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THE PUBLIC WORKS FUNCTION IN CANADIAN JURISDICTIONS

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EXECUTIVE SUMMARY

Purpose and Scope

The purpose of this paper is to describe the legal and regulatory relationship between provincial governments and municipalities in Canada in the areas of land use planning, building codes, roads and bridges, parks and recreational facilities, water and sewage systems, and solid waste collection and disposal. In analyzing each of these functions, emphasis is placed on how governance relationships promote the health and safety of municipal residents. Financing options available for selected functions are also examined, particularly with regards to how municipal expenditure and revenue are authorized and regulated.

In describing the regulatory relationship between provinces and municipalities, the intent is not to suggest that this arrangement is applicable to the context of native self-government. However, by examining the jurisdictional relationship between provinces, municipalities and their sub-units, a variety of general regulatory and administrative lessons may be gleaned, several of which may be of pertinence to other governing arrangements.

Overview of Provincial-Municipal Relations in Public Works

Provinces play a predominant role in setting out the legal and regulatory frameworks surrounding public works functions in Canadian municipalities. In all of the six public works functions outlined in this study, the provinces set standards, provide redress functions, approve various council decisions and -- in some instances -- directly inspect municipal public works. Despite trends to lessen bureaucratic regulation, legislation granting authority to municipalities remains extremely detailed. It places narrow limits on what municipalities can do and severely restricts the scope of municipalities to initiate policy. Legislation also sets out acceptable sources and conditions of municipal revenue, both in the areas of capital borrowing and user fees.

The relationship between provinces and municipalities, accordingly, is largely between regulator and operator respectively. By contrast, the rationale for dividing service responsibilities between regional (upper-tier) and lower-tier municipalities in several provinces is based more on considerations of economy and efficiency as opposed to concerns over regulation.

Conclusions & Further Research

A number of important questions arise from this study:

Issue #1: Given that the role played by provincial governments in the public works function has no parallel in an Aboriginal self-government context, how should some of the provincial-like functions be incorporated into self-government agreements?

In particular, how should such agreements handle the following: standard setting, inspection, harmonization, professional accreditation, provision for redress or appeals?

Issue #2: While evidence in this study suggests that a two-tier structure (akin to a provincial-municipal relationship) may be required to ensure effective regulation, can regulation also be achieved in a one-tier government? To what extent can regulations concerning public works be harmonized over multiple communities?

Issue #3: What, if any, authorities for financing public works are required in self-government agreements?

Issue #4: How can the federal government and First Nations' governments minimize the likelihood of insolvency when financing municipal capital infrastructure? Can borrowing mechanisms, such as the Municipal Finance Authority of British Columbia, be replicated for First Nations?

Issue #5: How are capacity constraints in small and rural municipalities handled in the following areas: land use planning, inspection of buildings and public utilities, professional training and accreditation? Are there particular accountability problems faced by smaller municipalities through the increased use of special purpose bodies, inter-municipal agreements, or contracting out of services? What administrative capacity is required to undertake greater use of user fees for the financing of various public works?

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1. PURPOSE AND SCOPE

Real Property Services for Indian and Northern Affairs Canada (RPS for INAC) is interested in commencing activities and discussions concerning the development of guidelines or best practices under which governance structures and processes associated with public works functions can be developed by First Nations as they move closer to self-governing status. The Institute On Governance has been asked to provide its expertise in this initiative.

The purpose of this paper is to provide background information for a one day seminar on public works functions that will include officials from RPS for INAC, INAC, Health Canada, First Nation technical organizations and other experts. Specifically, this paper will examine the legal and regulatory relationship between provincial governments and municipalities in Canada in the areas of land use planning, building codes, roads and bridges, parks and recreational facilities, water and sewage systems, and solid waste collection and disposal. In analyzing each of these functions, emphasis is placed on how governance relationships promote the health and safety of municipal residents. Where applicable, an analysis of financing options for selected functions will be examined, particularly with regards to how municipal expenditure and revenue are authorized and regulated. The paper will also highlight approaches to capacity development and suggest further research required on the topic of regulating and financing public works.

In undertaking this analysis, the Institute does not wish to suggest that the authorities of self-governing First Nations are in any way analogous to those powers granted to municipalities by their respective provincial governments. Equating First Nations with Canadian municipalities is obviously a false and misleading comparison. However, by examining the jurisdictional relationship between provinces, municipalities and their sub-units, a variety of general regulatory and administrative lessons might be gleaned: e.g. what functions need to be defined in legislation to ensure effective management of public works? which level of government carries out the inspection of public works? what public works typically include redress mechanisms for “aggrieved” users? what scale considerations, if any, need to be taken into account in the design and administration of public works functions?

2. OVERVIEW OF PROVINCIAL-MUNICIPAL RELATIONS

2.1 Legal Relationship

Local governments in Canada are the creatures of the provinces. In addition to maintaining the exclusive right to create and disband municipal corporations, provinces also determine the powers and responsibilities of their constituent municipalities, and by extension both their expenditure requirements and revenue capabilities. In Canada, as elsewhere, local authorities have never been accorded complete autonomy in local affairs. Thus statutes granting powers to municipalities commonly stipulate that the approval of a minister or other provincial authority be obtained before these powers can be exercised. As one of the foremost legal scholars on Canadian municipalities has stated, “municipal bodies are created to exercise only those powers which the legislators in their wisdom have committed to them.”¹ Municipalities which overstep their statutory responsibilities thus require new provincial legislation to authorize their actions.

Table 1: Overview of Municipal Governance by Province and Territory

Province	Type of Municipality	Basic Legislation
Newfoundland	3 cities, 287 towns, 1 region, 178 local service districts	Municipalities Act
Prince Edward Island	2 cities, 7 towns, 66 communities	Town Act
Nova Scotia	3 cities, 39 incorporated towns, 26 villages, 24 rural municipalities	Municipal Affairs Act
New Brunswick	7 cities, 28 towns, 76 villages, 272 unincorporated local service districts, 1 rural community	Municipalities Act
Quebec	256 cities and towns, 193 villages, 381 parishes, 97 townships, nine united townships, 515 municipalities without designation, 8 Cree villages, 1 Naskapi village, 14 northern villages; every local municipality is a member of an upper-tier structure	Cities and Towns Act; Land Use Planning and Development Act; Municipal Code
Ontario	13 two-tier systems with 93 lower-tier municipalities, 26 counties with 479 lower-tier municipalities, 17 separate cities, 4 separated towns, 1 separated township, 175 single-tier municipalities in northern Ontario;	Municipal Act; Regional Municipalities Act
Manitoba	117 rural municipalities, 39 villages, 39 towns, 5 cities, 2 local government districts	Municipal Act
Saskatchewan	363 villages, 145 towns, 2 cities, 298 rural municipalities, 26 northern municipal governments	Urban Municipality Act; Rural Municipalities Act; Northern Municipalities Act
Alberta	15 cities, 109 towns, 112 villages, 54 summer villages	Municipal Government Act (1995)
British Columbia	43 cities, 50 districts, 15 towns, 41 villages, 1 Indian district, 281 improvement districts	Municipal Act

¹ Ian M. Rogers, Law of Canadian Municipal Corporations (2nd ed., Carswell), Vol. 1, p. 11.

In each province, there is generally a provincial statute governing various aspects of municipalities (see Table 1). Legislatures have found, after earlier experience with a plethora of charters and special statutes for each municipality, that it was better to legislate for and organize corporations of an identical class under general laws.² These Acts typically specify the functions municipal government may undertake, the sources of revenue available to them, how and when budget decisions are made, the alteration of municipal boundaries, the composition of municipal councils, the passing of by-laws, among other functions. Each province also has a planning act that stipulates rules and regulations regarding municipal planning decisions, the development of regional and municipal plans, zoning by-laws, and sometimes provincial assistance for planning.

In addition, an assessment act in each province and territory establishes the rules for assessing real property for property taxes (in five of the ten provinces, it is entirely a provincial responsibility).³ Most provinces have also established boards, commissions, or quasi-judicial agencies to oversee many of the functions of municipalities, such as approval of capital expenditures, borrowing, planning decisions, and passing of municipal by-laws. (see Table 2 for a list of administrative tribunals in three provinces)

Table 2: Powers of Administrative Tribunals in Select Provinces

Ontario Municipal Board	listens to the appeals of citizens, public bodies or corporations who object to the decisions of public authorities such as local or regional councils, committees of adjustment, land division committees, the Minister of Municipal Affairs and Housing, or an expropriating authority; Board approval required for capital expenditures, zoning by-laws and exercise of certain other statutory powers.
Manitoba Municipal Board	undertakes supervision of local government finance issues; appeal tribunal for certain assessment and land use issues; other miscellaneous duties.
Saskatchewan Municipal Board	ensures financial viability of local authorities within the province respecting debt management; appeal process for the public on matters of municipal planning and development, assessment, fire prevention orders and certificates, disputes on taxes claimed due and payable to the provincial government, and any other matters as designated in legislation.

Finally, there are various other provincial statutes that affect local government services -- for example, the *Clean, Air, Water, and Soil Act* in Newfoundland governing water and sewage works or the *Municipal Water Assistance Act* in Saskatchewan, which specifies provincial-municipal grants for water, sewage and distribution facilities of local municipalities. Indeed, at least fifteen provincial acts -- besides the multitude of private Acts incorporating individual cities -- can be identified in Ontario which have relevance to the public works function as defined in this study.⁴

² In Quebec and some of the western provinces, cities still have special charters but the trend is in favour of general municipal statutes.

³ Richard Bird and Enid Slack, *Urban Public Finance in Canada* (2nd ed., Toronto: John Wiley & Sons, 1993), p. 13.

⁴ Municipal Act; Regional Municipalities Act; Municipal Affairs Act; Ontario Planning Act; Expropriations Act; Ontario Building Code Act; Highway Traffic Act; Public Parks Act; Local

Provincial governments, accordingly, are closely involved in all aspects of municipal public works. Provinces maintain detailed standards and professional staff for each of the categories of infrastructure in order to support the creation of new facilities (e.g. waterworks), the upgrading and replacement of ineffective installations, and some operations. They also monitor the delivery of services and carry out research on particular infrastructure problems.

2.2 Borrowing Capabilities of Canadian Municipalities

Municipalities generally borrow (through debt financing) to pay for that part of capital works that are not financed by grants from higher levels of government or through direct user fees. Like most other functions of municipalities, however, the extent of borrowing is strictly regulated by the provincial government. Borrowing or debt financing for *operating* expenditures within municipalities is forbidden by most provinces. In addition to determining the amount of debt that municipalities can incur, provinces determine the type of debentures that can be issued, the length of the term and the use of the borrowed funds. In all provinces except Prince Edward Island, the provincial minister or an appointed approval board must formally approve capital borrowing. In the case of Alberta and Ontario, however, no provincial approval is required if debt does not exceed a prescribed limit.⁵ The size of long-term debt is typically limited in two ways: the total long-term debt a municipality may incur and its debt service burden in comparison to gross revenues or expenditures.

Table 3 summarizes a variety of bond financing methods.

Improvement Act; Ontario Water Resources Act; Water and Sewage Services Improvement Act; Public Utilities Act; Environment Quality Act; Ontario Municipal Board Act; Condominium Act

⁵ David Amborski, Review of the Regulatory Environment of Municipal Capital Borrowing (Toronto: Intergovernmental Committee on Urban and Regional Research [draft, 1998])

Table 3: Summary of Selected Bond Financing Arrangements

General obligation bonds	Secured through local taxes. Best suited for infrastructure that benefits the community as a whole and where user fees are not common (e.g. public school buildings, fire stations).
Revenue bonds	Backed by the future user fees from the infrastructure projects that the bonds are used to finance. Typically used to finance roads, water and sewers where the beneficiaries can be identified.
Revenue loan funds	Usually permanent sources of lower-interest funds from higher levels of government that can be loaned for various purposes. When the loan is repaid, funds can be loaned for other projects, thereby multiplying the benefits of the original investment.
Bond banks	Local governments issue bonds that are purchased by an independent authority established by provincial statute. Major advantages include the access to a higher credit rating, the diversification of risk, the reduction of transaction costs and access to the major bond markets.

Sources: Enid Slack, Financing Infrastructure: Evaluation of Existing Research and Information Gaps (Ottawa: Canada Mortgage and Housing Corporation, 1996); Infometrica, Financing Municipal Infrastructure: Alternative Methods (Ottawa: Canada Mortgage and Housing Corporation, 1992).

It should be noted that bond financing is generally useful for large communities that benefit from good bond ratings, thus implying lower interest rates. Small municipalities, who are not rated at all, often have difficulty raising capital through the issue of bonds.⁶ To offset this problem of debt issuance, several provinces have resorted to the use of bond banks as described in Table 3, such as the Municipal Finance Corporation in Nova Scotia or the Municipal Finance Authority of British Columbia. In the case of BC, appointed officers of the authority retain the right to levy upon all taxable land in the province a tax sufficient to restore the authority's reserve fund when it falls below a certain amount. This capability has yet to be used but establishes firm collateral to ensure repayment of the loan. The benefits are, among other things, borrowing rates for municipalities below those of the province and prudent management of debt -- all achieved without provincial government guarantees.

According to one authority on municipal financing, municipalities have been reluctant to borrow funds for any purpose in recent years.⁷ The trend instead has been to rely more heavily on operating revenues and reserves as opposed to long term debt. Debt charges as a proportion of operating expenditures have declined in Ontario and Nova Scotia cities over the last twenty years and have remained fairly constant in municipalities in British Columbia. Debt charges were higher in municipalities in Quebec and Alberta.

Borrowing for capital projects can be quite beneficial to municipalities as a means to avoid large year-to-year fluctuations in property tax rates. Moreover, when the benefits of an infrastructure project are enjoyed over a period of time (e.g. 20 years) it may be both fair and efficient to finance these projects by borrowing, thus spreading the cost over present

⁶ Infometrica, Financing Municipal Infrastructure: Alternative Methods (Ottawa: Canada Mortgage and Housing Corporation, 1992), p. 17.

⁷ Enid Slack, Financing Infrastructure: Evaluation of Existing Research and Information Gaps (Ottawa: Canada Mortgage and Housing Corporation, 1996), p. 48.

and future beneficiaries. Disadvantages stem largely from the interest costs that are added to the cost of the expenditure as well as the possibility of impairing the credit rating of a municipality (thus increasing the cost of capital in the future).

2.3 Trends in Municipal Governance

In recent years, provincial governments across Canada have altered their relationships with their constituent municipalities in several ways. The first trend has been to devolve certain services and/or responsibilities to local government units. This has largely been driven by fiscal constraints faced by provinces, reflected in the review of municipal acts and in the cuts to grants and transfers to municipalities.⁸ Associated with this first trend has been the consolidation of municipal governments into larger regional units. Interviews with municipal officials suggest that this trend will continue for some time.⁹ One official speculated that Ontario, for example, may eventually be composed of 50 municipal regions, down from the nearly 800 municipalities at present. Besides providing capacity to assume these down-loaded provincial responsibilities, single-tier governments are generally thought to be more accountable to residents (through more direct ties to the political process) and better capable of assessing the condition of the regional infrastructure (by developing repair, replacement and maintenance schedules).¹⁰ Municipalities are increasingly expected to be more self-reliant, turning to their own sources of revenue -- largely property taxes and user fees. Municipal officials envisage increased reliance on other revenue sources, many of which are not presently authorized by provincial governments, such as gasoline or hotel taxes or a proportion of personal income taxes.

The second trend has been the deregulation of provincial control over municipal activities. The latter has been evident in a number of land use planning matters as well as regulations related to financial management. Canadian municipalities, long viewed as the “administrative arms” of provincial government, are increasingly asked to determine policy for both “hard” (sewage, public buildings, etc.) and “soft” (welfare, health, policing, etc.) services -- subject, of course, to provincial oversight. Related to this second trend, there appears to be a reduction in the complexity of documentation in the regulatory approval process. In some cases, the formal approval of a municipal action by some provincial agencies has been replaced by a guideline or standard which municipalities are obliged to follow. In general, there is a growing view that prescriptive laws detailing everything a municipality can do and how it must be done are antithetical to present notions of effective

⁸ Peter Diamant and Tom Carter, Canadian Response to Urban Governance Survey: OECD Group on Urban Affairs (Ottawa: Canada Mortgage and Housing Corporation, 1997), p. 48.

⁹ Interviews with Kent Kirkpatrick (Deputy Treasurer, RMOC) and Michael Sheflin (Environment and Transportation Commissioner, RMOC), September 17, 1998.

¹⁰ Institute for Urban Studies, Municipal Infrastructure: Organizational Structure, Financing and Delivery of Service (Ottawa: Canadian Mortgage and Housing Corporation, 1996).

public management.¹¹ Legislation that performs the role of a constitution -- setting out broad roles, norms, and objectives -- is viewed as being more conducive to an adaptable and responsive public sector.

A third trend is the growing belief that accountability of municipal councils may be weakened when government services are provided through special purpose bodies (such as parks boards, conservation authorities, utility commissions, or industrial commissions) rather than through government departments directly. Support for these bodies stem from the assumption that appointed experts rather than politicians and government officials could administer more efficiently the operation and provision of government services.¹² However, for many of these bodies there is no direct link between the body making the expenditure decisions and property tax revenues generated to fund these expenditures. These boards simply set their budgets and the municipalities are often required to provide them with sufficient funds to meet their expenditure.¹³ The proliferation of special purpose bodies has also made it difficult for citizens to decipher the responsibility for service provision in instances where their own concerns are to be addressed.

A final trend, related to the financial management of municipalities, relates to the improved valuation of assets and liabilities in municipalities. Provincial governments have demanded better accounting and reporting standards, particularly related to accounting for physical assets which includes depreciation costs. The Public Sector Accounting and Auditing Board of the Canadian Institute of Chartered Accountants, for example, has made recommendations that financial statements recognize the liability for closure and post-closure care costs for solid waste disposal sites. Many municipalities have accordingly altered their bookkeeping methods by adopting the accrual basis of accounting.

2.4 Approaches to Capacity Development

In most provinces, a wide variety of associations exist to facilitate the exchange of information, to offer training and -- in some cases -- to provide certification for personnel involved in municipal public works functions. In Ontario alone, there are over 60 such professional associations. Table 4 lists those directly and indirectly related to the public works functions as defined in this study.

¹¹ Canadian Urban Institute, Disentangling Local Government Responsibilities: International Comparisons (Toronto, 1993), p. 77.

¹² Harry Kitchen, Efficient Delivery of Local Government Services (Kingston: Queen's University School of Policy Studies), p. 14.

¹³ Office of the Chief Administrative Officer (Regional Municipality of Ottawa-Carleton), Review of Governance in Ottawa-Carleton (November 13, 1996), p. 57.

Table 4: Sample of Professional Associations related to Public Works in Ontario

Area and Local Municipal Solicitors Association	Ontario Home Builders Association
Assoc. of Conservation Authorities of Ontario	Ontario Library Association
Association of Ontario Road Superintendents	Ontario Municipal Administrators Assoc.
Association of Regional Municipal Solicitors	Ontario Municipal Recreation Association
Cdn. Assoc. of Certified Planning Technicians	Ontario Municipal Water Association
County Planners Group	Ontario Parks Association
Drainage Superintendents Assoc. of Ontario	Ontario Plumbing Inspectors Association Ltd.
Municipal Engineers Association	Ontario Professional Planners Institute
Municipal Finance Officers Assoc. of Ontario	Ontario Recreational Facilities Assoc. Inc.
Ont. Assoc. of Property Standards Officers Ltd.	Ontario Traffic Conference
Ontario Building Officials Association	Parks and Recreation Ontario
Ontario Good Roads Association	Solid Waste Association of North America

Source: Association of Municipal Clerks and Treasurers of Ontario, 1997 Ontario Municipal Directory (Mississauga, 1997), pp. 148-51.

A number of national organizations also exist as clearinghouses of information, some of whom also play an advocacy role on behalf of members. Among the most prominent are the Federation of Canadian Municipalities, the Intergovernmental Committee on Urban and Regional Research, and the Canadian Public Works Association.

There is no shortage of opportunities for municipal officials in Canada to take advantage of further professional education and training. According to a CMHC study on municipal infrastructure information needs, the typical public works professional relies on professional journals, conferences, municipal colleagues and consultants as useful sources of information.¹⁴ For many municipal practitioners, the challenge may be to determine the most useful educational opportunities from the array of sources. For example, there are over twenty titles dealing with water and wastewater issues in North America.

Accreditation of certain public works professionals varies from province to province and is largely governed by statute. In the case of waterworks operators in Alberta, for example, the province sets out particular classes of licenses depending on the size of the local population and complexity of the utility. Some provinces also have non-statutory certification programs that are administered by professional associations. Again In Alberta, the local branch of the Canadian Public Works Association recently developed a Certified Public Works Supervisor Program, which involved developing a competency profile and collaborating with a community college to determine an appropriate training program. According to the Program Director, this program was among the first of its kind in Canada.¹⁵

Given the increased availability and competency of private sector expertise in the operation -- and, in some instances, inspection -- of various public works, municipalities

¹⁴ Chris Gates and Judith Ramsay, An Assessment of Municipal Infrastructure Needs: Final Project Report (Ottawa: Canada Housing and Mortgage Corporation, 1995), p. ii.

¹⁵ Interview with Glenn Tompolski, City of Leduc (Alberta), Sept.24, 1998. Additional information on this initiative can be found at the following internet site:
<http://w3.wnet.gov.edmonton.ab.ca/cpwa/news.html>

have less of a need to provide these services themselves. In other words, technical expertise in infrastructure design is no longer the sole preserve of the public sector. Coincident with this development, however, is the rising importance of managerial abilities of public works professionals. Business degrees are quickly becoming as germane to public works function as engineering backgrounds, given the trends to increased contracting out of services, the development of user fee regimes and the adoption of other innovative means for financing public works systems.

3. COMPONENTS OF PUBLIC WORKS

The range of local government organizations has produced a complex system for delivering municipal services, with over six thousand cities, towns, villages, regions, counties and townships across Canada. Accordingly, a short analysis of the regulatory nature of public works functions can only be undertaken in general terms. Six components of public works will be examined: land use, building codes, road and bridges, parks and recreational facilities, water and sewage systems, and solid waste collection and disposal.

3.1 Land Use

Legal Framework

Two main forms of land use regulation exist in Canada. The more general authority, official planning, involves overall planning for the entire territory of a municipality. Zoning, alternatively called “building restriction” or “land use”, generally relates to restrictions on uses to which specific areas of the municipality can be put. The principle objective of land use regulation is to control future development, redevelopment or expansion of urban and suburban municipalities rather than to preserve existing residential areas. As most urban planners recognize, a planned and orderly growth is highly desirable not only from the standpoint of the residents but also from the standpoint of the maintenance of assessment (i.e. taxation) values.

Most provinces in Canada have adopted planning Acts which regulate the process by which municipalities delineate future land use. Without such authority, municipalities have no inherent power to interfere arbitrarily with the common law right of land owners in the use and improvement of their property.¹⁶ The objective of planning is to promote the public interest by regulating the use of private property and by directing future development. This is often undertaken by special purpose bodies sanctioned by provinces and appointed by municipalities. Ontario municipal councils, with the exception of those in northern Ontario, may appoint a planning advisory committee, and the councils of two or more municipalities may enter into an agreement to provide for a joint planning advisory committee. In all provinces with local planning agencies, their functions -- as their name implies -- are advisory only; they make no final decisions but merely advise and recommend.¹⁷ The outcome of the planning process, the official plan, must be adopted by the municipal council before being formally approved by the Minister of Municipal Affairs.

¹⁶ This refers to the common law right of every individual “to build upon his own land whatever kind of building he sees fit, so long as it is not a nuisance, public or private.” For a detailed treatment of this subject, see Rogers, *Canadian Law of Planning and Zoning* (Carswell).

¹⁷ Ian M. Rogers, *Law of Canadian Municipal Corporations* (2nd ed., Carswell), Vol. 1, p. 792.

Besides approving and implementing official plans, municipal councils are authorized to enact zoning by-laws to regulate “the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected or located within the municipality or within any defined areas.”¹⁸ Since zoning by-laws may interfere with property rights (by depreciating property values), provision for public hearing is often made by council before such a by-law is adopted. In the case of Ontario, the approval of the Ontario Municipal Board is no longer required for every zoning by-law. However, any person (including the relevant Minister) may appeal newly enacted zoning by-laws for a period of up to 20 days.

There have been some recent efforts to streamline the planning process for both provinces and municipalities. Reforms in Ontario have attempted to “empower” local decision-making by having the provincial government set detailed policy, the municipal government make development decisions, and the Ontario Municipal Board adjudicate disputes.¹⁹ While this may lessen the need for provincial approval of development decisions, some point to the difficulty that small municipalities (with minimal planning staff) will encounter when ensuring that local development decisions are consistent with provincial policy.²⁰

It is well recognized that effective planning requires considerable expertise of staff as well as maintenance of up-to-date data on the social, economic and environmental situation of a given municipality. For this reason, there is a growing consensus -- especially amongst two-tier municipal governments -- that planning should take place at the highest level of government (below the province).²¹ Similarly, a consensus exists that more detailed aspects of land use should rest with the lowest tiers given their greater expertise in local conditions. This would consist of implementing zoning by-laws, variances, site plans, and building permits.

Table 5: General Division of Responsibilities Over Land Use

Provincial Role	Regional Government Role	Lower-Tier Municipal Role
<ul style="list-style-type: none"> enabling legislation (Planning Act) advice to municipalities on land use planning final approval of Official Plans and oversight of zoning by-laws adjudication of disputes over official plans or by-law 	<ul style="list-style-type: none"> power to appoint planning advisory committee development and adoption of Official Plan 	<ul style="list-style-type: none"> adoption and implementation of zoning by-laws

Financing Options

¹⁸ Ontario Planning Act, S. 34(1), para. 4.

¹⁹ Ministry of Municipal Affairs (Ontario), Understanding Ontario’s Planning Reform (Toronto, 1994).

²⁰ D. Wayne Fairbrother, “The Effect of the New Planning Act on Smaller Municipalities,” Municipal Monitor (June/July 1995).

²¹ See for example Office of the Chief Administrative Officer (Regional Municipality of Ottawa-Carleton), Review of Governance in Ottawa-Carleton (November 13, 1996), pp. 96-100.

While unrelated to the administration of land use planning per se, it is worth highlighting the general procedure of financing new land development in Canadian municipalities. In new growth areas, private entrepreneurs are required to construct fully equipped streets, including water and sewer pipes, curbs, gutters, drainage systems and electrical services, all in keeping with standards set by the municipality. All new services must be approved by municipal inspectors, and an agreement must be signed to transfer ownership of the services to the municipality before it will issue permits that allow housing or other buildings to be constructed on land. There are few variations on this basic model.²² Authority to charge developers for the cost of these public works is derived from provincial statute. In British Columbia, for example, development charges may only apply to specific types of infrastructure such as expanding or altering sewer, water, drainage and highway facilities and the acquisition of park land.²³ As a general rule, municipal revenues can only be derived from those sources permitted by legislation; any attempts to collect moneys from other sources is deemed *ultra vires*.

From an efficiency point of view, development charges are attractive in that new infrastructure will only be built if there is demand. The major concern with development charges is that these costs cover construction as opposed to ongoing maintenance. The maintenance costs are met from either general revenues or user fees.

3.2 Building Codes

Legal Framework

General municipal statutes in most provinces provide for regulations to be passed establishing standards for the construction, use and occupancy of buildings. The purpose of such a statute is to regulate the construction of structures so as to promote the health and safety of those who inhabit them.²⁴ In several provinces, authority is given to adopt the National Building Code or National Fire Code in whole or in part. In some provincial statutes, adoption may simply involve incorporating the code by reference in a municipal by-law. With the intent of introducing uniformity amongst municipalities within the province, Ontario, Alberta, Prince Edward Island, Manitoba and Saskatchewan have each enacted provincial building code statutes related to fire and safety matters. Table 5 provides an overview of building codes in selected provinces.

Table 6: Treatment of Building Codes in Select Provinces

²² Canadian Mortgage and Housing Corporation, *Urban Infrastructure in Canada* (Ottawa, 1989), p. 24. In a minority of projects in some prairie and British Columbia centres, the municipality is both the landowner, the developer and the approval/inspection authority.

²³ Infometrica, *Financing Municipal Infrastructure: Alternative Methods* (Ottawa: Canadian Mortgage and Housing Corporation, 1992), p. 9.

²⁴ In the absence of express authority, building codes do not permit regulation of questions of detail such as fixtures and other non-structural matters which do not affect the general structure and which have no bearing on the safety, size, strength and support of a building.

Quebec	no express authority in the Cities and Towns Act to adopt the National Building Code; building by-law may include provisions to regulate materials used in building and establish standards of strength, safety and insulation
Ontario	Ontario Building Code Act replaces building construction standards prescribed earlier by municipal by-laws
Manitoba	by-laws may be passed by councils for prescribing standards for buildings, materials, plumbing, and electrical installations; may adopt the National Building Code
Saskatchewan	Lieutenant-Governor in Council may make regulations prescribing building standards, and may adopt the National Building Code in whole or in part
Alberta	Safety Codes Act empowers Lieutenant-Governor in Council to make regulations; Municipal Government Act permits councils to enact by-laws designed to make buildings fireproof
British Columbia	all-inclusive authority given to councils to pass by-laws for health, safety and protection of persons and property; councils may adopt Canadian Electrical Code, the National Fire Code of Canada, or standards of the Canadian Gas Association; parts of National Building Code have been adopted as provincial code

Provincial statutes sometimes prescribe specific standards applicable to certain aspects of building construction. According to one leading expert, “it seems that there is nothing to prevent a municipality from adding to construction standards prescribed by statute so long as it acts within its delegated powers.”²⁵ In the case of Ontario, however, the *Ontario Building Code Act* deprives councils of any authority they had under the *Municipal Act*, thereby preventing them from imposing stricter standards than those prescribed by the Code. It should be noted that any conflict between provincial and municipal regulations will be resolved in favour of the provincial standards.

Authority to protect against fire generally derives from building code statutes or through the adoption of the National Fire Code in whole or in part. Local by-laws, for example, may require fire escapes for all buildings exceeding a certain height or prohibit the erection of wooden buildings without external walls and roofs of incombustible materials.

Inspection and Enforcement

Municipalities usually appoint building inspectors to administer and enforce building by-laws. For most provinces, appointment of such officials remains at their discretion; in Ontario, however, it is now mandatory for a council to appoint a chief building official and a sufficient number of inspectors to enforce the *Building Code Act*.²⁶ The main function of building inspectors in any province is the administration of the building by-law or code, and sometimes the zoning by-law, which includes the issuing of permits, inspection and enforcement. If the administration of the building by-law is vested in such an official by

²⁵ Rogers, *Law of Canadian Municipal Corporations* (2nd ed., Carswell), Vol. 2, p. 834.

²⁶ Section 3(2) of the Ontario Building Code Act declares that inspectors are to be appointed for purposes of enforcement; it does, not, however, state that the right of enforcement is exclusively vested in the chief building official, and the municipal corporation is a proper plaintiff in an action to remedy code violations.

by-law, then the council has no right to assume jurisdiction and to instruct him to issue or to refrain from issuing a permit.

A permit is essentially a device to ensure compliance with existing legal restraints and is in effect a recognition that they have been complied with. Receipt of a building permit does not, however, exempt an owner from procuring a separate permit required by by-law for electrical work on the premises. In Ontario, for example, Ontario Hydro is mandated under the *Public Utilities Act* and *Power Corporation Act* to administer the provincial Electrical Safety Code. Under this authority, all new electrical wiring must be inspected and passed by an Ontario Hydro inspector.

Inspection of buildings for fire safety is generally undertaken by municipal building inspectors. A local fire chief is typically not permitted to determine the type of fire protection or fire protection equipment required with any premises (this being considered an unwarranted delegation of legislative power and more properly confined to municipal council itself). It should also be noted that a municipal corporation is not bound by law to establish a fire department or appoint a fire chief. Once a municipality has elected to create such a department, however, it is liable in damages for injuries sustained through the active negligence of its firefighters in the performance of their duties.

Provincial acts governing the use of building codes also set out the means by which inspectors may enter buildings (generally without the need for warrant), the authority to fix fees for inspection, the process of issuing compliance or stop-work orders, and the appeals procedure for any aggrieved person. In Ontario, an appeal from the refusal or the granting of a permit can be made to an Ontario Court (General Division) judge within fifteen days. In several other provinces, there is similar machinery established for resolving disputes between an applicant or the holder of a permit and the inspector.

Since the issuance of building permits is closely tied to the zoning by-law, there is a consensus that inspection should be carried out by the level of municipal government having responsibility for this function (typically, the lower-tier of two-tier governments).²⁷

Table 7: General Division of Responsibilities Over Building Codes

Provincial Role	Regional Government Role	Lower-Tier Municipal Role
<ul style="list-style-type: none"> • formulation of building codes (5 provinces) • enabling legislation (Building Code Act) • appeals procedure 	(limited)	<ul style="list-style-type: none"> • appointment of inspectors • site plan approval • issuing building permits

3.3 Roads and Bridges

²⁷ See for example Office of the Chief Administrative Officer (Regional Municipality of Ottawa-Carleton), *Review of Governance in Ottawa-Carleton* (November 13, 1996), p. 104.

Legal Framework

Municipal jurisdiction over roads and bridges within its boundaries is usually spelled out in the applicable provincial statutes. These statutes clearly lay out the classes of highways for which various governmental tiers are responsible, e.g. provincial inter-city highways, regional arterial roads, and municipal local roads. Such jurisdiction is generally circumscribed by general municipal legislation such as the Highway Traffic Act (in Ontario), which regulates the safe operation of vehicles across the provincial and municipal highway system. Municipalities are generally empowered to pass by-laws for the establishment, opening, laying out and construction of highways.²⁸

There are seven steps involved in establishing a highway and making it fit for public travel: 1) the giving of notice of the proposed by-law; 2) holding of a public meeting to consider objections; 3) enactment of a by-law for establishing the highway and describing its location; 4) conducting a survey; 5) the expropriation of the necessary lands; 6) the provision of the funds for paying compensation therefor and construction costs; and 7) the actual physical construction.²⁹ The council can proceed with a scheme of creating a road in any manner it wishes and can adopt whatever procedure it decides on, so long as it complies with the requirements of the statute. This has permitted the bulk of highway construction in some Canadian municipalities to be contracted out to private sector sources.

Once having enacted a by-law for the establishment of a highway, the council -- as outlined above -- must then take steps to expropriate the lands on which it has been laid out. Ontario municipalities may either use their general powers of expropriation or may exercise the special power to take land for highway (as sanctioned by the *Municipal Act*). These proceedings are involuntary and if a highway is to be established over private property against the will of the owner, it must expropriate in the manner prescribed by statute with compensation.³⁰

Enforcement of Standards

In Canada, the obligation of local authorities to repair and maintain highways over which they have jurisdiction is largely governed by legislation. The measure and scope of this duty is found in the language of the statute. In some provinces, the duty imposed is to keep the highways in a “reasonable state of repair”. The courts in practice have frequently stated that “repair” is quite relative and generally dependent on the locale. What may be good repair in one locality may constitute non-repair in another. The courts, accordingly, have tended to place different obligations of road maintenance on urban authorities as opposed to rural municipalities.

²⁸ This power also typically extends to the creation of sidewalks.

²⁹ Rogers, *Law of Canadian Municipal Corporations* (2nd ed., Carswell), Vol. 2, p. 1199.

³⁰ Rogers, *Law of Canadian Municipal Corporations* (2nd ed., Carswell), Vol. 2, p. 1200.

Recent amendments to the *Municipal Act* in Ontario permit the Minister of Transportation to set minimum standards on roads and bridges. Municipalities in turn may choose whether or not to follow these minimum standards. In the event that they do not, the judicial process will determine what constitutes a reasonable standard during the course of a lawsuit. Since the courts will likely use the minimum standards to determine whether the standard of repair performed by the municipalities is reasonable, municipalities are encouraged to meet the minimum standards. The province, moreover, does not enforce compliance with the standards. Monitoring is undertaken jointly with the municipal sector to determine the effectiveness of the standards.³¹

There is a general consensus that construction and maintenance of roads whose benefits are confined primarily to a local community should rest with the lowest tier of government. This permits the municipality to offer the level of service that best accords with the desires of its residents. Conversely, any road that transcends a municipality's boundaries should be the responsibility of the upper tier. Several additional arguments can be made for consolidating road maintenance at the higher municipal level. These include the desirability of applying uniform standards of construction across jurisdictional boundaries (thus minimizing confusion and improving safety), and the significant planning and engineering expertise associated with road building (more likely found at the regional level).

Table 8: General Division of Responsibilities over Roads and Bridges

Provincial Role	Regional Government Role	Lower-Tier Municipal Role
<ul style="list-style-type: none"> enabling legislation (e.g. Highway Traffic Act) setting and monitoring of minimum standards (construction and safety) construction and maintenance of provincial (inter-city) roads 	<ul style="list-style-type: none"> construction and maintenance of arterial roads consult with province on legislation and regulations monitor effectiveness of standards (with province) 	<ul style="list-style-type: none"> construction and maintenance of local roads

Financing Options

Funding for roads and bridges is most frequently undertaken through general taxes, usually supplemented by grants from provincial governments. Over the past decade, there has been increased use of private sector contracting for the construction of highways as well as the adoption of user fees.³² User fees may take several forms. Charges can be indirectly related to road use through the use of annual vehicle license fees or they can be related to road use through the levy of tolls. Authority for these levies must be expressly laid out in legislation. In British Columbia, for example, municipalities are permitted to

³¹ Ministry of Municipal Affairs and Housing website (Ontario), "Who Does What: Toward Implementation" (January, 1998) - <http://www.mmah.gov.on.ca/business/wdw/section4-4-e.html>

³² Enid Slack, *Financing Infrastructure: Evaluation of Existing Research and Information Gaps* (Ottawa: Canadian Mortgage and Housing Corporation, 1996), p. 30.

levy a fuel tax to finance urban transportation. The three main objectives of road pricing are to manage congestion, to reduce environmental damage and to raise revenue.

3.4 Parks and Recreation Grounds

Legal Framework

Councils of Ontario municipalities are authorized to acquire land for establishing and laying out parks and recreational grounds. Provision for this derives from the *Municipal Act* (s. 207) or through adopting the provincial *Public Parks Act* as a municipal by-law. Where the latter Act has been adopted, the management and control of all existing parks and those thereafter established is to be vested in a Board of Park Management. The municipal council cannot interfere with the Board in its exercise of the powers invested in it. The Board has powers to enact its own by-laws respecting the use, regulation and protection of parks (and the council has such powers where there is no board). Municipal parks in Ontario are to be free to the public subject to by-laws and regulations of the Board which may pass by-laws prescribing fees for entrance to any park. (In Alberta and British Columbia, councils may by by-law charge admissions to its parks and recreational facilities.)

Sometimes a municipality will take out letters patent creating a non-profit corporation to manage and operate a particular facility such as a skating rink or indoor swimming pool. Such a corporation is not an independent company carrying on the business with the public in general and its existence may depend each year on the decision of the municipality to renew the lease of the facility.

It is generally agreed that management and regulation of parks and recreation should be undertaken at the lowest tier of government. This is related to the lack of negative spillovers that need to be controlled, the frequent use of volunteers in these services (more easily recruited at the local level) and the more local nature of preferences for these services.

Table 9: General Division of Regulatory Responsibilities Over Parks and Recreation

Provincial Role	Regional Government Role	Lower-Tier Municipal Role
<ul style="list-style-type: none"> enabling legislation (Municipal Act or Public Parks Act) 	(limited)	<ul style="list-style-type: none"> by-law establishing park or recreational facility delegation of management to park Board

Financing Options

A board of park management is generally dependent on the council for the financing of the parks. At the request of a parks board, a council may raise money by an issue of debenture for the purpose of purchasing land for park purposes and making improvements thereto. In Ontario, the Board in effect becomes the statutory agent of the municipality when purchasing park lands and it is the municipality which is liable to pay for them either

out of its general funds or by issuing debentures. In Manitoba, councils are required to levy a park fund tax to meet the estimates of park boards.

A number of innovative public-private partnerships have been undertaken in recent years to facilitate the construction of parks and recreational facilities. In Richmond, BC, Honda Corporation agreed to build a soccer pitch in 1984 for community use on company ground in return for lower assessed taxes. In this same city during 1993, a private developer agreed to build an ice centre which was subsequently leased back to the city. This latter agreement required voter approval through referendum.³³

3.5 Water and Sewage Systems

Legal Framework

Provinces exercise proprietary rights over water resources and, therefore, have the authority to legislate on all aspects of water supply, use, pollution control, hydroelectric and non-nuclear power development, irrigation and recreation.³⁴ In practice, provincial governments have granted municipalities the bulk of responsibility for the provision of water. In Ontario, the only provincial standard that must be adhered to is that which is enforced by the Ontario Water Resources Commission and the Ministry of the Environment, stipulating that the quality of the final output must meet specific quality standards. In order to harmonize standards for potable water across Canada, however, the federal government and the provinces have agreed to share responsibility for the development of the Guidelines for Canadian Drinking Water Quality through the Federal-Provincial Subcommittee on Drinking Water. A number of research and development projects are also carried out under the jurisdiction of this inter-governmental body.

Provinces grant authority to municipalities to establish and operate waterworks for the purpose of supplying potable water. Councils, moreover, may supply these utilities with such powers as they please. In Ontario and Quebec, provincial government approval is required following the decision of a municipal council to establish or extend a waterworks system. In Ontario, the plans and specifications must be submitted to the Ontario Water Resources Director -- who may demand detailed information and tests before allowing a project to proceed. Furthermore, all waterworks must be kept in good repair and no work may proceed without the Director's approval. (There are several exceptions to these requirements, however, such as privately owned waterworks or waterworks serving five or fewer residences.)

Municipalities in Ontario have the power to divert any lake, river, pond or stream for the purpose of establishing a waterworks. Lands may be acquired by purchase or expropriation within or outside the municipality for waterworks purposes.

³³ IBI Group, Public-Private Partnerships in Municipal Infrastructure: Theory and Practice (Ottawa: Canadian Housing and Mortgage Corporation, 1995), pp. 28-34.

³⁴ Environment Canada, Federal Water Policy (Ottawa: 1987), p 8.

As mentioned above, all provinces have statutory provisions that are designed to ensure the purity of public waters (e.g. the *Ontario Water Resources Act*). Local authorities accordingly are under an obligation to supply wholesome and pure water to consumers. To this end, maintenance and purification standards are generally developed, managed, and approved by municipalities. These must meet, or be more stringent than, all provincial or federal standards. A municipality which knowingly maintains a contaminated water supply will likely be held answerable in damages to all who suffer from ill health by drinking water from such a source.

In addition to maintaining waterworks, municipalities are empowered by provincial statute to construct sewers, pumping stations, and sewage treatment plants. Ontario municipalities, for example, receive statutory authority to create appropriate utilities from both the *Municipal Act* and the *Local Improvement Act*. Construction of sewers is generally conferred in permissive terms. It is clear as a matter of law, for example, that municipalities are not bound to provide drainage for the property within its limits. So it is discretionary for a city to provide public drains in its streets to enable property owners to discharge their private drains into them.³⁵ The council of an Ontario municipality, however, may become obligated to enact the necessary by-laws to establish a sewage system if, in the opinion of the Municipal Board, it is necessary in the interest of the public health.

There is a consensus both in theory and practice that overall water management works best at the regional level (as opposed to lower-tier municipalities). In cases where the regional government is responsible for treatment of water while the local municipalities are responsible for distributing water and collecting sewage, there may be little incentive for the distribution or collection entity to implement policies or programs designed to economize on the consumption of water or sewage generated. Pricing structures designed to encourage conservation of water (e.g. water meters) involve considerable capital expenditure and would unlikely be implemented by area municipalities.³⁶ Clear evidence of economies of scale and the ability to control spillovers in the most cost efficient manner are additional arguments in favour of regional management over water services.

Recent reforms in Ontario have sought to better differentiate the responsibilities of the province and municipalities in managing water and sewage systems. The *Water and Sewage Services Improvement Act* of 1997 transferred remaining ownership of water and sewage treatment facilities -- amounting to 25 per cent of Ontario facilities -- over to the municipalities they serve. This will avoid placing the province in the position of being regulator, owner and funder of services in some areas. The new provincial role will focus on enforcing environmental and health standards through the *Environmental Protection Act* and the *Ontario Water Resources Act*. By contrast, inspection of on-site septic systems, typically confined to smaller municipalities and rural areas, has been transferred

³⁵ Rogers, *Law of Canadian Municipal Corporations* (2nd ed., Carswell), Vol. 2, p. 905.

³⁶ Office of the Chief Administrative Officer (Regional Municipality of Ottawa-Carleton), *Review of Governance in Ottawa-Carleton* (November 13, 1996), p. 74.

from the provincial Ministry of the Environment to municipalities. Septic inspection now falls under the Ontario Building Code (OBC). The OBC will set qualifications for septic inspectors and create the administrative framework for certifying these individuals.

Table 10: General Division of Responsibilities Over Water and Sewage Systems

Provincial Role	Regional Government Role	Lower-Tier Municipal Role
<ul style="list-style-type: none"> enabling legislation (Municipal Act) review of waterworks plans review of utility rates and provision for appeals process establishment of water quality standards (Water Resources Act) 	<ul style="list-style-type: none"> establishment and operation of water utilities expropriation powers over land and water sources inspection of water system 	<ul style="list-style-type: none"> (usually limited to local distribution, billings and customer relations)

Inspection

Ongoing monitoring of water and sewage works generally rests with municipalities themselves. Most provinces, however, maintain some authority for inspection, beyond regulating the construction of these utilities through a system of permits and licenses. Under Section 15 of the *Ontario Water Resources Act*, for example, the Minister of the Environment may appoint a provincial officer to undertake any inspections of surface waters or water and sewage systems that fall under the authority of the Act. The legislation also permits the provincial government to require operators (i.e. municipalities) to monitor, record and report on the sources of the treatment of water and sewage. The Minister may also license waterworks and sewage works operators and prescribe the qualifications of persons to whom licenses may be issued.

Financing Options

Utility rates are not considered taxes but rather the price paid for a commodity supplied to a consumer. Water systems -- whether operated by the municipality itself, by a public utilities commission on behalf of the municipality, by a waterworks commission, by a waterboard or by the Ministry of the Environment -- are free to implement their pricing policies and investment decisions subject to various statutes. (Council by-laws setting the price of water require ministerial approval in British Columbia and Quebec.) Several provinces have also established government boards with the authority to review and alter rates chargeable by public utilities, from which a right of appeal may sometimes be given. An Alberta user who is “aggrieved” by utility charges, for example, may appeal directly to the Energy and Utilities Board. As one scholar of municipal financing has noted, it appears as if current rate structures for water pricing have simply evolved over time without any guiding rationale.³⁷ These structures have periodically been modified to reflect changes in experience or in the political or financial environment encompassing the local community.

³⁷ Harry Kitchen, *Local Enterprise in Canada* (Ottawa: Economic Council of Canada, 1986), pp. 36-37.

The extent to which water rates are used to finance construction costs directly or to finance the debt costs associated with capital projects is the subject of several statutes. Under the *Local Improvement Act* in Ontario, for example, the rates set for capital projects must apply specifically to the lots benefiting from the projects. The *Municipal Act* allows municipalities to impose rates to cover capital costs on owners or occupants of land who derive, will or may derive benefits from these capital works. Finally, the *Public Utilities Act* allows municipalities to impose rates to cover capital construction costs even though the owners or occupants of the property are not connected to the service. This last statute strictly regulates the finances of a commission -- any revenues, after deduction of operating expenses and after provision has been made for any reserve fund, must be turned over to the municipal treasurer.

There is a strong consensus in the literature that water in Canada is underpriced, resulting in over-consumption, unfair pricing among consumers, and deterioration of the physical infrastructure.³⁸ Failure to price water may also have unfair distributional implications, since high-income households tend to use more water than low-income households. By contrast, there is considerable evidence supporting pricing systems. Studies have clearly demonstrated a demand-dampening effect for water through metering on water use in Canadian municipalities.³⁹ Correct pricing, moreover, links government expenditures with revenue and provides appropriate signals for capital investment.

Financing of sewer systems is generally undertaken through a surcharge included on the water bill. Sewer rates, like water rates, are established by a municipal or utility by-law. According to most commentators, pricing schemes for sewage are presently far from optimal.⁴⁰ In no instance has there been an attempt to separate the costs associated with treatment, collection and transmission of sewage.

3.6 Solid Waste Collection and Disposal

Legal Framework

Municipalities in most Canadian provinces are authorized to establish by by-law a system for the collection and disposal of garbage and other refuse. Provincial acts -- usually the basic Act establishing the framework for municipal governments -- also enable the municipality to contract with a private organization for the performance of such services.

Municipalities are also empowered to acquire land for the purposes of disposing solid waste. In Ontario, the Ministry of Health must approve the erection of buildings, plants

³⁸ Enid Slack, *Financing Infrastructure: Evaluation of Existing Research and Information Gaps* (Ottawa: Canadian Mortgage and Housing Corporation, 1996), p. 23.

³⁹ Harry Kitchen, *Efficient Delivery of Local Government Services* (Kingston: Queen's University School of Policy Studies), p. 36.

⁴⁰ Harry Kitchen, *Efficient Delivery of Local Government Services* (Kingston: Queen's University School of Policy Studies), p. 38.

and machinery as may be required for waste disposal. Should a local municipality refuse to build facilities for the disposal of garbage, the Municipal Board, after a hearing, may demand its creation. This authority is quite an important one, given citizens' disdain for disposal sites in close proximity to residential sites -- the perennial "NIMBY" problem ("not in my backyard"). Municipalities in most provinces, moreover, require a certificate of approval issued under an *Environmental Protection Act* in order to use, operate or establish a waste management system. Where there is an application for the disposal of liquid industrial waste or hazardous waste, approval by an Environmental Assessment Board is normally required. Inspection of disposal sites is generally undertaken by municipalities themselves, who monitor ground water, surface water, and gas migration to ensure proper management and compliance with all environmental standards set by the province.

In two-tier municipalities, there is a growing consensus that solid waste management -- both collection and disposal -- should be integrated at the regional level.⁴¹ The main rationale relates to the limited incentives for lower-tier municipalities to initiate policies minimizing the amount of waste collected when these same municipalities do not assume responsibility for disposal or recycling (typically left to the upper-tier regional government). The use of tipping fees -- charges assigned to each truckload of solid waste -- can help minimize this problem, but it is generally agreed that integration of collection, disposal and recycling at one level results in better management. There is also mounting evidence to suggest that single-tier responsibilities of solid waste management may lead to significant cost savings due to economies of scale.⁴²

Most experts agree that any successful solid waste management strategy should integrate both regulatory oversight with citizen participation.⁴³ The latter component is particularly important as a means of changing people's habits regarding materials they use and discard into the waste stream. Efforts to reduce, reuse, and recycle solid wastes require extensive public education campaigns.

Table 11: General Division of Regulatory Responsibilities over Solid Waste Management

Provincial Role	Regional Government Role	Lower-Tier Municipal Role
<ul style="list-style-type: none"> • enabling legislation • setting of health standards 	<ul style="list-style-type: none"> • choice and management of disposal site • inspection of sites 	<ul style="list-style-type: none"> • solid waste collection

⁴¹ Office of the Chief Administrative Officer (Regional Municipality of Ottawa-Carleton), Review of Governance in Ottawa-Carleton (November 13, 1996), pp. 83-85.

⁴² Office of the Chief Administrative Officer (Regional Municipality of Ottawa-Carleton), Review of Governance in Ottawa-Carleton (November 13, 1996), p. 83.

⁴³ Claire Felbinger, "Public Works," in James Banovetz, ed., et al., Managing Small Cities and Counties: A Practical Guide (Washington, DC: International City/County Management Association, 1994), p. 113.

Financing Options

A few municipalities in Canada have applied user fees for residential solid waste collection. In Ontario, for example, there are at least 23 variable curbside disposal fees throughout municipalities. Other than a few case studies, however, very little has been written in Canada on the use of charges for waste disposal and collection.⁴⁴ In particular, there is no assessment of the impact on user fees for waste diversion, illegal dumping and the need for landfill sites. The information that does exist suggests that curbside disposal fees do result in waste reduction but that the degree of diversion depends on community characteristics such as socioeconomic factors.

⁴⁴ Enid Slack, Financing Infrastructure: Evaluation of Existing Research and Information Gaps (Ottawa: Canadian Mortgage and Housing Corporation, 1996), p. 32.

4. CONCLUSIONS

Having examined the legal and regulatory frameworks surrounding six public works functions in Canadian municipalities, it is clear that provincial governments continue to assume an important role. In all of these functions, provinces set standards, provide redress functions, approve various council decisions and -- in some instances -- directly inspect municipal public works. Despite trends to lessen bureaucratic regulation, legislation granting authority to municipalities remains extremely detailed. It places narrow limits on what municipalities can do and severely restricts the scope of municipalities to initiate policy. While the present relationship between provinces and municipalities is largely a function of the constitution (wherein provinces assume control over the incorporation of municipalities), it is also related to various defensible regulatory principles. These principles include separating the setting of standards (provinces) from ownership and operations (municipalities) as well as providing for review bodies or administrative tribunals to hear complaints from aggrieved citizens or organizations.

It is evident that the rationale for dividing service responsibilities between regional (upper-tier) and lower-tier municipalities in several provinces is based more on considerations of economy and efficiency as opposed to concerns over regulation. The two-tier municipal structure has been used primarily to allow those services supposedly exhibiting economies of scale and significant spillovers to be provided by the regional government, while allowing the lower-tier governments to provide the remaining services and to encourage citizen access and participation in local decisions. (Trends towards municipal consolidation in both Canada and abroad, however, suggest that single-tier governments offer the least entangled, most accountable, and most cost-effective means of providing local government services.⁴⁵) Regulation concerning public works (as defined in this study) is exclusively a provincial-municipal matter.

Issue #1: Given that the role played by provincial governments in the public works function has no parallel in an Aboriginal self-government context, how should some of the provincial-like functions be incorporated into self-government agreements? In particular, how should such agreements handle the following: standard setting, inspection, harmonization, professional accreditation, provision for redress or appeals?

Issue #2: While evidence in this study suggests that a two-tier structure (akin to a provincial-municipal relationship) may be required to ensure effective regulation,

⁴⁵ Canadian Urban Institute, Disentangling Local Government Responsibilities: International Comparisons (Toronto, 1993), p. 82. See also Institute for Urban Studies, Municipal Infrastructure: Organizational Structure, Financing and Delivery of Service (Ottawa: Canadian Mortgage and Housing Corporation, 1996).

can regulation also be achieved in a one-tier government? To what extent can regulations concerning public works be harmonized over multiple communities?

As this study indicates, the manner in which revenue is raised by Canadian municipalities is tightly regulated by the provinces. This applies both to general capital borrowing as well as to financing of distinct public works such as water and sewers, roads and bridges, or solid waste collection. Most experts agree that the trend in infrastructure financing is towards greater use of user fees and a greater role for the private sector in paying for infrastructure. Additionally, it is generally argued that the more direct the relationship between the revenues raised to finance public works and the level of government determining the expenditures, the more fiscal accountability and efficiency is enhanced.

Issue #3: What, if any, authorities for financing public works are required in self-government agreements?

It has been argued, moreover, that while provincial control over municipal capital borrowing has been strict, municipalities as a result enjoy relatively sound financial status. Of the three levels of government, local government is usually considered the most financially prudent.

Issue #4: How can the federal government and First Nations' governments minimize the likelihood of insolvency when financing municipal capital infrastructure? Can borrowing mechanisms, such as the Municipal Finance Authority of British Columbia, be replicated for First Nations?

Finally, virtually all of the literature available on the regulation and financing of public works is based on the experiences of medium and large municipalities in Canada. Given the relatively small size of First Nations⁴⁶, further research would be helpful in this area.

Issue #5: How are capacity constraints in small and rural municipalities handled in the following areas: land use planning, inspection of buildings and public utilities, professional training and accreditation? Are there particular accountability problems faced by smaller municipalities through the increased use of special purpose bodies, inter-municipal agreements, or contracting out of services? What administrative capacity is required to undertake greater use of user fees for the financing of various public works?

⁴⁶ The average size of the twenty largest native Bands in Canada is 6636 persons. Indian and Northern Affairs Canada, Indian Register Population by Sex and Residence (Ottawa: February, 1998), p. xvii.