑦ ᓂᕈᐊᖅᑕᐅᒐᓱᐊᖅᑐᓄᑦ ᐃᑲᔫᑕᐅᓯᒪᔪᑦ ᑮᓇᐅᔭᐃᑦ ᐊᒻᒪᓗ ᓂᕈᐊᖅᑕᐅᒐᓱᐊᖅᑎᓪᓗᒋᑦ ᖃᓄᑎᒋ ᑮᓇᐅᔭᓂᒃ ᐊᑐᖅᓯᒪᓪᓚᕆᑦ, ᐊᒻᒪᓗ ᐱᖁᔭᖅᑎᑕᐅᖁᓪᓗᒋᑦ ᓄᓇᓕᖕᓂ ᐃᓯᒪᓕᐅᕈᑕᐅᔪᓐᓇᖅᑐᑦ ᔫᖅᓗ ᓂᕈᐊᖅᑎᓄᑦ ᐱᔭᓇᐊᖅᑎᒋᔾᔪᑕᐅᒐᔭᖅᑐᑦ ᐊᒻᒪᓗ ᑭᓪᓕᖅᑎᑦᑎᑕᐅᒥᐊᖅᑲᖅᓂᖏᑦ ᓂᕈᐊᖅᓴᐅᔪᑦ ᐊᔪᓐᖏᑎᑕᐅᔾᔪᑎᒋᔪᓇᖅᑕᖏᑦ.

ᑎᑎᕋᖅᑕᐅᓯᒪᔪᑦ ᐱᔾᔪᑎᒋᓪᓗᒋᑦ ᓄᓇᐃᑦ ᓇᖕᒥᓂᕆᔭᐅᔪᑦ ᖃᐅᔨᓴᖅᑕᐅᓂᖏᑦ ᐊᒻᒪᓗ ᑳᓯᔾᔭᐃᔭᖅᑎᒋᔾᔪᑕᐅᕙᒃᑐᑦ ᒪᓕᒐᖏᑦ ᓴᖅᑭᑎᑦᓯᒪᓕᐊᕆᑕᐅᕗᑦ ᓇᓛᖅᑎᒃᓴᓂᒃ ᓄᒃᑎᖅᑕᐅᔭᕆᐊᖃᕐᓂᖏᑦ ᓇᖕᒥᓂᖅᑯᑎᕆᔭᐅᔪᓂᒃ ᖃᐅᔨᓴᕆᑕᐅᕙᒃᑐᑦ ᐃᓚᖏᑦ ᓄᓇᓕᖕᓂ ᒐᕙᒪᐅᔪᓄᑦ, ᐊᓯᔾᔨᖅᑕᐅᓗᑎᒃ ᐊᐅᐊᖅᑕᐅᕙᒃᑐᑦ ᖃᖓᒃᑯᓪᓗ ᖃᐅᔨᓴᕆᑕᐅᓂᖅᓴᐅᕙᒃᑐᑦ ᑐᑭᓯᓂᐊᖅᑕᐅᓯᒪᓂᐊᖅᑎᓪᓗᒋᑦ ᓇᖕᒥᓂᖅᑯᑎᕆᔭᐅᔪᑦ ᒥᒃᓴᓄᑦ ᐊᔭᐃᓇᕐᓇᖅᑐᖅᑐᖃᕐᓂᖅᑐᕙᓂᐅᑎᓪᓗᒍ ᑐᐊᕕᕐᓇᕐᓂᖅᓴᒃᑯᑦ ᐱᑕᓇᐊᖑᔭᓇᖅᑐᑦ, ᐊᓯᔾᔨᖅᑕᐅᓗᑎᒃ ᒫᓇ ᐊᑐᖅᑕᐅᕙᒃᑐᑦ ᖃᐅᔨᓴᐃᓂᖓᑦ, ᑭᓪᓕᖅᑎᑕᐅᓂᖅᓴᐅᓗᑎᒃ ᓇᖕᒥᓂᖅᑯᑎᕆᔭᐅᔪᑦ ᐊᑭᒋᔭᖕᖑᐊᕐᑕᖕᒋᑦᑎᒍᑦ ᑳᓯᔾᔭᐃᔭᖅᑎᒋᔾᔪᑕᐅᕙᒃᑐᓄᑦ ᐊᑭᓖᑎᒋᔾᔪᑕᐅᕙᒃᑐᑦ ᐊᒻᒪᓗ ᓇᖕᒥᓂᖅᑯᑎᕆᔭᐅᔪᑦ ᓄᓇᐃᑦ ᐱᖅᑯᑏᑦᑐᓐᓂᑦ ᓇᓗᓇᐃᔭᖅᑕᐅᓯᒪᓂᖏᑦ ᐋᖅᑭᒃᑕᐅᔭᕆᐊᖃᖅᑐᑦ ᑳᓯᔾᔭᐃᔭᖅᑎᒋᔾᔫᑕᐅᕙᒃᑐᓄᑦ, ᐊᒻᒪᓗ ᐊᓯᔾᔨᖅᑕᐅᓗᑎᒃ ᐱᖅᑯᑎᒋᔭᐅᔪᑦ ᔫᖅᓗ ᓯᓪᓗᑖᑦ ᐊᒻᒪᓗ ᐱᑭᖅᑐᓕᖓᓂᖏᑦ ᐱᖅᑯᑎᒋᔭᐅᔪᑦ, ᖃᐅᔨᓴᖅᑕᐅᕙᓂᖏᑦ ᑳᓯᔾᔭᐃᔭᖅᑕᐅᕙᓂᐊᖅᑎᓪᓗᒋᑦ.

ᖁᒥᖁᐸᒋᔭᐅᓂᐊᖅᑐᑦ ᑲᑎᒪᔨᖃᑦ ᐃᒪᐃᓐᓇᐃᓕᓯᐊᑭᒪᓂᐊᕐᐳᑦ ᐊᑐᖅᓗᑎᒃ ᐃᓯᒪᒋᔭᐅᓯᒪᔪᓂᒃ, ᖃᓄᖅᑑᕈᑕᐅᓯᒪᔪᓂᒃ ᐊᒻᒪᓗ ᐅᖃᐅᑕᐅᓯᒪᔪᓂᒃ ᑭᐅᔾᔪᑕᐅᓯᒪᔪᑦ ᑖᑦᓱᒧᖓ ᐅᖃᖅᑎᒋᔾᔪᑕᐅᓂᐊᖅᑐᒧᑦ ᐸᐃᑉᐹᒧᑦ ᓴᖅᑭᑎᑦᓯᓂᐊᖅᑐᒃ ᑭᖑᓪᓕᖅᐹᒥᒃ ᐅᓂᒃᑳᓕᐊᖑᔪᓂᐊᖅᑐᒥᒃ ᐃᓗᓕᖅᑲᖅᑐᒥᒃ ᐊᑐᓕᖁᔭᐅᔪᑎᖃᓯᒥᒃ ᑐᓂᖅᑭᑎᓯᐅᔪᓐᓇᓯᒥᒃ ᒥᓂᔅᑕᒧᑦ.

ᒥᓂᔅᑕᖑᔪᖅ ᓄᓇᓕᓕᕆᔨᒃᑯᓐᓄᑦ ᓄᓇᓕᖕᓂᓗ ᒐᕙᒪᓕᕆᔨᒃᑯᓐᓄᑦ ᑭᒃᑯᐃᓐᓇᖃᓄᑦ ᐃᓄᓐᓄᑦ ᓴᖅᑭᑎᑦᓯᒪᕗᖅ ᖃᓄᐃᓕᐅᖁᔨᐊᕆᑎᒥᓂᐊᖅᑕᒥᒃ ᓴᖅᑭᑎᑦᓯᓂᐊᖅᑎᓪᓗᒋᑦ ᓄᑖᒥᒃ ᐋᖅᑭᒋᐊᖅᓯᒪᔪᒥᓪᓗᓐᓂᑦ ᒪᓕᒐᒃᓴᒥᒃ ᒪᓕᒐᓕᐅᖅᑎᒃᑯᓐᓄᑦ ᑐᓐᖓᕕᒋᓪᓗᒋᑦ ᐅᖃᐅᓯᐅᔾᔪᑎᓕᐊᖑᔪᓯᒪᔪᑦ ᖁᒥᖁᐸᒋᔭᐅᔪᓄᑦ ᑲᑎᒪᔨᖃᓄᑦ.

ᐅᖃᖅᑎᐅᔾᔪᑎᑦᔪᒪᒍᕕᐅᒃ ᑖᓇ ᑎᑎᖅᑲᖅ ᐃᓄᒃᑎᑐᑦ, ᖃᐅᔨᒃᑲᖅᓗᑎᑦ ᖁᑎᖁᐅᓂ ᐊᖏᔪᖅᑳᕆᔭᐅᔪᖅ, ᓄᓇᓕᓕᕆᔨᒃᑯᓐᓂ ᓄᓇᓕᖕᓂᓗ ᒐᕙᒪᓕᕆᔨᒃᑯᓐᓂ, ᐅᖃᓘᑎᐊ: (403) 983-7262, ᓱᑲᔪᒃᑯᑦ: (403) 983-2481; ᐅᕙᓗᓐᓃᑦ ᑭᕙᓪᓕᖁ ᐊᖏᔪᖅᑳᕆᔭᐅᔪᖅ, ᓄᓇᓕᓕᕆᔨᒃᑯᓐᓂ ᓄᓇᓕᖕᓂᓗ ᒐᕙᒪᓕᕆᔨᒃᑯᓐᓂ, ᐅᖃᓘᑎᐊ: (819) 645-5042, ᓱᑲᔪᒃᑯᑦ: (819) 645-2321; ᐅᕙᓗᓐᓃᑦ ᖁᑭᖅᑖᓗᒥ ᐊᖏᔪᖅᑳᕆᔭᐅᔪᖅ, ᓄᓇᓕᓕᕆᔨᒃᑯᓐᓂ ᓄᓇᓕᖕᓂᓗ ᒐᕙᒪᓕᕆᔨᒃᑯᓐᓂ, ᐅᖃᓘᑎᐊ: (819) 979-5020, ᓱᑲᔪᒃᑯᑦ: (819) 979-4779.

Introduction

The Department of Municipal and Community Affairs (MACA) is considering changes to the legislation that provides for the organization and powers of community governments.

The Acts under review are the: *Settlements Act, Hamlets Act, Charter Communities Act and Cities, Towns and Villages Act*. Most communities in the Northwest Territories are organized and operate according to one of these four Acts. Several smaller communities do not have legal status under any of these Acts, but have municipal type programs and services provided through their local Band Councils.

The review also involves the *Property Assessment and Taxation Act* (PATA) and the *Local Authorities Elections Act* (LAEA).

This review is a joint effort with the NWT Association of Municipalities (NWTAM). A review committee made up of representatives from the NWTAM and the GNWT has been established by the Minister of Municipal and Community Affairs, who is responsible to the Legislative Assembly for these Acts.

Changes to the Acts will be made in two phases:

Phase 1:

changes which are needed immediately to eliminate interpretative or other problems; and

Phase 2:

broad changes to what community governments do and how they do it.

The Phase 1 changes are nearly completed. After consultations with community governments, the Review Committee has identified the necessary changes, and the Minister of Municipal and Community Affairs has sponsored the tabling of these changes for review by the Legislative Assembly. It is expected they will come into effect in early 1997.

Phase 2, which may lead to new legislation, is the subject of this discussion paper. The paper presents a number of proposals for change and outlines in the appendix a set of principles the Review Committee believes should guide new legislation. Many of these principles are reflected in the GNWT's recently announced Community Empowerment Priority.

The Review Committee has produced this paper to encourage the widest possible discussion of changes which would affect the way every community government serves and is accountable to its residents. We welcome all feedback on these proposals for change. Meetings and discussions will be arranged throughout the winter of 1997 to hear your views and opinions.

For further information, to arrange an opportunity to discuss the paper, or to send written responses, please contact:

◆

Deputy Minister
Municipal and
Community Affairs
Phone: 873-7118 or
Fax: 873-0309

◆

President NWT Association
of Municipalities
Phone: 873-8359 or
Fax: 873-5801

Why Change

The Minister of Municipal and Community Affairs, in announcing the review of municipal legislation April 27, 1995, stated:

> As with any municipal legislation, changes are necessary to keep it current with new developing circumstances. Since our government's municipal legislation was first introduced, a number of amendments have been presented and approved by this Assembly. The need for legislative amendments has accelerated in recent years. Concerns have been raised by individual municipal Councils, senior administrative officers and the Northwest Territories Association of Municipalities. The Department has also identified a number of needed changes to conclusively address issues affecting community governments.
>
> The observations and concerns raised by the users of our legislation are a clear indication of the need to carry out a broad legislative review of all necessary changes.

In addition to the concerns raised by users of the legislation, factors in the general political environment of the NWT must also be considered, namely:

- the reality of division in 1999;
- the GNWT's Community Empowerment Priority, and its commitment to expand community government opportunities to be self-sufficient and self reliant; and
- the ongoing Aboriginal self-government negotiations in the western NWT.

These three factors have to be addressed in any review of community government legislation.

The NWTAM is actively promoting a reshaping of the territorial-municipal governance relationship and is seeking a redefinition of the role and status of community governments within the territory. Concerns have also been raised by municipal Councils, senior administrative officers, aboriginal and land claimant groups, the GNWT, and interest groups, that the legislation does not adequately address issues affecting communities.

These many concerns, coupled with the fast changing environment dominated by Division, the GNWT's Community Empowerment Priority and Aboriginal self-government and land claims processes, clearly establish the need for a comprehensive review of the NWT's municipal legislation.

The Review Committee recognizes that the broad authorities and structures of community governments will be largely determined by the outcomes of Western constitutional development, implementation of the Nunavut Final Agreement and aboriginal self-government negotiations. Extensive discussions on community governance issues are already taking place through these separate political processes. Rather than duplicate existing consultations, the Review Committee proposes to respond to what people have already asked for by making the necessary changes to municipal legislation. To ensure that such changes will be effective, there is a commitment to ongoing communications with the bodies responsible for implementing the broader political changes listed above.

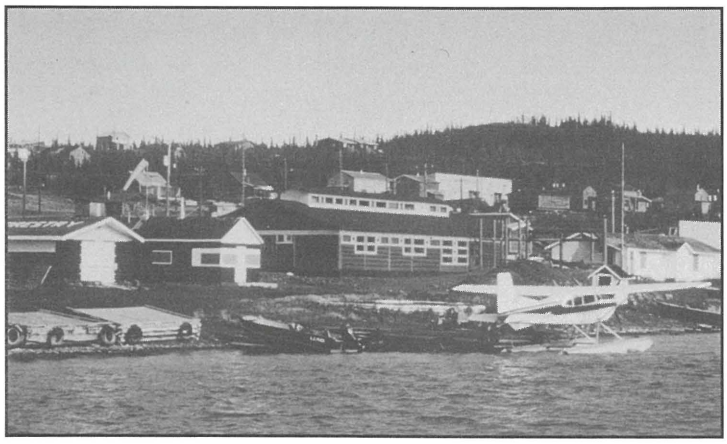
The Review Committee firmly believes that the changes proposed in this paper will place useful tools in the hands of communities. These tools will be empowering regardless of the nature and structure of the local authorities that eventually wield them. Nonetheless, the Review Committee is aware that the outcomes of other political processes may in the end override some of the proposals presented here.

The Responding to the Future section of this paper is intended to encourage your input on how municipal legislation can best respond to the changing political environment.

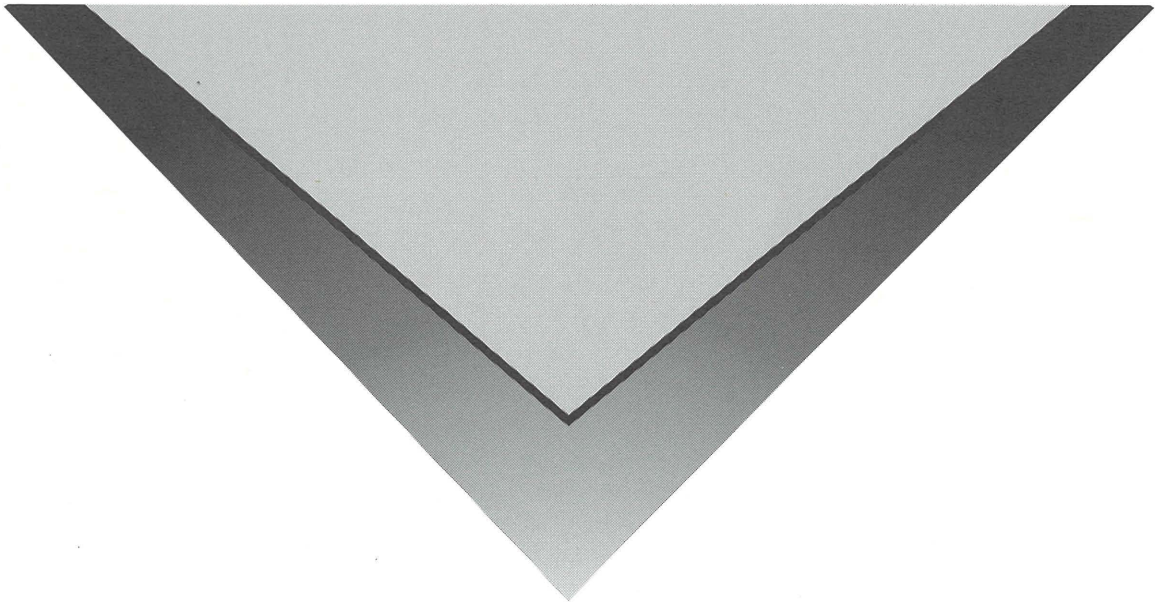
Proposals for Change

The Review Committee has chosen to present its proposals for change under a number of themes. Each theme is organized to explain what currently exists in legislation, why change seems to be necessary, and what new approaches are being proposed.

It is recognized that as new ideas are contributed, new themes may emerge and others may be replaced or combined. Our approach in presenting possible changes is not intended to limit discussion, but rather to help stimulate, focus and structure discussion in this wide ranging subject area.



COMMUNITY GOVERNMENT LEGISLATION



Flexible, Simple and Modern Legislation

What Exists

The current legislation is partly "permissive", in that it gives municipal governments the power to do certain things *without requiring* them to do these things, usually by using the word "may". For example, Councils of cities, towns and villages *may* make rules respecting public meetings called by the municipal corporation. In certain cases, when community governments are permitted to do things, they are still "restricted" by a number of requirements. While the *Cities, Towns and Villages Act* permits Council to make rules about public meetings, it also requires that such rules be made by by-law. Further, the Act only allows certain kinds of rules about public meetings to be made: rules about the calling of public meetings, or about procedures or the behaviour of persons at public meetings.

The current legislation is also partly "prescriptive", in that it *requires* municipal governments to do certain things, often by using the words "shall" or "must". For example, the *Settlements Act* provides that Council *shall* hold at least one regular meeting each month. Generally the Acts contain such requirements where the GNWT has a direct interest in or objectives relating to the municipal activity involved.

Current legislation is written in traditional legislative style, and sets out traditional forms of organization and powers for municipal governments. This style of legislation demands a large amount of detail to clarify how municipal governments are to exercise their authorities.

Those parts of the *Hamlets Act, Charter Communities Act* and *Cities, Towns and Villages Act* that outline by-law making authorities include many procedural requirements and definitions. By-law making powers (where the Act says Council "may" make a by-law) are often accompanied by as many details as by-law making requirements (where the Act says Council "shall" or "must" make a by-law).

How can community government legislation be made more flexible, simple and modern?

◆

Should community governments have broader by-law making powers?

◆

Should some of the current rules, restrictions and requirements that apply to community governments be removed from the Acts?

◆

Should some administrative and procedural details be removed from the Acts?

Why Change

To allow community governments to provide improved, new and more accessible services to the public in a climate of financial restraint, creative and flexible approaches must be allowed in legislation.

A prominent theme of municipal reform across Canada is *disentanglement*. In the NWT, disentanglement means sorting out which roles and responsibilities should belong to community governments, which should remain with the territorial government, and which should be shared between the two levels. Putting the GNWT's Community Empowerment Priority to work will mean testing the current allocation of responsibilities against territorial interests: communities should have opportunities to take on those responsibilities which are not direct territorial interests, and to participate in the administration of those responsibilities which are shared interests.

Deregulation, or removing unnecessary controls, is another common objective of many governments in Canada, at the community, provincial, territorial, and federal levels, as well as in other industrialized countries. Deregulation can reduce administration, cut costs and stimulate new activity and ideas.

Administrative and financial details ensure territorial interests and objectives are met and provide a degree of certainty and direction for community governments. However, procedural requirements and definitions can unduly burden community governments, can be unnecessarily restrictive and are often subject to interpretative problems.

The trend in Canadian municipal legislation is to replace detailed wording, on by-law making authorities for example, with more streamlined legislation. A proposed principle to guide the development of new NWT legislation is that community governments be allowed discretion and flexibility to fulfill their responsibilities. Matters of procedure should be left to the community government to decide.

Flexibility is linked to simplicity. Clearer and simpler rules are often more flexible. Legislation should also be easy to read and understand.

What do you think?

Which requirements on community governments do you think should be removed from the legislation?

Do you think the procedural requirements and administrative details listed in the proposals should be removed from the Acts? Are there others not mentioned that you think should be removed?

Are there any provisions in the Acts you find particularly difficult to read/use/understand?

Are there any "spheres of jurisdiction" you think should be added to the list provided in the proposals? Do you think restrictions on how councils may exercise their authorities should remain or be introduced for some spheres of jurisdiction?

What is Proposed

- Legislation should clearly establish municipal government roles and responsibilities and provide for the degree of authority and flexibility necessary to carry them out effectively.
- All requirements currently imposed on municipal governments by the Acts (e.g., "shall" or "must" clauses) will be reviewed to determine whether they meet the test of territorial interest. Some of these requirements are for:
    - the roles and duties of mayors, deputy mayors, settlement chairpersons, councillors and officers;
    - the length of terms of office;
    - procedures for passing by-laws (e.g. the requirement that a proposed by-law be given three readings);
    - the forwarding of by-laws and budgets to the Minister;
    - Ministerial approvals for municipal businesses, budgets and long-term borrowing by-laws;
    - the adoption of by-laws respecting council meetings;
    - how and when councils may close municipal roads;
    - how and when municipalities may acquire and dispose of property;
    - the contents of budgets and financial statements;

- the contents of resolutions establishing funds in addition to the general municipal fund;
- the appointment, powers and duties of auditors;
- the terms and forms of debentures and the interest on them;
- the forwarding of debentures to the Minister, and recording and countersigning of debentures by the Minister;
- the contents of and special procedures for making local improvement by-laws, land administration by-laws and long term borrowing by-laws;
- the elimination of deficits;
- municipal inspections; and
- the appointment, powers and duties of municipal administrators.

- The following restrictions will also be reviewed:
  - prohibitions on making loans and guarantees; and
  - prohibitions on settlements corporations passing by-laws and borrowing.
- Procedural and administrative details will, to the extent possible, be removed from the legislation. If necessary, such details will be incorporated into a Community Government Handbook of Procedures. Examples of such details are:
  - the procedural requirements for recording minutes of council meetings;
  - the place and frequency of council meetings;
  - how council meetings are to be called and how notice of meetings is to be given; and
  - how disbursements are to be made.
- The text of the Acts will be reviewed to ensure it is simple and easy to read and understand. An example of a provision that could be changed is:
  - *The mayor, as senior executive officer of a municipal corporation, shall communicate to the council information and recommend to it measures, within the authority of the council, that, in the opinion of the mayor may be necessary in the public interest.*

Simpler wording could be used, e.g.:

- *The mayor shall set the agenda for each council meeting.*

- Legislation can provide municipal governments with "sphere of jurisdiction authority." Examples of how this might work would be wording such as:

- Council may pass by-laws for community purposes respecting:
  - (a) the safety, health, well-being and protection of people;
  - (b) the safety and protection of property or the environment.
- More specific statements of by-law jurisdictions would be:
  - (a) people, activities and things in, on or near a public place or place that is open to the public;
  - (b) nuisances, including unsightly property;
  - (c) transport and transportation systems;
  - (d) businesses, business activities and persons engaged in business;
  - (e) services provided by or on behalf of the municipality;
  - (f) public utilities;
  - (g) wild and domestic animals and activities in relation to them;
  - (h) the enforcement of bylaws made under this or any other enactment; [with special provisions on the types of enforcement, e.g., fines, that may be used]
  - (i) municipal roads;
  - (j) sewage and drainage systems;
  - (k) garbage and waste;
  - (l) fire prevention and fire fighting;
  - (m) ambulance services;
  - (n) the establishment and operation of recreation programs, services and facilities;
  - (o) offroad vehicles on public or private property;
  - (p) the firing of firearms and other weapons and fireworks; and
  - (q) building control and the protection of heritage sites.

The key would be to take out sub-clauses that limit or detail the powers a municipality would have in these spheres. The less detail, the greater the flexibility.

GNWT AUTHORITIES

What Exists

The GNWT currently exercises its authority through Ministerial approvals and orders for a variety of matters. In some cases, the Minister may only act "on the recommendation of the Executive Council, which means Cabinet approval is needed. GNWT authorities with respect to local governments are also found in other Acts which are referred to throughout the community government legislation.

The GNWT requires financial reporting, conducts mandatory annual inspections and can dissolve Councils and place a municipal government under the control of a municipal administrator because, "it is in the best interests of the municipal corporation that it be under the control of a municipal administrator."

Presumably, the GNWT retains such authorities to protect the direct interests of the territory or to ensure territorial objectives are met.

Why Change

GNWT authorities need to be reexamined as part of the disentanglement process described above in the Flexible, Simple and Modern Legislation section. In a number of cases, the territorial interest or objective in retaining authority is not clear. The territorial interest should not be the administration of legislation; this is best left to community governments. The territorial interest or objective should be clearly defined, if not in legislation itself, then in complimentary statements of policy or priorities.

Ministerial authorities can diminish the accountability of community governments to their voters and ratepayers. In a few cases, Ministerial authority can override voter/ratepayer approvals or exempt by-laws from approval requirements.

Many GNWT authorities are exclusive and can be applied unilaterally, without consultation. Joint solutions or shared decision making in a partnership for good government may be more appropriate. For example, alternatives to the GNWT's authority to unilaterally appoint a municipal administrator and dissolve a Council are needed.

How should the current roles of community governments and the GNWT be redefined, and how should legislation reflect the new roles?

◆

Should some Ministerial powers and functions be removed from the Acts or transferred to other authorities?

◆

Should some powers and responsibilities be shared between community governments and the GNWT?

What do you think?

Which authorities should remain with the GNWT? Should there be any new territorial authorities?

Which Ministerial powers or functions should be removed from the Acts, or transferred to other authorities? Which should remain? Are there other powers and functions not mentioned that you think should be removed?

Which responsibilities do you think are in the shared interest of communities and the territory? How should the legislation be changed to recognize that these interests are shared?

What is Proposed

- Territorial interests will be clearly identified, either in legislation, or in complimentary policy or priority statements. As suggested in the Flexible, Simple and Modern Legislation section, protecting territorial interests may mean that some existing requirements are retained, and that new ones are added. An example of a new requirement that could be added would be for all municipalities to have insurance coverage.
- All mandatory requirements, Ministerial authorities and reporting requirements will be reviewed and tested to determine whether they are justified by a territorial interest. Some general areas of Ministerial authority which were listed in the Flexible, Simple and Modern Legislation section concern debentures, auditors, inspections and administrators. Others powers are:
    - ordering changes to the number of council members;
    - granting permission to submit a by-law for the same purpose as a by-law which has failed to receive the approval of the ratepayers or voters as required, within six months of the vote;
    - disallowing any by-laws for any reason within a year of the by-law's third reading;
    - granting permission to modify National Building Code standards;
    - approving purchases of franchises;
    - approving by-laws to adopt and make rules respecting municipal flags, coats of arms, or crests;
    - approving municipal businesses and real estate transactions related to them;
    - approving land administration and long-term borrowing by-laws;
    - receiving copies of budgets;
    - approving forgiveness of debt by-laws;
    - approving by-laws for indemnities to councillors (charter communities and hamlets); and
    - appointing council members (hamlets and settlements).
- Shared GNWT and community government interests will be identified and reflected in the legislation through joint authorities and responsibilities. For example, the legislation could be changed so that municipal administrators are assigned by agreement of the territorial and community governments rather than on the initiative of the GNWT alone.

Strengthen Rights and Powers

General

What Exists

As the Flexible, Simple and Modern Legislation section explains in more detail, NWT legislation is typical of the way provincial and territorial governments have traditionally related to their municipal governments: it is partly permissive and partly prescriptive.

Municipal governments have only those rights and powers that are specifically included in the Acts. If the legislation is silent on a certain authority, the legal interpretation is that this authority has not been delegated by the GNWT to the municipal government. For example, settlement corporations do not have the ability to own real property, because the *Settlements Act* does not specifically say they can.

Legislation of this form is inherently detailed; it must describe each authority in order to empower municipal governments. A natural tendency with detail is that it becomes regulatory, with too many restrictions and controls.

For example, municipal Councils may, by by-law, establish committees to carry out certain duties on behalf of Council. However, the responsibilities that can be delegated to committees are limited to those areas of authority outlined in the Acts. This is at odds with the GNWT's Community Empowerment Priority, which would see communities controlling and administering local programs and managing community affairs.

Should community governments have broader rights and powers? What restrictions or controls should there be on these rights and powers?

◆

Should community governments be able to delegate some functions to boards, agencies and commissions?

Why Change

Deregulation, which is dealt with in the Flexible, Simple and Modern Legislation section, is one way to strengthen community rights and powers, simply by removing unnecessary restrictions and controls. The "spheres of jurisdiction" approach to by-law making powers that was suggested in that section is an example of how important deregulation could be in empowering communities.

Disentanglement, which has also been considered in earlier sections of this paper, is another important means of empowering communities, by limiting unnecessary GNWT authorities, requirements, restrictions and controls. A natural outcome of disentanglement is the reallocation of responsibilities. Several jurisdictions have determined that the reallocation of service responsibilities between the provincial and municipal levels of government is a rational and effective way of empowering community governments.

Some jurisdictions have considered other ways to strengthen local governments by providing them with either "natural person powers" or expanded corporate powers. These approaches are explained in more detail under the next heading.

What do you think?

Do you agree that community governments should have more corporate powers? Should all community governments have the same corporate powers?

Which of these two options would you prefer, and why:

- *providing "natural persons powers" to community governments*
- *providing an expanded list of specific powers to community governments.*

Is there another option not listed here that you think would be better?

If you prefer the "natural persons powers" model, do you think legislation should provide for some restrictions on these powers? Which ones?

If you would prefer that legislation provide only specified corporate powers, which additional powers do you think should be granted? Do you agree that settlement corporations should be able to own real property?

Should there be any restrictions on how and when councils can establish municipal boards, agencies and commissions, and on the roles these bodies can have?

Because the Acts do not allow for municipal "boards", "commissions" or "agencies", or "general Councils" a number of special authorities have been created at the community level. In some cases community authorities have established joint structures under the Societies Act. These are limited solutions. Larger municipalities in particular need to be able to delegate powers and responsibilities for activities and operations such as libraries. This type of delegation has the added advantage of allowing greater public involvement in community government by creating more opportunities for citizens to participate on boards and other administrative bodies.

What is Proposed

- Legislation should provide community governments with more corporate powers, either through "natural persons powers" or by expanding the list of powers already available. (see page 15)
- Settlement corporations should have the capacity to own real property.
- Legislation should permit municipal governments to establish community boards, agencies and commissions, and to define their respective authorities and responsibilities.

Natural Persons Powers vs. Expanded Corporate Powers

As individuals, or "natural persons" (as opposed to corporations, for example, which are "legal persons"), we all have the inherent legal right to do what we choose, unless specifically restricted by the law. The opposite is true for corporations which may only do what the law specifically permits unless they are given "natural persons powers", as is already the case for most corporations other than municipal corporations. Providing community governments with "natural persons powers" would mean they would have the authority to do things that natural persons can do, like enter into contracts, own, mortgage or lease real and personal property, invest money, borrow money, make grants, charge fees, and sue or be sued, without being specifically authorized to do so in legislation. "Natural persons powers" do not include taxing, making and enforcing by-laws or expropriating property, and would not have any effect on the ability of local governments to do these things.

An alternative to "natural persons powers" would be to simply expand the list of corporate powers that the Acts currently provide. This approach has been favoured in some provinces.

An advantage of natural persons powers is that legislation does not have to be changed every time community governments need new powers that were not foreseen at the time the legislation was made. Even if everyone agrees that changes to legislation are needed, it can take years to make them. This can be very discouraging, as in the meantime, communities are restricted to using powers that are already provided for, and their ability to find creative solutions to their problems is limited. It also makes it difficult for community governments to plan for their futures, as they do not know when, or if the GNWT will grant them new powers.

On the other hand, some people think that such broad powers are not appropriate for local government bodies, which, unlike business corporations, act in the public interest and are financed by taxes. It may be that only those powers which are clearly in the public interest should be allowed. While the time it takes to make changes to legislation can be frustrating, it does force careful consideration of each power and its potential consequences.

A concern about natural persons powers legislation is that each restriction on the powers has to be set out in the legislation. As it is unavoidable that many restrictions would be needed, e.g. limitations on the types of investments municipal corporations can make, legislation could become very long, complicated, and difficult to use, defeating the objective of simplicity.

Finally, establishing natural persons powers for community governments would also increase their liability. The more powers a government has, the more opportunities there are for people to sue it for failing to exercise its powers.

Despite the potential difficulties, at least one jurisdiction (Alberta) has included natural persons powers in its new municipal legislation. Also, it is possible that solutions could be found to limit the effects of increased liability and other problems.

BORROWING, TAXATION AND INVESTMENTS

Should some or all incorporated municipal governments become taxing authorities? How can legislation be changed to make the process of becoming a taxing authority easier for municipal governments to manage?

◆

Should the GNWT stop collecting property tax (municipal and education) and give municipal governments exclusive authority to collect property taxes?

◆

Should some or all municipal corporations have broader investment powers? Should they have broader borrowing powers?

What Exists

At present, settlements and settlement corporations are not permitted to borrow.

Hamlets and charter communities may, by by-law, authorize temporary borrowing by way of overdraft, line of credit, temporary loan or other arrangement. Unless a hamlet or charter community is a taxing authority, (none are at present), long-term borrowing on the security of debentures is not permitted. A change has already been proposed under Phase 1 which would allow borrowing for land development purposes only.

Cities, towns and villages may, by by-law, authorize temporary or long-term borrowing. Long-term borrowing cannot exceed a certain percentage of assessed value of all property in the municipality (10% for a village, 20% for a city or town). Long-term borrowing by-laws must be approved by the Minister and the ratepayers, except where the Minister exempts ratepayer approval, which is restricted to specific conditions such as the loan will be self-liquidating.

All cities, towns and villages are municipal taxation authorities (MTAs). Hamlets and charter communities are permitted to become MTAs if they choose. MTAs (all of which are presently cities, towns or villages) collect both their own municipal taxes, for which they set the rates themselves, and education taxes, for which the rates are set by the GNWT, except in the case of Yellowknife where the local school boards set the amount of tax revenues to be raised. The MTAs retain the municipal taxes they collect to fund their programs and services, and forward the education taxes to the GNWT, except in the case of Yellowknife, where this money is forwarded directly to the local school boards.

For the General Taxation Area (GTA), which is all of the NWT outside of the MTAs, the GNWT sets and directly collects both the municipal and education taxes.

Education taxes, which the GNWT receives from the GTA and all the MTAs other than Yellowknife, go into the general revenue fund. This means they are not dedicated specifically to education purposes.

Under current legislation, cities, towns, villages, charter communities and hamlets may invest surplus money in certain low-risk investments which are listed in the Acts.

Why Change

Incorporated settlements, as legal entities, should be allowed to borrow.

Legislation details the specific content of every long-term borrowing by-law, requiring a by-law amendment for even minor changes to debenture details. All long-term borrowing by-laws require Ministerial approval, even when ratepayer approval has been received. Further reasons for reconsidering these requirements are provided in the Flexible, Simple and Modern Legislation section and GNWT Authorities section.

Short term borrowing limits (10% of revenues for hamlets and charter communities, 85% of revenues for cities, towns and villages) are arbitrary. As short term borrowing limits are fixed to a percentage of revenue, by-laws often must be renewed annually.

No hamlets or charter communities have taken advantage of the provision under the *Property Assessment and Taxation Act* which would allow them to assume municipal taxing authority. The potential for a community to become self-reliant and self-sufficient is tied closely to that community's ability to control locally generated revenue from property taxes and other sources. The criteria and requirements for becoming a municipal taxing authority need to be reconsidered and perhaps incorporated into community government legislation rather than the *Property Assessment and Taxation Act*.

It has been proposed that the GNWT should disentangle itself from the property tax field. Property taxes would then become an exclusive revenue source for community governments to support their municipal programs and services. The GNWT would no longer collect an education tax, and would fund education out of its other revenues. As a result, the GNWT would also consider adjusting the other finances it provides to community governments in recognition of the exclusive authority communities would have to raise money through property taxes.

While some restrictions on the investment of surplus money are necessary to protect the public interest, the current provisions may be unnecessarily restrictive. Slightly broader investment powers could allow municipalities to use their surplus funds more effectively.

What do you think?

Do you think that all incorporated municipal governments should eventually become local taxation authorities?

Should all municipal governments be allowed to become local taxation authorities? Should some or all municipal governments be required to become local taxation authorities?

If you think some, but not all, communities should be required to become local taxation authorities, what criteria should be used to decide which communities must take on taxation responsibilities?

What do you think of the "step approach" proposal? Do you think that all or some incorporated municipal governments should be required or permitted to take on tax collection responsibilities in the near future? Are there other responsibilities you think would be more appropriate as a first step toward enabling or requiring municipal governments to collect taxes?

If you agree with the "step approach", how many steps should there be to full responsibility for local taxation? What responsibilities should be contained in the different steps? What criteria should be used to determine which municipal governments are permitted or required to take on different "steps" of taxing responsibilities?

Do you agree that the GNWT should stop collecting the education tax and give communities the sole authority to levy property taxes? Are there other options for reforming the current property taxation system you would like to suggest?

What do you think of the proposed options for broader investment powers? Are there other options you think should be considered?

Should settlement corporations have investment powers?

What is Proposed

- Settlement corporations should have the authority to borrow, and the option of becoming taxing authorities. (Both these powers would require that settlement corporations have by-law making authority as well – see below under the "Enforcement" heading.)
- All incorporated community governments should be authorized to borrow at levels consistent with their local property tax bases.
- Legislation could be changed to encourage all incorporated municipal governments to take on the responsibility for local property tax collection and the authority to determine how the revenues from this source are spent. One way of doing this would be to simply make all municipal governments local taxation authorities, with an appropriate transition period. An alternative to requiring or permitting communities to become full taxation authorities all at once would be a "step approach", which would include incentives for communities to take on taxation responsibilities. One step toward full responsibility for local taxation would be *tax collection* (i.e. sending out tax notices and collecting payments), with other responsibilities, e.g. for setting mill rates and property classifications, to follow at a later time.
- The current property tax should be replaced with a municipal tax, which would still be based on assessed property values.
- Current investment powers should be broadened. Some options would be:
    - allowing municipalities to invest the *interest* earned on their initial investments in higher risk funds;
    - allowing municipalities to pool their surplus money into investment funds, from which they could also borrow;
    - expanding the list of permitted investments.

Public Accountability and Legal Liability

General

What Exists

Current legislation requires financial reporting by municipal governments to the GNWT, provides for mandatory annual inspections by the Minister's representatives, and contains provisions for the Minister to dissolve Council and place a municipal government under the control of a municipal administrator. These requirements are also mentioned above in the Flexible, Simple and Modern Legislation section.

As the GNWT Authorities section explains in more detail, the Minister has a range of authorities to approve or disallow certain by-laws and other actions of municipal governments. Presumably these authorities are maintained because of GNWT objectives or direct interests in these areas.

The Minister has authorities over a number of administrative matters such as varying the number of Council members and approving indemnities and allowances to Council members (except in the case of cities, towns and villages). The Minister may disallow any by-law and must specifically approve any business carried on by a municipal corporation, the adoption of a flag, crest or coat of arms, and land administration by-laws. The municipal government must have the Minister's approval of their auditor and have all long-term borrowing and forgiveness of debts by-laws approved by the Minister. Finally, the Minister has the authority in some cases, e.g. long-term borrowing by-laws, to exempt municipal governments from seeking ratepayer approvals.

The Acts require elections by the general public to be on fixed dates, except in the case of charter communities where dates may vary.

Public notice must be given prior to incorporation or a change of name, status or municipal boundaries. Charter community status must be approved by a vote. For other incorporation changes, objections may be filed with the Minister for consideration prior to the making of an order for change. Every regular, special and committee meeting of Council must be held in public, except in limited cases when Council has no power to make by-laws or resolutions. Public notice of meetings must be given. All by-laws and minutes of meetings must be open for public inspection. Certain types of by-laws, e.g. long-term borrowing by-laws require ratepayer or voter approval, and public notice must be given two weeks before any such votes are held. Voters numbering at least 25% of the electorate may petition Council to submit for voter approval any by-laws dealing with any matter within the powers of the municipality. In such cases, if a majority approves the by-law petition, Council has a duty to make the by-law.

How can legislation help to ensure that community governments are accountable to their residents?

◆

Should the current provisions on voter/ratepayer plebiscites be changed?

◆

Should municipal corporations, Council members and employees have any special protections against lawsuits?

What do you think?

Do you agree that new provisions are needed to ensure the accountability of community governments to their residents?

Do you think that annual general meetings and/or annual reports would help to increase the accountability of community governments to their residents? If yes, should legislation permit annual general meetings and/or annual reports, require them only if voters petition the community government for them, or require them all the time?

Should Councils be required or permitted to adopt codes of ethics?

Do you think that provisions for broader access to community government documents should be included in legislation?

Would you like to suggest any options for increasing community government accountability that were not mentioned in the proposals section?

Should legislation include a provision for the recall of the Mayor and Councillors in cases of necessity?

Current legislation protects Council members from civil action resulting from anything said in Council meetings or brought before Council by a Council member. There are some special time limitations on actions for damages against municipal corporations arising from negligent maintenance or repair of municipal roads. The Acts do not contain any general provisions limiting the liability of municipal or settlement corporations.

Why Change

Accountability of municipal governments to the GNWT should be restricted to areas of direct territorial interest, as is proposed above in the Flexible, Simple and Modern Legislation section.

Ministerial authority should be similarly restricted. Ministerial authority over municipal governments can be as much because "it is the way it has always been", as a true reflection of direct GNWT interest. Ministerial authority tends to remove the municipal government's accountability to its residents: "the Minister approved it". GNWT Authorities section provides proposals on this issue.

While some GNWT authorities and requirements should be removed from the legislation, accountability to voters, ratepayers or other groups should be strengthened. Ministerial exemptions that reduce this accountability should be reconsidered.

Other Canadian jurisdictions have experimented with new ideas concerning public access to municipal government documents, codes of ethics for councillors, voter petitions, plebiscites and referendums, and allowing Councils to vary their size and appoint representatives of community authorities and other local groups. These and other ideas have received serious consideration in other parts of Canada in response to changing social and economic times.

Municipal governments in the NWT are liable to civil lawsuits with only a few legislative limitations in their favour beyond those that apply generally to corporations and private individuals. This situation needs to be reconsidered, as judgments against community governments are paid out of public funds, and community governments have public responsibilities, e.g. maintaining municipal roads, that leave them more vulnerable to lawsuits than private individuals and corporations for their actions as well as for their omissions. (The particular case of building inspections is discussed later in this section, under the "Enforcement" heading.) While courts do to some extent take these factors into account in their decisions, it may be desirable, for greater certainty, to clarify the position of municipalities in legislation, or even to provide further protections. Some other Canadian jurisdictions do have broader liability protection for municipalities, Councillors and employees.

Any additional liability protections for municipalities need to be carefully considered, as they would limit the ability of people who suffer losses to get compensation. In some cases, it might be appropriate for local governments to pay damages because they are in a better position to spread the loss over a larger number of people; the alternative in many cases would be that the entire loss falls on the injured party. Also, some people think that if local governments are not held liable for their actions or for failing to perform their duties, they may not be as diligent in carrying out their responsibilities.

What is Proposed

- New provisions to promote accountability of community governments to their residents, will be considered. Existing provisions, such as the following, will be reviewed:
    - the requirement for voter approval of utility franchise by-laws the requirement for ratepayer approval of long-term borrowing by-laws
    - the current voter petition provisions.

  New provisions could require or permit:
    - annual general meetings with residents;
    - broader access to community government documents;
    - codes of ethics for Councillors; and
    - annual reports.
- Legislation could include provisions for the recall of the Mayor and Councillors in cases of necessity.
- Legislation should provide increased liability protection for municipal corporations, Councillors and employees.

Do you think the current provisions on voter and ratepayer approvals and voter petitions should be removed or changed? If you think provisions for petitions should remain, should all voters, or only ratepayers be allowed to petition? Should the current 25% requirement be increased or decreased? Should Councils always be required to pass any by-law approved by a majority of voters or ratepayers under these provisions?

Should Councils have broader powers or duties to hold plebiscites (opinion polls) and to obtain voter or ratepayer approvals prior to acting? In what, if any, cases should Councils be required to obtain approvals or to hold plebiscites? Are there any cases in which Councils should be restricted from obtaining approvals or holding plebiscites?

Should the procedures for conducting plebiscites and obtaining approvals be entirely set out in legislation, or should there be some flexibility for Councils to develop their own procedures?

In the case of approvals, what percentage of the vote should be required before council is bound to act according to the outcome of the vote? Should this percentage be different for some matters? Should the percentage be legislated, or should it be left to Council to decide the required percentage, perhaps within a range specified in the legislation, e.g. 51-75%? Should a certain percentage of voter participation be required to make the results binding?

Should municipal corporations have broader enforcement powers?

◆

Should legislation give municipal corporations increased protection against lawsuits related to some municipal activities, such as building inspections?

ENFORCEMENT

What Exists

Under the *Settlements Act*, settlement corporations are only allowed to pass resolutions, and not by-laws. This means that settlement corporations cannot enforce their decisions.

Hamlets, charter communities and cities, towns and villages have a separate part of their respective Acts detailing enforcement procedures, offenses and punishment.

A Council may, by by-law, regulate buildings, structures and excavations and require permits for these purposes. Buildings or excavations not in compliance may, by by-law, be demolished, removed, or filled in the cases of excavations. Procedures require Council to hear affected persons. Only in the case of imminent danger to public health and safety can notice and proper hearings be waived.

At present, municipalities must not issue a business license unless the application for the license is accompanied by a certificate of compliance with the *Workers' Compensation Act*.

Why Change

As is suggested throughout this paper, all incorporated community governments, including settlement corporations should have similar powers and authority.

Community governments should be allowed broader authority to regulate and license a range of local matters, described as "spheres of jurisdiction" in the Flexible, Simple and Modern Legislation section. By-law enforcement may be easier with this broad authority.

Community governments should be allowed to regulate the broad "sphere of jurisdiction" of buildings, structures and excavations, but at minimum to enforce the National Building Code. However, their liability for these regulations and any inspections they require should be limited. A broader discussion of the municipal liability issue is included above, under the "General" heading of this section.

One particular area of liability for municipal corporations arises from the requirement that they not issue business licenses unless a certificate of compliance with the *Workers' Compensation Act* accompanies the license. Other jurisdictions do not impose such a requirement on their municipalities. Further, this requirement may be inappropriate because the protection of injured workers is a territorial interest, and the monitoring of businesses' compliance with the Act should probably be done by the GNWT. If this change were made, it might be necessary to legislate some reporting requirements, such as a requirement that municipalities report regularly on all business licenses issued.

What is Proposed

- Settlement corporations should have by-law making authority.
- Municipal governments should have by-law making and licensing authority for their "spheres of jurisdiction" (see the Flexible, Simple and Modern Legislation section above).
- Legislation should limit community government liability in certain areas or spheres of jurisdiction, e.g. buildings and excavations. Municipal governments should not be liable for any regulations they make in these spheres unless the person who suffered a loss specifically relied on such a regulation, the municipality could have foreseen this reliance, and the person's reliance on the regulation was the cause of their loss. Liability for inspections should be limited if no inspections are requested or if conditions imposed by an inspector are not complied with.
- The current requirement that municipalities not issue business licenses unless a certificate of compliance with the *Workers' Compensation Act* accompanies the application for the license should be removed from the legislation. A requirement that municipalities report regularly to the GNWT on the business licenses they issue should replace it.

What do you think?

Do you agree that municipalities require special liability protection for regulations and inspections in certain spheres of jurisdiction?

Are there alternatives you would suggest to removing the Workers Compensation Act compliance certificate requirement from municipal legislation and adding a requirement that municipalities report regularly to the GNWT on the business licences they issue?

Responding to the Future

Should there be a single Community Government Act?

◆

How should community government legislation respond to major changes in the political environment of the NWT which are coming about through Division, western constitutional development, and aboriginal self-government negotiations?

What Exists

Each form of community government: settlement, hamlet, charter community and tax-based (cities, towns, villages) is governed by a separate Act. The current Acts create a series of steps, or platforms, each with different powers and authorities.

Parts of each Act dealing with administration and financial matters are specific in detail and nearly identical in all four Acts.

The four community government acts address the current range of community circumstances throughout the Northwest Territories. The *Charter Communities Act* was designed specifically to allow Western Territory communities to detail relationships between the community Council and Band Council or other local aboriginal groups. The *Settlements Act* provides a means to organize and incorporate without assuming full municipal authorities and responsibilities, an idea attractive to some Western Territory communities. The *Cities, Towns and Villages Act* provides for a range of tax-based governments suitable to the varying size and economic and infrastructure base of communities in the Western Territory.

Why Change

While separate Acts for each form of community government contain all provisions respecting each form of government, this results in redundancy as many provisions are identical.

Separate Acts create more administration.

Separate Acts create "islands" for each form of community government and real or perceived barriers between one form of government and another. These "islands" do not necessarily promote progressive political evolution, assumption of greater authorities and responsibilities or a true reflection of a community government's capability. Hierarchical legislation, while favoured in many jurisdictions, can result in artificial barriers preventing community governments from assuming additional responsibilities, tapping new revenue sources or exerting a greater degree of decision-making and flexibility. At the same time, hierarchical legislation may assign responsibilities to a community government it is unable to handle.

Any changes to legislation must reflect the GNWT's Community Empowerment Priority, which would eventually see communities doing their own planning, deciding their own priorities, owning and managing all community-based infrastructure and associated programs, controlling and administering local programs, and managing community affairs.

There are a number of other developments underway at this time that are influencing the political environment within which community governments are operating. While many of these developments are beyond the scope of this review, they must be taken into account because of the profound changes they will bring about that will affect all levels of governance – community, regional and territorial – and will have a tremendous impact on the scope and application of municipal legislation.

The Northwest Territories will become two new territories in 1999. Nunavut in the east is homogenous, with 25 hamlets and one town. In contrast, the Western Territory presents the challenge of widely diverse community government circumstances. Following Division, either or both new governments may wish to tailor the structure and authority of community governments to reflect the political climate of that time. While the intent of the current legislative review is to develop a legal framework that is broad enough in scope to suit the realities of East and West, it will be up to the new governments to decide whether they want to adopt the NWT legislation. Designing legislation to anticipate the future aspirations of two new territories is a difficult task.

The development of a constitution for the new Western Territory is underway. While Nunavut's constitution will essentially be the *Nunavut Act*, the Western Territory will continue to operate according to the current *Northwest Territories Act* until a new, more modern Act is developed. While the constitutional development process focuses on the powers and structures of the territorial government and does not address the division of authority and jurisdiction among the central, regional and community levels of government, the change to the overall framework of territorial governance will have an impact on local government. At the same time, it is recognized that a new Western Constitution must compliment developments in the area of aboriginal self government.

The GNWT wants to move forward with a meaningful self government agenda which is based on both a recognition of the inherent right and on an integrated public government/self-government model for the rationalized delivery of services. The integrated model for the implementation of self government is one which blends, where appropriate, aboriginal governing institutions with community governments in a way that protects and strengthens the ability of aboriginal peoples to thrive as peoples, ensures representation of all residents, and promotes strong community level government.

It is clear that this integrated approach will radically affect the structure, authority and jurisdiction of municipal governments within aboriginal settlement areas. Much of the specific detail regarding the nature of the relationship between public and aboriginal governments will be negotiated through each self government agreement and as such, it is difficult to predict the outcome. Because aboriginal and treaty rights, including the inherent right of self government, are constitutionally protected, self governing institutions may hold higher legal status than other levels of government in the West. Working relationships between the different governing institutions will have to be established.

These factors point to a need for new legislation to empower a range of governance structures which can be tailored to the needs of unique communities and regions. The Review Committee recognizes that the realities of Division and aboriginal self-government must be accommodated in new community government legislation. However, the broader policy decisions about the form community governance structures will take in the two new territories go beyond the mandate of this review and into the processes of aboriginal self-government negotiations, implementation of the Nunavut Final Agreement, and Western Constitutional development. Extensive public consultations have already taken place through these political processes. The Committee is establishing working relationships with the bodies responsible for broader political changes so that our efforts can be coordinated. Cooperation is the best way to ensure that where necessary, new community government legislation will enable rather than restrict the aspirations of residents in both East and West.

What do you think?

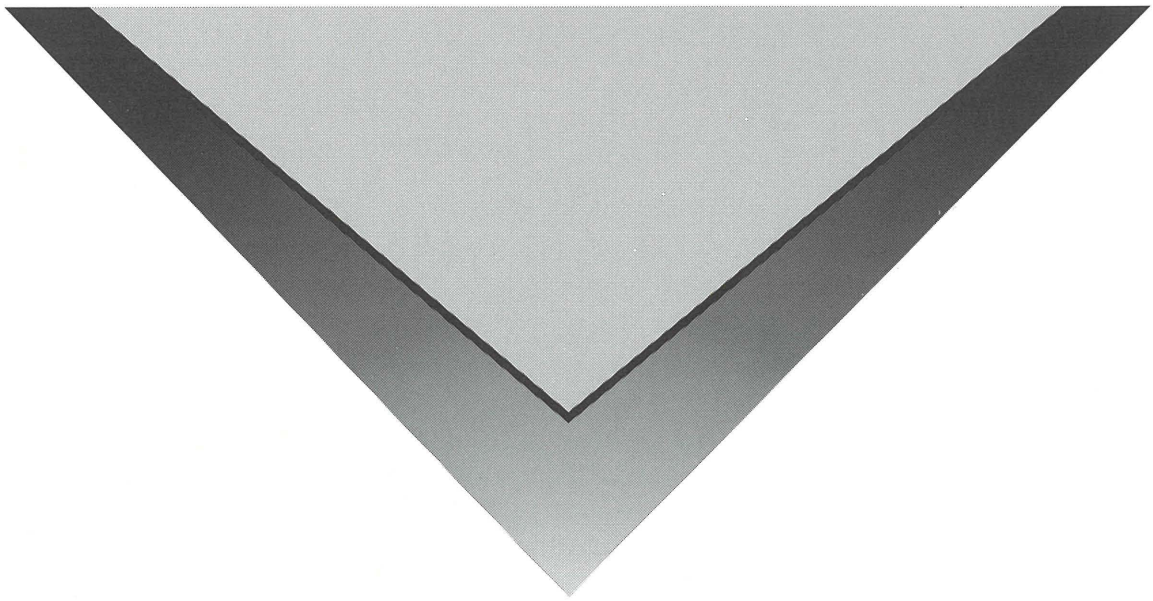
Do you think the four community government Acts should eventually be consolidated into a single Community Government Act? Would it be preferable to retain and restructure separate Acts?

Do you agree with the Review Committee's proposed approach to developing new community government legislation? Are there other approaches you would like to suggest?

What is Proposed

- The option of consolidating the four community government Acts into a single Act to eliminate redundancies without changing the current forms of community government will be considered. This first step could help pave the way toward more substantial changes which would be made at a later time.
- The Review Committee will proceed with changes, such as those proposed in the other sections of this paper, which it believes will serve all eventual forms of community government in both East and West. At the same time, the Review Committee will seek the cooperation of the bodies responsible for aboriginal self-government negotiations, Western constitutional development and the implementation of the Nunavut Final Agreement in preparing legislation to enable new community governance structures.

LOCAL AUTHORITIES ELECTIONS ACT



FLEXIBILITY

What Exists

The exercise of the democratic right to vote is a tradition of Canadian government. The GNWT's direct interest in protecting this right is evident in the numerous Ministerial authorities and generally prescriptive and careful style of the *Local Authorities Elections Act*.

Why Change

While there is general support for clearly established procedures and voting rules that ensure a fair and democratic election result, some areas of the legislation are unnecessarily restrictive.

A number of amendments have been proposed in Phase I of this review, including several that will provide greater flexibility. Included in Phase I amendments are provisions for mobile voting stations and for the appointment of Electoral Officers who may decide certain election matters that currently have to be decided by a judge.

Election dates for community governments are fixed, for hamlets the second Monday in December and for cities, towns and villages the third Monday in October. These dates are not always suitable for all regions and communities. There are no compelling reasons for having NWT-wide election dates. Indeed, charter communities fix the election date in their community charters and settlement corporations vote on the date fixed in their establishment order.

A person who is a full time permanent employee of the Council is not eligible to stand as a candidate. As communities assume responsibilities from the GNWT for housing or other areas, employees of these community authorities become ineligible to stand as candidates or serve as Councillors. In smaller communities this can create a shortage of adequate eligible, interested and competent candidates.

Eligibility rules for voting and standing for Council elections do not necessarily have to be the same in all communities.

A councillor is currently required to vacate his or her seat if convicted of a serious criminal offense. The legislation does not say how this can be enforced if the councillor refuses to vacate his or her seat.

The Minister may require a community council or local education authority to conduct a vote on any question at the same time that an election is held. No provisions are made for the procedures and rules of the Act to apply for a plebiscite or referendum at any other time, such as the recently held Nunavut Municipal Lands Referendum.

How can the Act be made more flexible to suit the needs of individual communities?

◆

What decisions and rules could be made at the community, rather than the territorial, level?

◆

Are there some rules or standards which should apply throughout the NWT?

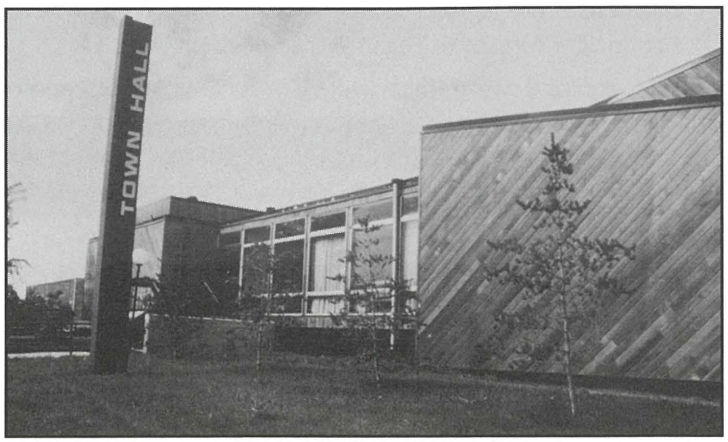
What do you think?

Are there any restrictions on the eligibility of councillors that you think should be legislated so that they apply across the NWT?

Are there any restrictions on voter requirements that you think should be included in legislation so that they apply across the NWT?

What is Proposed

- Legislation should provide for election dates to be set regionally, or by individual communities. There should be a requirement for communities to be consistent in setting their election dates.
- Legislation should provide for some local decision-making on the eligibility of Council candidates.
- Legislation should provide for some local decision-making on voter requirements.
- The provision requiring councillors convicted of serious criminal offenses to vacate their seats should be changed so that it is easier to enforce. For example, the legislation could state that such councillors are deemed to have resigned their seats as of the date of their conviction.
- Legislation providing for the application of the Act to other territorial or regional plebiscites or referendums should be considered.



Campaign Finances

What Exists

The Act makes no reference to community government candidates' campaign finances.

Should candidates be required to report on their campaign finances?

Why Change

Public interest in the accountability of councillors may justify reporting requirements for both campaign contributions and spending. Such requirements are already in place for territorial and federal elections and, in some jurisdictions, for municipal elections.

It is recognized that many candidates for community government elections receive few financial contributions and do not spend very much, and that campaign finances are a concern only in a few communities. To balance the public's interest in knowing "significant" amounts and the possibility that reporting requirements might discourage some candidates from running for office, legislation could require reports only for contributions or payments over a set amount.

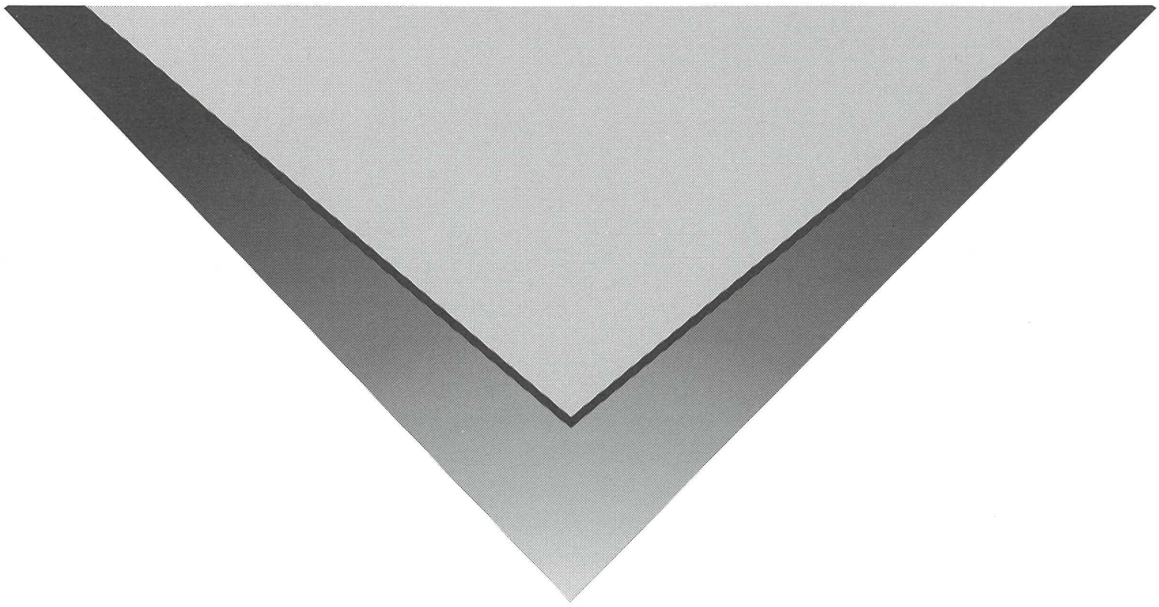
What is Proposed

- Legislation should require reports of campaign contributions above a set amount and statements of campaign expenses.

What do you think?

What amount should be fixed for the campaign contributions reporting requirement?

PROPERTY ASSESSMENT AND TAXATION ACT



Regulation of Property Assessment

What Exists

The GNWT currently provides property assessment services for the general taxation area (GTA) and municipal taxation authorities (MTAs). In Yellowknife, assessment services are contracted to the City. The Act, along with the *Property Assessment Regulations*, contains a number of rules on how and when assessments are to be carried out. These rules apply uniformly throughout the NWT. For example, all land is currently assessed at market value, while all improvements are assessed according to their replacement cost.

Why Change

Community governments could be allowed to manage assessment services for property within their boundaries, as has been arranged with the City of Yellowknife.

For those communities with taxation authority, expanded assessment powers would provide an opportunity for more control over the entire property assessment and property taxation process: the major own-source revenue of municipalities. For communities in the GTA, assessment powers could be considered once full property taxation authority is assumed.

With the transfer of assessment responsibilities to communities, some of the rules and standards which currently apply throughout the NWT might no longer be appropriate. There is a need to review the current rules to determine which are in the territorial interest, and which could reasonably vary on a community by community basis, according to local needs.

More specific assessment issues are considered in later sections of this paper.

Should some responsibilities for the management and regulation of property assessment services be transferred to communities?

◆

Should some of the rules and controls on how assessments are done be removed from the regulations?

◆

Should market value or replacement cost be used as the assessment base?

What do you think?

Do you agree that some or all communities should be allowed to manage assessment services for properties within their boundaries? Should some or all communities be required to manage their own assessment services?

Should some of the rules and controls listed in the proposals be changed or removed from legislation?

Are there some assessment rules which could vary from community to community? Should some or all communities be allowed to regulate some assessment matters? Are there rules which should remain uniform across the NWT?

Should land continue to be assessed at market value? Should improvements continue to be assessed according to replacement cost?

What is Proposed

- Community governments should have the opportunity to take on the management of assessment services for properties within their boundaries.
- Current rules and controls in the Act and Regulations will be reviewed to determine whether they are necessary to protect the territorial interest or should be removed or changed. The option of allowing communities to regulate some assessment matters will be considered where rules and controls do not need to be uniform across the NWT. Rules and controls on the following matters will be reviewed:
  - liability to and exemptions from assessment;
  - the manner in which assessments are made;
  - the frequency of assessments;
  - assessment roll format and contents;
  - assessed owners (e.g. who is assessed in the case of employees living in staff housing);
  - assessment notices; and
  - formulae for calculating assessed value based on market value for land and replacement cost for improvements.

Appeal Procedures and Timing

What Exists

Complaints to the Boards of Revision and Assessment Appeals Tribunal must be made by written notice containing certain information.

Once a complaint is filed with a Board of Revision there are no requirements for the complainant to use the hearing process available before forwarding the claim to the Assessment Appeals Tribunal. No dates are set for the hearing of assessment complaints by the Assessment Appeals Tribunal.

How can the process for appealing assessments be improved?

Why Change

The Boards of Revision and Assessment Appeals Tribunal often lack information concerning complaints, which results in hearings being delayed until further information is provided. Frivolous complaints and uncontested complaints which could have been settled without a hearing are sometimes heard because not enough information was provided in the complaint.

Boards of Revision complain their hearings are not taken seriously as some complainants intend to take their cases to the Assessment Appeals Tribunal from the beginning and only go through the motions of filing with the Board.

Backlogs of complaints have developed. Complainants have had to wait up to two years to go through the Board of Revision and Assessment Tribunal hearings and receive final judgments. Municipal taxing authorities have had to make retroactive repayments of taxes, in some cases requiring significant adjustments to their current budgets.

What is Proposed

- The dates by which the Assessment Tribunal must meet, and dates by which individual complaints must be heard should be set in legislation.
- Legislation should further specify the information that must be included in complaints, and provide authority and procedures for the Tribunal to request additional information from complainants in support of their complaints where necessary.
- Legislation should provide that complainants must make representations to Boards of Revision prior to appeals to the Tribunal, and provide the Tribunal with the authority to reject complaints not properly represented before a Board of Revision.

What do you think?

What time limits should be set for complaints to be heard?

What additional information should be required in complaints?

A Northern Assessment Base

How can the assessment base be changed to better reflect northern property values?

What Exists

The current property assessment levels, as set out in the Property Assessment Regulations, are 66.6% of Edmonton costs for improvements and 100% of actual land market value in the municipal taxation areas (MTA), and 100% of historic costs of land development in the general taxation area (GTA).

A 1994 amendment to the regulations allows the City of Yellowknife to use a base of 1.35 times Edmonton costs for improvements, a figure more in line with the market values in Yellowknife. The resulting assessments showed a significant shift toward improvements constituting a larger proportion of total assessments.

Why Change

The current assessment base places a disproportionate weight on land values (100% of market value or development cost) compared to improvements (66.6% of Edmonton costs), except in Yellowknife. This disproportionate weight on land values may result in an inequitable distribution of property tax burdens, to the benefit of more intensively developed parcels. Some taxing authorities have attempted to redress part of this imbalance by levying higher mill rates on higher-density properties, particularly multi-family residences, although this provides only a crude and partially effective solution.

The Canadian trend in assessment, spurred in large part by court cases in many of the provinces, is to a full market value system for both land and improvements. Indeed, the NWT is an exception to this standard practice. However, a complete market value system (land and improvements) is probably not practical in the NWT. Given the near lack of a real estate market in many communities, particularly in those which are small and remote, it is not possible to accurately determine market value. A system based on replacement costs for improvements, with equal weighting of land and improvements would perhaps be the fairest approach.

What is Proposed

- Legislation should provide a new assessment base for all communities, based on northern costs and an equal weighting of land and improvements.

Differential Mill Rates and Property Classifications

What Exists

Should there be controls on the amount the tax burden can be allowed to vary between different kinds of property owners?

The Act categorizes properties according to sixteen assessment classes which apply throughout the GTA. All seven tax-based municipalities (MTAs) categorize properties according to a number of property classes, although the scheme of categorization varies substantially from community to community.

Several MTAs segregate vacant land, while two differentiate on the basis of the density of multi-family units. Yellowknife maintains three developed commercial classes differing by the height of the building. The number of property classes used by each MTA is listed below.

Municipality	Number of Property Classes
Fort Simpson	16
Fort Smith	13
Hay River - Urban	11
- Rural	7
Inuvik	7
Iqaluit	8
Norman Wells	9
Yellowknife	5

Municipalities in the Northwest Territories use a broader range of property classes than do their counterparts in southern Canada.

Most MTAs levy differential or split mill rates on these property classes, although the incidence of these practices and the relative burden imposed on the various classes of property owners varies.

For the General Taxation Area (GTA), the GNWT assesses property according to the 16 classes set out in PATA, but levies three distinct mill rates.

In the GTA and in all MTAs except Yellowknife, a single education mill rate is set by the GNWT.

The rationale for differential mill rates varies. A range of rates may be established in attempt to compensate for perceived weaknesses and inequities within the present assessment and taxation system, in particular the disproportionate weighting of land values. Mill rates for annexed rural areas may be lower than those for the rest of the municipality. Higher mill rates have been levied for vacant lands as a disincentive for unimproved properties. Lower mill rates have been established for other classes to encourage development.

What do you think?

Do you think that either or both of the proposed options should be legislated? If you think that a maximum number of property classes should be legislated, what do you think that number should be? If you think that a maximum difference in mill rates should be legislated, do you agree this should be done by establishing a 2 to 1 ratio? Are there other options not mentioned you would like to suggest?

Why Change

Municipalities in the Northwest Territories use a broader range of property classes and a wider variety of mill rates than do their counterparts in other Canadian jurisdictions.

Some provinces legislate a maximum allowable ratio between the highest and lowest mill rates; others legislate a uniform mill rate or set a maximum number. In some cases, the province retains a veto over municipal mill rates. Some provinces require that the lowest mill rate be for residential property.

In the NWT, a taxing authority may use property classes and differential mill rates as a means of singling out one or more property owners. In one case in the NWT, the highest mill rate is applied to institutional properties, and multi-family dwellings are fixed at a higher rate than commercial and industrial properties. In another case, the taxing authority taxes those multi-family properties with between 40 and 149 units per hectare at almost twice the rate than similar properties with either fewer or more units. Only one such property exists in this particular taxation area.

One way of avoiding large variations in tax burdens is to restrict the ratio or relative spread between the highest and lowest mill rates.

What is Proposed

- Legislation should limit either the power to set property classes, the power to set mill rates, or both. Some options for doing this would be:
    - legislating a maximum number of property classes;
    - legislating that the maximum difference in mill rates be a ratio of 2 to 1 for the highest and lowest rates.

SPECIAL CONSIDERATIONS

Several types of property require more detailed consideration. Proposals for a northern assessment base, differential mill rates and the number of property classes presented in previous sections have bearing on these special properties and may or may not address some of the unique considerations outlined below.

Should changes be made to the way pipelines, works and transmission lines, machinery and equipment, special purpose properties and agricultural properties are assessed?

PIPELINES

What Exists

Pipeline assessments are based on Alberta's treatment of these properties, and cannot be directly compared to other property assessments. The large differences between pipeline mill rates and mill rates for other properties is largely a result of the difference in the assessment base.

Why Change

Pipelines have a different assessment base than other properties which, in turn, results in significantly different mill rates.

If a general move to a northern cost basis for assessment is viewed favourably, pipeline assessments should follow suit.

What is Proposed

- Legislation should provide for the assessment of pipelines with a new assessment base common to all properties.

WORKS AND TRANSMISSION LINES

What Exists

As with pipelines, works and transmission lines are assessed with a different method than is used for lands and improvements.

Why Change

Current assessment rates are purely arbitrary.

To the extent possible, all property should be assessed on the same basis.

The effective tax burden for works and transmission lines in other jurisdictions is substantially higher than in the NWT.

What is Proposed

- Legislation should provide for the assessment of works and transmission lines with a new assessment base common to all properties.

Machinery and Equipment

What Exists

Machinery and equipment is assessable if it forms an integral part of the activity or use of the land, whether it is mobile or fixed.

Why Change

The vast majority of equipment integral to the activity on or use of land is in the heavy industrial sectors (mining and oil and gas). It has been argued that this way of assessing machinery and equipment is discriminatory, particularly in the case of mobile or non-fixed equipment.

Seven provinces do not assess machinery and equipment, one assesses it at the level lower than any other property and the Yukon assesses only fixed machinery and equipment.

What is Proposed

Legislation should exempt mobile equipment from assessment, even if it is an integral part of the activity or use of the land.

Special Purpose Improvements

What Exists

The GNWT uses the Alberta Assessment Manual and its assessment rates for assessing improvements in the NWT. However, several special purpose properties are exempt from taxation or are not eligible, under Alberta policy, for government grants in lieu of property taxes. Assessment procedures and rates for these properties are not contained in the Alberta Assessment Manual. As an example, hospitals are exempt from taxation in Alberta and, therefore, not included in the Alberta Assessment Manual.

Current legislation and regulations do not specifically prescribe the methods or rates to be used in assessing these types of properties.

Why Change

The means by which assessors calculate the assessed values for these special purpose properties are debatable and have been the subject of assessment appeals.

To ensure fairness and equity, methods for assessing these special properties should be regulated.

What is Proposed

- Legislation should establish regulations respecting the assessment of special purpose properties, including reference to definitive assessment manuals.

Agricultural Property

What Exists

The method of assessing agricultural properties is no different than that for other land and improvements. There is no separate property class for agricultural property.

Why Change

Most Canadian jurisdictions have separate assessment methods, such as those based on productive value, for farmland. The small number of agricultural properties in the NWT may make it impractical to adopt a sophisticated assessment system for farmland. A regulated formula, possibly based on raw land values, may be appropriate. Machinery and equipment integral to the use of farmland is currently assessable. As noted under the section on machinery and equipment, this practice may be unfair. Agricultural property in other jurisdictions is usually accorded its own property class.

What is Proposed

- Legislation should establish a separate property class for agricultural land, and a regulated formula for assessment, based on raw land values.

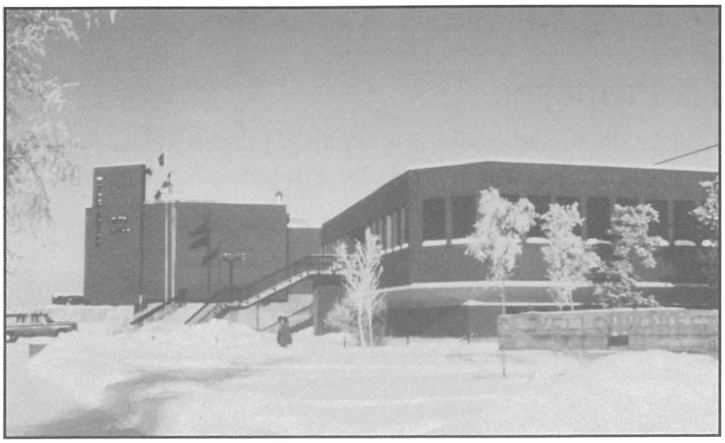
The Next Steps

The Municipal Legislation Review Committee welcomes any feedback from community government Councils, Band Councils, Mayors and Chiefs, Settlement Chairpersons, Senior Administration Officers and their senior staff, and others with a stake in community governments. The views and opinions of the public, ratepayers and user groups will also be sought.

In early 1997, individuals and groups will be contacted for follow up discussions about these proposals for change. A variety of methods will be designed to provide opportunities for your input.

It is the Review Committee's intention to use the views, opinions and suggestions obtained to develop a draft report with recommendations. This report will be circulated for comment. The committee will present it's final report, reflecting comments on the earlier draft, to the Minister of Municipal and Community Affairs in late spring of 1997.

The Minister of Municipal and Community Affairs has made public her intention to submit to the GNWT Legislative Assembly new or amended legislation based on the recommendations of the Review Committee.



APPENDIX

Background

The *Municipal Ordinance* served as the law for the development of community governments in the Northwest Territories even before the GNWT arrived in the North in 1967. In the late 1960's, the GNWT borrowed from southern Canadian models to develop a unique hamlet form of community government. The revised *Municipal Ordinance*, which included provisions for hamlets, traditional tax-based community governments and settlements, continued to prescribe the organization and authorities of community governments until the late 1980's.

"Design For Devolution", a public discussion paper issued in 1983, invited feedback on proposals for new legislation. Broad consultations on various drafts of new legislation resulted in the current Acts, which came into force on January 1, 1988. These Acts are the: *Settlements Act, Hamlets Act, Charter Communities Act* and *Cities, Towns and Villages Act*. Other provisions of the old Municipal Ordinance, on elections procedures and assessment and taxation requirements, were spun off into the present *Local Authorities Elections Act* and *Property Assessment and Taxation Act*.

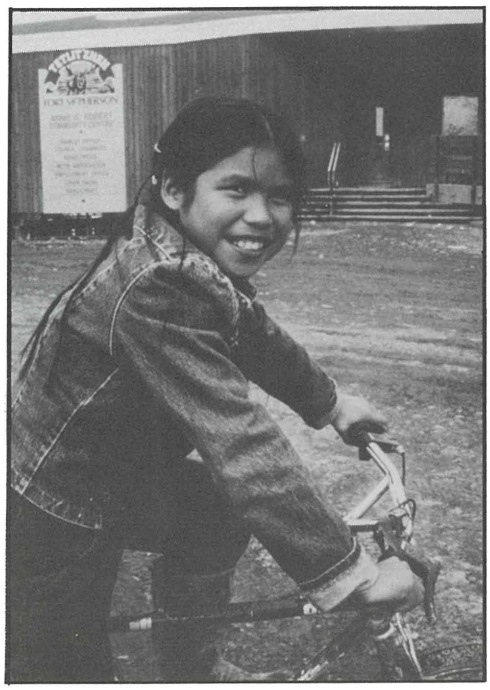
Seven NWT communities, all of which are tax-based, are incorporated under the *Cities, Towns and Villages Act*. Thirty-five hamlets are incorporated under the *Hamlets Act*. Three communities have separate community charters under the *Charter Communities Act*. Three communities are incorporated under the *Settlements Act*. Finally, a dozen communities, although organized and in most cases delivering municipal type programs and services, have no legal status under present GNWT legislation.

The current municipal Acts prescribe a ladder of community government authority. Unincorporated community governments provide municipal services and programs under GNWT policy provisions. In many settlements, Band Councils, under the federal Indian Act, serve as the community government authority. Hamlets and charter communities have local law-making authority (by-laws), which settlements do not, and a greater degree of budgeting authority; they receive unconditional transfer payments from the GNWT. Charter communities have local charters which formalize relationships and roles with respect to the band and municipal Councils. Although hamlets and charter communities may assume authority for taxing, none have chosen to do so. Tax-based municipalities (cities, towns and villages), have by-law making authority, local property taxation authority and long term borrowing rights.

For more than a decade, provincial, territorial and municipal governments in Canada have been grappling with the need to provide new, improved, and more accessible services to the public in a climate of financial restraint. Transfer payments to municipalities have been capped at previous levels of funding or have been cut. Both levels of government are trying to do more with less.

In recent years, provincial and territorial governments have responded by conducting broad reviews of the roles and responsibilities of community governments and the province or territory. In some cases, there has been a move toward the replacement of detailed, prescriptive legislation which tells municipalities what they have to do, with streamlined, updated, permissive Acts which allow municipalities to make more choices about what they do.

Major activity on some or all of these issues has been, or is, taking place in most of the provinces and territories.



Principles and Assumptions of Municipal Legislation

The following principles are proposed as the building blocks of new municipal legislation for NWT community governments.

Municipal legislation should clearly:

- set out community interests and territorial interests and objectives;
- provide the framework for community governments to assume authority and power and to acquire the resources to effectively and efficiently meet their responsibilities;
- define the roles and responsibilities of community governments and the criteria that will determine when the territory will directly provide service, delegate or devolve full authority to community governments, or share authority;
- define the roles and responsibilities of community governing authorities who, in the absence of a community government, provide community services;
- provide for community governments to define relationships with non-governing community authorities;
- provide for open, accessible, public and accountable community governments;
- make available the same powers and authority to all community governments, subject to territorial interests and objectives, and the roles and responsibilities assumed; and
- be workable, precise, and easy to read and understand.

Other assumptions which will guide the review are that:

- local authority and responsibility should be strengthened where possible;
- roles of political organizations other than municipal governments, such as Band Councils, Metis Locals and regional governments, should be recognized in NWT municipal legislation; this legislation should accommodate the requirements emerging from aboriginal self government negotiations, the implementation of the Nunavut Final Agreement, and the Western constitutional development process;
- local governments are distinct and separate;
- local governments need sufficient authorities and resources to take on responsibilities;
- local governments must be accountable to their residents;
- local governments are democratic, legitimate, representative and capable of meeting the public's needs; and
- good stewardship and management of money and other resources must be practiced by community governments.

Purpose and Objectives of the Municipal Legislation Review

The purpose of the review is to examine each Act and determine how it can be improved to:

- be more easily understood and interpreted;
- better meet the needs of community governments;
- recognize the diversity of community groups and political structures; and
- strike the right balance between flexibility and certainty and direction.

The Review Committee's objectives are:

- to identify areas of the legislation which concern users and other affected parties;
- to consider changes to eliminate or reduce interpretative difficulties;
- to consider changes that address the authority of community governments and, in particular, changes that would allow more flexibility in decision-making;
- to consider means to enable changes to community governance structures as required by the outcomes of the Western constitutional development process, implementation of the Nunavut Final Agreement, and aboriginal self-government negotiations;
- to review equivalent provincial and territorial legislation and consult with authorities from these jurisdictions on their experiences;
- to compare the benefits of separate acts with the options for amalgamation into a single community government act; and
- to seek the input of mayors, Councils, and other concerned parties.