**Toronto Computer Leasing Inquiry
Research Paper**

MUNICIPAL GOVERNANCE

Volume 1: Overview of Approaches

November 2003

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Executive Summary

Introduction

The focus of Volume 1 on municipal governance is on:

- An overview of major different models of political governance at the municipal level and a discussion of whether and to what extent any one particular model is more effective than another.

- An overview of the major different models of senior administrative structure at the municipal level and a discussion of the relative effectiveness of the different approaches.

- An overview of the new Ontario *Municipal Act, 2001* (referred to as "the Act").

With this as the foundation, Volume 2 focuses on the particular governance issues and challenges currently faced by the City of Toronto, as well as recommendations for potential changes.

Research for Volumes 1 and 2 included over 1,400 pages of documents and interviews with 28 individuals including current and former municipal officials, provincial government officials, academics, representatives of provincial associations, and legal experts. Documentary resources included legislation, government reports and research/policy documents, public proceedings, correspondence, academic and other expert analysis/writings, opinion pieces, etc.

Political Governance Structures

The literature points to five conceptual models for political governance of municipalities which are usually characterized at the highest level in terms of the statutory powers vested in the Mayor.   The five models are:

- Mayor-Council.

- Mayor-Cabinet.

- Board of Control.

- Committee-Council.

- Strong Council/Weak Mayor (also referred to as Council-Manager).

The two most common characterizations of the various models are *strong Mayor* and *weak Mayor*, referring to the statutory powers of the Mayor relative to Council and the administration.

The key distinguishing feature in this continuum of strong to weak models is in the apportionment of executive and legislative authority and accountability among elected officials. "Strong" generally means that the Mayor and/or executive body (Cabinet, Executive Committee, Board of Control, etc.) have more extensive executive authority for policy development, financial management, and program delivery that is independent of Council. *Weak* generally means that the nature and extent of executive authority flows from the Council.

What Makes One Political Governance Model Better than Another?

The literature does not point clearly to one political governance model as being superior to others. In fact, any or all of the models can provide for effective political governance if:

- Certain preconditions exist or can be created.

- The model can be implemented and/or modified in a way that is consistent with a particular jurisdiction's cultural context (including history/tradition, political culture, civic culture, etc.)

- Modifications to a particular model are geared to the actual obstacles – both real and perceived – that prevent a particular jurisdiction from achieving effective political governance.

These preconditions are:

- Strong political leadership.

- An effective Mayor/head of Council.

- Clear roles and responsibilities.

- Excellence in public service/confidence in the Public Service.

- Respect and professionalism.

- Reinforcing culture with embedded rewards and sanctions.

Not surprisingly, most of the preconditions relate to factors that are not particularly structural in nature – not whether the Mayor has "strong" or "weak" powers, not whether there is an executive committee, etc. Rather, they relate to the essential and less tangible elements of leadership, culture, values, and behaviour in both individual and collective terms. As often expressed by organizational experts, this suggests that with the right leadership, culture, values, and behaviour, any basic structure can be made to work. Also, in practice these preconditions are not discrete elements. There needs to be a high degree of interaction and integration between and among them.

Administrative Structures

Municipal Councils (particularly those in Ontario) often have wide legal latitude to establish the senior administrative structure of their government. In practice a relatively small number of core models have emerged:

- Chief Administrative Officer (also described as a Canadian approach to City Manager).

- City Manager (U.S.-style).

- Mayor as Chief Executive Officer.

- Commissioners/Board of Management.

The first three of these are, in effect, variations on the theme of a single accountable head of the administration, with a clear separation of policy and operational responsibilities. The fourth model is more diffuse in nature, both in terms of multiple points of accountability and less clarity with respect to policy and operational responsibilities.

Accordingly, three important distinguishing features among these various models are:

- The degree to which policy and administrative/operational authority are separate and distinct between the political and administrative levels, including whether this separation is delegated by the Council, or more statutorily based.

- Whether administrative/operational authority is formally concentrated in one versus several individuals.

- In the case of delegated authority, the extent to which a particular Council, in actual practice respects and adheres to delegated authority of the senior staff and conducts its interaction with staff at all levels accordingly.

With respect to the latter point, the factors that affect the practical (as opposed to formal) extent of delegation appear to include:

- Prevailing legal tradition and culture with respect to interpreting Council's power to delegate.

- The size and complexity of a municipality and the extent to which it is practical for Council to retain more "hands-on" operational control.

- The culture of risk taking and degree of public scrutiny within a particular municipality.

- The degree of trust a Council has in its administrative staff.

- Council's own view and understanding of its role.

Effectiveness of Different Administrative Structures

Any of the above models can and in various forms have been demonstrated to provide for effective governance. However, the cultural context of a particular municipality is the key factor in determining whether a particular model will be effective in a given situation, i.e. a model might be so inconsistent with the political and cultural tradition of a jurisdiction as to be unworkable.

In general, however, the research suggests that any model of administrative structure should be able to provide for the following:

- Greater operational efficiency and effectiveness, particularly when coupled with performance-based contracting.

- A specific focus of accountability and responsibility for the administrative performance of the municipality.

- A clear understanding the respective roles and responsibilities of politicians and administrative staff.

- Improved coordination and integration of municipal programs and activities.

- A relatively distinct separation of operations and policy, thereby enabling the political and bureaucratic components of municipal government to focus on their respective roles.

The Ontario *Municipal Act, 2001*

The province's *Municipal Act, 2001* enshrines a *weak Mayor/strong Council* model of municipal governance. The emphasis in the Act is on providing the basic ground rules. Within these basic rules, local Councils have considerable flexibility and authority to determine their own requirements.

The most important ground rule is that Council is the source/primary locus of almost all authority with relatively few exceptions, including all legislative authority. Council makes the decisions with respect to whether and to what extent to delegate this authority to others, including the Mayor, various standing or other committees, and the administrative staff. The statutory authority of the Mayor/head of Council is actually quite limited, with an emphasis on chairing Council meetings and performing largely ceremonial duties.

The following are the basic structural provisions of the Act related to governance:

- Each municipality will have a head of Council (Mayor). This individual is elected at large in lower tier municipalities. Upper tier municipalities have the option of appointing the head of Council from among the existing Council members.

- An elected Council will have a minimum of five members (including the head of Council).

- Council can be elected either by ward, at large, or in any combination of the two.

- Council must appoint a Clerk, focused primarily on recording resolutions, keeping records of decisions, etc.

- Council must also appoint a Treasurer, who, although not required to be an employee, is responsible for handling all of the financial affairs of the municipality "on behalf of" Council, as well as an external auditor.

- Council has the power to establish standing committees, including an executive committee. There is no guidance or direction in the Act with respect to number, configuration, mandate, etc. The general powers of Council to delegate its authority would apply to these committees.

- Although the Act sets out the roles and responsibilities of administrative staff, it does not prescribe a particular form of administrative structure (it does however, specifically allow for the appointment of a Chief Administrative Office at the Council's discretion.)

What's New about the Act?

From the provincial government's perspective, the new legislation was intended to reflect a new philosophy towards municipalities in Ontario and a new approach to defining their powers, with particular emphasis on:

- Less focus on explicit permission and more emphasis on general authority within the ten specific spheres of jurisdiction and enhanced natural person powers.

- Greater flexibility with respect to how municipalities are organized internally to deliver services.

Overall, the expert assessment of whether the Act in fact represents a significant new direction is mixed. There appear to be two general schools of thought that can be summarized as follows:

- That the Act actually does provide municipalities with more authority and flexibility. However, the Act is also very new and the culture of the previous, more prescriptive legislation is very ingrained among many municipal officials (including Councillors, municipal lawyers, and administrative staff). As such, it will take some time before the new Act is better understood/more fully implemented and its full potential is realized.

- That the new Act is not significantly different than the previous legislation in that it continues to be highly prescriptive in nature, and that municipalities continue to lack many of the key powers they require to manage effectively.

With respect to additional powers and greater flexibility to act, the conclusion reached by a number of observers is that the more prescriptive nature of the previous Act has resulted over time in a well-entrenched culture in the municipal sector that continues to focus on "if the Act doesn't explicitly say you can, assume that you can't". If this conclusion is true, it is clear that this relatively new piece of legislation:

- Needs time to be explored and tested, including court challenges.

- To be fully utilized may require a change in prevailing political, administrative, and legal/judicial perspectives and attitudes.

- Could, as has been suggested by others in the literature and in interviews, benefit from more detailed clarification from the province.

With respect to governance, the Act provides municipalities with a large measure of flexibility in how they organize and delegate authority, albeit within certain overall limitations. This means that Councils in Ontario already have the authority to replicate many of the features of the different political governance models. For example:

- A much stronger Mayor with more extensive delegated powers, an empowered executive committee to provide strategic leadership, etc.

- A Council with no committees that focuses on policy decision making and extensive empowerment of administrative staff.

- A Council that has dispersed its authority very broadly between and among all of the actors – Mayor, Council, Committees, and senior staff.

Again, the factors that determine which direction a Council will take depend largely on the Council itself.

- The culture and tradition of Council and the personal experience, knowledge, and views of Councillors.

- The relative value a Council places on streamlined Council decision making versus more participatory approaches.

- Whether Councillors are full-time or part-time and the number of personal staff for each Councillor.

- The strong emphasis in municipal government generally on very local matters, e.g. stop signs, garbage pickup, etc. and the extent to which the public understands the division of roles and responsibilities as set out in the Act and does not expect that their individual Ward Councillors will be able to instruct/give direction to staff, particularly on operational matters.

- The extent to which the desired delineation of roles and responsibilities has been articulated, discussed, and embedded in the operating culture.

- The level of trust that Council has in the administrative staff.

- The extent to which Councils are comfortable with stepping beyond traditional interpretations of the Act.

- The culture of the legal department in terms of narrow versus more expansive interpretations of the Act.

Part 1

Introduction

The focus of Volume 1 of this two-volume report on municipal governance is on effective municipal governance.   We have chosen this two-volume format for the purpose of presenting the information, findings, and analysis in a more manageable format.

Focus of this Report

With this in mind, the Volume 1 includes the following:

- An overview of major different models of political governance at the municipal level, with an emphasis on the differences between the basic conceptual models as part of setting the stage for the wide range of variations that exist in practice.

- An overview of the major different models of senior administrative structure at the municipal level and the relationship with the political level.

- A discussion of whether and to what extent any one particular model is more effective than another, including a set of preconditions for effective municipal governance that we will argue should be viewed as transcending and applying across the different models.

- An overview of the new Ontario *Municipal Act, 2001* including descriptions of:

    o The basic governance provisions of the Act.

    o What is new about the Act compared to its predecessor.

    o What the provisions of the new Act mean for governance.

With this as the foundation, Volume 2 focuses on the particular governance issues and challenges currently faced by the City of Toronto, as well as recommendations for potential changes to political and administrative governance at the City. Analysis and recommendations in Volume 2 are based on the premise that changes to municipal governance structures for a particular jurisdiction should have, as their basis, an understanding of the real and/or perceived problems and opportunities that need to be addressed. We also attempt, to the extent possible within the limitations of our research, to put the various real and perceived governance problems/challenges for the City of Toronto in the context of problems and opportunities faced by other municipalities in an effort to establish the extent to which Toronto's issues are unique to the size, scope, and complexity of the City.

Research Approach

The preparation of Volumes 1 and 2 included reviews of over 1,400 pages of documents and interviewing 28 individuals including current and former municipal officials, provincial government officials, academics, representatives of provincial associations, and legal experts.

Documentary resources focused on publicly available material (either in print or electronic format), including legislation, government reports and research/policy documents, transcripts of public proceedings, correspondence, academic and other expert analysis/writings, opinion pieces, etc. Material was collected on a wide range of jurisdictions including: examples from across Canada, the U.S., Great Britain, Australia, and New Zealand. Sources for these documents included various departments/branches of municipal, provincial, and state governments, academics and researchers, citizen groups, associations representing municipal political and administrative officials, and the media.

Our interviews included provincial officials from the municipal policy field, current and former municipal public officials from various (primarily Ontario), jurisdictions, academics from Canada and the U.S, legal experts, and representatives from the Association of Municipalities of Ontario and the Association of Municipal Managers, Clerks and Treasurers.

Part 2

Overview of Political Governance Structures

The literature points to a relatively small number of basic conceptual or theoretical models for political governance of municipalities. These basic models set the stage for the wide range of variations that exist in practice across municipalities in Ontario, across Canada, and abroad. In this section of our paper, we provide an overview of the key differences between and among these different approaches.

The Strong-Weak Continuum

The discussion of political governance structures at the municipal level, as presented in the literature, focuses primarily on the power relationship between the Mayor, Council, and Council Committees. The latter include various Standing Committees that tend to correspond to broad policy and/or program areas of municipal administration as well as variations on what in Toronto are known as "Community Councils"

The literature includes a range of approaches which are usually characterized at the highest level in terms of the statutory powers vested in the Mayor. The two most common characterizations are "strong Mayor" and "weak Mayor", referring to the statutory powers of the Mayor relative to Council and the administration.

Under these general types of municipalities, there is a relatively small number of models that appear to be common across most jurisdictions.

For the purposes of this section of our paper, our emphasis is on formal authority/roles and responsibilities. At this point, we are not attempting to articulate what are often less formal/more idiosyncratic qualities that make for effective municipal governance. For example, in a weak Mayor system it is possible for the Mayor to have considerable real but informal (as opposed to statutory or formally delegated by Council) power and influence by virtue of their personal leadership style and capacity, their ability to create political alliances, sheer force of personality, local political popularity, etc.

The key distinguishing feature in this continuum of strong to weak models is the apportionment of executive and legislative authority and accountability among elected officials. "Strong" generally means that the Mayor and/or executive body (Cabinet, Executive Committee, Board of Control, etc.) has extensive executive authority for policy development, financial management, and program delivery that is independent of Council. *Weak* generally means that the nature and extent of executive authority flows from the Council. For example:

- At the *Strong Mayor* end of the continuum, executive and legislative authority and accountability are statutorily separated. The former rests with an elected Mayor, essentially in the role of the city CEO. The latter rests with the Council, in the role of legislature.

- At the *Weak Mayor* end of the continuum, executive and legislative authority and accountability are dispersed/shared among all Council members. For all practical purposes, no one member has more executive authority than any other with Council exercising both its executive and legislative responsibilities collectively.

In between these two extremes, there are a number of variations which we will discuss in more detail in this volume. In some cases, these are in fact variations within variations. For example, within the *Strong Council/Weak Mayor* model, some municipalities establish various approaches to Council committees. These include:

- A standing executive committee.

- Other standing committees, typically along policy or program lines, e.g. public works, social services, etc.

- A Committee of the Whole whereby all of Council goes into committee-mode for certain types of business.

- No committees of any type.

With respect to the relationship between politicians and senior administrative staff, the political governance structure can in some cases predetermine at least in part, the structure of the relationship with the senior administrative staff. For example,

- Intrinsic to the *Mayor-Council* model (a form of strong Mayor model) is that senior administrative staff (but not necessarily using a CAO or City Manager approach) report directly to and take their executive direction from the Mayor.

- Intrinsic to the *Strong Council/Weak Mayor* model (a form of weak Mayor model) is that there is a senior administrative position (CAO or City Manager being the most common) through which Council delegates its administrative responsibilities.

Again, within these different models are variations. As will be demonstrated, Canadian municipal Councils in particular, generally have wide latitude with respect to how they wish to organize and relate to/govern the administration.

Five Models of Political Governance

In this section, we provide an overview of five different structural models of political governance, all of which fall somewhere along the continuum between "strong" and "weak" Mayor approaches. Also, it is important to note that these

models are conceptual starting points for discussion as opposed to rigid prescriptions. In practice, municipal structures, although generally fitting under one of these models, vary widely in the details, very often including elements from one or more models.

The five models are:

- Mayor-Council.

- Mayor-Cabinet.

- Board of Control.

- Committee-Council.

- Strong Council/Weak Mayor (also referred to as Council-Manager).

The descriptions that follow begin at the "strong" end of the continuum.

1. Mayor-Council

Under the Mayor-Council model, executive authority is vested in an elected-at-large Mayor, while legislative authority rests with an elected Council. Individual components of the model include:

Mayor

- The powers of the Mayor include:
  - Clear authority for providing executive direction to city departments, i.e. as chief executive officer of the city.
  - Appointment, discipline, and dismissal of senior administrative officials, including (if present) the City Manager.
  - Preparation and administration of the budget.

       o   In some jurisdictions, veto powers (which may be overridden) over Council decisions.

- In this model, the Mayor:

       o   Is elected with a mandate separate from that of Council and is directly accountable to the electorate, rather than to Council.

       o   Is generally expected to put forward a vision, strategy, and program for the City as part of the Mayor's mandate.

       o   Has clear and more direct and focused executive authority for the delivery of city programs and services.

       o   Does not sit as a member of the Council and is not entitled to vote on legislation.

       o   Is expected to focus on city-wide and intergovernmental issues.

Council

- The Council is focused on passing legislation and holding the Mayor accountable for his/her executive decisions. This includes responsibility for:

       o   Approval of the budget prepared by the Mayor.

       o   Passage of bylaws and resolutions.

       o   Adopting policy positions, either generated by the Council or as proposed by the Mayor.

       o   Auditing the performance of the Mayor and municipal departments.

- In this model:

       o   Council has a separate chair or speaker.

o In some jurisdictions, the chair/speaker is selected by Council from within its ranks. In other jurisdictions, the position is elected-at-large.

Other notable characteristics of this model include:

- It is in place in most of the large U.S. cities, e.g. New York, Chicago, Philadelphia, Indianapolis, etc.

- It usually includes the existence of political parties – the Mayor and Councillors run for office as members of political parties, with party blocks being formed within the Council.

- Consistent with U.S. political culture, it involves the politicization of the senior levels of the administration. Department heads serve at the pleasure of the Mayor and are typically replaced when a new Mayor is elected (although the incoming Mayor has the option to reappoint existing senior officials).

2. Mayor-Cabinet

Under the Mayor-Cabinet model, statutory executive authority rests with an elected-at-large Mayor and an appointed Cabinet. The model includes the following elements:

Mayor

- Is elected at large and does not sit as a member of Council.

- Has city-wide executive authority to implement policies and legislation and provides direction to city administrative departments.

- Is elected with a mandate separate from that of Council and is directly accountable to the electorate, rather than to Council.

- Is generally expected to put forward a vision, strategy, and program for the City as part of the Mayor's mandate.

- Appoints the members of the Cabinet from within the Council, including determination of:

   o Portfolio assignments for each Cabinet member.

   o Delegated authority to make executive decisions, provide direction to the administration, etc.

   o Whether to establish Cabinet committees, including members, mandate, authority, etc.

   o The development and implementation of Cabinet-driven processes to engage the wider community.

Cabinet

- Is responsible for:

   o Preparing the budget.

   o Drafting and submitting legislative proposals to Council for approval.

   o Proposing changes to city plans.

   o Managing the internal infrastructure of government, e.g. human resources, information and information technology, etc.

   o Building/property management.

   o Entering into some contracts (sometimes involving an upper limit on this contracting authority).

Council

- Is responsible for:

- o Approving policies as proposed by the Cabinet.

- o Approving the budget as proposed by the Cabinet.

- o Auditing the performance of the Mayor and Cabinet through overview/scrutiny committees.

- o Designing and implementing its own processes for engaging the wider community.

3. Board of Control

The Board of Control model is essential an elected executive committee with varying degrees and scope of executive authority. The extent to which a Board has independent decision making power (i.e. is *strong* vs. *weak*) varies depending on the jurisdiction and the legal basis for the Board's authority, i.e. powers/roles and responsibilities enshrined in state or provincial legislation as compared to delegated through a Council by-law.

Board

The Board of Control generally includes the following features:

- Membership of between two and six members (often referred to as Comptrollers) elected at large.

- Chaired by one of the members: in some cases, the chair is appointed by the Board itself. In others cases, it is an elected-at-large Mayor.

- Board of Control members sit as voting members of Council in some jurisdictions.

- Certain Board of Control decisions require ratification/approval by Council, i.e. the budget. Ratification often requires a "super-majority", i.e. a vote by at least two-thirds of Council to overturn a Board recommendation (where

Board of Control members sit on Council, this can in effect mean that an almost unanimous vote of non-Board of Control Councillors is required.

- Board responsibilities can vary considerably depending on the nature and extent of executive authority vested in the Board, including:

  o Managing the major administrative (HR, finance, I&IT, property management, etc.) and program delivery responsibilities of the City, including providing executive direction to senior administrative officials.

  o Policy development and in some cases, actual policy decision making (as opposed to making recommendations to Council).

  o Developing and in some cases deciding upon (as opposed to recommending to Council) policy.

  o Deciding on bids/tenders, sometimes up to a certain value, developing the budget for Council approval, managing the budget, and reporting to Council on financial matters.

  o Processes to engage citizens in providing input into city government (can be separate from processes that might be put in place by Council).

Council

Under the Board of Control model, the Council's scope of authority and responsibilities depends on the extent to which the Board's executive authority is established independently of the Council. To the extent that the Board has more independent executive authority, the Council generally becomes more reliant on the Board for policy direction. Responsibilities/activities include:

- Approving legislation/by-laws.

- Passing non-binding resolutions.

- Approving the budget.

- Monitoring the effectiveness of the Board of Control (through oversight/scrutiny committees).

- Engaging citizens in providing input into City government (can be separate from processes that might be put in place by the Board of Control).

- Providing advice/input to the Board of Control on policy development and program delivery (this does not necessarily mean that the Board of Control would be required to accept or even listen to that advice but rather than nothing would preclude a Council from providing advice).

4. Council-Committee

The Council-Committee model is a *weak* version of the Mayor-Cabinet model discussed above. This model emphasizes an executive committee, chaired by a Mayor and composed of Councillors, with the power to make recommendations to Council.

This model does not preclude the establishment of other more policy/program focused Standing Committees that would provide advice to Executive Committee through the Council.

Mayor

In this model, the Mayor is usually elected at large. His/her responsibilities include:

- Chairing Executive Committee meetings.

- Chairing Council meetings.

- Appointing at least some members of the Executive Committee.

Executive Committee

The extent to which an Executive Committee is a creature of the Council (in effect, whether it is considered to be *strong* or *weak*), depends on its level of independence as established either by provincial/state legislation or by Council by-law. Executive Committees with greater statutory independence would tend to function more along the lines of Boards of Control as discussed earlier. An executive committee established by Council is more likely to have fewer independent decision-making powers, with more emphasis on the power to recommend to Council.

Executive Committee members can be selected in a variety of ways:
- Appointed by the Mayor without reference to Council.

- Appointed by the Mayor subject to ratification by Council.

- Include the Chairs of various Standing Committees (which, depending on the jurisdiction, may have been appointed by the Mayor without reference to Council, recommended by the Mayor subject to the approval of Council, or appointed by Council.)

- Members elected at large, who may or may not sit as voting members of the Council, depending on the jurisdiction.

- A combination of the above including members elected at large, members appointed by the Mayor, and members appointed by Council.

Within these general parametres, Executive Committee responsibilities could include:
- Developing and recommending the overall strategic direction and plan for the City.

- Developing and recommending a budget to Council.

- Making recommendations to Council with respect to major policy decisions and legislation.

- Making recommendations to Council with respect to recruitment, dismissal, etc. of senior administrative staff.

- Making decisions with respect to the administrative infrastructure of City government, including HR, financial management, I&IT, etc.

- Providing day-to-day executive direction to senior administrative staff.

Council

Again within the general parametres discussed above, Council responsibilities could include:

- Passing legislation.

- Approving the budget as proposed by Executive Committee.

- Approving policies as recommended by Executive Committee.

- Appointing some or all Executive Committee members, other than the Mayor.

- Receiving the advice of Executive and other Standing Committees.

- Determining the processes by which Executive Committee would be required to engage Council and Standing Committees in the formulation of its recommendations to Council.

- Determining the extent to which powers/authority would be delegated to administrative staff.

- Monitoring the effectiveness of Executive Committee and other Standing Committees.

- Engaging the public in policy formulation, decision making, and evaluating effectiveness.

5. Strong Council-Weak Mayor

Also known as the "Council-Manager" model, this is the weakest of the different models discussed in this volume in that it involves all executive and legislative powers resting with full Council. It is also the most common Canadian model and, as will be discussed later in this volume, is enshrined in the Ontario *Municipal Act, 2001* as the basic legislative foundation for Ontario municipalities.

This model typically involves a Mayor elected at large or appointed by Council, and a Council elected at large or by ward, or in theory by a combination of the two.

Mayor

In this model, the only additional independent power given to the Mayor (as compared with any other Councillor) is the role of Chair/Head of Council. Other less tangible expectations may include:

- Providing leadership to the Council.

- Representing the municipality at official functions.

- Carrying out various procedural duties as head of Council.

This does not preclude Council, through by-law, from providing Mayors with additional powers, although as a fundamental principle of this model, these are powers to recommend to Council, as opposed to make final decisions. These can include powers to nominate committee members, to chair the selection process for senior administrative staff, etc.

Council

In this model, Council generally retains full executive and legislative authority and makes decisions about whether to delegate and the extent of that delegation. This authority generally includes the following:

- Decisions with respect to the establishment of Standing Committees and the extent of delegation to those Committees.

- Passing legislation, resolutions, policies, etc. typically in the form of recommendations from Standing Committees.

- Determining the process by which the budget will be developed, e.g. often in the form of a recommendation from a Standing Committee, and approving and/or modifying the budget.

- Decision making with respect to the appointment and potential dismissal of one or more members of the senior administrative staff.

- Determining the extent of the delegation of authority to administrative staff.

- Providing collective day-to-day direction to the staff through communication to the senior staff directly from Council or, as determined by Council, through the Mayor and/or Standing Committees.

Manager

As noted earlier, the Strong Council-Weak Mayor model is also sometimes known as the Council-Manager model. Generally, this model involves the appointment of a professional administrator (e.g. City Manager or Chief Administrative Officer). This individual is typically hired by the Council, with actual recruitment and recommendations often being made by a Committee of Council chaired by the Mayor.

Responsibility for administering the programs of the municipality, developing policy and other recommendations, and supervising and coordinating the staff is delegated to the Manager/CAO.   As we will discuss in the next section of this report, dealing with the governance relationship between the political and senior administrative levels, actual levels of delegation can vary considerably from municipality to municipality. Also to be discussed is that while the research indicates the single City Manager/CAO is increasingly the norm for Ontario and Canadian municipalities, Councils generally have considerable legal latitude to adopt different approaches.

What Makes One Political Governance Model Better than Another?

First and foremost, it is important to be clear that in the previous discussion we are talking about *models* – theoretical constructs that provide a framework for understanding actual practice. From our research, it is abundantly apparent that actual practice varies considerably from municipality to municipality with some municipalities borrowing one or more features from one or more models. But at the same time, it is also apparent that even with this customization, most municipalities fall predominantly under one model or another.

Preconditions for Success

In an ideal world, the literature would point clearly to one political governance model as being superior to others. In reality, however, this is not the case. In fact, the opposite actually appears to be true – that any or all of the models discussed earlier (as standalone theoretical constructs or in a more mix-and-match format) can provide for effective political governance if:

- Certain preconditions exist or can be created.

- The model can be implemented/modified in a way that is consistent with a particular jurisdiction's cultural context (including history/tradition, political culture, civic culture, etc.)

- Modifications to a particular model are geared to the actual obstacles – both real and perceived – that prevent a particular jurisdiction from achieving effective political governance.

With respect to these three points, we offer the following comments:

- We are suggesting that for the most part, the preconditions for effective political governance are the same across all of the models. As will be discussed, strong political leadership and vision is a critical precondition for every model. In practice, however, the various models encompass somewhat different approaches/mechanisms for its achievement.

- The evidence indicates that a particular jurisdiction's cultural context (including history, political and legal tradition/culture, civic culture, etc.) both sets the stage for and is a critical on-going limitation on whether and to what extent other models or components of other models can be imported into a jurisdiction. In other words, although we believe it to be true that any of the models discussed earlier can provide for effective political governance, it is also true that not every model can be made to work within the cultural context of each jurisdiction. For example, most Canadians we interviewed expressed the view that while the U.S. model of Mayor as CEO has been proven to provide for strong political leadership and strategic direction in that country, it is completely incompatible with the Canadian/Ontario political culture. In a similar vein, Americans we spoke with were clear that the Westminster model of professional bureaucracy that dominates Canadian public administration,

although demonstrated to be effective in this country, would be incompatible with the U.S. political and public administration tradition.

- Our review of the literature and the results of our interviews suggest that the debates about municipal governance, at least in Ontario and including Toronto, tend to focus more on discussions of solutions and less on defining, prioritizing, and building consensus related to the actual problems to be addressed.

With the above points in mind, the important consideration becomes how best to establish the different preconditions in a particular jurisdiction given what are often very real limitations of culture, practice and behaviour. The latter are particularly important.

Preconditions for Effective Municipal Governance

As indicated above, we are suggesting that there are a limited number of preconditions for effective municipal government and that for most part, these preconditions cut across all of the major governance models. These preconditions are:

- Strong political leadership.

- An effective Mayor/head of Council.

- Clear roles and responsibilities.

- Excellence in the public service/confidence in the public service.

- Respect and professionalism.

- Reinforcing culture with embedded rewards and sanctions.

In this section, we describe each of these preconditions, drawing on our review of the literature and, in particular, from our interviews with current and former public servants, academics, and other experts.

At the outset, it is important to make the distinction between *preconditions* and *best practices*. For our purposes, *preconditions* are the key characteristics of municipalities that are high-functioning in terms of governance. *Best practices* are the more technical means of developing/reinforcing those characteristics – in many cases, involving a structure, tool, mechanism, or process. The latter could include such things as training programs, mentoring programs, performance management systems, etc.

Not surprisingly, most of the preconditions relate to factors that are not particularly structural in nature – not whether the Mayor has "strong" or "weak" powers, not whether there is an executive committee, etc, (although in practice, preconditions are often reinforced by these kinds of structural elements.)

Rather, these preconditions have at their core what we would define as essential and less tangible elements of leadership, culture, values, and behaviour in both individual and collective terms. As is often expressed by organizational experts, this suggests that with the right leadership, culture, values, and behaviour, any basic structure can be made to work.

Also, we want to draw attention to the fact that we have not included "adequate financial resources" in this discussion of preconditions. There can be no doubt that running an organization is generally made easier by the extent to which financial resources are available. There is also evidence to suggest that when resources are scarce and there is stiffer competition for these resources, decision making is often made more challenging given the greater need for increasingly difficult tradeoffs. However, the literature on governance is generally neutral on the issue of adequacy of financial resources. This means that

regardless of the policy and/or operational challenges presented by tight or limited financial resources, the essential components of effective governance do not change.

Finally, we want to highlight the fact that in practice, the proposed preconditions are not discrete elements. There is, and should be, a high degree of interaction and integration. We have, however, separated them out in this discussion in order to achieve greater clarity.

Precondition: **Strong Political Leadership**

Clear, consistent political leadership begins with a well-defined vision at the political level. With effective public consultation and high quality staff support in terms of process/methodologies, this vision is translated into an overarching strategic direction that is actively endorsed and promoted by the political level. This strategic direction sets the stage for and provides policy guidance to:

- Council as it holds staff accountable for achieving this direction in the implementation and ongoing execution of its policies.

- The staff as they develop and recommend more detailed policies and implementation plans to Council and in their own operational planning and decision making.

Precondition: **An Effective Mayor**

The capacity of the Mayor to provide effective leadership, regardless of the degree to which he/she has been vested with executive authority, is an absolutely essential precondition for effective municipal governance. This includes:

- A clear understanding of the appropriate roles and responsibilities of the Mayor relative to Council and of the Mayor/Council relative to the administrative staff.

- Having a clear vision and the capacity to articulate and build support for that vision among Council members and the public.

- Understanding and fulfilling their role relative to the administrative staff (e.g. in the Ontario model), as the political rather than administrative head.

- Respecting the role and advice of the administrative staff.

- Setting the tone/providing leadership for conduct, behaviour, and decorum at Council and for the administrative staff by demonstrating, promoting, and reinforcing ethical and professional behaviour.

- Being able to work effectively and cooperatively with Council, including the capacity to build coalitions among Council in support of policy directions.

Precondition: **Clear Roles and Responsibilities**

The evidence suggests that having clear roles and responsibilities between and among politicians and bureaucrats and ensuring that those roles and responsibilities are an ingrained part of the culture of a municipality (i.e. well understood, respected, reinforced, enforced, etc.) is an essential precondition for effective municipal governance. By this, we mean roles and responsibilities between and among:

- The Mayor and Council.

- The Mayor and the CAO.

- The CAO and other senior administrative staff.

- Council/Standing Committees and the CAO.

- Council/Standing Committees and other senior administrative staff.

Our research points to a number of features related to clear roles and responsibilities that would be found in a highly functioning municipality, including the following:

- *Definition:* roles and responsibilities are clearly defined and articulated in the formal language of by-laws but also in more practical or real-world descriptive language/rules of engagement.

- *Understanding:* all parties would have a common understanding of what is included in the various roles and responsibilities.

- *Buy-in:* all parties would actively endorse and support the definition.

- *Consistency:* the definition and understanding of roles and responsibilities would become a consistent part of the foundation for the culture of the organization and as a result would transcend successive Councils and senior administrative staff turnover.

- *Respected in practice:* roles and responsibilities would be respected in actual practice and reinforced

Precondition: **Excellence in Public Service/Confidence in the Public Service**

An effective public service that is respected and valued by the Mayor and Council including:

- A demonstrated high level of professional managerial competence.

- Clarity with respect to respective political and administrative responsibilities and, depending on the model, the political neutrality of the staff, with these expectations being an ingrained part of the organizational culture.

- The capacity to provide objective and legitimate advice.

- An embedded culture of demonstrated ethical behaviour.

- A strong tradition of municipal management and professional development.

Precondition: **Respect and Professionalism**

The existence of a high level of mutual regard and respect between and among the political and administrative staff. This would include clearly articulated and well understood expectations in terms of public and private behaviour, including the public treatment of administrative staff by Councillors and vice versa, which are reinforced and rewarded.

Precondition: **Reinforcing Culture with Embedded Rewards and Sanctions**

The existence of a system of rewards and sanctions that supports and reinforces the desired behaviour. Given that culture, including beliefs, values, and behaviour, is an important unpinning of the various preconditions, a system of rewards and sanctions that helps to define and reinforce the desired culture becomes very important. The elements of both good and bad behaviour would be clearly articulated and well understood at all levels in the organization, including politicians and administrative staff, and incorporated into the latter's formal performance management process.

Most importantly, this system would be consistently applied in practice, particularly with respect to sanctions for behaviour that is not consistent with the desired values, beliefs, and behaviours, e.g. the demonstrated reality that there

are negative consequences for Councillors and administrative staff who go beyond the accepted roles and responsibilities, who interfere with each other's responsibilities, act disrespectfully or unprofessionally, etc.

Part 3

Overview of Administrative Structures

As noted in the previous section, municipal Councils (including those in Ontario) often have wide legal latitude to establish the senior administrative structure of their government. In practice a relatively small number of core models have emerged:

- Chief Administrative Officer (also described as a Canadian model of City Manager).

- City Manager (U.S. model).

- Mayor as Chief Executive Officer.

- Commissioners/Board of Management.

Key Distinguishing Features

The first three of these models are, in effect, variations on the theme of a single accountable head of the administration, with a clear separation of policy and operational responsibilities. The fourth model is somewhat more diffuse in nature, both in terms of multiple points of accountability and less clarity with respect to policy and operational responsibilities.

With the exception of the *Mayor as Chief Executive Officer* model, the various approaches are consistent with the model of governance enshrined in the Ontario *Municipal Act, 2001*. Three other important distinguishing features among these various models are:

- The degree to which policy and administrative/operational authority are separated and distinct between the political and administrative levels,

including whether this separation is delegated by the Council, or more statutorily based.

- Whether administrative/operational authority is formally concentrated in one versus several individuals.

- In the case of delegated authority, the extent to which a particular Council, in actual practice, respects, adheres to, and reinforces the delegated authority of the senior staff and conducts its interaction with staff at all levels accordingly.

As we learned in our research, the third point is particularly important in the Canadian context where administrative/operational authority is usually delegated by Council. Our research indicates that notwithstanding what exists on paper in terms of roles and responsibilities, the practical reality can vary significantly from municipality to municipality. The factors that affect the practical (as opposed to formal) extent of delegation appear to include:

Legal Tradition and Culture re Interpretations

- The legal tradition and culture of a particular municipality can play a major role with respect to advice to Council on extent to which delegation is allowed under provincial/state municipal legislation. In Ontario, for example, there appears to be considerable variation between and among municipal legal counsel with respect to the level and extent of delegation to staff that is provided for under the *Municipal Act, 2001*. Some municipalities have adopted expansive interpretations that allow for extensive delegations, i.e. along the lines of "*if the Act does not prohibit it, then assume that action can be taken*". Other municipalities adopt narrower, more prescriptive approaches, i.e. "*if the Act does not explicitly permit it, then assume that action cannot be taken*".

Size and Complexity

- In the course of our research, the view was expressed that the size and complexity of a municipality is less of a factor, compared to the issue of whether Councillors are full- or part-time and the extent of their own personal staff resources. A number of observers pointed to this factor, in combination with the strong emphasis in municipal government generally on very local matters, e.g. stop signs, garbage pickup, etc., as being more important in terms of determining whether and to what extent Councils are involved in administrative matters.

- It was suggested to us in our interviews that in the absence of clearly defined roles and responsibilities, individual Councilllors often are not even starting with the same understanding of what is meant by "administrative". Furthermore, the perception among Councillors is often that they are elected on ward-based operational issues as much or more than on citywide, more strategic considerations.

Culture of Risk Taking/Public Scrutiny

- The evidence suggests that Councils in some municipalities have a greater appetite for risk taking than others, with particular reference to adopting more rather than less expansive interpretations of what can be delegated to administrative staff. In some cases, this evolves over time as part of the culture through successive Councils. In other cases, it can reflect the propensity of a particular Council.

- It was also suggested to us in interviews that the degree of public scrutiny can also be a factor. For example, decision making in larger Ontario municipalities was frequently cited as being the subject of more extensive public and, in particular, media scrutiny. According to this view, a decision by Council to "push the envelope" with respect to delegations would more likely be the subject of legal or other challenges, compared to a similar decision made in a less high-profile municipality.

- As reported to us, the potential for these challenges to take place has resulted over time in a more cautious approach. It is also connected to what many perceive to be a greater likelihood that in the absence of a Council finding this greater legal clarity, the issue will be referred to the provincial level (e.g. where the municipality feels the *Municipal Act, 2001* is not clear on their power to act, a request will be made to the Province either for a legal opinion or for changes to the legislation to make the power more explicit.)

Trust in the Bureaucracy

- Our research indicates that trust in the professionalism and competence of the administrative staff and in particular the senior administrative staff is a major factor affecting both the legal and practical extent of delegation. Where this trust is absent or impaired, Council is considerably more likely to second guess staff decisions and/or decline to delegate any additional authority. In more extreme situations, Council may find itself taking back responsibility for decisions already delegated (either through formally rescinding delegations or less formally through the practice of more constant questioning and in some cases overturning of staff decisions).

Council's View/Understanding of its Role

- Council's own interpretation and/or understanding of its role in the management of the municipality is another major factor and here it is important to distinguish between the role as articulated on paper and in actual practice. The latter appears to be particularly important. As noted earlier, it was suggested to us that in the absence of clearly defined roles and responsibilities, individual Councilllors often are not even starting with the same understanding of what is meant by "administrative".

- The research indicates that some Councils, after consideration, formally take the view that it is appropriate for Council to be more closely involved

in operational/administrative decisions, with less delegation of decision making to staff. Other Councils adopt a more arms-length governance model focused more for example on strategic direction, policy making, and holding the administration accountable for effective delivery. In the former, there is likely to be less delegation of authority to the administration than in the latter.

- As reported to us, either approach can be made to work more or less successfully if roles, responsibilities, and expectations are very clear. The least desirable scenario, however, appears to be when a Council formally articulates one approach, i.e. extensive delegation of authority, but for various reasons (lack of trust in the staff, lack of understanding of or disagreement with what exists on paper, etc.) has a much more operational as opposed to policy focus.

Model Description

Chief Administrative Officer/City Manager (Canadian model)

The CAO model generally involves a single appointed officer as the head of the administration. CAOs are found in Canadian municipalities under a variety of names – including city administrator, commissioner, city manager, director general, and chief commissioner – and with a variety of powers and respon-sibilities.

In practice, the powers and responsibilities of CAOs can vary significantly from municipality to municipality. In Canada, provincial legislation tends to provide for the position only in general terms, but in some provinces such as Quebec and Nova Scotia, duties are specified in the statute.

In general terms, most CAOs operate under the control of the Council with responsibility for:

- Supervising and directing municipal affairs and employees.

- Executing Council policies.

- Advising the Council on matters within its control, including budget, strategic plans, policies, planning, etc.

- Inspecting and reporting on municipal works as Council requires.

- Responsibility for preparing for Council the estimate of revenue and expenditures annually or as Council requires.

- Preparing and awarding all contracts as Council prescribes.

- Carrying out other duties as prescribed by Council by-law or resolution.

This model does not normally attempt to enforce a complete separation between administration and policy, usually incorporating certain features designed to maintain the significance and prestige of the elected Council. For example:

- Council usually makes the final decision with respect to the recruitment of other senior staff.

- The CAO is not the sole conduit for contact between Council and the administration. Rather, Council usually has a direct relationship with at least the main department heads as well as the CAO/Manager, normally accomplished by the attendance of the department heads at standing committee meetings.

Most municipalities in Canada can now appoint a CAO under the general municipal legislation of their province.

This model is in place in over 170 Canadian cities, including the major cities, e.g. Vancouver, Edmonton, Calgary, Winnipeg, Saskatoon, Regina, Windsor, Toronto, Quebec City, Saint John, Halifax, and St. John's.

Model Description

City Manager (U.S. model)

The U.S. approach to City Manager is, in effect, a strengthened and more high profile CAO.   As described by one U.S. city, this approach puts the City Manager more clearly in the role of CEO of the municipality, "similar to that of a private corporation where the stockholders elect a board of directors, which then hires a president to run the company."

In this model, all legislative power rests with the Council. Its responsibilities are:

- Policy making and passing ordinances.

- Appointing the city manager who assumes primary executive responsibility for city management.

In this model, the responsibilities of the Mayor are largely ceremonial and the Mayor and Council retain no administrative decision making responsibilities. These are fully delegated to the City Manager. There are usually no standing committees that provide direction to staff and there is not any regular Council contact with the administration except through the Manager. Some U.S. jurisdictions are very explicit in their Municipal Codes as to the direct relationship between Council and the City manager, for example:

> "…City Council or its members shall deal with city officers and employees who are subject to the direction and supervision of the manager solely through the manager, and neither the city Council nor its members shall give orders to any such officer or employee, publicly or privately."

With these roles in place, the City Manager typically has a large amount of autonomy as manager and operational policy maker. All administrative functions and decisions fall under this managerial role. This includes final decision making

with respect to senior staff. In policy formulation, managers are the main source of information on policy issues for the Council. The manager often shoulders the responsibility for developing policy ideas and alternatives.

The following are examples of specific City Manager responsibilities as per the U.S. approach. In these examples, one sees language that is similar to that of a Canadian-model CAO, but the context is one of greater administrative authority and autonomy, including:

- Ensuring that all laws and ordinances are enforced.

- Exercising control over all departments and, in accordance with civil service regulations, appointing, supervising, and removing department heads and subordinate employees of the city.

- Making such recommendations to the Council concerning the affairs of the city as may seem to him/her desirable.

- Keeping the Council advised of the financial conditions and future needs of the city.

- Preparing and submitting the annual budget to the Council.

- Preparing and submitting to the Council such reports as may be required by that body.

- Keeping the public informed, through reports to the Council, of the operations of the city government.

Model Description

Mayor as Chief Executive Officer

This model is the typical U.S. style strong Mayor, currently in place in most large U.S. cities. The system reflects the general U.S. model in place at the state and

federal levels, featuring a rigid separation of executive and legislative authority between the Mayor and Council.

Under such a system, the Mayor is, in effect, the chief executive officer of the city. Authority and accountability are centralized in the Mayor's office, quite often with complete control over the day-to-day operation of city government, as opposed to a system in which the city's finances and operation are the shared responsibility of the Mayor, Council, and municipal staff.

The Mayor has almost total administrative authority. S/he is typically not a member of the Council and therefore cannot vote on legislation except to break a tie. His/her responsibilities include:

- Heading the political and policymaking agenda.

- Preparing and administering the budget and making policy jointly with the Council.

- Vetoing legislation.

- Appointing and removing department heads and directing the organization of agency functions.

In some strong-Mayor cities, a CAO or City Manager is appointed by the Mayor to serve at the Mayor's pleasure to direct the day-to-day administration of government. The CAO is usually given extensive authority over program implementation, operational concerns, and budget formulation, as well as advisory roles in developing other policy recommendations.

The precise powers granted to the Mayor may vary from city to city. Philadelphia, which among major U.S. cities provides the Mayor with the most extensive authority, includes the following:

- Control over every service the city provides through his/her appointees, with only one appointment, the city solicitor, needing to be approved by Council, because the solicitor serves Council as well.

- The power to appoint the members of all of the many boards and commissions set up by the Home Rule Charter, including the school board.

- Control over all of the city's financial affairs, preparing the operating and capital budgets and estimating revenues.

- Veto power over all Council legislation, with a two-thirds vote of Council necessary to override his veto.

In other major cities, these powers are not quite so extensive. For example, in New York, the Mayor shares power with borough presidents, and in Chicago and Los Angeles, the Councils must approve all administrative appointments.

Model Description

Commissioners/Board of Management Model

In effect, this is a form of "multiple-CAO" model, involving the appointment of a limited number of commissioners who are delegated administrative responsibilities by Council.   This model does not include a CAO or City Manager as the head of the administration.

As individuals, each commissioner is usually directly responsible for supervising and coordinating the activities of a number of municipal departments under his/her jurisdiction. Within their span of authority, their responsibilities are generally similar to those under the CAO model (see previous description of powers under *CAO/City Manager – Canadian model*).

In addition, the commissioners may meet together as a Board of Management for the purposes of coordinating the municipality's activities and for determining how Council's more general (as opposed to program-specific) policy directions are to be carried out through the administrative structure. The head of Council (e.g. Mayor, Chair) is usually a member of this Board.

The commissioners also serve as resource persons for the various Standing Committees of Council, and actively participate in their discussions, but do not have the voting rights accorded to full members.

This model tends to be more popular in Western Canada. The former City of Toronto also had a Commissioner/Board of Management model in place.

Effectiveness of the Different Approaches

In terms assessing the different approaches, we believe it is important to consider both the structural strengths and weakness of the different models, as well as the cultural context within which the model would be intended to operate. By this, we mean that structurally a model might be able to achieve all of the outcomes that one might want in effective municipal governance. However, that model might be so inconsistent with the political and cultural tradition of a jurisdiction as to be unworkable in terms of the cultural transformation that would need to occur for successful implementation.

Effectiveness Outcomes

With respect to structural characteristics, the research points to a number of important outcomes that should be present, regardless of the option to be considered, including the following:

- Greater operational efficiency and effectiveness by providing for the presence of a professional administrator with a degree of expertise that would otherwise likely not be available, particularly when coupled with performance-based contracting.

- A specific focus of accountability and responsibility for the administrative performance of the municipality.

- A clear understanding the respective roles and responsibilities of politicians and administrative staff, including communications and other interactions between Council and staff.

- Improved coordination and integration of municipal programs and activities.

- A relatively distinct separation of operations and policy, thereby enabling the political and bureaucratic components of municipal government to focus on those matters

Structural/Cultural Issues

Based on our interviews with municipal practitioners and other experts, as well as our review of the literature, our sense is that the aforementioned outcomes can be achieved effectively with any of the models discussed earlier in this section. As discussed below, however, each model has structural and cultural issues/challenges that depending on the jurisdiction could impair effectiveness.

In reviewing these challenges, it is important to keep this cultural factor in mind. For example, with respect to the U.S.-style strong Mayor's power to appoint the senior public servants, the typical and often very strongly held Canadian view would be that this form of politicization of the bureaucracy makes for government that is more partisan and less in the public interest.

The typical U.S. response rejects this view and suggests that the Westminster model of a professional bureaucracy is less democratic/responsive to the will of the people by making it more difficult for politicians with strong mandates from the people to overcome bureaucratic resistance and implement their new directions. In other words, it is important when discussing the merits/limitations of each model, to be clear whether the concerns are inherent to the model or related to its cultural appropriateness for a particular jurisdiction.

Issues/Challenges

Chief Administrative Office/City Manager (Canadian model)

- As discussed in the literature and reported to us in interviews, this model is highly dependent on a strong, positive working relationship existing between the head of Council/Mayor and the CAO. This relationship needs to be based on mutual trust, respect, and above all a clear understanding (also shared more broadly by the rest of Council and the administrative staff) of respective roles and responsibilities.

- In the absence of these characteristics, a problematic relationship can arise between the CAO and the head of Council. The potential for a clash is significant if the head of Council has a strong personality and a determination to provide "hands-on" leadership, i.e. wants to exercise *administrative* leadership, as opposed to the *political* leadership role countenanced, for example, in the Ontario *Municipal Act, 2001*.

- Councillors are often inclined to view more powerful CAOs with suspicion and to be concerned that they will become too dominant. This mistrust can pose problems in terms of CAO effectiveness.

- Where standing committees exist, committee chairs and/or department heads may attempt to use these as a buffer or a means of blocking CAO initiatives.

- No matter how effectively a CAO system may work, the position provides administrative, not political, leadership and cannot be made to compensate for a lack of the latter.

City Manager (U.S. model)

- While there is considerable potential for improved coordination in the organization of the Council-manager system, this model still faces the challenge of separating policy and administration in municipal government. In practice, it is not always a simple matter to identify in advance whether a particular issue is a routine administrative matter or has political implications.

- This model places more emphasis on the role and responsibility of the City Manager to ensure that Council receives the information and public input it needs to make effective policy (e.g. to avoid making policy "in a vacuum".)

- This system generally de-emphasizes a strong political leadership role for the Mayor and Council and emphasizes strong leadership for the municipality as a whole from the senior administrative level.

- The public focus of attention tends to be on the City Manager – often as a more conspicuous public figure than the members of Council, including the Mayor.

- In addition to producing friction and jealousies which frequently result in the dismissal of managers, this situation also leads to managers becoming publicly identified with particular viewpoints and policies. If, as a result, they become embroiled in political controversies, their role as administrative leaders is impaired.

Mayor as Chief Executive Officer

- This form of centralized leadership puts an onus on the Mayor to reach out broadly across the City to ensure responsiveness to all interests, as opposed to those interests that supported the Mayor's election.

- The effectiveness and efficiency depends in large measure on good relations between the Mayor and Council. This may be weakened to the extent there is competition, distrust, and/or disagreement on major directions.

- Consistent with general practice/political culture in the U.S., this model usually involves the senior staff level(s) of the administration as political appointees.

- The power and authority granted to the Mayor would permit the person holding office to make policy and operational decisions based more on political considerations.

- If the Mayor lacks competency or fitness as a chief executive office, s/he cannot normally be removed until end of his/her term, or after an onerous, expensive, and divisive process.

- The Mayor would have an improved capability to isolate the Council by controlling staff information to Council, and by working outside of Council to build public support for his/her own agenda.

Issues/Challenges

Commissioners/Board of Management

- Under a Commissioner system, no one person is clearly in charge and it is often highly dependent on personalities for effective coordination and leadership. This situation can prove problematic in terms of establishing clear lines of responsibility and accountability.

- Conflicts over the division of responsibilities between and among Commissioners may be more likely given the usual attempt to group departments under broad functional areas each headed by an individual Commissioner.

- Employees may tend to focus primarily on their own departments, thereby ignoring the needs of other segments of the government.

- The head of Council's chairmanship of the Board often results in the blurring of political and administrative responsibilities and authority, and the ability of the Commissioners to manage and exercise administrative authority could be undermined. Furthermore, senior staff are on occasion put in the awkward position of having to overrule the head of Council/Mayor.

- The head of Council/Mayor's chairmanship of the Board of Management has frequently been a factor in high levels of conflict between Council and the Administration. This includes leading Councillors to question whether the Board's activities are being unduly influenced politically by the Mayor, e.g. uncertainty as to whether the Board's recommendations are politically or administratively generated and endorsed.

Part 4

Overview of the Ontario *Municipal Act, 2001*

The focus of this section is on the general legal foundations of municipal governance in the Province of Ontario, as set out in the Ontario *Municipal Act, 2001*. This Act was subject to a major review in the late 1990's and, as will be discussed, includes a number of changes in the areas of governance compared to earlier legislation.

Governance in the City of Toronto is further affected by additional provincial and municipal legislation (the *City of Toronto Act*, the *City of Toronto Act No.2*, and the City of Toronto Municipal Code). The *City of Toronto Act* includes a number of specific limitations on governance that go beyond the general provisions of the *Municipal Act, 2001*. As discussed at the outset of this volume, a more detailed discussion of governance specific to the City of Toronto (legal parametres and outstanding issues) is the subject of our second volume on municipal governance.

With the above in mind, this section includes the following, based on our review of the literature and key informant interviews:

- A brief description of the general governance provisions of the *Municipal Act, 2001* (with *Appendix A* providing more detail on the roles and duties as prescribed in the Act).

- A discussion of what is new in the *Municipal Act, 2001* compared to the previous legislation (including, in *Appendix B*, a description of new/noteworthy features originally published by the Ontario Ministry of Municipal Affairs.)

- A discussion of what the new Act means for municipal governance including how Councils organize, the real as opposed to statutory power

of the Mayor, and the appropriate division of roles and responsibilities between Council and staff.

Governance Provisions of the Act

Consistent with the history and culture of municipal affairs in Ontario, the province's *Municipal Act, 2001* enshrines a "weak Mayor/strong Council" model of municipal governance.

In general, the Act is a combination of prescriptiveness and flexibility. With respect to governance, the emphasis in the Act is on providing the basic ground rules. Within these basic rules, local Councils have considerable flexibility and authority to determine their own requirements.

The most important ground rule is that Council is the source/primary locus of almost all authority with relatively few exceptions, including all legislative authority. Council makes the decisions with respect to whether and to what extent to delegate this authority to others, including the Mayor, various standing or other committees, and the administrative staff. The statutory authority of the Mayor/head of Council is actually quite limited, with a strong emphasis on the responsibility to chair Council meetings. (Having said this, we will also discuss further on in this section how "weak" Mayors can actually be quite powerful and influential, notwithstanding this lack of statutory authority).

The following are the basic structural provisions of the Act related to governance (a more detailed summary of the roles and duties of the head of Council/Mayor, Council, and administrative staff is provided in *Appendix A)*:

- Each municipality will have a head of Council (Mayor). This individual is to be elected at large in lower tier municipalities. Upper tier municipalities have the option of appointing the head of Council from among the existing Council members.

- An elected Council will have a minimum of five members (including the head of Council).

- Council can be elected either by ward, at large, or in any combination of the two.

- Council must appoint a Clerk, focused primarily on recording resolutions, keeping records of decisions, etc.

- Council must also appoint a Treasurer, who, although not required to be an employee, is responsible for handing all of the financial affairs of the municipality "on behalf of" Council, as well as an external auditor.

- Councils have the power to establish standing committees, including an executive committee. There is no guidance or direction in the Act with respect to number, configuration, mandate, etc. The general powers of Council to delegate its authority would apply to these committees.

- Although the Act sets out the roles and responsibilities of administrative staff, it does not prescribe a particular form of administrative structure. It does however, specifically allow for the appointment of a Chief Administrative Officer at the Council's discretion.

What's New about the *Municipal Act, 2001*?

In *Appendix A*, we have included a description of what is new/noteworthy about the Act that was prepared and published by the Ontario Ministry of Municipal Affairs and Housing.

As indicated in that material, from the government's perspective the legislation is intended to reflect a new philosophy towards municipalities in Ontario and a new approach to defining their powers. The description points to a climate of greater flexibility and less prescriptiveness, with emphasis on at least two key areas:

- Less focus on explicit permission and more emphasis on general authority within the ten specific spheres of jurisdiction and enhanced natural person powers.

- Greater flexibility with respect to how municipalities are organized internally to deliver services.

It is not our intention here to provide a comprehensive assessment of the strengths and weaknesses of the new legislation. Our focus remains primarily on governance. However, we do want to provide some sense of whether and to what extent experts and practitioners in the area of municipal affairs do in fact see the new legislation as different in the ways articulated by the province. Also, we intend to highlight the extent to which those differences impact on governance and administrative structure.

Overall Assessment

Overall, the expert assessment of whether the Act in fact represents a significant new direction is mixed. There appear to be two general schools of thought that we would summarize as follows:

- That the Act actually does provide municipalities with more authority and flexibility. However, the Act is also very new and the culture of the previous, more prescriptive legislation is very ingrained among many municipal officials (including Councillors, municipal lawyers, and administrative staff). As such, it will take some time before the new Act is better understood and more fully implemented.

- That the new Act is not significantly different than the previous legislation in that it continues to be highly prescriptive in nature, and that municipalities continue to lack many of the key powers they require to manage effectively.

The challenge, of course, is how to make sense of this disparity of views, particularly with respect to governance.

One of our key informants suggested to us that an interesting framework for understanding the disparity lies in two views of local government in general. These views (expressed, for the purposes of discussion, at extreme ends of the spectrum) are as follows:

- *View A:* This view suggests that local government is/should be considered to be a government in the full western democratic/constitutional tradition. This includes the power to create laws, raise taxes, determine spending priorities, and engage in all of the activities necessary to meet its goals.

- *View B:* This view is more rigidly historical/legal in nature and takes the view that local governments are not intended to be governments in the full western democratic/constitutional sense. Rather they are bodies of citizens who have banded together to create services on a monopoly basis because it is the most efficient way to do it – in effect, public corporations whose job it is to arrange and deliver a relatively narrow range of services.

It was suggested to us that individuals who ascribe to *View A* may be more likely to see the Act as not significantly different or at best, a step in the right direction but still not fundamentally consistent with their view, while those more disposed to *View B*, would see it as a more significant change.

In terms of balance, there was definite tendency among practitioners in the municipal area (including current and former public servants, lawyers, and some academics) to view the Act as not significantly different compared to its predecessor. This was described in various ways including:

- The Act is not a move towards more independent status and does not include the kind of Charter/Home Rule status that has been afforded to

municipalities in some other jurisdictions, as has been the case with many U.S. cities and also Vancouver.

- The Act still includes extensive powers for the Minister of Municipal Affairs and Housing to step in and override municipal decisions.

- The Act does not include major changes in the overall scope of municipal power, even with the newly defined ten spheres of jurisdiction.

- The Act provides some more permission for Councils to act but overall is still a very prescriptive Act, whereby Councils have to be given express powers to act.

- The natural person powers conferred in the Act will not change how municipalities operate to any great extent and two key powers are missing – more general powers to raise revenues and power to create certain types of corporations.

Our sense from the interviews and our review of the debate is that the last point relating to the "missing" key powers is very central to concerns about the Act. In response to our question "what additional powers would municipalities want that are not available in the new Act?" most interviewees focused on revenue raising and creating corporations based on public-private partnerships (as opposed to strictly publicly owned corporations) as the two major areas.

An alternative and somewhat more positive viewpoint was expressed by a similar range of practitioners (albeit fewer of them). From this perspective, the new Act continues to be a generally prescriptive form of legislation, with municipalities still viewed fundamentally as creatures of the province as per the *Group B* view of local government, with a focus on local service delivery. As such, much of the Act continues to articulate various limitations on municipalities' capacity to take independent action.

With this overall caveat in mind, however, it was felt that the Act did include a number of changes that have been overshadowed by the *View A* emphasis on more independent status and taxing powers for municipalities. It was also suggested that these changes are significant but perhaps not yet fully understood within the municipal community. This was described for us as follows:

- The ten spheres of jurisdiction do not necessarily expand the scope of jurisdiction for municipalities beyond what was previously in place but, in combination with the application of natural person powers, the basis of municipal authority in the province is significantly changed.

- With these powers in place, the spheres of jurisdiction now become the general legal basis for municipal authority, not whether the legislation includes specific permissions. This represents a fundamental change of philosophy, the impact of which will not be felt immediately. However, this change means that within these spheres, municipalities generally will no longer be required to look for specific permission to act. As described to us by a municipal official: if the Act (or related Acts) does not specifically prohibit a municipality from taking action, the appropriate course is to apply the natural person powers and assume that the action can be taken. In other words, "*if it doesn't say you can't, assume that you can*" instead of the traditional "*if it doesn't say you can, assume that you can't*".

- The Act makes a clear statement that the role of the Councillor is to focus on the well-being of the municipality as a whole as opposed to the emphasis on Councillors as "ward bosses" more focused on ward-level operational/administrative matters that, as reported to us, exists in some municipalities.

- The Act sets very few limits on how Council may organize administratively and gives it the capacity to use staff more effectively and efficiently and to focus itself more on policy making.

- Consistent with the previous point, the Act has a clearer recognition of the role of Council to make policy and the role of the staff to advise on and

implement policy. This is seen as continuing and reinforcing a shift already underway in many municipalities from more hands-on "managing" Councils to "governing/policy" Councils.

It was interesting to note that in the 1998 draft of the new Act, a number of additional spheres of jurisdiction were proposed. As reported to us, these additional spheres became the subject of intense negotiations between the Ministry of Municipal Affairs and Housing, the municipalities, the business community, and other provincial Ministries. The central issue was whether and to what extent those additional spheres would have put municipalities much more in potential conflict with the interests of the provincial government. This concern was strongly expressed by the business community and other government departments. The proposed solution at the time was to give the Minister of Municipal Affairs and Housing significantly enhanced power to override provisions of the Act.

The issue was resolved in the 2001 legislation by removing the additional spheres of influence and at the same time removing the Minister's significant override powers. This does not mean, however, that the ten spheres of jurisdiction are "cast in stone" for all time. According to AMO officials, there is every possibility that these spheres could be expanded at a future date.

Those who felt the Act contained perhaps more change than is often recognized also suggested that culture and tradition are the major factors in whether and to what extent the impact of these changes is widely acknowledged. In support of this view, the following points were offered:

- The legislation is still very new, having coming into force in January 2003. The sections of the Act dealing with the expanded powers of Councils to act/natural person powers are not generally well understood and municipalities (perhaps particularly in an election year) have not had the time to consider what those changes might mean/how they could be used.

- Historically the courts have played a role in clarifying whether municipalities have accurately interpreted the *Municipal Act, 2001* and thinking along these lines is part of the Ontario municipal tradition. The sections of the Act dealing with expanded Council powers/spheres of jurisdiction will likely have to be taken up and tested by municipalities before they are embraced more broadly and before we know their full impact. This includes the possibility/probability (although no municipality wants to be the first to be challenged, let alone to lose a challenge) of court challenges, most likely from citizens and/or businesses.

- The legal tradition/culture of municipal affairs writ large in the Province of Ontario has been shaped by decades of prescriptive legislation. Councils, staff, and especially legal counsel have been conditioned to look for where the Act specifically says a municipality *can* take a particular action ("*if it doesn't' say you can, assume that you can't*"). The idea of the opposite being the case goes against that prevailing culture and will take time and demonstrated practical experience to change.

- It was suggested to us by a number of interviewees that from time to time, Councils can have a tendency to "hide" behind the view that the Act does not specifically say they can do something as a means of being able to avoid taking action and being able to blame the province for Council's failure to address an issue.

- The province generally refrains from commenting on legal opinions of municipal counsel or from offering legal opinions to municipalities with respect to whether a particular action would be permitted under the Act. At the same time, however, the long-standing practice over time in Ontario is that the provincial government does not step in to challenge municipal legal interpretations of the Act.

What does the Act mean for Governance?

How Councils Organize to Govern

As indicated earlier, the Act gives Councils broad latitude to organize their affairs in any way that they see fit. This includes any number of standing committees, whether policy/program, geographic, or a combination of the two.

In terms of the extent to which Councils can delegate authority to committees and/or staff, municipalities take their direction from the Act as well as common law principles. In both cases, the direction is fairly broad and provides latitude for interpretation.

The *Municipal Act, 2001* provides that Council may delegate to committees and/or staff any matters that are administrative in nature. While the Act does not specifically define "administrative", it does provide direction with respect to what is "non-administrative". The latter includes the power to:

- Pass by-laws.

- Adopt estimates.

- Levy, cancel, reduce or refund taxes.

- Appoint persons to and remove them from offices created by statute.

With respect to common law, two principles appear to be particularly relevant:

- Where express statutory authority exists for such a delegation (as in some of the explicit powers of delegation under the *Planning Act.*)

- Where the power to sub-delegate arises by necessary implication to effect the expressly stated statutory purpose of a municipality, or those

purposes which are compatible with the purposes and objectives of the
enabling statute.

Based on our research, the first principle is generally thought to be clear. It
makes references to other legislation, such as the *Planning Act*, that gives
express authority to Councils to delegate authority for certain planning decisions
to committees of Council and/or administrative staff.

However, the second point is less clear and becomes more problematic when
viewed in combination with the lack of specificity in the Act with respect to what
constitutes an *administrative* matter. In practice, there appears to be
considerable variation across the province in terms of how this second principle
is interpreted in the context of the *Municipal Act, 2001*. As reported to us, the
culture of the legal department has much to do with determining this variation.
For example, some municipalities have interpreted the legislation as allowing
Council to delegate decisions about stop signs, speed bumps, loading zone
designations, etc. to staff. Other municipalities maintain that these are decisions
requiring by-laws and therefore can only be made by Council.

In a subsequent section of this part of our report – looking at how roles and
responsibilities are divided in practice between Councils and their staff – we have
included more discussion of this variation and the factors, beyond just legal
interpretations, that affect this division.

In general, however, Councils can make their own determinations with respect to
how much or how little to delegate and, just as importantly, whether to
concentrate or disperse that delegation.

This last point about concentrating/focusing versus dispersing delegation is very
significant in terms of approaches to/effectiveness of governance models. The

following is a sample list of the types of activities that a municipal Council might decide to delegate:

- Responsibility for developing the budget and recommending that budget to Council.

- Responsibility for developing and recommending the strategic plan to Council.

- Making recommendations to Council re corporate structure, corporate finance, corporate human resources, intergovernmental issues, corporate policy.

- Awarding all contracts.

- Coordinating Committee agendas and workplans.

- Supervising the CAO and senior staff/providing direction to the administration.

- Recommending appointments to agencies, boards, and commissions.

- Submitting proposed by-laws to Council.

- Authorizing the sale or disposition of land.

- Supervising legal services.

- Recommending the appointment of general managers/senior staff.

The *Municipal Act, 2001* allows for considerable variation in how different Councils can approach these activities. Depending on the approach, the result could be a totally different configuration/clarity of governance roles and responsibilities.   For example:

- A Council could decide to keep decision making highly focused/streamlined on Council as policy maker and the CAO as advisor/implementer, for example:

- Not creating any Council committees or when a committee is required, using Council as "committee of the whole".

- Providing direction to the administrative staff only through the CAO.

- Focusing on the role of the staff to make recommendations to Council with respect to budgets, strategic plans, policy, organization, etc.

- Maximizing the amount of actual decision making power to the staff, including awarding contracts, etc.

- Being clear that direction to the staff is provided by Council as a whole through the CAO, and giving the CAO the power to appoint senior staff, supervising legal services.

- A Council could decide to empower an executive committee as its intermediary with administrative staff and as the focus of staff advice and recommendations, e.g. by giving the executive committee the power to:

  - Make recommendations to Council with respect to the budget, strategic plans, policy, organization, etc.

  - Make recommendations to Council re the appointment of the CAO but giving the CAO the power to appoint other senior staff.

  - Provide direction to the senior staff on behalf of Council.

  - Award contracts.

  - Supervise legal services.

.
- A Council could decide to keep some basic responsibilities but broadly disperse recommending and decision making responsibilities to a large number of committees, as well as to senior staff. For example, Council could:

o Retain some activities for itself, e.g. providing direction to the CAO and/or individual department heads on cross-cutting matters, supervising legal services, awarding large contracts, appointing the CAO and other senior staff, etc.

o Give responsibility to various policy/program committees for providing direction to department heads on program specific matters, making recommendations on their part of the budget and strategic plan, proposing program-specific by-laws and appointments, etc.

o Give the CAO responsibility for coordinating the activities of the senior staff and ensuring that Council decisions are implemented.

o Give staff responsibility for smaller contract awards, operational decision making, etc.

As demonstrated above, one can progressively move from structurally simple, very streamlined approaches to much more complex/complicated structures and decision making processes.

The "Real" Power of the Head of Council/Mayor

While the governance model countenanced under the Ontario *Municipal Act, 2001* is one of "weak Mayor/strong Council", this does not mean the Mayor has to be powerless, other than for chairing Council meetings and signing bylaws. In fact, under the Ontario model, it is possible to have a very "strong" Mayor (albeit falling short of the statutory chief executive powers provided under the U.S. strong Mayor model).

A more powerful Mayor in the Ontario model can be achieved in two ways.

The first way is through the individual characteristics/capabilities of the Mayor her/himself. This includes their own:

- Leadership abilities and force of personality.

- Political will and ability to negotiate/build consensus and capacity to create coalitions within Council.

- The ability to communicate with the public.

- Political/public popularity.

- Understanding of the role of Mayor, Council, and the administrative staff, including their respect for the latter's professional role.

- Capacity to create a compelling vision for the City and to market that vision to the public and Council.

- Personal approach to building a positive Council culture, establishing and maintaining decorum and professional conduct, etc.

The most commonly referred to example in our interviews of a strong Mayor along these lines was Hazel McCallion of the City of Mississauga. Mayor McCallion is perceived to be very effective in all of the categories identified above and as a result is seen as being a very powerful Mayor, not withstanding the relatively weak powers conferred upon her by the *Municipal Act, 2001*.

The second way is by an explicit decision of Council that governance is made more effective by the Mayor having more powers than just those conferred by the Act, to the extent these additional powers can be conferred by Council through by-law. Most often, these are powers of recommendation as opposed to actual decision making. For example:

- The power to recommend:

  o The chairs of one or more committees.

- o Some or all of the members of one or more committees.

- o The appointment of the CAO/senior staff.

- o A budget and/or a strategic plan.

- The role of chair of an executive committee, with that committee being responsible for recommending the budget, strategic plan, and major policies to Council, supervising senior staff on behalf of Council, etc.

As noted above, these are powers that expand the influence of the Mayor, as opposed to the Mayor's independent/statutory powers. However, interviewees suggested that these kinds of powers, in combination with the kinds of more personal qualities detailed above can result in a very strong Mayor not withstanding his/her rather limited powers under the *Municipal Act, 2001*.

Roles and Responsibilities of Council and Staff

As suggested earlier, the Act is not highly explicit in terms of the details of the division of roles and responsibilities between Council and administrative staff. However, the description of Council and staff responsibilities in this regard is generally viewed as providing for a "governing vs. managing" split as follows using the language of the Act:

- Council's role to make decisions, with staff being responsible to provide advice.

- Council's responsibility to ensure that procedures are in place to implement its decisions, with staff being responsible for actual implementation.

- Council's power to delegate administrative responsibilities, with staff being responsible for performing those responsibilities.

Other than this high level terminology, further definition is not offered. To make matters more complicated, the literature and interviews indicate that this emphasis on Council as a policy making, rather than managing/operating body, is a direction that has been evolving in Ontario municipal affairs over time. However, the historical tradition in Ontario as presented in the literature and in interviews is one of more, rather than less, "hands-on" Councils, with a wide range of variations from municipality to municipality.

As described in the literature and in a number of interviews, the language of the new *Municipal Act, 2001* makes this direction much more explicit. The current literature on municipal governance generally points to this direction as providing for superior governance and as a best practice for municipalities to follow. There is evidence that a well-developed body of advice, training, and interpretation exists through organizations such as the Association of Municipalities of Ontario and Municipal World that would give more detailed guidance to municipalities in this respect.

At the end of the day, however, it is left to each Council to determine the extent to which they are prepared to define what they mean by policy making vs. managing, operating, implementing, etc. and whether and to what extent they are prepared to rely on staff advice in these areas. The literature and our interviews point to a number of factors – less related to the *Municipal Act, 2001* and more related to politics and culture – that influence municipalities in this regard, some of which have already been discussed:

- The culture and tradition of Council and the personal experience, knowledge, and views of Councillors with respect to the appropriate breakout of roles and responsibilities of politicians relative to the staff, including whether and to what extent a Mayor sees her/himself as the *administrative*, rather than more exclusively the *political* leader of the municipality.

- The relative value a Council places on streamlined Council decision making versus more participatory approaches.

- The reported strong emphasis in municipal government on very local matters, e.g. stop signs, garbage pickup, etc. and the extent to which the public understands the division of roles and responsibilities as set out in the Act. This include where the public expects that their individual Ward Councillors will be able to instruct/give direction to staff, particularly on operational matters.

- The extent to which the desired delineation of roles and responsibilities has been discussed and articulated in terms of practical, day-to-day behaviour and the extent to which this is supported/endorsed by Councillors and staff, and embedded in the operating culture of the municipality, including ongoing training and sanctions.

- The level of trust that Council has in the administrative staff and particularly in the senior administrative staff and its comfort level in terms of empowering staff.

- The extent to which Councils are comfortable with stepping beyond traditional interpretations of the Act, including the likely level of citizen/business/media scrutiny to which a Council feels its decision will be subject.

- The culture of the legal department in terms of narrow versus more expansive interpretations of the Act and its own views about how best to interpret the *Municipal Act, 2001*.

What about Super Majorities?

Super majorities – the practice of requiring more than a simple majority to overturn a recommendation to Council either from staff or a committee – have not generally been part of the Ontario municipal affairs landscape. The practice

was permitted until the mid-1970's specifically for the City of London's Board of Control (Council required a 2/3rd majority to overturn Board of Control recommendations). However, this power was eliminated at the request of London City Council. The Council had been opposed to this practice because it felt that it gave too much power to the Board and the resulting tension between Council and the Board was creating an increasingly dysfunctional relationship. However, London continues to have an elected-at-large Board of Control the recommendations of which require a simple majority on the part of Council to overturn. In actual practice, the bulk of Board recommendations are usually strongly supported in terms of votes by London City Council.

At present, the *Municipal Act, 2001* focuses on a simple majority approach to Council voting (50 percent plus one vote). This applies to all Council votes, including:

- Decisions that Council is not allowed, under the *Municipal Act, 2001* (or other Acts such as the City of Toronto Act, Planning Act, etc.) to delegate.

- Decisions that a Council could, in fact, delegate but for various reasons has chosen not to.

This would preclude a Council from taking incremental steps to streamline decision-making by deciding that a 2/3rds majority vote would be required to overturn the recommendation it receives from a committee or staff for matters that it could otherwise delegate but has chosen not to. It also places the focus of debate more squarely on the issue of the extent to which a Council is prepared to delegate decision making.

Other Limitations in the *Municipal Act, 2001*

Much of the popular debate with respect to municipal governance focuses on other limitations in the *Municipal Act, 2001* that we do not question make

planning, decision making, and managing at the municipal level more challenging. However, we would suggest that these are more properly viewed as public policy limitations rather than governance challenges. These limitations are primarily financial in nature and reflect a provincial policy decision to retain substantial control at the provincial level over taxation, particularly of the business community.

From this perspective, the basic elements of good governance (clear direction, clear roles and responsibilities, effective decision-making, etc.) are not contingent on, for example, whether an organization's funding is adequate to meet real or perceived needs. This would hold true regardless of whether that organization is a level of government, a non-profit agency, or a private sector corporation. In this category we would include:

- The requirement to have a balanced budget each year.

- Limits on municipal revenue generation to property taxes, user fees, and licence charges.

- The capacity to raise money only by way of debentures/short term debt.

- The ability to secure debt/use the underlying value of existing assets to finance new infrastructure.

- Limits on the capacity of municipalities to create the kind of corporations that would be necessary to facilitate public-private service delivery/infrastructure investment partnerships.

Part 5

Conclusion

In this paper, we have provided an overview of the major approaches to political governance and senior administrative structures, as described in the literature and based on interviews. We have attempted to provide factual information about each of these models, as well as analysis of whether and to what extent one model is better/more effective than another. Finally, we have provided an overview of the governance provisions of the new Ontario *Municipal Act, 2001*, including a discussion of what is new about this Act and how these new features affect governance.

The Models

As noted, the literature points to a relatively small number of basic conceptual or theoretical models for political governance of municipalities and for the structure of the relationship between the political level and senior administrative staff. These basic models set the stage for the wide range of variations that exist in practice across municipalities in Ontario, across Canada, and abroad.

The models for political governance are usually characterized at the highest level in terms of the statutory powers vested in the Mayor. The two most common characterizations are "strong Mayor" and "weak Mayor", referring to the statutory powers of the Mayor relative to Council and the administration. The models for administrative structures involve variations on the theme of a single accountable head of the administration or small group of senior administrative officials with a more or less clear separation of policy and operational responsibilities.

Preconditions

In terms of whether one model is better/more effective than another, it is apparent from the literature and our interviews, that each of the models can provide for effective political governance if:

- Certain preconditions exist or can be created.

- The model can be implemented/adapted in a way that is consistent with a particular jurisdiction's cultural context (including history/tradition, political culture, civic culture, etc.)

- Adaptations are geared to the actual obstacles – both real and perceived – that prevent a particular jurisdiction from achieving effective political governance.

In this mix of factors, the preconditions are particularly important, including the following:

- Strong political leadership.

- An effective Mayor/head of Council.

- Clear roles and responsibilities.

- Excellence in public service/confidence in the public service.

- Respect and professionalism.

- Reinforcing culture with embedded rewards and sanctions.

Most of the preconditions have at their core what we have defined as the essential and less tangible elements of leadership, culture, values, and behaviour in both individual and collective terms. As often expressed by organizational experts, this suggests that with the right leadership, culture, values, and behaviour, any basic structure can be made to work.

The New Ontario *Municipal Act, 2001*

The *Municipal Act, 2001* provides for the basic elements of a Strong Council/Weak Mayor model of political governance across the province. The expert assessment of whether the Act in fact represents a significant new direction is mixed, with two predominant schools of thought:

- That the Act does provide municipalities with more authority and flexibility. However, the Act is also very new, the culture of the previous more prescriptive legislation is very ingrained among many municipal officials (including Councillors, municipal lawyers, and administrative staff), and it will take some time before the new Act is better understood.

- That the new Act is not significantly different than the previous legislation in that it continues to be highly prescriptive in nature, and that municipalities continue to lack many of the key powers they require to manage effectively.

All indications are that the new Act was intended by the provincial government to be a change in the general legal basis for municipal authority (through natural person powers and the ten spheres of jurisdiction). Whether and to what extent this change is significant continues to be vigorously debated. The conclusion reached by a number of observers is that the more prescriptive nature of the previous Act has resulted over time in a well-entrenched culture in the municipal sector that continues to focus on "if the Act doesn't explicitly say you can, assume that you can't". If this conclusion is true, it is apparent that this relatively new piece of legislation needs time to be explored and tested and in order to be fully utilized may require a change in prevailing administrative and legal perspectives and attitudes.

With respect to governance, the Act provides municipalities with a large measure of flexibility with respect to how they organize and delegate authority, albeit within certain overall limitations. This means that Councils in Ontario already have the authority to replicate many of the features of the different models. For example:

- A Mayor with more extensive delegated powers, an empowered executive committee to provide strategic leadership, etc.

- A Council with no committees that focuses on policy decision making and extensive empowerment of administrative staff.

- A Council that has dispersed its authority very broadly between and among all of the actors – Mayor, Council, Committees, and senior staff.

Appendix A

Roles/Duties under the *Municipal Act, 2001*

The roles of the head of Council, Council, and administrative staff are defined at a very high level in the legislation.

Head of Council

Under the *Municipal Act, 2001*, Mayors/heads of Council of lower tier municipalities are required to be elected at large by a general vote. Upper tier municipalities have the option to appoint their head of Council from among the Council members.

The role of the head of Council is described in general terms under the *Municipal Act, 2001* as follows*:*

- To act as chief executive officer of the municipality.

- To preside over Council meetings.

- To provide leadership to the Council.

- To represent the municipality at official functions.

- To carry out the duties of the head of Council under this or any other Act.

In addition to the above *roles*, the legislation makes reference to two specific *duties*:

- Presiding over all meetings of Council; and

- Signing all by-laws, together with the City Clerk, passed at meetings at which the Mayor presided.

The specific powers provided to the head of Council including the following:

- Calling a special meeting of Council.

- Expelling any person for improper conduct at a meeting.

- Proclaiming a civic holiday for the purposes of requiring retail business closings.

- Acting as a commissioner for taking affidavits (as may any member of Council).

- Appointing guards with the powers of peace officers for public works and municipal buildings.

- Exercising the following in the case of an emergency:

  o Declare that an emergency exists in the municipality or in any part thereof;

  o Take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area; and

  o Declare that an emergency has terminated

The view is expressed in the literature that the job of head of Council is actually simpler under the new Act. The new Act does not talk about "duties", but rather about "roles". In addition, some duties from the former *Municipal Act* are not included in the new Act:

- The duty to be vigilant and active in causing the laws for the government of the municipality to be duly executed and obeyed.

- The duty to communicate information and recommend measures to improve the finances, health, security, cleanliness, comfort, and ornament of the municipality.

The role of head of Council/Mayor as chief executive officer is not spelled out in detail in the legislation but is viewed in the literature as relating to that individual's role to supervise the senior administrative staff. This is further clarified in the Act with respect to the discussion of roles of officers and employees and their accountability to Council, thus making it clearer that the Mayor's supervisory role is on behalf of Council (although not necessarily to the exclusion of Council or it's committees from providing direction to staff) and by implication that the Mayor and Council need to be closely connected in this regard.

Under the *Municipal Act, 2001,* Council may, by by-law or resolution, appoint another member of Council to act in the place of the Mayor when the Mayor is absent or refuses to act, or the office is vacant. In such cases, the Acting Mayor has all the powers and duties of the Mayor. Also, Council may, with the consent of the Mayor, appoint another member of Council to act in the place of the Mayor on any body of which the Mayor is a member ex officio (e.g. the Police Services Board in the case of Toronto).

Council

As defined at a high level in the *Municipal Act, 2001*, Council's role is the following:

- To represent the public and to consider the well-being and interests of the municipality.

- To develop and evaluate the policies and programs of the municipality.

- To determine which services the municipality provides.

- To ensure that administrative practices are in place to implement the decisions of Council.

- To maintain the financial integrity of the municipality.

- To carry out the duties of Council under the *Municipal Act, 2001* and other Acts.

Within Ontario's overall "weak Mayor/strong Council" model, almost all authority stems from the Council. As part of this, Councils have the general authority to determine how they will govern. This includes:

- Whether and to what extent to establish standing committees and the focus of those standing committees (policy/program, geography, etc.).

- The type of administrative structure to put in place (CAO, Commissioners, etc.) subject to the givens identified earlier. In their legislative role, Councillors are responsible for deliberating and establishing policies and by-laws in order to implement Council's decisions.

- The extent to which it will delegate its authority: either to the head of Council, various standing committees, or administrative staff, subject to the delegation provisions of the *Municipal Act, 2001* and other relevant pieces of legislation such as the *Planning Act*.

Role of the Administration

In broad terms, the Act establishes the following as the role of the Administrative officers and employees of the municipality:

- To implement Council's decisions and establish administrative practices and procedures to carry out Council's decisions.

- To undertake research and provide advice to Council on the policies and programs of the municipality.

- To carry out other duties required by the Act or any other duties assigned by the municipality.

As noted earlier, Councils have the option to appoint a Chief Administrative Officer with very general responsibilities defined in the Act as follows:

- Exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality.

- Performing such other duties as are assigned by the municipality.

Appendix B

Ministry of Municipal Affairs and Housing Description of the New *Municipal Act, 2001*

The New *Municipal Act, 2001*

A new *Municipal Act, 2001*, which went into effect on January 1, 2003, will be the cornerstone of a new, stronger provincial-municipal relationship.

Passed by the Legislature in December 2001, the new *Municipal Act, 2001* is modern and streamlined. It gives municipalities a broad new flexibility to deal with local circumstances, and to react quickly to local economic, environmental or social changes. The new Act is the product of extensive consultation and hard work with municipal and business groups to find the right balance between municipal flexibility and strong accountability to taxpayers.

The new *Municipal Act, 2001* includes a number of amendments on technical or operational matters that will improve the Act's clarity or its ability to meet its overall objectives.

The new *Municipal Act, 2001* also recognizes the importance of ongoing consultation with municipalities on matters of mutual interest. The Ministry has signed a new memorandum of understanding with the Association of Municipalities of Ontario with respect to consultation.

- Two specific provisions in the *Municipal Act, 2001* establish a new framework for provincial-municipal relations:
- Municipalities are acknowledged as responsible and accountable governments and their purposes are broadly defined

The new Act endorses the principle of ongoing consultation between the province and municipalities on matters of mutual interest. This has led to the development of a Memorandum of Understanding signed by the Minister of Municipal Affairs and Housing and the President of the Association of Municipalities of Ontario

A new approach

The old *Municipal Act, 2001* was a detailed, prescriptive statute that allowed municipalities to do only what was specifically set out in its provisions. Whenever municipalities wanted to undertake new activities, amendments were needed to provide for the change in roles.

The new *Municipal Act, 2001* gives municipalities greater flexibility to organize their affairs and deliver services. Among other benefits, the new Act:

- Enables municipalities to undertake new activities within their spheres of responsibility without the need for time-consuming legislative changes

- Is a more understandable and user-friendly statute, in which related matters are streamlined, up-dated and grouped together. Some 1,100 pages of legislation governing municipalities have been reduced to just over 300

- Consolidates in a single Act provisions from some 30 other pieces of legislation, including acts for individual regional municipalities

The change in approach from prescription to greater flexibility is largely accomplished through the use of three key concepts:

- Natural person powers

- Spheres of jurisdiction

- Governmental powers

Natural person powers

Natural person powers give Councils much the same authority and flexibility as individuals and corporations have to manage their organizational and administrative affairs. Generally, these powers will enable municipalities – without the need for specific legislative authority – to hire staff, enter into agreements and acquire land and equipment, etc. This single provision in the new Act replaces the numerous specific and prescriptive provisions about administrative matters found in the old Act.

Spheres of jurisdiction

Spheres of jurisdiction are general grants of authority in ten service delivery areas. The ten spheres are:

- Public utilities

- Waste management

- Highways (public roads), including parking and traffic on highways

- Transportation systems other than highways

- Culture, parks, recreation and heritage

- Drainage and flood control, except storm sewers

- Structures, including fences and signs

- Parking except on highways

- Animals

- Economic development services

The value of the spheres is that they:

- Encompass specific powers in the old Act falling under the above categories
- Enable new activities within the sphere, without the need for legislative change.

For matters falling under the spheres, municipal staff will not have to begin with specific legislative provisions as justification for Council's actions. In most instances, they will be able to point to the sphere as the basis for municipal authority.

Specific municipal powers

Not all service delivery powers are captured under the spheres of jurisdiction. Part III of the new Act is devoted to specific municipal powers falling into two main categories:

- **Specific powers associated with spheres**, dealing with process requirements and relationships between upper and lower-tier municipal governments. These include provisions for designating boundary roads, procedures for road closings, powers of entry, notices and fines.

- **Specific powers not associated with spheres**, including provisions in three topic areas – health, safety, well-being and protection of persons and property; nuisances; and the natural environment. Because of the potential for duplication between provincial and municipal governments and over-regulation of ratepayers and businesses, these areas were not designated as spheres in the new Act. However, the provisions have been substantially streamlined and modernized, compared to the manner in which they are set out in the old Act.

Many archaic provisions have been discontinued. Others have been transferred to more appropriate Acts –- for example, the fire provisions of the old Act will form part of the *Fire Protection and Prevention Act*, administered by the Ministry of Community Safety and Correctional Services.

Governmental powers

In the old Act, the provisions that entitle municipalities and local boards to act as law-making bodies are scattered throughout the statute. As with the natural person powers, many of these governmental powers - including authority for municipalities to regulate and prohibit, and to oblige individuals to take certain actions - are consolidated in the new Act.

Limits

Another feature of the new Act is its spelling out of explicit limits. The old Act is inherently limiting because the basic approach is to only enable municipalities to do what is specifically stated. The flexible approach of the new Act means that certain restrictions need to be set out explicitly. Some of the restrictions, reflecting current common-law and provincial government policy, are:

- Municipal by-laws cannot conflict with federal or provincial statutes;

- Spheres may be subject to procedural requirements and other limitations existing in other statutes;

- Under six of the spheres, municipalities are prohibited from regulating non-municipal systems;

- Municipalities in two-tier systems are prohibited from regulating activities of the other tier which are authorized under the spheres;

- Neither the spheres nor the natural person powers authorize municipalities to undertake certain corporate and financial actions such as

imposing taxes, fees or charges or incurring debts and making investments - municipal authority for those activities is set out elsewhere in the Act; and

- Municipalities can only exercise their powers inside their own boundaries, with some exceptions.

Finance matters

The new Act's treatment of the financial provisions remains detailed, although it has been streamlined and modernized.

Other new features

Several significant powers in the *Municipal Act, 2001* are entirely new. Most importantly:

- Municipalities will be able to establish corporations for municipal purposes, subject to regulation. This is intended to facilitate public-private partnerships for the delivery of services

- Municipalities will be able to collect tolls for vehicles using their roads, subject to regulation

- Councils will be able to establish and appoint municipal service boards to provide services under five spheres of jurisdiction - public utilities; waste management; transportation systems other than highways; culture, parks, recreation and heritage; and parking, except on highways - and in other service areas as prescribed by the Minister of Municipal Affairs and Housing. This will offer enhanced flexibility for administration and governance, including joint service provision by two or more municipalities.

Accountability

The increased municipal flexibility in the *Municipal Act, 2001* is balanced by a strong accountability framework, including existing and new requirements. The new Act makes municipalities more accountable to taxpayers for their hiring and purchasing practices. It imposes new requirements on municipalities with respect to regulating business and imposing user fees. It also requires municipalities to publicly disclose improvements in service delivery.

To keep the statute relevant and updated, the new Act requires review on a regular basis. The first review is to start by the end of 2007 and thereafter within five years of the end of the previous review.