

POLICY SERIES



Creating proper incentives for Canada's cities through smart provincial legislation

A best-practice model of local government legislation for Canada

By Larry N. Mitchell, C.A.

About the Author



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The Frontier Centre for Public Policy is an independent, non-profit organization that undertakes research and education in support of economic growth and social outcomes that will enhance the quality of life in our communities. Through a variety of publications and public forums, the Centre explores policy innovations required to make the prairies region a winner in the open economy. It also provides new insights into solving important issues facing our cities, towns and provinces. These include improving the performance of public expenditures in important areas like local government, education, health and social policy. The author of this study has worked independently and the opinions expressed are therefore their own, and do not necessarily reflect the opinions of the board of the Frontier Centre for Public Policy.

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Feedback

All opportunities to amend, correct and improve future editions of this study are encouraged. The author can be e-mailed at larry@kauriglen.co.nz.

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Executive Summary

Recent research conducted by the Frontier Centre for Public Policy has established that Canadian local government is controlled by outdated legislation.

It is clear from the evidence that:

- Canadian local government law is unsuited to modern conditions of life and;
- the law does not ensure cost-efficient delivery of the complex range of municipal services that are currently demanded.

The Canadian problem

Canadian municipal law is characterized by its prescriptive rules-based codes of compliance. These contrast starkly with other jurisdiction's local government law.

Modern local government laws of other countries:

- seek to facilitate best-management practice by setting outcomes rather than rules;
- they construct a performance and service-delivery framework designed to effectively and efficiently meet the needs of local taxpayers and residents.

Good local government law promotes good local government.

Modern management practices, when incorporated into practically based laws that govern local government behaviour, will invariably include current best-practice asset and financial management coupled with democratic decision-making processes.

Practical legal provisions that incorporate best-management practices into the law can directly influence local government and will achieve the following:

- Better performing local government that will contribute to the economic, social, cultural and environmental state of the nation;
- Economic gains in particular will flow from the reform of the present antiquated Canadian local government law.

Municipal management will rarely of its own volition set performance targets that reach optimal outcomes. To achieve best practice and optimal municipal performance, suitable law that sets performance objectives and that is supported by rigorous audit processes has to be put in place.

Benefits of a new Local Government Act for Canada

Municipal managers mandated to perform to measurable targets can utilize all available best-practice methods to deliver the most cost-effective services. Taxpayer and resident satisfaction will improve as will local government's contribution to both local and national economic and other goals.

Asset-management regimes, principally those of the engineering and financial disciplines, are amongst the most significant of municipal activities and stand to benefit greatly from law reform. Infrastructure assets are the publicly owned network facilities and systems that contribute to local and national economic activity. For optimal results, these assets need to be properly deployed and maintained. This can only occur if the legal framework of municipal operations is specifically designed to mandate best-practice asset management as measured by performance-based systems.

Present Canadian law makes scant reference to the use of modern management practices including the engineering and financial accounting dimensions of asset management. Local government performance is diminished as a result.

The disturbing infrastructure asset-maintenance deficit within the Canadian economy is not being fully addressed, as municipalities are not required by law to deal properly with these issues. A model for the achievement of better local government is needed.

A New Zealand model Local Government Act

Modern local government legislation that is best suited to Canadian conditions exists within the New Zealand *Local Government Act 2002*. This legislation is the product of extensive public sector reforms that commenced in the late 80s.

The New Zealand *Act* provides for the following:

- It sets local government outcomes that can be achieved within practically based best-practice management processes;
- These include asset and financial long-term planning, consultative process and democratic decision-making;
- All of these processes are constructed to comply with good local government principles of transparency, accountability and the separation of operational and policy activities.

The result of this approach is a municipal form of a performance-based framework, one that motivates highly skilled modern management to make better decisions and to achieve better outcomes.

In practical terms, one important effect of the better law has been the accurate measurement and full funding of optimized asset-management plans. Such plans

directly address asset capital and renewal and maintenance requirements including asset-maintenance deficit issues.

Another effect has been the recruitment of highly trained managers at all levels. These people are attracted to fulfilling careers in a local government that uses many modern management techniques. They are further stimulated by the incentives provided by performance-based pay.

Recommendations

Canada would do well to adopt much of New Zealand's local government legislation. This adoption would have the following results:

- It would improve local government performance. There is no argument that improvements are necessary, as Canadian municipalities score poorly when measured on a number of international performance scales;
- The national economy would benefit directly from local government law reform. Much of the economy's vital arterial economic lines of production and supply, the nation's roads and the water and waste-water systems, are owned and managed by the municipalities.

The culture change and improved standards of management performance that would occur with the change of law will give rise to positive benefits for local taxpayers and residents. The productive and supportive liaison between communities and their local municipalities, based on New Zealand experience, will be significantly enhanced. Good public information can be supplied and consultative processes that lead to improved decision-making can be conducted within a better-balanced dialogue that caters to citizens' information needs.

Provincial legislatures set Canadian local government law, and it is provincial legislators that must act:

- Federal support for local provincial government law reform could be an impetus for change for the provinces. This might take the form of linking federal infrastructure funding to the required improvements in law;
- The benefits of reform could be enormous.

A ready-to-run model, the New Zealand *Local Government Act*, already exists. This paper concludes that many relevant sections of the New Zealand Act should be

incorporated into Canadian municipal law.

Significant savings in legal and other costs can be realized by adopting this model, which was developed only after negotiating many difficult blind alleys and pitfalls. The learning curve has now been established and traps for the unwary may be avoided. Canadian local government policymakers, lawmakers and the municipal sector can benefit from this hard-earned experience.

If the performance of Canadian local government is to be improved, then the New Zealand model *Local Government Act 2002* could well be the blueprint.

The culture change and improved standards of management performance that would occur with the change of law will give rise to positive benefits for local taxpayers and residents.

Part I: Introduction

Local government law affects municipal performance

The law of local government is the foundation for all that municipalities do. Any value to be derived from organizational improvements to local government performance therefore is dependent upon the structure and ethos of the laws that govern municipalities' actions including their managerial behaviour.

Unlike private firms, municipal public sector managers and their elected officials must look to the law that governs their actions, for the law is their authorization to act. Private firm managers though operate under much less constraint. They are free to use discretion when selecting areas of operations and the manner in which they and their organizations behave. A private firm's operational framework that includes a profit motive provides incentives for their actions and drives firm performance.

If municipal managers are expected to improve the performance of their organizations within an operational context that lacks profit motivation, they must first be provided with the correct legal basis for a mandated performance-based framework.

If municipal law pays little or no attention to municipal performance, then managerial behaviour will reflect this. Poor performance will be exhibited by a lack of interest with little motivation to do things better. Municipal law that provides an appropriate framework for performance improvement can produce superior results from municipal organizations and their managers.

This paper sets out to describe a suitable performance regime for local government.

It makes comparisons between Canadian and New Zealand legal-performance models. Canada's municipal law is largely devoid of performance-based provisions; New Zealand's are the opposite. Based on three propositions, Canadian local government can benefit from the New Zealand experience:

- Good local government law is fundamental to the performance improvement of municipalities;
- There is a best-practice model of local government law that will influence the development and delivery of good local government;
- The New Zealand *Local Government Act 2002*¹ is a best-practice model act suited for adoption by Canadian provincial legislatures within their municipal legislative charters.

Some history

Looming large in the contemporary history of many Western democracies² are local government sector reforms. These began with reforms of the sector's law, a great deal of which had remained largely unchanged since the Victorian era. By the late 1980s in the United Kingdom and Australasia, a new approach was proposed. This was considered necessary for the conduct of modern life and vital for addressing a need to improve municipal performance.

Recent local government law reform arose from a recognition that the construction and expression of earlier legislation

was far from ideal; in fact, it was often unhelpful in meeting the conditions of modern life, including the promotion of economic activity.

The widespread local government legal reforms of Western democracies over the last 20 years were designed to modernize and liberalize local government legislation. This process has yet to reach Canada in any substantial form.³

Earlier antiquated municipal laws were oppressively prescriptive. They were largely regulatory and rule-driven. More effective, efficient and sustainable policies with managerially designed mechanisms and tools of service delivery were needed. These had to be set within appropriate legal contexts.

New Zealand's municipal law-reform process began with the 1989 *Local Government Act*. This was followed more recently by new, comprehensive legislation enacted in 2002. The process was part of much broader and well-publicized public sector-wide structural governance and legal reform.⁴ Local government best-practice policies are now mandated by law. A performance-improvement framework is incorporated into this model.

The principles... designed to provide service delivery that would meet the complex, numerous goals of twenty-first century life...

Principles

Improved performance including better service-delivery mechanisms were provided by the New Zealand 1989 and 2002 *Local Government Acts*. These included providing the means to improve the way municipalities behave. The new municipal laws focused upon the following:

- The performance of the separate roles of governance and operational management;
- Setting broad-based objectives according to citizens' expectations;
- Assisting in a municipality's duty to improve its performance;
- Conducting municipal business in a more transparent and democratic fashion.

Legal provisions leading to the implementation of these principles were seen as the key to making well-rounded performance improvements that covered all municipal activities. The principles were implemented within the law and were designed to provide service delivery that would meet the complex, numerous goals of twenty-first century life coupled with improved local government performance.

The most important aspect of this process was the development of suitable municipal laws that created a comprehensive performance framework, an environment in which local government could operate effectively and efficiently. Lacking the disciplines of private sector operations, local government emulation of these was achieved through the adoption of best practices from all sources contributing to an improved municipal performance framework.

Premises

This paper is based on the premise that local government performance will be improved if it is guided by legislation that influences managerial behaviour. The limited scope of this study does not allow for a wide-ranging justification of this; that is for example, the part that the law's renewal process will play in achieving better behaviour or of its assumed positive effects upon municipal performance.

It would be rare to discover any serious disagreement with the view that the conduct of today's complexities of life could have been productively pursued and goals set for higher municipal performance within the old, narrow, rules-based restrictive codes of practice and municipal law designed to cater to nineteenth-century society.

After all, Victorian England, the source of original local government law, conducted its civic affairs very differently at a time when citizens' rights and expectations were much more proscribed than they are now. Changes to the old law are seen as essential to improving municipal performance.

From a theoretical standpoint, this paper does not attempt any detailed validation or proof of, for example, the economic benefits to be derived from local government law reforms. Instead, a context or a frame of reference is set whereby consideration of these postulated benefits can be assessed. The study describes the most important factors that produced the overall benefits gained largely through municipal law reform. For example, when the law's introductory purpose clause includes such requirements as improved effectiveness and efficiency, it is safe to assume that economic and other benefits were intended to be delivered.

Similarly recent outstanding performance

results from some New Zealand councils ("council" is the New Zealand equivalent of "municipality") competing within Quality Management and Business Excellence programs would have been unlikely without the support of the performance structure provided by the 2002 legislation.

New Zealand public opinion and steadily improving citizen satisfaction-survey results leave no doubt. Modern New Zealand municipalities are providing greater benefits to citizens. Higher performing municipalities are operating within a performance culture that is promoted by good local government law.

The Frontier Centre's position

The examination by this paper of municipal performance improvement accords with the Frontier Centre for Public Policy's campaign for higher performing government. The principles involved apply fully to the subject—the need for improving Canadian local government performance. These are stated by Frontier as follows:

- The Frontier Centre continues to seek better performance from the public sector. Certain fundamental criteria are seen as essential;⁵
- "High-Performance Government—Creating smarter and more effective public services and institutions based on the principles of transparency, neutrality and separating elected officials from day-to-day operations; government as a purchaser, not provider of services."

As a prescription for the New Zealand *Local Government Act* and as suggested in this study as a model for Canada to adopt, the Frontier Centre's exposition of criteria is a perfect fit. The Frontier criteria coincide with the thrust of recent local government law reforms undertaken in New Zealand.

This is particularly true of transparency, neutrality and separation, all of which are now an integral part of New Zealand law. These criteria are obvious from a review of the *Act* contained in Part V of this study. They are axioms of good policy and are clearly stated as such within the provisions of the New Zealand *Act*, often using similar terminology. They appear in the *Act's* "Principles and Purposes" sections, and they are the very foundations of New Zealand local government law.

With respect to the government acting as a purchaser separate from the role of provider, though not explicitly stated in the *Act*, nonetheless as a paradigm, this relationship has become a tenet of good practice for all New Zealand public sector entities including municipalities.⁶ The purchaser-provider split is now ubiquitous over all of the New Zealand public sector because of the structural and legal reforms that were incorporated into the 1986-1987 New Zealand *Public Sector* and *Public Finance Acts*.

Practical steps and examples

The New Zealand legislation of 2002 is proposed as a model for adoption by Canadian local government. To assist with an evaluation of this model, relevant local government law provisions, many at the heart of the reforms, were taken from the New Zealand *Local Government Act*.

These are reviewed in Part V of this paper. This is intended to comprise an accessible list of improvements to existing Canadian provincial legislation. The list is designed so that each provincial legislature can consider its applicability and desirability. All of the provisions represent current best practice irrespective of any local Canadian variants.

The benefits arising from these improvements cannot be readily quantified. Given

a dispassionate consideration, their overall positive value and merit will be evident when contrasted with outdated municipal codes. For example, more pedantic, outdated legal rules are replaced by performance-driven principles. Prohibitions are replaced by the use of best-practice-based managerial judgments that are exercised within a more permissive context. Such legal constructs provide a performance-based framework much more in tune with current public policy positions that are suited to and capable of facilitating municipal affairs.

Local variations

Not all local governments the world over are the same. There are significant variations in the legal environments for the conduct of local government. The law must reflect these differences.

For instance, one hugely influential structural factor distinguishing differing kinds of local government is their varying sources of funding. Sources of centralized local government funding (often portrayed as the United Kingdom model) can be contrasted with regional, community-based, truly local funding of government (the New Zealand model). Such funding arrangements become a major determinant of how local government law should be structured. In general, centralized funding will often demand a more rules-based performance model. This will include a full monitoring, reporting and accounting for use of grants and subsidies provided from central government taxation and other sources

New Zealand local government is almost exclusively (about 85 per cent) funded from local sources, and its legislation reflects this.⁷ Because of the wide variation of funding sources within different jurisdictions, it is left to the reader to

draw his or her own conclusion about the individual or overall application and merit of the New Zealand reforms according to the jurisdictional circumstances.

The principles of good law and local government will remain unaffected although some more-detailed, largely compliance rules-provisions will reflect these differences.

Each Canadian provincial jurisdiction has its own autonomous legal context. Each province develops provincially sponsored local government law that is suited to its environment. Given such local influences, considered judgment of the applicability of the suggested list of improvements to their local government laws must be conducted separately as Canadian provincial circumstances determine.

The a priori evidence

Justification for the presumption that good local government law directly affects municipal performance is primarily derived from an experiential a priori base of New Zealand local government sector law reforms of the past 20 or more years. There has been little choice in this matter. Evidence to support such a presumption, such as a direct link to the metrics of performance improvement that are clearly attributable to the reforms, does not exist.⁸ A before picture was not established, so post hoc quantitative analysis cannot be attempted.⁹

The absence of such clear evidence is not uncommon. For instance, the vexing questions arising from attempts to measure the benefits derived from local government amalgamation are often incapable of evidence-based assessment. This has not prevented the pundits from venturing a variety of opinions on the subject.

Each standpoint suffers, as does much of the proffered analysis, from a lack of the before and after pictures expressed in reliable quantitative terms.

The a priori inferences drawn for the evidence of this paper are however compelling if not conclusive. Asking a simple question related to the model legal context of "Did it work?" was used to test opinions where they have been expressed. In the majority of cases, the answer was "Yes!" The basis for this answer is an assessment of perceived benefits flowing from law change. These include such evidence as:

- improved citizen-satisfaction levels;
- implementation by New Zealand municipalities of continual improvement performance models;
- better information and accountability.

Where a process or practice has not worked, there still arise benefits from such mistakes contributing to a learning curve. This of itself is useful for spotting the blind alleys and learning-curve lessons arising from previous mistakes.

Many of the opinions in this paper were developed by working with local governments, principally in New Zealand and abroad. Observations of New Zealand municipalities' performance-management practice, though in places a mixed bag of good and less good experiences, has been positive overall. Many of these results, good and bad,¹⁰ are clearly attributable to the 1989 to 2002 local government law reforms.

Some errors amounting to blind alleys would not have occurred but for the new law. The mistakes made along the way were the inevitable result of a trial and error process that arose from implementing the new laws.

One such inauspicious example was the often-excessive level of detail and

complexity of public consultative and accountability documents. The public consultative information process initially gave rise to many such instances, but with experience, improvements were progressively made. Recent initiatives will lead to further simplifications, including a major overhaul of overly complex financial reporting-practices.

To balance this, there are numerous positive highlights to report. One example is the now widespread use of credible independently produced and monitored citizen-satisfaction surveys. As a result of the reforms and based on survey results, more-demanding targets¹¹ are being used to make improvements. A return now to the older forms of law with their stifling legal and other constraints would be unthinkable and unworkable. Improvements under the old regime would have been unlikely.

This kind of a priori evidence strongly suggests that performance improvements attributable to the new law and its performance framework have had observable positive effects.

Intangibles, the non-measurable benefits of the reforms

The gains or benefits arising from legislative changes in many cases have not been quantified and are not readily assessable.

These include the benefits derived from the following:

- provision of new, additional services now accepted as being core to local government;
- better purchasing terms gained from competitive tendering;

- public satisfaction for such things as prompt and reliable customer service responses.

Another example is the observable, though intangible, benefit derived from the improved calibre and culture of modern local government personnel.

The much less prescriptive legal environment has had a startling and clearly observable positive effect upon municipal staff recruitment, attracting better people to the local government sector. The new regime has demanded the services of more-competent and professionally qualified practitioners. It has released their powers of imagination and creativity. This effect has, in many cases, rubbed off and has extended to circles of local elected officials and other municipal general management.

The wave of positive governance and organizational change was brought about by the law reforms. The positive changes that have emerged have resulted in a shift of mindset. The people most affected by the changes, the municipal management employees, have been challenged in their work practices, and they are now motivated further by performance-related incentives. They actively seek to achieve the best results, which lead to higher rewards.

A can-do, high-performance mentality amongst municipal staff has replaced a preoccupation with unproductive time wasting. For example, negative energy spent honing skills in becoming an apprentice law clerk occupied in looking for compliance authority or legal loopholes to justify management actions has gone. It has been replaced by targeted performance directed at achieving budgets and outcomes. In strict productivity measurement terms, these advances, for the reasons already given, would be difficult to establish. They nevertheless are hard to deny.

Case Studies and surveys

Further evidence of the benefits gained from the reforms is contained within the case-study lessons in this paper. All relate to experience gained from recent New Zealand local government contact and employment. Case study examples have proven invaluable in the absence of the measured, quantifiable evidence necessary to demonstrate the positive effects of the performance-related content of the new laws.

Convincing case-by-case evidence of better performing local government is progressively emerging from still-developing learning curves. For example, in a recent informal survey, 16 of the 85 local authorities are voluntarily participating in demanding, principled, quality-improvement programs.¹²

The proliferation of self-motivated¹³ public opinion surveys (they are yet to be mandated) as conducted by New Zealand municipalities is further solid evidence of the performance improvements taking place in the sector. The advent of such surveys demonstrates the cultural shifts that are associated with these initiatives. They also demonstrate the new higher standards set by management over and above what the law specifically requires of them. These higher standards are consistent with their own more-professional attitudes and training.

The results of the surveys, in a more directly quantifiable manner, inform the extent of the progress being made. Public opinion survey findings overall can be ranked as satisfactory or better, and municipal performance as judged by such surveys is consistently improving.

Municipalities that are showing lower than average satisfaction performance are challenged to improve and make progress

based on reasonable expectations.

In one case,¹⁴ a low overall satisfaction score of 55 per cent was expected to rise to the peer group average of 75 per cent within five years. This process has added an identifiable improvement path that will be monitored and publicly reported. Incentives at all levels depend upon progress being made. Staff emoluments¹⁵ are set according to the level of progress made.

Customer service is closely surveyed and is worthy of special mention. Most, if not all, New Zealand municipalities have put major, some might say excessive, resources and effort into improving communication with their customers, the taxpayers, (termed in New Zealand "ratepayers.")

A client-service mentality has been nurtured. This is reflected, for example, by perceiving ratepayers as clients or customers who possess rights that are to be valued in a client-service approach to doing business.

Front office client-service communication systems were devised to quickly attend to enquiries. These are linked to the operational arms of the organizations. Front-of-house customer service staff are highly trained to deal with the usual enquiries and are given the know-how to refer other issues, those demanding more-expert attention, to the appropriate person.

Another set of informative and positive case studies involves the provision of public information. The duty to inform citizens has undergone radical improvement and change. The *2002 Act* required very demanding processes in the interests of good consultation. Consultative process, though initially heavily criticized by some as being excessive, has become part of the scenery.

Management is becoming better with such matters of process. In dealing with the affected communities, municipal staff take their responsibilities seriously. Community groups in particular are keen, in the face of a recent move to simplify these tasks, to see that the best features of these processes are retained. There is little doubt that the standards for providing useful public information have significantly improved. There have been justified criticisms of over-complicated consultation. Refinements, for reasons of information and detail overload are still needed as part of a still-maturing learning curve.

In the brave new local government world, post 2002, the learning curve has extended to the communities themselves. Community groups demonstrate a high degree of sophistication in the manner in which they interact with their local government organizations.

For example, the native Maori and their special interests are served by consultation in tune with their cultural and other special needs by using separate Maori consultative committees. Similarly, community boards are established and funded to deal with grassroots consultative and operational matters.

It is extremely doubtful that many of these improvements, including, for example, the self-motivation necessary to conduct optional public opinion surveys, would have occurred under the pre-1989 rules. Community expectations in accord with the demands of modern life are being met that would not have been possible under the old law. Heightened community expectations now would be unlikely to permit a return to the old ways.

Nothing is perfect

Not everything is rosy in the garden though. In the interests of balance, a totally idealized picture of better performance, one based merely on the improvements made in New Zealand and elsewhere, would be a misrepresentation of what has actually emerged in practice. There are ample examples of failings, most of them human.

A list of these failings includes:

- the villain of bureaucratic capture of the processes;¹⁶
- the extension of non-core local government activities;
- the subversion of consultative procedures;
- higher and still higher municipal taxation and debt levels.

All of these time-worn canards are still with us. Some even continue to thrive within the rich tapestry of New Zealand's local government life.

Short of the intervention of an enlightened and benevolent dictator put in charge of running the sector, such perversions of good intentions will always occur whatever the quality of the law and wherever in the world local government operates.

In spite of some shortfalls, local government in New Zealand can claim progress and performance improvement; progress it is contended that was only made possible by changes to the laws governing its behaviour.

It is worth noting that the suggestions for improvements included in this paper can be made to cover the full gamut of local government roles, not just as referred to in detail in this paper, for the economic and financial advantages to be gained.

Improvements made possible by New Zealand's law reforms relate to many processes. These include:

- consultative procedures;
- provision of better, more useful information to citizens;
- discovery of a rational, economic, fair and equitable method for determining property taxation policy settings;
- resource allocation decision-making relating to citizens' well-being—and many more.

The expansive range of local government practices extending to governance, social, environmental and cultural well-being have been revolutionized because of the legal reforms. The overarching modern principles of sustainability and social justice are evident throughout local government behaviour as well.

Benefits from better, more relevant local government laws that are fit for contemporary purposes are now in place.

Assumptions of the study

To summarize, for the reasons advanced relating to the nature and limits of the evidence used for the research and preparation of this study, certain underlying assumptions were made.

These assumptions are:

- The revision or reform of local government legislation from an outdated rules-based framework, one that presently characterizes Canadian local government legislation, is urgently needed;
- New municipal law mandating the performance-based principles of transparency, neutrality and separation is required;
- The new law should be modelled on the New Zealand *Local Government Act 2002*;

As a result, better performance and economic benefits will accrue to the Canadian municipal sector and to the nation.

“There are ample examples of failings, most of them human...”

Part II.

The way forward for Canada

Municipal performance is linked to municipal law; this is the heart of the matter

The performance of municipal units within any country's local government sector is directly associated with the ethos and quality of the government-empowering legislation that oversees their actions.

Deficiencies of this law, specifically a failure to set performance-measurement and management criteria for local government, invariably lead to few, if any, performance-improvement initiatives being implemented by the municipalities. There is nothing quite as persuasive as the use of mandated procedures made subject to audit coverage for extracting compliance that leads to improved performance by public sector entities.

An audited performance-management framework, specified and mandated within the letter of municipal law, provides an environment in which performance improvement is embedded, encouraged and can flourish. A mandated performance framework now characterizes New Zealand local government law, but Canadian municipal law is largely devoid of such encouragement.

The outdated prescriptive nature of Canadian law leads to the omission of numerous modern, good policy and best-practice processes. Many best-practice methods have been incorporated within more recently devised, less prescriptive styles of the local government legislation of other jurisdictions. They include certain defining characteristics of better law. These include:

- The specification of principles of purpose and roles of local government that adhere to excellent policy guidelines including transparency, accountability and separation;
- The empowerment of local government in a less-prescriptive legal context, one that gives municipalities wide-ranging powers of general competence. These powers replace demands for compliance according to rules, setting instead, results-based outcomes that allow for the flexible use of professional and other judgments;
- Setting the municipal focus upon the achievement of sustainable, broadly defined outcomes or so-called citizens' well-beings rather than prescribing a set of numerous, detailed outputs or matters for regulatory compliance;
- Specifying a transparent governance, democratic decision-making process and an audited accountability framework;¹⁷
- Codifying a legal performance framework that is fully integrated with the above principles and is linked to modern best practice including asset and financial management standards;
- All of the above incorporated into workable, audited, long-term management and financial plans.

Historical developments—to arrive at the current local government legislative position

On a continuum measuring along a simple accountability scale over the last century, the evolution of Western Commonwealth and U.S. local government law is characterised by the following:

- rapid progress of local government law reforms in New Zealand, Australia and the United Kingdom;
- steady progress in the United States and South Africa;
- while other countries have progressed in these terms Canada has stood still.

The criteria, all of which can be mandated within suitable legislation, contribute significantly to the achievement of good local government.

Assessment of the two legal environments comparing Canada's with that of New Zealand's

This paper promotes the benefits of using the New Zealand model of local government legislation for Canada. The following section draws together some evidence of the circumstances that prevail in the two countries, comparing actual practices in use and covering a small number of important criteria. The criteria, all of which can be mandated within suitable legislation, contribute significantly to the achievement of good local government.

An assessment was made of seven essential ingredients of best-practice local government. Canadian and New Zealand practice was surveyed. The selection of criteria is biased toward the law as it affects municipal asset management, financial and governance performance. The selection was influenced by the nature of the research already conducted and the evidence extant within the Frontier Centre for Public Policy's "Local Government Performance Index" (LGPI) referred to in detail below.

All the criteria can and should be incorporated into the best of local government legislation. As the Table 1 (next page) demonstrates, Canada has yet to adopt the legal structures necessary to improve local government performance.

The comparisons in this table are made between Canadian local government law based on a sample of four provinces and the New Zealand *Local Government Act 2002*.

Table 1.

Legal and other criteria influencing the delivery of good local government	Canada's legal position and score	New Zealand's position and score	Best practice incorporated into local government legislation	Overall effect
Performance Framework: the existence of a legally mandated local government performance measurement and improvement framework	Canadian law shows little or no sign of any emphasis upon municipal performance Score: 1	New Zealand law mandates and emphasizes a municipal performance framework Score: 5	Canada: No New Zealand: Yes	If the law does not specify that municipal operations must be conducted within a formal performance-measurement framework, then local government operations will not achieve high-performance standards.
Accounting Audit Disclosures: a mandated (legally enforceable) audited accounting-disclosure regime that adequately and comprehensively reports the municipalities' performances.	Canadian law and accounting standards require no such useful audited-performance information including non-financial performance measures be publicly reported. Score: 1	New Zealand law mandates and emphasizes a municipal performance framework including the requirement to comprehensively report relevant financial and non-financial performance measures. Score: 5	Canada: No New Zealand: Yes	If the law does not specify that municipal operations must be conducted within a comprehensive, publicly reportable and audited performance-measurement framework, then local government operations will not achieve high-performance standards.
Legislation: Outdated rules and codes approach versus the modern, facilitative and empowering style of law.	Based on a review of four of the 10 provincial local government Acts, all require reform/redesign, as they are rules based, leaving little scope or incentive for the development and use of modern management techniques. Score: 1	New Zealand's <i>Local Government Act</i> is held up as model legislation for modern local government. It mandates, empowers and encourages best practice. Score: 5	Canada: Outdated and rules based. New Zealand: Modern, facilitative municipal-empowering law.	High performing local government can be fostered and flourish only if the law sets the appropriate performance environments-framework.
Outputs versus Outcomes objective setting and means of service delivery: Detailed prescriptions of outputs in modern law are replaced by the setting of overarching citizens' Outcomes or well-beings.	Based on a review of four of the 10 - provincial local government Acts, all require reform/redesign. Score: 2	New Zealand's <i>Local Government Act</i> is held up as model legislation for modern local government. Score: 4	Canada: outdated rules-based. New Zealand: modern, facilitative municipal-empowering law.	High performing local government can be fostered and flourish only if the law sets the environment and/or framework.

<p>Transparency and separation: Accountability, management of conflicts of interest, audit coverage over performance, all contribute to better local government. The same can be said for best-terms competitively tendered service provision that is always tested on the open market.</p>	<p>An ethos of heightened public accountability has yet to reach the Canadian local government sector. Closely held in-house provision of services is only slowly being separated from third party service provision that benefits from competition on the open market. Score: 2</p>	<p>An ethos of heightened public accountability has reached the New Zealand local government sector. In-house provision of services is always tested by competition on the open market. Score: 5</p>	<p>Canada is tending toward more outsourced provision of municipal services. New Zealand has fully embraced the notion.</p>	<p>The style as well as the letter of the law will be influential in promoting best practice, best terms, cost-effective service delivery from all sources to obtain the best deal irrespective of the identity of the provider.</p>
<p>Citizens' satisfaction and other performance surveys: Such surveys, properly managed, are a valuable tool for performance-improvement purposes.</p>	<p>Surveys are proliferating, but few are linked directly to management actions to improve performance. Score: 2</p>	<p>Though not required by law, New Zealand local government makes extensive use of independently produced and audited survey results that are linked to management actions intended to improve municipal performance. Score: 4</p>	<p>Canada is developing survey processes. New Zealand local governments have more fully adopted these techniques.</p>	<p>If the legal environment in which local government operates includes an ethos of performance improvement, it will greatly affect the adoption of additional improvement techniques including surveys.</p>
<p>Audit Coverage: mandated with both compliance and performance-improvement objectives.</p>	<p>Evidence within the Frontier LGPI indicates widely varying standards of auditing across Canada. In a number of cases, auditing, including provincial surveillance of auditors, appears to have broken down. Score: 1</p>	<p>Audit of local government is treated seriously, with all municipal audit results being reported to Parliament (central government) as is required by law. Recent low levels of activity by audit in value for money¹⁸ effectiveness and efficiency audits, downgrades the score. Score: 3</p>	<p>Canada: Yes New Zealand: Yes</p>	<p>Audit coverage is essential and must be written into legislation if municipal management is expected to achieve good local government by improving performance.</p>

Measurement scale: For each of the seven criteria in Table 1, a five-point scale is used to rate municipal practice within the two jurisdictions. The scale ranges from 1, the lowest score, which indicates that poor local government will be the result, to a 5, the highest score, which indicates good local government is assured. Each score is a measure. It is based on the assessed quality of local government services that occurs in actual practice.

The right-hand columns report the state of the laws in Canada compared to New Zealand. The correlation between good performance and the legal circumstances for each country can readily be assessed.

Observations

Most of the high scores, (4's and 5's) are recorded for New Zealand. These are clearly linked to the fact that the law relating to meeting each of these criteria requires (mandates) compliance of municipalities and other players such as the sector's auditors to achieve good local government.

The scores and their links to the law relate (for example the low scores), to what might be expected to occur from a failure to properly audit compliance with best practice and the law. If the audit process is deficient because the law fails to specify it (or if the audit processes though mandated are allowed to fail), then there is a clear connection between the low score and the deficiencies of existing law.

There are numerous other components apart from the criteria used above of what comprises good local government. The seven criteria selected to assess good (or poor) local government can be taken as representative of many others for which reliable evidence has yet to be collected. For example, municipal personnel performance-related inducements, financial performance measures or non-financial performance measurement have not been fully researched and have not been measured, though these are referred to in the body of the paper. In many cases, Canadian municipal law does not require compliance or adherence to these best-practice criteria. Consequently, the performance of Canada's local government sector is degraded.

The judgments exercised over Canadian local government and reported are based on two years' or more detailed observation and assessments as contained in the "Local Government Performance Index." The surveys rated the public accounting documents disclosure, audit and compliance

criteria on a detailed scale of 24 measures. Some of the findings from these surveys were incorporated here. Added to this is the further postulated connection between the state of affairs that exists and the links to the state of the legislation (as discussed above). There have been a number of significant and somewhat unorthodox steps taken that advanced the New Zealand local government reform process.

Quasi-standards called "authoritative support" are given the force of law

It may just have been serendipitous but with excellent timing starting in 1989, New Zealand practitioners, joint accounting and engineering working parties in the main, took the development of local government performance and related practical management matters further than solely legal (1989) constructs permitted. Subsequently added to the new laws were a number of very practical best-practice methodologies that gained their standing largely due to the manner in which they were developed. Multi-disciplinary best practice¹⁹ emerged, and it was integrated with other legal reforms.

At roughly the same time as the legislation of 1989 through to 1996 was being drafted, a great deal was being achieved in other arenas that supplemented the legal developments.

Accounting standard-setting within the accounting profession and engineering and valuation professionals working within the National Asset Management Steering Group (NAMS) and other groups²⁰ produced practical methodologies to suit local government scenarios. In the case of NAMS, economic, engineering and financial planning disciplines participated, creating a comprehensive body of knowledge that

has come to be known collectively as asset management.

The NAMS practice guidelines were an example of what later legislation (S.5 of the 2002 Act's Interpretation section) referred to and accorded a special status called "authoritative support." Deriving from this section, such practically based policies gained the legal status and authority of (quasi) standards.

They supplemented the law; they included accepted practices that were accorded standards status as if they had been devised in much the same manner as professional bodies and their standard-setters might have done.

The NAMS body of accounting, valuation, economic and engineering knowledge that was produced from these efforts comprised policy and practical work, and although falling short of rigorous standard-setting, the material was worthy of legally mandated use in practice.

Such developments possessed their quasi-legal authority due to the quality of their content and because of the collaborative professional manner in which they were developed. The knowledge, practical support and training given in these areas also proved to be essential for their effective implementation. These initiatives, supported by extensive training, supplemented with practical provisions, lead to the implementation of practical processes that the law had only vaguely suggested in principle.

If Canada is to learn from New Zealand's experience, then consideration must be given to developing its own brand of this type of material given the status of authoritative support. The present outlook for such developments, based on recent observations, is not promising. Canadian standard-setters have yet to rise to this challenge.

Crucial omissions—Canadian standard-setters are setting the bar too low

As outlined in the table above, Canada is at the lower end of the accountability scale. A bold statement, this, but one fully borne out by the evidence and examples that follow.

To achieve a level of legally mandated authoritative support, the process used must be of a high standard and must achieve acknowledged high standards in every respect. This, it may be argued, includes incorporation of best practice in the widest sense, including internationally accepted best practice.

The status of Canadian local government's so-called best practice is of serious concern. In many important respects, the standard, that is, the bar for local government, has been set well below what would qualify on an international scale of best practice.

A purpose of this paper is to highlight the significant legal and practice-based omissions from present-day Canadian local government law and practice that support this contention. In addition, in its final section, the paper recommends a large number of legal and practical steps that would, if adopted, achieve acceptable standards. This approach is justified, as the Canadian local government environment is in dire need of higher standards and of correcting its omissions.

Many of these defects and omissions can be categorized as practices that could, but only if they are acceptable, be accorded legally mandated authoritative support status. Only properly developed, consulted upon best practice can achieve this standing.

To be accorded the status of best-practice authoritative support and then for these to effectively be given the force of the law, it is rational to assume that such practices

would be the best available. Canadian best practice, at least in the accounting field, by setting the bar too low, falls short of what can fairly be claimed to be best.

In Canada, in one glaring instance involving accounting standard-setting, that is, the development of a recent asset-accounting standard, a significant failure has occurred. Major compromises have been made in its development. The defects that have arisen from these compromises will effectively prevent municipal asset valuation, accounting practice and integrated asset management from reaching acceptable high (best-practice) standards.

The introduction of a fundamentally flawed accounting standard, the soon to be implemented Tangible Assets Standard PS 3150²¹ developed by the Public Sector Accounting Board (PSAB) of Canada, does not bode well for the future.

It is disappointing to have to report that a deficient accounting standard such as this, which comes nowhere close to what international best practice would demand, is in the process of development. The standard, after a prolonged introduction, became operational on January 1, 2010. The following justification for these critical assertions is based on a complex set of circumstances including technical accounting practices. To the extent possible, the explanations given are the simplified ones.

The PS 3150 asset standard's defects

The PS 3150 asset-accounting standard concerns physical, tangible assets. It is the first major accounting initiative of its kind to be introduced to Canadian local government. In spite of its very drawn-out introduction, which was long enough to have made necessary improvements and to utilize best-practice methodology, when finally the standard becomes effective in 2010 it will fall well short of best practice. PS 3150 has major defects, which are now briefly described.

The standard appears to achieve little more than window dressing that requires minimal asset-related accounting apart from the mere recording; in effect, just an inventory using doubtful asset-valuation data for municipal infrastructure assets.

Valuations of municipalities' physical assets have, in many cases, been conducted with little rigour and with scant regard for their importance if good decision-making is to be supported with reliable data. In one instance,²² a major city municipality adopted asset valuations taken from historical cost purchase order sources.²³ In cases where this information was unavailable, guesstimates were used. This is a poor substitute for the rigorous valuation techniques that are needed. Unacceptable asset-valuation practices such as these are a far cry from the New Zealand experience where, following a lengthy, often-gruelling debate of the issues, a demanding and accurate asset valuation methodology was developed.

The deficiencies in the accounting treatment of municipal assets extend to the economic consequences that will result.

The Canadian asset standard eschews any reference to the need to provide funding for asset replacement on the basis that this would be inappropriate—in the sense

that the standard has chosen to ignore the funding issues. There appears to be no plan to address this omission within the existing standard or a subsequent one or from any other source, including suitable legislation.

The outcome of these machinations is the introduction of seriously deficient asset accounting and management practices. In summary, the limited objectives that will be achieved with the standard's introduction are:

- to produce just an inventory of municipal assets without any reference to or use of properly established valuations;
- use of the inferior asset valuation basis of depreciated historical cost (DHC) instead of best-practice depreciated replacement cost (DRC) or other acceptable optimized replacement valuation (ORV) methods;
- no provision being made for the funding of asset replacements.

Affecting as it does a range of disciplines, that is those encompassed by asset-management practice, if this is an example of what is to be the standard for Canada, then the bar will be set too low. A comprehensive asset standard with no solid valuation base and without a clear funding mandate will fail to address the underlying economic questions relating to maintaining and replacing large network municipal assets.²⁴ The potential economic and other consequences of these failings are severe.

Some suggestions

An objective of this study is to suggest the inclusion of excellent law and practice (authoritative support included) within redrafted best-practice-based legislation. The New Zealand experience is that this leads to organizational performance improvements that in turn address the serious economic issues currently being avoided by Canadian asset standard setters.

To make the necessary progress, accounting, valuation and engineering disciplines need to be intimately involved in developing the highest acceptable levels for standards and practices that also meet the needs of Canada's circumstances. These practices, following considered steps of moderation and acceptance, can then be identified as best practice and can be given authoritative support status within suitably drafted legislation.

The PS 3150 asset standard will require substantial amendment to achieve this status. A full critique of this asset standard is beyond the scope of this paper. Because of its critical importance to local government, a full reappraisal of its design and content is strongly recommended.

Practical limits of research and certain caveats

The research method chosen for this study was influenced by Canada's geography and the fragmented nature of the governance structure of its local governments.

Canada is a confederation of 10 provinces and three territories, each overseeing actions of the local governments of their respective regions. Every province has its own municipal legislation, charter or Act of provincial government. A detailed topology and analysis of these varying and invariably very detailed municipal Acts proved to be beyond the scope of this study and the coverage of this paper.

For example, the relevant British Columbia Act extends to over 800 sections. Many other provinces have similar legislation that is almost as large and cumbersome. Some Acts are enormously detailed; others are cluttered with largely regulatory provisions that are often bewildering to a researcher.

Some municipal Acts are poorly laid out, and it is difficult to discern any logical flow to the order and grouping of the different sections. A few provide contents pages for guidance, but many include a mass of deletions, amendments and provisos that only a trained lawyer and/or law draftsman could possibly navigate. This research though had one compensating value: It revealed the dilapidated state of Canadian local government law and the need to reform it completely.

A comprehensive review of the Ontario, Manitoba, Alberta and British Columbia²⁵ provincial municipal legislation demonstrated many important similarities. All the legislation shared a common characteristic. Every province adopted a legalistic-prescriptive approach rather than a facilitative-permissive, outcomes-oriented approach to the principles and rules applying to the powers given to local government.

The research identified many less important syntactic and other differences relating to the Canadian approach to writing laws for local government. Of more importance was a finding that points to the fundamental philosophical differences between Canadian local government law and others. Other jurisdictions such as New Zealand and Australia chose very different paths. Their approach can be labelled modern best-practice legislation governing good local government. Its defining characteristics, an outcomes-driven viewpoint will be explained more fully in this study. In short, it is a style of facilitative law that is very different from the prescriptive Canadian models. The consequences of these fundamental differences as they affect municipal managerial behaviour and organizational performance lie at the heart of this paper for the omissions and failings directly affect the culture and behaviour of local government and result in the present low performance of the sector.

Canadian local government law is different from and inferior to prevailing best-practice law and consequently is deficient when compared to other jurisdictions. The deficiencies and consequences will be addressed in full.

Proposed Canadian law reform based on New Zealand legislation

A line-by-line comparison of all provincial local government Acts proved to be impracticable. Apart from the problem presented by the legislation's prescriptive nature, there are key parts to the New Zealand legislation that are not present in Canadian law that thereby render comparisons largely irrelevant. The important task then becomes one of identifying the significant omissions, followed by suggestions for inclusion of best-practice based provisions.

Many of the omissions from Canadian law relate to important policies and legislative advances, that is, improvements to local government law that legislatures should be made aware of and move to adopt. This report focuses on omissions and recommendations, rather than in pointing out the very obvious differences. If Canadian provincial jurisdictions choose to modify or overhaul their respective local government Acts, they would do well to consider the inclusion of such provisions, all of which will lead to municipal performance improvement.

Part V of this paper was prepared to detail these notable significant improvements as they are contained within sections of the New Zealand Act. All are worthy of possible inclusion in Canadian reforms because they are the distinguishing features of reformed and improved New Zealand local government law for good reasons.

Many of the improved New Zealand legislative provisions relate to best-practice law within a sound economic, financial policy and performance framework. For example, the accounting for measurement²⁶ and of most significance, the funding of accurately measured infrastructural assets is a feature of New Zealand law. This was drawn from sources of authoritative support incorporating international best practice and results in asset-management practice that includes a full funding of asset depreciation. These developments are groundbreaking and are essential to improved Canadian local government legislation.

Development of best practice

The PS 3150 standard-setting process described demonstrates the need for best-practice-based development of accounting standards if they are to be accorded authoritative support status. These objectives will not be met under current conditions.

New Zealand practices, by comparison, provide examples of the mandated use of managerial, often accounting- and engineering-based best-practice policies that are given the standing of authoritative support within the letter of the law.

It is unusual within other jurisdictions to encounter such a practical, utilitarian approach that is so specific in mandating managerial behaviour. A legal best-practice process such as this, demonstrates a clear preference for laws intended for implementation and comprised of useful directives. This style of governance has supplanted the more traditional approach involving incorporation of legalistic, rules-based provisions. A rules-based style of law characterized earlier New Zealand legislation, and it is still generally applied to existing Canadian local government law.

Prominence is given in Part V of the paper to particular legal sections. These contain the truly distinguishing features of the New Zealand legislation. They were singled out and highlighted for their positive influence upon the conditions necessary to achieve good local government in a real, practical, not just a legalistic sense. These detailed and demanding practices have been written into New Zealand local government legislation.

This is particularly true of the practice of infrastructure asset-depreciation provisioning and funding discussed earlier. Implementation of similar practices would have a very significant positive effect upon the state of Canadian asset-infrastructure management and accounting. Such mandated processes if adopted would address the major economic issue arising from burgeoning infrastructure asset-maintenance deficits. These have been allowed to accumulate in Canada over the last decade or more. If nothing is done to change existing plans, an asset standard (PS 3150) that will not grapple with this problem will be introduced to Canada. Window dressing is no substitute for the real thing. The economic consequences of failing to provide for and fund asset maintenance (possibly even including another bridge collapse), are likely to be severe.

The adoption of many similar provisions to those of New Zealand law and currently omitted from Canadian law would represent a major contribution to Canadian local government law and practice and its performance record.

Significant differences of Canadian constitutional and municipal law

The Canadian federal *Constitution Act* of 1982 divides lawmaking powers between the federal and provincial governments; municipal governments are the creation and responsibility of provincial governments. A municipality's performance is merely left to the electorate to periodically assess at the ballot box. Each province enacts its own local government legislation, which, because of certain omissions and due to their prescriptive ethos, is both self-limiting and outdated.

For instance, as revealed from the research conducted, performance-management sections of the existing provincial municipal acts (if such sections exist at all) do not in general set standards that will ensure good cost-effective delivery of municipal services. The sector's best-practice accounting standards and bodies of knowledge given authoritative support status do not reach the necessary high standards.

To demonstrate such limitations of local government law, a brief assessment is made of the limits of any performance-based provisions discovered within Canadian municipal law.

The thrust of these provisions (where they exist) can be clearly identified from the ethos, texture and content of the introductory clauses of the various municipal acts, that is, the key provisions defining the ubiquitous "Purposes and Principles of Local Government." Some sense of the importance and nuances of emphasis given to these defining factors as they inform issues of performance can be gained from a review and comparison of Canadian and New Zealand local government legislation.

The New Zealand *Local Government Act 2002*

introduces the purpose and principles of good local government in the following terms:

- S.10 "Purposes" (b) to promote the social, economic, environmental and cultural well-being of communities;
- S.14 "Principles" (f) commercial transactions to be undertaken in accordance with sound business practices (g) efficient and effective use of its resources (h) taking a sustainable development approach.

Contrast this with the British Columbia equivalent, S.2 for their Regional Governments:

- providing good government for its community;
- providing the services and other things that the board considers are necessary or desirable for all or part of its community;
- providing for stewardship of the public assets of its community;
- fostering the current and future economic, social and environmental well-being of its community.

The well-being sections of both Acts include economic outcome goals and are roughly comparable, but the similarities end there.

For British Columbia, decisions as to what are necessary public services are left for the board to consider and decide. This is very different, some might say authoritarian and much less democratic, than New Zealand where it is for the local community to directly participate in and influence these decisions.

The British Columbia Act omits any notion of sustainability and any mention of cost-effective best business practice. New Zealand law includes these terms.

The use by British Columbia of the word "providing" instead of New Zealand's "promoting" points to the lack of neutrality of British Columbia's service provision.

New Zealand's "promotion" suggests facilitative actions as a player in community affairs, not merely as an organization that fosters and "provides." New Zealand local government also acts as a purchaser, not as a provider as in British Columbia.

Later sections of the British Columbia municipal Act, which are typical of other comparable provincial acts, include the following:

S.814 (1) under the heading "General Accounting Rules" there appear vague and generalized accounting requirements, barely rules at all. "The regional district financial officer must keep separate financial records for each service that include full particulars of assets and liabilities, revenues and expenditures, information concerning reserve funds and other pertinent financial details." Inclusion of such a simplistic and far from comprehensive provision covering the complexities of municipal accounting amounts to a mere stating of the obvious.

Contrast this with the extensive financial management provisions of the New Zealand equivalent. "Part 6. Planning, decision-making and accountability" (including financial management) provisions that run to 47 sections and include these headings:

- S.94 Audit of the long-term municipal community plan;
- S.100 Balanced budget requirement;
- Sections 101 to 108 covering all forms of acceptable best-practice financial and performance-management policies, governing liabilities, treasury management practice, public private partnerships and so on.

Add to these largely financial provisions the matrix of performance-related provisions including asset management, performance improvement and audit, decision-making, outcome focused processes—and a comprehensive accountability (both financial and non-financial) framework is the result.

It may seem that an extensive list such as this, comprising as it does some detailed managerial provisions, actually contradicts the idea that New Zealand law is less prescriptive than Canadian law, but this is not the case.

The New Zealand law does not specify in any prescribed manner what the appropriate policies and practices should be. These are left to the professional judgments of those involved. Canadian law, on the other hand, omits these broad specifications and gives little discretion for its many statutory rules and requirements.

Similarly, an omission within Canadian law of the more comprehensive kind of provisions does not equate with a less prescriptive format. Canadian law is very prescriptive and regulation-based and is very detailed for often minor or procedural matters. Failure to include provisions such as the planning and accountability sections (above) within Canadian provincial municipal legislation is, indeed, a significant omission.

Such omissions are important to the thrust of this paper because, as already described, a failure to provide a proper performance framework for local government practitioners that is reinforced with strong audit and accountability provisions leads to the lowest common denominator being adopted in practice.

In spite of an audit coverage, Canadian local government standards of compliance in the accounting disclosures field, for example, are often unsatisfactory.²⁷ These results should come as no surprise if the central contention of this paper is accepted: Good best-practice-based local government law will lead to best practice. In Canada, anything goes because very little is demanded.

Canada's brief report card

This poor state of Canada's current local government accounting practices implicates the accounting standard-setters of the Canadian Institute of Chartered Accountants (CICA). The Institute, in numerous communications with the author, revealed its proscribed views of the infrastructure asset standard.²⁸ The standard set for accounting for public municipal infrastructure assets is a failure when measured against international best practice.

Some may argue, as does the CICA, that the wider economic issues (such as asset funding) are no business of theirs. As a justification for the introduction of a flawed PS 3150 standard, such a position is just barely tenable on the basis that such matters were intentionally excluded from its purview. This is a bit like a car manufacturer delivering a vehicle with no engine. The car might look good (window dressing), but it is not going anywhere (the standard).

The author's experience with Frontier's "Local Government Performance Index," which involved the review and analysis of hundreds of 2004 to 2008 financial statements of Canadian municipalities, provides further ample evidence in support of a claim that Canadian accounting and audit practice are deficient.

Canadian local government financial reporting currently results in an ill-disciplined, anything goes environment. Provincial accounting and auditing standards vary wildly. What is of greater concern is that no audit-opinion qualifications²⁹ pointing out clear failings to comply even with the present often-inadequate practices have attended any of these failures.³⁰ Audit practice in the local government sector along with unacceptable accounting practices are bad enough to warrant sanctions.

The long lead-in time for the implementation of the PS 3150 standard, when little improvement was made during the draft period of the standard may indicate a lack of concern for its importance, apathy of the contributors, obduracy of the official standard-setters or other failings.

The perceived lack of moderation received for the standard led to a flawed standard being adopted. This may point to the fact that the necessary committed long-term liaison and co-operation of accountants within asset management practice and with engineers and valuers was not forthcoming.

Little will be gained from such a flawed process. The use of shortcuts such as poor quality asset valuation and other asset-related information will inevitably lead to poor economic and accounting estimates, which lead to even poorer decision-making.

To achieve good local government in Canada, the professionals involved, accountants principally but joined by the engineering and valuation disciplines, are going to have to pull up their socks and supply best-practice process that delivers reliable, relevant and useful data.

Their (all of the disciplines involved) current report card might well read, "seem to be uninterested" and "must do better in future."

A direction forward for Canada

As has been briefly described, most Canadian provincially-based local government law would benefit from comprehensive redrafting aligned with a significantly improved legal model.

New, empowering municipal legislation, if modelled along the lines of the 2002 New Zealand *Local Government Act*, could benefit from the model, a product of institutional knowledge gained from a steep and lengthy learning curve. This process has taken over 20 years to establish, and it is still being improved upon.

Pre-1989 New Zealand local government law suffered from many of the same limitations that are obvious within Canadian legislation. Later New Zealand Acts (of 1989 and 2002), revolutionized the methods of local government practice, particularly those concerned with economic and financial management.

New Zealand has had a 20-year head start over Canada. But Canada could benefit by avoiding New Zealand's pitfalls and blind alleys,³¹ thereby possibly more than halving the New Zealand development period.

The essential justification, that is the prime purpose of this paper, is to provide practical suggestions for improvements, expanding upon the views already expressed concerning the unsatisfactory state of Canadian local government provincial law.

The paper suggests (in Part V) a source of best-practice local government law amendments that should be made to the legislation that would lead to an improvement process being adopted within Canadian municipalities.

The model chosen for high-performing local government is based upon international best practice, much of which is enshrined in local government law. This is supplemented with professional authoritative practice guides such as the NAMS manual and is principally drawn from New Zealand and, to a lesser extent, from Australian and other sources.

The economic benefits that would accrue from these improvements would result from higher performing local government. This would translate into better national economic performance. Here is the way forward for Canadian local government given that provincial legislatures take the appropriate actions and amend their local government legislation accordingly.

The model, a product of institutional knowledge gained from a steep and lengthy learning curve...

Part III:

A best-practice “practical” model

Why use New Zealand local government legislation as a model?

A legitimate question to ask is why should Canada choose to use the New Zealand *Local Government Act* as its model?

The previous section proposed the New Zealand local government legislative model for Canada, based upon the *Act's* modern design and useful content. There are other good reasons for its adoption. These include its use of best practice, its respected place within an international context and the benefits arising from the avoidance of some pitfalls encountered along the way.

The New Zealand local government sector and its local government law and practice have evolved over a long period to a point where general recognition is accorded to the fact that New Zealand local government law and its complementary body of knowledge (including matters of authoritative support) on an international scale represent a best-practice model, amongst the best available.

The New Zealand law and local government practice has widespread application to countries within the Commonwealth including Canada. Public services are delivered in much the same fashion for this group of jurisdictions. Benefits arising from using the New Zealand developments of the law and the processes plus the cost-benefits accruing from adoption of the processes are difficult to estimate.³² Judgments can, however, be made to assess the many benefits referred to and proposed within this study.

One very simple example amongst many of the benefits to be gained can be instructive. Use by Canada of New Zealand (Department of Internal Affairs) educational staff-training resources and materials that in 2003 dollars were reported to have cost over NZ\$2 million (Can\$1.2 m) to develop could be utilized. Proprietary government-to-government rights could be obtained to this material and to trainers, and with suitable adaptations, all of these resources could be used within Canada for a figure likely to be a great deal less than this total.³³ The benefits that can and will arise from adoption of better law, policies and practices leading to higher performing local government justify serious consideration.

How can New Zealand local government claim their practices are “best practice”?

The claim made for this study is that a best-practice legal and performance framework exists, and it can be found within New Zealand local government law and its related processes. Based on the New Zealand law as it now stands and given the comprehensive manner of its development as a legislative model, the claim for best practice can be judged independently by considering the following factors.

New Zealand local government lawmaking is the result of a premeditated, well considered, consultative and evolutionary process involving a long period of maturation.

It encompasses all facets of what are considered to be the components of modern, good local government.

It is founded upon excellent public policy settings. Multi-disciplinary personnel, not just law draftsmen, participated at all stages in developing the revolutionary *2002 Act*. This resulted in an act that includes superior law and codes of practice that cover the following:

- municipal process and practice designed to improve the transparency and accountability for the provision of public services;
- democratic process and governance provisions requiring strict separation of policy and operational decision-making;
- consultative processes including providing citizens with useful and meaningful information;
- maintenance of long-term community sustainability in both financial (prudential) and environmental (green) terms;
- long-range and fully integrated (strategic) financial, capital expenditure project, debt management and asset-facilities management planning;
- performance management with organization-wide application coupled to high standards of public accountability audit and reporting.

Within the development of the New Zealand *Act*, local government financial and asset-management best practice led to the advancement of many practical policies. These are mandated and are subject to audit coverage as well.

One shining example of best practice

Asset management has been a shining example of best-practice processes. Asset management remains the most important of municipal responsibilities and within this discipline, excellence of management is pivotal to better performing local government.

Using the NAMS structure, as earlier described, a comprehensive, managerially based code that includes economic, engineering, valuation and financial accounting disciplines integrated within facilities management, with workable and fully audited long-term asset-management plans has been developed for all New Zealand councils—irrespective of their size.

The plans have been designed to ensure that the major issue bedeviling local government, relating to backlog maintenance of municipal assets, is not permitted to deteriorate further and that the funding for future asset replacement is put in place.

As an educational resource, the NAMS manual is an instructive model of best practice. Extensive training materials and a comprehensive taxonomy have been developed to accompany it to educate those concerned with local government asset-management practice. All are founded upon up-to-date policy and management doctrine. These resources are already established and are currently in use. With modest amendment, this body of knowledge could be picked up and used by Canadian local government.

It must be added that the developmental learning process that has accompanied the reform of the New Zealand *Act* has not been without some difficulties. At times, developments had to be reversed after having earlier travelled up some

unproductive blind alleys. One of the strengths of the New Zealand model is its learning-curve-based history. The finished article has established a coherent, workable and integrated performance and sustainability framework that has widespread application.

Even today (January 2010), changes are being made to good practice amounting to improvements or, at the very least, providing cautionary tales.

One such tale, associated with financial management, involves the recent decision by the New Zealand Office of the Controller and Auditor-General (OAG) to withdraw the public sector from the application of the International Financial Reporting Standards, the IFRS regime. Previously, despite the protests of many practitioners and at the behest of the Institute of Chartered Accountants of New Zealand, ICANZ foisted the over-complicated IFRS upon local government.

The cost of making this reversal and of the mistake itself will in the end be significant in New Zealand terms. This is an explicit example of a blind alley for Canadian authorities to avoid, and it points to the benefit of learning from another's mistakes.³⁴

A proven practical track record—improvements in progress

The New Zealand *Local Government Act* and accompanying best-practice processes have been proven in the field, principally over the last seven years from 2002 to 2009. Earlier doubts that the one-size-fits-all nature of the law would be difficult for smaller municipalities to implement have largely proved to be unfounded.

Much to the surprise of many, the smaller municipalities (many with populations below 10,000 residents) have done some of the best work. Many of the bigger units with more money to spend (waste), on the other hand, have often over-egged the omelette by producing complicated, turgid public information, the worth of which is often seriously in doubt.

Larger municipalities have in some cases spent large amounts of money in producing public documents that are too long-winded, complex and expensive. In these instances, it is more the people and their organizations that are at fault, the *Act* itself less so, for its provisions were found to suit all New Zealand municipalities whatever their size and degree of sophistication.

A quick scan of any New Zealand municipal web site and its public accountability documents will demonstrate the validity of this point.

There is much to be said for the current move to simplification. One benefit could be a change to existing audit attitudes. To date, by emphasising the particulars and detail and largely conducting expensive compliance-based audit processes, the big picture (the substance-over-form argument) has become unnecessarily opaque. Thankfully of late, performance measurement

and assessment is emerging from the shadows as a worthwhile interest of properly trained auditors.

The steps to take toward better law and practice—in fields other than financial ones

Better performance is often given a financial emphasis, but it extends more widely than this as is evidenced, for example from broadly based surveys and league table³⁵ assessments. When these are publicly reported, they often extend to assessments of such things as governance, service quality and quality of life measures. The wide-ranging nature of the 2002 *Act* covers an extensive number of local government operations. Some of the survey results arise for example out of assessments of the quality and effectiveness of consultation and decision-making.

To provide some sense of the extent of the New Zealand legal provisions, the list that follows describes some of a less financial economic nature.

To achieve greater legitimacy of municipal actions, the following important steps, (largely to do with the laws relating to consultative process), are assessed and undertaken:

- Good communications and community involvement in gaining democratic consensus are essential. There must be widespread consultation with the affected communities prior to annual and long-term municipal plans being signed off. This will include establishing initial draft, long-term plans and setting numerous municipal policies such as those relating to significance³⁶, public-private partnerships and borrowing levels;
- Revenue-raising policies are set under the new 2002 *Act*'s revised framework where consulted upon fairness and equity take greater prominence than had the earlier, purely economic objectives;
- A proper balance must be achieved in the area of decision-making. The temptation for over-consultation needs to be moderated and balanced as does any tendency for the bureaucratic dominance of a process. In establishing this particular learning curve, opinions have varied on the appropriate amount of time and cost to be expended upon these procedures. It is true that the quality of some consultation processes has been suspect because of too much (or too little) proper process;
- In other cases, a failure of municipal staff to provide a range of policy options, and then push their favourite scheme has occurred.

Overall, in spite of these pitfalls for the provision of sound, understandable and comprehensive public information, the New Zealand local government sector can justifiably be proud. It is often favourably compared to its central government masters, who, ironically, do not set such demanding standards for themselves. The level of accountability of New Zealand councils deserves to be commended.

Of passing interest is that the initial 1989 law reforms also covered local government boundary issues and provided sound consultative and other mechanisms to deal with local government amalgamations. The reforms led to the merger and amalgamation of numerous smaller units of local government into fewer larger ones.³⁷ Further reorganizations, including the merger of seven sizable urban units into a "Super" Auckland City, are currently underway and are slated for completion by 2010.

Justification for these groupings has had a great deal to do with implementing best practice, by requiring integrated asset management of the large city water and wastewater networks and transportation assets reportedly valued at NZ\$27 billion. Auckland's "Super City" population will be 1.4 million by 2010.

Another important justification for these amalgamation changes is due to the need to ensure that units of local government have sufficient size and professional competence to accomplish the demanding tasks a modern municipality is called upon to conduct, particularly for urban-city service provision.

Many of these complex tasks were first specified by the 2002 Act. They demand superior, often highly paid, management and professional skills that are best employed within organizations of sufficient size. They have required modern appropriate legislation to make them work.

The reforms led to the merger and amalgamation of numerous smaller units of local government into fewer larger ones....

Part IV:

Demanding municipal law translates into high municipal performance

Why local government performance matters to the law

This section of the paper ranges widely over a number of topics concerning performance. Although these are all closely related and necessary to gain a comprehensive view of achieving better Canadian local government performance, they are more detailed than may be of interest to the layman reader.

The current and generally acknowledged low level of performance³⁸ of substantial parts of the Canadian municipal sector is directly associated with the status of the law governing municipal behaviour. Performance of the sector is currently far from optimal and can be substantially improved. Improvements will only come if the existing law is modified to demand higher levels of municipal performance.

Local government underpins and provides the basic infrastructure for the furtherance of all economic activity over all sectors, both public and private. Because of these interdependencies, economic benefits accruing from improved local municipal performance would pass through to all other levels including the provincial and national economies. To ignore an opportunity to gain from better local and regional performance would be to forego gains that can accrue to the nation.

As creatures of statute, municipalities gain their powers from senior government. The optimal performance of municipalities can only come from provincially sponsored law that governs municipal actions and are designed to improve municipal behaviour.

Modern municipal law (for example the New Zealand *Local Government Act 2002*) sets the behaviour patterns that are intended to improve municipal performance using best-practice management techniques. The New Zealand *Act* provides a model of service delivery within a performance framework that ensures that municipal services are focused upon meeting a citizen's sustainable, consulted-upon well-being, that is, the economic, environmental, social and cultural outcomes.

Canadian legislation does not achieve these objectives. The provincial municipal empowerment statutes (often termed Charters) are prescriptive; they are as described mostly regulatory in nature, and they provide little incentive for municipalities to adopt best practice and achieve higher performance standards. There is a focus on outputs rather than upon performance-based outcomes. The effect of this approach in Canada is a concentration upon and a bias toward the means, the outputs of service delivery rather than upon the achievement of satisfactory outcomes.

Amongst its founding principles and purposes for municipalities, Canadian law sets an in-house model of delivery of services as a provider.³⁹ This differs markedly from New Zealand local government where service delivery methods are deliberately flexible according to a purchaser-provider split. New Zealand municipalities are encouraged by law to seek the best terms

available for the supply of their services, not just their own direct provision of services. Having chosen the best, most cost-effective source of service delivery on the open market without being bound into a provider's role, they are allowed to set in place outcomes-related, third-party performance-based contracts.

What's missing from Canadian local government law?

Missing from Canadian municipal law is a best-practice performance-management framework. Because of these constraints and deficiencies, Canada's municipal sector is underperforming and economic losses to the country are being sustained.

Improving the performance of municipalities by redrafting the legislative provisions governing them will take significant law reform designed to improve municipal performance and will have, at the very least, to address the following:

- obtaining more effective and efficient service delivery at optimal cost including acting as a purchaser rather than as a provider while achieving higher public satisfaction levels and best value-for-money operations;
- raising the responsiveness of local government using better consultation by municipal units matched to stakeholders' needs, principally local taxpayers;
- providing evidence to funding agencies (senior federal and provincial government) of the merit and effect of their funding grants and subsidies; for example, bids for funding supported with reliable evidence that are derived from proper asset-management plans.

Given the current ineffectiveness of mandated audit coverage over local government, value-for-money, cost-

effectiveness, asset planning and overall performance, the Canadian municipal sector presently has little motivation or incentive to achieve satisfactory results. Better local government law and governance demanded by superior governments could alter this.

Non-financial performance measures

A feature of any performance-measurement framework is the measurement and reporting of non-financial performance measures in addition to the usual financial ones.

New Zealand local government was fortunate to benefit from initiatives relating to the development and reporting of comprehensive financial and non-financial performance measures. At a time when this form of comprehensive performance measurement was introduced by legislation, the means to achieve this had already appeared in practice.

In the early 1990s, the accounting profession (the Institute of Chartered Accountants of New Zealand, ICANZ) introduced what they termed their "Conceptual Framework"⁴⁰ or "SC Statements of Concepts." Included in this document for the first time were the standards of and methods for non-financial performance measurement and reporting. The basis for such performance measurement therefore already existed. It was being used, so the capability was already available to local government. Fully featured performance measurement and reporting could be implemented by the time the new *Local Government Amendment Act of 1996* required it.

Five basic criteria to be used for the comprehensive measurement process were laid down. They were measurements of cost, quantity, quality, timeliness and location.

Reasonably standard reporting practices were quickly added to these, so that, for example, municipal water services would be publicly reported, often using about four or five familiar, serviceable and understandable sets of non-financial measures similar to those described below. These familiar formats became readily accepted by and were suited to the needs of laymen readers of municipal annual performance reports. As these were subject to audit scrutiny, their accuracy and credibility were significantly enhanced.

A comprehensive measurement system and its view of performance is equally concerned with non-financial performance measures. For example, for a water supply service, reporting performance using a set of non-financial measures such as the following:

- water quality—does it meet WHO health standards for potable drinking water?
- location and quantity—will it produce water delivery pressure at an adequate level and will it deliver this pressure to all area hydrants to meet emergency fire-fighting requirements?
- cost quantity and quality—results of water-leak detection programs—is water leakage below a (10 per cent or less) satisfactory level?

All of these (largely) non-financial measures are reported in addition to the usual purely financial water supply-related measures such as actual cost-budget results.

By these means and after much trial and error, the practices for both financial and non-financial performance measurement were developed.

They have become an established part of the New Zealand municipal public reporting landscape. A scan of the web page of any recent New Zealand municipal

annual report⁴¹ will show how highly developed this movement is. Non-financial performance measures covering all municipal services are reported with skill and innovation. This is a further example of an established learning curve, now operational and one that can benefit those who follow a similar developmental path.

Managerial behaviour and thus, municipal performance is set by law

Management 101 teaches us that as a class, managers will only perform to high standards if they are given clear, measurable goals within a practicable performance framework.

A performance framework will bring with it manager accountability. Their actions can be measured and monitored based upon a set of effective performance-measurement targets. The five comprehensive performance-measurement criteria⁴² must be embedded within this reporting regime.

Based on properly measured results, high performance may be rewarded with bonuses and incentive payments while sanctions may also be used to penalize poor performance. Many New Zealand municipalities have integrated performance related reward elements at all levels of their staff and management structures. Municipal CEOs, who are solely responsible for running the performance-management schemes, are themselves rewarded or not depending upon measurable, comprehensive performance results.

Issues of fairness, accuracy and rewards for performance aside, without high performance expectations derived from an effective performance-measuring system, poor performance will inevitably result.

People respond to the lure of incentives

and the fear of sanctions. If there is no carrot or stick in place, then the donkey will listlessly languish in his or her field of inferior pasture, happy with his or her lot but unfit when called upon to pull a decent load. Something similar could be said to apply to people.

New Zealand local government has moved for their people from staid and traditional public service employment terms to performance-based pay and conditions of employment. This was achieved with the acquiescence of employee unions.

Performance case studies—good and not so good

Many success stories are associated with high performing New Zealand municipal organizations. In one celebrated case, in 2006, a small city, called Hutt City, after seven years of making continuous improvements won the premier New Zealand Business Excellence Award against all comers, including by beating off stern competition from the private sector.

Making this award to a local government organization (of all things) gives credence to the theory that a best-practice local government environment can be developed, and it will deliver top performance municipal-service delivery. Many people believed this to be an impossible dream. It is generally recognized now that such excellent results would not have been possible without the profound influence of the 1989-2002 law reforms, which encouraged these improvements.

It is significant that Hutt City decided to embark upon its long-term performance improvement campaign for the following reasons:

- Projections of rates (taxation) increases were unacceptably high. Without taking

remedial (performance improvement) actions, severe political and operational consequences would have ensued. By 2008, Hutt was able to record some of the lowest annual increases of New Zealand municipal rates over an extended period;

- Excellent leadership of the process was displayed by the senior management team with the blessing of elected members;
- Adoption of a no frills, largely core services, service delivery profile;
- Control of overheads. For example, intensive management of staff numbers—and their Head Office remains, due to cost considerations, located in an old office building of Art Deco (circa 1930s) vintage.

There have been some less-than-auspicious misadventures as well. In an unnamed large city, the municipality's high performance results were achieved after payment of very large senior management-performance bonuses. Short-term gains were achieved; staff discontent rose and the high flyers soon left the building for greener pastures.

The lessons to be taken from these examples include the need for astute elected members to be directly involved in bonus, remuneration and performance-related pay processes in order to provide balance, oversight and leadership.

Motivation and accountability

New Zealand local government legislation permits and encourages reward for effort within the performance framework included in the law. It is doubtful if many Canadian provincial jurisdictions replicate this situation.

In a profit-motivated, market-driven private sector situation, market-driven performance incentives and disincentives are automatically present. In a local government environment, they have to be structured into a legally mandated performance framework. Their absence inevitably leads to poor performance, often with public services being provided merely on a cost-plus basis (last year's budget and say—plus 5 per cent or 6 per cent) with long-suffering taxpayers reaping the whirlwind. Far better to set zero-based budgets with stiff performance targets and to promise rewards for their achievement.

Poor results are inevitable when managers are acting in the absence of the controls and motivation that can be derived from market forces. To achieve optimal municipal management and organizational performance, a local government performance-management regime that simulates market-driven motivations must be mandated.

High performance, except in the most exceptional of circumstances, will not occur of its own accord. Taking this argument further, if it is accepted that a law is needed for these purposes, then it must derive from a modern best-practice and performance-based municipal act.

Management must be mandated to act appropriately by setting clear, measurable goals within a sensible, accountable performance framework. A framework that is monitored for achievement and that rewards the attainment of measurable performance targets. Add to this the influence of public accountability and audit, and a legally mandated high-performance prescription will be set for municipalities, one that accords with current municipal best practice.

In many respects, Canadian legislation is not meeting the standards of modern accountability or the needs of commercial

and civic life. For example, failure to use a legally based performance framework that is designed around an effectiveness and efficiency ethos leads to poor and costly municipal performance, poor accountability, inferior governance, low responsiveness to citizens' needs and suspect probity of behaviour, among other problems.⁴³

Use of practical methods

The influence of practical solutions that were incorporated into the New Zealand legislative development process can be partially explained by the inclusion in the law of extensive practically based codes and conventions. These as discussed already at some length are referred to as a body of knowledge serving as practice-based techniques deserving of the title of authoritative support (S.5 of the New Zealand Act as explained in Part II and Part III of this study).

A far-reaching and significant example of the effect and value of such practically based legal provisions is evident in terms of Sections 111 and 101 of the New Zealand 2002 Act, which meet S.5 authoritative support standards:

- S.111 "Information [is] to be prepared in accordance with generally accepted accounting practice;"
- S.100 (20) (b) is a provision that states that depreciation must be assessed and funded based on "an estimate of expenses associated with maintaining the service capacity and integrity of assets throughout their useful life."

The significance of these two sections cannot be understated because of the way in which they address issues of infrastructure asset maintenance and depreciation.

New Zealand generally accepted account-

ing practice (GAAP) contains many practical and public sector specific guidelines. In the S.100 instance, these are legal, not GAAP provisions that deal with infrastructure asset accounting, maintenance and depreciation.

S.100 goes further by explicitly identifying, in recognised public policy and economic terms, standards in practice that qualify (as authoritative support) and are given the force of law—by S.5. They qualify with the status of authoritative support, that is, the principles and specifics of local government depreciation policies.

Much has been written on this complex area, and best practice is still a moving target with final positions yet to be reached. Constructive progress to date though is still founded on the S.111 and S.100 principles and directives. These sections create practicably based laws to ensure that public assets are maintained by requiring all estimated asset-related expenses to be provided. Accurate assessments, backed by actual funding, guarantee that asset integrity is preserved thus ensuring full financing-funding of asset maintenance and renewal.

It is rare to see a similar approach with the use of the authoritative support notion in local government legislation elsewhere. Such utilitarian provisions are conspicuously absent from Canadian local government law. As a result, the means by which infrastructure asset backlog deficits can be measured and funded do not by and large exist at the local government level.

If Canadian local government does nothing more than merely amend its existing municipal acts with the aim of gaining the maximum economic benefit currently available, then adoption by the sector of these asset-funding provisions should be placed at the very top of every provincial legislature's list.

Other practical issues

It is important to note two matters that bear upon the use of the practical processes as described. For a well-rounded performance model, a local government act needs to consider the following. First, the guidance such as is given by S.100 on depreciation is written into the letter of the law and is a clear example of New Zealand local government law acknowledging its basis upon current best-practice codes of practice. There are plenty of others, taken from a wide range of fields such as public policy, economic and social policy. These policies show up in areas such as decision-making, accountability provisions, the community outcomes process, consultative information provision and so on.

Second, Canadian municipal acts include a requirement to adhere to GAAP. It is important to note though that the present deficiencies of Canadian public sector GAAP—reference the case of PS 3150⁴⁴—render some GAAP deficient for local government in Canada as far as adoption of best practice is concerned. Canadian GAAP, citing the asset standard PS 3180 as an example can by no stretch be termed best international practice.

New Zealand GAAP, by contrast, has been purpose-built to suit local government needs as described within the comprehensive conceptual accounting framework.⁴⁵ It is a systematic framework of financial and non-financial performance measurement that Canadian public sector GAAP does not possess. Canadian GAAP is generally not suited to municipal purposes or it fails to meet best-practice standards.

Earlier observations of this paper asserted a generally low opinion of Canadian local government standards. Most of these deficiencies could be addressed and rectified.

At present, the lack of a suitable legal —performance-measurement framework virtually ensures low expectations that lead to poor performance.

These limiting factors and deficiencies will slow and possibly handicap progress for Canada's local government. At least the New Zealand models are available, if followed—to assist with their development.

Some practical advice for practical solutions

There are a few commonsense cautions to add to the opinions expressed in this paper. These arise from experience gained over the 20 or so years of New Zealand local government best-practice developments. They concern the challenges of managing the multi-disciplinary initiatives that have been active in the processes.

To effectively use a practical code, that is, a set of professional standards, and at the same time derive practical authoritative support and incorporate these into local government law, some cautions need to be added. Several factors need to exist if the melding of law, standards and best-practice methods is to be achieved:

- An excellent, proven, operational and professionally developed model of best practice must be in place from the beginning. Such a framework must be supported with practice guidelines, educational material and training courses at all staff levels, particularly for accounting and engineering personnel;
- To define the limits of acceptable practice, audit involvement is also crucial early on in the process. An example of an established non-financial reporting code is given in the paper. This was already produced by the accountants (ICANZ) and was given audit blessing quite separately from similar developments made within the local government sector. The wheel (performance measurement) was not re-invented; the existing code with little adaptation was adopted;
- Care must be taken to ensure, before their adoption that such codes are appropriate for use by the local government sector and that they make good public policy sense;
- Preferably, the practical accounting, asset management and other codes will have been developed and moderated with proper public sector applications in mind. If not, their applicability may well be suspect. It is clearly no use in relying upon a version of GAAP for a performance framework best-practice work if it is itself either deficient or if it does not contain a GAAP-approved accounting-standard level framework that includes non-financial performance measurement and reporting;
- The law draftsmen need to be fully acquainted with the available best-practice models in all relevant fields. They will not know what they do not know or what they have not been made aware of. It is hoped that this paper will alert these people and the professional bodies of Canada to the need to educate themselves in these important areas;
- The legal and law-drafting disciplines cannot, from their own resources develop and incorporate the necessary, relevant and detailed practical codes that are needed for the law that they draft. To incorporate such provisions, they need to know of the practical requirements and the many issues such as those highlighted in this study—and to work closely with sector experts;
- Multi-disciplinary working parties that were funded by public and private

(professional associations) money worked hard over many years to achieve the New Zealand results. Canada will need to act in a similar fashion for the extensive multi-disciplinary developments involved;

- The combined public policy, legal and practitioner groups will have to define the areas where good practice can be practically mandated within the provincial contexts. Any provincial view that is too customized to local conditions may complicate any process of adapting national professional standards and codes;
- Audit practice will be complicated if significant local variations are permitted, and audit quality would probably be degraded as a result. It is difficult enough to maintain one national code of audit practice, let alone many provincial ones. Uniformity of these codes would seem to be warranted and federal direction may be required to achieve this, possibly using the threat of (federal) subsidy denial;⁴⁶
- There seems to have been a tendency in New Zealand to ignore the economic implications of outcome setting. The other three outcomes, particularly the social ones, were well serviced; the economic ones were not. A recession seems to have partially corrected this. Canada might do well to draft its legislation giving prominence to economic—financial management goals. Before howls of protest to this suggestion become too loud it is worth pointing out that social, cultural and environmental outcomes—take money;
- For best results overall, the whole process has to be driven by the overarching objectives of gaining maximum benefit from the desired social, environmental and cultural outcomes. These must then be justified by their intended

positive economic effects. Addressing Canada's backlog asset-maintenance issue using appropriate local government legislation is a perfect example of the positive and essential economic effects to be derived;

- In New Zealand, it can fairly be claimed that the co-ordination of efforts by the multi-disciplinary people involved in developing such far-sighted and practically based purpose-built law has been successful. Improvements of existing New Zealand local government law and future amendments are likely to benefit from a similar collegial and co-operative approach;
- Canadian lawmakers, the professional bodies representing the sector, and engineering and accounting representatives in particular need to get their heads together and co-operate in setting up a better model. A series of working parties similar to those developed in New Zealand should set about mandating managerial performance and behaviours with the better performance of Canadian municipalities as their objective.

Having covered policy and theory and given some case study evidence in support of adopting the New Zealand *Local Government Act* as a model for Canada, this paper will now get down to brass tacks. The final section, Section V, identifies the key elements (currently missing from Canada) that comprise modern performance-based local government legislation.

A series of working parties... should set about mandating managerial performance and behaviours...

Part V

Significant reforms, the specifics— a toolbox of good local government law

This part of the study has been prepared to detail the following:

- sections of the New Zealand Act that are worthy of identification because of their beneficial effects;
- they are the distinguishing features of the New Zealand law for good reasons;
- they may be used to construct amended or redesigned local government legislation.

This part of the paper contains specific references to sections of the New Zealand *Local Government Act 2002* that are noteworthy with brief reasons given for their particular significance and value. The incorporation of these sections within redrafted Canadian provincial legislation is contemplated. This section was completed in the following manner:

- Distinguishing sections were selected for their significance to improved good local government as described in other parts of this paper. In each case, some description of the effect, benefit or other attribute of the provision is given;
- The New Zealand Act's featured sections are reported irrespective of the fact they may exist in similar or more appropriate form in some provincial legislation. To this extent, this section will serve as a Provincial Municipal Act checklist;

- Purely regulatory, mechanical or administrative provisions of the New Zealand law, unless they meet a significance threshold in their own right, are omitted. Most of these have little if any use or significance to Canadian jurisdictions although its local government law will no doubt contain many of their own comparable provisions;
- The New Zealand *Local Government Act 2002* was reviewed from cover to cover, sections appear below in sequence from S.1 to S.314 plus extracts taken from Schedules 1 to 20 inclusive;⁴⁷
- Section headings of the Act's terminology are shown in **bold** type. They relate directly to the accompanying commentary as to their significance and effect. *Italics* are used to identify sections lifted from the Act itself. Singular terms and quoted sections are enclosed in parentheses.

Table 2. A toolbox of selected local government law provisions

Selected sections of the New Zealand Act	Commentary and Significance
<p>S.3 Purpose of the Act</p> <p><i>"is to provide for the democratic and effective local government that recognizes the diversity of New Zealand communities"</i></p> <p><i>"provides a framework for local authorities' actions"</i></p> <p><i>"promotes the accountability of local authorities and to their communities"</i></p> <p><i>"provides for local authorities to play a broad role in promoting the social, economic, environmental and cultural well-being of their communities, taking a sustainable development approach"</i></p>	<p>The effect of this section is clear in its intent and has been far-reaching in its effect. Local government is to operate within the framework provided by the <i>Act</i>, a framework characterized by accountability to local communities for actions directed at addressing the four citizens' "well-beings," also referred to as "Outcomes," whilst behaving in a sustainable manner.</p> <p>These provisions have become articles of faith relating to a modern version of what local government should represent. The basis of these provisions can be traced to the U.K. Royal Commission of 1969. Whereas previously, local government was seen merely as a provider of services, it is now viewed as a player in its own right, taking a facilitative and constructive role in the affairs of its citizens and it is accountable to them for these actions. Notions of sustainability, of course, have a very modern aspect to them, too.</p>
<p>S.5 Interpretation – refer to Community Outcomes</p> <p><i>"identified as priorities"</i></p>	<p>This section introduces what to some may be the somewhat novel notion that it is for the community, not the organization, to express its desires and then set suitable resource-allocation priorities. Citizens can determine their own balance to some extent. For example, they can favour more effort for one well-being ahead of another from their unit of local government, perhaps by emphasising (or not) more resources to be applied to the social arena and less of a pure economic kind. The <i>Act's</i> detailed provisions set up the extensive means to achieve this and relate to local government playing its broad role in meeting citizens' well-being aspirations and needs.</p>
<p>S.5 Interpretation – refer to Generally Accepted Accounting Practice (GAAP)</p> <p><i>means "approved financial reporting standards and any applicable rule of law, accounting policies that— are appropriate and have authoritative support within the accounting profession in New Zealand."</i></p>	<p>Adherence (unsurprisingly) to GAAP is required. For example, S.69 (2) and S.111 require financial reporting to comply with standards. What is significant here is the addition of other "appropriate" standards with "authoritative support." This section envisages use of best-practice accounting methodology over a wide range of areas at the discretion of the practitioners and for circumstances not contemplated within the normal financial reporting standard's framework. The effect of this interpretation has been to admit variations for accounting and best-practice-based asset valuation, accounting, long-term budgeting and audit practices that are deemed suitable to local government circumstances. This has in some cases proved a double-edged sword in that the greater flexibility has often heightened</p>

	<p>uncertainties of varying presentations and treatment. Some were deemed acceptable but have in fact led to the adoption of inappropriate standards including recent (post-Sarbanes-Oxley) International Financial Reporting Standards (IFRS). At its best, though, it is a clear example of the authoritative support matters as raised in the study where the practical world (practice-based process) takes over from the legalistic (law and accounting professional standards).</p>
<p>S.10 Purpose and S.11 role of local government <i>"to enable democratic local decision-making on behalf of communities"</i> <i>"to give effect to its purpose"</i></p>	<p>These are two short but very important policy sections that directly link local government's purpose and role. Coupled with the framework (call it the Act's "scaffolding") provided by the Act, the body of New Zealand local government law represents a comprehensive, principled and, above all, integrated structure of service provision adding many of the delivery mechanisms of modern good local government.</p>
<p>S.14 Principles relating to local authorities <i>"Conduct business in an open, transparent and democratically accountable manner"</i> <i>"make itself aware of and have regard to the views of all of its communities"</i> <i>"when making decisions take account of the diversity of the community, the interests of future as well as current communities and the likely impact on all well-beings"</i> <i>"Undertaking commercial transactions in accordance with sound business practices"</i> <i>"Ensure prudent stewardship and the efficient and effective use of its resources "</i> <i>"Taking a sustainable development approach"</i></p>	<p>Here is Good Local Government writ large—in a nutshell. This section sets down the standards by which local governments are ordered to behave. These principles cover all key aspects of:</p> <ul style="list-style-type: none"> • transparency and accountability; • democratic, commercially sound, sustainable decisions and actions; • with resources used efficiently and effectively to satisfy community ends; • meeting the (consulted-upon) four well-beings. <p>Note that similar terms are used to describe the principles of Good Governance (S.39): effective, open and transparent, etc.</p>
<p>Sections 28 to 37 The Local Government Commission</p>	<p>This is a standing autonomous quasi-judicial group of three or more Commissioners whose role it is to set local authority boundaries based on defined criteria in accordance with the affected communities' wishes and taking into account their common communities of interest. The Commission works tolerably well and removes some of the political "steam" from ubiquitous "border wars."⁴⁸</p>

S.42 Chief Executive (Officer) CEO

- role and responsibilities of the CEO

These more detailed sections set the role of the CEO/CAO.⁴⁹ In doing so, the CEO is named as the only person employed by the elected members; all staff are appointed directly by the CEO without any interventions. This role and others specified herein achieve effective separation of operational and policy roles. Elected members cannot then meddle in areas where they are not entitled. This prohibition is given the force of law and infractions are treated seriously. Codes of conduct dealing with the actions of elected members set local rules for their behaviour. The CEO is set contractual objectives involving the effective and efficient performance of the municipality that she or he manages. Invariably, the contract provides further rules for the reinforcement of a separation of operational, regulatory and policy processes.

S.45 Local (Government) Authority to respond to Auditor-General

plus many others involving the powers of audit

The powers of audit over almost all local authorities' activities provide the necessary oversight of matters of probity, compliance and value for money.

In addition, such powers cover the usual public financial and non-financial reporting. Infractions of audit rules are reported to Parliament and auditors take a role in ensuring that the *The Local Authorities (Members' Interests) Act*, which rigorously sets standards of anti-corruption, is followed. All concerned treat audit requirements seriously and generally high, consistent audit standards are achieved. As a result, New Zealand local government probably accounts for a good part of the high scores obtained by the public sector in recent international surveys of transparency and low corruption levels.

Sections 55 to 74 Council-Controlled Organizations (CCOs)

The powers and ability of local government to set up CCOs are extensive. This gives effect to the 2002 Act's granting municipalities powers of general competence. These allow local government to do almost everything they (that is, their communities) desire. There have been few, if any, abuses of these provisions by setting up totally inappropriate organizations. The CCOs created have focused upon numerous and varied activities, generally those that at least partially possess significant elements of or provide services of public benefit.

The most successful of these relate to CCOs comprising standalone units set up for road construction and road maintenance, municipality-owned operational parks and reserves, and facilities-maintenance units, tourism developments, sport-facility provision, and forestry. Strict governance (statements of corporate intent) and other accountability provisions successfully—by and large—control CCO activities.

Part 6**Planning, decision-making
and accountability****Sections 75 to 122**

This is by far the most important part of the New Zealand *Local Government Act* and is its single largest component.

This part of the *Act* contains all of the required financial management provisions needed to achieve modern, good local government.

Canadian local authorities would do well to review the detail of these sections with the aim of their adoption. They provide the practical financial mechanisms to give effect to the operation and the implementation of the legal principles laid down in the *Act*.

The provisions of Part 6 of the *Act* provide an integration of all the processes involved, forming a workable, coherent and holistic policy and operational environment. The sections, comprising the planning, financial management and decision-making processes of New Zealand local government law provide a workable schema within an excellent structure that has been developed in accordance with sound management and other principles. These sections represent a notable achievement, and they were designed to give effect to the delivery of good local government that fosters good management and democratic decision-making. They have worked well in practice. The judgments made as to the value of this structure and these mechanisms are of course dependent to some extent upon a view that the founding principles of the *Act*, such as the declarations of the purpose and roles of local government, are well founded.

Whatever one's world view, (liberal or conservative), it is worth noting that differing emphasis, for example in the emphasis upon resource priorities within the four well-beings context, are still highly flexible. Widely varying resource-allocative decisions are eminently possible using these provisions.

**Sections 75 to 116
Outline of Part 6**

- (a) sets out the obligations of local authorities in relation to making decisions and
- (b) consultation
- (e) reporting on community outcomes
- (f) the long municipal community plan and annual report and
- (g & h) financial management and borrowing obligations

The noteworthy features of these sections include:

- S.77 Decisions—all practical options, not merely a single recommendation, are required to be presented as alternative courses of action for policy development decision-making purposes. For example, three options representing low-, no- or high-growth alternatives might be developed and considered. "*Benefits and costs of these options*" must be assessed and consultations must be done. The effect upon community outcomes, their impact on future needs (sustainability), the integration and efficiency of the decisions need to be measured and stated within the policy development decision-making context. Information produced along these lines must be satisfactory in the explicit terms given by S.78;
- S.78 Community views of decisions—"the views and preferences of persons likely to be affected or who have an interest in a decision" must be considered "at the

Sections 75 to 116
Outline of Part 6

Continued

stage when the problems and objectives are being defined" and "at a time when all reasonable practicable options are being assessed and proposals developed;"

- Clearly, these provisions recognize the dangers of and are aimed at preventing decision-making from being subject to bureaucratic capture when often only one or just the favoured few options of operational management are presented to elected members as a fait accompli;
- S.79 (2) The local authority must exercise its discretion and judgment in relation to the application of Sections 77 and 78 (decisions), taking into account their significance particularly as it relates to the importance of the principles, the size of the resources involved and the scope, options and preferences expressed;
- These are "practical application" directives where, based on the relative significance of the decision to be made, the extent, nature and quality of information provided, options to be considered and application of Sections 77 and 78 can, using judgment, be suitably circumscribed or not as any particular case may warrant;
- S.82 Principles of consultation;
- If there is a better legal exposition of the essentially practical principles governing consultation, then it has not been sighted, at least not within Canadian local government law. There are those who believe these provisions are excessive. The author (who has witnessed most forms of abuse of consultative process) thinks not;
- S.82 (a) *"affected persons will be provided with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons;"*
- This sub-section explicitly demands of a local authority the provision of useful and understandable information that is suited to and provided for the persons affected. If there is any one provision of a modern local government act that has real meaning for democratic and balanced administration, it is this one. This is because the section attempts to address the information imbalance that exists between citizens and public entities, an imbalance that must be corrected if "balanced" decisions are to be consulted upon and then decided fairly and correctly. The section attempts to give effect to good, long-established principles of natural justice and administrative law;
- Other S.82 "Principles of consultation" sub-sections demand of local authorities the *"encouragement of a presentation of views," "reasonable opportunities to present views," "views to be received with an open mind and given due consideration,"* and *"persons provided with the relevant decisions and the reasons for the decisions;"*
- S.83 Special Consultative Procedure (SCP) lays down a standard process of consultation involving contents of a *"proposal"* requiring *"public notice and a hearing process"* largely confined to *"dealing with matters specified by the act requiring such process"* for *"matters of significance;"*
- S.84 SCP in relation to the S.93 long-term council community plan (LTCCP). Not surprisingly, this section requires the full SCP to be followed for this key (LTCCP) accountability document;

Sections 75 to 116 Outline of Part 6

Continued

- S.88 When, for example, a change to the mode of service delivery of a significant activity of the local authority is proposed, an SCP must be used. This covers situations where, for example, in-house service provision is proposed to be contracted-out or significant services discontinued or modified in terms of their volume, nature, etc. As it is left to each authority to determine its level of S.90 significance for any particular matter, even, for instance, the proposed discontinuance of a roadside refuse collection could trigger the SCP if after consultation the matter has been given a sufficiently high level of significance;
- S.90 Policy on significance requires a local authority to define the matters it deems to be of special significance to the extent that heightened care and public notification and special consultation processes are warranted for these matters. The issues/matters include those of significant public interest, dealings with so-called strategic assets; they may be policies such as borrowing or they may relate to certain specified significant services, even for such matters as the preservation of specified cultural values and so on. The definition of "significance" is extremely broad and its application is a matter for the exercise of wide discretion by the municipality and community involved;
- S.93 Long-term Council Community Plans provide extensive details. The LTCCP can be regarded as the cornerstone of municipal democratic process and accountability;
- The LTCCP must be consulted upon, and it must be integrated and consistent with all community outcome priorities, budgetary and borrowing constraints, asset-funding needs and revenue-raising policies. In short, a fully integrated and workable plan. It is subject to audit and a three-year review using a 10-year planning and budgetary horizon;
- The LTCCP must be audited in a demanding so-called prospective accounting information standard's context;
- The process surrounding these plans is complex and time-consuming. Opinions differ as to the depth of detail that the public can be expected to intelligently absorb. Any criticism inherent in these opinions should be reserved for the plan's preparers, as they often over-complicated the matter by forgetting good public information guidelines and by providing administrative details far too complex for the average public reader;
- The LTCCP process represents a quantum leap toward better local government administrative standards given the plan's integrated and long-term planning context coupled with the demands for excellent information to support the process;
- An Annual Plan (AP) process, (S.95) is fitted underneath the structure of the LTCCP. The two do not materially differ, except for the lesser detail and time taken. The AP differs in its demands from the LTCCP but gives special treatment to any annually occurring changes that might be proposed to the LTCCP;
- Sections 98 to 116 Reporting, financial management and borrowing and security. As a comprehensive financial and financial reporting regime, this is an excellent model, the full details of which are beyond the scope of this paper;

Sections 75 to 116
Outline of Part 6

Continued

- The major significance of these sections has already been raised in the body of this study. For example, S.100, the balanced budget provision and its requirement to fully fund asset depreciation – loss of service potential;
- S.101, the financial management provisions that require the full cost-benefiting of proposals and which lays out a method for assessing the best means of measuring the relative public and private benefits of all local government services and setting taxation (rating) policies accordingly;
- S.103 provides a balanced equity-based and economic two-step process for rating (taxing) policy setting;
- All the necessary local government tools to equip a toolbox of financial management mechanisms are contained in these sections;
- Full practice guides to support these processes and model presentations of financial and non-financial reports accompany this body of knowledge. They have been professionally developed by various agencies to give effect to these provisions; all are working satisfactorily in practice;

If there is a better code of financial management, then it has not yet been found within Canadian local government circles (or elsewhere for that matter).

Part VI. Concluding remarks

Basis for Canadian law reform

This study represents the culmination of the last five years' contact and engagement by the author with Canadian local government at every level. It draws on experience as a practicing local government finance and policy analyst over the last tumultuous 20 years of New Zealand local government reforms.

When first working in Canada with the public sector, it quickly became clear from direct observations and from media and concerned citizens that they held their municipalities in low esteem. They considered them unresponsive to their needs, inefficient and overdue for a good shakeup. Recent surveys have confirmed these earlier findings.⁵⁰

While visiting and working with municipalities in Canada, it also became obvious that municipal government looked remarkably like the New Zealand municipalities of the early 1980s, before the New Zealand reforms were introduced. Pre-reform municipalities are characterized by a rule-bound, unimaginative, overly bureaucratic, public service mentality, internal service provision and operations—service delivery to match.

"Performance improvement" is a phrase seldom heard in Canadian local government circles—and even less practiced.

It is apparent that Canada would benefit from serious consideration of the means by which local government performance could be improved. Using the New Zealand model of local government, which involves fundamental changes to local government law and practice, this paper has attempted to point out the path forward for Canada's municipal sector.

If Canada's economic and other desirable social goals are to be reached, many will

emanate from the local government sector. The discovery, evaluation and the implementing of the processes that can achieve these gains will be the challenge to all persons concerned—for the betterment of Canadian local government. The solution (or at least one version of it) is at hand and is contained in this paper—if there is the enthusiasm for it.

A word about audit

As a "recovering" auditor with over 30 years of accountancy and public audit and finance experience, the author holds firm beliefs relating to the social worth of the accounting standard-setting and audit processes. As conventional wisdom puts it and as did a certain beloved grandfather, "If a job is worth doing, it is worth doing right."

Unfortunately, and in spite of the 2002 *Local Government Act* containing excellent, effective audit mandates and process, New Zealand audit practice of late has failed to deliver. Audit coverage of the *Act* includes effectiveness and efficiency—value for money and performance mandates. The New Zealand audit presence in these areas of local government has over the last 10 years or more become conspicuous by its absence. This, no doubt due to tough economic times, may be about to change.

For Canada, it is vital if administrations are serious about achieving better performance from their local governments that audit coverage is given prominence in the law and provided with the capacity in practice inside a new reformed legal structure so that their actions are effective and make good social and economic sense. At present, Canadian local government audit practice in places "is woeful".

Action plans

This paper in its original form was prepared as a discussion-exposure draft, and it will be given wide circulation.

Its principal audiences are the local government policy and law-drafting professionals of Canadian provincial legislatures. The main thrust of the paper is directed at them, relating as it does to the need for new provincial local government law. If progress is to be made, then it will only come from actions initiated and advanced by provincial lawmakers.

Provinces set the rules, principles and purposes for the local governments of their own regions. One common limiting factor of Canadian local government legislation is its outdated, rule-bound and legalistic expression.

Coupled with this, Canadian local government law sets no performance framework for municipal operations, and poor performing units of local government are the result. The economic benefits of better performing local government that could be influenced⁵¹ if the law demanded them are being lost. The adoption of the many suggestions and the model law contained in this study deserve serious consideration.

All opportunities to amend, correct and improve future editions of this study are encouraged. The author can be e-mailed at larry@kauriglen.co.nz.

***If progress is to be made,
then it will only come from
actions initiated and advanced
by provincial lawmakers...***

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- Queen's Printer, Victoria, British Columbia; *Local Government Act* [RSBC 1996] July 1, 2009. Victoria BC Canada, published by Provincial Government of British Columbia Queen's Printer.

Endnotes

1. The New Zealand *Local Government Act 2002*.
2. Western democracies mean the United Kingdom, the United States and Australasia. The experiential basis of the research for this paper, though, largely excludes the United States, as it draws upon the author's experience based in Australasia.
3. The radical reforms of the New Zealand public sector of the 1980s have yet to visit Canada's shores. Signs are slowly emerging, as evidenced by work conducted for the latest Frontier "Local Government Performance Index" at <http://www.fcpp.org/publication.php/2483>. Some slow progress, initiated by the municipalities, is now occurring. Broad local government law reform still seems distant. Canada has a long way to go compared with the tsunami of New Zealand reforms that began in 1986 (initiated by the New Zealand *Public Sector and Public Finance Acts*).
4. For a full exposition of those radical times, a veritable tsunami of reform, see *Reshaping the State: New Zealand's Bureaucratic Revolution*. Eds. Boston, Pallot, Martin and Walsh. Oxford University Press, Wellington, New Zealand, 1991.
5. See The Frontier Centre, <http://www.fcpp.org/position.php?topic=>.
6. "The Provider/Purchaser Split," *Reshaping the State: New Zealand's Bureaucratic Revolution*, Boston, Martin, et al.
7. New Zealand Local Government Association and L.N. Mitchell, 2008 "Base Stats with Trendz" research finding.
8. The Office of the Auditor-General (OAG), which might be expected to take an interest in these matters, has adopted a moribund position over the last 10 years administered by successive Labour (Liberal) governments. This lack of measurement of local government productivity benefits now in times of recession and under a National (Conservative) government may be about to change. Economic outcomes delivered by local government are gaining prominence ahead of other social and environmental goals. There has finally been (by mid-2009) a renewed interest shown by the OAG in performance measurement and benchmarking.
9. If a clear start point of an analysis of the cost-benefits (of say reorganizations/amalgamations) is not established in advance or at the time (of merger) then no useful post hoc subsequent process will suffice.
10. Referred to in Part IV of this paper. "Performance Cases Studies" are reported, for example some bad practices associated with incentive-based pay.
11. By the use of the term "more-demanding"—it is intended to suggest that this should be part of a conscious effort to achieve ever higher performance standards.
12. Larry N. Mitchell, 2009. "Base Stats with Trendz" surveyed data Local Government New Zealand reports.
13. "Self-motivated" in the sense that they did it of their own volition—voluntarily, as the law does not insist upon the conduct of such surveys.
14. The Rodney District Council Combined Satisfaction Index (CSI) score of June 2006.
15. Any kind of incentive payment usually though in the form of cash/salary bonuses linked to achievement of performance.
16. The well known phenomenon (to policy analysts at least) of bureaucratic capture where management and staff often in control of relevant knowledge information use their power of information imbalances to control elected member behaviour.
17. In short—all of the elements of an acceptable, modern and "high performance" governance regime.
18. Audit practitioner terms used interchangeably—"value-for-money" (UK) and "effectiveness and efficiency" audits (contrasted with compliance—regulatory audits) are as is suggested by their titles designed to improve auditee performance as opposed to merely seeing that the rules have been followed
19. The multi disciplines principally included engineering, accounting and valuation disciplines. Each brought to the table their best practice input to local government asset and financial management.
20. The National Asset Management Steering (NAMS) group consisted of professionals from New Zealand and South Africa, the United Kingdom, Australia and the United States. See their current International Infrastructure Management Manual, International Edition 2006, for a complete account of multi-disciplinary methodology and asset-management techniques applied to local government.
21. Much has been written on Public Sector standard TAS 3150, but a plain-English briefing paper of the standard is at http://www.granthornton.ca/resources/insights/adviser_alerts/Implementation%20PS3150%20Tangible%20Capital%20assets.pdf.

22. The organization is not identified for reasons of client confidentiality.
23. A very low level quality of cost data hardly a substitute for considered and accurate valuation processes.
24. "Assets" – fixed, physical, including local government utilities—networks like roads, water, wastewater and so on.
25. For example the British Columbia Act is at http://www.bclaws.ca/Recon/document/freeside/--%20L%20--/Local%20Government%20Act%20%20RSBC%201996%20%20c.%20323/00_Act/96323_00.htm.
26. Measurements involving all of the dimensions of both financial and non-financial performance.
27. See the Frontier Centre for Public Policy "Local Government Performance Index 2008" at www.fcpp.org/main/publication_detail.php?PubID=2483. See pages 113 to 127 for some damning assessments of current Canadian standards of accounting, audit and disclosure as yet (July 2009) not rebutted.
28. Canadian Institute of Chartered Accountants research, emails and telephone discussions circa 2008 with its public sector accounting standard's setting practitioners. This extensive dialogue revealed CICA's stance on PS 3150, the infrastructure asset standard. CICA declined to have any standard's-based input on matters relating to the crucial issue of the funding of public sector asset maintenance. A "Let's not frighten the horses" approach – and extremely unhelpful. If this is the way authoritative support is going to be handled, then the report card will continue to garner a failing grade.
29. "Qualifications", that is, audit opinions that contain reference to circumstances indicating auditor reservations – qualifications that are worthy of mention. Qualifications of course vary in terms of their significance ranging from minor infractions to fundamental issues that affect the truth and fairness of the financial statements.
30. A number of the research findings from Frontier's LGPI fieldwork point to such significant failures of accounting and audit practice which (in other jurisdictions) would warrant a range of sanctions.
31. A recent case of an expensive blind alley and referred to elsewhere in this study concerns the New Zealand OAG's reversal of its earlier (and incorrect) decision to adopt International Financial Reporting Standards. The full report of this extraordinary affair is at <http://www.oag.govt.nz/2009/financial-reporting-standards/> and is titled "The Auditor-General's views on setting financial reporting standards for the public sector."
32. One missing ingredient relating to the measurement of New Zealand local government is the paucity of official statistics covering local government sector performance metrics. Refer to the author's web site at www.kauriglen.co.nz for many reports and the "Base Stats with Trendz" reportage covering these matters.
33. The "Jigsaw" series of training material are referred to in the NZ Society of Local Government Managers briefing to the incoming minister 2008, but it is no longer online. A circa 2006 version is at www.solgm.co.nz/Site+map.htm.
34. Ibid. Footnote 31.
35. A league table (or ranking of surveyed or researched information, in this case of municipal performance) gains its name from lists of 'league' soccer teams ranked from top of the league to the bottom according to their respective win/loss records.
36. "Significance"—a plain English term that covers all matters deemed to be of sufficient importance (significance) to warrant special treatment, for example a proposed sale of strategic community assets requires use of special (proscribed) consultative procedures.
37. Ibid. Reshaping the State, Boston, Pallot et al.
38. Ibid. Frontier's LGPI 2008. Footnote 27.
39. Ibid. Provider-Purchaser Split. Footnote 6.
40. New Zealand Society of Accountants (later ICANZ) Handbook, March 1996. "SC" Statement of Concepts for General Purpose Financial Reporting," pages 1 to 18 and paragraph 9.12 where non-financial performance measures were first introduced.
41. www.lgnz.co.nz, an excellent New Zealand local government Internet portal will provide a guide.
42. Ibid.
43. On the subject of probity – Transparency International's "2008 Corruption Perceptions Index" at http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table which rates New Zealand highest at 9.3 on its transparency scale of low perceived levels of corrupt practices—in a first-place tie with Denmark and Sweden. Canada is in a ninth-place tie with Australia with a score of 8.7. This is a survey of 180 countries (Somalia is lowest at 1.0).
44. Ibid. Footnote 28.
45. Ibid. Footnote 40.

46. See the FCPP site www.fcpp.org Local Government panel for L.N. Mitchell paper/charticle titled "Good Local Government," and others for commentary on how powerful federal and provincial subsidies and grants could be in convincing local governments that if they do not use proper asset-management information and plans to produce credible support for their funding claims, then their claims might be withheld. Reference is also made to a recent (July 2009) Frontier policy paper on "Rural Roads" in which Professor H. Kitchen's excellent work in this area is cited.
47. In the outturn, no detailed references were considered relevant for this study beyond Part 6. S.116. Schedule 10, however, contains Council Plans and Reports methodology and should form part of an amended comprehensive local government act if Canada "chooses to adopt".
48. Border wars—turf wars where adjoining local government units plead their own special cases, often to the exclusion of the joint—amalgamated community interests.
49. CEO - "CAO"—the Canadian local government term (along with GM), all are the same.
50. For example, fieldwork conducted in connection with Frontier's LGPI 2008 project included a survey of Certified Management Accounting post-graduate students. Not one of around 60 Saskatchewan 2008 graduates, whose skills are desperately needed by municipalities, considered pursuing a career in Canadian local government as it is presently constituted because it lacks any challenge.
51. "Influenced"—covers a myriad of actions, some as basic as hiring the right people, others as complex as integrated community long term plans. A major effect of such actions affect economic well-being.

Further Reading



The Financial Analysis of 88 Canadian Cities

David Seymour

<http://www.fcpp.org/publication.php/3084>



September 2009

Getting a Better Bang for the Pothole Buck

Larry N. Mitchell and David Seymour

<http://www.fcpp.org/publication.php/2860>

For more see

www.fcpp.org