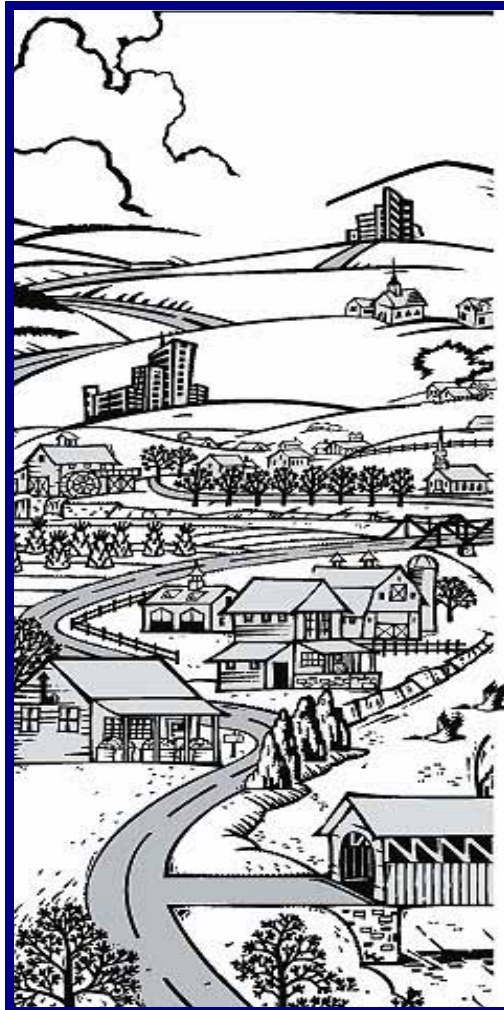


*Opportunities for Improving
Local Governance in New Brunswick*



**REPORT of the MUNICIPALITIES
ACT REVIEW PANEL**

September 1999

Aussi disponible en français.

Letter of Transmittal

September 17, 1999

**The Honorable L. Joan MacAlpine
Minister of Municipalities
Province of New Brunswick
PO Box 6000
Fredericton, NB
E3B 5H1**

Dear Madam,

The members of the Municipalities Act Review Panel are pleased to submit for your consideration a report entitled *Opportunities for Improving Local Governance in New Brunswick* which presents our observations, comments and conclusions regarding the proposed changes to the Municipalities Act.

The Panel sought the input of citizens, municipalities and other interested parties during a series of 25 public hearings held in 17 communities throughout the Province of New Brunswick from April 20th to June 10th 1999.

The consultation exercise proved to be both enlightening and interesting and provided a wealth of information for the Panel to consider. It was evident from the presentations at these hearings that there is a definite need for improvement in the current legislation.

The Panel is proposing a principled approach to developing a new Municipalities Act that will build upon the earlier recommendations of the Municipalities Act Review Advisory Committee and address the major issues and concerns raised during the consultation exercise.

The Panel concluded that a strong emphasis on enhancing openness, accountability, responsiveness and accessibility are essential elements of any legislative renewal that will increase local autonomy at the municipal level.

The Panel is also advocating the creation of a new Rural District Governance Model for strengthening the role of Local Service Districts and encouraging a gradual evolution to more democratic decision making in the rural areas of this Province.

Opportunities for Improving Local Governance in New Brunswick

We would be pleased to meet with you to review our findings and to clarify any matters of concern that you may have.

Thank you for giving us this opportunity to provide input into the development of the new Municipalities Act and we look forward to your response.

Respectfully yours,

Germain Blanchard
CO- CHAIRPERSON CO- CHAIRPERSON

Nancy McKay

Richard Gorham
PANELIST PANELIST

Patrick Woods CGA

***Opportunities for Improving Local
Governance in New Brunswick***

September 1999

**Government is a mixture of politics
and administration, accommodation and
logic, consent and decision, in an environment
subject to change through time.**

H. J. Whalen

*The Development of Local
Government in New Brunswick,
1963*

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EXECUTIVE SUMMARY

The Government of New Brunswick initiated a comprehensive review of the Municipalities Act in early 1995. In the first phase, a detailed questionnaire was forwarded to all municipalities seeking information about areas of concern and difficulties encountered by municipalities.

A nine member Municipalities Act Review Advisory Committee, representing the Union of Municipalities of New Brunswick, L'Association francophone des municipalités du Nouveau Brunswick, the Cities of New Brunswick Association and the Department of Municipalities and Housing, subsequently took this and other information into consideration and completed an extensive review of the existing legislation.

The Review Advisory Committee released the *Report of the Municipalities Act Review Advisory Committee*¹ in the fall of 1998. The report contained 234 recommendations that in some cases responded to very mundane issues while others would, if adopted, fundamentally change the operation and character of local government in New Brunswick.

The Department of Municipalities and Housing also undertook a separate review of the legislative provisions dealing with Local Service Districts. The review focused on the administrative framework for Local Service District operations and did not consider the appropriateness of the underlying structure or the role of the Local Service District Advisory Committees.

The Department issued a report entitled *A Review of Local Service District Legislation*² in January 1999 containing 33 proposals aimed at addressing problem areas associated with the administration and operation of Local Service Districts.

Mandate - The Municipalities Act Review Panel (**the Panel**) was mandated to undertake a public consultation to solicit input, feedback and suggestions on the recommendations made in the two earlier reports namely; the *Report of the Municipalities Act Review Advisory Committee (1998)* and *A Review of Local Service District Legislation (1999)*. The Panel was also mandated to identify other issues that municipal officials, representatives of Local Service Districts,

¹ Report of the Municipalities Act Review Advisory Committee, (Fredericton 1998)

² A Review of Local Service District Legislation, (Fredericton 1999)

interested groups and the general public believed should be addressed in the review process.

The Panel - It was considered appropriate to appoint a citizen panel independent of government that could interpret the input that was provided during the public consultations in an objective manner that reflected the concerns of all stakeholders.

The Panel was comprised of four members as follows;

GERMAIN BLANCHARD *Ex-Mayor and retired Principal, Ville de Caraquet*

NANCY MCKAY *Physiotherapist and Partner, O'Keefe McKay and Associates, Bathurst*

RICHARD GORHAM *Chairman, Kingston Local Service District Advisory Committee, Kingston Peninsula*

PATRICK WOODS *Deputy City Manager, City of Saint John*

The broad experience and varied backgrounds of the panelists brought the perspectives of citizens, elected officials, municipalities, Local Service Districts and administrators to the public consultation process.

The Process - A series of public hearings was then undertaken by the Panel in every region of the Province (Appendix 1) to obtain the input and comments of citizens, municipal elected and appointed officials and other interested groups. A total of 25 sessions were conducted in 17 communities around the Province over a six-week period in the spring of 1999.

The hearings were conducted in a structured but informal format that encouraged the active participation of those in attendance. The Panel received 59 written briefs and over 50 verbal submissions during the course of the hearings (Appendix 2). The comments, briefs and opinions of the presenters were considered in detail during the preparation of this report.

In addition, the Panel conducted a review of relevant academic and professional literature, considered the recommendations of earlier studies and reports prepared by, or for, other government committees and evaluated similar legislative initiatives recently undertaken in other Provincial jurisdictions in order to arrive at its conclusions and recommendations.

PANEL CONCLUSIONS AND RECOMMENDATIONS **RESPECTING GOVERNANCE IN INCORPORATED** **MUNICIPALITIES**

Current Situation - Some preliminary comments on the local governance structure in New Brunswick are in order. The current Municipalities Act (1973) is a product of the New Brunswick Royal Commission on Finance and Municipal Taxation³ (Byrne Report) undertaken in 1963 and the ensuing Equal Opportunity Program introduced in 1967.

The Panel believes the fact that many of the Byrne recommendations have stood the test of time and continue to be the model for progress in other jurisdictions highlights the potential benefit to be derived from adopting progressive and innovative approaches to renewing the legislation governing municipalities.

At present there are sixty-eight (68) Villages, twenty-eight (28) Towns and seven (7) Cities in New Brunswick. The character of these communities is as diverse as their size. Large and small rural communities, farming and fishing villages, coastal towns and seasonal tourist areas are scattered between the seven relatively small urban centers in the Province.

Single industry towns, island communities, built-up industrial areas and commercial centers are part of the urban landscape. Some communities are experiencing periods of growth and others are facing economic decline as global economic forces exert their influence.

The Panel concluded that this diversity in the nature, type and size of the communities in the Province leads to an equally diverse range of local needs and priorities and points to the requirement for a Municipalities Act that effectively accommodates this plurality.

Despite the many and varied concerns raised during the consultations, neither the Review Committee nor the Panel heard demands for fundamental change to the current division of powers between the Province and municipalities nor calls for restructuring the property taxation system as the prime means to fund local services.

³ New Brunswick Royal Commission on Finance and Municipal Taxation. Fredericton, 1963

The Panel concluded that there is no need to advocate structural changes to the current division of powers, the uniform property assessment or the property taxation system as part of the development of the new Act.

Opportunities for Improvement - The submissions received by the Panel cited many shortcomings in the current provisions of the Act. The Panel noted that the comments and recommendations of the participants often focused on ensuring that the new legislation fully and adequately accommodates the political and operational requirements of local communities. As a result, the Panel was able to identify significant opportunities to generate improvements in the quality and effectiveness of local governance in New Brunswick.

Increased local autonomy, more openness, enhanced accountability, elimination of ambiguous language, improved conflict of interest rules, the ability to offer development incentives and the elimination of nuisance claims were but some of the recurring themes that were of concern to those who participated in the public hearings. In many cases, the presenters suggested specific corrective action that could be taken while in others they pointed to a general approach that they believed should be adopted in the legislation.

Video lottery terminals, natural gas pipelines, Year 2000 issues and airport operations were not matters of local concern 30 years ago. In fact, the prescriptive nature of the current Act which obligates Municipalities to operate within the confines of narrowly defined grants of power to deal with purely local matters was cited as the fundamental reason for the inability of communities to respond effectively to such emerging issues⁴.

The Panel believes that developing a new Act is preferable to comprehensive revisions, as it will avoid an extended and piecemeal approach to legislative renewal that would undoubtedly create uncertainty and confusion at the municipal level.

The Panel fully supports the need for the timely development and enactment of a new Municipalities Act for the Province of New Brunswick.

The Panel concluded that the Municipalities Act must provide a strong governance framework, yet provide sufficient flexibility to accommodate a diversity of needs and priorities at the local level.

Activity in Other Jurisdictions - New Brunswick is not alone in its efforts to develop a new Municipalities Act. The Provinces of Manitoba, Alberta, Nova Scotia and British Columbia have each completed a similar undertaking. Their new Statutes have recently been adopted and are now being implemented.

The fact that these other jurisdictions have already embarked on reviewing and renewing the legislation governing municipal government provides many opportunities for the Province of New Brunswick. The Province can not only draw from the language used in drafting particular provisions in these new Acts

⁴ Report of the Municipalities Act Review Advisory Committee, (Fredericton 1998), p. 51

(Appendix 3) but can also learn from the experience gained in these other jurisdictions since the legislation has been enacted.

The Panel cautions that the fact that many other jurisdictions have adopted a particular approach is of no consequence if the provisions do not suit the New Brunswick experience.

The Panel recommends that the legislative solutions adopted in New Brunswick fully reflect local interests and practices and not merely mimic the efforts in other jurisdictions.

Communication - A concerted and deliberate effort at communicating the changes introduced in a new Act will provide citizens with an increased understanding of the roles and responsibilities of their local government. Likewise, user-friendly guides will assist local politicians and staff persons to properly interpret and implement the changes during the initial transition period.

The Panel recommends that the Province of New Brunswick provide user friendly supporting guides and explanatory material in conjunction with the introduction of a new Municipalities Act.

Key Considerations - The Panel took into consideration a number of key factors in order to arrive at its conclusions and recommendations.

It is recognized that neither the Province nor the Municipalities have unlimited resources at their disposal. Practical, straightforward solutions that could be implemented easily and on a timely basis are preferred over theoretical concepts that could involve putting in place elaborate, complex and expensive mechanisms with limited marginal benefit.

Another important consideration was the simple fact that the Municipalities Act must of necessity apply to all municipalities across the Province. The legislative approaches that meet the particular requirements of a large city may not be appropriate for a smaller suburban community.

As well, the Panel was cognizant of the need to develop a balance between the sometime conflicting demands for maximum flexibility insisted upon by some communities and the equally common requests from other communities for certainty in the new legislative provisions.

Of significant concern, was the ability of the municipalities to accommodate the new responsibilities that would flow from a more permissive legislative framework not only financially but also administratively and politically.

Key considerations in developing the Panel responses to the input received included, the need to develop practical, cost effective solutions, the fact that the new Act will apply to all municipalities despite divergent needs, the requirement to balance flexibility against certainty in the new legislative provisions and the ability of the communities to accommodate new political and administrative responsibilities.

Desired Outcomes - The Panel identified the following objectives in the development of a new Municipalities Act in New Brunswick:

- The Municipalities Act should fully reflect the dynamic realities that are very much a part of municipal government in New Brunswick.
- The new legislation should readily accommodate the changing political requirements and operational demands facing municipalities.
- The Act should provide long-term stability in the sense that changes to the new Act are not done in a piecemeal manner.
- The Act should be enduring by incorporating sufficient flexibility to adapt to changing circumstances at the local level.
- The new Act should be drafted in such a manner as to be easily understood not only by professional administrators or politicians but also citizens who have a right to know how their local government operates.
- Finally, the new Act must recognize that different communities possess different levels of maturity and expertise in matters of local governance and it must allow for and encourage a continued evolution to greater self-reliance.

The Panel concluded that the new Municipalities Act should provide an integrated framework for municipal governance, should accommodate changing political and operational requirements, should provide long-term stability, should be enduring, should be easily understood by citizens and should allow for increasing self-reliance at the local level.

Principled Approach - Given the overall complexity and range of matters under consideration and the fact that many of the issues and recommendations are inter-related, the Panel considered it necessary to adopt a principled approach to objectively assess and comment on the various recommendations.

A number of basic principles for assessing and evaluating the various recommendations were put forward during the public hearings. Antoft and Novack advanced four of the principles; accountability, accessibility,

responsiveness and public choice in a book entitled *Grass Roots Democracy, Local Government in the Maritimes*⁵. The authors presented the principles, "...as criteria by which to judge the adequacy and effectiveness of any form or variation of municipal government"⁶.

The fifth principle, openness, is sometimes regarded as a subset of accountability but the Panel believes that it is sufficiently significant in the context of municipal governance to merit separate consideration as a guiding principle.

The Panel concluded that the identified principles adequately reflect the current thinking and perspectives on this subject and provide a structured and objective frame of reference to evaluate the input received on the proposed changes to the Act.

ACCOUNTABILITY – Refers to the close relationship that often exists between elected officials and their constituents at the local level. In fact, it is frequently said that local government is the level of government 'closest to the people'. It is not enough, however, to be close to the people it is also necessary that local government see itself as answerable to the citizens for its actions or lack thereof. A heightened level of one on one citizen contact at the local level enhances the opportunities for citizens to ask those elected to report on or justify their positions or decisions on various issues. The use of a multitude of special purpose boards and commissions for instance raises questions about the accountability of elected representatives. Effective accountability requires openness in the affairs of government.

ACCESSIBILITY – Generally considers the ability of the public to make their views known to those elected. Ready access is viewed as positive in so far as it strengthens the accountability and responsiveness of the local government body. For example, a key issue in the proposed changes is whether or not citizens have a 'right' to be heard or merely a 'privilege' to be heard. Citizen access to information is another key element in assessing the performance, accountability and responsiveness of local government. Procedural matters, notice provisions, time and location of meetings etc. are all aspects of accessibility. As with openness, there is a need to strike a healthy balance between accessibility and protecting the municipality's financial and legal interests and the confidentiality of personal information.

RESPONSIVENESS – Flows from the premise that local government equates in many respects to local choice. As such, the quality and scope of local programs and services should generally reflect the desires of the community. Local autonomy is an essential element of exercising local choice. It is also the basis for insisting on legislative flexibility so that local governments can effectively respond to local situations as they best see

⁵ Kell Antoft and Jack Novak. *Grassroots Democracy, Local Government in the Maritimes*. Halifax Henson College, Dalhousie University, 1998, p. 155-7

⁶ *Ibid.*, p. 155

fit. The alternative is to treat all local governments as part of the Provincial administrative apparatus.

PUBLIC CHOICE - The decision to live in one area or another is influenced by many factors. Land values, taxation, proximity to work and the availability of social services are but some of the considerations. Where people choose to live will reflect what is important and possible for them. Real differences among municipalities provide for real choices for the public.

OPENNESS – Commonly recognized as a fundamental element in a democratic system of government. It goes beyond simply determining what matters are placed on the open session agenda at a particular Council meeting or accessing a particular document. Openness also encompasses the structural and procedural processes that allow citizens to scrutinize the workings of their local government. Openness suggests that citizens should be privy to the facts, the issues, the debate and the vote on all legislative matters before Council. Citizens are then able to assess the performance and responsiveness of those elected. The need for openness should not however be allowed to compromise the legal and financial interests of the community and its citizens.

The Panel noted that each principle supports a deliberate effort to recognize citizens as the primary focus of local government legislation. In fact, the stated principles have relevance only to the extent that they support respect for citizen interests. What is really being proposed is accountability to the citizens, accessibility to the citizens and responsiveness to the citizens, choice for the citizens and openness to the citizens of the community.

The Panel adopted the five basic principles of accountability, accessibility, responsiveness, public choice and openness as an objective basis for evaluating the comments and proposals put forward during the public consultations.

Response to Recommendations – Brevity does not permit a complete review of the Panel observations and conclusions concerning the recommendations presented in the *Report of the Municipalities Act Review Advisory Committee*. Two issues, increased municipal powers and the need for greater openness do, however, warrant particular mention.

Municipal Powers: The Panel noted strong support for the proposed move from the prescriptive approach of legislating municipal powers to the permissive or sphere of jurisdiction model that will serve to increase the responsiveness, accountability, autonomy and authority of locally elected governments. The change was viewed as a significant and positive move forward. An enhanced ability to respond to local issues, in a manner deemed most appropriate by the local community, was considered particularly advantageous.

It must be recognized that with increased local autonomy to legislate and regulate comes a consequent increase in local responsibility for both large and small communities. The Panel is conscious of the fact that adapting to these new powers and responsibilities may be a greater challenge for some communities than for others because of limited resources and expertise.

The Panel notes that in all cases, municipalities will no longer be able to use the excuse that a lack of legislative authority prevents them from responding to emerging matters. Local autonomy means that Councils will have to accept the political challenges and legislative responsibilities that arise when confronted with controversial issues.

The Panel also believes that the resulting flexibility will encourage experimentation at the local level that should lead to the development of new and innovative solutions to common municipal problems. All communities will benefit from the opportunity to learn from each other and as appropriate, adapt the innovative actions of other municipalities to their own situations.

Providing increased autonomy and authority at the local level is an important development in the ongoing evolution of municipal government. This progression must however be accompanied by effective accountability to the electorate. The public must have the opportunity to know how and why legislative initiatives are developed and adopted, particularly in light of the increased bylaw and regulatory authority that flows from the permissive model.

The Panel fully endorses the use of a permissive approach to legislating municipal powers and concluded that increased municipal autonomy must be accompanied by increased accountability to the electorate through strong legislative provisions for openness and access to information.

The threat of downloading of additional service responsibilities by the Province to municipalities, with or without financial compensation, is one that will continue to exist regardless of the legislation in place at any given time is permissive or prescriptive. The reality is that Provinces have the constitutional authority to dictate the powers, duties and responsibilities of municipalities. The legislation governing municipalities can be changed unilaterally by the Province if it deems it necessary or appropriate.

The most meaningful protection available to municipalities is a close working relationship with the Province and on-going dialogue in a spirit of mutual respect and cooperation. It is unrealistic to believe that confrontation can be completely avoided but such should not be the order of the day.

The Panel strongly urges the Province to carry out extensive consultations with municipalities well in advance of any planned downloading or transfer of service responsibilities.

Openness - The need for more openness in local government was rarely contested during the public hearings. There was broad agreement that the new Act had to establish clear and unequivocal rules governing a Council's ability to conduct business in private.

Presenters stressed that the current practice of Councils to use closed meetings to discuss and debate municipal business does not serve the public interest. Citizens are effectively denied their right to be apprised of all aspects of matters before Council including the pertinent facts, the perspectives and positions of their elected representatives and the reasoning behind the decision that was finally adopted.

The Panel believes that openness is a fundamental attribute of good local governance from the perspective of enhancing both effective accountability and responsiveness. No other aspect of the renewal of the Municipalities Act has as much potential to improve the character and quality of local government in New Brunswick.

The public should be able to easily scrutinize the workings of their local Councils as a matter of course. Openness must not only be protected and preserved as a basic principle of good local governance but also be fully reflected in the pertinent legislative provisions.

Clear legislation restricting the use of closed meetings, providing easy access to municipal information and affording citizens a right to be heard by Council are considered essential in the interests of accountability, accessibility, openness and responsiveness. This is particularly important in light of the move to a more permissive legislative environment.

Adopting a basic requirement for openness in all but the consideration of very limited subject matters will greatly increase the accountability of those elected to the electorate, encourage meaningful and thoughtful debate at the Council table and provide citizens not only a better understanding of the issues but also a means of assessing the performance of those who govern their city and a knowledge of why they make the decisions they do. It will also have the effect of making local Councils far more responsive to the needs and priorities of their citizens.

The Panel drew a distinction between secrecy and confidentiality. The Panel recognizes that certain confidential matters are appropriately considered in private in order to protect the legal and financial interests of the community and

the privacy of personal information. The only matters deemed appropriate for closed meetings (absent the public) should be those subjects considered confidential by their very nature.

The limited exemptions for these specific subjects should be specifically and explicitly set out in the legislation. The Panel cannot support the broad exemptions contemplated in the Review Advisory Committee recommendation as they undermine the spirit and intent of the basic principle that the public's business must be done in public.

The Panel strongly recommends using clear and unequivocal statutory language that is not open to broad interpretation or varied application when setting out the requirements for openness in respect of access to Council meetings, a citizen right to be heard, access to information and any related exemptions. The requirement for openness should also apply all committees of a Council and all boards, commissions and agencies established or funded by a municipality.

Resources - A repeated concern of both large and small municipalities was their inability to incur additional costs without resorting to tax rate increases. The smaller communities in particular pointed out that they have very limited numbers of staff and it will create problems to take on additional responsibilities relating to access to information or bylaw preparation and enforcement.

It was not suggested that the proposed changes be abandoned but rather that the Province support the transition to the new Act by preparing model bylaws, offering transition funding for training or engaging lawyers and conducting detailed teach-ins at the local level prior to the enactment of the new Act.

The Panel recommends that the Province of New Brunswick supports the transition to the new Municipalities Act with in-depth training and orientation programs and the preparation of model bylaws and that financial support be provided only in cases of financial hardship.

Many also pointed to the need for stable and sufficient Unconditional Grant Funding. The universal complaint was that the reductions in the Unconditional Grant coupled with a change to the grant formula itself were putting undue financial pressure on municipalities.

The Panel agrees that a sufficient level of Unconditional Grant Funding is necessary for municipalities to fulfill their governance responsibilities, however, consideration of the formula for distributing such funding is beyond the mandate of this Panel.

Municipalities as a Third Order of Government - Certain presenters suggested that it was necessary for the Federal and Provincial levels of governments to fully recognize the municipal level of government as a legitimate third order of government in Canada as opposed to a so-called "creature" of the Province.

It was suggested that only then would municipalities be able to take their place at the political table as equal partners and fully represent the broad range of interests affecting their constituents.

The Panel agrees that only when Municipalities are recognized as true political partners (as opposed to a local service delivery agency) with the Federal and Provincial governments will the full range of community interests be adequately represented.

The Panel concluded that the issue of the constitutional status of municipalities is an important and relevant matter that should be pursued by New Brunswick municipalities working in concert with other municipalities across the country independent of this legislative review. However, it raises significant legal and jurisdictional issues that are well beyond the scope of the Panel mandate.

Municipal Relationships with LSDs - Both Local Service Districts and incorporated municipalities cited the need for a more effective working relationship. The municipalities and other presenters urged the Panel to recommend mandatory cost sharing by the LSDs for the use of municipal services and recreation facilities. The need for a detailed study to determine how to best resolve the issue was also identified.

Municipalities believe that they are currently subsidizing LSDs at the expense of municipal residents. The cost sharing models suggested by these presenters ranged from rates based on buffer zones, to negotiated amounts, to amounts determined by the Municipal Services Representative based on municipal costs incurred.

The LSD Advisory Committees complained about a lack of consultation by the municipalities and having last minute demands made for cost sharing when the LSDs had no input into the quality, character or scope of regional projects. They also contend that their ongoing patronage of businesses in the municipalities helps to support the municipal tax base, which in turn helps to fund services commonly used by non-residents.

The Panel recommends that the Province of New Brunswick undertake a detailed analysis of all aspects of the financial relationship between

municipalities and unincorporated areas including but not limited to taxation and cost sharing for common services.

The Panel recommends that pending completion of the above, that cost sharing for municipal services should continue to be a matter for negotiation and resolution at the local level.

Amalgamation Initiatives - The need for prior consultation with local communities that may be the object of an amalgamation exercise was put forward during the public hearings. It was suggested that there was a need to establish a well-defined and structured process to identify the appropriate communities of interest before any such undertaking. As well, a requirement was cited for a municipal guide setting out the methods and procedures necessary to implement successfully a decision to amalgamate.

The Province can be no less accountable than local governments when it initiates action at the local level that will have a major impact on the quality and character of a community. The Panel believes that citizens have a right to know and understand on what basis municipal restructuring decisions are to be made. The Panel concluded that the Province should elaborate specific principles, standards, and criteria that are to be taken into account in a municipal restructuring exercise.

The Panel recommends that the new Act provide explicit requirements for municipal restructuring initiatives including;

- **a structured process to identify the appropriate communities of interest before any such undertaking.**
- **notification and consultation requirements**
- **stated procedures, principles, standards and criteria for evaluating such proposals.**

A Provincial guide setting out the actions and sequence of events required to implement a decision to amalgamate should also be prepared to support the affected communities.

Need for Ongoing Consultation - Both individual municipalities and their associations noted that the success and support of the current revision exercise is due in large part to the concerted effort on the part of the Province to consult with the municipalities prior to making any decisions. The current departmental emphasis on consultation was praised as being both healthy and positive and regarded as a foundation for improved cooperation and communication.

They went on to recommend that the balance of the revision of the Municipalities Act be accompanied by ongoing consultation citing a particular need for municipalities to have an opportunity to review the final version of the new Act prior to enactment.

The Panel strongly recommends that ongoing consultation with the municipalities and unincorporated areas be employed as an essential element in the development of the new Municipalities Act legislation.

Definitions and Language - The Panel was pressed on the need for clarity of language so as to avoid misunderstandings, legal challenges or costly administrative mistakes. Several examples were presented where terminology in the Review Advisory Committee report remained undefined and thus open to interpretation and dispute.

Similarly, several inconsistencies in the translations were brought to the Panel's attention. For example the French treatment of the term "Head of Council" is inconsistent with the apparent meaning in the English text in the Review Advisory Committee Report. The need for careful attention to detail and accuracy in both official language versions of the Act was highlighted.

The Panel considers clarity an issue separate from, but related to, the recommended use of a plain language approach. Legislative provisions using plain language can still be vague or unclear to the user of the Act unless a deliberate effort is made to avoid such situations. The use of interpretive clauses and user guides may also assist in this regard.

The Panel recommends that:

- **Clear and precise definitions should be given to all key terms.**
- **Great care should be taken to ensure that both official language versions of the new Municipalities Act are consistent regarding definition, intent and application.**

Momentum and Need for Action - The Review of the Municipalities Act was announced in the 1995 speech from the Throne and the process has been ongoing since then. The Panel believes that the efforts undertaken thus far have created a real expectation for meaningful and timely change.

Not one presenter argued for maintaining the status quo. In fact, many went to great lengths to identify the practical difficulties encountered on a day to day basis when trying to govern or administer their communities under the current legislative regime. At the same time, the media and individual citizens recounted their frustration in trying to access local governments or to secure public information.

There is a broad level of interest in the outcome of the renewal of the Municipalities Act given the extensive participation in the review and consultation processes. The public consultation conducted in the most recent phase has reinforced the need for change and created a tangible desire to move forward to develop the new Act.

The Panel urges the Province to build on the public interest and momentum generated thus far in the review process and to continue to move forward on a timely basis with the development of a new Municipalities Act. The risks are few and the opportunities are many.

**PANEL OBSERVATIONS AND CONCLUSIONS RESPECTING
GOVERNANCE IN UNINCORPORATED LOCAL SERVICE
DISTRICTS**

Background - The Municipalities Act provides for the establishment of Local Service Districts and the various procedures for their operation and the provision and payment of services. Approximately 40 percent of the provincial population live in these unincorporated rural areas.

The Local Service Districts (LSDs) are administered by the Province and do not have a locally elected, accountable level of government⁷. The Minister of

⁷ A Guide to Municipal Government in New Brunswick, (Halifax, 1995), p. 6

Municipalities is responsible for the provision of services in these areas and may seek the advice of LSD Advisory Committees on such matters.

Of the two-hundred-and-seventy-one (271) Local Service Districts in the Province of New Brunswick, only one-hundred-and-sixty-eight (168) have LSD Advisory Committees in place.

The Department of Municipalities and Housing⁸ conducted a review of Local Service District legislation in order to “ensure that the legislation governing service provision in the unincorporated regions is functional, up-to-date and meets the servicing requirements of residents of the Local Service Districts”.

It is important to note that the Department emphasized that its review of the Local Service District legislation was based only “on an examination of the administrative framework for Local Service District operations” and did not “consider changes to the fundamental structure or orientation of Local Service Districts”. Their final departmental report entitled *A Review of Local Service District Legislation* produced 33 proposals for improving the procedures and operations in LSDs for consideration in the new legislation.

General Observations - The public input received by the Panel respecting the basic role of Local Service Districts went much beyond comments concerning the 33 proposals in the Review of Local Service District Legislation.

With respect to Local Service District administration in general, the presentations and comments made to the Review Panel throughout the Province had a consistent theme. LSDs expressed a feeling of frustration at the lack of any meaningful participation in the governance of the districts. This frustration was advanced from a variety of perspectives given the diversity in the size and character of the Local Service Districts in the Province.

The many and strong representations from citizens in the unincorporated areas pointed to significant weaknesses in the current model of governance in Local Service Districts. Presenters cited the absence of mandatory consultation, a lack of authority to decide on local matters, limited understanding of roles and responsibilities, lack of representation on regional agencies and ineffective community planning as major shortcomings that needed to be rectified.

A combined lack of decision-making power with no effective voice on local issues creates a situation where forty percent of the population of the Province lives in communities without even the semblance of local government. Democracy is a theory and administrative convenience is too often the reality in matters of local governance in the rural areas of this Province.

⁸ Referred to as Department of Municipalities since July 1999

The presenters made no requests for incorporation as full-fledged municipalities. The comments generally supported retention of the current advisory-structure without an administrative bureaucracy and expressed a desire to be more actively involved in local decision-making.

Changing local needs, divergent local priorities, an increased desire by citizens to work for the well being of their communities and criticism about the lack of meaningful local input into decisions affecting their communities gave the Panel a clear indication that there is a need for a better model of governance in unincorporated areas. The status quo is not acceptable.

Range of Needs - Policy makers are sometimes quick to lump all Local Service Districts in the 'rural community' basket as though they were an homogeneous group facing the same concerns, open to the same solutions and well served by a consistent structure. The reality is far different. Local Service Districts embrace coastal, farm, fishing and tourist communities to name but a few.

Some are adjacent to urban areas while others are far distant. Some have active LSD Advisory Committees, others inactive. Some must contend with a large influx of seasonal residents while others must deal with large-scale forestry or industrial operations. Yet others must cope with the local impact of decisions made in nearby urban areas. This reality points to a wide variety of interests, problems and priorities in the various Local Service Districts.

The Panel believes and the new Municipal legislation must allow for divergent governance requirements, foster local choice and encourage respect for local decisions in the unincorporated areas of the Province of New Brunswick.

Participation - The Panel learned that of the 271 Local Service Districts in the Province of New Brunswick only 168 have active LSD Advisory Committees in place. The presenters seemed to believe that citizens saw little to be gained from participating on an LSD Advisory Committee perceived to have no real authority, was seldom consulted and rarely listened to by Provincial authorities.

There is very limited understanding of the concept of a Local Service District and the roles and responsibilities of LSD Advisory Committees. The Panel concluded that this lack of understanding is also a major contributing factor to both the lack of participation in the political process in unincorporated areas and the overall sense of frustration.

The Panel recommends that, in consultation with representatives of LSD Advisory Committees, the Province develop appropriate educational materials (print, video, internet) to explain the role and functioning of a Local Service District and the LSD Advisory Committee.

Resources - The Panel noted a great disparity across the Province in the type and level of funding that LSD Advisory Committees are able to access in support of their mandate. A lack of adequate financial resources effectively undermines an LSD Advisory Committee's ability to exercise its function.

The Panel strongly recommends that an adequate administrative support budget be immediately provided for each functioning LSD Advisory Committee. In addition, the LSD Advisory Committee should be given complete discretion over the use of these funds according to a budget plan.

Land Use Planning - During the public consultations a number of LSD presenters expressed considerable concern about the lack of information and consultation being provided by the Rural District Planning Commission or by the District Planning Commission in which they found themselves. Some presenters were not aware whether or not their area was even included in any Planning Commission.

The Panel cannot overstate the fundamental importance of effective land use planning in the long-term development of healthy, vibrant communities in the rural areas of this Province. The key to building support for local land use plans is meaningful citizen input and consultation at every stage of development of the community plan.

Residents must have a voice in selecting their representatives on the planning agency, have real input in the development of their plan through broad based community consultation and must be consulted on the actual day-to-day implementation of the plan through vehicles such as local Planning Advisory Committees. The residents must also have an understanding of the processes and mechanisms that are established so that they can fully appreciate and respect their rights and obligations.

The Panel concludes that there is a significant communication gap between Local Service Districts and the relevant District Planning Commissions and recommends that the Government take immediate steps to ensure that the constituent unincorporated areas are fully informed of and have meaningful and ongoing representation and input into all aspects of local planning administered by the District Planning Commissions.

Number of LSDs - Many presenters questioned the necessity of maintaining the large number of Local Service Districts in the Province. It was pointed out, for example, that there are presently 57 LSDs on the Acadian Peninsula alone and some 271 across the Province. In fact, 103 of the LSDs do not even have LSD Advisory Committees in place.

The Panel is convinced, as were a number of presenters, that a consolidation of some Local Service Districts is warranted. The intent is not to take the communities away from the residents but to provide opportunities for communities to work together to address common issues.

As a first step opportunities should be identified, in consultation with local residents, to consolidate inactive LSDs with those that have active LSD Advisory Committees or with adjacent urban areas. The result should be fewer Local Service Districts, most with active LSD Advisory Committees, suitable community plans and sufficient resources to provide needed services in a rural environment.

The Panel recommends that the Province take action to reduce substantially the number of Local Service Districts in the Province of New Brunswick within the next five years.

The Panel further recommends that residents of the Local Service Districts be fully consulted during the process to reestablish boundaries.

Sustainability - The goal of developing strong, healthy, viable and sustainable communities is just as vital in the unincorporated, primarily rural, areas of the Province as it is in any of the cities, towns and villages of this Province.

To the extent that community leaders and residents begin to realize that they can influence the decision making process in a real and effective manner they will be motivated, to not only to participate in problem solving, but also to support actively the proposed solutions. Both outcomes will be of lasting benefit to the community.

This notion goes to the underlying role of the LSD Advisory Committee. It can be regarded as a necessary evil that presents the appearance of local choice or it can become an effective vehicle for encouraging local solutions to local problems. In the latter case, the Minister respects local desires in all but the rarest of circumstances.

The Panel believes the future prosperity and sustainability of rural communities in New Brunswick will be determined largely by the opportunities residents of the unincorporated areas are given for meaningful participation in the local decision making process. Identifying

problems, establishing priorities and developing solutions to local concerns should be integral elements in the local governance mandate.

Governance Gap - For various reasons there has been a steady movement of residents from the municipal areas to unincorporated areas and it seems likely that this trend will continue and even escalate.

These population trends are not equally evident in all unincorporated areas of the Province. This fact, coupled with the divergent character of the various Local Service Districts, suggests that a 'one-size-fits-all' approach to local governance may no longer be appropriate.

In the course of its public consultations the Panel encountered no sentiment in favor of a return to the former county Council system nor were there any expressions of strong sentiment in favor of vesting the Local Service Districts with the powers of a municipality.

The representatives of Local Service Districts identified a series of shortcomings with the current governance model for unincorporated areas including:

- **Lack of a meaningful role for the LSD Advisory Committee:** No decision making authority combined with little voice on local matters creates not only frustration but also discourages participation by citizens on LSD Advisory Committees.
- **Taxation without representation:** LSD Advisory Committees rarely, if ever, have input into the development or approval of their annual operating budget or the determination of their local tax rate.
- **Lack of effective consultation:** LSDs are rarely consulted by government agencies and departments despite their 'advisory role' on local matters. On occasion, they are consulted but not listened to and often are merely told what will happen, rather than asked what should happen.
- **Lack of input on land use planning:** The structures to deliver land use planning in the rural areas are relatively new and continue to evolve. LSDs contend that planning decisions are being made without adequate consultation with the affected LSD.
- **Lack of representation on regional agencies:** LSD residents often do not have direct representation on the planning agencies or solid waste commissions yet they are required to contribute to the operating costs of these same bodies. Appointments of LSD residents can be made to these boards without the knowledge, input or consent of the LSDs that are to be represented.

- **No decision making authority:** The advice or opinions of the LSD Advisory Committees are not binding on the Minister. Furthermore, the LSD Advisory Committee has no decision-making authority on purely local matters.
- **Delays in getting decisions:** Relying on a centralized bureaucracy to 'process' decisions often means that it takes months to obtain a response to simple requests to resolve local matters.

It is interesting to note that these problems were cited primarily by citizens and representatives of Local Service Districts with LSD Advisory Committees that are active in local affairs. The Local Service District model may continue to serve adequately the needs of certain communities while another model offering more local autonomy may be better suited to other rural areas with residents more active in local affairs.

The Panel concluded that the existing Local Service District system does not meet the needs of all unincorporated areas in the Province of New Brunswick.

The current Rural Community pilot project - The CLURE Report proposed the consolidation of the existing LSDs in each Planning District into units to be called "Rural Communities". CLURE emphasized that the Rural Communities would not be municipalities in the sense of cities, towns and villages but that their responsibilities would initially be limited to planning matters within the Rural Community.

The government subsequently introduced legislative amendments to provide for the creation of Rural Communities. The role of a Rural Community does not extend beyond involvement in a rural planning process. Like municipalities, they are represented by an elected body having decision-making authority but solely on land use issues that effect their community. Like Local Service Districts, they have their local services provided for by the Province and advise the Minister on the provision of these services.

To date, only one Rural Community, the Beaubassin East Rural Community has been established from former LSDs as a pilot project. Currently, it appears that the Government has no intention or desire to replicate this experiment in other areas.

The Panel concluded that the governance needs of Local Service Districts go beyond planning matters and therefore cannot be adequately met by the Rural Community structure as currently legislated.

Other Reviews - Over the years, it became apparent that the LSD system had inherent imperfections in dealing with the provision of services, rural development, management of the environment, the protection of agricultural land, the growing problems of urban sprawl and ribbon development and the strained relations with neighbouring municipalities. During the 20-year period between 1971 and 1991 special task forces conducted numerous studies concerning these matters in addition to the studies and documents prepared internally by the Government and externally by consultants.

The Panel was surprised how well some of the recommendations set out in these earlier reports responded to the needs and concerns raised by presenters during this round of public hearings. The Panel was also dismayed by the fact that only cosmetic changes to the governance of Local Service Districts had been made to date, despite the many earlier recommendations for improvement.

It is difficult to draw definitive conclusions from the apparent unwillingness of previous governments to act on the recommendations of the many earlier reports. The Panel is firmly convinced that this inertia is no longer tenable.

The Panel does not accept the age-old refrain that limited resources, small populations and a lack of expertise preclude effective decision making at the local level in rural New Brunswick.

The Panel recommends that the Province develop a more effective framework for local governance for the unincorporated areas of this Province.

A New Rural District Governance Model - The Panel is advocating that the Province of New Brunswick considers the implementation of a new Rural District Governance Model. The Panel believes that the role of the Rural District should be expanded beyond merely an advisory one and applied to more than just the resolution of planning issues.

The concerns about a lack of a meaningful role for the LSD Advisory Committee, taxation without representation, a lack of effective consultation, too many LSDs, protecting the rural lifestyle, avoiding incorporation, lack of effective land use planning and a lack of representation on regional agencies would be addressed in the new model. A new Rural District Governance Model will also provide a springboard for future development, increased independence, sustainability and prosperity as communities grow and develop.

Initially allowing for separate tax rates and maintaining LSDs as wards would preserve local identity. Permitting the Rural District to exercise decision making authority over local matters such as fire and recreation services and giving them the authority to adopt its own community plan would provide for a solid base on

which to service and develop the local service districts. Requiring the Rural Authority to appoint representatives to regional service delivery agencies will provide the unincorporated areas a voice on these boards and commissions.

The Panel recommends that the new Rural District have the following essential features:

FEATURES	PURPOSE
Rural District Authority	The Authority is the governing body. The Authority and not the community would be incorporated. No municipal status, no hiring of staff permitted to prevent creation of costly bureaucracy. Allows district to exercise authority.
LSDs become Wards	Allows for protection of local identity, separate tax rates, separate service levels. Can build on existing community of interest
5-7 Wards per Rural District	Limited scope makes it easier for rural district to administer; broad implementation will reduce number of LSDs. Fewer LSDs for MSR to administer
Informal LSD Advisory Committees	Rural District would assume advisory role of LSD Advisory Committees. Elected ward representatives may choose to use informal LSD Advisory Committees as sounding boards for local matters.
Elected Representative(s) per ward	Creates representative government, eliminates LSD Advisory Committees, avoids costly, cumbersome two tier government, creates more accountable body
Triennial Elections	Elections held in conjunction with municipal elections will enhance significance and profile of rural district authority elections
Property Taxation	No change. Police and transportation services included in base tax rate.
Mandatory Public Meetings	Improved accountability to citizens, allows for information and decision making meetings
Petition Requirements	No change but would relate to 'defined areas' so that quorum and petition requirements can be met.
ROLE	PURPOSE
Participates in preparation of budget	Local input in spending decisions, service levels. Input in establishing tax rate(s).
Make appointments to all regional service agencies (solid waste, planning etc.)	Provides local voice on matters of local concern. Ensures local representation. Committee has more meaningful role.
Fulfills role of Planning LSD Advisory Committee (PAC) for District Planning Commission.	Allows for meaningful participation and input into local planning decisions
Adopts and amends rural Land Use Plan	Allows for input into development of local land use plans
Negotiates cost sharing agreements	Local input on service acquisition and regional cooperation

Opportunities for Improving Local Governance in New Brunswick

Advises Minister	Continues to advise Minister on services, service levels, service delivery methods, capital borrowing, acquisitions and disposals and other local matters.
Service responsibilities	Directly responsible for delivery of Planning, Fire and Recreation Services. Police and transportation services continue to be provided on Province wide basis as part of base tax rate.
Point of contact for all government departments and agencies.	Requiring all government departments and agencies to advise and as necessary solicit input of Rural Districts will enhance roll of authority and improve communication with the Province.

The Panel believes that, with these basic features, the new Rural District Governance model will resolve many of the issues raised during the hearings. The strength of this model as well as the Local Service District system is entirely based on the willingness of the Minister to consult with the local community, listen to and respect their opinions on matters of local concern and to act accordingly.

Better representation, increased accountability, improved land use planning, more local decision-making and potential economies of scale are the likely immediate benefits. Fewer LSDs, coordinated development, more citizen involvement and a strong voice for citizens of rural areas are the longer-term outcomes to be realized.

Finally, while the Panel has attempted to set out the essential features of a new Rural District governance model, it is preferred that the detailed characteristics be developed in consultation with representatives of the Local Service Districts.

The Panel strongly recommends that the Province engage in public consultations with Local Service Districts with a view to adopting and implementing the proposed Rural District model of local governance for the unincorporated areas of the Province.

Range of Governance Options - The Panel is not targeting the creation of a specific number of Rural Districts or the abandonment of the Local Service District concept. The Panel recognizes that given the range in the type and character of the unincorporated areas that it may be sufficient for certain communities to continue to use the Local Service District model in its current form.

A uniform governance framework can provide the needed stability but must recognize the diversity of local needs and foster developing local solutions to local problems. A continuum of models, differing in complexity and suited to different stages of community development is appropriate.

Governance Model	Local Service District	Rural District Authority	Municipality
Role	Advisory Role	Advisory & Some Local Decision Making Authority	Full Local Decision Making Authority

The Panel supports an evolutionary approach to developing local autonomy in the unincorporated areas of the Province. The initial stage(s) would be a Local Service District with no LSD Advisory Committee in place that is entirely administered by the Department of Municipalities or a Local Service District with an active LSD Advisory Committee providing advice to the Minister on local matters. The next stage would see a number of Local Service Districts join together to create a Rural District governed by an elected body with decision making authority on certain local matters (fire, recreation, planning) and a strong advisory role on other local matters. In the long-term as the Rural Districts mature and become more self-reliant (politically, administratively, and financially) they could seek full municipal status.

The Panel advocates an evolutionary approach to local empowerment for the unincorporated areas of the Province of New Brunswick that respects and accommodates the divergent needs and interests of the communities in the rural areas of the province. The level of local decision making authority each possesses differentiates the range of governance models.

Concluding Remarks

The Panel conclusions are based on careful consideration of the *Municipalities Act Review Advisory Committee Report* (1998), the *Review of Local Service District Legislation Report* (1999) and the input received during the public consultation process.

The Panel acknowledges the quality and thoroughness of the two earlier reports. The many recommendations for change inspired considerable debate and encouraged citizens to reflect on the role and functioning of their local governments.

From the outset of the public hearing process, it was evident to the Panel that the citizens of New Brunswick have a genuine and heartfelt interest in the well being of their communities. The extent and quality of the input received was most impressive and provided many meaningful insights to the Panel during our deliberations.

Balancing the various interests proved both interesting and challenging for the Panel. Assessing the recommendations and public input in the context of

recognized principles of local governance allowed for an objective evaluation of the comments, suggestions and concerns raised during the public hearings.

The Panel report focuses on identifying opportunities for improving local governance in New Brunswick. The Panel recommendations advocate a new Municipalities Act, which will:

- **Use plain language to enhance public understanding of the roles and responsibilities of local government and facilitate implementation of the proposed changes,**
- **Emphasize greater respect for openness and public accountability in the conduct of local government affairs,**
- **Provide increased autonomy and flexibility for municipalities to deal with local matters and,**
- **Establish a new governance model for rural unincorporated areas.**

As with any major legislative revision, it is inevitable that questions or disputes will arise on how to address particular issues that were, or were not, considered in the various reports. It is also likely that, once implemented, the practicality of certain legislative provisions will be challenged. Clearly, such debate should be considered a legitimate aspect of the legislative renewal effort.

The Panel believes that government must, first and foremost, seek the best interests of the public and not simply administrative convenience or political comfort when responding to these concerns.

The Panel concluded that the best interests of citizens must be the primary consideration when developing the provisions of the new Municipalities Act.

Significant changes are required if a new Municipalities Act is to respond to the broad range of issues raised by the various stakeholders. The Panel hopes that a collective effort at legislative renewal based on a collegial approach will find an attentive ear among decision-makers and provide the people of New Brunswick with a new and progressive Municipalities Act worthy of entry into the new millennium.

PANEL MANDATE

The Province of New Brunswick formally constituted the Municipalities Act Review Panel (**the Panel**) in March of 1999, as part of, a comprehensive review of the *Municipalities Act*.

The Panel was mandated to undertake a public consultation to solicit input, feedback and suggestions on the recommendations made in two earlier reports namely; the *Report of the Municipalities Act Review Advisory Committee (1998)* and *A Review of Local Service District Legislation (1999)*. The Panel was also mandated to identify other issues that municipal officials, representatives of Local Service Districts, interested groups and the general public believed should be addressed in the review process.

More specifically, the role of the Panel was to:

- Organize and facilitate regional consultation forums across the Province of New Brunswick.
- Solicit input from the participants on the recommendations which were put forward in the report by the Municipalities Act Review Advisory Committee as well as the issues and proposals identified in the document 'A Review of Local Service District Legislation'.
- Prepare a report with recommendations to the Minister of Municipalities and Housing that includes a summary of the comments received through the consultation process and the Panel's views regarding those issues that were the focus of public debate during the consultations.
- Respond to other issues raised by the general public and municipal officials during the consultations.

ORGANIZATION OF THE REPORT

The report is presented in two main sections.

The first section addresses the issues raised during the public hearings in response to the recommendations contained in the *Report of the Municipalities Act Review Advisory Committee*. As such, the topics are centered on the legislation governing the 103 incorporated villages, towns and cities in New Brunswick.

The second section presents the Panel's observations and conclusions in respect of issues raised by presenters during the public hearings concerning the role and governance of Local Service Districts and responds to the comments made respecting the changes to the legislation proposed in the *Review of Local Service District Legislation*.

The Panel received input on each recommendation put forward in the two previously mentioned reports. As a result, the Panel report is a comprehensive response to the issues and concerns raised during the public hearings.

For ease of reference, both sections follow the order of presentation of the recommendations in the originating reports. Highlights of the current legislative provisions are followed by a summary of the conclusions contained in the earlier reports. This leads to a synopsis of the public input received by the Panel, the Panel comments in respect of the issues raised and finally the Panel conclusions regarding the specific recommendations. The Panel conclusions should be read in the context of the related commentary.

In addition, the Panel report contains commentary and recommendations on key issues that were raised during the public hearings that were not addressed in the recommendations or proposals of the two earlier reports.

The Panel chose not to attribute the comments made during the public hearings to specific individuals or municipalities, as many of the same issues and concerns were put forward by several presenters albeit in different forms.

OVERVIEW

BACKGROUND

The Government of New Brunswick initiated a comprehensive review of the Municipalities Act in early 1995. In the first phase, a detailed questionnaire was forwarded to all municipalities seeking information about areas of concern and difficulties encountered by municipalities.

A nine member Municipalities Act Review Advisory Committee (**Review Advisory Committee**), representing the three municipal associations and the Department of Municipalities and Housing, subsequently took this and other information into consideration and completed an extensive review of the existing legislation. The LSD Advisory Committee work was conducted over a 13-month period beginning in February of 1996 and ending in March 1997.

The Review Advisory Committee released a report on its findings in the fall of 1998. The report contained 234 recommendations that in some cases responded to very mundane issues while others would, if adopted, fundamentally change the operation and character of local government in New Brunswick.

The Department of Municipalities and Housing⁹ also undertook a separate review of the legislative provisions dealing with Local Service Districts. The review focused on the administrative framework for Local Service District operations and did not consider the appropriateness of the underlying structure or the role of the Local Service District Advisory Committees.

The Department issued a report entitled *A Review of Local Service District Legislation* in January 1999 containing 33 proposals aimed at addressing problem areas associated with the administration and operation of Local Service Districts.

THE PANEL

The Municipalities Act Review Panel was formed in March 1999 in the most recent phase of the Municipalities Act review process. The Panel was given a mandate to undertake a series of public consultations to solicit input, feedback and suggestions on the recommendations made in the *Report of the Municipalities Act Review Advisory Committee* and *A Review of Local Service District Legislation*.

⁹ Referred to as Department of Municipalities since July 1999

It was considered appropriate to appoint a citizen panel independent of government that could interpret the input that was provided during the public consultations in an objective manner that reflected the concerns of all stakeholders.

The Panel was comprised of four members as follows:

GERMAIN BLANCHARD *Ex-Mayor and retired Principal, Ville de Caraquet*

NANCY MCKAY *Physiotherapist and Partner, O'Keefe McKay and Associates, Bathurst*

RICHARD GORHAM *Chairman, Kingston Local Service District Advisory Committee, Kingston Peninsula*

PATRICK WOODS *Deputy City Manager, City of Saint John*

The broad experience and varied backgrounds of the panelists brought the perspectives of citizens, elected officials, municipalities, Local Service Districts and administrators to the public consultation process.

The Panel efforts were supported throughout the process by administrative and technical staff in the Department of Municipalities and Housing.

THE PROCESS

The Panel began its work by participating in a series of briefing workshops to review the recommendations set out in the two earlier reports and to consider other pertinent matters relating to the structure and operation of local government in New Brunswick.

During this same period, the Department of Municipalities and Housing conducted information sessions around the Province for the benefit of both municipalities and unincorporated areas, in anticipation of the public consultation exercise. The sessions provided an opportunity to help community representatives become more familiar with the recommendations put forward in the Review Advisory Committee report and the Local Service District Legislation report and to be better prepared to offer input at the public hearings.

A Province wide, print-media advertising campaign was launched before the hearings in order to raise awareness of the issues and to stimulate interest in the public hearings. The Panel also extended letters of invitation to each Mayor and

Council in the Province encouraging them to participate in the scheduled hearings.

A series of public hearings was then undertaken by the Panel in every region of the Province (Appendix 1) to obtain the input and comments of citizens, municipal elected and appointed officials and other interested groups. A total of 25 sessions were conducted in 17 communities around the Province over a six-week period.

The hearings were conducted in a structured but informal format that encouraged the active participation of those in attendance. The Panel received 59 written briefs and over 50 verbal submissions (Appendix 2) during the course of the hearings. The comments, briefs and opinions of the presenters were considered in detail during the preparation of this report.

In addition, the Panel conducted a review of relevant academic and professional literature, considered the recommendations of earlier studies and reports prepared by, or for, other government committees and evaluated similar legislative initiatives recently undertaken in other Provincial jurisdictions in order to arrive at its conclusions and recommendations.

CURRENT SITUATION

Some preliminary comments on the local governance structure in New Brunswick are in order. The current Municipalities Act is a product of the Byrne Commission Report undertaken in 1963 and the ensuing Equal Opportunity Program introduced in 1967. Other than minor amendments made from time to time over the years, the core of the Act continues to reflect many of the concepts and recommendations put forward in the Equal Opportunity Program.

The comprehensive recommendations of the Byrne Commission were far-reaching and resulted in a wholesale reorganization of government in New Brunswick. The resulting legislation provided a clear division of responsibilities between the Province and Municipalities. The policy making function for social programs such as health, education, justice and social welfare was centralized with the Provincial government¹⁰.

The primary role of cities, towns and villages became the provision of those services considered local in nature such as streets, sidewalks, fire and police protection, snow removal, and water and sewerage services¹¹. In fact, the

¹⁰ Rankine M. Smith, *Equal Opportunity Revisited* (Sussex, 199), p. 8

¹¹ *Ibid.* p. 19

Municipalities Act set out a schedule of services that a municipality was authorized to provide¹².

The government also implemented a uniform, integrated and stable revenue source for financing local services through property taxation in conjunction with the new division of responsibilities. Since being enacted in 1967, the Municipalities Act has remained the model for governance in New Brunswick. The approach adopted in New Brunswick was unique in Canada at the time and continues to serve as a reference point for other jurisdictions.

The Panel believes the fact that many of the Byrne recommendations have stood the test of time and continue to be the model for progress in other jurisdictions speaks to the need for thoughtful and careful action when considering the development of a new Municipalities Act. The enduring success of the model does, however, also highlight the potential benefit to be derived from adopting progressive and innovative approaches to renewing the legislation governing municipalities.

At present there are sixty-eight (68) Villages, twenty-eight (28) Towns and seven (7) Cities in New Brunswick. The population of these communities varies from a low of 226 in the Village of Lac Baker to a high of 72,495 in the City of Saint John. The citizens of each of these communities elect a Mayor and Council, on a triennial basis, to govern their municipality.

Approximately 40 percent of the provincial population live in unincorporated rural areas. The Local Service Districts (LSDs) are administered by the Province and do not have a locally elected, accountable level of government¹³. The Minister of Municipalities is responsible for the operation of these areas and only on occasion seeks the advice of the LSD Advisory Committee members on local matters.

Of the two-hundred-and-seventy-one (271) Local Service Districts in the Province of New Brunswick, only one-hundred-and-sixty-eight (168) have LSD Advisory Committees in place.

The character of both these incorporated and unincorporated communities is as diverse as their size. Large and small rural communities, farming and fishing villages, coastal towns and seasonal tourist areas are scattered between the seven relatively small urban centers in the Province.

Single industry towns, island communities, built-up industrial areas and commercial centers are part of the urban landscape. Some communities are experiencing periods of growth and others are facing economic decline as global economic forces exert their influence.

¹² First Schedule of Services, Municipalities Act, RSNB 1973

¹³ A Guide to Municipal Government in New Brunswick, (Halifax, 1995), p. 6

The Panel concluded that this diversity in the nature, type and size of the communities in the Province leads to an equally diverse range of local needs and priorities and points to the requirement for a Municipalities Act that effectively accommodates this plurality.

Despite the many and varied concerns raised during the consultations, neither the Review Committee nor the Panel heard demands for fundamental change to the current division of powers between the Province and municipalities nor calls for restructuring the property taxation system as the prime means to fund local services.

The Panel concluded that there is no need to advocate structural changes to the current division of powers, the uniform property assessment or the property taxation system as part of the development of the new Act.

OPPORTUNITIES FOR IMPROVEMENT

The Panel had the benefit of considering the recommendations submitted in the *Report of the Municipalities Act Review Advisory Committee* and the *Review of Local Service District Legislation Report* in addition to the comments of over 100 verbal and written presentations made during the course of the public hearings.

The briefs and submissions received by the Panel cited many shortcomings in the current provisions of the Act that required change. As a result, the Panel was able to identify significant opportunities to generate improvements in the quality and effectiveness of local governance in New Brunswick.

Increased local autonomy, more openness, enhanced accountability, elimination of ambiguous language, improved conflict of interest rules, the ability to offer development incentives and the elimination of nuisance claims were but some of the recurring themes that were of concern to those who participated in the public hearings. In many cases, the presenters suggested specific corrective action that could be taken while in others they pointed to a general approach that they believed should be adopted in the legislation.

The Panel observed that despite the attendant structural strengths of the current Act, municipalities must operate in a very dynamic environment and the provisions of the existing Act limit their functional ability to respond effectively to ever changing needs and priorities.

Video lottery terminals, natural gas pipelines, Year 2000 issues and airport operations were not matters of local concern 30 years ago. In fact, the

prescriptive nature of the current Act was cited as the fundamental reason for the inability of communities to respond effectively to such emerging issues¹⁴.

Furthermore, the Panel recognized that municipalities as a group are maturing in their ability to govern and administer their communities. Yet, the prescriptive nature of the current Municipalities Act obligates them to operate within the confines of narrowly defined grants of power to deal with purely local matters such as bylaw enforcement, animal control, business licensing and unsightly premises.

The many and strong representations from citizens in the unincorporated areas pointed to equally significant weaknesses in the current model of governance in Local Service Districts. Presenters cited the absence of mandatory consultation, a lack of authority to decide on local matters, limited understanding of roles and responsibilities, lack of representation on regional agencies and ineffective community planning as major shortcomings that needed to be rectified.

Comprehensive revisions to the Act are required if it is to respond to the broad range of issues raised by the various stakeholders. The Panel believes that developing a new Act is preferable, as it will avoid an extended and piecemeal approach to legislative revision that would undoubtedly create uncertainty and confusion at the municipal level.

Following their deliberations, the Review Advisory Committee concluded unanimously that a new statute should be drafted. Given the dynamic environment, in which municipalities operate, the age of the existing Act and the many shortcomings identified, it is not surprising that there is a broad consensus that a new Municipalities Act is needed. The Panel fully concurs that a new Municipalities Act is required.

Recommendation #1: A new Municipalities Act should be drafted.

**THE PANEL CONCURS THAT A NEW MUNICIPALITIES ACT
SHOULD BE DEVELOPED AND ENACTED.**

ACTIVITY IN OTHER JURISDICTIONS

New Brunswick is not alone in its efforts to develop a new Municipalities Act. The Provinces of Manitoba, Alberta, Nova Scotia and British Columbia have each completed a similar undertaking. Their new Statutes have recently been adopted and are now being implemented.

¹⁴ Report of the Municipalities Review Advisory Committee, (Fredericton 1998), p. 51

The Panel, like the Review Advisory Committee, was able to draw from these other legislative initiatives during our deliberations. Overall, there is a general trend toward adopting plain language in the actual wording of the new legislation and a move to a more permissive approach to empowering municipalities. Many of the specific recommendations in the Review Advisory Committee report parallel those that were adopted in the other Provinces.

The fact that these other jurisdictions have already embarked on reviewing and renewing the legislation governing municipal government provides many opportunities for the Province of New Brunswick. The Province can not only draw from the language used in drafting the provisions in these new Acts but can also learn from the experience gained in these other jurisdictions since the legislation has been enacted.

The Panel cautions that the fact that many other jurisdictions have adopted a particular approach is of no consequence if the provisions do not suit the New Brunswick experience.

The Panel recommends that the legislative solutions adopted in New Brunswick fully reflect local interests and practices and not merely mimic the efforts in other jurisdictions.

The Panel was impressed with the deliberate effort in the Province of Nova Scotia to provide extensive supporting guides and explanatory material in conjunction with the introduction of their new Municipal Government Act.¹⁵

A concerted and deliberate effort at communicating the changes introduced in a new Act will provide citizens with an increased understanding of the roles and responsibilities of their local government. Likewise, user-friendly guides will assist local politicians and staff persons to properly interpret and implement the changes during the initial transition period.

The Panel recommends that the Province of New Brunswick provide user friendly supporting guides and explanatory material in conjunction with the introduction of a new Municipalities Act.

KEY CONSIDERATIONS

The Panel took into consideration a number of key factors in order to arrive at its conclusions and recommendations.

The primary objective of the Panel was to ensure that the new Municipalities Act encourages the development of healthy, vibrant, prosperous communities with

¹⁵ Municipal Government Act, S.N.S. 1998, c. 18

local governments that are able to respond to the needs of their citizens and fully accountable to the electorate for their actions.

In this context, the need to identify practical and effective solutions to resolve the issues that were raised during the hearings was a key concern of the Panel. It is recognized that neither the Province nor the Municipalities have unlimited resources at their disposal. Practical straightforward solutions that could be implemented easily and on a timely basis are preferred over theoretical concepts that could involve putting in place elaborate, complex and expensive mechanisms with limited marginal benefit.

Another important consideration was the simple fact that the Municipalities Act must of necessity apply to all municipalities across the Province. The legislative approaches that meet the particular requirements of a large city may not be appropriate for a smaller suburban community. The Panel had to balance the need to establish a uniform structural approach to local governance in New Brunswick against the need to accommodate the legitimate and divergent requirements of different communities.

As well, the Panel was cognizant of the need to develop a balance between the sometime conflicting demands for maximum flexibility insisted upon by some communities and the equally common requests from other communities for certainty in the new legislative provisions.

Of significant concern, was the ability of the municipalities to accommodate the new responsibilities that would flow from a more permissive legislative framework not only financially but also administratively and politically.

Finally, the panel considered it important to identify an objective framework using recognized principles of local governance in order to evaluate the variety of opinions and positions put forward during the public consultation exercise.

Key considerations in developing the Panel responses to the input received included, the need to develop practical, cost effective solutions, the fact that the new Act will apply to all municipalities despite divergent needs, the requirement to balance flexibility against certainty in the new legislative provisions and the ability of the communities to accommodate new political and administrative responsibilities.

DESIRED OUTCOMES

This legislative review exercise was not predicated on a desire for change simply for the sake of change. Instead, it flows from an identified need by those subject to the legislation to have the Municipalities Act fully reflect the dynamic realities that are very much a part of municipal government in New Brunswick.

Effective, comprehensive improvement cannot be built around a series of disjointed recommendations. The Panel believes that it is important that the individual recommendations contained in this report not be treated in isolation but instead be considered within the broader context of an integrated framework for municipal governance.

The new legislation should readily accommodate the changing political requirements and operational demands now facing municipalities. It should also provide long-term stability in the sense that frequent changes to the new Act are not required. Likewise, the Act should be enduring by incorporating sufficient flexibility to adapt to changing circumstances at the local level.

The new Act should be drafted in such a manner as to be easily understood not only by professional administrators or politicians but also citizens who have a right to know how their local government operates.

Finally, the new Act must recognize that different communities possess different levels of maturity and expertise in matters of local governance and it must allow for and encourage a continued evolution to greater self-reliance.

The Panel concluded that the new Municipalities Act should provide an integrated framework for municipal governance, should accommodate changing political and operational requirements, should provide long-term stability, should be enduring, should be easily understood by citizens and should allow for increasing self-reliance at the local level.

A PRINCIPLED APPROACH

The legislative approach used to address related matters (e.g. procedural rules, openness, and access to information) should be consistent and comprehensive. To do otherwise, would only invite confusion and criticism and ultimately undermine the integrity of the much-anticipated new Municipalities Act.

Using a principled approach avoids the risk of treating the proposed changes as a series of stand-alone recommendations. Instead, it affords an opportunity to address the issues in a consistent, comprehensive and integrated fashion. For example, if one concludes that responsive government augers for increased local autonomy it would be inconsistent to recommend that minor procedural matters be legislated by the Provincial government irrespective of local desires.

Adopting a principled framework for assessing the proposed changes also provides an effective reference point for responding to those particular issues raised during the consultations for which there was little or no apparent consensus (e.g. closed meetings).

Given the overall complexity and range of matters under consideration and the fact that many of the issues and recommendations are inter-related, the Panel considered it necessary to adopt a principled approach to objectively assess and comment on the various recommendations.

Five basic principles for assessing and evaluating the various recommendations were put forward during the public hearings. Antoft and Novack advanced four of the principles; accountability, accessibility, responsiveness and public choice in a book entitled *Grass Roots Democracy, Local Government in the Maritimes*¹⁶. The authors presented the principles, "...as criteria by which to judge the adequacy and effectiveness of any form or variation of municipal government".¹⁷

The fifth principle, openness, is sometimes regarded as a subset of accountability but the Panel believes that it is sufficiently significant in the context of municipal governance to merit separate consideration as a guiding principle.

The Panel concluded that the identified principles adequately reflect the current thinking and perspectives on this subject and provide a structured and objective frame of reference to evaluate the input received on the proposed changes to the Act.

ACCOUNTABILITY – Refers to the close relationship that often exists between elected officials and their constituents at the local level. In fact,

¹⁶ Kell Antoft and Jack Novak. *Grassroots Democracy, Local Government in the Maritimes*. Halifax Henson College, Dalhousie University, 1998, p. 155-7

¹⁷ *Ibid.*, p. 155

it is frequently said that local government is the level of government 'closest to the people'. It is not enough, however, to be close to the people it is also necessary that local government see itself as answerable to the citizens for its actions or lack thereof. A heightened level of one on one citizen contact at the local level enhances the opportunities for citizens to ask those elected to report on or justify their positions or decisions on various issues. The use of a multitude of special purpose boards and commissions for instance raises questions about the accountability of elected representatives. Effective accountability requires openness in the affairs of government.

ACCESSIBILITY – Generally considers the ability of the public to make their views known to those elected. Ready access is viewed as positive in so far as it strengthens the accountability and responsiveness of the local government body. For example, a key issue in the proposed changes is whether or not citizens have a 'right' to be heard or merely a 'privilege' to be heard. Citizen access to information is another key element in assessing the performance, accountability and responsiveness of local government. Procedural matters, notice provisions, time and location of meetings etc. are all aspects of accessibility. As with openness, there is a need to strike a healthy balance between accessibility and protecting the municipality's financial and legal interests and the confidentiality of personal information.

RESPONSIVENESS – Flows from the premise that local government equates in many respects to local choice. As such, the quality and scope of local programs and services should generally reflect the desires of the community. Local autonomy is an essential element of exercising local choice. It is also the basis for insisting on legislative flexibility so that local governments can effectively respond to local situations as they best see fit. The alternative is to treat all local governments as part of the Provincial administrative apparatus.

PUBLIC CHOICE - The decision to live in one area or another is influenced by many factors. Land values, taxation, proximity to work and the availability of social services are but some of the considerations. Where people choose to live will reflect what is important and possible for them. Real differences among municipalities provide for real choices for the public.

OPENNESS – Commonly recognized as a fundamental element in a democratic system of government. It goes beyond simply determining what matters are placed on the open session agenda at a particular Council meeting or accessing a particular document. Openness also encompasses the structural and procedural processes that allow citizens to scrutinize the workings of their local government. Openness suggests that citizens should be privy to the facts, the issues, the debate and the vote on all legislative matters before Council. Citizens are then able to assess the performance and responsiveness of those elected. The need for openness should not however be allowed to compromise the legal and financial interests of the community and its citizens.

Clearly, these principles are strongly inter-related. Several principles may be relevant to the same issue. The extent to which one principle is considered or ignored can have a direct impact on the quality and effectiveness of the recommended course of action. Likewise, the issues and recommendations put before the Panel are interdependent and could not and should not be treated in isolation.

The Panel noted that each principle supports a deliberate effort to recognize citizens as the primary focus of local government legislation. In fact, the stated principles have relevance only to the extent that they support respect for citizen interests. What is really being proposed is accountability to the citizens, openness to the citizens, accessibility to the citizens and responsiveness to the citizens of the community.

The Panel concluded that the identified principles should be used in a comprehensive and integrated manner to assess the input received and to formulate responses to the recommendations in order to best ensure the development of effective outcomes.

The Panel adopted the five basic principles of accountability, accessibility, responsiveness, public choice and openness as an objective basis for evaluating the comments and proposals put forward during the public consultations.