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MUNICIPAL LAW : INTERMEDIATE LEVEL

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9-5-251

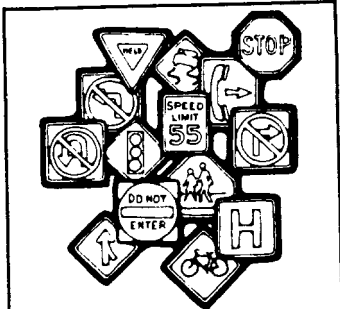
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MUNICIPAL LAW : INTERMEDIATE  
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# Municipal Law Intermediate Level

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NORTHWEST TERRITORIES



**Municipal Administration Certification Program**

MUNICIPAL LAW

1. Introduction to Law
2. Law in the Northwest Territories
3. The Establishment & Proceedings of Municipal Councils
4. General Powers and Responsibilities of Municipal Councils
5. Specific Powers and Responsibilities of Municipal Councils
6. Tax-Based Municipalities
7. The Law of Contracts
8. Municipal Tendering Procedures
9. - Land Administration &  
Introduction to Resource Development
10. Exam

MUNICIPAL LAW

General Introduction:

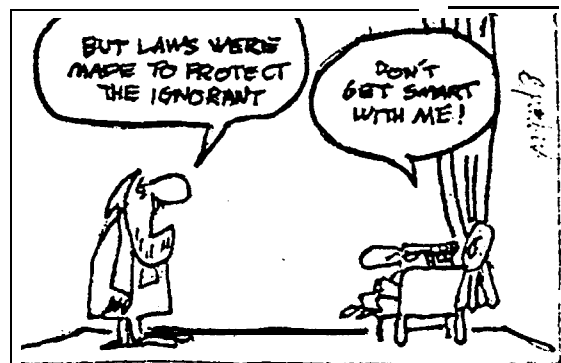
This course is called Municipal Law, and simply stated, it is a study of the law as it relates to the structure and operation of municipal government.

There are many aspects of the law, and many specific laws, that determine or otherwise effect the operation of a municipality. Since ignorance of the law is no excuse, the law as it affects municipal government must be understood by senior administrative staff. This course will try to provide that understanding.

WIZARD OF ID



by Brant parker and Johnny hart



## INTRODUCTION TO LAW

### 1. Objectives:

To review and explain the following aspects of law in Canada:

- **What** is the law and the rule of law?
- What are the two sources of law in Canada?
- **Who** makes laws in Canada?
- The **legal** authority of governments in Canada.
- The structure of the court system in Canada and the N.W.T..

## 2. Law and The Rule of Law

Law can be defined as:

"rules of conduct, recognized by custom or decreed by formal enactment, considered binding on the members of a community, nation, etc"  
(Funk & Wagnalls Standard Dictionary)

Laws define right and wrong in a society and generally reflect the values and beliefs of a society. If life is valued, there should be laws that protect life. If property is valued, there should be laws to protect property. If individual rights and freedoms are valued, there should be laws to protect them.

The law is meant to ensure that justice is done, but there may be considerable differences of opinion on whether or not a particular law, or even an entire legal system, is in fact just. The law however, is what the state, representing society as a whole, views as constituting justice. If laws cease to represent the views of society they should be changed through the properly constituted authority. Any individual's opinion of justice cannot be substituted for the law. This is the basis of social and political organization in Canada and it is called the rule of law. This principle says that the law is supreme and that everyone, including governments, must abide by the law. The law applies equally to all. No one person or organization is above the law, and all actions must be within the law.

All societies have laws and all societies demand the rule of law. Yet, social and/or political upheaval may lead to the breakdown of the rule of law if the law, or the process of making and/or enforcing the law, is unjust. The political system must be examined in any study of law to see how the law has developed; how laws are made; by whom; under what authority; how are they enforced; and what safeguards there are to ensure that the law is just and that the rule of law is not violated.

### 3. Sources of Canadian Law:

There are two sources of law in Canada: common law and statute law. All Canadian laws are either based on the principles and traditions of common law, or are written in various statutes. Both sources of law are equally important.

#### COMMON LAW :

**Common** law is a system of law that has evolved over centuries of court decisions and that Canada has inherited from England. It evolved from a time in England when traveling judges, appointed by the king, decided cases based on the traditions and common customs of the people. Customs varied from place to place and, over time, the judges selected the most appropriate of these customs and adopted them as law. The law began to be applied uniformly, or **common** to all, and thus the name common law".

Common Law is based on tradition and the rules of precedent and equity.

A precedent is a case or decision of the court that provides an example or standard for an identical or similar case **in the** future. Precedents establish principles of law. The rule of precedent requires that similar cases be decided alike. That is, the courts must follow the precedents established by previous court decisions because these precedents have established law. A precedent is established when a judge gives legal force to what previously had been only a custom or tradition, or when a judge makes a new interpretation of an already existing law. Once a precedent is established, it remains in force until overruled by a higher court or changed by the passage of a new law.

The rule of precedent ensures:

1. Uniformity - similar cases are decided upon in similar ways.
2. Predictability - a lawyer can advise his client as to the probable outcome of a case because he knows how similar cases were decided in "the past."
3. Impartiality - the judge cannot show favoritism when he is guided by accepted principles of law established over time.

Before the development of the printing press, common law was often referred to as "Unwritten Law" because to a large extent, the common law was maintained in the memories of lawyers and judges. With the printing press came the ability to record and publish cases and judicial decisions. The accumulation of recorded judicial decisions is referred to as case law. Case Law consists of recorded cases and decisions that form a body of law. Text books and digests are often **prepared** by experts to explain and **summarize** case law on a particular subject matter. For example, The Law of Canadian Municipal Corporations, by Ian Rogers, attempts to clarify and summarize case law regarding municipalities, that is, to indicate how the courts have ruled on matters of municipal law.



- The rules of equity are another **important** aspect of **common law**. Equity, in law, is a body of rules founded upon the **principle** of fairness. As common law grew in volume it became more rigid as judges tended to treat all previous rulings as final and did not take into account changing times and circumstances. As a result, many court decisions were not very just and they were appealed. Over time, the rules of equity developed and are now part of common law. Today, whenever there are conflicts between principles of common law and equity, equity prevails.

How is **common law** important today? The principles and traditions of **common law** still constitute a basis of today's system of law in Canada. Specifically, the rules of precedent and equity are still used to define law in Canada. Important cases that establish precedents are, in fact, establishing principles of law. These cases, when pulled together on a particular subject or activity, constitute Canadian law in the form of case law. For example, almost **all** the law regarding contracts, torts, trusts, and much of the law regarding the laws of evidence, and real estate, are derived from cases. Most of this law has never been set down in any kind of code or statute, but rather, it can only be found through the research of cases to find out how the courts have decided similar cases in the past. The study of case law therefore is essential in many aspects of law.

Common law, based on tradition and the rules of precedent and equity, and recorded in cases over hundreds of years, is still a vital and important source of law in Canada, as it continues to develop and establish law today.

#### STATUTE LAW:

Statute law is the law that most Canadians are **familiar** with. Statute law is written law enacted or authorized by elected legislative bodies. This would include all laws passed by the Parliament of Canada, by Provincial Legislative **Assemblies**, by Territorial Legislative Assemblies, and by municipal councils. At the Federal and Provincial **levels**, these statutes are called Acts; at the Territorial level they are called Ordinances; and at the municipal level they are called by-laws.

Statutes can be amended or repealed by the same **legislature** that originally passed them.

Statute law is quite specific in its intent.

#### Statute Law vs Common Law:

- **If** there is a statute, the statute takes priority over common law. The specific nature of **the** statute prevails over common law.
- **If** a statute is not clear and requires some interpretation, the interpretation given **would** probably be that which is consistent with common law. So, even where there is a statute, **common law** may be used to help interpret or give clear meaning to the statute.

- Where there is no statute to govern a matter, the court will look to common law to try to determine what has been customary in such cases. The common law may not have a specific remedy for a given situation, but general guidelines or principles may exist which can assist the judge in making a ruling.

**In some instances**, case law is codified to organize it, to eliminate obscurities, or to change aspects of the law. It then becomes statute law. (Landlord and Tenant law is a good example of this). This process of establishing statutes in more and more areas may be appealing and useful, but there is a considerable **argument** that the **common** law system defines law more precisely and fairly and that it is a greater protection for the citizen. This was an **argument** used in opposing the enactment of the Charter of Rights and Freedoms of the Canadian constitution.

**In summary**, there are two sources of law in Canada: common law, which is law established over time through court decisions and interpretations based on principles derived from tradition and the rules of precedent and equity; and statute law, which is all written law enacted or authorized by elected legislative bodies. Both sources of law are important in Canada today and both are relevant to municipal law.

#### 4. Making Law in Canada:

In Canada laws are made by governments. The system of government is organized to ensure the control of government by the people. To do this governments in Canada are democratic, **representative, and** responsible.

##### DEMOCRATIC GOVERNMENT:

Democratic government is based on the social and political equality of all the people and it is most clearly demonstrated through the principle of one man, one vote. Every citizen is eligible to vote in elections to determine who will govern. If people are to legitimately have government by the people and of the people, they must be able to take part in the selection of that government through free elections and the right to **vote**.

##### REPRESENTATIVE GOVERNMENT:

Representative government is government that is made up of individuals who are selected through elections, to represent the people of a constituency and to speak and act on their behalf. Every citizen is eligible to run for election subject to age restrictions, and in some instances certain other restrictions like a residency clause. Any restrictions on the right to run for election, or the right to vote in an election, must be intended to ensure principles of democratic government rather than to discriminate against individuals. Any and all restrictions must be viewed from this perspective, although there is no simple answer as to what is discriminatory and what is ensuring democratic and representative government.

##### RESPONSIBLE GOVERNMENT:

Responsible government is government where the representatives are responsible to the people who elected them and that these elected **representatives** control the government. In its broadest sense it means that; (1) there must be elections at regular intervals. Representatives are not elected for an indefinite term, but must **go** back to the people in an election to seek **approval** for their actions as representatives of the people. (2) the government must be controlled by the elected representatives. Historically in Canada, there have been appointed governors and appointed Councils of different types that shared power with elected representatives. In such instances there is not responsible government because the appointed officials are not accountable to the people in an election, yet they share power. The NWT has not yet attained full responsible government as the Commissioner of the **N.W.T.** is a federally appointed official who shares power with the Legislative Assembly of the **N.W.T.**

In a parliamentary sense, responsible government has a more specific meaning. **In Parliament, or Provincial Legislative Assemblies, the party in power** (the government) is responsible to Parliament or the Legislature, and must maintain the confidence of the Parliament/Legislature. If the government is out voted on a particular issue, this is considered a "vote of non-confidence" in the government, and the government is often forced to resign and call an election.

## LAW MAKING AND THE EXECUTIVE, LEGISLATIVE AND JUDICIAL BRANCHES OF GOVERNMENT:

There are 3 branches of government in Canada; executive, legislative and judicial. The executive and legislative branch work closely together in the **making** of statute law. Statutes are usually prepared and proposed by the executive, then submitted to the legislative branch for debate, amendment and enactment. The judicial branch is separate and independent of the other branches, and it consists of the court system. The system of common law originates in the court system, and the courts create laws only to the extent that precedents establish or give new meaning to law.

### Executive Branch of Government:

The executive branch of government is the branch responsible for running the government. It proposes most laws, initiates and creates government policy and directs the administration (the bureaucracy). The **Executive** branch is responsible to the legislative branch.

At the federal and provincial levels, the executive consists of the Cabinet. The Cabinet is chosen by the leader of the party in power and these Cabinet Ministers are each given responsibilities for different government departments or aspects of the administration of government.

In the Northwest Territories, there is the Executive Committee of the **N.W.T.**. This **committee** is selected from the members of the Legislative Assembly and they carry out the executive function.

In a municipality, the mayor carries out the executive functions, although there is considerable variation from community to community.

### Legislative Branch of Government:

As indicated by its name, the legislative branch of government is primarily concerned with enacting law. No other body can enact law, unless authorized to do so under a statute of a legislature. A legislature is, "a body of persons officially constituted and empowered to make and enact the laws of a nation, province, community, etc" (Funk & Wagnalls • Dictionary). In Canada this includes the Parliament of Canada, the Legislative Assemblies of the provinces and territories and municipal councils. The elected representatives of the people, and only the elected representatives form these legislative bodies.

Legislatures not only enact law, but they provide a forum for public political debate on issues, an opportunity for representatives to criticize and hold accountable the executive branch of government and generally to represent the wishes and aspirations of the people.

### Judicial Branch of Government:

The judicial branch of government interprets and applies the law through the court system. The courts make decisions on the law by applying and interpreting both statute and common law to the facts of the case.

The judicial branch makes law only to the extent that decisions of the courts can establish precedents and give new meaning to the interpretation of law.

For the judicial system to operate fairly, it must be independent of the legislative and executive functions of government. An independent judicial system is the chief guarantee that the rule of law will be maintained. There must be a clear division of powers between the judicial system and the other branches to ensure that judges are able to perform their duties without any fear of intimidation, **influence, or control** by politicians or others. It is the courts, and only the courts, that have the authority to determine right or wrong regarding the law. Any citizen who feels he has been wronged has recourse to a fair and impartial hearing through the courts. The courts protect the rights of citizens against one another, and against the government. If in the course of a dispute one party should challenge the validity of a law or action passed or performed by a federal, territorial or municipal government, the court will inquire into the question of jurisdiction and can declare the law or action valid or void. The courts protect society from any abuse of the law.

To ensure the independence of the courts, judges have special safeguards:

1. Judges are appointed for life or until they reach the age of retirement/senility.
2. Retirement age for judges is **75, for** federally appointed judges.
3. The process for removal of a judge is extremely difficult, particularly for Supreme Court judges. Removal of a Supreme Court judge requires the approval of Parliament.

Judges are not agents of the government and they are not subject to instruction by either the elected politicians or the people. They interpret and apply the law, regardless of popularity or any other factor, to ensure the rule of law.

All Supreme Court judges are appointed by the Cabinet of the Federal Government based on the recommendation of the Attorney General of Canada, who is the cabinet minister responsible for the administration of justice.

Territorial judges and Justices of the Peace are appointed by the Government of the Northwest Territories.

#### SUMMARY:

In Canada, laws are made by governments.

Governments are controlled by the people. Representatives of the people are democratically elected to form government and to govern exclusively and they are accountable to the people through regular and recurring elections.

There are 3 branches of government in Canada; executive, legislative and judicial.

The executive branch proposes most laws, the legislative branch debates, amends and enacts laws, and the judicial branch interprets and applies the law.

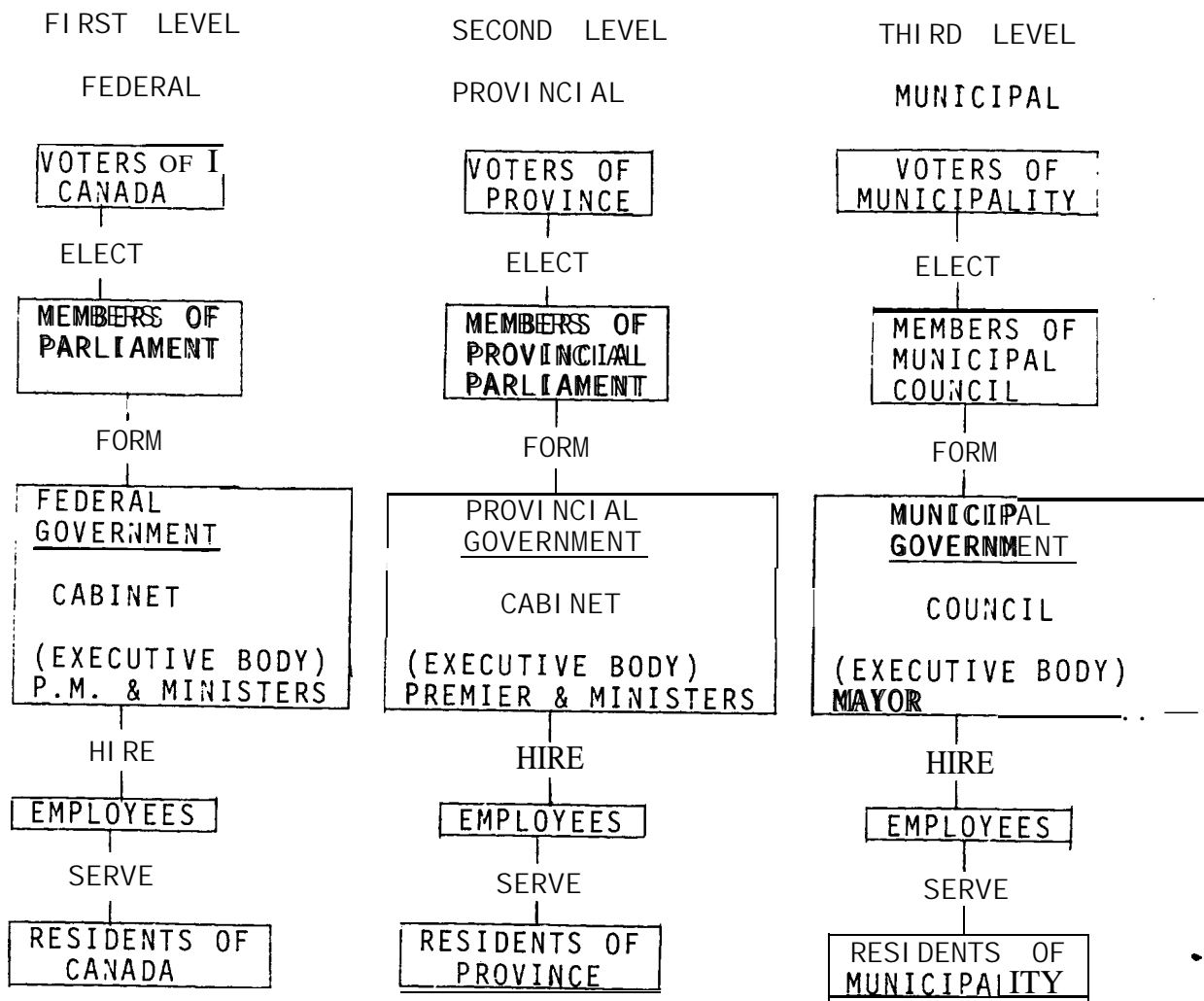
The judicial branch is independent of the rest of government. It creates law only to the extent that precedents establish or give new meaning to law.

It is the courts and only the courts, that have the authority to determine right or wrong regarding the law.

Any and all citizens who feel they have been wronged have recourse to a fair and impartial hearing through the courts.

The courts ensure the rule of law.

GOVERNMENT ORGANIZATION CHART



Canadian  
Constitution

Canadian  
Constitution  
and Federal Law  
creating Province

Provincial  
Law creating  
recognized  
Municipal  
Government

## 5. Legal Authority of Governments in Canada:

Governments, like citizens and other organizations must act within the law. A constitution is a body of basic principles stating the powers and limitations of a government, the way these **powers** are to be exercised, and the rights and freedoms of the people.

The Constitution Act, 1981, is the constitution of Canada. However, there are other statutes which, by their very nature, are so important that they are interpreted as being constitutional rather than ordinary law. Some examples are the Dominion Act, creating the Supreme Court of Canada, the Canada Elections Act, and the Canadian Bill of Rights. **In addition, tradition and judicial decision** are important aspects of constitutional law.

### THE CONSTITUTION ACT 1981:

The most fundamental principle in the social and political organization of Canada is the rule of law, and this is recognized in the Constitution Act:

"Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law, .."

The Constitution Act is the supreme law of Canada and it establishes the political and legal foundations of the country.

### Section 52(1) Constitution Act:

"The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the constitution is, to the extent of the inconsistency, of no force or effect."

The Constitution of Canada consists of the Canada Act, the Constitution Act, and various other Acts including the **B.N.A.** Act and Acts admitting different provinces to Canada. The Acts are listed in the Constitution Act, and form part of it.

### Section 52(2) Constitution Act:

"The Constitution of Canada includes  
(a) the Canada Act, including this Act;  
(b) the Acts and orders referred to in Schedule 1; and  
(c) any amendment to any Act or order referred to in paragraph (a) or (b)"

Until 1981, the **B.N.A.** Act served as Canada's constitution. There were problems with this Act though, the most severe one being that it did not provide for any means of amending itself in Canada, and successive Federal and Provincial governments could not agree on a formula to do so. Since the **B.N.A.** Act was an Act of the Parliament of the United Kingdom, any changes had to be enacted by the Parliament of the U.K.. It is a very unusual situation when the constitution of one country can only be amended in another country. In 1981, the Federal and Provincial governments agreed on an amending formula and other changes, and the Canadian Government requested that the Parliament of the United Kingdom enact the Canada Act. This Act included the Constitution Act, and it legally **ended** Britain's power to legislate for Canada.



Section 1, Canada Act

"The Constitution Act, 1981 set out in Schedule B to this Act is hereby enacted for, and shall have the force of law in Canada and shall come into force as provided in that Act."

Section 2, Canada Act

"No Act of the Parliament of the United Kingdom passed after the Constitution Act, 1981 comes into force shall extend to Canada as part of its law."

The Constitution Act includes:

- the Canadian Charter of Rights and Freedoms which outlines various rights and freedoms including democratic rights (sections 3-5), legal rights (sections 7-14), and equity rights (section 15).
- Rights of the Aboriginal Peoples of Canada.
- Equalization and Regional Disparities.
- Constitutional Conference (on aboriginal rights)
- Procedure for Amending Constitution of Canada
- Amendment to the Constitution Act, 1867
- General clauses
- Schedule 1 to the Constitution Act, 1981

DIVISIONS OF POWER IN CANADA:

Canada is a federal state, that is, the country is organized into two separate and distinct levels of government, each with certain powers allocated to it by the Constitution. The intention was to allocate "the powers between the governments in such a way that neither controls the other. The general principle applied was to give matters of broad national interest to the" federal government and matters of local or particular concern to the provinces. Each government can pass laws within its area of jurisdiction, and only within these areas. Any government that attempts to pass laws that are beyond their legal powers is acting ultra vires, that is, beyond its legal powers.

The division of powers in Canada can be found in the Constitution Act, 1867 (This is simply the B.N.A. Act renamed and included in the Constitution Act, 1981).

Some important Federal government powers and responsibilities are; Indian, **Inuit**, and Northern Affairs; Fisheries; Criminal Law; Taxation; Trade and Commerce; Currency; **Defence**; . . . . .

- Some important Provincial Government powers and responsibilities are: Municipal government; Education; natural resources: provincial courts and laws; property and civil rights . . . . .

Some powers are shared. Both Federal and Provincial governments can pass laws relating to agriculture and **immigration**. If any part of these laws conflict, the Federal law prevails.

Similarly, both governments can pass laws relating to old age pensions. If there are any conflicts in the law, the provincial law prevails.

No listing of separate powers can be so extensive and complete that it covers all situations. Constitutions often stipulate that other, residual powers, be given to either level of government as a general rule. **In Canada** this power was given to the Federal government, as the power to enact "laws for the peace, order, and good government of Canada" (section 91, Constitution Act, 1867) .

**In the early years** of confederation though, the courts often ruled' in **favour** of giving residual powers to the Provinces under property and civil rights. Since **World War II**, the courts have tended to be more favorable to granting residual powers to the Federal government. This is a good example of how the courts establish law through interpretation.

#### GOVERNMENT OF THE NORTHWEST TERRITORIES:

The Government of the **N.W.T.** was created by the Federal government through passage of the **N.W.T. Act**. This Act granted the **G.N.W.T.** many powers similar to a province but there are some important differences:

1. The **N.W.T. Act** (Section 13 and 14) clearly indicates the supremacy of federal legislation even in areas in which the **N.W.T.** has jurisdiction.
2. Section 16(1), **N.W.T. Act**, requires that every Ordinance passed in the **N.W.T.** shall be sent to the Federal Cabinet within 30 days for review by Parliament. Section 16(2) allows the Federal Cabinet to disallow any Ordinance within one year of passage.
3. The existence and power of the **Commissioner** of the **N.W.T.** is unique and is not found in any province.
4. Certain important **provincial type** powers are retained by the Federal Government. Specifically, the ownership, management and development of land, non-renewable and most renewable resources, and **labour** relations.
5. The **G.N.W.T.** is created under a Federal Act. Provinces are established in, and protected by, the Constitution. The Constitution of Canada has an amending formula which requires the Provinces and the Federal government to work together to change the Constitution. The **N.W.T. Act** is an Act of the Federal government and it can be changed by the Federal government exclusively. This leaves the **G.N.W.T.** in an inferior position.

6. The bulk of G.N.W.T. operating funds come from the Federal government.

#### MUNICIPAL GOVERNMENT IN THE NORTHWEST TERRITORIES:

The Government of the N.W.T. is empowered under the N.W.T. Act to create municipal institutions, and it has done so under the Municipal Ordinance. This ordinance sets out how municipal governments are organized and structured, and it authorized them to make by-laws in a number of areas. The principle of ultra vires applies to municipalities;

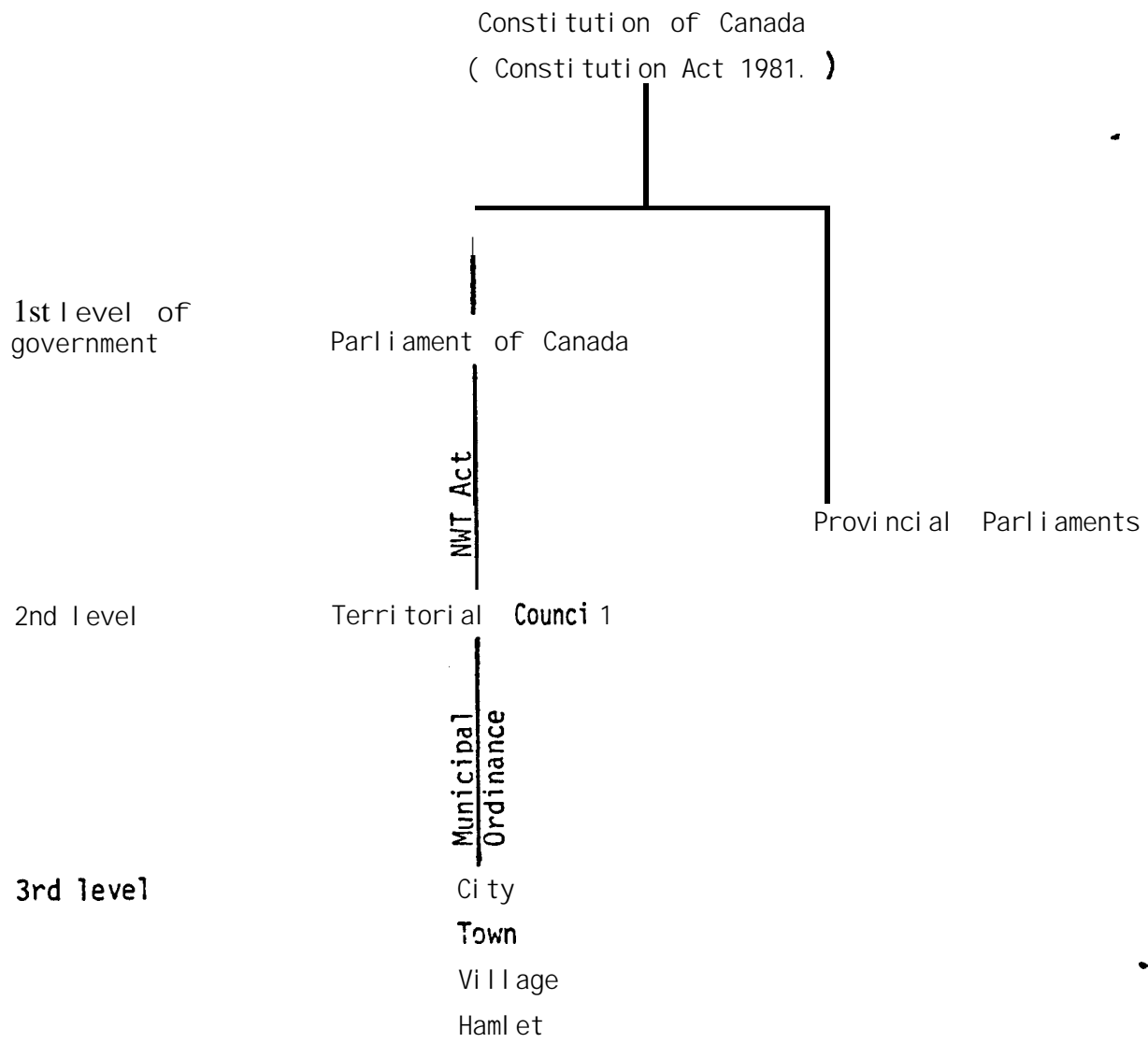
"If there is no legislative authority vested in the municipal council to deal with a certain subject then it does not have the power to do so."

Municipal governments are in a constitutionally inferior position to the other levels of government. They are created by the Territorial level, and any changes to the Municipal Ordinance can only be made by the Legislative Assembly of the N.W.T.. This inferior position is found throughout Canada, as municipal government is a responsibility of Provincial governments.

#### SUMMARY:

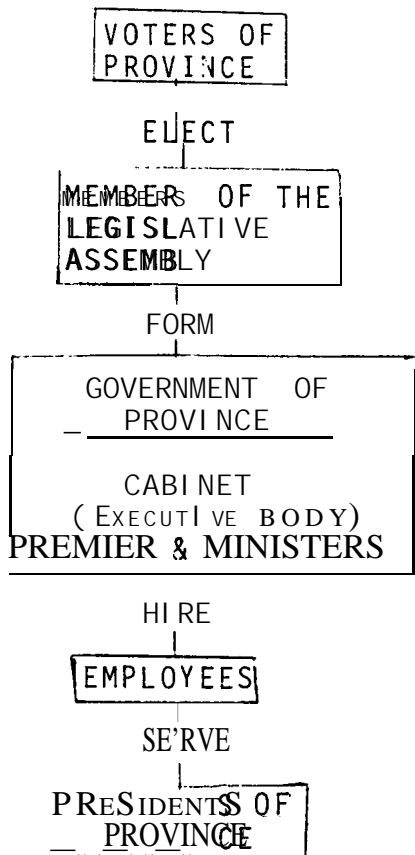
- A constitution is a body of basic principles stating the powers and limitations of a government, the way these powers are to be exercised, and the rights and freedoms of the people.
- The Constitution Act, 1981, is the Constitution of Canada. Tradition, judicial decisions, and other important Acts are also important to constitutional law.
- The Constitution is the supreme law of Canada. No other law can conflict with or prevail over the Constitution.
- Canada is a federal state, that is, the country is organized into two separate and distinct levels of government, each with certain powers allocated to it by the constitution.  
  
ultra vires - acting beyond your legal powers
- The Government of the N.W.T. was created by the Federal government through passage of the N.W.T. Act.
- The G.N.W.T. is empowered to create Municipal governments under the N.W.T. Act. It has done so through passage of the Municipal Ordinance.

Legal Authority of Governments in Canada

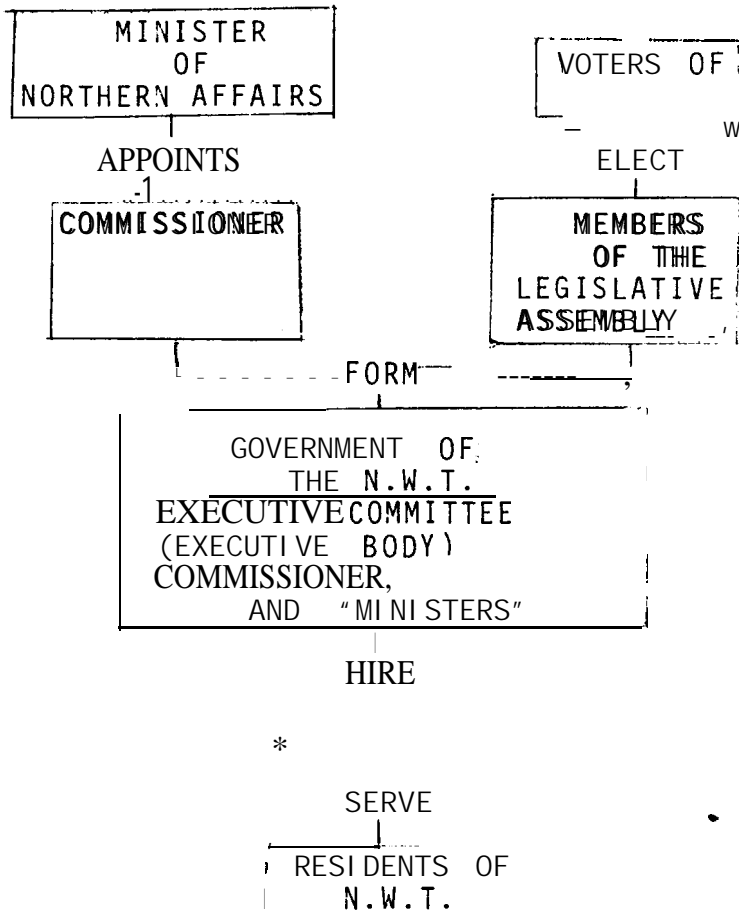


STRUCTURE OF G.N.W.T.  
COMPARED WITH A PROVINCE

PROVINCIAL GOVERNMENT



GOVERNMENT OF N.W.T.



OTHER DIFFERENCES

1. No party politics
2. NWT Legislation is not "exclusive" as in Provinces; Federal legislation overrides.
3. Own revenue limited "deficit funded" through DIAND Treasury Board.

## 6. Court System in Canada & the N.W.T.

As previously stated, it is the courts, and only the courts, that have the authority to determine right or wrong regarding the law.

The Constitution Act 1867, did not create any courts, but gave Parliament the power to establish a court of appeal and any additional courts for the "better administration of the laws of Canada". Provincial legislatures were given jurisdiction over the administration of justice within the province, including the creation of provincial courts. Similar power was given to the Government of the Northwest Territories:

### Section 13(i), N.W.T. Act

"The administration of justice in the Territories including the constitution, maintenance and organization of territorial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in these courts."

In Canada, the law is divided into two main divisions; civil law and criminal law.

Civil law consists of a series of rules designed to regulate the conduct of individuals. Civil law is used by a person who has a grievance against another person. Civil law provides a means for disputes to be solved through the courts by way of a lawsuit (ie any action between two parties in a court of law). Civil law includes such areas as **contracts, torts**, business, property, etc. Civil law is sometimes known as private law as it deals largely with private rights and obligations. Civil law is different in the different parts of Canada. (eg civil law in the N.W.T. is different from civil law in Ontario)

Criminal law is concerned with the prohibition of certain actions defined as criminal, and provides penalties for anyone committing such acts. Criminal offences are serious acts like murder, kidnapping, theft, etc, and are considered to be crimes against the state. As a result, it is the government that prosecutes. Most criminal law is found in the Criminal Code of Canada, **although** there are other Federal and Territorial laws that also constitute criminal law.

## COURT SYSTEM IN THE NORTHWEST TERRITORIES

### Justice of the Peace Court:

Justice of the Peace Court is the lowest level of court in the N.W.T.. It is presided over by a Justice of the Peace, who is appointed by the Commissioner. This court deals with minor offences, including by-laws.

### Territorial Court:

The Territorial Court was created by the Territorial Court Ordinance. All Territorial judges are appointed by the Commissioner, hold office until age 65, and have jurisdiction throughout the N.W.T.. -This court hears minor criminal offences and most violations of Territorial laws (Ordinance). This court does not hear jury cases.

#### Supreme Court of the Northwest Territories:

The Supreme Court of the N.W.T. was created by the Judicature Ordinance. It consists of 2 Judges appointed by the Federal government and it deals with serious criminal offences, all property matters, contract law, torts, any civil matter involving more than \$5,000.00, and some family law (eg divorce, child custody).

#### Court of Appeal for the Northwest Territories:

This court hears appeals of decision made by the Supreme Court of the N.W.T. or by the Territorial Court. The Court of Appeal consists of the judges of the Alberta Court of Appeal and the 2 N.W.T. Supreme Court judges. The N.W.T. Supreme Court judges cannot hear appeals from the Supreme Court of the N.W.T. if either of them were involved. The Alberta judges decide these. The N.W.T. Supreme Court judges can hear appeals from the Territorial Court.

The Court of Appeal always consists of 3 judges. This court sits once per year in Yellowknife. Otherwise, it sits in Alberta.

#### FEDERAL COURTS

##### The Federal Court of Canada:

This court hears claims directly against the Federal government or any of its departments and it includes cases concerning taxation, damage suits against the government, copyrights, patents, lawsuits dealing with navigation and shipping and jurisdiction over appeals against rulings by federal regulatory agencies such as the C.R.T.C. (Canadian Radio and Television Commission).

##### Supreme Court of Canada:

This court is the highest appeal court in the country for both civil and criminal cases. It hears appeals from Territorial and Provincial Supreme Courts, from the Federal Court of Canada, and it has jurisdiction to deal with matters referred to it by the federal government, particularly constitutional questions.

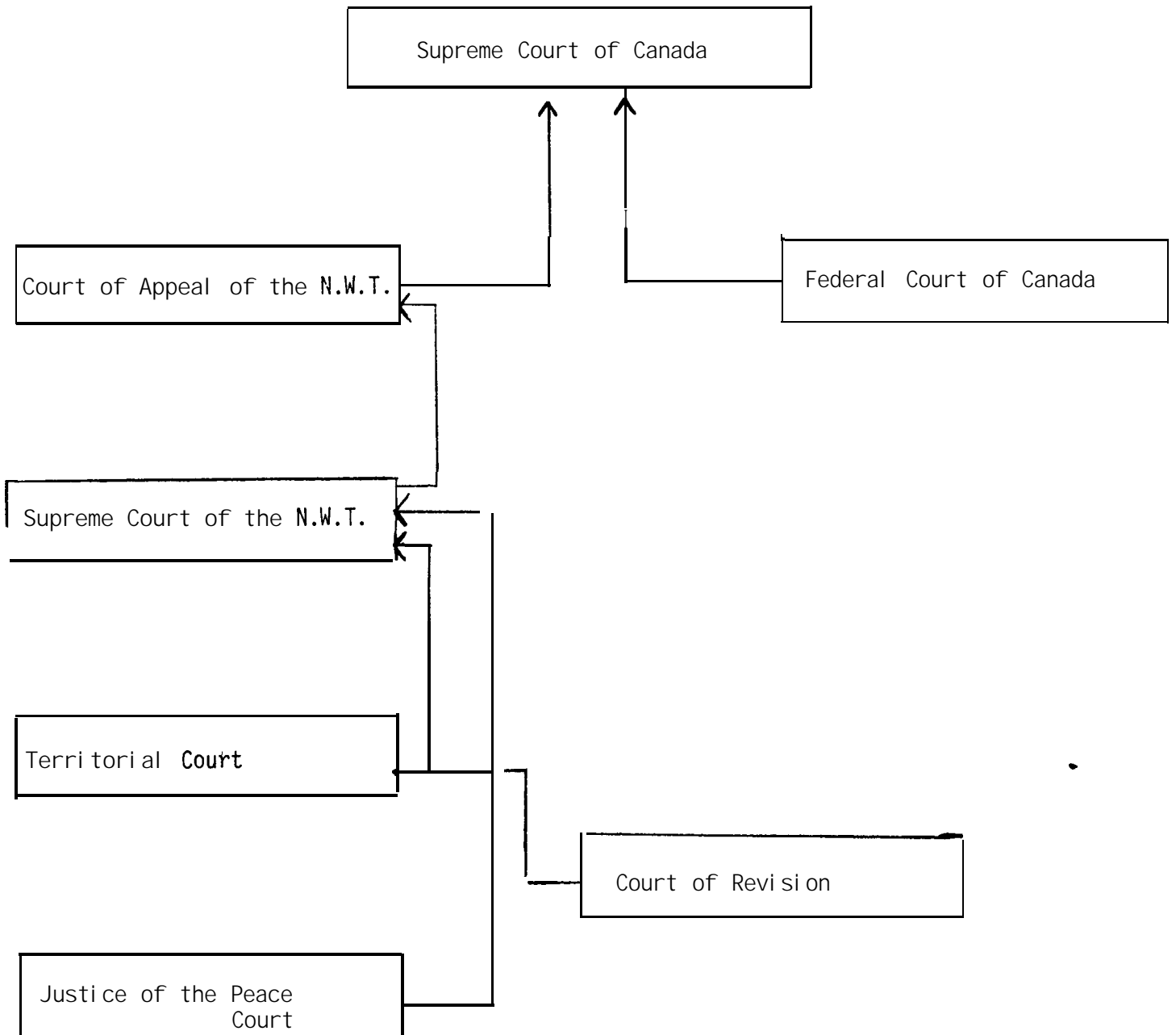
In civil cases, the Supreme Court of Canada will hear appeals only with permission of the Territorial/Provincial Supreme Court or the Supreme Court of Canada itself.

In criminal cases, permission of the court is also required before the Supreme Court will hear the appeal. In addition, questions of law where there has been a dissenting judgment also constitute grounds for appeal to the Supreme Court of Canada.

##### Special Courts:

Court of Revision: This is a court where a taxpayer may dispute his property tax assessment for local tax purposes.

COURT SYSTEM IN CANADA & THE N.W.T.



Note:

<--Arrow indicates that appeals are made to that court



# -You and the law—M. David Gates—

This is the first in a series of articles to be presented every other week dealing with matters of law. This first article will look at the court system as it exists in the Northwest Territories with respect to **criminal** matters.

In the Northwest Territories there are four **court levels** dealing with criminal matters. At the local level, Justices of the Peace in virtually all of the communities exercise a limited **criminal jurisdiction**. Justices of the Peace hold regular court **sessions** in the larger settlements such as **Inuvik**, **Frobisher Bay** and **Hay River**, and deal with **summary conviction** type of offences. In the less populated communities, Justices of the Peace can be found holding court on an "as required" basis. The type of matters with which Justices of the Peace generally deal can be characterized as the least serious **variety** of criminal **offences**. This would include **all offences** under Territorial **Ordinances**, most **offences** under federal statutes other than the Criminal Code, and a limited number of Criminal Code **offences**. Consumption of liquor by a person under the age of nineteen years (Section 67(1) **Liquor Ordinance**); operating an **unregistered motor vehicle or trailer** (Section 3(1) **Motor Vehicles Ordinance**); or taking a motor vehicle without the consent of the owner, commonly referred to as "**joyriding**", (Section 295 of the Criminal Code) are **all examples of summary conviction offences**. Of offences of this nature, generally speaking, carry a maximum fine of \$500.00 upon conviction or up to six months imprisonment, or both.

In addition to the jurisdiction which Justices of the Peace possess over summary conviction matters, they also exercise a number of other important functions within the communities. Perhaps the most important of these is the matter of **pre-trial release** from custody of persons accused of **all types of criminal offences**; the **more serious**

type of **offences** are known as **indictable offences**. Justices of the Peace also exercise important roles in subpoenaed witnesses for trials; authorizing search warrants; receiving information under oath from anyone with reasonable and probable grounds to believe that an offence has been committed; and securing the attendance of accused persons to answer in court to such charges.

The next court level is Magistrates Court, or Territorial Court as it is known in the Northwest Territories. This court has authority to deal with all summary conviction proceedings, certain types of **indictable offences** (known as **absolute jurisdiction offences**) and all but the most serious kinds of offences if the accused person elects or chooses to be tried in that particular court. This court travels extensively throughout the Territories on a regular basis and sits in **Frobisher Bay** about every five weeks; **Inuvik** every three weeks; **Norman Wells** and surrounding communities every three months; **Rankin Inlet** and the communities of the **Keewatin** approximately four times a year; **Fort Simpson** about every five weeks and **Fort Smith** on approximately the same regularity. Some of the smaller centers have Territorial Court on an "as required basis" and simply arrange for court time when the Judge and court-party are expected in the region. Communities such as **Spence Bay**, **Nanasivik** and **Tungsten**, for example, might have court as infrequently as once a year. In any given week during the year one can expect to find at least one of the four Territorial Court Judges on circuit somewhere in the Territories, while another court sits in **Yellowknife**, and one in **Hay River** or another of the communities south of **Great Slave Lake**.

The Supreme Court has absolute jurisdiction in the most serious type of **indictable offences**, such as **murder**, **treason** and **piracy**, and jurisdiction over all **indictable offences** if the accused person

elects to be tried by this particular court, either with or without a jury. The Supreme Court also travels "throughout the Territories as required and at present has two resident Justices as well as a number of Deputy-Justices appointed from the Superior Courts of the provinces. In addition to hearing trials in certain cases, the Supreme Court also sits as an Appeal Court for all summary conviction matters heard at first instance by Justices of the Peace and Territorial Court Judges. As indicated above, anytime a jury trial is held in the Northwest Territories you can expect to find a Supreme Court Judge present to instruct the jury on all points of law.

The final level of court in the Northwest Territories which deals with criminal matters is the Court of Appeal. The Northwest Territories Court of Appeal is made up of all the Justices who sit on the Alberta Court of Appeal, the two resident Supreme Court Judges in the Territories, and the resident Supreme Court Judge from the Yukon. This court does not hear trials, but only deals with questions of law or questions of mixed fact and law which may arise as a result of a trial held previously. If satisfied that some error or mistake was in fact made in the lower court, the Court of Appeal is empowered to order a new trial or even substitute its own decision. Similarly, the Court of Appeal has jurisdiction to consider the fitness of "sentences imposed for **indictable offences** by lower courts and may vary them as required. The Court of Appeal only deals with appeals in relation to **indictable offences**, just as the Supreme Court only sits as an Appeal Court in relation to summary conviction matters. There is, however, a right of appeal, in certain circumstances, to the Court of Appeal on a summary conviction matter once the Supreme Court has given its ruling. Similarly, in very special circumstances a right of appeal may exist to the Supreme Court of Canada, the court of last resort in both civil and criminal matters.

## LAW IN THE NORTHWEST TERRITORIES

### 1. Introduction & Objectives

Although the Municipal Ordinance is the main law concerning municipalities, it is by no means the only law that may affect them. There are many laws passed in the N.W.T. that are relevant to municipalities either directly or indirectly. It is important therefore to be aware of the scope of the law in the N.W.T., to know how to find out what the law is, and to understand how to read and interpret meaning from the law.

The objectives for this session are:

to examine statute law in the N.W.T. generally, and its relation to municipalities;

to learn how the law is published and how to find the law;

to learn rules for the interpretation of Ordinances and the proper terminology used in referring to the **specific** content of Ordinances.

## 2. Statute Law in the N.W.T.

Statute law in the N.W.T. comes in three main forms: Ordinances, Regulations, and By-Laws.

The Government of the N.W.T. was given the authority to enact laws, called ordinances, on certain **subjects** by the federal government, through the N.W.T. Act. The scope of law making powers of the Government of the N.W.T. can be illustrated by the fact that there are over 150 Ordinances in the N.W.T..

There are quite a number of these Ordinances that affect municipal government:

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>- Municipal Ordinance</li><li>- Conflict of Interest Ordinance</li><li>- Planning Ordinance</li><li>- Public Highways Ordinance</li><li>- All-Terrain Vehicles Ordinance</li><li>- Interpretation Ordinance</li><li>- Civil Emergency Measures Ordinance</li><li>- Education Ordinance</li><li>- Environmental Protection Ordinance</li><li>- Electrical Protection Ordinance</li><li>- Lord's Day Ordinance</li><li>- Summary Conviction Procedures Ordinance</li><li>- Fire Prevention Ordinance</li><li>- Fair Practices Ordinance</li><li>- Labour Standards Ordinance</li><li>- Workers' Compensation Ordinance</li><li>- Senior Citizens Land Tax Relief Ordinance</li><li>- Safety Ordinance</li></ul> | <ul style="list-style-type: none"><li>- Vehicles Ordinance</li><li>- Municipal Employees' Benefits Ordinance</li><li>- Business Licence Ordinance</li><li>- Commissioner's Land Ordinance</li><li>- Area Development Ordinance</li></ul> |
|---|--|

Although the Municipal Ordinance is the central piece of legislation for municipalities, the business of local government is diverse with many different laws applying, depending on the activity.

A second form of statute law are regulations. Regulations are laws established under the authority of a particular ordinance. Regulations often define the law more clearly and precisely than an ordinance by setting standards or procedures for carrying out aspects of the ordinance. The Regulations Ordinance is the law in the N.W.T. regarding the making of regulations.

Regulations Ordinance:

- 2(f) "regulation means a statutory instrument
- (i) made in the exercise of a legislative power conferred by or under an Ordinance, or
  - (ii) for the contravention of which a penalty, fine or imprisonment is prescribed by or under an Ordinance,

and includes a rule, order or regulation governing the practice or procedure in any proceedings before a judicial or quasi-judicial body established by or under an Ordinance, but does not include a by-law, resolution, order or directive of a local authority. "

Regulations serve a very important function. It is very difficult for the Legislative Assembly to pass an Ordinance that completely governs a particular subject. Circumstances change, the issues are often complex, and amending ordinances can be difficult and time consuming. The Legislative Assembly often enacts a basic ordinance governing the subject and then provides authority within the Ordinance for the Commissioner or an Executive member to establish regulations. This approach makes it easier to get precise regulatory conditions, and to change these conditions as circumstances require without wasting the time of the Legislative Assembly. Regulations must meet the following conditions, as laid' out in the Regulations Ordinance:

- "3(2) Upon receipt by the Registrar of copies of the proposed regulation. . . the registrar, in consultation with the Director, shall examine the proposed regulation to ensure that
- (a) it is authorized by the Ordinance pursuant to which it is to be made;
  - (b) it does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made;
  - (c) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the Canadian Bill of Rights; and
  - (d) the form and draftsmanship of the proposed regulations are in accordance with established standards.

In addition, all regulations must be reviewed by the Legislative Assembly:

Interpretation Ordinance:

"39 A copy of every order, rule or regulation made by the Commissioner pursuant to any Ordinance shall be laid before the council as soon as conveniently may be after the making thereof."

Regulations are often referred to as subsidiary legislation, indicating their subordinate position. Regulations are law though (Section 12 Interpretation Ordinance), and they must be followed. An example of regulations that affect municipalities are the General Sanitation Regulations, made pursuant to the Public Health Ordinance.

The third form of statute law of interest here is the by-law. Municipal governments are authorized to enact by-laws on a variety of subjects of local concern. By-Laws apply only in the particular community in which they are passed. The Municipal Ordinance specifically indicates the types and conditions of by-laws that councils can enact. The principle of ultra vires is very important in the making of by-laws.

**REGULATIONS ORDINANCE**

R-088-82

28/05/82

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The Commissioner of the Northwest Territories, pursuant to section 12 and 17 of the *Regulations Ordinance*, orders as follows:

1. The *Regulations Regulations*, Reg. No. 239 R. R. N.W.T. 1980, are amended by repealing section 6 and substituting the following:

"6.(1) Subject to this section, copies of each Gazette published shall be delivered without charge to each of the following persons and bodies:

- (a) one copy to each public library;
- (b) one copy to each municipality;
- (c) any person who is entitled thereto under a reciprocal agreement or by-law;
- (d) one copy to each secretary-treasurer of a settlement; and
- (e) one copy to each member of the Legislative Assembly.

(2) All copies not falling under subsection (1) must be paid for at the relevant rate prescribed by section 7.

(3) The Gazette copy provided to each municipality and to each settlement is provided on the condition that it is kept in a public place in the municipality or settlement offices and is available at all reasonable times for inspection by members of the public."

2. The regulations are further amended by repealing section 7 and substituting the following:

"7.(1) The charges for copies of the Gazette shall be in accordance with this section.

- (2) The annual subscription to the Gazette for 1981-82 shall be
  - (a) in the case of a subscriber resident in the Territories .....\$45.00; and
  - (b) in the case of a subscriber resident, outside the Territories .....\$50.00

- (3) The annual subscription to the Gazette for 1982-83 shall be
  - (a) in the case of a subscriber resident in the Territories .....60.00; and
  - (b) the case of a subscriber outside the Territories .....70.00.

(4) The charge for an individual issue of a Gazette shall be in accordance with the following:

- (a) PART I, per issue .....\$1;
- (b) PART II, per issue .....\$1; and
- (c) PART III, per issue.....\$2

(5) Special binders shall be issued to persons who subscribe to the Gazette at an additional charge of \$18.

### 3 Reading and Understanding Ordinances

Since ordinances are the written law of the N.W.T., they must be written carefully to ensure that the courts **will** interpret the law as it was intended. The result **is** that lawyers **write** these ordinances using a particular form, rules, words and expressions. To provide consistency and to assist the courts, or anyone else who has to interpret an ordinance, there is "An Ordinance Respecting the Form and Interpretation of Ordinances", commonly known as the Interpretation Ordinance.

The following points should be kept in mind when reading and interpreting ordinances:

the Interpretation Ordinance applies to all Ordinances unless otherwise **specified** (Section 3(1) Interpretation Ordinance).

**if there is an interpretation section, or definition section in any law, then it applies to that law.** (Section 3(2) and 6(5) Interpretation Ordinance).

when deciding what certain words mean, the courts **will** look first to the definition section of the ordinance, then to the definition section of the Interpretation Ordinance. **If there are still** problems, the court will use the dictionary meaning of the word(s).

in law, the word "shall" means must. For example, when the Municipal Ordinance says a municipality shall do something, then the municipality must perform that act. It is their legal duty to do so and the courts can require the municipality to **do so** (eg Section 133, Municipal Ordinance).

when the word "may" is used, it means there is discretion or choice involved. A municipality, for example, has permission to do something if it chooses, but it is not required by law to do it. (Section 6(3) Interpretation Ordinance) **.If it says the municipality may do something by by-law, it means that a by-law must be used if the municipality chooses to do it.**

incorporation provides the **following** powers: (Section 14, Interpretation Ordinance)

- the power to sue and be sued
- the power to contract and be contracted
- the power to have a corporate seal and change it at **will**
- the power of perpetual succession
- the power to hold, acquire, sell property or **movables** for the purposes of the corporation
- the **power of the majority of members to bind the** others by their acts
- the power to exempt individual members of the corporation from personal liability for its debts or obligations etc if they have acted within the law.

incorporation of a municipality obliges the municipality to abide by the terms of the Municipal Ordinance.

- words authorizing the appointment of a public officer include the power to fire, suspend, reappoint, and fix the wages. (Section 17(1) Interpretation Ordinance).

words **importing** male persons include female persons and corporations. (Section 18(g) Interpretation Ordinance)

in any ordinance, the word "court" means the Supreme Court of the N. W. T.. (Section 21(6) Interpretation Ordinance)

- the word "judge" refers to a Judge of the Supreme Court of the N.W.T. (Section 21(ii) Interpretation Ordinance)
- the **Territorial** Court **is** referred to as the **Territorial** Court and judges of this court are referred to as Territorial Judges. (Section 33(3) Territorial Court Ordinance)

If two ordinances conflict, the specific provisions will override the general provisions.

#### 4. Publication of the Law in the Northwest Territories

The public must have access to the law and knowledge of it, in order to abide by the law. It is not reasonable to expect people to know all the laws, but it is important to provide a means by which the law can be made available to the public. **In the N.W.T.**, all ordinances and regulations are published by the Department of Justice and Public Services. **In order to find out what the law is on a particular matter, you must consult these publications.**

The Revised Ordinances 1974 is the publication containing all the revised (ie up to date) ordinances as of 1974. The Revised Ordinances 1974 consists of 2 volumes. These volumes are hardcover and are normally produced **about** every 10 years.

Each year the Legislative Assembly creates new ordinances or amends existing ones. **In order to keep abreast of these new laws between publications of the Revised Ordinances, a supplement to the Revised Ordinances is published each year. For example, at the end of 1980, a hardcover edition called Ordinances of the N.W.T. 1979 -80 was published, and it includes all new or amended ordinances enacted during 1979 and 1980.**

After each sitting of the Legislative Assembly there may be new or amended ordinances. These are published in the N.W.T. Gazette (Part III) immediately after enactment.

Regulations can be found in 2 sources: The Revised Regulations of the N.W.T. 1980 contains all the regulations of the N.W.T. up to December 31, 1980. Regulations created after December 31, 1980 can be found in the N.W.T. Gazette (Part II).

The N.W.T. Gazette is the means by which the public, government departments, and municipalities can keep abreast of the law in the N.W.T.. The Gazette can be subscribed to, and as soon as laws are enacted or amended, they are published and mailed to all subscribers of the Gazette. The Gazette is a 3-ring binder format, so that when new laws are published and mailed to subscribers, they can easily be inserted **into** the Gazette.

The Gazette was established under the Regulations Ordinance (Section 9). **It consists of 3 parts:**

- Part I - contains proclamations, appointments, government notices, legal advertisements and any other documents required by law to be published. Part I is published monthly.
- Part II - contains regulations. This part is published every 2 months.
- Part III - contains new ordinances and amendments enacted by the Legislative Assembly. These are published as soon as possible after enactment.



Hardcover consolidations of the Gazette are also being published now.

● So, for example, you can purchase Volume I of the N.W.T. Gazette which contains all the information published in the Gazette from October 1979 to March 1981.

Finding the Law:

When looking up the law on a particular subject you should first find the Ordinance dealing with the subject. The Ordinance will be in the Revised Ordinances, 1974 if enacted during or before 1974. If enacted after that date, **it** will be found in the annual supplement to the Revised Ordinance, or in the Gazette if it is a very recent enactment. **In** the back of the annual supplement to the Revised Ordinances there **are** different parts that can help you find the law. **In the 1979-80** supplement there are five different parts. Each part is explained and is very helpful in finding the law. Earlier supplements do not have such an extensive record.

Part I consists of a list of all the new Ordinances or new parts of Ordinances enacted since 1974.

Part II lists Ordinances or parts of Ordinances that have not yet been legally implemented.

Part III lists all Ordinances that have been repealed since 1974.

Part IV lists all the amendments made to Ordinances since 1974, and any new Ordinances enacted since 1974. There are 3 columns on this chart. The first column lists the name of the Ordinance. The second column indicates whether the **Ordinance is in** the 1974 Revised Ordinances or not. If **it is**, a letter and number will be listed **indicating** the chapter and number of the Ordinance **in** the 1974 Revised Ordinances. The third column lists all the amendments, repeals and new legislation.

Part V lists all the regulations made pursuant to Territorial Ordinances.

Ordinance Terminology:

There is proper terminology used when **citing** or referring to the particular contents of an ordinance.

Parts - ordinances may be broken down into Parts, referring to general topic areas. For example, the Municipal Ordinance has eleven parts. Part I is Organization and Elections, Part 11 is Proceedings of Council etc. Parts are numbered using roman numerals.

Sections - in ordinances the numbered statements are referred to as sections.

Subsections - sections may be divided into subsections. Subsections are listed **by bracketed** numbers, for example 159(3). This would read section 159 subsection (3).

Paragraphs - subsections can also be divided into paragraphs. Paragraphs are listed by bracketed letters. For example, 159(3)(a) reads, Section 159, subsection (3) paragraph (a).

There are often a series of letters and numbers at the end of many sections in ordinances. These letters and numbers document the amendments made to that section over time and provide a legal history that can be traced for that section. For example; 1977 (1st),c.7, S.2: This means that the particular section was amended in 1977, at the first session of the Legislature in that year, to be found in chapter 7 of the records for that **session, in section 2 of that** chapter. By going back and looking at the 1977 amendment, you can see what the section was then as compared to what it is now. In some instances there will be several amendments documented and by researching the amendments, the legal history and evolution of that particular section can be traced.

Sometimes the letters R.O. are present. This simply refers to "Revised Ordinances".

Summary:

statute law in the N.W. T. has 3 main forms; ordinances, regulations, and by-laws.

ordinances are the law of the N.W.T. and they are enacted by the Legislative Assembly of the Northwest Territories, empowered to do so by the N.W.T. Act, an act of the Federal Government.

- the **Municipal Ordinance** is the central **piece** of legislation for municipalities, but many other ordinances also **affect** municipalities due to the diverse nature of local governments.

regulations are laws established by the Executive branch of government under the authority of a particular ordinance.

- by-laws are laws made by municipal councils. They apply only to the particular municipality in which they were enacted. Municipalities are authorized to make by-laws on specific subjects only. A municipality is ultra vires if it makes by-laws on subjects that are not included in the Municipal Ordinance.

- the law is published and accessible to citizens. It is the citizen's responsibility to be aware of the law.

- ordinances are **published** in the Revised Ordinances 1974, annual revised ordinance **supplements**, and the N.W.T. Gazette.

- regulations are published in the Revised Regulations of the N.W.T. 1980, and the N.W.T. Gazette.

- ordinances and regulations must be carefully written to ensure that the law is interpreted by the courts in a way the law was intended.

- the **Interpretation Ordinance** provides direction in interpreting ordinances and by-laws.

The following ordinances relate to municipal councils' actions by bylaw or resolution:

All-terrain Vehicles Ordinance  
Civil Emergency Measures Ordinance  
Dog Ordinance  
Education Ordinance  
Electrical Protection Ordinance  
Lord's Day Ordinance  
Municipal Employees Benefit Ordinance  
Northwest Territories Housing Corporation Ordinance  
Planning Ordinance  
Public Health Ordinance  
Public Highways Ordinance  
Public Utilities Ordinance  
Senior Citizens Land Tax Relief Ordinance  
Summary Conviction Procedures Ordinance  
Vehicles Ordinance

Other ordinances affect municipalities through regulations and orders, for example:

Business Licence Ordinance

There are others which refer to particular applications such as :

Conflict of Interest Ordinance  
Expropriation Ordinance  
Fire Preselection Ordinance  
Vital Statistics Ordinance  
Workers' Compensation Board Ordinance .  
Labour Standards Ordinate  
Landlord and Tenant Ordinance

While attention is focussed on the Municipal Ordinance as the "central piece of legislation, the business of local government must be perceived as being diverse.

THE ESTABLISHMENT & PROCEEDINGS  
OF MUNICIPAL COUNCILS

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1. Introduction & Objectives

Over the next four sessions of this **Municipal** Law Course, the **Municipal Ordinance** **will** be examined thoroughly and **in some depth**. In some instances other ordinances or regulations **will** also be examined **in** relation to the legal **responsibilities** of a **municipality** as outlined **in** the **Municipal Ordinance**. An extensive knowledge of the **Municipal Ordinance** is required for the **municipal administrator** to adequately **advise** Council and manage the **community**.

In **this** particular session, Parts I and II, and **XI** of the **Municipal Ordinance** will be reviewed.

Part I deals with the organization and election of municipal councils; Part II concerns the proceedings of the Council, including meetings, various roles and responsibilities, and employees; and Part XI consists of miscellaneous provisions. Information on these matters regarding Settlements will also be provided.

The objectives of this session are:

- to learn what the law **is for municipalities** regarding:
  - the establishment of **municipalities**
  - the **organization** of **Council**
  - Council elections
  - the proceedings of **council**

to learn how Settlement Councils are established, structured and operate.

## 02. The Establishment of Municipalities

M.O. 5 Communities in the N.W. T. can be established as municipalities through incorporation under the Municipal Ordinance as either a hamlet, village, town or city. Every municipality is "a body corporate" and as such, it has all the powers vested in a corporation under Section 14 of the Interpretation Ordinance.

### M.O. 3 HAMLETS:

To establish a Hamlet, a petition with the signatures of at least 25 residents of the community must be sent to the Commissioner requesting Hamlet status for the community. After receipt of the petition, the Commissioner will post a notice in two places in the community indicating that Hamlet status has been requested. This notice must be posted for at least 3 months before the community can become a Hamlet. During this time, any resident may appeal to the Commissioner opposing the change.

The Department of Local Government conducts a community assessment in order to advise the Commissioner of the political and administrative readiness of the community, and in order to assist the community in preparation for Hamlet status. This often involves workshops and public meetings in the community to explain and outline the new responsibilities.

When Hamlet status has been agreed to, the Department of Local Government is involved in negotiating a Hamlet Turnover Agreement with the community. This involves identifying the financial, manpower, property, and other resources that will be transferred from the G.N.W.T. to the newly formed Hamlet upon incorporation. Apart from the Department of Local Government, Department of Public Works and the Department of personnel are involved in the turnover.

M.O. 11 In the process of becoming incorporated, a community boundary is established outlining the legal limits of the municipality.

### M.O. 4 CITY, TOWN, VILLAGE:

A city, town or village is a tax-based municipality, that is, it raises its own capital and operating funds through the assessment and collection of property taxes. The Municipal Ordinance indicates that in order to become a tax-based municipality there must be a minimum per capita assessment. The amounts indicated in the Ordinance are not realistic today. At those rates, the community would not have sufficient money to operate. The criteria used in the establishment of a city, town or village today is that there be sufficient tax base for the community to be financially viable. Population and administrative competence are two other factors that are considered.

M.O. 4(4) No change in municipal status will occur unless recommended by the Council.

M.O. 11" As with Hamlets, incorporation as a **city**, town or **village** includes the establishment of a **municipal** boundary.

**Municipalities** are established by regulations pursuant to the Municipal Ordinance. By consulting the Revised Regulations of the N.W.T., or the N.W.T. Gazette, the actual regulation establishing any given municipality can be examined.

M.O. 341-

351 APPOINTMENT OF AN ADMINISTRATOR:

Once a community has **attained a certain municipal status** it is not likely to ever regress to a lower status. If any municipality is in serious financial difficulty due to mismanagement, the Commissioner can retire the Council and appoint an administrator who would run the community. When the problems are resolved, the Commissioner can remove the administrator, call an election for Council, and return the responsibility to the newly elected Council.

Where a tax-based municipality cannot longer raise sufficient funds to operate through property taxes, the normal course of action is for the G.N.W.T. to provide additional funds to the **community** rather than have it revert to Hamlet status.

3. The Organization of Council

- M.O. 7(1) The Council of a city or town normally consists of the mayor and 8 councillors. The Council of a village or hamlet normally consists of the mayor and 7 councillors. The Commissioner may vary these numbers (Municipal Ordinance 7(3)).
- M.O. 7(2)  
7(7) Mayors and Councillors are elected for 2 year terms.

In the first ever election of a new municipal council, the four Councillors receiving the highest number of votes will have a 2 year term and the other elected Councillors will serve a one year term only. In subsequent elections all Councillors will be elected for 2 year terms. The result of this rule is that the election of Councillors is staggered, that is, only part of the Council is up for election each year. This ensures that there are always some experienced members of Council.

- M.O. 7(6) Every year there is an election to replace members of Council whose term expires at the end of the year.

- M.O. 9.1 Mayors are elected at large by popular vote. There is an alternative system for electing mayors in Hamlets only. Under this alternative there are eight Councillors elected by the community and one of these councillors is chosen mayor by the others. The mayor's term under this system is for one year only.

To use this system, a Hamlet must pass a by-law providing for the selection of mayor in this manner. The by-law must be requested by a petition of 25% of the voters and the by-law must then be approved in a community vote. In addition, the community vote on this by-law must take place before the third Monday in July in order to affect the December election. The same process is required to repeal this by-law and revert to the system of electing the mayor at large.

- M.O. 14 If a councillor who has one year left on his term wishes to run for the mayor's position, he must resign as a Councillor by November 1st in order to do so.

- M.O. 9 If the mayor dies or resigns, the Council shall appoint one of its members to act as mayor until the end of the mayor's term, unless he dies or resigns prior to November 1st in his first year of office, in which case the appointment is only to the end of that year.

- M.O. 8 If a Councillor dies or resigns, the Council shall appoint a person who is qualified to be a Councillor to fill the position until the end of that Councillor's term, unless he dies or resigns prior to November 1st in his first year of office, in which case the appointment is only to the end of that year.

Under Section 9(1)(c) and 20(1) of the Education Ordinance the municipal Council shall elect one of its members to be a member of the local Education Committee/Society. This must be done at the first council meeting after the annual election and the Councillor will be a member of the Education Committee/Society for one year.



#### 4. Elections

M.O. 13(1) Persons eligible for election:

- **Canadian Citizens**
- 19 years old  
resident in the community for at least 6 months prior to the close of nominations

M.O.13(2) Persons not eligible for election:

judges or territorial judges  
sheriff or clerks of the court  
employees of the municipality receiving a monthly salary  
secretary manager, assessor or auditor of the municipality  
anyone who owes the municipality over \$250.00 other than current taxes  
anyone who has a contract with the municipality, or who has a partner or agent with a contract with the municipality. This section does not apply to Hamlets (M.O. 13(3))  
anyone who has controlling interest in a public or private company that owes the municipality over \$250.00: other than current taxes; or anyone who that person nominates to run for election. Controlling interest is direct or indirect control over 25% of the voting rights of the corporation (M.O.13 (2.1)).  
anyone who is a surety for an officer or employee of the municipality. A surety is a person who agrees to be responsible for another's debt.  
anyone who is an undischarged bankrupt or insolvent  
anyone who has been convicted of an offence punishable by over 5 years imprisonment within the preceding 24 months; or, whose imprisonment as a result of such conviction has ended within the previous 24 months.

M.O.13(3.1)A justice of the peace is eligible to run for council in a Hamlet.

M.O. 15 Persons qualified to vote:

- Canadian citizen
- 19 years old  
resident of the community for at least 6 consecutive months immediately preceding the close of nominations

#### MUNICIPAL ELECTIONS - PROCESS

M.O.17 A registrar must be appointed by Council before September 15th each year to prepare a voter's list.

M.O.25 The Council must appoint a returning officer for the election prior to November 1st.

M.O.26 &  
29 The returning officer shall appoint deputy returning officers, if more than one polling district. Deputy returning officer shall appoint poll clerk.

M.O.31 The returning officer or deputy returning officer can appoint and swear in interpreters to assist the voters.

M.O. 27 If only one poll then returning officer acts as deputy returning officer and shall appoint poll clerk.

- M.O.32 Oaths must be taken by all election officials.
- M. 0.34(1) Candidates must be nominated by at least 2 qualified voters who sign the official nomination form and submit it to the returning officer.
- M.O.34(2) Nominations close at 3pm on the third Monday in November.
- M.O. 35 Municipal elections are held on the second Monday in December.
- M. 0.39(2) If the Council wants an advance poll, the returning officer will organize one for the **Monday or** Tuesday, one week before the regular election day, from 10am to 7pm. (Council should pass resolution)
- M.O.43 Voting is done by secret ballot.
- M.O.357 - If a community needs to change the dates involved in the election process they **can** do so by asking the Commissioner to pass a regulation authorizing the changes. This is only done when exceptional circumstances make it necessary. This is not meant to be a convenient option for a Council.
- The Education Ordinance stipulates that the election of local education authorities be held in conjunction with municipal elections each year and that the returning officer for the municipality shall also carry out the **local** education authority elections. The provisions of the Municipal Ordinance regarding elections and election procedures **apply to** the local education authorities (Sections 9, 20 & 29 Education Ordinance).

## 5. Proceedings of the Council

M.O.6 "The powers of every **municipality** shall be exercised by the Council of the municipality". This point emphasizes that the **community** is run by the decisions of Council and not by the mayor, secretary manager, or **individual councillors** acting without Council's consent.

M. 0.119 Councils make decisions, set policies, enact by-laws, approve payments and generally conduct the business of a municipal government in regular meetings of Council which are open to the public.

M. 0.121 Councils are required to hold at least one regular meeting per month.

M. 0.122 Special meetings are arranged when called for by the mayor or by 2 **councillors**. The law requires that the public be given at least 48 hours notice of a special meeting. The only exception is when all members of Council are present and they decide unanimously to hold a special meeting without giving 48 hours public notice.

M. 0.135 Minutes of all meetings are recorded and kept by the Secretary Manager.

M. 0.118 At all Council meetings, a majority of the total members of Council are required to be in attendance for the meeting to be an **official** meeting. Without this quorum, decisions cannot be made.

M.O.119

(2)(3)

In some instances it is in the **public** interest for Council to discuss matters in private. This is referred to as **an in camera** meeting. Anytime during a regular or special meeting the **Council** may authorize the holding of an in camera meeting by passing a motion to do so by a two thirds majority vote of the **Councillors** present.

When an in camera meeting is held, the public is excluded. Often this means that the Council **will** ask the **public** to leave the Council chambers until the in camera meeting is over. During the in camera meeting the members of Council can discuss matters thoroughly and privately. While in camera, no by-laws or resolutions can be passed other than the resolution necessary to close the in camera meeting and revert back to the regular meeting. When this is done, the public is allowed back into the **meeting**.

During in camera meetings, informal decisions may be made by the Council but these decisions can only become formal and legitimate decisions of Council if approved by resolution when Council has reverted to an open meeting. This is to ensure that Council is publicly accountable for their decisions. This is an important aspect of democratic government.

M.O.126 Regarding other aspects of meetings, meeting procedures, committees, and the conduct of members of Council etc., the Council is given the power to set its own rules through a Procedure By-Law.

**In any community** where conflict of interest has been a recurring issue, it may advisable to further define who/what constitutes conflict of interest in the community through the Procedure By-Law. The Conflict of Interest Ordinance is the law in the **N.W.T.** on this subject and it applies to all Councils. Some Councils may wish to clarify and tighten up this Ordinance though through the Procedure By-Law.

M. 0.127 The Procedure By-Law, or a separate by-law on the matter, can provide for the payment and conditions of payment of honoraria to the Mayor and **Councillors**. There is often a provision for deductions for missed meetings. All by-laws dealing with the payment of Council honoraria in a village or hamlet must be approved by the

M. 0.143 Commissioner. No member of Council can be given a salaried job with the municipality.

M. 0.123 THE MAYOR:

M. 0.119 The Mayor is the chairman for all Council meetings and he is responsible for keeping order and generally running the meeting. **Nobody** shall be excluded from a **Council meeting** except for improper conduct.

M. 0.131 The mayor is the chief executive officer of the municipality. He is the link between the Council and the hired staff. The executive duties are defined as:

(1)

- M. 0.131 (2)
- to ensure that the by-laws and policies of Council are followed.
  - to oversee the work of the employees.
  - and to recommend to Council measures that may improve the municipality or its operation.

The Secretary Manager reports to the mayor between meetings and looks to the mayor for assistance and direction between meetings.

M. 0.132 A deputy mayor may be selected by **Councillors** from amongst **themselves** & appointed by **resolution** to act **as mayor** when required.

THE SECRETARY-TREASURER/MANAGER:

M. 0.133 The Secretary Manager must be appointed by by-law and must be bonded within one month of beginning work. This is to protect the municipality in case of theft.

M.0.134

The **principal** duties of the Secretary Manager are:

M.0.135

(1)

- to record the minutes of meetings
- to keep the financial records
- to keep all by-laws
- to carry out other duties as directed by Council

M.0.135

(2)

In addition, Secretary Managers in Hamlets only must submit a financial statement to Council at the first regular meeting of Council every month, and must submit quarterly financial statements to the Department of Local Government.

M.0.135

(3)

M.0.136 The Secretary Manager has signing authority with the mayor.

M. O. 139 AUDITOR:

Every municipality must appoint an auditor, by resolution, to audit their records at the end of the fiscal year and the audits must be completed and sent to the mayor and the Commissioner within 120 days of the end of the fiscal year. The audit report must be submitted to Council at the first opportunity. In addition, the audit report must be available to any eligible voter for their review and information.

M.O. 352, MUNICIPAL INSPECTORS:

353,  
354, The Commissioner can appoint municipal inspectors with the authority to  
355 inspect the records and operation of a municipality and to ensure that they conform to any regulations made by the Commissioner.

M.O. 356 The Commissioner can make regulations regarding:

- methods of bookkeeping, accounting, records, auditing
- sample books and forms used to carry out the regulations
- other matters

Municipal Affairs Officers or Municipal Officers of the Dept. of Local Government are municipal inspectors.

LIABILITY OF COUNCIL MEMBERS:

Members of Council are given certain legal protection as a mayor or councillor.

Under 14(c) of the Interpretation Ordinance, individual members of a corporation are exempt from personal liability for the debts, obligations or acts of the corporation, as long as the corporation is acting within the law. Municipalities are incorporated under the Municipal Ordinance and Section 14(c) applies to them. What this means is that the municipality is responsible for its debts, obligations or acts, and not individual members of council, unless these members acted corruptly or authorized illegal acts.

Section 125(1) of the Municipal Ordinance protects a member of Council from any civil action for anything said or done by him in a council meeting or committee meeting, as long as it is not said or done "maliciously".

Section 158(1)(2) provides further protection for members of Council.

## 6. Employees of Council

Under Section 142 of the **Municipal Ordinance**, **municipalities** are empowered to **hire** employees, define **their** duties, and provide for **their** pay, benefits, and discipline or dismissal. Although **this** section seems straight forward, there are many legal implications and **responsibilities** involved with employees.

There are a number of Territorial Ordinance that apply to **municipalities** regarding **their** employees:

- Safety Ordinance & Regulations
- Labour Standards Ordinance & Regulations
- Worker's Compensation Ordinance & Regulations
- Fair Practices Ordinance
- **Wage** Recovery Ordinance
- Municipal Employee** Benefits Ordinance (M.E.B.O.) & Regulations
- Landlord and Tenant Ordinance

As an employer, the **municipality** must ensure that **it** conducts **its** operation in a way that is consistent with the law regarding the safety and treatment of its employees.

### SAFETY ORDINANCE

This Ordinance outlines the responsibility of employers and employees regarding safety. It provides for the appointment of Safety Officers and outlines their duties and powers; it outlines penalties for safety **offences**; and it authorizes the Commissioner to make regulations on a variety of subjects related to safety.

Under Section 4 of this Ordinance, every employer must:

- maintain the work place to ensure that the safety and health of people are not endangered
- use all necessary precautions, techniques, and procedures to ensure the health and safety of people at the work place
- provide** adequate first aid services. (First Aid standards are found in the regulations)

Section 6 of the Safety Ordinance reads:

"Every employer shall maintain for reference by all his employees a copy of this Ordinance and the Regulations, and he shall ensure that his employees understand the provisions of this Ordinance and the Regulations that pertain to his establishment."

The regulations made pursuant to the Safety Ordinance are called the General Safety Regulations. These regulations outline in some detail the safety requirements for employers.

" Under these regulations, employers are required to encourage and promote safety in the work place. Every employer with less than 10 employees must meet with them and discuss accident prevention at least once every 6 months. Records of the times of these discussions must be kept. For employers with 10 or more employees, there must be an accident prevention committee and program. Records and statistics regarding inspections and accident investigations must be maintained in order to indicate the effectiveness of an accident prevention program (Sections 4-9).

Records of accidents and injuries must be kept and they must include the causes of the accident and the measures taken to ensure it does not happen again (Section 4).

Where a worker is injured, an accident report must be completed and submitted within one month to the Chief Safety Officer (Section 66).

The General Safety Regulations outline the required safety standards and conditions of the work place and include:

- protective clothing
- first aid service requirements
- office safety
- construction and maintenance safety, including maintenance of machinery and equipment, and mobile equipment.

Emphasizing safety in the workplace is required by law and it is a good management practice.

#### WORKER' S COMPENSATION ORDINANCE

This is an Ordinance respecting the payment of compensation to employees who are injured on the job.

The Ordinance establishes the Worker's Compensation Board, defines its jurisdiction and structure, provides for the payment of compensation, creates the Accident Fund, and provides for the assessment of employers.

Compensation includes payment of wages, medical expenses, widow's benefits, and funeral expenses.

The program is paid for through employer contributions to the Accident Fund. Employers are assessed and are required to pay the assessed amount into the Fund.

In order to qualify for compensation, the injury must have occurred on the job or in some act related to the job. There are two exceptions:

- where the injury does not disable the worker from earning full wages at his work
- where the accident is due solely to the serious and wilful misconduct of the worker and does not result in serious injury or death.

M.E.B.O.

The Municipal Employees Benefits Ordinance allows municipalities the opportunity to provide retirement, death, and disability benefits for their employees.

Any municipality may apply to be covered under this benefit program.

Contributions towards coverage are made by both the employer and the workers.

Details of the program can be found in the Municipal Employees Benefits Regulations.

LANDLORD AND TENANT ORDINANCE

This Ordinance defines the relationship and responsibilities of landlords and tenants. It applies to municipalities that provide housing to their employees.



## Settlement Councils

Settlements are not legal levels of government as they are not incorporated. They have no legal authority or power and they are not obliged to follow the Municipal Ordinance.

### ESTABLISHMENT:

Settlement Councils are formed by the community in conjunction with the Department of Local Government. They act as advisory bodies to the Department of Local Government on matters of local concern, and as representatives and spokesmen for the community generally,

There is no particular procedure required to establish a Settlement Council. The community simply has to indicate an interest in forming a Settlement Council to the Department of Local Government.

In communities in the MacKenzie Valley - Great Slave Lake areas there were Band Councils in existence prior to Settlement Councils. Since membership in Band Councils is restricted by the Indian Act to status Indians, the G.N.W.T. did not consider them as appropriate organizations to form community governments. As a result, Settlement Councils were created. Settlement Councils are open to any resident to vote and run for election, given a six month residency in the community.

Settlement Councils can be abolished by the Department of Local Government simply by not recognizing them as the community government, by refusing to work through them, by withholding grants and by canceling any agreements established with them. As unincorporated bodies, Settlement Councils have no legal protections.

### ELECTIONS:

Settlement Councils are democratically elected and generally follow standard election procedures for Municipal Councils.

The voting age is 19; in order to vote or run for election you must be a "resident for at least 6 months; and you must be a Canadian citizen.

There is flexibility regarding the size of settlement councils although there are usually 6 - 8 councillors elected. Councillors are elected for a 2 year staggered term. The Chairman is selected by the Councillors from among their members and normally serves for a one year term.

There is flexibility regarding the date of elections although most Settlement Council elections occur around December/January.

### PROCEEDINGS:

Settlement Councils conduct their business publicly, make decisions at meetings, require a quorum, record the minutes of their meetings and generally operate much like municipal councils.

Although their prime function is advisory, their advice is nearly always respected and implemented by the Department of Local Government.

Settlement Councils enter into agreements with the Department of Local Government to provide **municipal services** such as water delivery, sewage and garbage disposal, road **maintenance**, **snow** removal, community improvement projects and **janitorial** services.

If there are private contractors, often contracts are established between the contractor and the Department of Local Government based on the recommendation of the Settlement Council. Since Settlement Councils are not legal organizations, they cannot legally contract or be contracted as a Settlement Council.

Settlement Councils are funded by the Department of Local Government with two grants: the Per Capita Grant, which is \$20.00 **per person living** in the community to a maximum of \$12,000.00; and a Per Capita Recreation Grant of \$5.00. Settlement Councils may also make administration fees on agreements established with the Department of Local Government.

#### EMPLOYEES :

Settlement Councils have a Secretary to carry out the administration of Council. This employee is a Department of Local Government employee seconded to the **Settlement Council**. Normally this is the only position directly funded by the Department of Local Government.

The Settlement Secretary is paid by the G.N.W.T., receives **all G.N.W.T.** benefits, and is hired/dismissed by the **G.N.W.T.** on the advice of the Settlement Council. Performance appraisals are often done **jointly** by both the Council and the Department of Local Government.

Any other employees of a Settlement Council are hired and paid exclusively by the Council itself.

## GENERAL POWERS & RESPONSIBILITIES OF A COUNCIL

### 1. Introduction & Objectives

This session will examine generally the law regarding the powers of a municipal council.

A council exercises much of its legal authority through by-laws and therefore this session will focus on the law regarding the enacting, enforcing, quashing and attacking of by-laws.

In addition, the liability, or legal obligation, of a municipality is examined regarding the exercise of its power.

More specific objectives are:

to learn generally what powers a council possesses and how it exercises these powers.

to learn the requirements of a valid by-law.

to learn what the powers of a municipality are regarding the infraction and enforcement of by-laws.

to learn how by-laws can be attacked and/or quashed.

to learn what the liability of a municipality is regarding actions done under invalid by-laws and negligence.

### 2. General Powers of Council

A municipality possesses and can exercise powers that are expressly given to it by statutes. The Municipal Ordinance contains most of the powers of a municipal council, but there are other relevant ordinances such as the Planning Ordinance and the Vehicles Ordinance.

When trying to decide whether or not the municipality has a certain power, the relevant section of the empowering statute should be read very carefully. If the section is not clear it may be necessary to consult decisions of the court (case law) regarding the subject. The courts throughout Canada have generally tended to interpret municipal legislation strictly. That is, if there is any doubt about the existence or extent of a power the courts tend to decide against the municipality. This is because municipalities are the recipients of delegated power from the Territorial or Provincial Governments, and the courts generally feel that if a municipality is not clearly given the power, then it was not meant to have that power by the senior level of government.

The powers given to a municipality can be either mandatory or discretionary. Mandatory powers are indicated by the word "shall", and discretionary powers are indicated by the word "may". In some instances, a power may be discretionary, but if council chooses to exercise that power there are actions that it must do. For example, a council may make by-laws for licensing businesses (M. O. 178). If it does, then it must submit the by-law to the Commissioner for approval if it is a by-law of a Hamlet or Village. (M.O.178(4)).

**M.O.6\*** In the N.W.T. the powers of a municipality are exercised by the council  
M. o. 144- either by resolution or by-law approved by a majority vote. Resolutions  
146 are used unless the Ordinance stipulates that a by-law is required.

A resolution is a declaration of Council's intention with respect to a particular matter. It represents the council's position on policy but it is not law. A resolution is simply an approved motion.

A by-law is a local law that applies within the municipal boundary only. A copy of all by-laws passed by a municipality must be sent to the Commissioner within 10 days. The Commissioner has the right to disallow any by-law within 1 year.

The following municipal powers must be exercised by by-law:

- M.O.16 establishing polling divisions for elections.
- M. 0.126 - establishing procedures for the operation of council  
ie Procedure By-Law.
- M. 0.127 - the payment of honoraria" and expenses of members of council
- M.O.133 appointment of the Secretary Manager/Treasurer
- M.O.142 - providing for the hiring, pay, dismissal etc of other employees.
- M.O.159 - providing for the raising of revenue through the property and/or  
business tax (City, Town, Village only).
- M. o. 160- regarding highways within the municipal boundary.  
173
- M.O.174 regarding public health
- M.O.175 regarding fire protection
- M.O.176 - regarding the construction and maintenance of buildings
- M.O.177 - regarding utility franchises (City or Town only)
- 177.1 - regarding establishing a public bus system
- M.O.178 - regarding business licences
- M.O.179 - regarding taxis
- M.O.180- - regarding garbage collection and water supply  
181
- M.O.182 - regarding domestic animals
- M.O.183 - regarding the protection of person and property in the following  
areas:
  - regulating billboards and advertising devices
  - regulating public exhibitions
  - regulating the discharge of fire arms
  - regulating the use of public address systems
  - curfew
  - regulating the setting of snares and traps within the municipal boundary
  - regulating noise

- M.O.184 - authorizing the acquisition or disposal of any real or personal property purchasing or constructing staff housing and borrowing money for such purposes (Village, Town, City only).
  - regulating the location and standard of services for trailer parks.
  - closing of stores or businesses.
  - proclaiming civic holidays.
  - for taking a community census.
  - for the acquisition, operation and maintenance of parks and recreation facilities.
  - to regulate sales of goods in public places
  - regarding parking meters.
  - regarding the keeping and transporting of combustible or dangerous materials.
  - for naming and numbering streets
  - for canceling debts owing the municipality (with Commissioner's approval)
  - zoning. (Planning Ordinance)

M.O.194- - Local improvements (Village, Town, City only)  
201

M.O.202- - for borrowing money (Village, Town, City only).  
210

M.O.277- - mobile unit taxes.  
282

M.O.283- - community service charges.  
287

3. Requirements of a Valid By-Law

- by-laws must be passed by majority vote at a properly convened meeting of council with sufficient quorum. Any conflict of interest must be declared and recorded.

each by-law must have 3 readings. All 3 readings can occur at the same meeting only if there is unanimous consent of the Councillors present (Municipal Ordinance 148)

every by-law must be in writing and it must be signed by the mayor and the secretary manager/treasurer, or whoever was acting in those capacities at the meeting when passed. (M.O.147), and the municipal seal should be applied.

- if a by-law requires the approval of the Commissioner, a vote by electors or ratepayers, or any other conditions, these conditions must be fulfilled.

the by-law must be within the powers of the municipal corporation and it cannot violate any Territorial or Federal law.

- the by-law must apply generally throughout the community. It must not discriminate against a single person or class of persons, and it must not create a monopoly situation.

the by-law must be made in the interests of the inhabitants and not to serve a private interest.

- the by-law must not be ambiguous. It should be clear and definite in its meaning.

Under Section 150 of the **Municipal Ordinance**, residents of a municipality can petition the Council to enact a particular by-law. This requires that a petition consisting of 25% of the electors be submitted to Council outlining the request. The Council is then obliged to prepare the by-law and organize a community vote on the matter. If a majority of voters approve passing of the by-law, then the Council is required to enact the by-law within 4 weeks.

#### 4. Infraction and Enforcement of By-Laws

Section 153 of the **Municipal Ordinance** makes it an offence to break any community by-law. The offender is prosecuted under the **Summary Conviction Procedures Ordinance**. This Ordinance, and the Regulations that accompany it, outline the proper form and method of ticketing offenders, provides for payment of fines directly to the court, and establishes the amount of fines for different offences.

A municipality can establish its own ticketing system that permits offenders to pay their fines directly to the Secretary Manager/Treasurer (M. O. 154). This system, called the **Notice of Violation Ticket**, must be **established by** by-law. The **Summary Convictions Regulations** listing the amount of fines for different offences still applies. **The** **Notice of Violation ticket** must be authorized by the Commissioner by regulation under the **Vehicles Ordinance**. For any offence where no fine is stipulated **either in** the by-law or **in** the **Summary Convictions Regulations**, the fine cannot exceed one month imprisonment or \$100.00 or a combination of both (**M.O.153**).

**Municipalities** have the authority (**M.O.155**) to hire by-law officers to enforce **community** laws. A by-law is required to hire a by-law officer and this by-law must **be** approved by the Commissioner for a Hamlet or Village.

By-Law officers are empowered to enforce **community** by-laws (**M.O. 155**), the **Vehicles Ordinance** (Section 195, **Vehicles Ordinance**), and the **All-Terrain Vehicles Ordinance** (Section 7, **All-Terrain Vehicles Ordinance**).

- The authority of a by-law officer is very restricted. By-Law officers have the power of a peace officer only to the extent required to enforce community laws. To determine exactly how much power this is, the Criminal Code of Canada, Sections 2, 25, 26, 27, 28 and 29 must be studied. As general rules, By-Law officers should: enforce only **local** laws; should not attempt to use force in any situation; and should form a close and co-operative relationship **with** the R. C. M. P. .

**In a situation** where a by-law requires that some particular **activity** should be done and it is not, the municipality can have it done at the expense of the responsible people. The municipality would recover the money through court action. (M. O.152). For example, if under Section 174(c) of the Municipal Ordinance, the responsible person did not remove the offending material, the municipality could have it done at the expense of that person. **Same expenses** can be collected through taxes (see Municipal Ordinance **Section** 180/181).

#### 5. Quashing of By-Laws

To quash means "to make void or set aside; to annul" (Funk & Wagnall's Dictionary). Sections 156-158 of the Municipal Ordinance provide for the **quashing** of by-laws.

Any person can apply to the Supreme Court to have a **by-law** quashed. The procedure is as follows:

the municipality must be given legal notice 7 days before the application to quash a by-law is made to the Court. This gives both parties some time to settle the matter out of Court.

a legal application to quash a by-law is made to the Court and a \$100.00 security deposit is paid.

an application to quash a by-law must be made within 2 months of the enactment of the by-law. Where a by-law requires a vote of the electors or ratepayers and this vote did not take place, an application to quash the by-law can take **place** anytime.

The Court will decide whether or not the by-law should be quashed, **and** who will pay the court costs. Normally, the loser pays court costs.

#### 6. Attack on By-Laws

By-Laws can be legally attacked in other ways besides the procedure laid out in the Municipal Ordinance to quash a by-law. Although attacks, or challenges, to the legality of by-laws are not that common in the N.W.T., they will increase as by-laws increase and as communities grow and develop. In **communities** facing rapid growth and activity due to resource development these challenges could be very important.

Where anyone can apply to quash a by-law **within** the 2 month **time** period, the **following** methods of attacking by-laws can usually only be made by someone whose rights have been affected. These approaches can be pursued at anytime.

1. By-Laws can be challenged through judicial orders.
  - Mandamus - a **judicial** order **requiring** that the municipality perform a statutory duty.
  - Injunction - a **judicial** order **stopping** a municipality from performing an action or activity.
  - Court order - a **judicial** order from a **higher** court demanding records of a case tried in a lower court.Someone who **feels** his rights have been infringed **upon** can apply to the court for these orders.
2. By-Laws can be attacked through a court action declaring **that** the by-law is discriminatory, not in good faith or otherwise **bad**.
3. A defence to a prosecution under a by-law can be to attack **the** legality of the by-law. For **example**, someone who is charged with an offence under a by-law may plead **innocent** and challenge the legality of the by-law as their defence. **If** that person wins, the by-law could be declared **invalid**.

These are different methods of challenging a by-law. There **are** a number of different reasons or grounds for challenging a by-law. **Briefly** they are:

- by-laws passed in bad faith
- by-laws that represent or advance a private interest
- by-laws that are discriminatory
- by-laws that are ultra vires
- by-laws that conflict with Territorial or Federal laws
- by-laws that were not **passed** properly.

#### 7. Liability of the Municipal Corporation

- The municipality can sue or be sued in its corporate name.
- Where a person has suffered damage as a result of something **that** was done under an **invalid** by-law, he may sue the municipality.
- Every action for damages as a result of something that was done under an invalid by-law shall be brought against the municipality and not against any **Councillor** or person acting under the by-law (M.O.158(2)).
- **In** certain cases, the law requires that notice be given to the municipality before an action against it begins. **If** notice is not given, the action against the **municipality** may be dismissed.
- There can be no action against a municipality for failure to exercise its discretionary powers.
- A municipality is not liable for the wrongful acts of independent contractors.



## NEGLIGENCE

A municipality can be sued for negligence.

Negligence can be defined as the failure to do something that ought to be done.

In legal terms, negligence is:

"doing or omitting to do something which a reasonable man would do or not do under the circumstances, and **failing** to exercise a duty of care towards others where a reasonable-man could foresee that he would injure someone" (Take Notice, Spetz)

In terms of this definition, a reasonable man is considered to be thoughtful and careful to avoid any **behaviour** or action that **might** present a danger to others.

There are 3 important elements to be aware of regarding negligence: duty to care, required standard of care, and foreseeability.

Duty to Care refers to the legal responsibility or duty governing the behaviour of an individual or corporation for the protection of others. For example, if municipal workers dig a large pit for some reason, the municipality has a duty to ensure that no one accidentally falls into that pit.

The required standard of care **attempts** to define **exactly** what is required to fulfill the duty of care. In many instances it may be difficult to establish precise rules regarding the amount of care required, but in other instances there are regulations that precisely define the standards. Where there are no precise standards, the courts will consider what a "reasonable man" would do.

Foreseeability means that: "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure someone". (Take Notice, Spetz)

A municipality can become aware of its duty of care and required standard of care by abiding by the law as laid out in various ordinances and regulations. Each situation will be judged on its own merits in the courts though, so even where there is no statute law outlining a duty and standard of care, **common** law and the rule of **foreseeability** may establish a duty of care.

A municipality can be sued for negligence by anyone who was owed a duty of care by the corporation and has suffered damage.

A municipality is not liable for failure to exercise discretionary powers but there may be liability for negligent exercise of such powers.

In certain cases, a municipality will be liable for the negligent acts or omissions of its officers and employees. If the municipality has authorized a wrongful act, then it is clearly responsible. If the municipality has not ordered or authorized the wrongful act, then the municipality will be liable only if the wrong of the employee was committed in the course of his work and for the benefit of the municipality. The wrongful act must have been done by the employee in the legitimate exercise of some duty.

Where the wrongful act is totally unrelated to the subject matter of the employee's job, then the municipality is not liable.

### Summary

- A municipality gets its powers through various statutes. The principal source is the Municipal Ordinance.
- Municipal powers can be either mandatory ("shall") or discretionary ("may").
- These powers are exercised by resolution or by-law. Resolutions are used unless the Ordinance stipulates that a by-law is required.
- There are a number of requirements for a by-law to be valid:
  - normal procedural requirements such as proper readings, appropriate signatures, etc.
  - special procedural requirements such as approval by the Commissioner, vote by electors" . . .
  - the by-law must not be ultra vires.
  - the by-law cannot violate Territorial or Federal law.
  - the by-law must apply generally throughout the community (non-discriminatory).
  - the by-law must be made in the public interest
  - the by-law must not be ambiguous.
- The municipality has the power to enforce its by-laws. Violation of any by-law is an offence.
- The Municipal Ordinance allows for the quashing of by-laws. In addition, there are several other methods of challenging the legality of by-laws:
  - through judicial orders
  - through court action (law suit)
  - through defence to a prosecution
- A municipality can be sued for damages for actions done under an invalid by-law and/or for negligence.

## SPECIFIC POWERS AND RESPONSIBILITIES OF A COUNCIL

### Introduction & Objectives

This session will examine in some detail the specific powers and responsibilities of a municipal council.

Powers and responsibilities that apply only to tax-based municipalities will be examined in another session.

The objective of this session is:

- to examine the specific powers and responsibilities of municipal councils as laid out in the Municipal Ordinance and other relevant ordinances and regulations of the N.W.T..

## 1. Highways and Traffic

Municipalities have powers/responsibilities regarding highways and traffic within their municipal boundaries under the following ordinances:

- Municipal Ordinance
- Vehicles Ordinance
- All-Terrain Vehicles Ordinance
- Public Highways Ordinance

The term "highway" refers to all public roads within a municipality (Municipal Ordinance 160).

### MUNICIPAL ORDINANCE:

M. 0.161 The municipality is responsible for the management and control of all public roads within the community, and these roads must be kept in "reasonable repair".

M.O.164(1)

M.O.164(2) The municipality is also responsible for sidewalks, and it may pass by-laws regulating the installation, maintenance and repair of these sidewalks, poles or other works along the roadway.

By-Laws in the following areas may be passed by a municipal council:

M.O.164(1)

- to regulate traffic

M.O.164(2)

- to open, close, repair, widen, maintain, etc roadways

.191

- to expropriate land for roadways (City, Town, Village only)

- to prevent or remove obstructions on roadways

- to provide for sidewalks along roads and to provide penalties for the improper use of sidewalks

requiring the removal of snow, ice, dirt and other obstructions from sidewalks, in front of and adjacent to a person's premises

- to determine the compensation to be paid for any lands taken for roads or sidewalks. (City, Town or Village only)

There are legal considerations involved with roads.

M. 0.165(1)

a municipality may be liable for damages if it does not keep its roads in reasonable repair.

M. 0.166

- in such cases, written notice must be sent to the Secretary Manager/Treasurer by registered mail within 14 days of the accident. The notice must indicate where the failure to repair exists, and the nature and cause of the alleged damages.

- the municipality shall have the damaged vehicle examined by a qualified person to assess the alleged causes of the accident and damages.

- Where death results from an accident related to a municipality's failure to repair a road, and where notice has not been given, this will not stop legal action. In other situations where notice is not given, the judge can decide whether to permit legal action or not.

There are special requirements involved when a municipality wants to open, close, alter, etc any road.

a by-law is **required**  
notice of the by-law must be advertised for one month  
the Council shall hear from anyone who claims his land will be injuriously affected by the by-law  
notice is not **required**; if the owners of the land to be taken for the roadway agree in writing to the passage of the by-law, or where the municipality owns the land  
all by-laws of this nature require the Commissioner's approval.

#### VEHICLES ORDINANCE:

Sections 201 - 204 of the **Vehicles Ordinance** is concerned exclusively with municipal by-laws.

Under this Ordinance, a municipality may pass by-laws in the following areas:

- to vary the maximum **speed** limit
- to vary the speed limit of vehicles of different classes, during night time or day time, during different periods of the year, or in different traffic lanes (where speed limits are effected by by-laws, the Council must put up speed signs indicating the speed limits)
- to restrict the gross weight of vehicles using the road
- to delegate to a municipal officer the power to prescribe the location of traffic control signs
- to classify vehicles for any purpose relating to the use of the road
- to prohibit, restrict, and/or regulate parking
- to prohibit the operation of objectionably **noisy vehicles**
- to prohibit or **regulate** turns
  - regarding parking-stands
  - prescribing fees for use of parking stands
  - to prevent **the over-crowding** or blocking of streets by vehicles
  - to provide for the impounding and removal of vehicles that violate " parking laws
  - to regulate parades
  - to grant a **licence** or permit for the temporary use of roads or road allowances when not required for public use
  - to provide for one way traffic
  - to prohibit vehicles or classes of vehicles from using roads for certain periods
  - to regulate crossing and walking along roads
  - to provide for a parking ticket system that allows payment of the fines directly to the municipality. The form of this ticket must be approved and established by a Commissioner's Regulation.

Section 195 of the Vehicles Ordinance authorizes a by-law officer to enforce this Ordinance, and Sections 196 - 200 outline enforcement powers. Sections 211 - 213 provide for penalties.

ALL - TERRAIN VEHICLES ORDINANCE:

Under the All-Terrain Vehicles Ordinance, a **municipality** may pass by-laws **with** respect to all-terrain vehicles **in** the following areas:

Section 5 - creating a system for their registration, setting terms and conditions of registration, and establishing registration fees.  
governing the licensing of operators; setting tests as conditions of licensing and providing for the suspension or cancellation of **licences**; and establishing licensing and examination fees.  
setting speed limits.  
prohibiting or restricting their operation on roads and other areas.  
establishing special areas where they may be operated.  
prescribing safety gear  
establishing **licence** plates  
requiring owners to carry public liability insurance.  
prescribing age limits for operators  
outlining the duties of operators involved in accidents  
making special provisions for people not resident in the community regarding registration, licensing, and identification requirements.  
licensing and regulating businesses involved in selling, leasing or renting all-terrain vehicles.  
providing penalties for offences. The penalties cannot exceed those listed in Sections 211-213 of the Vehicles Ordinance.

Section 8(1) of the All-Terrain Vehicles Ordinance states that **municipal** by-laws made under the All-Terrain Vehicles Ordinance shall prevail where there **is** any conflict with Part **III** (Equipment) or Part **IV** (Rules of the Road) of the Vehicles Ordinance.

Sections 9, 10, 11 and 13 deal with enforcement.

PUBLIC HIGHWAYS ORDINANCE:

Under this Ordinance a municipality is a "**highway** authority", meaning that it has management and control of highways within its municipal boundary.  
(Section 2(c))

Section 7 **permits** the Commissioner to enter into agreements with municipalities regarding the construction or maintenance of a primary highway within the municipal boundary.

Section 8 requires that any by-laws of a municipality be in accordance with the terms of the agreement with the Commissioner regarding the primary **highway**.

Section 9 allows the **Commissioner** to purchase or expropriate land within the municipality for the purpose of a highway. The consent of the municipality is required.

## 2. Public Health

Municipalities have powers and responsibilities regarding **public health** under the following Ordinances and Regulations:

o Public Health Ordinance:

- General Sanitation Regulations
- Public Water Supply Regulations
- **Public Sewerage Systems Regulations**
- **Swimming Pool Regulations**

● Municipal Ordinance

PUBLIC HEALTH ORDINANCE:

Under Section 3 of the Public Health Ordinance, the **Commissioner** has the power to make regulations on a wide variety of subjects related to public health. The regulations listed above are all **made** pursuant to this section of the Public Health Ordinance and they are all very important to municipalities.

There are several sections of the General Sanitation Regulations that are particularly relevant to municipalities.

**Sections 13-17** are concerned with water supplies. Every municipality must provide a water supply and this supply is subject to inspection by a Health Officer.

Section 18 requires that a **municipality** establish a sewage collection and disposal system.

Section 25 requires that a municipality establish a system of garbage collection and **disposal**, and **Section 28** requires that a **municipality provide** a dump site.

The Public Water Supply Regulations provide for the inspection, approval, and closure of public water supplies. It is also concerned with water quality, water treatment plants, chlorination, fluoridation, and distribution systems. Section 22 may be of particular interest to communities that haul water by truck as it stipulates conditions for water trucks.

The Public Sewerage Systems Regulations **provide** for the **inspection, approval and closure of public** sewage systems; general **principles** related to sewage; **pumping** stations; the protection of water supplies; and sewage treatment.

The Swimming Pool Regulations **apply** to any municipality that has a public **swimming** pool. These regulations are concerned with the construction of pools, disinfection of the water, required safety equipment, toilet and washing facilities, supervision, and inspection.

Sections 6 - 11 of the Public Health Ordinance are also of some interest to municipalities. These sections concern the appointment and duties of a Health Officer, boards of health and advisory health committees. Although the law clearly states that a municipality must appoint a Health Officer, this is rare in the N.W.T.. The Federal Department of Health & Welfare has Environmental Health Officers who act for both the Government of the N.W.T. and municipalities in the N.W.T..

#### MUNICIPAL ORDINANCE:

Under the Municipal Ordinance, Section 174, a municipality may pass by-laws regarding public health in the following areas:

- for the prevention of contagious and infectious diseases  
appointing public health officers and **defining their duties**  
requiring the removal of **dirt**, garbage etc from public places at the expense of the offender
- requiring the removal of anything **considered** dangerous to public health
- preventing or regulating out-houses
- preventing or regulating factories or trades that may be a public health nuisance
- protecting streams and **bodies** of water **within** the municipality
- for constructing, operating, and maintaining hospitals in the municipality and **fixing** rates for their usage.

The Municipal Ordinance, Sections 180, 181, gives a municipality the power to pass **by-laws** regarding garbage and sewage collection and **disposal**, and water delivery. These by-laws can:

- specify who, how, and when the garbage will be picked up  
specify in what areas the garbage will be picked up
- provide for the payment of garbage pick-up either through the general revenue of the municipality, by **residents**, or both
- provide for collection of fees for garbage services, fix the times and places for payment, and provide penalties for late payment and discounts for prompt payment.  
authorize the municipality to contract the delivery of water or the collection of garbage or sewage
- provide for the collection of fees for water and sewage services, fix the times and places for payment, and provide penalties for late payment and discounts for prompt payment
- provide for actions to be taken in default of payment of **garbage, sewage, and** water fees.  
authorize the fluoridation of water  
a city, town or village can **provide** for the construction, **operation**, and maintenance of water, sewage, or garbage systems.

### 3. Fire Prevention

Under the Municipal Ordinance, Section 174, a municipal council may pass by-laws:

- establishing a fire department, appointing officers and providing for their pay and duties
- to acquire fire equipment and storage space
- requiring residents to assist in fire fighting  
requiring the pulling down of any structure to prevent the spread of a fire



establishing fire districts  
providing for the alteration or removal of any structure or thing  
that may be a fire hazard at the owner's expense  
establishing any required measures for the safety of the community  
regarding fire prevention

#### FIRE PREVENTION ORDINANCE:

Under Section 6 of **this** Ordinance, any local **fire** brigade chief appointed by a municipal council is automatically a local assistant to the N.W.T. Fire Marshal. **If there is** no brigade, or no appointed brigade chief, the Secretary Manager/Treasurer is the local assistant to the Fire Marshal.

When a local fire brigade chief is appointed, the Fire Marshal's office must be notified immediately by the municipality (Section 6(2)).

As a local assistant to the Fire Marshal the local fire brigade chief has considerable **powers** and responsibilities regarding investigations, inspections, and identification and removal of fire hazards. A local fire chief **should** become quite **familiar** with this Ordinance and the powers and responsibilities he has under it.

#### Section 22:

"A local assistant to the Fire Marshall who fails to comply with any of the requirements of this Ordinance or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding twenty-five dollars."

#### 4. Building By-Laws

Section 176 of the Municipal Ordinance permits a municipality to pass by-laws regulating the construction and maintenance of **buildings within** the community. Council may, by by-law:

- prohibit the erection of any wooden building, building addition, or wooden fence in any specified areas of the municipality
- prohibit erection or placing of buildings that might constitute a fire hazard
- regulate the construction of chimneys
- require proper care and inspection of chimneys, stoves and furnaces
- provide for the destruction or removal of any building that is placed in contravention of a by-law at the owners expense
- provide for the issuing of building permits

Municipalities that issue building permits and have building by-laws often have building inspectors to enforce the by-laws. These inspectors are hired pursuant to Section 142 of the Municipal Ordinance.

## 5. Business Licences

The Municipal Business Exemption Regulation passed pursuant to the Business Licence Ordinance states:

" A business that is carried on within any municipality having by-laws governing the issuance of business licences is exempt from the Business Licence Ordinance. "

If the municipality does not have a business licence by-law, then all businesses are licensed by the G.N.W.T. under the terms of the Business Licence Ordinance.

Municipalities can pass business licence by-laws under the terms of Section 178 of the Municipal Ordinance. A business licence by-law can:

- set the fees for a business licence
- establish a method for payment of fees
- establish how long business licences are valid for (Usually they must be renewed every year).
- provide for the suspension of a licence
- establish rules of conduct for the place of business and the people who use that place.

All business licence applications must include a certificate from the Worker's Compensation Board indicating that the business has fulfilled all requirements for the Worker's Compensation Board.

Business licence by-laws for Hamlets and Villages must be approved by the Commissioner.

In preparing a business licence by-law, Council should be careful to ensure that the by-law is not discriminatory in its nature. For example, establishing different fees for residents and non-residents is discriminatory and unacceptable.

Council should also be careful when considering rejecting a business licence application. Applications cannot be rejected because the new business will compete with an established local business.

## 6. Taxi-Cabs and Bus Systems

TAXI -CABS:

The Municipal Ordinance, Section 179, empowers a Council to pass by-laws:

- providing for the supervision, regulation and licensing of taxis
- establishing taxi stands or depots
  - requiring the taxi company to establish and maintain waiting rooms
  - establishing taxi fares
  - regulating the transfer of taxi licences.

- The Municipal Council can determine how many cabs are required to best serve the **community** and then limit the number of taxi **licences** issued. For **example**, if a council decides that 15 cabs **is** the maximum number of cabs that can be **supported** by the community, **it** would **issue** only 15 taxi **licences**. These **licences** could go to one individual or to 15 independent operators. Once all 15 **licences** are issued, then no one else can get into the taxi business unless:

- Council decides to increase the number of **licences**, or  
a licence is transferred according to the terms of the by-law, or
- a **licence** is **cancelled** and **issued** to another individual.

Temporary permits allowing additional cabs to operate may be **issued** for certain times of the year, special occasions, etc.

Because Council has the power to limit the number of taxis, the provisions of the by-law regarding the licensing, regulating and transferring of licences are very important.

In determining the number of taxi **licences** to be issued, a council must consider the public convenience.

The licences referred to here should not be confused with taxi-cab driver's **licence**. A taxi-cab driver's **licence** is issued by the G.N.W.T. pursuant to Sections 60 - 62 of the Vehicles Ordinance.

#### BUS SYSTEMS:

Section 177.1 of the Municipal Ordinance allows a municipal council to pass by-laws to establish, operate and maintain a public bus system, and to set the fares and make rules regarding the operation and control of the system.

#### 7. Domestic Animals

Section 8(7) of the Dog Ordinance states:

" **Where** the seizure of a dog is made for contravention of a by-law of " a municipality respecting dogs, the provisions of the by-law respecting the impounding, selling, or killing of dogs apply instead of the provisions of this section."

If there is no municipal by-law, then the Dog Ordinance applies.

Under Section 182 of the Municipal Ordinance, a council may pass by-laws regarding dogs or other domestic animals that apply throughout the community or in specified areas. In **addition**, a council may by by-law provide for:

- restraining, prohibiting and regulating dogs running at large
- **imposing** a tax on **dog** owners for dogs other than working dogs
- issuing dog tags and charging for them
- refusing dog tags for vicious or nuisance dogs
- restraining, selling, destroying or impounding dogs or other animals running at large
- regulating or prohibiting the keeping of any domestic animal that may cause a nuisance.

- establishing the fees to be charged to owners for impounded/or destroyed animals.
- preventing cruelty to animals

## 8. The Protection of Person and Property

The Municipal Ordinance authorizes Count' 1 to pass a variety of by-laws relating to the protection of Person and Property under Section 183

regulating billboards and advertising devices

regulating public exhibitions

regulating the discharge of firearms

regulating the use of public address systems

curfew

regulating the setting of snares and traps within the municipal boundary

regulating noise

## 9. Miscellaneous By-Laws

Section 184 of the Municipal Ordinance is concerned with miscellaneous by-laws that a Council may pass:

authorizing the acquisition or disposal of any real or Personal property. Hamlets and Villages require the Commissioner's approval for the acquisition of land. A city or town must have included sufficient funds in their budget to do this. If the funds have not been included, then the Commissioner's approval is required.

- purchasing or constructing staff housing and borrowing money for such purposes. Hamlets are not allowed to borrow money but may pass a by-law to purchase or construct staff housing if they have the funds.

regulating the location and standard of services for trailer parks

closing of stores and businesses. A petition signed by the majority of ratepayers engaged in the particular business is required.

- proclaiming civic holidays.
- for taking a community census
- for the acquisition, maintenance and operation of parks and recreation facilities.

regarding parking meters

regarding the keeping and transporting of combustible or dangerous materials

- for naming and numbering streets
- for canceling uncollectable debts (the Commissioner's approval is required).

10. Community Service Charge

Municipalities may enact a by-law to impose a community service charge of \$25.00 for every resident who is;

- 19 years old  
not liable for property taxes  
has lived in the **community** for more than 6 months
- has been employed during the year

Sections 283 - 287 of the Municipal Ordinance outline the details of the **community** service charges.

11. Community Planning

**Municipal** powers and responsibilities regarding community planning are found in the Planning Ordinance.

PLANNING ORDINANCE:

The Planning Ordinance **is** the law in the N.W.T. regarding the development of **community** general plans. A general plan is an official document adopted by Council consisting of written policies and maps stating Council's position on the desirable pattern of physical growth and development in the community. Although community plans are not mandatory, many councils choose to have a plan as **it is** an effective tool in **decision making** and **community** management regarding the physical development of the community.

P.O.4

A General Plan **is developed** under the direction of a qualified planner, appointed **by, and** responsible **to, the** Council.

The Plan must include:

- maps showing the division of lands into different land use classes.
- proposals regarding the content of **zoning** by-laws.  
proposals regarding roads, services, **public buildings**, schools, parks and the reservation of land for community purposes.  
schedules showing the sequence of land development and other proposals.
- proposals regarding the financing and scheduling of capital work and development.  
other requirements as necessary to illustrate proposals in the general plan.

The plan must be **adopted** by by-law.  
every 5 years.

The plan must be reviewed

P.O.15      **Zoning** by-laws outline the detailed legal restrictions, standards and procedures for controlling the physical development of a community. Usually, a **zoning** by-law **is** based on a general plan but a community may enact a zoning by-law based on a survey of existing land uses and conditions in the municipality.

P.O.29      Enacting general plans by **by-law, or** zoning by-laws, requires special conditions to ensure the involvement and input of the public. After first reading, a public meeting must be held to give people an opportunity to **comment** on the by-law. After the meeting Council can amend the by-law if it chooses, and give it second reading. After second reading, it must be sent to the Commissioner for approval. Then Council can give it third reading. Any amendments or repeals to the by-laws require the same procedure unless the change **is simply** to clarify an existing provision.

Zoning by-laws create zones of permitted land uses, and regulate the size, construction, and location of different classes of buildings and lots. The detail of what a Council may regulate by a zoning by-law is quite extensive and the Planning Ordinance should be consulted.

P.O.17,18  
19,21      A zoning by-law must provide for the appointment of a Development Officer, who is responsible for monitoring and inspecting development within the community to ensure it conforms with the zoning by-law. Many zoning by-laws establish a development permit system. In **such** cases, the development officer **may** be responsible for **implementing** this **system** by issuing permits, rejecting permit applications or canceling permits.

P.O.21      " A council, or a Development Officer authorized by Council, can **stop** any illegal construction and require the removal, alteration or demolition of the illegal work. Written notice must be given, stating the **reasons why** the work is not authorized, what must be done to correct the problem and by what time. **If** the property owner **fails** to comply, the **municipality** can have the work done and recover their expenses from the **owner,** by action through the Courts.

P.O.22      The zoning by-law must also establish an Appeal Board consisting of a chairman and at least two other members. All members are appointed by Council, and serve a 3 year term. One member of the Board must be a **Councillor**. A person may appeal a decision of the Development Officer or Council to the Appeal Board. The **Appeal** Board may confirm or reverse the decision or impose conditions or limitations, but no decision of the Appeal Board can be incompatible with the general plan.

P.O.50      Appeals from an Appeal Board decision can go to the Supreme Court of the N.W.T. only on questions of jurisdiction or points of law.

P.O.52(2)

Neither the Commissioner or any member of an Appeal Board is liable personally for anything resulting from an appeal to the Supreme Court.

Sections 38 - 48 of the Planning Ordinance, dealing with subdivision, have not yet been proclaimed and are not therefore, in force.

## TAX-BASED MUNICIPALITIES

### 1. Introduction & Objectives

There are many parts of the **Municipal Ordinance** that **apply** only to tax-based **communities** (city, town or village). An examination of these **parts** will show that they are primarily concerned **with money**; the process of raising money through taxes, the borrowing of money, and the cost of community improvements and who will pay for them.

Tax-based municipalities must raise both their operating and capital financial requirements from local taxation. The assessment, levying, and collection of taxes is a fundamental aspect of the operation of a village, town or city in the N.W.T..

Citizens are naturally very concerned as they will want to be sure that the process of taxation is fair and that they get good services for their money. There are many sections of the Municipal Ordinance that are concerned with the power of a municipality to raise money through taxes and these will be examined and explained in this session.

The power to borrow money is another important feature of tax-based municipalities. It may be necessary to borrow money for short term operating expenses and/or for major capital purchases or projects. The terms and conditions for borrowing money as laid out in the Municipal Ordinance will be explained.

The Municipal Ordinance also contains sections dealing with local improvements. Community improvements are financed primarily by those residents who are positively affected by the improvements. The rules for initiating **community** improvement projects and determining how they will be paid for **will** be examined.

The objective for this session is to-examine the following distinguishing features of tax-based municipalities in the N.W.T.:

- the power to assess, levy and collect taxes and how it is done
- the power to borrow money
- local improvements



## 2. The Power to Raise Money

### TAXES :

- M. 0.159 The Council of a city, town or village has the power to raise revenue by imposing and collecting a tax on land called the property tax. This is a tax charged to all land owners within the municipality. The only exceptions are:
- M. 0.211
- public or separate schools and their residences
  - municipal lands
  - hospitals
  - churches
  - cemeteries
  - mining claims
  - Royal Canadian Legion may be exempted if authorized by Council through a by-law
  - lands owned by incorporated community associations may be exempted if authorized by Council through a by-law.

Governments do not pay taxes as such. Instead, they pay the municipality a grant in lieu of taxes. This grant may be equal to what they would be taxed, but not necessarily.

- M.O.2(m) The property tax is based on the assessed value of the land and any structures on the land.

- M.O.264 A second tax that can be levied is a business tax. This can be levied on every person, partnership or association residing and doing business in the community. The tax is based on the assessed value of the buildings or premises occupied by the business. At the present time, there are no municipalities in the N.W.T. that impose a business tax.

- M.O. 277-  
283  
M.O.2(p) A third form of tax that can be levied is the mobile unit tax. A municipality can levy a tax on mobile units that are located on leased or rented lands. In reality this is not necessary because mobile unit owners pay property taxes either directly or indirectly. Depending on the terms of the agreement between the trailer owner and the landowner, either the land and the trailer will be assessed separately and both parties pay taxes individually or, the land will have a total assessment and the landowner will recover the taxes from the rent. The first method is the more common.

- M.O. 283-  
287 A fourth tax that could be charged is the Community Service Charge. Hamlets are also eligible to levy this charge but due to the small amount of money involved there are no municipalities in the N.W.T. who impose a community service charge.

Tax-based municipalities levy a school tax every year. Although the municipality levies and collects this tax, it has no authority over the amount. Where there is a Board of Education in the community, it is the Board that determines how much money is required for education purposes in the community. The municipality collects the taxes and must turn all the money collected for education over to the local Board of Education. All property liable for taxation for municipal purposes is liable for the school tax.

Education Ordinance, Section 39(4):

" The municipality shall fix the rate necessary to raise the amount of money required to be raised in the municipality, levy and collect the amount as taxes, and pay the amount to the Board of Education in quarterly instalments . . . . ."

In tax-based municipalities where there is an Education Committee or Society, it is the **Commissioner** who sets the school tax rate to be charged and the money collected is turned over to the G.N.W.T. .

ASSESSMENT:

M.O.138

All properties within a municipality must be assessed or evaluated for taxation purposes. In the N.W.T. assessors are appointed by the Commissioner to carry out all assessments in municipalities and to prepare a general assessment roll. All properties, including properties exempted from taxation, are assessed and recorded on the general assessment roll. The general assessment roll is simply the official listing of each property, its owner, its value and other pertinent information.

In doing an assessment, the land is assessed for its market value. That is, how much is a piece of land in a particular **community** worth to a buyer. A more precise definition would be:

" The highest price estimated in terms of money which a **property** will bring if **exposed** for **sale** in the open market allowing a reasonable time to find a purchaser who buys within full knowledge of all the uses to which it is adapted and for which it is capable of being used." (Handbook for Land Assessment)

In the N.W.T. many pieces of **land** are leased from the Crown. In such cases, the value of the land is determined by the "development costs", that is, how much did it cost to develop a piece of land.

The cost for land in all communities is contained in the Handbook for Land Assessment. This handbook is used by the assessors when they are assessing a piece of property.

Any structures or improvements on the land are assessed separately from the land. These are assessed on the basis of replacement costs, that is, how much would it cost to replace the house or whatever situated on the land. The assessors check the size and types of structure, and its condition and then assess a value on it. Again, the assessors use manuals which ensure that the same standards are being applied to all assessments.

The assessment of any piece of property is the total value of both the land and all structures or improvements to the **land**.

Property owners are required by **law** to co-operate with assessors (M. 0.217) . Assessors are required by law to carry out their duties fairly and honestly (M.O.220).

Based on the assessment of each individual property in a **community**, the assessors prepare a general assessment **roll** and deliver this **roll** to the Council for their examination and information. Any identified errors can be corrected by the assessor at this time.

Every community must be assessed every six years (M. 0.231). A Council can require a complete assessment any time, but usually the Council will simply use the existing general assessment role and add any lands, buildings or improvements that are new or were missed, or any assessments that have decreased (eg fire damages, **etc**).

The general assessment roll must be presented to the Council before the first of December. The Secretary Treasurer must notify anyone whose assessment is new or has changed, by mail. The public is also notified that the general assessment roll is available for inspection and that anyone who has a **complaint** should register the complaint(s) with the Secretary Treasurer within 30 days of the date of notice.

The Council then establishes a Court of Revision to hear complaints against the assessment. The Court has 3-5 members appointed by the Council. The Secretary Treasurer is the clerk of the court and records the proceedings. The Court of Revision can raise or lower an assessment or order a new assessment of the municipality, or of a zone, block, or portion of land that contains the land complained about. Decisions by the Court are made by majority vote. The assessors are in attendance at the Court and the Secretary Treasurer can issue a **supoena** requiring the attendance of any person as a witness before the Court.

The Court of Revision must complete the revision of the general assessment role by May 31. Anyone who is dissatisfied with the decisions of the Court of Revision or with the **refusal** of the Court to hear a complaint can appeal to a Supreme Court judge.

The Council must adopt the general assessment role by resolution by September 30 (**M.0.231(3)**). If they elect to adopt existing assessment roll.

Summary of assessment process and dates:

- assessors assess lands and prepare a general assessment roll and present to Council by December 1st.
- Council reviews the roll and any errors or omissions are identified. Corrections can be made by the assessors.
- Notice is given to anyone whose assessment is new or has changed.
- Notice is given to the **public**. Complaints must be registered **within** 30 days of notice.
- Court of Revision is **estab**lished to hear complaints. Must **comp**lete revision by May 31.
- Appeals can be made to the Supreme Court.

At this point, Council is in a position to levy taxes based on the general assessment roll.

#### LEVYING TAXES:

Every year Council must prepare an annual budget estimating anticipated expenditures. These expenditures should include:

- any amounts needed to meet debenture payments (loans)
- amounts required for education
- normal operations and maintenance requirements
- amounts required to meet any operating deficits from the previous year.

(The fiscal year for tax-based municipalities is January 1 - December 31 - Municipal Ordinance 140(1. 1))

The Council should also estimate anticipated revenue from sources other than taxes, and the amount of taxes that may not be paid. With the estimated expenditures and revenues, Council knows how much money is required and can establish an appropriate level of taxation, called the mill rate, by by-law.

A mill rate is simply the amount of money to be paid as tax for every \$1,000.00 of assessed value. For example, if a property is assessed at \$50,000.00 and the Council has established a tax of 10 mills, then the property owner is required to pay \$10.00 for every thousand dollars of assessed value, or:  $10 \times 50 = \$500.00$ . If the assessed value is \$83,476.00 and there is a mill rate of 14.5, then the taxes to be paid are:  $83.476 \times 14.5 = \$1,210.40$ .

Once a municipal Council knows how much money it needs, and what the taxable assessment is (from the general assessment roll), then a mill rate is established that will provide the municipality with enough money to operate. For example, if the municipality needs \$1,050,000.00 and the taxable assessment is \$13,650,000.00, the required mill rate would be:  $13,650,000 \div 1,050,000 = 13$  mills. This calculation assumes that every property is taxed at the same rate, which is not necessarily the case.

Property can be classified differently, and different tax rates charged. For example, property can be classified as residential, commercial, or industrial and a different mill rate applied to each classification. Similarly, public and separate school supporters may be taxed at different rates depending on the needs of the respective School Board in the community.

Many people feel that when a community gets a new assessment it means their taxes will go up because their assessment has gone up. This is not necessarily the case. When a community is given a general assessment (at least every six years) the assessments usually go up. Replacement costs are higher and market values or development costs are higher.

But, it is the Council that sets the mill rate and this is the important factor. If the taxable assessment of the community is increased because of the new assessment, the Council can lower the mill rate and still collect the required amounts. When the assessment remains the same over several years, the Council increases the mill rate to collect the required amounts. A new assessment does not mean an increase in taxes, but rather, it simply means that the property is given a more realistic current value. Regardless of the assessment, the Council will establish a mill rate sufficient to collect the money needed by the municipality.

(In Hamlets and Settlements it is the Commissioner who establishes the mill rate. The amount of taxes paid is equal throughout these communities although there may be different mill rates depending on which year the community was assessed.)

After the general assessment roll has been finally revised and adopted by Council, and after the Council has levied the mill rate (by by-law), the Secretary Treasurer prepares a tax roll that includes: name, and address of land owner, the assessed value, the taxes that are levied, the amount owed, and any arrears (back-taxes).

#### COLLECTION OF TAXES:

After the tax roll has been prepared, the Secretary Treasurer bills the residents for their taxes owed. All taxes are due by October 31 unless otherwise stipulated by a by-law. Usually, Council will provide for reductions for advance payment and penalties for late payment. The penalties cannot exceed 2% per month on the unpaid portion. The penalty is added to the unpaid tax. Any taxes that are paid by someone who is behind in their payment of taxes will be applied to the arrears.

A municipality has a number of options regarding the collection of taxes:

- M.O.300 - where taxes are due on land occupied by a tenant, the Secretary Treasurer can give the tenant written notice requiring the tenant to pay the rent to the municipality instead of the landlord until all taxes are paid.
- M.O.301 if premises for which taxes are owed are damaged or destroyed, the municipality can claim any money owed under an insurance policy for the amount of taxes owed.
- M.O.304 if a building is moved from one lot to another, and taxes on the first lot have not been paid, the taxes due are transferred to the new lot.
- M.O.305 - failure to pay taxes within 30 days of final notice allows the municipality the right to seize and sell the owner's possessions up to the amount of taxes owed.

lands can be sold for **taxes** by the municipality if the taxes are unpaid for more than one year after December 31 of the year **owed**. The Secretary Treasurer prepares a **list of all lands liable** to be sold and must submit this list to the mayor by April 30. The mayor **issues** a warrant and the Secretary then advertises the sale and sends notice by registered mail to the owners of land liable to be sold, advising them of the sale and how much they owe. The sale must take place no later than August 15. Employees of the municipality are not eligible to purchase tax sale properties. The lands are sold to the highest bidders although the municipality has the right to buy any property for the amount owed in taxes. **If** a piece of land can't be sold for enough to pay all the taxes, approval of Council is required to sell it for whatever it can get. Purchasers of the **land** must wait for 6 months after the sale day before the Secretary Treasurer applies to the Supreme Court to confirm the sales by transferring ownership. The Secretary Treasurer then prepares the transfer of ownership and **demand**s full payment for the land within one month. Within all this time, the original owner can redeem (regain possession) his property by paying the arrears, any additional costs incurred, and a penalty.

### 3. Borrowing Money

Since municipal taxes are not due until October 31 of every year, a community may face cash **flow** problems. To ease such problems, the Municipal Ordinance gives tax-based municipalities the power to borrow money until all current year taxes are collected. (M.O.159(4)). The Council can, by by-law, authorize the Mayor and Secretary Treasurer to borrow money. The amounts borrowed cannot exceed:

- 85% of estimated revenue, minus any unpaid amounts from the previous years' borrowing, or

if there is no estimate of revenues, 85% of previous years' budget minus any unpaid amounts from previous borrowing.

The Commissioner's approval is required to borrow in excess of these amounts (Municipal Ordinance 159(5)).

All money borrowed for operating expenses must be repaid in the fiscal year it was borrowed as the first charge against the general revenue of the municipality (Municipal Ordinance 159(6)).

Villages must have all by-laws to borrow money approved by the Commissioner (Municipal Ordinance 159(7)).

Tax-based municipalities can also borrow money for municipal purposes such as capital purchases or projects through the issuing of debentures. This is long term borrowing.

A debenture is; "a certificate given as acknowledgement of debt; a bond usually without security" (Funk & Wagnall Dictionary).

Debenture borrowing must be authorized by by-law, and the by-law must be approved by the Commissioner before third reading. Then, it must be put to a vote of the ratepayers at the next general election, or at a special vote if the Commissioner approves. If the ratepayers do not approve the debenture by a majority vote, then Council cannot proceed. A waiting period of 6 months is **required** before the Council can try for the ratepayer's approval again (Municipal Ordinance 203).

When the money is to be borrowed for a local improvement that only affects some of the ratepayers, and municipal general revenue is not used, then only the affected ratepayers vote on the by-law. (Municipal Ordinance 203(6)).

The money borrowed must be used for the **purposes** outlined in the by-law. **If there** is some money left over after the project/purchase, it can be used to pay off interest on the debenture, as payment on the principal, or for other purposes approved by Council and the Commissioner. (M.O.202).

- A city or town can borrow up to 20% of the total assessment of land within the municipality.

A village can borrow up to 10% of its total assessment. (M.O.205).

Money borrowed for local improvements that are being paid for by a special tax, or money borrowed for public utilities that are being paid for by a user charge, are not considered when a municipality is calculating how much it can borrow (M.O.205(3)).

All debentures are for a term not greater than the probable lifetime of the asset (M.O.209(3)). If, for example, a piece of equipment was purchased through money borrowed by debenture, and it was estimated that this piece of equipment should last 10 years, then the debenture must be repaid within 10 years.

The Commissioner countersigns all debentures (M. 0.210) .

The advantage of purchasing/constructing capital items through debenture borrowing are:

the people who will benefit from the project/purchase are the ones paying for it , and since approval of the ratepayers is required in a vote, Council will know the community supports the purchases/projects.

The disadvantages of debenture borrowing are:

the ratepayers may not approve, even though the purchase/project may be a necessity.

Tax-based municipalities are encouraged not to depend totally on debenture borrowing. The annual tax rate could be increased slightly to generate an on-going capital replacement/purchase fund. Every year money would go into this fund. The Council would not have to go to the ratepayers too often this way and it would be able to cope with emergency or predictable capital needs.

Sometimes ratepayers may complain if they feel that too much money is being raised this way. Their argument is that they are paying now for future assets that they may not derive any benefits from but future residents and ratepayers will derive benefits without having contributed. This argument is valid only if large amounts of money are being generated. Otherwise , it is good financial management to have funds raised annually for capital replacement purchases, or projects.



#### 4. Local Improvements

Tax-based municipalities can undertake the following types of work as local improvement projects:

- M.O.194
- opening or otherwise altering or improving roads
  - construction of sidewalks, culverts, or bridges
  - sewage or drainage projects through public or private lands
  - the acquisition, construction, or upgrading of water and sewage systems
  - the repair, maintenance or reconstruction of any of these types of work

There are special conditions for local improvement projects. For example, if you are a ratepayer living in one end of town and there is a sidewalk being constructed in the other end of town, you may ask what benefit it is to you, and why should your taxes pay for such an improvement? These are legitimate concerns and as a result, local improvements are paid for by those ratepayers who benefit from them. Some improvements will benefit the whole community, in which case the municipality pays for the improvement, or, a fair share of it, out of general municipal revenue.

M.O.199

M.O.198-201

Usually local improvements benefit the lands right beside the improvement and these land-owners are required to pay for the improvements. If other lands nearby also benefit, they too will be charged a portion of the costs.

M.O.200

Local improvement projects must be paid for within the probable life of the local improvement. For example, a wooden sidewalk not treated with preservatives is expected to last 7 years, and a concrete sidewalk is expected to last 20 years. Payment for these projects is usually spread over that time period. In this manner, if land is sold, the new owner will pay his fair share.

Citizens may want local improvements to improve services, for reasons of convenience, or because it makes the area look nicer. Local improvements will increase the value of the land and this is a major consideration.

M.O.195

(1, 2, 3)

Local improvement projects can be initiated by the Council, or by citizens through a petition. A petition requires the signatures of 2/3 of the owners who must represent at least 1/2 of the assessed value of the properties effected and liable to pay.

M.O.195 (4)

Where Council initiates the improvement it must give public notice for at least 2 weeks through advertisements in the newspaper, and it must notify all owners of properties to be affected. The owners then have one month to petition the Council not to proceed. Their petition requires the signatures of a majority of the owners, representing at least 1/2 of the assessed value of the properties affected and liable to pay.

The Secretary Treasurer is responsible for determining the validity of petitions for or against local improvements (See M.O.195(6)-(15)).

M. 0.196 • Once a local improvement has been proposed the Council may pass by-laws to:

- determine the costs
- determine the lands affected
  - determine the expenses to be charged against individual properties
- provide for a time and place to hear objections
  - appoint a qualified person to gather this information and report to Council.

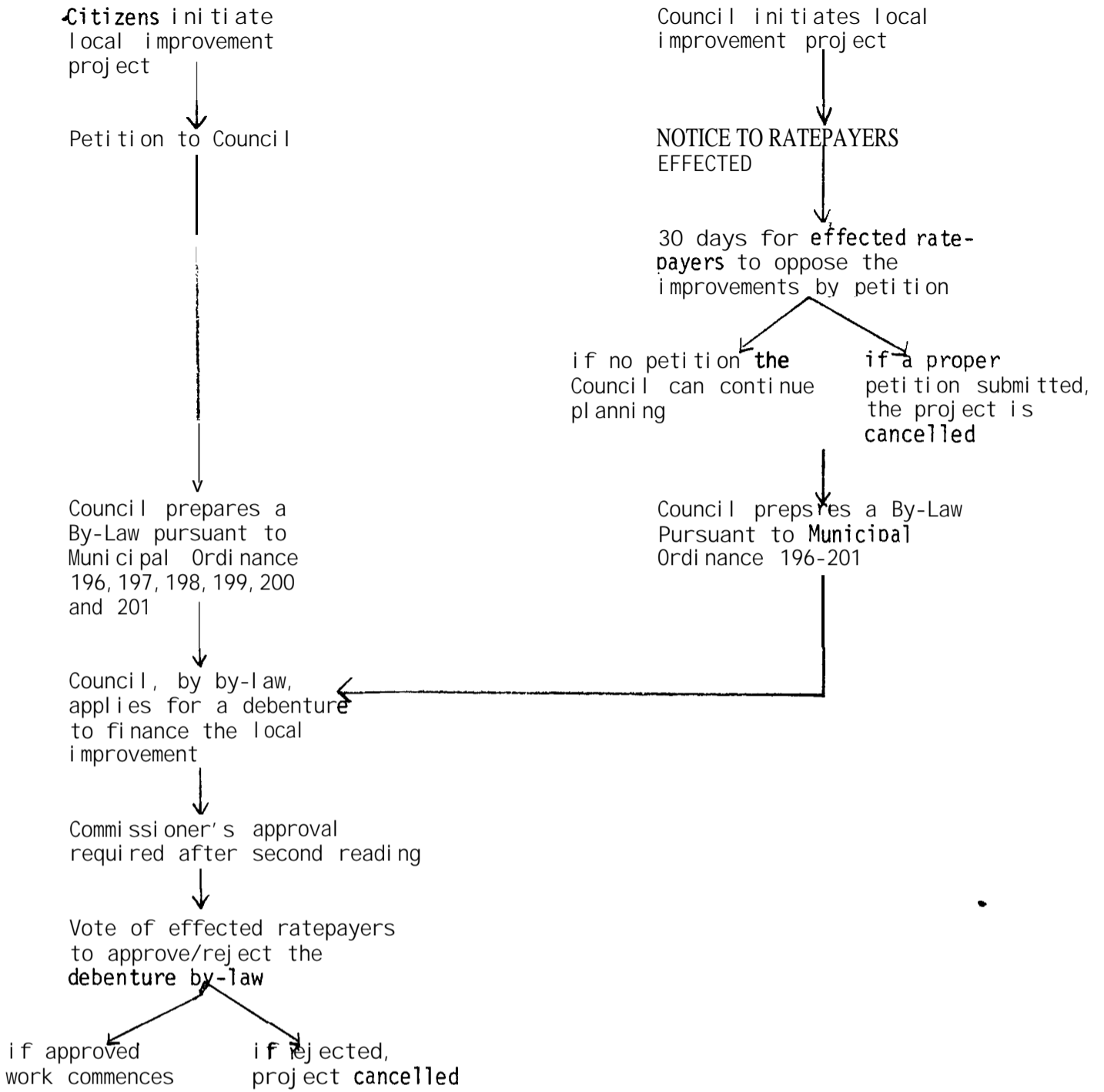
M.0.197 After the report and/or objections, if any, the Council can then proceed by by-law to:

- authorize the improvements
- indicate the benefits and set the costs to be charged the individual property owners and/or the **municipality**.
- assess, levy, and collect by special tax the costs of the improvements including interest
- outline a payment schedule

M. 0.203(3) Local improvements are financed through debentures. **When** the Council prepares a by-law for the debenture to pay for the local improvements, this by-law must be approved by the ratepayers. **If** the improvement benefits the entire **community**, and the municipality is paying a share or all of the costs, then all **ratepayers** are eligible to-vote'. 'If-the improvement only affects certain properties, then it is only the affected property owners who vote because they are the ones who will be repaying the debenture.

If the debenture is approved by the voters, the project proceeds.

Local Improvements



5. Miscellaneous

Sections 63 - 69 of the Municipal Ordinance outline special conditions for the voting of ratepayers on by-laws. These sections should be consulted before any vote.

Section 191 of the Municipal Ordinance authorizes a tax-based municipality to expropriate land within the municipality. This must be done by by-law and all by-laws concerning expropriation must be approved by the Commissioner. The Expropriation Ordinance must be followed.

## THE LAW OF CONTRACTS

### Objectives:

1. To understand what a contract is, and the legal requirements and implications of a contract.
2. To develop some helpful hints regarding monitoring and/or managing contracts.

What is a contract?

- A contract is "an agreement voluntarily entered into, which the parties intend to be enforceable at law."

contracts cover the supply of goods and services between two parties.

"enforceable at law" means that either party **would be able** to sue. if necessary to require the other to keep his obligation.

- Contracts generally fall into two categories:

1. Simple Contracts: these contracts can be written, oral or implied actions (e.g. shaking hands, raising one's hand at an auction or any physical **behaviour** that leads the other party to assume a contract has been **made**). Simple contracts are not under seal and require no special form. If there are problems it becomes one party's word against the other. To be enforceable, witnesses are required. Simple contracts are enforceable if there is a proper offer and acceptance.
2. Specialty Contracts: contracts that pertain to a special formal event and must be in writing and under seal. This is a more secure form of contract. Specialty contracts should be used for any transaction that the parties feel is of sufficient importance to require one.

- What is a "seal" - the requirement of having a seal on contracts comes from early England where melted wax was dropped on the contract and impressed with some mark or design to indicate the genuineness of the signer. Today a red sticker or the Incorporated municipality's official **seal** is used. Sometimes just a signature is used.

- Some contracts are required to be specialty contracts, i.e. mortgages, leases, deeds, etc. . . Failure to put them in writing means they are not enforced by the courts.
- Contracts do not have to be in a particular form. The law will accept any written document or collection of documents which prove the existence of the agreement.

### Legal Requirements of a Contract

To have a legally binding contract you must have the following:

1. valid offer
2. **valid** acceptance
3. consideration.

1. Valid Offer: a valid offer must be made. The offer should be **clear**, seriously intended and communicated to the other party. To be more specific it must:

- be made to the person intended (not through another person).

must be definite and precise in content.

- must be seriously intended - i.e. a hasty comment or sarcastic statement is not acceptable.

a valid offer is different from an advertisement. Sometimes it can be difficult to distinguish between an advertisement and an offer.

Some ads can be worded in such a way that they become offers.

An advertisement is considered an invitation.

An offer is more a proposition.

**e.g.** for a municipal service contract, it is the contractor who makes the offer based on the municipality's invitation to bid. The signed tender document submitted by the contractor

is the offer.

"A tender is nothing more or less than an offer to carry out the work specified therein and subject to the terms **and** conditions stated at the price quoted".

an offer may be **revoked** any time before it has been accepted. The notice of revocation must reach the other party before it has been accepted. A revocation lost in the mail is not enforced in the courts because it was never delivered.

2. Valid Acceptance: Once an offer has been made there must be a valid acceptance for the contract **to be legal. This involves;**

acceptance must be made in the manner and time stipulated in the offer. **If** no manner is stipulated, acceptance may be made in **any** customary manner. If no time stipulated, acceptance must be made within a reasonable time. (When inviting tenders, the **time~~s~~** and **manner** is stipulated.)

the acceptance must be communicated to the person making the offer. **In** law "silence does not mean consent".

- acceptance must be unconditional. You can't accept and change the terms of the offer at the same time. **If this happens**, the law says (a) the offer was refused.

(b) a counter offer was made.

an offer is automatically revoked if a counter offer is made or if acceptance is not made within the time stipulated.

an acceptance of an offer becomes effective when mailed, or phoned. Registered mail is recommended. **(If** the letter was lost in the mail



the court would still rule the offer was accepted).

oral promises made outside a written contract are not enforceable. The court will not allow oral testimony to contradict the clear, unambiguous terms of a written contract.

an offer is automatically revoked if the person making the offer dies before acceptance.

3. Consideration: The law assumes that the purpose of entering into a contract **is** to exchange values in some manner. The **value** which each party exchanges in the contract is called consideration. A contract generally cannot be enforced without some consideration being shown to both parties. The court would ~~say that~~ a contract without consideration is really a promise to do something for free, thus a gift and not legally enforceable. This does not apply to contracts under seal - **the courts feel** that even if there is no consideration the parties must have seriously intended the contract if they had it formally drawn up.

consideration must be something that can be expressed in terms of dollars - it cannot be intangible things such as loyalty, affection, etc.

Forbearance **is a form** of consideration which means to give up a legal right in return for payment-if a person agrees to give up his right to sue a second person, he is entitled to some monetary payment for doing so.

### When is a contract binding

- Once a contract has been made problems may arise as to whether it can be enforced at law. The following terms are used to describe the correctness of a contract:

valid - a contract is valid if it meets all the **legal** requirements and can be enforced by either party against the other. It is a contract without major defects.

void - a contract is void if it fails to meet the essential requirements of a contract. Neither party could enforce such a contract and in most cases the court would hold that the contract never existed since it was defective from the start.

- voidable - a contract is voidable if one party could escape the terms at his option. In other words, there is a defect which one party may use to declare the contract not binding. If he does not so choose, the contract remains valid and enforceable.

Parole Evidence Rule:

- where there is a dispute concerning a written contract, the court will consider only the terms of that written contract. No matter what has been said between the two parties the court will only enforce what is put down in written form.
- to add to the contract, the additional terms can simply be written out and initialed by both parties. Similarly, terms can be eliminated as long as both parties agree and initial any eliminations.

Legal Capacity to Make Contracts:

- age of majority - must be a legal adult to contract - (19 years old in the N.W.T.)
- intoxicated persons or those under the influence of drugs can cancel a contract if they can prove:
  - i) that he/she was impaired.
  - ii) that the other person knows of his/her condition.

They must take action to cancel the contract immediately upon recovery and the entire contract must be repudiated not just part of it.

must be a legal body (incorporated) to make contracts. e.g. Hamlets can contract and/or be contracted. Settlements cannot.

### Genuine Consent to a Contract

both parties must give their "genuine consent" to the contract.

situations that challenge whether or not genuine consent was given.

1. Mistake - refers to a misunderstanding about the subject matter of the contract.

- does not refer to a bad decision or a bad bargain.

Common mistake -

if both parties make the same mistake, e.g. both parties sign a contract for the sale of a building not knowing that the building has burned **down, then** the contract is void from the start.

Mutual mistake -

two parties making two different mistakes and neither aware that he **misunderstands the** other, e.g. if Joe and Bob agree to buy one of Bob's snowmobiles, but they are both talking about different snowmobiles and don't know it, then the contract is void.

Clerical error -

one party cannot profit from an obvious clerical error - can't bind the other part to a disastrous contract.

2. Duress -

actual or threatened violence against self or family.  
ordinary business pressure is not duress.

3. Undue Influence -

- having the person make contracts that are not to his betterment, but to the betterment of the advisor.

4. Misrepresentation -

- false statement of material facts
- fraud - severe form of misrepresentation
- it is an intentional, deliberate misstatement of facts, a criminal offence
- misrepresentation - can be accidental
- fraud renders a contract void
- misrepresentation renders a contract voidable.

Discharge of Contract:

- A contract may be interrupted before completion by the wrongful actions of one party. The following is a list of ways contracts may be "discharged" (ended).

1. Discharge by Performance: when both parties have carried out their obligation the contract is said to be performed and the parties are discharged.
2. Discharge by Mutual Agreement: when both parties decide to cancel their contract they may do so. A written statement is often drawn up and signed by both parties for mutual protection.
3. Discharge by Impossibility of Performance: problems and difficulties must be expected and anticipated when engaging in a contract - (strikes, late deliveries, etc.). Difficulties of this nature do not necessarily excuse the parties from fulfilling the contract.

- There are **situations** that are beyond control and render a contract impossible to perform.

- **where** the subject matter has been destroyed. e.g. a contract to buy a building would be void if the building burned down.

- **where** illness makes the performance of a personal service impossible e.g. if a person has contracted to do a job based on his own personal skill he cannot send someone else to do it for him.

- where a change in the law makes the contract illegal and therefore impossible.

4. Discharge by breach of contract: where one party to a contract fails to carry out his obligation he is said to be in breach of contract. His breach frees the other party from their obligation. There is no **requirement** on one party to continue the contract when the other party is clearly not going to fulfill his obligation. The parties may then go to court to argue the matter of settlement of damages.

when there is a breach of contract it is important to determine whether or not the contract was substantially performed before the breach occurred,

and if the breach is a major or minor breach. "Substantial performance" refers to a situation where most of the contract was carried out and the breach was small. The injured party might get some damages but would not be able to declare the entire contract void.

**In** some cases the injured party may ask for "specific performance". This means asking the courts to order the other party to carry out its obligations. This usually only occurs where monetary damages won't suffice. This does not apply to personal service contracts (that would be servitude) but it does apply to **labour** unions for example.

- Injunctions may be used in breach of contract situations. An injunction is a court order requiring a person either to perform an act or to stop doing an illegal act.
- Time limitations: It is important to be aware that there are time limitations for initiating suits against other parties for breach of contract. The time limitations can vary depending on the complaint.
- If one party breaches a contract by neglecting or refusing to complete it, the other may treat the contract as discharged and may sue for damages. The injured party must prove:

substantial breach of one or more conditions of the contract by the other party.

the injured parties readiness to complete the contract at all times.

that steps were taken by the injured party to reduce or avoid loss - i.e. after the breach was made what steps were taken to minimize losses.

the amount of loss (converted into dollars) directly caused by the breach of the other party.

## Monitoring/Managing a Contract

Municipalities can both contract out and be contracted. Although municipalities are more often involved in contracting out the delivery of various municipal services, they also get involved as a contractor in different situations (e.g. with the Housing Corporation for pad construction, Motor Vehicle Licensing, P.O.L. etc.

Settlements are not legal **community** governments therefore they can't contract or be contracted. They can engage in "Agreements" with the Territorial Government though. These agreements are similar to contracts but legally would be considered administrative arrangements.

Co-operation is an important aspect for both parties in a contract but you must recognize each other's position and vested interest. Initially, both parties seek a contractual arrangement because it is mutually advantageous. Once a contract has been agreed to **though, there** is some separation of interest and the relationship becomes more adversarial. The contractor's objective becomes fulfilling the contract for the maximum financial benefit for himself. This may lead to problems of quality control as the contractor takes as many short-cuts as possible to maximize his profits. On the other hand, the party who has put out the "contract has its objective of achieving the maximum quality of service and work in the time allotted and at the price agreed to.

There are also reasons to ensure co-operation; for example, if the contract comes up every year a company must provide good service if the contract is to **be given** to them again (assuming there is competition).

## HELPFUL HINTS

When monitoring or managing a contract these are some helpful hints:

1. Know your contract in detail.
2. Establish clear channels of communication.  
Depending on the type of contract it may be advisable to schedule on-going meetings to review the progress and quality of the work.
3. Written confirmation should be issued as soon as possible after any oral direction is given, any changes made or any problems or issues raised.
4. In cases of disputes set up and maintain detailed records of all pertinent facts.
5. Ensure that the terms of the contract reflect any concerns you **have**:
6. Be vigilant. Continuous monitoring of contracts discourages infractions and reduces the causes of constant complaints.



PROBLEMS WITH CONTRACTS -

1. What salaries to pay.
2. Finding out what to bid (charge) for contract work.
3. Not getting paid as soon as possible.
4. Overspending on contracts.
5. Underspending on contracts.
6. Not enough equipment or people.
7. Amending (changing) contracts.
8. Carry over on contracts.
9. Keeping track of contract costs and revenues.
10. Preparing invoices,
11. Timing - (not enough-too much).
12. Communications with distant customers.
13. Preparing contract and specifications.
14. Unclear contracts and 'specifications.

## MUNICIPAL TENDERING PROCEDURES

### Introduction and Objectives:

The enclosed booklet entitled "Municipal Tendering Procedures" was put together by the Government of Ontario for use by Ontario municipalities. This booklet is not the law in the N.W.T.. It is used here as a thorough and detailed reference guide to municipal tendering. Some of the procedures and details may not be appropriate for communities in the N.W.T., especially smaller ones. After reviewing the booklet you can decide how to tender projects in your community. Generally, though, the tendering process is consistent throughout Canada.

Public tendering is designed to get the best possible contract for the municipality in a way that is fair and equal for all concerned. Many of the procedures involved in public tendering are intended to ensure this fair and equal treatment. Potential bidders, bidders, parties with specific interests, and the public generally often pay very close attention to tendering procedures to ensure fairness. Considering the amounts of money involved and the general importance of most publicly tendered projects this interest and attention to detail is understandable. It is equally important and understandable that anyone involved in the tendering of projects should have a thorough and detailed source of information that can be referred to regarding all aspects of public tendering and any problems that may arise. This booklet is a good source of this information.

The objective of this session is to explain and review tendering procedures using the Municipal Tendering Procedures booklet as a reference guide.

## 1. Types of Contracts

Generally speaking there are two types of contracts: Lump sum contracts and Unit price contracts.

Lump Sum Contracts: contracts where payment is made on a stated bid amount for the entire contract. The advantage of this type of contract is that less time is spent in calculating quantities in the work and it is not necessary to measure exactly the finished work. Often used for maintenance contracts or general building construction.

Disadvantages are that if the work involves more than expected there is no way of increasing the price and is no way of knowing the cost breakdowns.

Unit Price Contracts: are in which payment is made at a stated unit price for actual measured quantities (e.g. 50 yards of gravel are to be spread on two miles of road). This type of contract often used in road and culvert construction, **gravelling**, gravel hauling, etc.

Unit price contracts should have a maximum figure in the contract, e.g. if a water delivery contract is on a price per gallon basis the contract must indicate some form of restrictions that the contract is not to exceed without permission of the municipality - delivery quotas or a maximum contract figure.

Unit price contracts may contain some items or parts that are bid on a lump sum basis.

### Advantages

the contractor is protected from loss due to actual quantities being more than expected.

protects municipality when work is less than expected as payment is based on actual measured quantities.

more flexible than lump sum when alterations necessary

individual item prices known when evaluating bids received.

### Disadvantages

ultimate cost unknown as cost dependent on actual quantities

necessary to itemize work on tender.

## 2. What Goes into a Contract

(Municipal Tendering Procedures - Ministry of Transportation and Communications - Ontario; Part A Sections 1.01 - 1.06).

### **Summary:**

contracting in government results in a significant transfer of public funds to the private sector - must be done in a formal, fair and business-like manner. Proper procedures must be followed.

- In municipal contracting, the offer - acceptance sequence is:
  - a) Invitation to tender is published.
  - b) Bids submitted.
  - c) Contract is entered into when the municipality accepts one of the tenders.
  
- When a bid is received it should be marked with the date of arrival and the time. There is no legal obligation for the municipality to accept any tender submitted (this is usually stated in the ad). An acceptance should not be conditional or qualified in any way except as specified in the tender.

- **Contracts should** be fair and reasonable to both parties. See page 2 Municipal Tendering Procedures for desirable characteristics of a tender.

- Contract Documents (pages 2, 3, 4 for more information)

1. Tender Form
2. General Conditions of Contract
3. Standard Specifications of Work
4. Special Provisions
5. Agreement to Bond
6. Plans and Drawings

- Closing Date of Tender - determined by municipality, considering how long it should take bidders to prepare and submit a tender. Normal length of time is 3 weeks.

- Opening of Tenders - tenders should be opened immediately after closing time (within an hour or two or at least on the same day) Opening of tenders is done in public.

### **3. Tendering Steps and Procedures.**

- Preparation of tender documents
- Designated Officials
- Advertise Invitation to Tender
- Release information packages to bidders upon request (keep a listing)
  - receive bids - must be on time
    - must be in proper form
    - must be in proper envelope
      - with information on the outside of the envelope (contract number, company, identifying contents as a bid, closing date)
    - must contain deposits or bonds if required.

Changes to Tender under call - this is **permissible** (addenda, Extension of time or cancellation).

- Withdrawal procedures

Tendering opening and checking procedures.

- Award procedures

1. Designated officials - only two required; one to open bids and one to witness.
2. **Pre-Qualification** - not used in most **communities** in the N.W.T.
3. Advertising - page 8 for information as to what should go into an Invitation to Tender ad.
4. Release of Information to bidders - (**note**) a standard tender envelope is not necessary but bid submissions must be identified on the outside of the envelope to ensure it is not opened. The envelope should indicate the contract number, that it is a tender and the name of the company (address and phone number), the closing date.

\* When a bid is received it should be marked with the date of arrival and the time.

5. Recording and Control of Tendering material - a list of **all plan takers** should be kept.
6. Tender requirements:

bids must be on proper tender **form**.

bids received after closing time won't be accepted.

tender must **be** legible **and** written **in** ink or typed.

↪ alternate proposals won't be considered unless requested in tender form.

bids must **not be** qualified in any **way**

adjustments to a tender already submitted will not **be** considered.

mistakes **in** the documents must be initialed.

7. Deposit Requirements - bidders are often required to deposit security with their tender. The amount varies.

8. Bonding Requirements

(i) Performance Bond - to guarantee completion of the contract as per the terms of the contract.

(ii) **Labour** and Materials Payment Bond - to ensure **labour** and materials are paid for before a final payout of the contract.

9. Changes to Tenders under Call (Addenda, Extension of time or cancellation).

- pages 13, 14, 15.

10. Receiving Tenders

(a) Tender boxes are not necessary but Tenders should be kept in a safe place.

(b) Time and date **stampi**ng when tender is received.

- the number of bids received and names of bidders is confidential and must not be divulged prior to the tender opening.

- late tenders - should be time and date stamped anyway and returned unopened to the bidder.

11. Withdrawal Procedures - p. 16, 17.

12. Opening Tenders - p. 17, 18, 19, 20.

13. Award Procedures - p. 20-25.

# Municipal Tendering Procedures



Ontario

**Ministry of Transportation and Communications**

**JAMES W. SNOW**  
**Minister**

**H. F. GILBERT**  
**Deputy Minister**

**FEBRUARY, 1978**



## INTRODUCTION

This booklet describes an important phase of **precontract** work for public works contracts and other services and supplies, and is intended to promote sound administrative practice with respect to **all** types of tenders.

It is written in a very specific and somewhat rigid manner. The purpose of this style and format is to allow a municipality to adopt it as a working manual in its present form by incorporating it into appropriate administrative by-laws. Where it is felt that a particular aspect should vary somewhat, a revision can be made to that portion without difficulty.

The booklet is divided into three distinct parts.

### Part "A" General

Is general in content and discusses the tendering process. It is **inteded** for the use of officials concerned with the overall process, but not involved closely with the administrative details.

### Part "B" Tendering Procedures

Is **intended** as a step-by-step procedure for the municipal staff responsible for the detailed administration of the tendering procedures.

### Part "C" Appendix

Includes specimen forms that have been used successfully by municipalities during the tendering phase, and some data on the qualification procedures ~~of~~ the Ministry of Transportation and Communications.

It is recommended for use in its entirety and discretion must be exercised by designated municipal officials if partial use of, or modifications to, these procedures are proposed. "

The booklet was prepared in 19.77 by representatives of:

The Municipal Engineers' Association  
The Association of Municipal Clerks &  
Treasurers of Ontario  
The Consulting Engineers of Ontario  
The Ontario Road Builders' Association  
The **Ministry of** Transportation and  
Communications

and has been endorsed by the executive heads of each organization.

Additional copies are available from the Records Services Office of the Ministry of Transportation and Communications, which is located at:

East Building  
1201 Wilson Avenue  
Downsview, Ontario  
M3M 1J8

TABLE OF CONTENTS

Subject Page

PART "A"

1.	General	
1:01	Desirable Tendering and Award Practices	1
1:02	The Requirements and Desirable Characteristics of a Contract	1
1:03	Contract Documents	2
1:04	Types of Contracts	4
1:05	Closing Date of Tender	6
1:06	Opening of Tenders	6

PART "B"

2.	Tendering Procedures, Requirements and Materials	
2:01	Designated Officials	7
2:02	<b>Pre-Qualification</b>	7
2:03	Advertising	8
2:04	Release of Information to Bidders	9
2:05	Recording and Control of Tendering Material	9
2:06	Tender Requirements	9
2:07	Deposit Requirements	11
2:08	Bonding Requirements	12
3.	Changes to Tenders Under Call (Addenda.. <b>Extension</b> of Time or Cancellations)	
3:01	Preparation of Addendum	13
3:02	Notification of Addendum to Prospective Bidders,	13
3:03	Contract Extension of Time	14
3:04	Notification to Prospective Bidders of Extension of Time	14
3:05	Disposition of Tenders when Closing Date Extended	14
3:06	Action when Contract <b>Cancelled</b> or <b>Cancelled</b> and Recalled	14
3:07	Notification to Prospective Bidders of Cancellation of Contract	14
3:08	Return of Tenders on Cancellation of Contracts	15

4.	Receiving Tenders		
	4:01	Tender Boxes, Envelopes, Date Stamping, Recording, Adjustments	15
5.	Withdrawal Procedures		
	5:01	Withdrawal of Tenders prior to Tender Closing	16
	5:02	Withdrawal of Tenders during Tender Opening	17
6.	Tender Opening and Checking Procedures		
	6:01	Opening Tenders	17
	6:02	Checking Tenders	20
7.	Award Procedures		
	7:01	Bids in Order	21
	7:02	Improper Bids <b>Received</b>	21
	7:03	Decisions on Rejection or Acceptance of Improper Bids	2
	7:04	Action when Tie Bids are Received	23
± z	7:05	Decisions on Improper Bids	23
	7:06	Disposition of Withdrawn Tenders	23
	7:07	Disposition of Deposit <b>Cheques</b>	23
	7:08	Notification of Acceptance of Tender	24
	7:09	Execution of Contract	24
	7:10	Action on Acceptance of Contract	24
	7:11	Action when Successful Bidder does not Finalize Contract	25
	Appendix		
	Index		26

GENERAL

1:01 DESIRABLE TENDERING AND AWARD PRACTICES:

The advertising of a tender and the subsequent award of a contract results in a very significant transfer of public funds to the private sector. The manner in which this transfer takes place must therefore be done in a formal, open and business-like manner and in accordance with procedures which have been carefully considered and approved by Council.

The approval should incorporate not only how the tendering process is to be carried out, but also what specific municipal officers are to carry it out and the specific responsibilities assigned to each of them.

1:02 THE REQUIREMENTS AND DESIRABLE CHARACTERISTICS OF A CONTRACT

A Contract is an agreement between two parties covering the supply of goods or services. For a contract to exist between two persons or parties there must have been an offer on the part of one, and acceptance on the part of the other.

In municipal work the offer-acceptance sequence of events occurs as follows:

- (a) An invitation to tender is published to advertise the fact that the municipality is interested in entering into a contract.
- (b) Bids will then be submitted by persons wishing to undertake the work. In some instances the contract may be advertised as a "Qualified Contract" and only contracting firms who have "Pre-Qualified" are allowed to submit tenders. Pre-Qualification of bidders is a procedure whereby a contracting firm satisfies the municipality before it submits a tender that it is capable of satisfactorily performing the work.
- (c) A contract is entered into when the municipality accepts one of the tenders submitted.

There is no legal obligation on the part of a municipality to **accept any** tender submitted and it is customary to state this in the **tender** advertisement. An acceptance must not be conditional or qualified in any way, except as specified in the tender. For **example**, if the acceptance of a tender is to be conditional on the **approval** of the Minister of Transportation and Communications, this fact shall be set forth in the tender documents.

Contracts, when entered into, shall be fair and reasonable to both parties. The following are desirable characteristics of a tender:

- (a) Full disclosure shall be made of all pertinent facts known to the municipality relative to the project which might affect the tenderer's bidding,
- (b) Where there is a possibility that the contractor may encounter unusual conditions or may have to undertake extra work, provision shall be made for fair compensation.
- (c) A tender and contract shall be definite and specific on all points.
- (d) A reasonable period of time shall be allowed for the preparation and submission of bids.
- (e) A specific time limit between the receipt and the acceptance of a tender shall be included. Thirty (30) days is considered to be a reasonable maximum time period.
- (f) All quantities and measurements shall be as accurate as possible and the contractor shall be made aware of quantities that are estimated with a limited degree of accuracy.
- (g) All documents relating to a contract shall be written in a clear and precise style without contradictory stipulations.

#### 1:03 CONTRACT DOCUMENTS

The documents referred to above consist of the tender form, general conditions of contract, specifications of work, plans and drawings, and agreement to bond. The following is a brief description of these documents.

##### (a) Tender Form

The Tender Form when completed and properly signed is a legal offer by the bidder to do the contemplated work and must be drawn up with care. This protects the interests of both the bidder and the municipality.

The Tender Form shall be clear as to the type, location and extent of the work and shall contain all necessary declarations required of the bidder. The time limit for signing the contract, usually ten days after the date of acceptance, shall be clearly stated. Provision shall be made on the form to allow clear identification of the bidder and the price or prices to be paid for the work.

The municipality shall provide a standard tender form in order to ensure that **all** tenders are **properly prepared** and **truly** comparable. The tender shall contain all conditions of acceptance and a clause shall **be** included binding the bidder to such conditions. An example of this is the condition that acceptance of the bid is conditional upon the approval of the Minister of Transportation and Communications.

Specimen tender forms **will** be found in the Appendix.

(b) General Conditions of Contract (Form PI-100)

In most engineering work there are many provisions of a general character necessary to a construction contract that by reason of their wide applicability may be regarded as standard. General Conditions set forth the duties, authority, responsibility; and relationships of the contracting parties and their representatives in the conduct of the work. (Special arrangements specific to a particular contract **shall** be covered in the Special Provisions). Standard General Conditions (Form M-100) for municipal work is available from the Ministry of Transportation and Communications and is recommended for use.

(e) Standard Specification of Work

Standard Specifications govern construction procedures, materials, workmanship, measurement and basis for payment applicable to all **work** of a specific nature. For example, rules concerning concrete forming, pouring and finishing can be specified and **will** be applicable to many contracts. Therefore, they need not be written expressly for each individual contract. **Revision** dates should be noted for each specification to ensure the correct **one is used**.

Municipalities are encouraged to include in their contracts specifications that are widely used and are familiar to those bidding on the work. The Standard Specifications developed by the Ministry of **Transportation** and Communications are available for municipal use.

(d) Special Provisions

Special Provisions define conditions that are specific to one particular contract. Examples of this type of provision would be a working restriction due to an environmental constraint or the amendment of a general condition or standard specification particular to the one contract.

(e) Agreement to Bond

The inclusion of an Agreement to Bond Form in the tender documents is **recommended** for all municipal contracts. This form is signed and sealed by a bonding company and in effect establishes with reasonable certainty that **the bidder will** be able to obtain the necessary **performance** bond if his **tender** is accepted by the municipality. In this way the municipality is protected to some extent against delays and loss resulting from the successful bidder finding that he is unable to obtain the necessary bond.

A specimen Agreement to Bond Form will be **found in** the Appendix.

(f) Plans and Drawings

**Plans** and drawings show the type and extent of the proposed work. They are used to show the location, the various dimensions, and the type of **the work** in a concise diagrammatical manner. They **shall** give sufficient information along with the written data in the tender documents to outline the requirements of the Engineer and to permit the bidder to intelligently prepare a tender for the work.

Errors and discrepancies in plans or specifications do not **generally** **annul** or vary a contract. Generally, where there is a discrepancy, the **plans** take precedence over the specifications, and figured dimensions take precedence over scaled dimensions. The precedence must be established in the General Conditions of the contract. Standard Drawings developed **by** the **M.E.A.** and **M.T.C.** are recommended for municipal **use.** "

#### 1:04 TYPES OF CONTRACTS

The types of contracts usually entered into by a municipality with **some** comments on the advantages and disadvantages of each are:

##### Lump Sum Contract

A Lump Sum Contract is one in which payment is made on a stipulated bid amount for the entire project. This type of contract is recommended for the supply and erection of **structural** steel and **pre-cast** beams, general building construction and maintenance contracts such as **bridge painting.** .

Advantages

less time is spent by the Engineer in calculating the quantities in the work

it is not necessary to measure exactly the finished work

Disadvantages

if work is less than anticipated there is no way of reducing the bid price

individual item prices are unknown when evaluating bids received.

Unit Price Contracts

A Unit Price Contract is one in which payment is made at a stipulated unit price for actual measured quantities for each item. This type of contract is recommended for all types of road, bridge and culvert construction and for maintenance contracts such as **gravelling**, priming, surface treatment and hot mix patching.

In some cases a unit price contract may contain some items that are bid on a lump sum basis. Examples of this are the placing of a concrete bridge deck or the supply of pile driving equipment.

Advantages

the contractor is protected from loss due to actual quantities being more than expected

protects municipality when work is less than expected as **payment** is based on actual measured quantities

more flexible than lump sum when alterations necessary

individual item prices known when evaluating bids received

Disadvantages

ultimate cost unknown as cost dependent on actual quantities

necessary to itemize work on tender



1:05 CLOSING DATE OF TENDER

The Municipality determines the tender closing date guided by the following:

(a) the time required by the bidder to prepare and submit a tender. For Advertised Contracts the normal period of tender call is

(i) Unqualified Contracts - not less than three weeks

NOTE : Unqualified contracts are contracts for which bidding is not restricted to contractors who have been established as "**pre-qualified**" in accordance with required procedures.

(ii) Qualified Contracts - not less than five weeks

NOTE : Qualified contracts are contracts for which **bidding** is restricted to contractors who have been **established** as "**pre-qualified**" in accordance with the required procedures.

(b) urgency of the requirement

\* z

1:06 OPENING OF TENDERS

The opening of tenders by a municipality shall take place immediately after the closing time, preferably within one or two hours, but always on the same day. Without exception this shall be done in public.

PART "B"

TENDERING PROCEDURES, REQUIREMENTS AND MATERIALS

2:01 DESIGNATED OFFICIALS

The term "designated official" is used throughout this booklet; it is important that the meaning is well understood. Briefly the designated official (s) have the following functions to perform:

- (1) Clerical - releasing, recording and receiving tenders and ensuring their safekeeping.
- (2) Tender Opening Chairman - recording and checking of bids.
- (3) Adjudicator - answering queries of prospective bidders, considering extensions of time, and reviewing bids received, ruling on the acceptance of those not completely meeting the tender requirements and preparing a report and recommendations to Council.

Desirably three different officials should be designated to perform these three functions.

2:02 PRE-QUALIFICATION

**Pre-Qualification** is a procedure whereby a bidder satisfies the municipality that he is capable of performing the work before he is allowed to submit his tender. Where contractors are required to be **pre-qualified**, it follows that the contract, if awarded at all, must be awarded to the lowest bidder. The Ministry of Transportation and **Communications** will assist municipalities wishing to **pre-qualify** contractors, by applying the Ministry's **pre-qualification** procedure to prospective bidders and advising the municipality whether such bidders are **pre-qualified** under it. Due to practical limitations of the Ministry's **pre-qualification** procedure it is not applied to contracts having an estimated value of less than \$50,000.00.

For contracts with a **value** between \$50,000.00 and \$500,000.00 **pre-qualification** procedures offer a number of **advantages** but for contracts with higher values they should be considered mandatory.

When a municipality wishes to use the **Pre-Qualification** Procedure of the Ministry of Transportation and Communications, it should contact the Ministry's District Office. Arrangements can then be made to have the appropriate notice contained in the advertisement for tenders advising the **pre-qualification** rating required to bid on the work. Each contractor wishing to bid on the work will then contact the Ministry's Qualification Accountant in Toronto and request him to advise the municipality of his qualification.

2:03 ADVERTISING

In order to attract as many competent bidders as possible, requests for tenders shall always be placed in at least one major construction trade publication and, if the municipality so desires, in the local press. Tender requests for minor projects are an exception to this - rule and may be placed in the local press only. Advertising in this manner may attract the largest number of competent bidders and increase competition. Coverage may be extended for contracts requiring special techniques or type of work.

Advertisements should appear in the press at **least** twice, and sufficient time between advertising and tender closing shall be allowed to permit a contractor to examine the site, obtain the tender documents, complete and submit his tender.

Typically, an advertisement shall contain the following information:

- (a) **the** name of the municipality
- (b) the contract number
- (c) the type of work
- ~~#~~ (d) the official designated to receive tenders
- (e) the time of closing
- (f) the location of the work
- (g) the** location where plans and specifications may be obtained
- (h) the charge, if any, for contract documents
- (i) the type of security that must accompany the tender
- (j) the** bonding requirements
- (k) the time and place of opening
- (l) information that "The lowest or any tender, not necessarily accepted"
- (m) **pre-qualification** requirement

A typical advertisement is shown in the Appendix

## 2:04 RELEASE OF INFORMATION TO BIDDERS

Upon the request of a prospective bidder the Designated Official shall supply the following material for **each** contract:

- (i) two copies of the official tender form
- (ii) one standard tender envelope of distinctive **colour**  
(sample envelope shown in Appendix)
- (iii) tendering material e.g. specifications, plans, profiles, etc. (**M.T.C.** specifications not usually provided but available on request).
- (iv) an agreement-to-bond form (if used)

NOTE (1) Additional procedures **shall** be followed when **pre-qualification** is a requirement of the contract. See pages 41-44.

(2) When a fee for tendering material is required it **shall** be paid to **the municipality**.

(3) When a fee **is** refundable it will be returned when tendering material is returned in good order.

## 2:05 RECORDING AND CONTROL OF TENDERING MATERIAL

A list of plan takers shall be maintained by the **Designated** Official responsible for issuing tendering material. The list shall be available to the public.

NOTE : It is essential that names, addresses and telephone numbers are recorded when tenders are released to facilitate distribution of addenda and when necessary to extend or cancel a contract under **call**.

## 2:06 TENDER REQUIREMENTS,

Tenders are required to conform to the conditions listed below and those failing to do so may be subject to disqualification.

- (a) The correct Tender Form, as supplied by the municipality, must be used and in the possession of the Official Designated to receive tenders, or his duly authorized representative on or before the Tender Closing Date and Time. **BIDS RECEIVED AFTER CLOSING TIME WILL NOT BE CONSIDERED.**

- (b) The Tender must be legible, written in ink or typewritten and ALL ITEMS MUST BE BID, where stipulated, with the unit price for every item and other entries clearly shown.
- (c) Alternative proposals will not be considered unless requested in the tender documents.
- (d) The bid must not be qualified by any statement added to the Tender Form or a covering letter, or alterations to the Tender Forms (unless requested by the municipality).
- (e) Adjustments by telephone, telegram or letter to a Tender already submitted will not be considered. A Bidder desiring to make adjustments to a Tender must supersede it with a later Tender submission.
- (f) The Official Tender envelope supplied by the municipality must be used for tendering purposes without any extra exterior covering. Provision shall be made on the Tender envelope for the contract number, closing date and the actual time of receipt.

NOTE : It is recommended that, other than the actual time of receipt, this information be completed by the municipality at the time the envelope is issued.

- (9) The Tender Form must be signed in the space (s) provided with the signature of the bidder or of a duly authorized Official of the organization bidding. If a joint bid is submitted, it must be signed on behalf of each of the bidders and if the signing authority for both bidders is vested in one individual he shall sign separately on behalf of each bidder. In **the case** of an incorporated company the corporate seal must be affixed to the Tender Form.

Qualified Contract tender form (s) must be submitted under the name of a contractor (group of contractors) who has (have) been approved as having the required rating for the contract being bid.

- (h) Erasures, overwriting or strike-outs must be initialed by the person signing on behalf of the organization bidding.
- (i) The Tender shall be accompanied by an Agreement to Bond, if required, and a tender deposit in the form of a certified **cheque**, bank draft or money order made payable to the MUNICIPALITY in the amount specified in the tender. THESE MUST BE ENCLOSED IN THE SAME ENVELOPE AS THE TENDER.

2:07 DEPOSIT REQUIREMENTS

Each bidder shall be required to deposit security with his tender, the amount of which will vary depending upon the value of the tender.

Normal deposit requirements for municipal contracts are as follows:

<u>TOTAL AMOUNT OF BID</u>	<u>MINIMUM DEPOSIT REQUIRED</u>
20,000.00 or less	1,000.00
20,000.01 to 50,000.00	2,000.00
50,000.01 to 100,000.00	5,000.00
100,000.01 to 250,000.00	10,000.00
250,000.01 to 500,000.00	25,000.00
500,000.01 to 1,000,000.00	50,000.00
1,000,000.01 to 2,000,000.00	100,000.00
2,000,000.01 and over	200,000.00

If any of the tender and deposit requirements have not been met the Tender shall be considered to be an "Improper Bid".

The security is held by the municipality to ensure that the tenderer will enter into a formal contract with the municipality, and when he does so, the security is returned to him. The security of all bidders, except that of the lowest and the next lowest bidder shall be returned immediately after the tender opening. The tender **shall state that the security will** be forfeited to the municipality if the accepted tenderer fails to enter into the formal contract (see also withdrawal of tenders).

Various types of security and **comments** on each are noted in the following:

1. A Certified Cheque Bank Draft or Money Order is the best form of security and can be turned into cash at once by depositing it in a bank. With a certified cheque no third party (other than the bank) is involved. However, if a contractor is bidding **on** a number of jobs at once, the requirement to provide security in the form of certified **cheques** may severely reduce his working capital. **From a small contractor or one with limited resources, this can be a real hardship.**
2. Bearer Bonds that are guaranteed as to redemption value on demand and other security that can be readily converted into cash are comparable to a certified cheque, and have the same inherent advantages.

3. A Bid Bond is an undertaking by a surety company to pay to the municipality the money **stated** in the bond "if the contractor fails to enter into a contract, and is the least desirable of the three types of securities. If the contractor defaults, and the surety company refuses to make good the bond, it may be necessary to sue the company to recover the money owing the municipality. This puts the municipality in a less desirable position than if it had a certified cheque from the contractor.

NOTE : Tender deposit **cheques** or other security shall not be cashed or deposited unless the successful bidder fails to enter into the formal contract.

## 2:08 BONDING REQUIREMENTS

1. Performance Bond

In order to protect the municipality, security to guarantee the completion of the contract is required. It is **recommended** that this security be in the form of a Performance Bond issued by an approved Bonding company for 100% of the amount of the tender, or, in the form of cash or acceptable collateral, which can readily be converted into cash, totalling 100X of the amount of the tender. The bond or collateral should be furnished by the successful tenderer when the contract agreement is signed. In cases where the **Prequalification** Procedure is used the Performance Bond requirement can generally be reduced to 50% of the amount of tender.

A Performance Bond provides for the completion of the work within the terms of the contract with the liability of the Bonding Company being limited to the amount of the bond. The municipality shall ensure that all actions and agreements are within **the** provision of the contract, otherwise the Bonding Company may be wholly or partially released from its obligation. Improper or unwarranted payments, unreasonable delay in reporting the failure of the contractor, new arrangements with the contractor, extensive changes or alterations in the contract, unauthorized extension of time, and premature payment of hold back or other lawfully retained monies are examples of actions which could release the Bonding Company wholly or partially from its obligation.

The municipality should also advise the Bonding Company of any problems that may arise **during** the course of the contract so that the company will be fully advised of the contractor's position as the work progresses.

2. **Labour** and Materials Payment Bond

Many municipalities feel they have a **moral** obligation to protect their local **labour** and material suppliers to the fullest extent and require the successful tenderer to provide a **Labour** and Materials Payment Bond as well as a Performance Bond when the contract agreement is signed.

Since a municipality cannot be held responsible for a contractor's **labour** and material debts, except as provided for by the provisions of the Workman's Compensation Act and the Mechanics Lien Act, a **Labour** and Materials Payment Bond is not necessary to protect the municipality.

Under the provisions of the Workman's Compensation Act a municipality is responsible for payments to the Board upon default by the contractor. It is recommended that a municipality obtain from the contractor before payment of the final payment certificate, a clearance in the form of a certificate signed by the Workman's Compensation Board stating that the contractor is in good standing.

A municipality can protect itself against liens filed under the provisions of the Mechanics Lien Act by fulfilling the requirements of this Act with respect to payments held back from the contractor.

CHANGES TO TENDERS UNDER CALL ( ADDENDA, EXTENSION OF TIME OR CANCELLATION)

**3:01** PREPARATION OF ADDENDUM

Interpretations should be made in reply to queries from bidders **only** in the form of written addendum.

When it becomes **necessary to revise, delete, substitute or add to** tendering material for a contract under **call**, the Engineer shall approve the issuance of an addendum.

**3:02** NOTIFICATION, OF **ADDENDUM TO** PROSPECTIVE BIDDERS

A **copy of** each addendum shall be forwarded by registered mail to each prospective bidder who obtained tender forms for the contract.

A copy of the addendum notice shall also be stapled to each tender form not yet distributed.

If an addendum notice is prepared too late to allow notification by mail prior to the contract closing time, in addition to mailing the notice, each prospective bidder who obtained tender forms for the contract shall be notified of the revision by telegram, and the closing date **shall** be extended.

In addition to the above procedure, it is desirable to give prior notice of the mailing to the prospective bidder by telephone.



3:03 CONTRACT EXTENSION OF TIME

When it becomes necessary to extend the closing date for receiving tenders for a contract, an advertisement setting out the new closing date shall be inserted in the publication originally used.

Appropriate municipal departments and outside agencies shall be notified of the extension of time.

3:04 NOTIFICATION TO PROSPECTIVE BIDDERS OF EXTENSION OF TIME

Each prospective bidder who received tender documents shall be notified by registered mail of the extension of time. In addition to the above procedure, prior notice of the mailing by telephone is suggested.

3:05 DISPOSITION OF TENDERS WHEN CLOSING DATE HAS BEEN EXTENDED

When the closing date for receiving tenders has been extended, tenders already received shall be handled as follows:

(a) If the extension of time is two weeks or less the prospective bidders shall be advised that his tender will be returned upon request.

(b) If the extension of time is more than two weeks, all tenders shall be returned unopened.

All **communications** by mail shall be registered.

3:06 ACTION WHEN THE CONTRACT IS CANCELLED OR CANCELLED AND RECALLED

When, in the opinion of the Municipality, it is advisable to cancel a contract under call, an advertisement shall be inserted in the same publication originally used, stating that the contract has been **cancelled**. Advertisements giving notice of cancellation should include information that the contract **will** not be recalled or will be recalled at a later date.

Appropriate municipal departments and outside agencies shall be notified of the cancellation.

3:07 NOTIFICATION TO PROSPECTIVE BIDDERS OF CANCELLATION OF CONTRACT

Each prospective bidder who received tender documents **shall** be notified by registered mail of the cancellation of the contract. In addition to the above procedure, prior notice of the mailing shall be given by telephone.

### 3:08 RETURN OF TENDERS ON CANCELLATION OF CONTRACTS

When a contract is **cancelled** no tenders will be accepted.

All tenders received shall be returned unopened to the bidder by hand or by registered mail with a covering letter.

### RECEIVING TENDERS

#### 4:01 TENDER BOXES, ENVELOPES, DATE STAMPING, RECORDING, ADJUSTMENTS

(a) Tender Boxes

A locked metal box with twin locks **shall** be provided by the Official designated to receive tenders for the safekeeping of tenders, and the keys for each lock shall be held by separate municipal officials.

(b) Tender Envelopes (Sample in Appendix)

Tenders received in other than the tender envelope supplied shall not be accepted and shall not be deposited in the tender box. When this happens the bidder shall be advised, by telephone if necessary, that his tender can not be accepted and that he must use the envelope supplied or his tender" will be returned unopened, as provided for in paragraph 4:01 (e), below.

(c) Time and Date Stamping and Recording of Tenders

When a tender is received, the envelope shall be time and date stamped. If a time stamp is not available, the time received shall be noted in ink and initialed **by** the receiver and shall be deposited unopened in the proper tender box.

NOTE : THE NUMBER OF BIDS RECEIVED AND NAMES OF BIDDERS IS CONFIDENTIAL AND MUST NOT BE **DIVULGED** PRIOR TO THE TENDER OPENING.

(d) Official Time

To ensure accurate time, the official designated to receive tenders shall ensure that he is using the correct time.

(e) Late Tenders

Regardless of the time a **bid** is received, the envelope shall be time and date stamped. If the bid is for a contract already closed it shall be returned unopened to the bidder. If a tender is to be returned by mail, it **shall** be accompanied by a covering letter stating that the tender could not be accepted due to late arrival. The same explanation can be courteously given when refusing **bids delivered** in person.

NOTE : If a late bid is received without a return address **on the envelope it shall be opened by the designated official, address obtained and then returned.** The covering letter should state why the envelope **could** not be returned unopened.

(f) Action on Correspondence Pertaining to Adjustments, Corrections or Restrictions to a Tender

Any correspondence, pertaining to adjustments; corrections or restrictions to a tender, which is received with a tender but outside the tender envelope or is received after a tender has been submitted but prior to closing time, shall not be considered, see 2:06 (d) and (e). Depending on the time available the bidder shall be advised by mail or phone of the withdrawal procedures.

WITHDRAWAL PROCEDURES

5:01 WITHDRAWAL OF TENDERS PRIOR TO TENDER CLOSING

A contractor who has submitted a tender on a contract may request that his tender be withdrawn. (Adjustments or corrections to a ~~tender~~ **tender** submitted will not be allowed). The withdrawal shall be allowed if the request is made before the closing time for the contract to which it applies. Withdrawal requests must be directed to the Designated Official by letter, telegram or in-person. Telephone requests shall not be considered.

When withdrawals are made in person, the Official receiving tenders shall obtain a signed withdrawal form confirming the details. If the person is other than a Senior Official of the Company, and for letter or telegram withdrawals, the authenticity of the request must be confirmed by telephoning a responsible Official of the Company.

Tenders confirmed as withdrawn prior to being placed in the tender box, shall be returned **unopened** to the contractor. Withdrawal notices received after the tender has been deposited shall, together with the confirmation of withdrawal be placed in the tender box. These bids are dealt with at the opening by announcing that the tender was withdrawn. The bid amount of a withdrawn tender shall not be read out.

The withdrawal of a tender does not disqualify a bidder from submitting another tender on the same contract.

Withdrawal requests received after the contract closing time will not be allowed. The party concerned shall be informed that the withdrawal request arrived too late for consideration.

#### 5:02 WITHDRAWAL OF TENDERS DURING TENDER OPENING

In some instances several contracts are opened at the same tender opening. At such an opening, at the conclusion of the reading out of bids on a contract, the low bidder on that contract may withdraw any of his remaining tenders. Tenders withdrawn under this procedure cannot be reinstated.

If more than one tender is read out under the same name for the same contract and no withdrawal notice has been received, the tender contained in the envelope bearing the latest date and time stamp shall be considered the intended bid. The first tender received shall be considered withdrawn and returned to the bidder in the usual manner.

#### TENDER OPENING AND CHECKING PROCEDURES

NOTE : Tender opening shall take place as soon as possible after closing time, preferably within one or two hours but always on the same day.

#### 6:01 OPENING TENDERS

(a) **Public** Opening of Tenders

Tender openings for all contracts shall be open to the public and shall be conducted under the chairmanship of the Designated Official.

(b) Draw to Determine Order in which Contracts will Be Dealt with.

Where there are two or more contracts to be opened at the same time a lottery shall be held to determine the order in which contracts will be dealt with at the opening.

(c) Opening of Tender Box

When the order in which contracts will be dealt with has been established, the Designated Officials holding the keys to the **locks**, shall open the tender box and remove the contents.

- (d) Action on Correspondence requesting Withdrawal when Tender Box Opened

Any correspondence requesting withdrawal of a tender shall be read by the **Designated** Official who shall state the nature of the correspondence, the name of bidder and **the** contract number. He shall then attach **the** withdrawal notice to **the** tender envelope which shall remain unopened.

- (e) Opening and Sorting of Tenders

When the correspondence in the tender box has been dealt with, the remaining tenders shall be opened. Each tender form shall be stapled to the applicable tender envelope, the deposit **cheque clipped** to the tender form and the tenders sorted according **to** the contract number.

- (f) Action on "Unknown" Tenders at Tender Opening

Any tender that does not have the contract number on the envelope shall be opened and placed with the other tenders for that contract.

- (g) Action on Correspondence Found Enclosed in Tender Envelope"

# = If correspondence is found enclosed with a tender in the tender envelope that tender shall be considered to be **an** "IMPROPER BID" and shall be so noted in the record of tenders opened and the tender read out in the normal manner. This correspondence and the tender shall be referred to the Designated Official for decision as to acceptance or rejection.

- (h) All Tenders Received Must be Accounted For

**When tenders** have been opened and sorted, the Designated Official shall check the number of tenders opened to ensure that **all** tenders received are accounted for. **If** a discrepancy occurs, the tender opening proceedings shall be delayed until all tenders have been accounted for.

- (i) Reading Out of Bid Amounts Etc.

When all tenders have been accounted for, the Designated Official shall announce for each contract, the contract number, and the number of bids received and for each tender, the name of the bidder and total bid amount.

- (j) Listing of Information Read Out

After reading out the bid amount the Official shall have a list prepared in order of bid amount from **low** to high recording the name of each bidder, the amount of the tender and the deposit cheque amount on the Record of Tenders Opened (see sample form in Appendix).

(k) Action When Correspondence Requesting Withdrawal Attached to Tender

When, during the reading out of tenders, the Official receives a tender that has correspondence requesting withdrawal attached, he shall read out the contract number, and the bidder's name and indicate to those in attendance that the tender is one previously announced as withdrawn at the request of the bidder.

The bidder's name for each withdrawn bid shall be recorded immediately following the names of the bidders whose tenders will be considered, noting the method and date of withdrawal.

NOTE : If, during the reading out of tenders, the Official receives a tender with correspondence other than a withdrawal request attached, he shall read out the tender in the normal manner.

(l) Action When All Tenders Have Been Read Out and Recorded

When all tenders for a contract have been read out and the information has been recorded by the Designated Official, the Chairman shall close off the Record of Tenders Opened by drawing a diagonal line in the unused space under the information listed and sign the form.

(m) More Than One Tender Under Same Name

During the reading out of tenders the Designated Official shall check for more than one tender under the same name (Without a notice of Withdrawal). If this situation occurs, it shall be dealt with as in 5:02.

If two tenders for the same contract are received in the same tender envelope, (Contractor's copy included) the signed copy or if both are properly executed and prices differ the lower price shall be considered the intended bid, which shall be processed in the normal manner.

(n) Preparation of Notice of Withdrawal of Tender During Tender Opening

A contractor, read out as low on a previous contract who desires to withdraw a tender(s) during an opening shall attest in writing to his identity and state the contract(s) on which he desires to withdraw. The Notice of Withdrawal of Tender must be signed by the contractor. This Notice must be handed to the Chairman before the reading out of the first tender on the contract(s) to which it applies. A specimen Notice of Withdrawal form will be found in the appendix.

The Chairman shall have the completed notice attached to the applicable tender. The Official presented with the tender and withdrawal notice shall read out the bidder's name and announce that the tender has been withdrawn in accordance with established procedure.

The Official shall not read out the bid amount of a withdrawn tender.

NOTE : A contractor who withdraws a bid on the strength of being read out as low bidder on a previous contract does not have the right to reinstate the withdrawn tender if subsequent checking proves that his tender on the previous contract was not in fact low.

#### 6:02 CHECKING TENDERS

The purpose in checking tenders is to determine whether -

- (i) all tendering requirements have been met
- (ii) all unit prices have been correctly extended
- (iii) the extensions have been correctly totalled

Tenders which do not conform to tender requirements or which require \*mathematical correction(s) shall be deemed "Improper Bids".

NOTE : All checking shall be completed by the Officials responsible immediately following the opening of tenders.

All tender documents shall be checked to ensure that:

- (1) the bidder's name and tender amount shown on the Record of Tenders Opened is correct
- (2) the tender form is signed as necessary, sealed or witnessed
- (3) the correct tender form and envelope have been used
- (4) each tender envelope is time and date stamped prior to the contract closing time
- (5) the deposit (when applicable) is sufficient and in an acceptable form
- (6) each item on the tender has been bid

- (7) all extensions and the total for each tender are correct. If an extension or total is incorrect, the checker shall cross out the incorrect figure shown on the tender form, enter the correct figure in red above it and initial the entry. If the extensions and total are correct the checker shall affix a numbered stamp or initial each tender adjacent to the total certifying that it has been checked.
- (8) the tender is free of restrictions or alterations "
- (9) all other tendering requirements have been met

#### AWARD PROCEDURES

##### 7:01 CONTRACT ON WHICH ALL BIDS ARE IN ORDER

When tenders have been checked, the Designated Official (adjudicator) shall review the bids in order to recommend an award.

##### 7:02 CONTRACT ON WHICH IMPROPER BIDS HAVE BEEN RECEIVED

Following completion of the checking procedures outlined in 6:02, bidding infractions, if any, shall be noted on the Record of Tenders Opened. This notation must clearly state the reason the bid is considered improper. The Designated Official shall then decide on the acceptance or rejection of all tenders noted as improper on the Records of Tenders Opened.

##### 7:03 BASIS OF DECISIONS ON REJECTION OR ACCEPTANCE OF IMPROPER BIDS

The decision as to whether an improper bid shall be rejected or accepted shall be based upon the following general considerations.

- (i) is the intention of the bidder clear? "
- (ii) has the bidder made a conscientious attempt to comply with the Tender Requirements?

Extreme care must be exercised by the Designated Official responsible to ensure that **Improper** Bids are handled in a manner which is fair to other bidders as well as to the public. The following are guidelines and are only intended to illustrate some of the discretion allowable: Bids described in (a) to (f) inclusive would be rejected. Bids described in (g) to (j) may, with proper discretion, be accepted by the adjudicator who must record his decision and reasons and must be prepared to explain them if requested.



(a) Late Bids - must be rejected

(b) Tender Form or Envelope not used - must be rejected

(i) bids received on other than supplied tender forms must be rejected

(ii) bids received in other than the tender envelope supplied must be rejected

(c) Bids Not Completed in Ink or by Typewriter- must be rejected

(d) Incomplete Bids (all Items Not Bid) - must be rejected

Part bids must be rejected except when the tender form clearly states that an award may be made for individual items (e.g. contracts such as equipment rental or some material contracts which are in effect several individual contracts combined).

(e) Qualified Bid - must be rejected

If a bid is restricted by a statement added to the tender form or a covering letter or alterations to a tender form it must be rejected unless the change was requested by the Municipality (e.g. F.O.B. point changed, escalator clause, etc.)

(f) Bid not Signed - must be rejected

(g) Erasures, Overwriting or Strikeouts not initialed

Providing the price is legible these bids may be accepted

(h) Arithmetic Errors

Bids containing arithmetic corrections from the checking procedure may be accepted. Bid unit prices shall ordinarily be used to correct extensions. Where there are obvious errors such as incorrect extensions or misplaced decimals the designated official shall consider the intent of the bidder.

(i) Deposit not Submitted or of Insufficient Amount

If a cheque, bank draft or money order is not submitted the tender must be rejected, but if a **cheque**, bank draft or money order for insufficient amount is submitted, a bidder may be allowed a reasonable time to submit sufficient deposit. If the deposit is not received within the time allotted the bid must be rejected.

(j) Agreement to Bond

If an agreement to bond is not submitted, when required, the tender must be rejected, but if an **agreement to bond** is not properly executed a bidder may be allowed a reasonable time to have it corrected. If the corrected agreement is not received within the time allotted the bid must be rejected.

7:04 ACTION WHEN TIE BIDS ARE RECEIVED

In the event that more than one bidder has submitted a low tender in the same amount they shall be advised that the tender to be accepted will be decided by means of a draw. The names of tied bidders shall be placed in a container and the tender to be accepted shall be drawn by a Designated Official. The time and location of the draw shall be set by a Designated Official and the bidders shall be so advised in order that they may be present. The following shall be present: Designated Officials  
Any of the bidders, or their authorized representatives.

Should any bidder elect not to be represented **at the** draw, the draw will proceed regardless.

7:05 DECISIONS ON IMPROPER BIDS

When an improper bid must be jettied as outlined in section 7:03, the amount of the tender shall **not** be recorded on the Record of Tenders Opened but the words "Rejected Bid" shall be recorded instead.

When an improper **bid is** one that may be accepted as outlined in section 7:03 it shall be noted as an "Improper Bid" on the Record of Tenders Opened **along** with the amount of the tender. All tenders shall then be referred to the Designated Official appointed as Adjudicator for review. In his review to council he shall include all bids that are improper, he shall **recommend** acceptance or rejection of any **bid**, and recommend the award to the successful bidder, or if necessary, the cancellation of the contract.

#### 7:06 DISPOSITION OF WITHDRAWN TENDERS

Following the tender opening, the officials responsible, shall return withdrawn tenders and the deposit **cheques** (when applicable) to the bidders by registered mail or by hand. If a tender and deposit **cheque** is returned by hand, a letter **acknowledging** receipt must be signed by the bidder or by an official identified as a representative of the bidding organization.

#### 7:07 DISPOSITION OF DEPOSIT CHEQUES

Immediately following the opening of tenders, all deposit **cheques** other than the low and second low bidders shall be returned to the applicable bidders by registered mail.

The tender deposit **cheques** that are retained, shall NOT, under any circumstances, be cashed except as noted in 7 11.

#### 7:08 NOTIFICATION OF ACCEPTANCE OF TENDER

Upon the award of the contract the Designated Official shall **immediately** send a Notification of **Acceptance** to the successful bidder advising him that his tender has been accepted, and advising that documents follow for execution.

- \* = The acceptance of Tender and award of the contract shall be carried out as quickly as possible. This is **especially** important if the tender contains a time limit for **acceptance** (usually 30 days) and it is necessary to **obtain** the approval of another authority before the tender can be formally accepted.

#### 7:09 EXECUTION OF CONTRACT

When the tender has been accepted the formal contract agreement shall be submitted to the contractor for execution. The contractor shall be allowed ten working days between the date of mailing the Agreement and the date the executed contract must be returned to the Designated Official. This form of agreement is a written record of the business arrangement between the municipality and the contractor. It is the **most** formal part of the contract and should be kept as simple as possible. Items which should be included in the agreement are as follows:

- (a) the purpose of the business arrangement between the parties
- (b) the binding of heirs, assigns and successors, and
- (c) the date and place of execution and the signature

If the tenderer is a corporation, the seal of the corporation must **accompany** the signature. If the tenderer is a private individual his signature must be witnessed. A by-law of the municipality is required to authorize the proper officers to sign on behalf of the municipality.

A specimen form of by-law and agreement will be found in Appendix.

7:10 ACTION ON ACCEPTANCE OF CONTRACT

As soon as copies of the executed contract and bonds, etc., if any, are returned and found acceptable to the Designated Official the deposit **cheques** of the successful bidder and the second low bidder shall be returned by registered mail.

7:11 ACTION WHEN-SUCCESSFUL BIDDER DOES NOT FINALIZE CONTRACT

If a contract has been awarded and the successful low bidder fails to sign the contract or provide a contract bond, cash or other acceptable collateral within the specified time, the Designated Official may grant additional time to fulfill the necessary requirements or may recommend one of the following:

- (i) that the contract shall be awarded to the next higher bidder
- (ii) that the contract shall be cancelled

In the case of (i) or (ii) above, the deposit of the low bidder shall be forfeited. If a contract is to be awarded to the second low bidder his deposit **cheque** shall be retained until he has actually signed the contract.

If the second low bidder fails, or declines, to execute the contract if awarded to him, his deposit shall be forfeited.

(APPENDIX)

	Page
Specimen Tender Form (Lump Sum)	27
Specimen Tender Form (Lump Sum and Addenda)	29
Specimen Tender Form (Unit Price)	31
Typical Advertisement	33
Typical Tender and Bonding Requirements	34
Specimen Agreement to Bond Form	35
Specimen Record of Tenders Form	36
Specimen By-Law Form for Acceptance of Tenders	37
Specimen Agreement	38
Specimen Contractor's Notice of Withdrawal Form	40
Qualification Procedures Applicable to Municipalities	41

'2 =

SPECIMEN TENDER FORM

LUMP SUM

To the \_\_\_\_\_ and Council,  
Corporation of \_\_\_\_\_ hereinafter  
called the "Municipality"

TENDER FOR:  
Under Contract No. \_\_\_\_\_

By \_\_\_\_\_  
(Name of Firm or Individual - Tendering)

Address \_\_\_\_\_

Name of Person Signing for Firm \_\_\_\_\_

Position of Person Signing for Firm \_\_\_\_\_

I/WE, the undersigned, having carefully examined the site of the proposed work, and having read, understood, and accepted the Provisions, Plans, Specifications and Conditions attached hereto, each and all of which form part of this tender, hereby offer to furnish all machinery, tools, labour, apparatus, plant and other means of construction; all materials, except as otherwise specified in the Contract; and to complete the work in strict accordance with the Provisions, Plans, Specifications and Conditions hereto attached for the lump sum price of:

_____ do" lars (in words)	(\$ _____ ) (in figures)
------------------------------	-----------------------------

-- : The estimated cost of material to be incorporated in the work is	_____
---	-------

The estimated cost of labour and all other charges is	\$ _____
---	----------

Total (must equal lump sum bid)	\$ _____
---------------------------------	----------

Attached to this Tender is a certified cheque in the amount specified in the "Tender and Bonding Requirements" made payable to the \_\_\_\_\_, the proceeds of which shall, upon acceptance of this tender, constitute a deposit which shall be forfeited to the Municipality if I/HE fail to file with the Municipality the completed Performance Bond specified in the "Tender and Bonding Requirements" and an executed form of Agreement for the performance of the work within ten (10) days from the date of notification of the acceptance of this tender by the Municipality.

I/WE hereby agree that notification of acceptance of this tender shall be in writing, and may be sent by prepaid post, and if sent by prepaid post, acceptance shall be deemed to have been made on the date of the mailing of such notification.

I/WE hereby agree that the work specified in this contract will be performed in strict accordance with the following Provisions, Plans, Specifications and Conditions:

- A. Special Provisions:
- B. Plans:
- c. Standard Specifications:
- D. General Conditions:

Signed at the \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Signature of Corporation witnesses and position held

Signature of Contractor or seal of the Corporation

1.

SPECIMEN TENDER FORM

LUMP SUM WITH SCHEDULE OF UNIT  
PRICES FOR ADDITIONS AND DELETIONS

The \_\_\_\_\_ and Council,  
Corporation of \_\_\_\_\_ hereinafter  
called the "Municipality"

TENDER FOR:

Under Contract No. \_\_\_\_\_

By \_\_\_\_\_  
(Name of Firm or Individual Tendering)

Address \_\_\_\_\_

Name of Person Signing for Firm \_\_\_\_\_

Position of Person Signing for Firm \_\_\_\_\_

I/WE, the undersigned, having carefully examined the site of the proposed work, and having read, understood, and accepted the Provisions, Plans, Specifications and Conditions attached hereto, each and all of which form part of this tender, hereby offer to furnish all machinery, tools, labour, apparatus, plant and other means of construction; all materials, except as other-wise specified in the Contract; and to complete the work in strict accordance with the Provisions, Plans, Specifications and Conditions hereto attached for the lump sum price of:

_____ dollars (in words)	\$	_____
		(in figures)
The estimated cost of material to be incorporated in the work is	\$	_____
The estimated cost of labour and all other charges is	\$	_____
Total (must equal lump sum bid)	\$	_____

Should additions to or reductions from the dimensions shown on the Plan be made, additions to or deletions from the above price shall be as follows:

<u>Item</u> <u>No.</u>	<u>Description</u> <u>of Item</u>	<u>Unit</u>	<u>Unit</u> <u>Price</u>
---------------------------	--------------------------------------	-------------	-----------------------------



Attached to this Tender is a certified **cheque** in the amount specified in the "Tender and Bonding Requirements", made payable to the \_\_\_\_\_, the proceeds of which shall, upon acceptance by the Municipality of this tender, constitute a deposit which shall be forfeited to the Municipality if I/WE fail to file with the Municipality the completed Performance Bond specified in the "Tender and Bonding Requirements" and an executed form of Agreement for the performance of the work within ten (10) days from the date of notification of the - acceptance of this tender by the Municipality.

I/WE hereby agree that notification of acceptance of this tender shall be in writing, and may be sent by prepaid post, and if sent by prepaid post, acceptance shall be deemed to have been made on the date of mailing of such notification.

I/WE hereby agree that the work specified in this contract will be performed in strict accordance with the the following Provisions, Plans, Specifications and Conditions.

- A. **Specail** Provi si ons:
- B. Plans:
- c. Standard ' Speci fi cati ons:
- D. General Condi ti ons:

Signed at the \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

Signature of Corporati on wi tnesses and posi ti on held

Signature of Contractor or sea? of the Corporation

SPECIMEN "TENDER FORM"

UNIT PRICE

The \_\_\_\_\_ and Council  
Corporation of \_\_\_\_\_ hereinafter  
called the "Municipality"

TENDER FOR:

Under Contract No. \_\_\_\_\_

By \_\_\_\_\_  
(Name of Firm of Individual Tendering)

Address \_\_\_\_\_

Name of Person Signing for Firm \_\_\_\_\_

Position of Person Signing for Firm \_\_\_\_\_

I/WE, the undersigned, having carefully examined the site of the proposed work, and having read, understood and accepted the Provisions, Plans, Specifications and Conditions attached hereto, each and all of which form part of this tender, hereby offer to furnish all machinery, tools, labour, apparatus, plant and other means of construction; all materials, except as otherwise stated in the Contract; and to complete the work in strict accordance with the Provisions, Plans, Specifications and Conditions hereto attached for the unit prices shown in the attached Schedule of Prices which forms part of this tender.

Attached to this Tender is a certified cheque in the amount specified in the "Tender and Bonding Requirements", made payable to the \_\_\_\_\_, the proceeds of which, upon acceptance of this tender, shall constitute a deposit which shall be forfeited to the Municipality if I/WE fail to file with the Municipality the complete Performance Bond specified in the "Tender and Bonding Requirements" and an executed form of Agreement for the performance of the work within ten (10) days from the date of notification of the acceptance of this tender by the Municipality.

I/WE hereby agree that notification of acceptance of this tender shall be in writing, and may be sent by prepaid post, and if sent by prepaid post, acceptance shall be deemed to have been made on the date of the mailing of such notification.

SCHEDULE OF UNIT PRICES ATTACHED TO  
AND FORMING PART OF THE TENDER FOR  
CONTRACT NO. \_\_\_\_\_

Item No.	Spec. No.	Description of Item	Unit	Est. Quan.	Unit Price	Total
				Total Tender Amount	\$	_____
The estimated cost of material to be incorporated in the work is					\$	_____
The estimated cost of labour and all other charges is					\$	_____
Total (must equal Total Tender Amount)					\$	_____

I/WE hereby agree that the work specified in the contract will be performed in strict accordance with the following Provisions, Plans, Specifications and Conditions:

- A. Special Provisions:
- B. Plans:
- C. Standard Specifications:
- D. General Conditions:

Signed at the \_\_\_\_\_ of \_\_\_\_\_ in the  
County \_\_\_\_\_ this \_\_\_\_\_ day of  
\_\_\_\_\_ 19 \_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Corporation  
witnesses and position held

\_\_\_\_\_  
Signature of Contractor or seal  
of the Corporation

TYPICAL ADVERTISEMENT

COUNTY OF SMITH  
TENDERS FOR STRUCTURE  
Contract No. 70-8

Sealed tenders on forms supplied by the County will be received by the undersigned until **2:00** P.M. local time on

WEDNESDAY, FEBRUARY 14th, 1970

for the construction of a 30 ft. concrete rigid frame bridge on County Road Number 2 across the Fourth River in Lot 12 of Concession III, Township of Blank. Approximate quantity of concrete is 300 cubic yards.

Only those tenderers that have submitted Ministry of Transportation and Communications form **P.Q.C.-MR** and qualified will be considered. The necessary rating for this project is (2) in (S). (if applicable)

Plans, specifications, tender forms and tender envelopes may be obtained from the undersigned:

- for a fee of ten dollars (\$10.00) which is non-refundable (as
- at no charge
- for a fee of ten dollars (\$10.00) which is refundable when tendering material is returned in good order. (desired)

A certified cheque, not **less than** the amount specified in the Tender and Bonding Requirements must accompany each tender and the successful bidder will be **required to** provide a 100% Performance Bond upon execution of the contract agreement.

Tenders will be opened publicly at **2:15** P.M. local time Wednesday, February 14th, 1970 in the 2nd Floor Committee Room, 150 **Berryman** Avenue, Birch, Ontario.

The lowest or any tender will not necessarily be accepted.

R.E. Jones,  
County Engineer,  
County Building,  
Birch, Ontario.

TYPICAL TENDER AND BONDING REQUIREMENTS

COUNTY OF SMITH  
CONTRACT 70-8

1. Tenders for the construction of a rigid frame concrete bridge on Smith County Road 2 in Lot 12, Concession III, Blank Township, 1/2 mile east of North Spruce and Highway 20, will be received until 2:00 P.M. E. S. T., Wednesday, February 14th, 1970.
2. Tenders shall be enclosed in a sealed envelope marked in the lower left-hand corner "TE/IDEI? FOR CONTRACT 70-8" and be addressed to Mr. R.E. Jones, County Engineer, P.O. Box 298, Birch, Ontario. If tenders are delivered by hand they shall be taken to the office of the County Engineer, Birch, Ontario.
3. Each tender must be accompanied by certified cheque made payable to the County of Smith, equal to or greater than the amount shown in the following table, and must be enclosed in the same envelope as the tender.

<u>Amount of Contractor's Tender</u>	<u>Minimum Deposit Required</u>
20,000.00 or less	<b>1,000.00</b>
20,000.01 to 50,000.00	2,000.00
50,000.01 to <b>100,000.00</b>	5,000.00
100,000.01 to 250,000.00	10,000.00
<b>250,000.01</b> to 500,000.00	25,000.00
500,000.01 to 1,000,000.00	50,000.00
1,000,000.01 to 2,000,000.00	100,000.00
2,000,000.01 and over	200,000.00

4. Each tender must be accompanied by the attached Agreement to Bond form completed by the Bonding Company.
5. **When** the contract agreement is signed the successful bidder must furnish a Performance Bond issued by the Bonding Company for 100% of the amount of the Tender, or 100% of the amount of the Tender in cash or acceptable collateral.
6. Tenders shall be submitted on the Tender Form attached hereto and must be properly signed and witnessed, or signed and sealed if the bidder is a Corporation.
7. The Tender must be legible and all items must be bid. Tenders which are incomplete, unbalanced, conditional, or obscure, or which contain erasures or alterations not properly initialed, or irregularities of any kind, may be ejected as informal or void.

4 SPECIMEN AGREEMENT TO BOND FORM

We, the undersigned, hereby agree to become bound as Surety for

\_\_\_\_\_ in a bond totalling One Hundred Per Cent (100%) of the contract amount, and conforming to the Instruments of Contract attached hereto, for the full and due performance of the works shown as described herein, if the tender for -- -- -- -- \_\_\_\_\_

is accepted by the Owner.

It is a condition of this Agreement that if the above-mentioned Tender is accepted, application for a Performance Bond must be completed with the undersigned within ten (10) days of acceptance of the tender related hereto, otherw se this agreement shall be null and void.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_.

==

\_\_\_\_\_  
Name of Bonding Company

\_\_\_\_\_  
Signature of Authorized Person  
Signing for Company

(Company Seal )

\_\_\_\_\_  
Position

MUNICIPALITY OF

RECORD OF TENDERS OF \_\_\_\_\_ D AND CHECKED

TENDER OPENING DATE \_\_\_\_\_ TIME \_\_\_\_\_  
 CONTRACT No. \_\_\_\_\_ No. OF BIDS \_\_\_\_\_  
 DESCRIPTION \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

CONTRACTOR	TENDER AMOUNT	ACCOUNTS				ENGINEERING				
		DEPOSIT AMOUNT	DEPOSIT CHEQUE		CORRECT FORMS	PROPERLY SIGNED	UNRESTRICTED	ALL ITEMS BID		
TOTALS CORRECT	CERTIFIED		AMOUNT SUFFICIENT							

\_\_\_\_\_ DESIGNATED OFFICIAL

COMMITTEE DECISIONS:

RECORDING SECRETARY \_\_\_\_\_

TENDERS FROM THE FOLLOWING CONTRACTORS REQUIRE  
 A COMMITTEE DECISION FOR THE REASONS STATED

SPECIMEN BY-LAW FORM FOR ACCEPTANCE OF TENDERS

BY-LAW NO. \_\_\_\_\_

It is hereby enacted by the Corporation  
of the \_\_\_\_\_ of \_\_\_\_\_ that  
the tender of \_\_\_\_\_  
for \_\_\_\_\_  
submitted on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
for the amount of \$ \_\_\_\_\_ is accepted.

Read a first, second  
and third time and  
passed on this \_\_\_\_\_  
day of \_\_\_\_\_ 19 .

Municipal Seal

\_\_\_\_\_

\_\_\_\_\_  
Designated Signing Officers of the  
Municipality



SPECIMEN AGREEMENT

THIS AGREEMENT made in duplicate this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_

BETWEEN: \_\_\_\_\_ of the \_\_\_\_\_ in the District or County of \_\_\_\_\_ and Province of Ontario hereinafter called the "Contractor"

THE PARTY OF THE FIRST PART

\_\_\_\_\_ and \_\_\_\_\_ THE CORPORATION OF THE \_\_\_\_\_ of \_\_\_\_\_ hereinafter called the "Municipality"

THE PARTY OF THE SECOND PART

**WITNESSETH**, that the party of the first part, for and in Consideration of the payment or payments specified in the Tender for this work, hereby agrees to furnish **all** necessary machinery, tools, equipment, supplies, **labour** and other means of construction and, to the satisfaction of the Engineer, to do all the work as described hereafter, furnish all the **materials** except as herein otherwise specified, and to complete such works in strict accordance with the plans, specifications and Tender therefore, which are identified and acknowledged in the Schedule of Provisions, Plans, Specifications and Conditions attached to the Tender and all of which are to be read herewith and form part of this present Agreement as fully and completely to all intents and purposes as though all the stipulations hereof have been embodied herein.

DESCRIPTION OF THE WORK

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN CONSIDERATION WHEREOF, Said party of the second part agrees to pay to the Contractor for all work done, the unit prices on the Tender.

This agreement shall ensure to the benefit of and the binding upon the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF, the Contractor and the Municipality have hereunto signed their, names and set their seals on the day first above written. "

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Corporation witnesses and position held

\_\_\_\_\_

Signature of Contractor or Seal of the Corporation

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of designated Municipal Officers and position held

\_\_\_\_\_

Seal of The Municipal Corporation

If the Contract documents contain a Liquidated Damages clause the following paragraphs should be inserted following DESCRIPTION OF THE WORKS. •

"The Contractor further agrees that he will deliver the whole of the works completed in accordance with this Agreement within the time stipulated in the General Special Provision Number \_\_\_\_\_ entitled "Liquidated Damages".

The Contractor agrees that any monies due the municipality as a result of non-completion of the works within the time stipulated may be deducted from any monies due the contractor on any account whatsoever".

Municipality of \_\_\_\_\_

Contractor's Notice of Withdrawal

Date of Tender Opening \_\_\_\_\_ 19\_\_

Time \_\_\_\_\_

Name of Contractor \_\_\_\_\_

- (a) Contracts on which the above contractor is provisionally the low bidder at this tender opening prior to the time noted above

\_\_\_\_\_

\_\_\_\_\_

- (b) Contracts yet to be opened at this tender opening on which the above contractor has submitted tender which he wishes to be withdrawn

\_\_\_\_\_

\_\_\_\_\_

The undersigned who is a duly authorized signing officer of

\_\_\_\_\_

(Name of Contractor)

requests that the tenders listed in (b) above be withdrawn.

The undersigned hereby authorizes the Municipality of \_\_\_\_\_, Ontario, to withdraw the tenders listed in (b) above. **Furthermore** he understands that he may not subsequently revoke this request notwithstanding the fact that he may not be declared the lowest bidder on some or **all** of the contracts listed in (a) above.

\_\_\_\_\_

Witness

\_\_\_\_\_

Signed

\_\_\_\_\_

Title

QUALIFICATION PROCEDURES DEVELOPED BY THE  
MINISTRY OF TRANSPORTATION AND COMMUNICATIONS - ONTARIO  
APPLICABLE TO MUNICIPALITIES

1. INTRODUCTION

The Qualification Procedures developed by the Ministry of Transportation and Communications - Ontario and the resulting "qualification rating" have proven to be **very** useful to the **tendering** system in the Ministry. **Similarly**, the **municipalities** which are using **this information** have expressed **satisfaction** with the results.

- The purpose of this directive is to restate the procedures to be followed by municipalities utilizing this service and to outline the Ministry's current position.

2. BRIEF DESCRIPTION OF QUALIFICATION PROCEDURES

The Basic Rating compiled by the Ministry is based on the Contractor's financial resources, "including equipment.

From this Basic Rating, an adjustment is made for experience and any penalties where applicable to arrive at the ADJUSTED RATING.

From the Adjusted Rating, or Basic Rating if no adjustments have been **applied**, there is a deduction made of the net value **of all** uncompleted work a Contractor presently has on hand and all the work on which he has been read out as low bidder whether for the Ministry or other owners. The result of this calculation is called the **AVAILABLE RATING**.

3. APPLICATION

The qualification procedures govern all types of work but are not usually applied to contracts of less than \$50,000.00.

4. CLASSIFICATION OF WORK

GRADING

- G - Grading
- Grading and granular base course
- Grading, granular-base course and hot mix paving.

PAVING

- P - Hot mix asphalt paving
- Granular base course and hot mix paving.

CONCRETE PAVING

- C** - Granular base course and concrete paving.

STRUCTURES

S - All structure contracts.

MISCELLANEOUS

M - Maintenance or miscellaneous contracts.

For purposes of advertising, the dollar values of available ratings are in a numerical code as follows:

NECESSARY AVAILABLE RATING NUMBER	MINIMUM NECESSARY AVAILABLE RATING
1	\$ 25,000.00
2	\$ 100,000.00
3	\$ 250,000.00
4	\$ 500,000.00
5	\$1,000,000.00
6	\$2,000,000.00
7	\$3,000,000.00
8	\$5,000,000.00
9	\$10,000,000.00
	over

As an example a notice to qualified contractors should stipulate a necessary Available Rating such as 5 in (G) or (S) with a minimum of 5 in (G) and 3 in (S). In such a case, tender forms would only be provided to contractors who have a minimum Available Rating in (G) of \$1,000,00.00 and in (S) of \$250,000.00 with an overall available rating in either (G) or (S) of at least \$1,000,000.00.

5. PROCEDURE TO BE FOLLOWED BY MUNICIPALITIES

The following steps should be followed by municipalities wishing to make use of the Ministry's facilities to place their tender calling on a prequalified basis:

A. PRE-ADVERTISEMENT

- i) The requirement that bidders must have a specific available qualification rating should be made a condition of the municipal tender Form and should be approved by prior resolution of Council for each tender.
- ii) The specific available rating required for the job should not be the engineering estimate. It should always vary from the engineering estimate to ensure bidders are not relying thereon for cost estimates and should reflect any special conditions or standards of construction required by the contract. For example, an involved contract may require a higher rating and conversely a much less involved contract may require a lower rating.

B. ADVERTISEMENT & ACCEPTANCE OF TENDER

- i) The advertisements for contracts should indicate that bids will be restricted to qualified contractors and should also indicate the minimum Available Rating(s) required. The **form** of a typical advertisement is as **follows**:

NOTICE TO QUALIFIED CONTRACTORS GRADING, DRAINAGE,  
GRANULAR BASE AND STRUCTURES  
**Necessary** Available Rating is (5) in (G) or (S) with  
a minimum of (5) in (G) and (3) in **(S)**

- ii) A copy of the advertisement should be sent to:

Qualification Accountant  
Financial Comptroller's Branch  
Ministry of Transportation and Communications  
1201 Wilson Avenue  
Downsview, Ontario M3M 1J8

together with a request *for* a supply of **Prequalification** Forms  
P.Q.C. - M.R.

- iii) The municipality **will** supply interested contractors with forms **P.Q.C. - M.R.**, plans, specifications and tender forms marked "FOR INFORMATION ONLY".

- iv) The municipality **will** ask the contractor to complete form **P.Q.C. - M.R.** and forward it directly to the Qualification Accountant.

- v) The Qualification Accountant will then **advise the** municipality by **letter** of the Contractor's request to bid on the "Qualified Contract". The **form** letter is as follows:

"CONFIDENTIAL"  
Municipal Engineer. and Address  
Contract Number  
Contractor's Name and Address

Pursuant to the Qualification **Procedures**, the above named company is qualified to bid on your contract.

Please note that **Post-Qualification** is forbidden on tenders called under these procedures.

Signed  
Qualification Accountant

NOTE : The list of qualified bidders should be considered confidential.

- vi) On receipt of the above letter, the Municipality will forward the Qualified Tender Forms directly to the contractor.

vii) After the tender opening and on the same day, the Municipality will furnish the Qualification Accountant with a list of the bidders and the amount of their tenders. Phone call, if necessary, should be placed to telephone number 248-3465, area code 416.

viii) Within 3 days after acceptance of a tender by Municipal Council, the Qualification Accountant will be notified of the award.

6. CONTRACTOR'S INFRACTION REPORT

Where the quality or the performance of a Contractor's work is unsatisfactory, the Municipality must submit an Infraction Report Form No. PB-CC-50A supported by factual evidence to the Municipal Engineer of the local M.T.C. office. This report must include information on the following:

- A. Quality of work
  - i) Poor Quality directly or partially attributable to Contractor.
- B. Performance of the Contractor:
  - i) Failure to comply with Scheduler Contract Requirements as to:
    - Commencement on Approved Specified Date; Maintenance of Approved Scheduled Rate of Progress; Completion by Approved completion date.
  - ii) Failure to Discharge Liabilities.
  - iii) Failure to maintain Public Relations.
  - iv) Failure to provide Adequate Organization, Co-operation, Personnel or Equipment.
  - v) Failure to comply with Other Contractual Conditions or Specifications.

7. CONTRACTOR'S PERFORMANCE REPORT

On completion of the contract, the Municipality must submit a Contractor's Performance Report Form OB-CC-14 to the Municipal Engineer of the local M.T.C. office. This report shall contain information under the following headings:-

- A. Administration
- B. Co-operation of Contractor to Produce Quality of Work
- C. Public Relations
- D. **Adherence** to Regulations and Specifications
- E. Condition and Sufficiency of Equipment
- F. Name(s) and Comments on Sub-Contractor(s).

For further information regarding items 6 and 7, please contact your M.T.C. District Engineer.

8. POST QUALIFICATION

Post-Qualification is forbidden on tenders called under these procedures. Any breach of this condition by a municipality will result in the cancellation of its privileges under this system.

9. QUALIFICATION PROCEDURES FOR CONTRACTORS

A copy of the "M.T.C. Qualification Procedures" is available from the Ministry if required.



## LAND ADMINISTRATION IN THE N.W.T.

### 1. Introduction and Objectives:

Land is a particularly important and controversial subject in the N.W.T.. The ownership, control and use of land is the basis of the most important political, economic, and cultural issues in the north. In this session, the administration of land in the N.W.T. will be examined. This will include a listing of the relevant laws, an explanation of the different types of land in the N.W.T., a review of the land application process, and the regulation of land and land use both within municipal boundaries and beyond. Particular emphasis is placed on the various regulation and approval processes of resource development projects since most land uses outside of municipalities are related to the exploration, development and/or production of the natural resources of the N.W.T..

### 2. Land Administration and the Law:

The basis for the administration of land in the N.W.T. is found in a great number of laws, both Federal and Territorial, that apply to the land and land use. Some of the more **important** laws are:

- Federal
  - Treaties # 8 and 11
  - Territorial Lands Act
  - Territorial Lands Regulations
  - Territorial Land Use Regulations
  - Canada Lands Survey Act
  - Land Titles Act
  - Canada Oil & Gas Act
  
- N.W.T. Law
  - **Commissioner's** Land Ordinance
  - Commissioner's Land Regulations
  - Area Development Ordinance
  - Area Development Regulations
  - Environmental Protection Ordinance
  - Planning Ordinance
  - **Municipal** Ordinance

Since there is considerable legislation on this subject, land administration will be reviewed generally here rather than looking at each piece of legislation. The Lands Manual is a comprehensive guide to land administration in the N.W.T. and it should be consulted whenever questions related to land administration arise.

3. Land in the N.W.T.

There are two types of land in the N.W.T.; private land and public or "Crown Land".

There are 3 varieties of public land: Federal land, Commissioner's land, and Municipal land.

FEDERAL LAND consists of all land under the administration and control of the Federal Government. This amounts to over 99% of all the land in the N.W.T.. The Minister of Indian Affairs and Northern Development is the federal minister responsible for federal land in the N.W.T..

COMMISSIONER'S LAND is land under the administration and control of the Government of the Northwest Territories. Commissioner's land is limited to surface rights, which include roadways, timber, and quarrying. Sub-surface rights such as minerals, oil, gas, or the land under bodies of water remain under the management and control of the Federal Government.

Commissioner's lands have either been purchased by the Government of the Northwest Territories from private owners or have been received from the Federal Government through the Block Land Transfer Program. Most of the Commissioner's land has come from the Block Land Transfer Program. Through this program, land in and around communities in the N.W.T. is transferred to the Government of the N.W.T.. There are two major conditions attached to these transfers; (1) the Government of the N.W.T. must honour any existing commitments regarding the transferred land (eg. federal leases, sales, reserves). (2) the Government of the N.W.T. is obliged to return any uncommitted land required for the settlement of land claims.

The Block Land Transfers vary in size but they are all big enough to provide a buffer zone between the community and federal lands. This is seen as desirable in order to help the local Council control development in and around the community.

A Block Land Transfer for every community in the N.W.T. has been identified and requested. The communities were consulted on the suitability of the requested Block Land Transfer in the early 70's. There have been only 17 Block Land Transfers so far, but by an agreement with the Federal Government, all land matters within the requested Block Land Transfers are administered by the Government of the N.W.T. on behalf of the Federal Government even though the Transfers may not have been approved.

BLOCK LAND TRANSFERS:

Yellowknife	Fort Good Hope
Inuvik	Pine Point
Rae-Edzo	<b>Nanisivik</b>
Fort Providence	<b>Frobisher Bay</b>
Fort Simpson	Hall Beach
Fort Smith	Resolute Bay
Hay River/Enterprise	
<b>Aklavik</b>	(As of 1983)
Norman Wells	
Fort McPherson	
Fort Franklin	

4. MUNICIPAL LAND is land owned by a municipal corporation.

PRIVATE LAND is land which is owned by an individual, corporation, or society.

Ownership refers to the possession of a Certificate of Title, which is issued by the Registrar of Land Titles, Land Titles Office (Federal). Titles can only be issued for lands which have been legally surveyed.

#### 4. The Conduct of Lands Business

It is important that lands business be conducted fairly and in the public interest. The disposal of public lands is public business and is not confidential or to be decided in private. Anyone has the right to know what lands are reserved, open for **disposal, or committed** by sale, lease or other agreement, and for what period of **time**.

The disposal of public lands is essentially a matter of striking a fair balance between two distinct, and sometimes conflicting, interests; the interest of the private individual or company seeking land, and the public interest.

If a community has adopted a general **plan** or zoning by-law, then many policies and regulations will already have been thought through and established. This is a great help for community councils and for the Department of Local Government in deciding on land applications. Without a general plan or zoning by-law, decisions on land **applications** are based on general planning principles.

The Department of Local Government (Land & Assessment Division) is responsible for the administration of Commissioner's land, and by agreement with the Federal Government, **all** Federal land within communities and within designated Block Land Transfer Areas yet to be transferred.

With the approval of the Department of Local Government any municipality, legal organization, government agency, or private individual may be granted an interest in land controlled or administered by the Commissioner through a sale, **lease, or** reserve for public use.

#### LAND SALES:

Land Sales are arranged through a 5 or 10 year Sale Agreement. Anyone seeking to purchase Commissioner's or Federal land must make an application on a prescribed form outlining the intended use of the land and the kind of improvements which will be made to the land. If a building, trailer or any other improvements are already on the land applied for, then this land is not available for application for sale unless the applicant is the owner **of** the improvements or about to become the owner.

The standard agreement for sale **calls** for payment of 1/5 of the purchase price of the land at the time of the sale and the balance **in equal** payments for the rest **of** the term **of** the Sale Agreement, plus interest on the unpaid balance. The sale agreements bind the **purchaser** to make the improvements indicated on the land, application and included in the sale **agreement**, within the stated time period. Improvements are required to prevent land speculation. It is in the **public** interest to provide individuals the opportunity to own land for approved purposes, but it is not in the public interest to allow individuals to own land for the purpose of land speculation.

When all the terms of the sale agreement have been met, a freehold **land title** is issued to the purchaser. A freehold land title means registered ownership of the land by the person named on the title.

A registered owner may lease or sell his land. To sell the land, the owner must complete a Land Transfer document and submit it with the certificate of title to the Registrar of Land **Titles** so a new certificate of title can be issued to the new owner.

When a registered owner wishes to lease his land, then the arrangements and lease are the private concern of the land owner subject to planning, zoning and/or standard legal restrictions.

#### LAND LEASES:

A lease is a form of permission to occupy and use land for a stated **period** of time. A leasehold title may be issued to the person who has a lease on surveyed land. Although it is not required to have a leasehold title it is recommended as a protection to the person leasing the land. The leasehold title protects his rights and gives him the first option to review the lease or purchase the land when the lease expires. Without leasehold title, the municipality has the first **option** to **purchase** or lease when the lease expires.

The maximum length of leases issued by the Government of the **N.W.T.** or Federal government is 30 years.

A lease may include an option to buy the land. **In** such cases though, the annual rental payment do not count as payment for the purchase of the land.

Except in very unusual cases, improvements to the land are required to be made by the **lessee** (the one who occupies the land) under the terms of the lease.

A lease may or may not include a promise of renewal. **If granted**, the renewal takes the form of a new **lease** effective on the expiry of the **old** lease. Renewals are not granted if the present lease is not in good standing ie if the terms of the lease are not being fulfilled.

Leases may be ended in several ways:

- the lease expires and a renewal is not issued
- the lessee surrenders his lease  
the lease is cancelled because the lessee has abandoned the site or has failed, after due warnings, to fulfill the terms of the lease.

A lease, rather than an agreement for sale, is usual where:

- the land is needed for only a few months or years  
the land is unsurveyed or the boundaries may be subject to changes under re-planning
- for any reason a long-term commitment of the land would not be in the public interest
- the applicant intends to seek mortgage financing on his improvements, in which case the lease may contain an option to buy the land.

Property taxes, based on the assessed value of the land improvements are payable by the lessee.

LAND RESERVES:

There are two types of reserves on land; the first type refers to land set aside for the use of the government or a designated individual or group, or to be withheld from use or disposal. These are called land reservations.

Examples of land reservations are:

- lands reserved for Indians. These lands can only be disposed of with the consent of the local band council and the Minister of D.I.A.N.D.
- lands reserved for public enjoyment such as parks, historic sites and recreation areas.  
watershed reserves to protect water supplies
- lands reserved for government use, such as public buildings.
- land reserved from use or disposal.

Land can be reserved by a Federal Act or a Territorial Ordinance, by Federal or Territorial Regulation, or by Municipal By-Law, depending on who controls the land.

The second type of land reserve is called reservations in land titles and contracts. These are conditions in the title or contract that reserve some right in the land for the government or the public. Examples of this type of reservation are:

- the Crown holds all mineral rights to the land. The land title refers to surface rights only.
- the Commissioner reserves the right to install or maintain public utilities on land under title.
- governments reserve the right to claim land under title for unpaid taxes or through expropriation.

## OTHER RIGHTS & PERMITS REGARDING LAND USE:

- Licences for the use of public lands may be granted to power companies or public utilities for a limited right to construct and maintain power lines, water/sewer mains, pipelines, etc that do not require the exclusive possession of the land. Other uses of the same land may exist as long as they do not interfere with the utilities installed.

- An Easement is a right held by one person in another's land. For example, a person may have the right to cross someone else's land to get to their own. An easement is required by utility companies to cross private land with their lines.

Road Allowances are land kept for roads, sidewalks, etc.

Building Permits are used by municipalities to regulate and control construction of lands within the municipality.

- Timber Permits and Quarrying Permits for Commissioner's lands can be issued.

### 5. Land Applications

The Department of Local Government is responsible for the administration of Commissioner's land, and Federal lands within communities. Decisions on land applications are made based on formal consultation with the municipal or settlement Council, requesting their review and recommendations.

When reviewing a land application, a municipal or settlement council should consider the following points:

- 1) Does the application conform with the community's general plan?
- 2) Is the intended use compatible with the surrounding development?
- 3) Is the land available?
- 4) Is the land suitable for the intended development?
- 5) Is the size of the proposed building and lot appropriate?
- 6) Is the location of the building on the lot appropriate?
- 7) Is there proper road access?
- 8) Are the connections for municipal services such as water and sewage properly and conveniently located?
- 9) What type of foundation will be used?
- 10) How will the development or use of the land effect drainage?

After reviewing the applications, Council can recommend approval, denial or modifications to the application. The Department of Local Government considers the Council's recommendations and decides on the application.

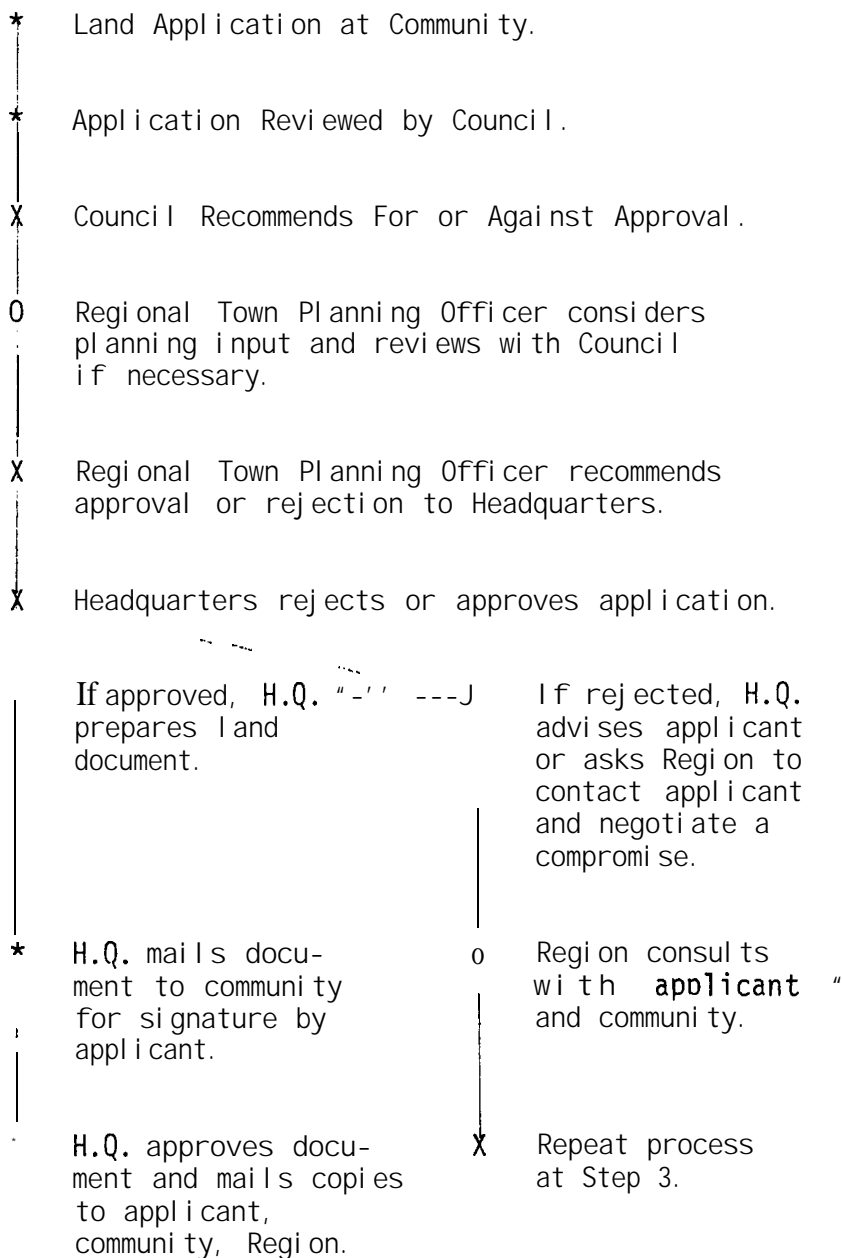
The following flow chart illustrates the land application process.

LAND APPLICATION PROCESS

\* INFORMATION

O CONSULTATION

X DECISION



Also see Lands Manual

The Department of Local Government **inspects** all land leased or sold after the first 6 months to determine whether construction has begun, and again after 24 months to determine whether construction has been completed.

Where no construction has been done after 6 months or where the construction has not been completed after 24 months, the lease or sale may be **cancelled** after giving 60 days written notice. If there are special circumstances, extensions can be granted to give the purchaser/lessee more time.

If the purchaser or lessee is in arrears of taxes, lease **rentals**, or purchase payments, the sale or lease may be **cancelled** after giving 60 days **written** notice.

## 6. Land Agents

Subject to the approval of the municipal or settlement council, the Settlement Secretary, Secretary Manager, or Secretary Treasurer often act as the Land Agent. Where there is no Land Agent **appointed**, an Area Service Officer or the **Superintendent** of Local Government will act as Land Agent.

The duties of a Land Agent are:

- 1) Liason between the public, council, and the Department of Local Government, including the presenting of land applications to Council.
- 2) Receiving and processing applications.
- 3) Management and reporting of existing permits.
- 4) Receiving and forwarding of Government of the N.W.T. revenues.

The Land Agent is almost always required to assist applicants in **filling** out their applications. The **Agent** should ensure that the conditions and procedures concerning the application are understood.

When assisting the public with land applications, the Agent should keep the following points in mind:

- conformity of the application with the general plan
- suitability of the site
- availability of the land
- the application must be signed by the applicant
- a detailed site plan should accompany the application
- a \$25 deposit is required for each **application** for **Commissioner's** land. If the application is rejected, the deposit is returned. There is no deposit required for Federal Land applications.
- if there are already improvements on the land being applied for the applicant must submit a statutory declaration indicating that the improvements are owned by the applicant.



regulations that could affect the application (eg. fire-separation, zoning by-law).

- does the applicant want to expand in the future.

A Land Agent should note in the application the date and time the application was made. This is important because applications are dealt with on a first come, first serve basis.

Once an application is made, the Land Agent should immediately send the original to the Land & Assessment Division, Department of Local Government, in Yellowknife. One copy of the application is given to the applicant, one copy goes to the Council, one copy goes to the regional office of the Department of Local Government, and one copy is kept on file by the Land Agent.

The recommendations of council should be **forwarded** to the applicant and to the regional office of the Department of Local Government as soon as possible by the Land Agent. If Council recommends change to the application, or rejection of the applications, its reasons should also be included.

The Land Agent may be required to do site visits in order to identify the land being applied for, to review the suitability of the site, and to perform inspections as required or as requested by Council or the Department of Local Government.

Each **community** has a Land map and when applications are received and processed the map should be updated. When an application is received it can be marked in pencil. If approved, it can be marked in pen. This will help keep track of the availability of land within the **community**.

#### 7. Municipal Lands Policy

The Department of Local Government's Municipal Lands Policy permits Villages, Towns, and Cities to get involved directly in the selling/leasing of land within the municipal boundary.

A village may, by by-law, acquire or lease Commissioner's land from the G.N.W.T. that is occupied or under application. The village can then sublease or re-sell this land. Land is made available by the G.N.W.T. at a minimum rate while the village sells or leases it based on the assessed value of the lot. This results in additional revenue for the village.

Towns and Cities can enter into "Sole Vendor Agreements" within the G.N.W.T. A Sole Vendor Agreement is a formal agreement whereby any vacant Commissioner's land can be transferred to the town or city for its use and development. The town/city can lease or sell this land as it sees fit. The Commissioner also agrees not to dispose of any undeveloped vacant lot other than to the town/city. It is the responsibility then of the town or city to develop the land.

#### 8. Control of Land Uses Within a Municipality

Council has an important role to play in the approval of **land** applications and in controlling land uses within the **community**. The key in both situations is the adoption of a general plan and/or zoning by-law. A general plan provides Council with a policy guideline for the physical development of the community, while a zoning by-law provides a detailed law that regulates the physical development of the community.

Although it is the **G.N.W.T.** that **approves** land applications, it cannot contravene any properly enacted zoning by-law, and it would not undermine an approved general plan unless the Council **recommended** a non-conforming use.

Zoning by-laws require; the **appointment** of a Development Officer to monitor and **implement** the Zoning By-Law, and the establishment of an **Appeal** Board to hear appeals of decisions made by the **Development** Officer. The interpretation of the zoning by-laws is in this way locally controlled. The decision of an Appeal Board can only be appealed to the Supreme Court on questions of **jurisdiction** or points of law.

Villages have additional control in that they can acquire **Commissioner's** land that has been applied for or is **occupied**, and a town or city has further local control through Sole Vendor Agreements.

INTRODUCTION  
TO RESOURCE DEVELOPMENT

Department of Local Government

December 1982

## TABLE OF CONTENTS

PAGE NO.

### SECTION ONE

#### THE PHASES OF NON-RENEWABLE RESOURCE DEVELOPMENT PROJECTS

Introduction	1
Exploration Phase - 1st Stage	1
Development Phase - 2nd Stage	3
Production Phase - 3rd Stage	3
Post-Production Phase - 4th Stage	3
Table 1- Major Steps to Offshore Oil and Gas Production	4
Table 2- Major Steps to a Large Mining Operation	7

### SECTION TWO

#### REGULATION AND APPROVAL OF RESOURCE DEVELOPMENT PROJECTS

1.0 Introduction	9
2.0 Land Use Permits	9
3.0 Arctic Waters Advisory Committee (AWAC)	12
4.0 Regional Environmental Review Committee (RERC)	12
5.0 Environment Assessment Review Committee (EARP)	13
6.0 National Energy Board (NEB)	18
7.0 Approvals of Water Use	20
8.0 Land Leases	23
9.0 The GNWT and the Regulation of Resource Development	26
10.0 Oil and Gas Development and Bill C-48	27
FIGURE 1	2
FIGURE 2	10
FIGURE 3	15
FIGURE 4	22
FIGURE 5	25

## SECTION ONE

### THE PHASES OF NON-RENEWABLE RESOURCE DEVELOPMENT PROJECTS

#### Introduction

Most forms of resource development such as mining and petroleum development undergo four distinct phases of activity: **exploration, development and post-production.**

As can be seen from figure 1, each phase creates a different **level of activity**, (i. e. employment and construction) over a different period of time. Although for ease of understanding the phases can be seen as four distinct elements, in actual practice the first three stages may occur at the same time. For example, during the development of a large oil field, several oil fields may be producing and transporting the oil to market, while exploration and development continues in adjacent areas. This is often the case where you have more than one petroleum company operating in the area. The same can be said of mining operations. Even during the early years of extracting the resource the mine continues to explore for additional minerals so that the mine can expand in the future.

#### Exploration Phase - 1st Stage

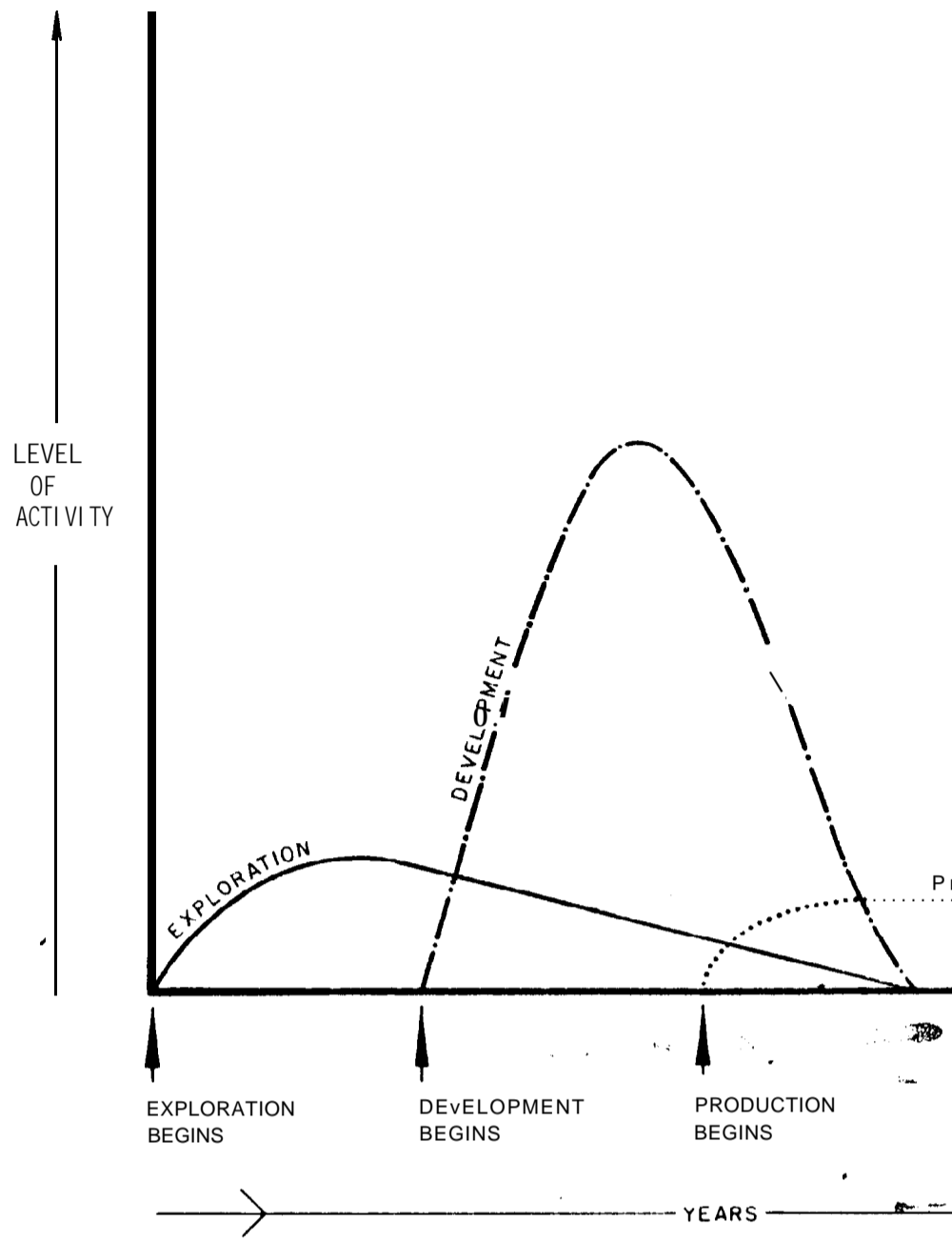
The exploration phase involves the actual search for mineral or petroleum deposits. Companies can undertake preliminary surveys to determine likely areas where a deposit can be found. When such areas are found more detailed exploration takes place to determine the size and characteristics of the deposit. Tables 1 and 2 provide additional information on the exploration process.

The results of the exploration stage will justify whether or not commercial production of the resource is possible. If sufficient resources are available **the development stage** would be entered into by the company.

The level of activity that occurs during **the** exploration phase varies from project to project. Exploration **of** minerals and **land** based oil and gas deposits are **usually** very small operations. Offshore oil and gas exploration on the other hand involves a much **larger** number of employees and a **greater** amount of support activity both onshore and offshore. Offshore **exploration also** takes place over a **longer** period of time.

Any facilities constructed during the exploration phase are usually temporary ones **unless** the exploration stage is successful **and** the resource will be developed.

The exploration phase can take several years for mining companies or ten years or more for companies looking for offshore **oil and** gas.



ACTIVITY PHASES OF RESOURCE D

### Development Phase - 2nd Stage

The development phase involves the design and construction of permanent facilities and infrastructure that are required by the company to take the resource out of the ground. A resource company for example would construct such items as permanent islands, additional wells and tank farms in the case of petroleum operations and mining shafts, open pits and processing plants would be constructed for mining operations. Transportation facilities such as harbours, pipelines) roads, airstrips and/or railroads would also be constructed during this phase so the resource can be transported to the market. Finally, the inf restructure necessary to support and accommodate the construction workers required in the development phase and the permanent workers required in the production phase are built, e.g. housing, recreation facilities, water and sewer services, etc.

In contrast to the exploration phase most of the facilities constructed during the development phase are permanent in nature. Because of this most of the important decisions about the location, design and construction of facilities required for resource production are made in this stage.

Over the entire length of the project, the development stage (see figure 1) creates the largest amount of activity in the area in terms of employment and construction.

The development phase can take up to four years to complete or longer depending on delays with governmental approvals.

### Production Phase - 3rd Stage

The production phase involves the day to day operation and maintenance of the resource operation. It is during this stage the deposits are actually withdrawn from the ground and are transported and sold on the commercial market. The amount of construction activity during this stage is very low. The employment levels vary from project to project, however, generally speaking a mining operation will have a larger work force than a similar size oil and gas operation. In contrast to both earlier stages, the production phase lasts for a long period of time.

### Post-Production - 4th Stage

The last stage of resource development, the post-production phase, involves the company closing down their operation. At some point after production has started the company will not find it economic to continue to produce the resource. The closure may be the result of poor international markets, and/or the depletion of the oil, gas or ore reserves. The length of the production phase varies considerably from project to project. The post-production phase may happen very quickly without warning or be a planned and gradual reduction of the company's operation. Quite often the post-production phase results in a sudden shock and serious disruption to the region in which the project is located because employment levels and business activity have gone from a very high level to a very low level over a short period of time.

Tables 1 and 2 on the following pages summarize in more detail the major steps a resource company would undertake in most cases, before their products can be found, developed and sold.

TABLE 1

MAJOR STEPS TO  
OFFSHORE OIL AND GAS PRODUCTION

<u>ACTIVITY</u>	<u>DESCRIPTION</u>	<u>PURPOSE</u>
1. Preliminary Survey	Evaluation of geologic information to determine which area should be explored. This is usually done with existing data collected from other sources.	To undertake a broad search of an area to locate possible oil or gas deposits.
2. Detailed Survey	Seismic surveys are carried out from a ship to map any structure below the surface that may have trapped oil or gas.	To confirm the possible structures that may contain an oil or gas deposit in the area.
3. Preliminary Drilling	Using a ship or man made island one well is drilled into the surface of the earth to test any of the structures. This may take an entire season and be 10,000 feet deep.	To determine if the oil and gas deposits exist and if so is it of sufficient size and quality to warrant future exploration.
4. Delineation Drilling	Additional exploratory wells are drilled around the initial well (this technique is called delineation drilling because it defines or "delineates" the size of the deposits). The samples and data are examined by the company.	To establish the size, quality and rate of flow of the deposit.
5. Feasibility Studies	The company undertakes economic and market studies.	To determine if the deposits can be produced and sold.
6. Preliminary Environmental Assessment	The company prepares a preliminary environmental evaluation of the effects of their proposed plans. This is called an Initial Environmental Evaluation.	To provide information to the government so that they may decide whether the project can continue or whether additional studies are required.



<u>ACTIVITY</u>	<u>DESCRIPTION</u>	<u>PURPOSE</u>
7. Detailed Environmental Assessment	If the project will have major effects on the surrounding area the company prepares a detailed series of studies. The studies called Environmental Impact Statement determine what effect the project may have on the natural environment the social and economic activities of the region in which the project will take place.	To provide detailed information to government the public and special interest groups so that they may evaluate and comment on the costs and benefits of the project. The information and public review assists the federal government in deciding whether the project should proceed or not.
8. Detailed Economic, Engineering and Environmental Studies	The company undertakes studies to indicate the financing of the project, the environmental impact of the <b>project</b> , the engineering feasibility of the project and the impact of the project on the energy market.	To prepare for National Energy Board hearing and obtain certificate to export oil or gas.
9. Final Engineering and Development Plans	The company undertakes detailed design and engineering plans of production facilities such as production <b>wells</b> , tank farms, and collection systems.	To prepare company for construction of production facilities.
10. Construction of Production Facilities	The company through contractors construct all necessary offshore facilities including the drilling of production wells. This would involve the construction and placement of a permanent island or drilling rig. Approximately 50 production wells could be drilled for one field.	To prepare the oil or gas field for production.

	<u>ACTIVITY</u>	<u>DESCRIPTION</u>	<u>PURPOSE</u>
11.	Construction of Production Facilities (On Shore)	The company through contractors construct all necessary facilities on the land that are necessary to support the production wells - e.g. tank farms, warehouses, airstrips, work camps, etc.	To prepare the oil or gas field for production.
12.	Production and Transportation	The company takes oil or gas from the ground and transports it to the market by tanker or pipeline.	To sell oil or gas on the market to recover costs and make profit.
13.	Reduction and/or Closure of Production	The company begins to lay off workers and not maintain equipment and facilities. Workers and equipment are transferred to other projects.	To minimize financial losses to the company.

TABLE 2

MAJOR STEPS TO  
A LARGE MINING OPERATION

<u>ACTIVITY</u>	<u>DESCRIPTION</u>	<u>PURPOSE</u>
1. Preliminary Survey	Maps are examined which show the general rock formation of an area. Surveys are taken from the air with <b>electro-</b> magnetic instruments to evaluate the type of rocks that are located in the ground.	To undertake a broad search of a large area to locate possible mineral deposits.
2. Detailed Survey	Based on the preliminary survey a crew on the ground examines any promising areas. Scientific methods are used to determine in more detail the possible locations of minerals. Maps are made of possible deposits to guide future exploration.	To confirm the possible location of a mineral deposit in the area.
3. Preliminary Drilling or Sampling	Samples of the rocks found in the area are taken to a laboratory to be analyzed for mineral characteristics. The samples are removed by 1) diamond drilling which includes drilling into the earth up to several thousand feet or 2) by trenching which involves digging a small hole or trench in the ground with heavy equipment and dynamite.	To determine if a mineral deposit exists in the area and if so, is it of sufficient size and quality to warrant further exploration.
4. Detailed Drilling or sampling	If the preliminary sample looks good more detailed exploration is done. Two techniques are possible: 1) additional diamond drilling at close spaces around the initial hole or 2) bulk ore sampling which involves digging a Large pit or shaft with heavy equipment and explosives and taking truck loads to a laboratory to be studied.	To establish the size, quality and production costs of the deposit.

<u>ACTIVITY</u>	<u>DESCRIPTION</u>	<u>PURPOSE</u>
5. Feasibility Studies	The company undertakes preliminary economic studies.	To determine if the deposits can be produced and sold.
6. Preliminary Environmental Assessment	The company prepares a preliminary environmental assessment of the effects of their proposed development may have on the social, economic and natural environmental features of the area. This study is called an Initial Environmental Evaluation (IEE) which is usually prepared by a consultant.	To provide information to the government so that they may decide whether project should be developed.
7* Final Engineering and Development Plan	With government approval of the project the company undertakes detailed design and engineering plans of production facilities.	To prepare company and contractors for construction facilities.
8. Construction of Production Facilities	The company through contractors construct the facilities needed to extract and transport the minerals to market - e.g. mine shafts, processing plant, railways and bunkhouses.	To prepare the mineral deposits for production.
9* Production and Transportation	The company takes the mineral from the ground, and transports it to the market.	To sell the mineral to the market to recover costs and make profit.
10. Reduction and/or Closure of Production	The company shuts down the mine and the work force is layed off.	To minimize financial losses to the company.

## SECTION TWO

### REGULATION AND APPROVAL OF RESOURCE DEVELOPMENT PROJECTS

#### 1.0 INTRODUCTION

In order to understand the implications of resource developments it is necessary to understand how resource development projects are regulated and approved.

One of the most complex aspects of resource development is understanding who, how and when projects are regulated and approved. By understanding these questions communities can be in a better position to respond to the issues that are created by resource projects.

The following section presents a summary of the major approvals a resource company must obtain and a summary of the role community councils can play in each of these approvals.

#### 2.0 LAND USE PERMITS

##### 2.1 What is a Land Use Permit?

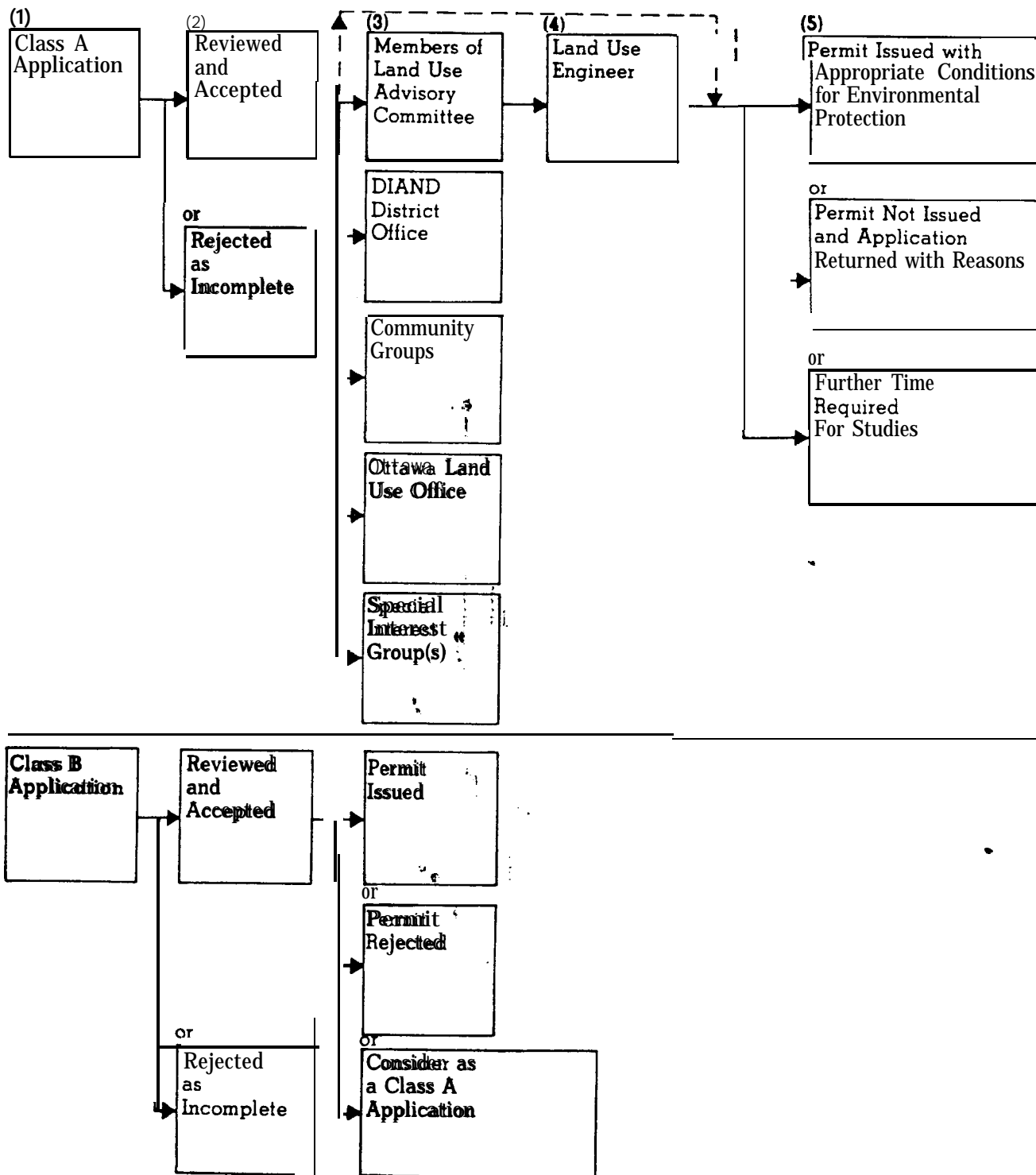
Under the Territorial Land Use Regulations a Land Use Permit is required by **DIAND** (Department of Indian Affairs & Northern Development) before any company, government or private individual undertakes a short term activity on Federal Crown Land. Activities regulated by land *use* permits under the Territorial Land Use Regulations include use of heavy vehicles, construction of work **camp**s, the use of explosives, the construction of access roads, and the clearing of trails. A resource company therefore during the exploration phase when they are undertaking a drilling or seismic program must obtain a land use permit. This is usually the first of many approvals a resource company must obtain from the Federal Government. The land use permit can be issued for a period no longer than two years. Separate land use permits are issued for each separate exploration activity a company may be engaged in.

##### 2.2 How Are Land Use Permits Issued?

Two types of Land Use Permits can be issued by **DIAND**; Class B for small operations and Class A for larger operations. Figure 2 on the **next** page outlines the major steps that are taken before a permit can be issued. The process is as follows:

1. Application is sent to the Land Use Engineer in **DIAND**, who is usually the Regional Manager of Land Resources in **Yellowknife** (in the **Inuvik region** applications are sent to the District Manager.)
2. If the application is straight forward, not located near a community and in an environmentally 'non-sensitive' area the Land Use Engineer makes a **DECISION** on the permit within ten days.

Land Use Application Review Process



Source DIAND, Northern Natural Resource Development: Requirements, Proceedings and Legislation 1981, p.13.

3. If additional time is required to review the proposal because the application is near a community and/or an environmentally "sensitive" area, the application is sent to members of the Land Use Advisory Committee (LUAC), Community Councils, hunters and trappers associations, and native organizations. These groups have up to forty-two days to COMMENT on the application and make recommendation to DIAND on environmental concerns.
4. The Land Use Engineer receives and REVIEWS ALL COMMENTS AND RECOMMENDATIONS that have been made by the various groups on the application.
5. Within forty-two days the Land Use Engineer makes a DECISION to grant or reject the permit. (If additional information is needed, the decision can be delayed for up to twelve months).

If a permit is issued it can be used for a period of up to two years with a possibility of renewal for one additional year only. Inspection of the site during and after the granting of the Land Use Permit is undertaken by DIAND staff.

### 2.3 What is the Land Use Advisory Committee (LUAC)?

This Federal/GNWT committee reviews\* most Class A Land Use Permits to ensure the proposed operation can be undertaken in an environmentally safe manner. Before the permit is issued, and in most cases they are granted, the individual members of the Committee recommend to DIAND the type of conditions that should be placed on their approval, e.g., location and size of facilities used in the operation, waste disposal, erosion control, protection of wildlife, and final clean-up of site.

In the N.W.T. there are two Land Use Advisory Committees; one deals with Land Use Permits only in the Inuvik Region and the other committee meets in Yellowknife and deals with all other land use permits in the N.W.T.

The Committee consists of various federal representatives from DIAND, and the Departments of the Environment (DOE) and Fisheries and Ocean (DFO). The GNWT is represented by the Department of Renewable Resources and the Department of Local Government (Lands and Assessment Division).

### 2.4 Community Councils and Land Use Permits - What is their role?

The majority of Class A permits are issued with conditions within forty-two days. It is therefore important for the Community Council, if they have a concern with the proposal, to comment within the forty-two day time period and to make recommendations as to what type of environmental conditions they wish to see placed on the operation.

### 3.0 ARCTIC WATERS ADVISORY COMMITTEE (AWAC)

All resource operations that may affect the water from the Arctic Ocean are reviewed by AWAC. In most cases this would include offshore oil and gas operations but in some cases it could involve operations such as mines which are located on lands that are adjacent to the Arctic coastline which may therefore use Arctic waters. The Committee reviews different permits throughout the exploration, development and production phases to ensure the operations occur in an environmentally safe manner and do not pollute the Arctic Ocean.

Before any exploratory or production drilling is undertaken by a company a Drilling Authority must be obtained from COGLA (Canada Oil and Gas Lands Administration). This application is reviewed by the Arctic Waters Advisory Committee and then advises COGLA what type of conditions should be attached to the drilling authority. The type of environmental conditions that are imposed usually deal with such items as oil spills, waste disposal, the use of chemicals etc. When reviewing the application, AWAC may make one or more visits to communities that might be affected by the proposal to hold public meetings to find out what conditions the local people feel are necessary on any proposals reviewed by the federal government. The social and economic impacts of offshore drilling are usually not considered by AWAC.

In addition to their advisory function on federal environmental legislation such as the Arctic Pollution Prevention Act, the Committee also acts as a regional point of contact among federal government agencies, the Government of the N.W.T. and industry on matters relating to offshore resource development.

### 4.0 REGIONAL ENVIRONMENTAL REVIEW COMMITTEE (RERC)

This is a joint Federal/GNWT committee which consists of federal representatives such as the Department of Indian and Northern Affairs, the Department of the Environment and the Department of Fisheries and Oceans, and the GNWT Departments of Economic Development and Tourism, Renewable Resources and Local Government. This committee examines applications for land use permits and/or land leases when a company is about to enter the development phase, to determine if the project should be handled by a standard review process or be referred to the Federal Environmental Assessment and Review Process (EARP). The committee sends its recommendations to DIAND who makes the decision on which review process to follow. It is important to note that although LUAC only examines the effects on the natural environment of the proposed exploration activity, RERC at this stage brings socio-economic matters into the review process.



When a company finishes their exploration and starts to enter the development phase, permanent facilities such as access roads, airstrips and work camps are needed. These activities require the issuance of land use permits and/or land leases from DIAND. To ensure that there are no major impacts from the proposed development, these applications are usually sent to the Regional Environments! Review & Committee (RERC) for their review. Before commenting on these applications the RERC may ask the company to prepare an Initial Environmental Evaluation (IEE) which would provide a preliminary indication of the possible effects the proposed development may have on the environment and the people. This review of the development proposal marks the start of the Environmental Assessment and Review Process (EARP) which is discussed in the next section.

The IEE's are usually sent to communities, native organizations and other interest groups. The company may hold public meetings to review the study with the community.

## 5.0 ENVIRONMENT ASSESSMENT REVIEW PROCESS (EARP)

### 5.1 What is EARP?

EARP is a federal review process used to evaluate the environmental and socio-economic impacts of a proposed resource development project.

The review process under the direction of the Minister of the Environment attempts to determine the environmental impacts of proposed development before any major decision or commitment has been made about the project. The information collected from the process is used by various government agencies in their decision-making and management of the project.

### 5.2 What Type of Resource Project does EARP deal with?

The EARP process deals with all types of development that require federal land or require federal funding. In the provinces this could include for example a proposal from a federal department such as Transport Canada for the construction of a major airport, or from a crown corporation such as the Atomic Energy of Canada Corporation for the construction of a nuclear power plant. Other private development such as mining, hydro electric dams and logging operations which are located on provincial land would not be subject to the EARP process. In the N.W.T., however, all resource projects require federal lands and therefore all resource projects are subject to the EARP process to some degree.

### 5.3 How Does EARP Review a Typical Resource Project?

The EARP Review Process is best seen as a two staged process consisting of:

1. First, an 'in-house' government review of the possible impacts of the project and then;
2. If necessary, a second more detailed public review of the project.

The following is a summary of the EARP process as outlined in the Environment Canada document, 'A Guide to the Federal Environmental Assessment and Review Process'. On the next page a chart taken from this document, illustrates the EARP process (figure 3).

#### 1. Preliminary Review Process

Once a development is proposed the Federal Department responsible for the project, in the N.W.T. this is usually DIAND, reviews or *screens* the project to determine if the proposal will have any effect on the environment. DIAND is assisted in this review by the Regional Environmental Review Committee (see Section 4). Depending on the review there are three possible options (see figure 3 for illustration).

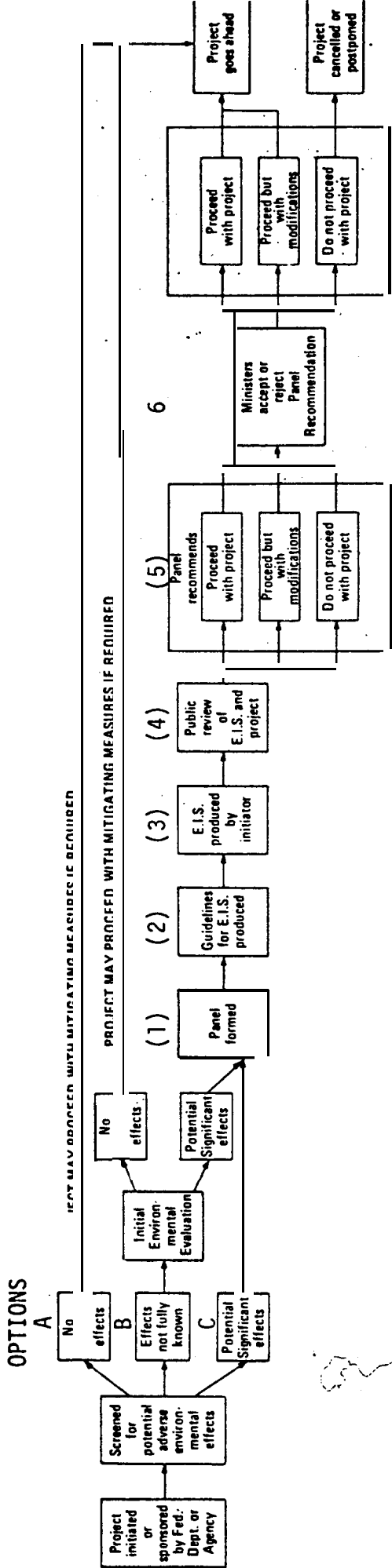
Option A - If DIAND thinks there will be no impacts the project can continue by obtaining the usual government approvals such as permits, licences and leases. The majority of developments are handled in **this** way.

Option B - If there may be possible impact but DIAND is not sure if the impacts can be considered 'significant' the company is asked to prepare an Initial Environmental Evaluation (IEE). An IEE is usually prepared by a consultant for the company and consists of a detailed report outlining the anticipated impacts of the development. In the N.W.T. the IEE is reviewed by Regional Environmental Review Committee (RERC).

Option C - If DIAND knows from the start that the project will have significant effects on the environment, no IEE is requested from the company. The project is referred directly to the public review stage.

FIGURE 3

SCHMATIC DIAGRAM OF THE FEDERAL ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS



IN-HOUSE  
REVIEW PROCESS

PUBLIC REVIEW PROCESS

SOURCE: REVISED GUIDE TO THE FEDERAL ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS  
FEARO, MAY 1979

In the N.W.T. past experience seems to suggest that most IEEs are prepared by mining companies and these projects are not recommended by DIAND to enter the formal public review stage process. Examples Cadillac Mines, Lupin Gold Mine and Cullaton Gold Mine. Most oil and gas projects on the other hand usually do not require an IEE but are directly referred to the second stage review process because the government is aware that these projects may have significant effects on the environment. Examples are Beaufort Sea, Arctic Pilot Project and Lancaster Sound.

## 2. Public Review Stage

Once a decision has been made by the Federal Government to have the project reviewed by the Panel the following steps are taken: (See figure 3 for details).

1. An EARP PANEL IS APPOINTED by FEARO (The Federal Environmental Assessment and Review Office in the Department of the Environment).
2. The Panel ISSUES GUIDELINES for the preparation of an Environmental Impact Statement (EIS).
3. The Resource company PREPARES AN EIS.
4. The Panel holds a HEARING to hear comments from governments, including community governments, interest groups, and the general public on the EIS.
5. The Panel writes a REPORT including recommendation for government and company action.
6. The report is made public and is sent to the Minister of Environment and the Federal Minister of the initiating department for their ACTION.

### 5.4 EARP Hearings - What are they Like?

Environmental Assessment Review Panels usually undertake public hearings in most communities affected by the project under review. The Panel consisting of anywhere between three and nine members is usually composed of a cross-section of individuals including local residents of the affected region, civil servants, and non-governmental experts such as university professors.

The hearings themselves are usually very informal allowing anyone to make a verbal or written presentation to the Panel. The hearings are quite different from the National Energy Board hearings. EARP hearings are more relaxed and are "come as you are, say what you think" type hearings, whereas the NEB hearings are more formal.

A Panel will sometimes ask questions of the person making a statement in order to clarify certain points or to improve their understanding of the presentation. The Panel will not criticize or cross-examine the evidence presented by the spokesperson. The company responsible for the project is usually in attendance and will be there to answer any questions that the Panel or the spokesperson may have on the project.

#### 5.5 Who can Participate in an EARP Hearing?

Any individual or organization including community councils can make a presentation to the Panel. Since the hearings are informal in nature it is very easy for the Council to participate. Depending on the importance of the issues to the community, and the resources available to Council, the Council can spend a great deal of time or very little time preparing a presentation to **the Panel**. The Mayor or Chairman of the Council can deliver a written or oral presentation to the EARP Panel on behalf of the community.

#### 5.6 What Powers does EARP Have?

EARP is an environmental assessment process, it is not a decision-making process. The EARP process can only assist the Federal **Government** in making decisions regarding the management and approval of resource development projects.

The EARP Panel is an advisory panel to the Minister of the Environment and in the N. W.T usually the Minister of Indian and Northern Affairs. The Panel recommendations are recommendations only and there fore can be ignored by the Federal Ministers and Cabinet.

The EARP Panel has no powers to implement their recommendations.

#### 5.7 What are the Advantages and Disadvantages with EARP?

EARP is one of the most easily available means for the public to involve themselves in the assessment of the impact of the proposed resource project in a comprehensive manner taking into account all social, economic and environmental effects of the project. Despite **this**, EARP has been subject to a number of criticisms including:

1. The project may not be reviewed by the EARP Panel, although some interest groups may feel such a review is necessary. Some projects such as Polaris Mine, the exploration of oil in the Beaufort Sea and the Labrador Coast have not been subject to a public review.
2. The EARP has no regulatory or legal powers to enforce its recommendations. The Panel is advisory only and must **rely** on the support of the Federal Ministers and their departments for implementing EARP recommendations.

- 3\* The appointment of the Panel members may not always fairly represent the various groups who have an interest in the project. Also the independence of the Panel is sometimes questioned by various groups when government civil servants are appointed to the Panel.
4. The entire EARP process is not established in legislation but is only a guideline for the Federal Government.

## 6.0 NATIONAL ENERGY BOARD

### 6.1 What is the N. E. B.?

One of the most important and powerful government bodies dealing with resource development projects in Canada is the National Energy Board (N. E.B.). This federal administrative board obtains its power from the 1959 National Energy Board Act and has two main duties:

- 1) The review and approval of certain types of large scale resource development projects.
- 2) To advise the Federal Cabinet on the development and use of national energy resources.

### 6.2 What Type of Resource Projects does the N.E.B. deal with?

Although very **powerful** in some instances the **N.E.B.** can only regulate certain types of resource development projects. **N.E.B.** approval is only required when 1) The project involves the transportation of oil, gas or electricity across a province or territorial border or 2) when oil, gas or electricity generated from the project would be exported or sold to another country. For example, both the Alaska Gas Highway Pipe line and the Norman Wells Oil Pipeline **required** **N.E.B.** approval because the project involved the transportation of oil or gas across at least one territorial/provincial border. If the Norman Wells pipeline for instance was only built between Norman Wells and Fort Simpson no **N.E.B.** approval would be required because no oil would have been transported across one or more territorial/provincial boundaries. The Arctic Pilot Project requires **N.E.B.** approval not because a gas pipeline will be built on Melville Island in the **N.W.T.** but because the project involves the export of natural gas to the United States.

Beyond the mandate of the **N.E.B.** is the approval of oil and gas exploration and the exploration and development of mineral resources. The **N.E.B.** will only become involved in an oil and gas project when the company wishes to obtain approval to undertake a project to transport their resources to southern Canada or an international market.

6.3 How does the N.E.B. review a typical resource project?

If a resource company requires N.E.B. approval, the company at the beginning of the development stage requests the N.E.B. to issue them with a "Certificate of Public Convenience and Necessity". The approval of this Certificate is the most important approval the company can obtain from the Federal Government. Once approved the remaining steps such as leases and water licences are all "downhill" because the Federal Government has stated in public that the project should proceed because it is in the national interest. The following is a brief summary of a typical N.E.B. approval process:

1. The Company makes an APPLICATION for a Certificate of Public Convenience and Necessity. The application is supported with many detailed studies prepared by the Company.
2. The N.E.B. places a NOTICE OF APPLICATION in the newspaper indicating the location and date of the proposed hearing.
3. Individuals or organizations wishing to oppose or support the application send a NOTICE OF INTERVENTION to the Board. This notice outlines the reasons why the group wishes to "intervene" in the hearing. Any group other than the Company (i.e. the applicant) is called an Intervener.
4. The Interveners and the Company can hold preliminary hearings and exchange information. This process is called DISCOVERY.
- 5\* A HEARING is held and the Board listens to all arguments made. The Hearing can last for several months and be held in several different locations.
6. After the Hearing the Board sends a detailed REPORT TO CABINET outlining their reasons for approving or rejecting the application. This report includes detailed terms of conditions that should be attached to the Certificate if it is approved.
7. The FEDERAL CABINET MAKES A DECISION either to accept or reject the report.
8. The DECISION OF CABINET IS MADE PUBLIC. The N.E.B. issues or denies the application for the Certificate depending on the decision of Cabinet.

6.4 N.E.B. Hearings - what are they like?

A Hearing of the N.E.B. operates on an adversarial basis much like a court case. The Board consisting of a small number of members acts like a judge, hearing all the evidence and making decisions on the procedure of the Hearing.

The Company presents facts supporting their application and the Intervener either presents evidence to support or oppose the application. Quite often the Intervener makes use of expert witnesses and detailed studies to support his evidence. Each party is allowed to cross-examine (i.e. ask questions) regarding any of the evidence presented at the hearing.

The **N.E.B.** does not travel from community to community like the EARP Panel but during each case usually holds the Hearings in major centres such as Ottawa, Calgary and Yellowknife.

#### 6.5 Who can participate in an N.E.B. Hearing?

Any individual or organization, including a community council, can participate in an **N.E.B.** hearing provided the **N.E.B.** feels the individual or organization has an "interest" in the case to be heard.

To participate in the hearing the Community Council must send a written notice to the **N.E.B.** prior to the hearing indicating the Council wishes to make a presentation. Because the **N.E.B.** hearings are **more** formal than EARP hearings it is best that the Council have done their homework before making a presentation. Most **Intervenors** make use of a lawyer who is familiar with the procedures of **N.E.B.** hearings. All of the testimony is made under oath.

#### 6.6 What Powers Does the N.E.B. Have?

The **N.E.B.** is a very powerful body. Any report of the **N.E.B.** dealing with an Application of Certificate including terms and conditions of their approval sent to Cabinet can not be changed. The Federal Cabinet can only accept or reject the report. **In contrast** EARP advises the Minister of the Environment and any recommendations made to the Minister by EARP may be ignored *or* changed by the Minister at his discretion. This is not the case with the **N.E.B.**

The **N.E.B.** also has enforcement powers to require the Company to follow the conditions established by the Board.

Finally the **N.E.B.** can expropriate or take control of any lands that are needed for a project such as a pipeline, provided compensation **is** paid to the landowner.

### 7.0 APPROVALS OF WATER USE

#### 7.1 What is a Water Licence and When Is it Needed?

Management of inland fresh water in the **N.W.T.** is a Federal responsibility. Any form of development that may affect the flow or quality of fresh water requires approval from the Federal Government under the Northern Inland Waters Act. Approval may be granted in the following ways:

- 0) Authorization (Short Term)
- (2) Licences (Long Term)



Water Authorizations are required when small amounts of water (less than 50,000 gallons a day) will be used for a short period of time, e.g. exploration activities of resource companies or for settlements requiring approval for their water supply and sewage disposal systems. Water Authorizations are the most common form of water approvals and are granted without any formal public review. Specific conditions are placed on the quantity of water used and on the quality of the water returned to the source.

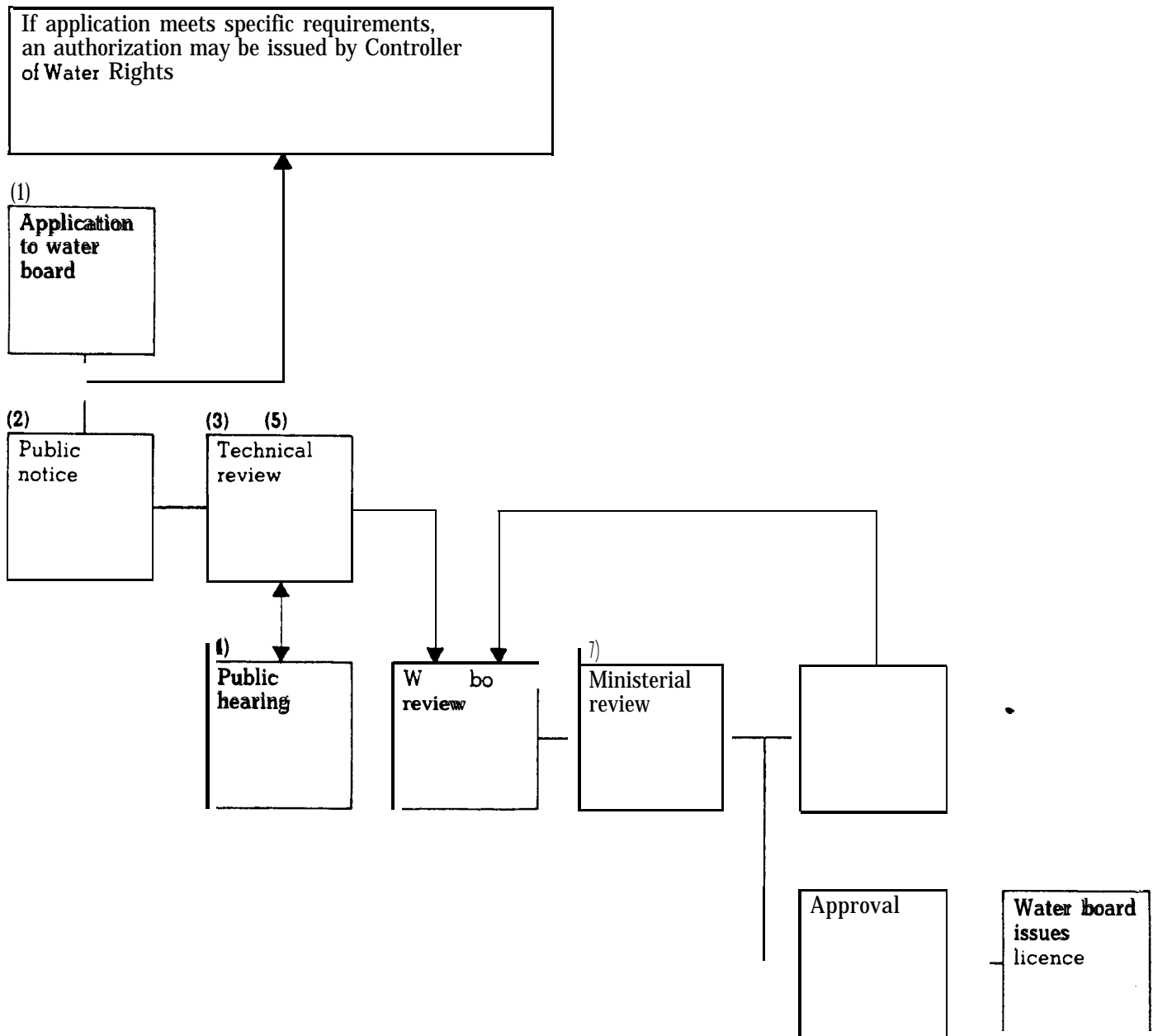
Water Licences are required when large amounts of water will be used in the operation and/or for long periods of time. These types of approvals are therefore required for such things as hydro projects, municipal water and sewage systems, mining operations and on-shore oil and gas operations. Water Licences are obtained by the Company in the development stage prior to the construction of the project but after EARP and N.E.B. approvals have been given. Licences may have a term of one to twenty-five years.

## 7.2 How is a Water Licence Issued?

The Federal Government has created the N.W.T. Water Board to review and recommend approval of all water licences in the N.W.T. The following is a brief summary of the process (see figure 4 on the next page).

1. APPLICATION is made to the N.W.T. Water Board. If applications require only a WATER AUTHORIZATION, APPROVAL is given if the application meets the regulations under the Northern Inland Waters Act.
2. If the application requires a Water Licence the Board places a NOTICE in the local newspapers giving the time and place for a Public Hearing.
3. The TECHNICAL ADVISORY COMMITTEE (Advisory group of government and industry experts) REVIEWS APPLICATION.
4. A PUBLIC HEARING is held in the community closest to the proposed water use unless there is no interest shown in the application by the community or the general public.
5. After reviewing the application and comments made at the public hearings the TECHNICAL ADVISORY COMMITTEE SENDS RECOMMENDATIONS, including terms and conditions that should be attached to the Licence to the Water Board.
6. WATER BOARD holds meeting to make decision on application. RECOMMENDATIONS are sent to Minister of DIAND.
7. MINISTER APPROVES OR REJECTS THE APPLICATION. If the Minister approves the application he must also accept the conditions that were recommended to him by the Water Board.

### Water Use Licensing Application Process



Source DIAND, Northern Natural Resource Development: Requirements, Proceedings and Legislation 1981, p.13.

The entire approval process can be quite lengthy and can sometimes take up to two years. Water Licences are one of the last steps required by a company before production can begin.

### 7.3 What is the N.W.T. Water Board?

Whenever a water use requires a licence, the N.W.T. Water Board reviews the application, conducts a public hearing and prepares terms and conditions of a licence to be recommended to the Minister of DIAND for his approval. Members of the Water Board include three federal representatives appointed by the Minister of DIAND including the Chairman and Vice Chairman and six territorial representatives appointed by the Commissioner. The Commissioner's representatives usually include appointees from the GN WT Public Service, the N.W.T. Legislative Council and the general public.

### 7.4 What is the Role of the Community Council in the Water Approval Process?

The Community Council can make a written or oral presentation to the Water Board at its public hearings. To ensure that a public hearing will be held the Council should send notice to the Water Board that it wishes to make a presentation at least ten days before the Public Hearing is scheduled. If there appears to be no public interest in the hearing the N.W.T. Water Board may not hold a public hearing.

It should also be remembered that the Water Board is only concerned about what impacts the resource projects may have on water quality and quantity. Discussions about social or economic impacts of the project are beyond the mandate of the Board and therefore should not be raised at public hearings.

## 8.0 LAND LEASES

### 8.1 What are Land Leases and When are they Needed?

Nearly all land outside communities in the N.W.T. is federal Crown Land. To use or occupy Federal Crown Land outside of communities over a long period of time the land user requires a surface lease from DIAND. The lease is an agreement between the Government and the land user as to the rights and obligations of both parties with respect to the use of the land.

Once a resource company has completed the exploration phase and has found that it is economical to develop and produce the resource a Land Lease is usually required. This is the last major approval a resource company requires before it can begin to construct the production facilities required to remove the deposit from the ground.

The Lease may cover a period of three to thirty years depending on the location of the land and the intended use of the land. The application form and many of the conditions of the lease are similar to the leases issued by the GNWT for lands within community boundaries.

## 8.2 How is a Lease Issued?

The process for acquiring a Federal Crown Land Lease for a large scale resource project outside communities is summarized on Figure 5.

The process is as follows:

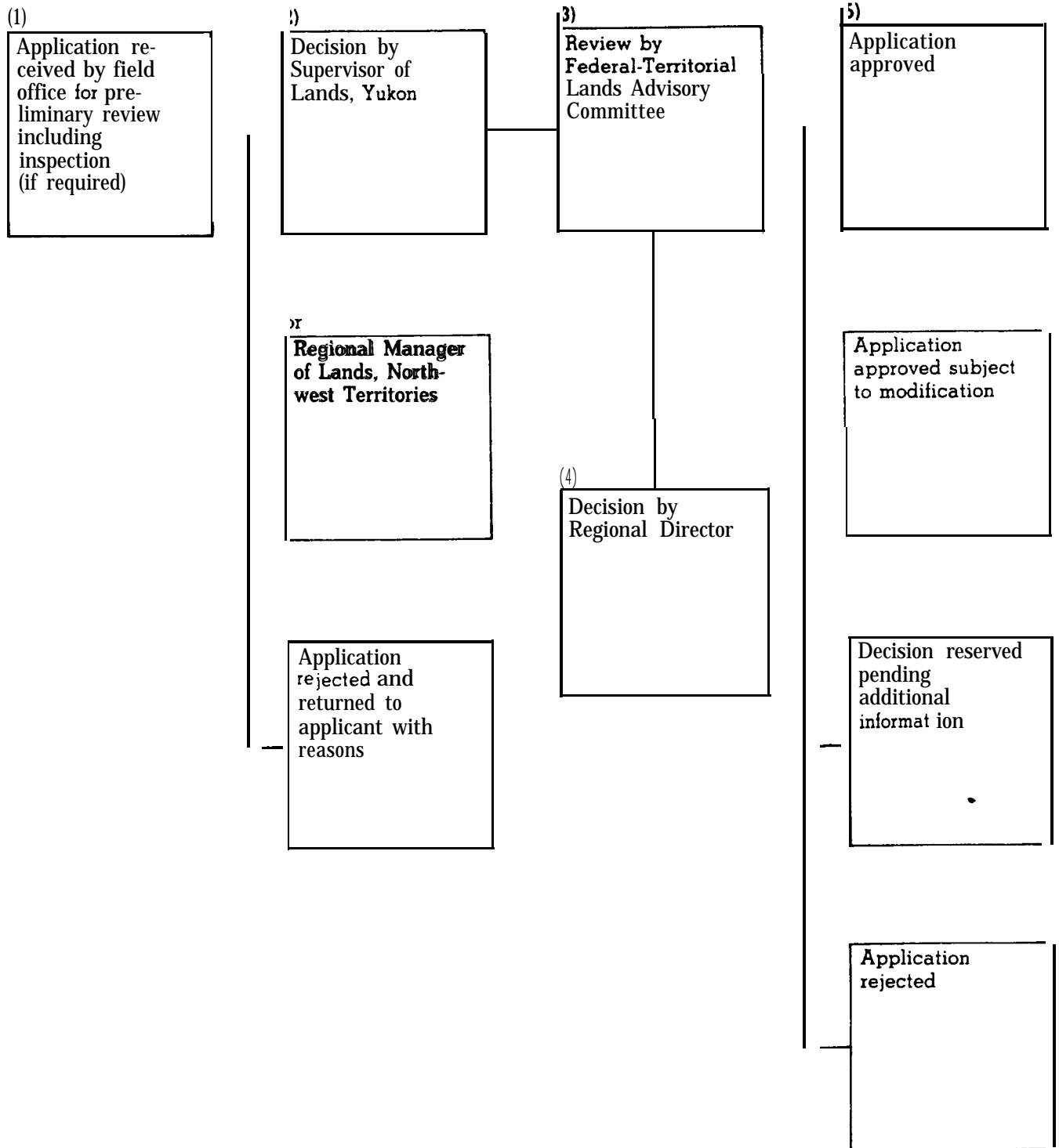
1. APPLICATION is made to the local DIAND field office.
2. Application is sent to Yellowknife where DIAND undertakes a PRELIMINARY REVIEW of application which may include an inspection of the site. At this stage DIAND (Land Resources) may:
  - i. Reject the application;
  - ii. accept the application for further review, or
  - iii. require changes be made to the application before further review.
3. OTHER GROUPS REVIEW AND COMMENT on application such as community Councils, native organizations and members of the Regional Environmental Review Committee (RERC).
4. RERC SENDS COMMENTS on application to Regional Director (DIAND).
5. Regional Director (DIAND) makes FINAL DECISION on application.

## 8.3 Community Councils and Land Leases - What is their Role?

Community Councils are requested by DIAND to comment on all applications for Federal Crown Land.

During the review of applications for land the Council can raise at this time much broader issues than those that could be raised during the review of any Land Use Permit requested by a resource company. The Land Use Permit review and approval process only deals with environmental considerations whereas both environmental and socio-economic effects should be and can be considered by Council when commenting on lease applications. Since the Land Use Permits only deal with the exploration phase of a company's activities there is no certainty that the resource will be developed or even found. There is therefore not much point in discussing socio-economic impacts of a possible project until such time as the company can define with greater certainty what type of development it intends to undertake on the property. It can only do this once the exploration phase has been finished and the amount and type of resource that is located on the property is known. The company can then determine what type of development is needed to extract the resource from the property. This will give the community council a much better idea of what exactly the company intends to do with the land that the company is requesting to lease.

Land Tenure Agreement  
(Leasing of Crown Land)



Source DIAND, Northern Natural Resource Development: Requirements, Proceedings and Legislation 1981, p.13.

900 THE GNWT AND THE REGULATION OF RESOURCE DEVELOPMENT

9.1 What Control Does GNWT have over Resource Development?

The Government of the Northwest Territories has no legal powers to control resource development projects in the N. W.T. This is a responsibility of the Federal Government. The GNWT, however, has the prime responsibility for dealing with social and economic impacts of resource development. The GNWT responsibility for environmental impacts are limited to wildlife protection and enforcing the GNWT Environmental Protection Ordinance.

The GNWT can influence the socio-economic impacts of resource development in the following ways:

1. Participation in the various Federal regulatory processes such as EARP and N.E.B.
2. The development and implementation of policies and programs to deal with socio-economic impacts, such as, education, employment training, social services, community development and infrastructure.
3. The negotiation and signing of socio-economic agreements with the resource company.

9.2 What is the GNWT Energy and Resource Development Secretariat?

The Government of the N.W.T. in late 1981 established an office called the Energy and Resource Development Secretariat to advise the Executive Committee of the GNWT on energy and resource development matters. This office has two main duties:

1. To co-ordinate GNWT positions on energy and resource development issues including the Government's participation in EARP and N.E.B. hearings, and
2. to develop overall GNWT policies to deal with energy and resource matters.

9.3 What is the GNWT Resource Development Policy?

The Executive Committee of the GNWT in the summer of 1982 approved a Resource Development Policy for the Northwest Territories. The details on how this policy will be implemented are presently being worked on.

The Objective of the policy states:

"The Government of the Northwest Territories will approve a resource development project when its overall economic, social and environmental implications are judged to result in net benefit to the people of the Northwest Territories."

The following principles will be used to evaluate the implications of resource development projects:

- opportunities for jobs, training, and business development shall be maximized to ensure economic benefits
- The Northwest Territories shall derive energy benefits and secure energy supply from energy producing projects to help offset the loss of resource and to contribute to achieving energy self-sufficiency
- The environment and renewable resource activities shall be protected
- northern lifestyle and cultural heritage will be protected
- local communities and interest groups will participate in consultation programs to ensure that *resource* projects are responsive to public concerns
- the interests of aboriginal groups shall be recognized
- social and economic disruption shall be identified and monitored, and corrective measures developed and assigned to industry and appropriate levels of government
- expansion of existing communities to support resource development shall occur in an orderly manner in keeping with the wishes of residents, and when this expansion is uneconomic or undesirable, new single-resource communities may be established
- an equitable **share** of resource revenue should accrue to the Northwest Territories"

The first element of the policy - Development Impact Zones - the public role in planning - involves the designation and prioritization of development impact zones in the Northwest Territories. A zone is defined as a community, a group of communities, or a geographic area which is experiencing or is about to experience extraordinary impacts as a result of resource development. The Executive Committee will support the formation of a development impact zone group representative of public interest in a zone, using as a basis existing bodies such as local and regional councils. The objective will be to allow for participation and resolution of issues associated with the impacts of resource development. It is anticipated that this kind of group can become a valuable resource for the assessment and planning activities of both government and industry and that the group will participate in the planning of social and physical infrastructure within the development area.

The second element of the policy is to implement a GNWT assessment and review process. The objectives and purposes of this assessment process are:

1. Proponents of resource development projects need to consult with the GNWT and communities before options concerning the pace, scale and nature of the project are finalized.
2. Identification and resolution of adverse impacts need to be carried out well in advance of project approval and implementation.

Industry will be required to secure a Development Certificate from the GNWT Executive Committee which will outline the terms and conditions that industry must meet if GNWT support is to be given to the proposed project. These terms and conditions will also form the basis for GNWT participation in federal government review processes such as EARP and NEB hearings.

Thirdly, the GNWT will monitor the effects of the resource projects on the Northwest Territories. Development Certificates will be renewed based on the results of the monitoring process.

#### **9.4 What are GNWT Socio-Economic Agreements?**

One of the ways the GNWT attempts to influence the **socio-economic** impacts of resource development projects is to sign a **socio-economic** agreement with the resource company. These agreements cover such items as the company's policies on northern employment hiring, employment training, local business opportunities, community information and consultation, and social, medical and recreation facilities available at the work site, etc.

These agreements are "gentlemen's" agreements and therefore rely on the good will and trust of the company to undertake their actions according to the agreement. The GNWT currently has no legislative or legal means to enforce these agreements.

Although unenforceable the agreements are useful because they provide a process whereby the GNWT and the company can negotiate how **socio-economic** benefits of the project can be maximized for **N.W.T.** residents. Agreements can also provide a basis to monitor and evaluate the success of the operation over the length of the project.



The Department of Economic Development and Tourism is responsible for negotiating **socio-economic** agreements in the **N.W.T.** The Minister of Economic Development and Tourism approves and signs the agreements on behalf of the GNWT Executive Committee for all agreements.

These **agreements** are negotiated at various stages during the life of a resource project. At the moment the **socio-economic** agreements are signed with mining and petroleum companies before they undertake any major activities such as a major exploration program or the development of a mine site.

#### 10.0 OIL AND GAS DEVELOPMENT AND BILL C-48

The regulation of oil and gas development in the **N.W.T.** has recently changed with the passage of the Canada Oil and Gas Act (**Bill C-48**). The actual administration and regulation of this Act is still being worked out but the following is a brief summary of the step that the company will probably have to follow to explore, develop and produce oil and gas in the **N.W.T.** These steps are in addition to those explained earlier such as land use permits, EARP and NEB.

1. Public Tendering

Petroleum Companies will be asked to submit proposals for the right to explore certain crown lands based on a grid system. The request for proposals may be **publically** advertised. When the Minister of DIAND selects a proposal the company immediately enters into an exploration agreement with the Minister.

2. Exploration Agreement

Before a petroleum company can begin to explore for oil and/or gas they must negotiate a legal agreement with the Government of Canada called an Exploration Agreement. The **Exploration** Agreement gives the company the sole right to explore for oil and gas on lands outlined in the Agreement. In return the company agrees to meet certain conditions that may be required by the Minister of DIAND such as equity participation by Canadians, in the firm, provision of local employment and business opportunities, and the payment of funds to the Federal Government for undertaking environmental studies. The Exploration Agreement will usually be for a maximum term of between five and eight years and be subject to re-negotiation for an additional five year term. The Agreement also gives the company the right to produce oil and gas on **the** lands if a commercial discovery has been found.

Before the agreement will be granted the company must outline details of their proposed **exploration**. This will include an action plan stating how the company intends to provide opportunities to Canadian businesses for the supply and services to the company. In addition the company may be required to state what training and employment opportunities will be provided to Northern residents. These plans are called the Canada Benefits package.

3. Drilling Authority

Once an exploration agreement has been signed a company will have to obtain from **COGLA** an approval to drill each individual exploration well. If the well is to be drilled from an offshore man-made island the company will also require the approval of a surface land lease from **DIAND** (see Section 8) as well as a permit to dredge the sea bottom.

4. Production Licence

Once a company has found a commercial discovery a production **licence** will be needed before the development stage can start. This **licence** will give the company the sole right to produce oil and gas from the area for a period of up to ten years. After the initial ten year period extensions of ten years may be granted by the Minister.

5. Development Approvals

Once a production **licence** has been received the company will have to send detailed plans to **COGLA** for their approval for each type of development structure that is required for the production of the oil and/or gas. These detailed approvals include approvals for the development plan, production structures, production facilities and transportation systems.

10.1 What is the Canadian Oil and Gas Lands Administration (COGLA)?

The Canadian Oil and Gas Lands Administration (**COGLA**) is responsible for the management of all oil and gas exploration and development in the Yukon and **N.W.T.** as well as the offshore areas off the east and west coasts. **COGLA** formed in 1981, is a joint administration body that contains responsibilities from both the Department of Indian and Northern Affairs and the Department of Energy Mines and Resources. In the **N.W.T.**, with the exception of Hudson's Bay, the majority of approvals received from **COGLA** will be under the direction of the Minister of **DIAND**.

TYPICAL APPROVALS REQUIRED FOR MOST  
NON-RENEWABLE RESOURCE PROJECTS

ACTIVITY	MINING	OFFSHORE OIL AND GAS
<u>EXPLORATION PHASE</u>		
Preliminary Survey	<ul style="list-style-type: none"> <li>• Company</li> <li>• Prospecting Licence (DIAND)</li> </ul>	• Company
Detailed Survey	<ul style="list-style-type: none"> <li>• Land Use Permit * (DIAND)</li> <li>• Water Authorization (N.W.T. Water Board)</li> </ul>	• Exploration Agreement (DIAND)
<u>DEVELOPMENT PHASE</u>		
Preliminary Drilling or Sampling	<ul style="list-style-type: none"> <li>• Mineral Lease (DIAND)</li> <li>• Land Use Permit * (DIAND)</li> <li>• Water Authorization (N.W.T. Water Board)</li> </ul>	• Drilling Authority * (COGLA)
Detailed Drilling or Sampling	<ul style="list-style-type: none"> <li>• Land Use Permit (DIAND)</li> <li>• Water Authorization (N.W.T. Water Board)</li> </ul>	<ul style="list-style-type: none"> <li>• Drilling Authority * (COGLA)</li> <li>• Socio-Economic Agreement * (GNWT)</li> </ul>
Feasibility Studies	• Company	• Company
<u>DEVELOPMENT PHASE</u>		
Preliminary Environmental Assessment (IEE)	<ul style="list-style-type: none"> <li>• DIAND with recommendation from Regional Environmental Review Committee * (RERC)</li> </ul>	<ul style="list-style-type: none"> <li>• DIAND with recommendation from Regional Environmental Review Committee (RERC)</li> </ul>
Detailed Environmental Assessment	<ul style="list-style-type: none"> <li>• DIAND and DOE with advice from Environmental Assessment and Review Panel * (EARP)</li> </ul>	<ul style="list-style-type: none"> <li>• DIAND and DOE with advice from Environmental Assessment and Review Panel * (EARP)</li> </ul>

ACTIVITY	MINING	OFFSHORE
DEVELOPMENT PHASE cont'd		
Detailed Economic, Engineering and Environmental Studies		<ul style="list-style-type: none"> <li>• Certificate of Public Convenience and Necessity * (N.E.B.)</li> </ul>
Final Engineering and Development Plans	• Company	• Company
Construction of Production Facilities (Off-Shore)		<ul style="list-style-type: none"> <li>• Production Licence (COGLA)</li> <li>• Development Approvals (COGLA)</li> </ul>
Construction of Production Facilities (On-Shore)	<ul style="list-style-type: none"> <li>• Water Licence *</li> <li>• (N.W.T. Water Board)</li> <li>• Land Lease * (DIAND)</li> <li>• Socio-Economic Agreement (GNWT)</li> </ul>	<ul style="list-style-type: none"> <li>• Water Licence *</li> <li>• (N.W.T. Water Board)</li> <li>• Land Lease * (DIAND)</li> <li>• Socio-Economic Agreement * (GNWT)</li> </ul>
PRODUCTION PHASE		
Production and Transportation	<ul style="list-style-type: none"> <li>• None, however terms and conditions of the land lease and water licence are met.</li> <li>• Monitoring of socio-economic impacts takes place under the GNWT Socio-Economic Agreement.</li> </ul>	<ul style="list-style-type: none"> <li>• Operating Licence (DIAND)</li> <li>• Terms and Conditions of land lease and water licence are met</li> <li>• Monitoring of socio-economic impacts takes place under the GNWT Socio-Economic Agreement.</li> </ul>
POST-PRODUCTION PHASE		
	<ul style="list-style-type: none"> <li>• Terms and Conditions of land lease regarding restoration of site are met</li> </ul>	<ul style="list-style-type: none"> <li>• Terms and Conditions of land lease regarding restoration of site are met.</li> </ul>

\* Indicates the stages where the Community Council has the opportunity to comment and review application.

## GLOSSARY OF LEGAL TERMS

- ADVERSARY SYSTEM - legal system having opposite parties, the Crown prosecutor against the accused and his lawyer.
- AFFIDAVIT - written declaration of facts.
- APPELLANT - one who appeals the decision of a court to a higher court.
- CASE LAW reported cases forming a body of law.
- CHATELS articles of personal property; **moveable** possessions.
- CIVIL LAW this area of law consists of a series of rules designed to regulate the conduct of individuals. Civil law is used by a person who has a grievance against another person. Civil law provides a means for disputes to be solved through the courts by means of a lawsuit. Civil law includes contracts, business, torts, property, insurance and many other areas of law. Civil law is sometimes known as private law as it deals largely with private rights and obligations.
- CONSIDERATION - those things of value which **parties** to a contract exchange in order to indicate their serious intention to be bound by the contract.
- CRIMINAL LAW - this area of law concerns the prohibition of certain actions defined as criminal, and provides penalties for anyone committing such acts. Criminal offences are serious acts like murder, theft, kidnapping, assault, etc., and are considered to be crimes against the state. As a result, the government is the prosecutor. Most criminal law is found in the Criminal Code of Canada although there are other Federal and Territorial laws that also constitute criminal law.
- DEBENTURE a document issued by a corporation or public body as **security** for a loan.
- DEBTOR one who owes a debt to a creditor.
- DEFAMATION - the taking of one's reputation. Two forms; libel and **slauder**.
- DEFENDANT a person being sued in a civil action or charged with a criminal action.
- DEFRAUD to cheat or trick.
- DETINUE the wrongful withholding of chattel from the owner
- DI STRESS the taking of chattel **property** from someone who is considered a wrongdoer for some reason eg. non-payment of rent.

DUE PROCESS	notice and opportunity to be heard and to defend in orderly proceedings in court; the protection of a day in court and benefit of the law for all citizens.
EASEMENT	- right of way over another's ground or property.
EQUITY	a body of rules founded upon the principle of fairness, now a part of common law.
EXPROPRIATE	- to take property, with compensation, for public purposes.
FELONY	serious offence; an indictable offence.
A FREEDOM	a freedom exists because no law restricts the freedom.
GARNISHEE	- a debtor whose wages or savings have been seized by court order. A garnishee order directs a person having funds belonging to the debtor to pay them to the creditor.
INDICTMENT	- a written or printed accusation of a crime.
INFORMATION	- formal accusation of an offence.
INJUNCTION	a court order whereby a person is required to do or refrain from doing a particular act.
INSTRUMENT	a written legal document.
INVALIDATE	- not of binding or legal force.
LAWSUIT	- an action between two parties in a court of law.
LIABILITY	a legal obligation arising from contract or tort, or from a statute imposing such an obligation
LIBEL	- print, writing, pictures, or signs injurious to one's reputation.
LIEN	- the right to hold or charge the property of another as security for an obligation.
MALICIOUS	wrongful and done intentionally without just cause or excuse.
MI SDEMEANORS	- less serious offences. A summary offence.
NEGLIGENCE	- a tort, arising from the defendant's failure to take care not to injure someone where it was foreseeable that he might do so.
ONUS	- duty of responsibility.
PLANTIFF	- person who complains or sues in a civil action.

PRECEDENT a case or decision of a court that provides an example or authority for an identical or similar case at a later time.

REAL PROPERTY - land and the buildings on it.

REPLEVIN a document that states that property must be given back to its rightful owner.

A RIGHT is something granted to **citizens by the state.**

SLANDER gestures or speech injurious to one's reputation.

STRICT LIABILITY - liability without fault.

SUMMARY OFFENCE - a less serious offence.

SURETY one who undertakes to pay money to ensure the later appearance of an accused person in court.  
one who agrees to be responsible for another, as for another's debt.

TENDER an offer by one party to perform an obligation.

TORT a civil wrong committed by one person against another, not arising from a contract obligation.

ULTRA VIRES - beyond the power. An act in excess of authority and therefore invalid.

VALID having legal force; good in point of law.

VOID having no legal force.

WRIT OF SUMMONS - a process initiated by a court at the request of a **plaintiff to give** the person sued notice of the claim made against him.

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