

Request for Decision City Council




Type of Decision										
Meeting Date	August 12, 2003				Report Date	August 1, 2003				
Decision Requested	<input checked="" type="checkbox"/>	Yes		No	Priority	<input checked="" type="checkbox"/>	High		Low	
	Direction Only				Type of Meeting	<input checked="" type="checkbox"/>	Open		Closed	

Report Title
Traffic Control - Various Intersections Coniston


Policy Implication + Budget Impact	
n/a	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.
<input checked="" type="checkbox"/>	Background Attached

Recommendation
<p>-THAT Oak Avenue in the community of Coniston be designated as a "Through Street" to allow all intersecting streets to be controlled with "Stop" or "Yield" signs.</p> <p>-THAT traffic control at the intersection of Gilbert Avenue and Concession Street in Coniston be changed from a "Yield" to a "Stop" sign facing southbound traffic on Gilbert Street.</p> <p>-THAT traffic control at the intersection of Fourth Avenue and Concession Street in Coniston be changed from a "Yield" to a "Stop" sign facing northbound traffic on Fourth Avenue.</p>
<input checked="" type="checkbox"/> Recommendation Continued

Recommended by the General Manager


 Don Bélisle
 General Manager of Public Works

Recommended by the C.A.O.


 Mark Mieto
 Chief Administrative Officer

Date: August 1, 2003

Report Prepared By



Nathalie Mihelchic, P. Eng.
Co-ordinator, Traffic & Transportation

Division Review



R.G. (Greg) Clausen, P.Eng.
Director of Engineering Services

Recommendation Continued:

-THAT East Street in Coniston be designated as a "Through Street" to allow all intersecting streets to be controlled with "Stop" or "Yield" signs.

-THAT a By-Law be passed to amend the City of Greater Sudbury's Traffic and Parking By-Law 2001-1 to implement the recommended changes.

Background:

Oak Avenue: Study Area "A"

The City's Traffic and Transportation Section received a complaint regarding speeding problems along Oak Avenue in Coniston (see Exhibit "A", Study Area: A). A review of the study area revealed that the three intersections on Oak Avenue are currently uncontrolled. Uncontrolled intersections have no stop or yield signs and the "Right of Way Rule" applies. Under this rule, the driver on the left yields Right of Way to the vehicle on the right. Uncontrolled intersections are becoming less common in urban areas, and may be contributing to the speeding problems.

It is recommended that:

- a) Oak Avenue in the community of Coniston be designated as a "Through Street" to allow all intersecting streets to be controlled with "Stop" or "Yield" signs
- b) stop signs be installed facing east and westbound traffic on Stephen Street at Oak Avenue
- c) a stop sign be installed facing westbound traffic on Michael Street at Oak Avenue
- d) a yield sign be installed facing westbound traffic on Morris Street at Oak Avenue

Concession Street: Study Area "B"

A complaint was received from an area resident regarding traffic control at the east end of Concession Street in Coniston (see Exhibit "A", Study Area: B). The Coniston Curling Club is located at the east end of the street and there are three closely spaced intersections. Currently traffic on Gilbert Avenue, Fourth Avenue and Emery Avenue all have yield signs at their intersection with Concession Street.

Frequently during events at the curling club, people park along the streets in the area which reduces visibility at the intersections. Yield signs are appropriate when sight lines are good and stopping is not always required.

It is recommended that the yield signs on Gilbert Avenue and Fourth Avenue be changed to stop signs.

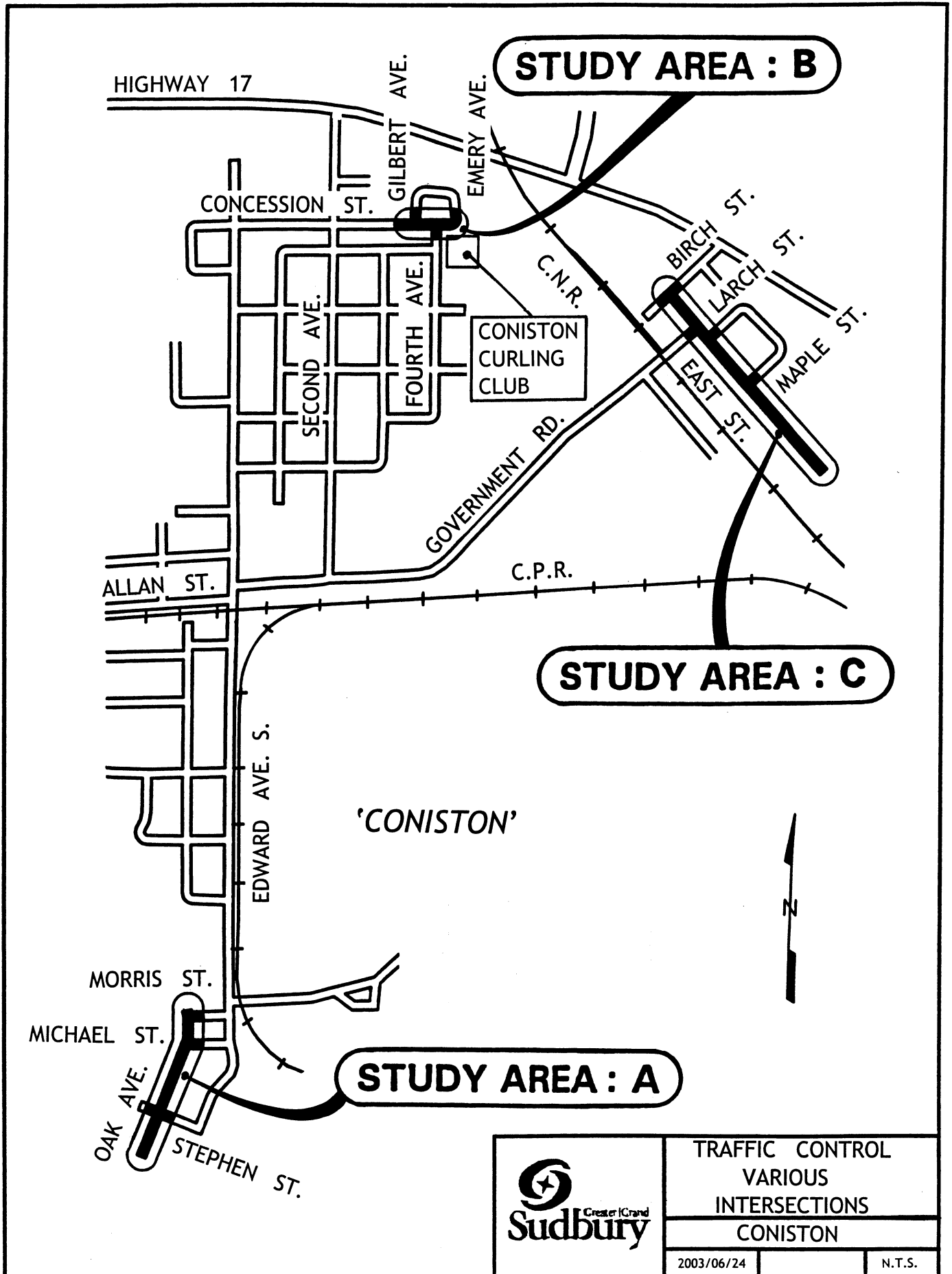
Date: August 1, 2003

East Street: Study Area "C"

East Street is located in the Community of Coniston (see Exhibit "A", Study Area: C). Currently only the intersection of Government Road and East Street is controlled with a stop sign, the remainder of streets are uncontrolled.

It is recommended that:

- a) East Street in Coniston be designated as a "Through Street" to allow all intersecting streets to be controlled with "Stop" or "Yield" signs
- b) stop signs be installed facing southbound traffic on Larch Street and Maple Street,
- c) a stop sign be installed facing westbound traffic on East Street at Birch Street.



Request for Decision City Council



Type of Decision									
Meeting Date	August 12 th , 2003				Report Date	August 5, 2003			
Decision Requested		Yes	<input checked="" type="checkbox"/>	No	Priority	<input checked="" type="checkbox"/>	High		Low
	Direction Only				Type of Meeting	<input checked="" type="checkbox"/>	Open		Closed

Report Title
Security at the Downtown Transit Terminal

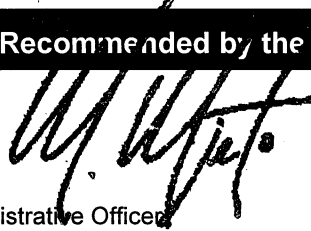
Policy Implication + Budget Impact	
<input type="checkbox"/>	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.
<input checked="" type="checkbox"/>	Background Attached

Recommendation	
FOR INFORMATION ONLY	
<input type="checkbox"/>	Recommendation Continued

Recommended by the General Manager


 Réal Carré
 Acting General Manager, Citizen & Leisure Services

Recommended by the C.A.O.


 Mark Mioto
 Chief Administrative Officer

Date: August 5, 2003

Report Prepared By



Robert Johnston
Director of Transportation Services

Division Review

EXECUTIVE SUMMARY

At a Council meeting earlier this year, Councillor Courtemanche requested staff to prepare a report on the measures taken to address the security issues at the downtown transit terminal. Since the time of this request, Transit staff and the Greater Sudbury Police Service have worked collaboratively to address various security concerns.

BACKGROUND

In April of 2002 a report was prepared describing the City of Greater Sudbury's transit system as experienced by older adults. This investigation was conducted by students Erin Graham and Gary Courchesne, under the direction of Chris Stewart and Dr. Birgit Pianosi, Assistant Professors, in partial fulfilment of their requirements for the Laurentian University course Gerontology 3015, "Critical Skills for the Gerontologist".

Their research was initiated by Councillors David Courtemanche and Ted Callaghan to address their request for detailed information on the need for a senior's shuttle bus in the Downtown Core.

Four primary research methods were utilized, including:

- Operational observations
- Face-to-face surveys
- A telephone survey
- Two focus groups

One of the most important recommendations identified was:

5.5 Safety and Security in the Downtown Core

- increased safety and security within the downtown core
- it was suggested that both the "Eye-in-the Sky" program and an increased presence of law officials (eg. Uniformed and un-uniformed foot patrols of Greater Sudbury Police Officers) in the Hnatyshyn Park/Trans-Canada Trail link may help relieve the situation.

Further to this recommendation, there was some discussion about a satellite police station at the Transit Centre. Although this idea was very good and had the full support of Transit staff, it never came to be. Rather, a new unit was developed by the Greater Sudbury Police Service to help with some of our concerns and we have been working with the "Community Response Unit" since the beginning of year to improve security at the Transit Centre.

Since January, transit staff has met several times with the Community Response Unit and other key players such as Tim Horton's and the L.C.B.O. We have discussed the security problems that were common to group and developed strategies for each facility. A summary of The Greater Sudbury Police Service's activity at the Transit Centre, prepared by Constable McDougall, is attached to this report.

Date: August 5, 2003

The following initiatives have been put in place for the Transit Centre, improving both our image and security:

- working closely with security company to ensure the proper personnel are in place
- security guards share valuable information with the Police Service
- increased hours for the janitorial staff so that the area between the Transit Centre and Tim Horton's can be kept cleaned
- the washrooms have been painted with graffiti-resistant paint
- a "Trespass Notice" has been signed, granting the Police Service authority to issue notices on our behalf
- security guards have been trained by the Police Service
- a photocopier and a camera have been purchased for the Transit Centre in order to properly document all notices issued by the Police Service
- close communication with the Community Response Unit has been maintained.

The Greater Sudbury Police Service have increased their security presence and have made a number of drug trafficking-related arrests in recent months. We have encouraged the Police Service to continue with their efforts to ensure the Transit Centre remains a safe and secure facility.

Mr. Sauve

I am aware that as the weather gets nicer, the "problems" in to downtown core will also increase. However, I have done some analysis of our call load in that area, and wanted to ensure you that we have been addressing problems as they arise.

For example, since Feb/03 we have had 55 calls to the LCBO/DEPOT/TIM Horton's area. Of those, 41 were solved by charge and/or arrest. 9 are continuing investigations, 4 remain unsolved, and 1 was unfounded.

I was also pleased to see that there were 9 drug arrests, 9 theft charges, 13 LLA arrests, 4 assault charges (1 investigation pending). Although these arrests will not "solve" the problems, I was happy that uniform and drug officers are continuing enforcement.

Further, I have also re-contacted your security officers. I have put them in direct contact with our drug unit who are willing to attend the DEPOT and arrest parties involved in drug trafficking. Jason RIVET also advised me that he has noticed a slight decrease in the call load...this may be linked to the colder weather and/or police presence. I have also asked that uniform increase their presence in these areas so as to try and deter further incidents.

With regard to the "trespass order" I have run into a bit of a "glitch". Apparently the LCBO has a provincial mandate NOT to trespass parties from their location, except with permission from head office.....therefore they can not sign my generic trespass form. I plan to get a hold of personnel from their head office to try and explain our dilemma and see if a special concession can be made.

If you have other ideas or suggestions, please feel free to contact me with regard to such. We have been meeting with other members of the downtown core, and many of the complaints are similar in nature. It is very apparent that this will not be any easy problem for "us" to solve. Any word on whether or not you will soon be blasting classical music throughout the DEPOT?!?!?

Looking forward to hearing from you,

Cst. McDougall

**Request for Decision
City Council**



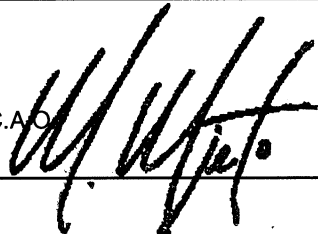
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Report Title
CHARITIES TASK FORCE MEMBERSHIP

Policy Implication + Budget Impact	
	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.
	Background Attached

Recommendation	
FOR INFORMATION ONLY	
	Recommendation Continued

Recommended by the General Manager
N/A
Name and Title

Recommended by the C.A.O.
 Mark Mieto, C.A.O.

Report Prepared By


Carlos Salazar
Manager of Corporate Strategy and Policy Analysis

Division Review

N/A

Name
and Title

The purpose of this report is to provide information on the Charities Task Force Membership and its first meeting. Council established the Task Force and adopted the terms of Reference at the Priorities Committee meeting on May 14, 2003. At this meeting, Council also appointed Councilor Gerry McIntaggart as its representative on the Task Force.

As per Council direction, the Bingo Hall Operators, the Charity Associations, the Health Unit Board, and the Sudbury Community Foundation Board were requested to appoint their representatives to the Task Force. These groups have appointed their members and staff is scheduling the first meeting of the Task Force for the week of August 18, 2003.

On October 24, 2002, City Council passed the Smoke-Free Public Places and Workplaces By-law 2002-300 Effective May 31, 2003. This by-law prohibits smoking in public places and workplaces, including entrance ways. It also phases out by May 31, 2004, the separately ventilated designated smoking rooms in existence as of October 23, 2002.

As part of the By-law, Council supported the creation of a multi-sector Task Force to determine the feasibility of creative strategies to address the concerns raised by local charities and non-profit organizations that raise money from Charity bingos.

During the second public meeting of the 2003 Budget process, the Sudbury Community Foundation presented a proposal to Council to establish a Community Fund from the Sudbury Race Tracks slot revenues. Council approved an allocation of \$50,000 towards the creation of this Fund under the umbrella of the Sudbury Community Foundation. Council's direction was to initially allocate these funds in support of those charities affected by the Smoke Free By-law.

To implement this by-law, a staff Working Group was established under the direction of Councilor Gerry McIntaggart to develop the Terms of Reference in order to establish the multi-sector task force for charities.

On May 14, 2003, The Working Group presented a report to City Council outlining the Terms of Reference and membership of the Charity Task Force. The report also contained the framework for the agreement with the Sudbury Community Foundation, which has been approved by Council. At this meeting, Council's priorities Committee passed the following resolution adopting the Terms of Reference and membership of the Charity Task Force:

PRIORITIES (16th) 2003-05-14 (2)

Implementation of smoke-free Bylaw Charity Task Force

Report dated 2003-05-07 from the Chief Administrative Officer

Regarding the Implementation of Council's smoke-free Public Places and Workplaces Bylaw 2002-300.

RECOMMENDATION 2003-29: Moved by Councillor Kilgour
THAT the Terms of Reference for the Smoke Free By-law Charity Task Force be adopted;
AND THAT Councillor McIntaggart be appointed to the Task Force and the Foundations' Community Advisory Council for the term ending November 30th, 2003;
AND FURTHER THAT financial resources to a maximum amount of \$15,000 be provided to the Task Force from the Policy Initiatives Budget/Special Projects of the CAO's Office, and the Corporate Professional Support Services Account.

Subsequently, staff requested representation from the Bingo Hall operators, the Charity Associations related to the Bingo Halls, the Sudbury Community Foundation and the Health Unit. These organizations met and appointed their representatives as follows:

City Council	Councillor Gerry McIntaggart
Bingo hall operators	Don Labreche - Owner (Valley Bingo) Garth Moote - Manager (Bingo Country) Alternate - Denis Sivret - Manager (Bingo One)

Charity Associations	Jane Pascoe (Bingo One Association) Rick Barrett (Capital Bingo Association)
Sudbury Community Foundation	

Carmen Simmons
Gary Gray.

Health Unit	Shelley Westhaver
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Staff:

Health Unit	David Groulx
City	Heather Salter Carlos Salazar

Recently, Ms. Lolly Barrett wrote a letter to Council requesting the City's assistance in dealing with the impact of the Smoke free By-law on the charities associated with the Capital Bingo Charity association. We will include this issue in the Agenda of the first meeting of the Charity Task Force scheduled for the week of August 19th, 2003.

Over the next few months, the Charity Task Force will work to develop and implement different strategies to support the viability of the charities in our community. In addition the Task Force will work with the Sudbury Community Foundation to design the eligibility criteria for the Greater Sudbury's Charities Fund.

Request for Decision City Council



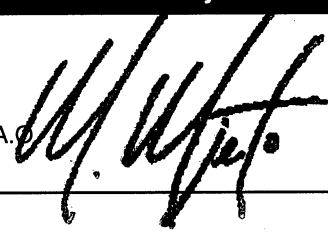
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Report Title
UPDATE ON CITY OF GREATER SUDBURY'S ACCESSIBILITY PLAN

Policy Implication + Budget Impact	
<input type="checkbox"/>	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.
<input type="checkbox"/>	Background Attached

Recommendation	
<p>FOR INFORMATION ONLY</p>	
<input type="checkbox"/>	Recommendation Continued

Recommended by the General Manager
N/A
Name and Title

Recommended by the C.A.O.

Mark Mieto, C.A.O.

Report Prepared By


Carlos Salazar
Manager Corporate Strategy and Policy Analysis

Division Review

N/A

Name
and Title

The purpose of this information report, as requested by members of Council, is to provide an update on the City of Greater Sudbury's Accessibility Plan. The Ontarians with Disabilities Act requires that all municipalities have a Plan by September 30, 2003. Council's Accessibility Advisory Committee and the service providers in the area have been working together to prepare a plan for Council's consideration. The draft Plan will be available by the end of August.

People with disabilities represent a significant and growing part of our population. According to Statistics Canada, about 1.9 million Ontarians have disabilities — about 16% of the population. Disability tends to increase with age. In two decades it is estimated that 20% of the population will have disabilities. Enhancing the ability of people with disabilities to live independently and contribute to the community will have positive effects on future prosperity in Ontario.

It is also very important to highlight that seniors are the largest demographic group with disabilities; The disability rates in Canada for seniors over 65 is about 40.5% (see the appendix); if we were to apply this ratio to our City, close to 8,600 - out 21,505- seniors in our community have some form of disability. Seniors are the fastest growing segment of our population.

The *Ontarians with Disabilities Act, 2001* (ODA) received Royal Assent on December 14, 2001. The purpose of the ODA is to improve opportunities for people with disabilities through identification, removal and prevention of barriers to participation in the life of the province.

Traditionally, disability has been related to physical access. The Act has now included a clear definition of disability that goes beyond physical disability. The definition under the Act is as follows:

The ODA adopts the broad definition for disability that is set out in the *Ontario Human Rights Code*. "Disability" is:

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997.

Improving accessibility is a shared responsibility. The ODA requires the provincial and municipal governments and key broader public sector organizations to review their policies, programs and services through the development of annual accessibility plans.

Municipal governments play a crucial role in the planning and development of our communities: in their streets, parks, public transit, libraries, social housing, ambulance services, public buildings and elections. Responsibilities, which include enforcing the barrier-free access requirements of the Ontario Building Code and implementing key accessibility considerations under the ODA, are crucial to realizing a vision of local communities that improve accessibility and mobility for their residents.

The *ODA* mandates municipal governments to develop annual accessibility plans and make them public. Accessibility plans are intended to address existing barriers to people with disabilities and to prevent new barriers from being established. All municipalities, regardless of their size, are required to prepare annual accessibility plans as part of their regular planning process.

The Council of the City of Greater Sudbury established the City's Accessibility Advisory Committee in the fall 2002. The mandate of the Committee includes the development of City's first accessibility Plan by September 30th, 2003.

The Committee's initial work focused on developing the Greater Sudbury plan. After community consultation, Council approved the Transit Accessibility Plan on April of 2003.

For the preparation of the City's first Accessibility Plan, the Committee has held four workshops and a community workshop. This community workshop included staff from all departments, and many of the local agencies/service providers currently working with people with disabilities in the community.

The Members appointed to the Committee by Council are:

Councillor Mike Petryna (Chair)
Elizabeth Lounsbury (Vice-Chair)
Bob Bannister
Nancy Baron
Earl Black
Shirley Childs
Councillor Ron Dupuis

The Corporate Strategy and Policy Analysis Division of the City is currently coordinating the preparation of this plan. The Accessibility Advisory Committee expects to release a draft plan by the end of August for public consultation.

Appendix - Disability in Canada

Figure 1 shows the percentages of children, working-age adults and seniors who have disabilities. The figure shows that the rate of disabilities rises with age. As people grow older they are more likely to have experienced injuries, diseases and other health conditions that give rise to disabilities.

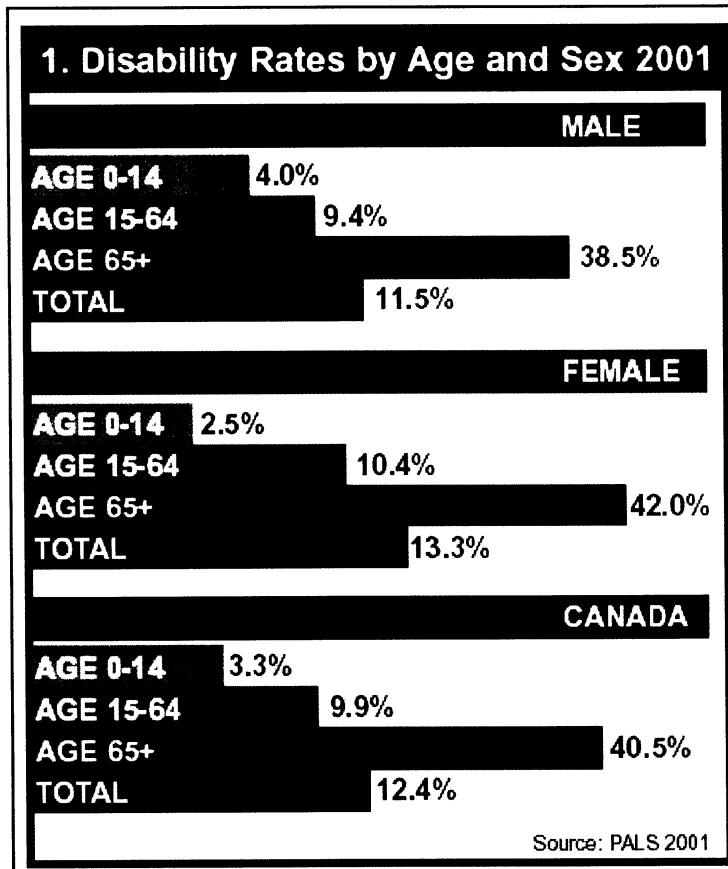


Figure 1 -- Total disability rates among children (aged 0-14) are low, at 3.3%. The rate for boys is 4.0%, for girls 2.5%. Among working-age men and women (aged 15-64) the total rate of disability is 9.9% and the rate for men and women is similar. For seniors (65 and over) the rate rises to 40.5%. In the working-age group, rates for men and women are similar, but among seniors, and the rate is higher for women than for men (42% versus 38.5%) because women have a longer life expectancy.

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Report Title
SMOKING BY-LAW

Policy Implication + Budget Impact	
<input type="checkbox"/>	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.
<input checked="" type="checkbox"/>	Background Attached

Recommendation	
None	
<input type="checkbox"/>	Recommendation Continued

Recommended by the General Manager

D. Wuksinic
for Doug Wuksinic
General Manager of Corporate Services

Recommended by the C.A.O.

M. Mieto
Mark Mieto
Chief Administrative Officer

Date: August 8, 2003

Report Prepared By



Ron Swiddle
Director of Legal Services/City Solicitor

Division Review



Ron Swiddle
Director of Legal Services/City Solicitor

As Council will recall, in the spring of this year Mr. David Horton launched an Application in the Superior Court of Justice to quash By-law 2002-300, the By-law to Regulate Smoking in Public and Workplaces.

This By-law had been passed on November 14, 2002, and replaced the earlier City By-law 2001-7L.

Counsel for the Applicant took the position in court that the provincial enabling legislation did not give City Council the power to enact a Non-Smoking By-law that requires the employer to adopt as its own the non-smoking policy as prepared by the City.

This Application was defended by Mr. Steve Vrbanac, Assistant City Solicitor and a full day hearing on the issue proceeded on July 9th before the Honourable Justice L. C. Kozak.

On August 5th, the Court issued its Decision on the matter, rejecting Mr. Horton's submissions and confirming the By-law as validly enacted. A copy of the entire Decision is attached as the Court reviewed the matter in some detail. This Court saw fit to comment on the actions of the City in its attempt to protect the inhabitants and its workers in the City of Greater Sudbury from the discomfort and known health hazards of second hand smoke.

The Court said: "In the herein matter it can readily be seen that the provisions of Section 213 of the *Municipal Act* present a coherent, plausible and workable scheme to implement and enforce a smoke free environment in all public places and work places in the City of Greater Sudbury. To say that this has been a mammoth effort is perhaps an understatement. One need only consider that 7,400 education packages were mailed by the City to business owners and another 207 education packages were hand delivered to various business owner/employers."

An Appeal from this Decision is possible, but as of the date of this writing no such Appeal has been received.

The Court did not make an Order as to costs of the Application, but the Legal Division will be pursuing this with Council for the Applicant and with the Court if necessary and will report back to Council on this issue.

For Council's information, we can advise that recent discussion with the Manager of By-law Enforcement Services has confirmed that the public, by and large, is following the provisions of the By-law.

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID HORTON

)
)
) T. Michael Hennessy,
) for the Applicant

)
)
) Applicant)

- and -

THE CITY OF GREATER SUDBURY

) Stephen Vrbanac,
) For the Respondent

)
)
) Respondent)

) HEARD: July 9, 2003

The Honourable Justice L. C. Kozak

REASONS

[1] On November 14th, 2002, the City of Greater Sudbury passed *By-Law 2002-300*, being a By-Law to regulate smoking in public places and work places. Referred to as the *SMOKE FREE PUBLIC PLACES AND WORKPLACES BY-LAW*, it came into force and effect on May 31, 2003.

[2] The City's purpose in passing the By-Law was to protect the inhabitants and the workers in the City from the health hazards of second hand smoke by providing a smoke free environment.

[3] Part II of the By-Law which deals with smoking in the workplace imposes a general prohibition against smoking in the workplace in that no person shall smoke in the workplace when a non smoking policy has been adopted for a workplace, and when a non smoking policy has been adopted for the workplace, no employer shall permit smoking in the workplace.

[4] Sections 9 and 10 of the By-Law describe the employers duties as follows:

9 (1) Every employer shall, on or before May 31, 2003 adopt and implement a non-smoking policy that prohibits smoking in respect of each workplace in the City of Greater Sudbury under the control, supervision or ownership of the employer.

9 (2) Where after May 31, 2003, a workplace is created or comes into existence, the employer of such workplace shall within seven days after such workplace is created or comes into existence, adopt, implement and post a copy of a non smoking policy that prohibits smoking in respect of each such workplace under the control, supervision, or ownership of the employer.

[5] Section 10 of the By-Law reads:

10. Every employer required by this By-Law to adopt and implement a non smoking policy shall:

(a) insure compliance with this By-Law;

- (b) Inform all of the employees that smoking is prohibited in the workplace except as provided by this By-Law;
- (c) prohibit smoking in the workplace except as provided by this By-Law;
- (d) post and keep continuously displayed a copy of the non smoking policy in a prominent place(s) accessible to all employees in the workplace;
- (e) prohibit ashtrays and like paraphernalia in areas where smoking is prohibited and
- (f) conspicuously post no smoking signs in areas where smoking is prohibited in accordance with Part III of this By-Law;

[6] The applicant, David Horton, is a self-employed businessman in the City of Greater Sudbury who along with his wife operates a restaurant/pub which employs fourteen employees. He brings the herein application to quash *By-Law 2002-300* in its entirety or in the alternative that those portions of the by-law relating to workplace non-smoking policies be quashed. In particular, the applicant states that the requirement that employers adopt as their own, non-smoking policies is illegal, as are those provisions that are premised on the employer's adoption of such a policy. The applicant asserts that the impugned provisions by the By-Law are outside the authority granted to the City by the Province in its enabling legislation.

Background

[7] The affidavit of Heather Salter, the Deputy City Solicitor, sworn June 9, 2003 provides background information leading to the passage of *By-Law 2002-300* on November 14, 2002

pursuant to Section 213 of *The Municipal Act RSO 1990 c. M-45* as amended. Included in the affidavit materials is a detailed report by Dr. Penny Sutcliffe, the Medical Officer of Health of the Sudbury and District Health Unit.

[8] On January 17, 2002, Dr. Sutcliffe delivered a presentation to the City Council on the topic of 100% smoke-free communities. As a result council carried a motion which endorsed the work of the Sudbury and District Health Unit in working towards a 100% smoke-free community.

[9] Pursuant to this endorsement the Health Unit led a public consultation process which included the commissioning of a public opinion poll, the receipt and review of commentary and critique concerning a 100% smoke-free by-law, the delivery of presentations and convening of meetings with groups and organizations potentially affected by a proposed smoke-free by-law.

[10] As part of an effort to raise awareness of the City's *Smoke-Free By-Law* a public awareness media campaign and a business owner/employer education campaign were implemented subsequent to the passage of the *Smoke-Free By-Law* and prior to the initiation of this proceeding.

[11] A sample workplace non-smoking policy formed part of the business/owner employer education package. The content of the sample policy – prepared with a view towards compliance with the *Smoke-Free By-Law*, is succinct in its intent: “Effective May 31, 2003, a Non-Smoking Policy will prohibit smoking in all interior areas of these premises. There will be no allowances for designated smoking rooms not established in accordance with City of Greater Sudbury By-Law 2001-7L. Changes to the smoking policy are in accordance with the City of Greater

Sudbury's *SMOKE FREE PUBLIC PLACES AND WORK PLACES BY-LAW* and are in response to concerns about the health hazards of second hand smoke. We hope to help reduce the potential smoke related health problems of our employees by promoting a completely smoke-free work environment."

Employer

Date

Workplace

DISCUSSION

[12] Counsel for the applicant takes the position that the provincial enabling legislation does not give City Council the power to enact a non-smoking by-law that requires an employer to adopt as his own the non-smoking policy as prepared by the City. In referring to the enabling legislation (i.e. Section 213 of the *Municipal Act*) it was submitted that Section 213(2) did not pose any problems in that it permitted City Council to pass a by-law regulating the smoking of tobacco in public places and workplaces within the municipality and designating public places or work places or classes or parts of such places, as places in which smoking tobacco or holding lighted tobacco is prohibited. However, it was contended that Section 213(3)(g) which provides that a by-law made under subsection (2) may require the employer of a workplace or the owner or occupier of a public place to ensure compliance with the by-law does not go so far as to compel or mandate the employer to adopt the non-smoking policy. The argument as presented

was that there is a fundamental difference between “ensure compliance” and “adopt policies”. This was the narrow focus of the applicant’s argument.

[13] Counsel for the respondent first of all argues that the onus is on the applicant to rebut the presumption of validity by proving on a balance of probabilities that *By-Law 2002-300* is ultra vires. Applying a remedial liberal and benevolent interpretation to Section 213(2) of *The Municipal Act* leads to the conclusion that the City has been granted wide powers under *The Municipal Act*. When combined with the public health purpose of the legislation and the characterization of a municipal government as trustee of the environment, it was submitted that the City of Sudbury enacted *By-Law 2002-300* pursuant to the clear authority established in the enabling legislation. It was further submitted that a liberal interpretation of the purpose and wording of Section 213(3) (g) of *The Municipal Act* also supports the conclusion that the requirement that an employer adopt a smoke-free policy is the means by which an employer of a workplace ensures compliance with the *Smoke Free By-Law*. It was also pointed out that this type of by-law was not something new and that several Ontario Municipalities have passed 100% *Smoke Free By-Laws*, had the by-laws challenged, and were found to be intra vires.

LEGAL CONSIDERATIONS

[14] It has long been recognized that municipalities are creatures of statute, and as such can only exercise those powers that are conferred upon them by the Provincial Legislature through enabling legislation.

[15] The process of delineating municipal jurisdiction then becomes an exercise in statutory construction. Recent decisions by the Supreme Court of Canada have shed considerable light on the interpretation of municipal statutes.

[16] In the early case of *R. v. Weir et al and The Queen* 102 D.L.R. (3rd) P. 273 The Ontario Divisional Court found an anti-smoking by-law to be invalid on the basis that Section 242 of *The Municipal Act*, which was the enabling legislation, was drafted in general terms, and the ensuing by-law was not only uncertain, but also improperly delegated authority to proprietors to determine what efforts to prevent smoking may be reasonable, and to delegate enforcement upon the proprietor. Section 242 was given a very narrow and restrictive interpretation.

[17] In 1994 The Ontario Legislature passed the *Tobacco Control Act* which amended the *Municipal Act* and provided for a specific power to pass a by-law regulating the smoking of tobacco in public places and designating as public places, places in which smoking tobacco and holding lighted cigarettes is prohibited.

[18] With respect to the Municipality's authority to pass by-laws prohibiting smoking in public places and workplaces, *The Municipal Act* provides as follows:

213 (1) In this section public transit vehicle includes a school bus and a passenger vehicle used for hire; workplace includes a public transit vehicle.

213 (2) The council of a local municipality may pass a by-law regulating the smoking of tobacco in public places and workplaces within the municipality and designating public places or workplaces or classes or

parts of such places as places in which smoking tobacco or holding lighted tobacco is prohibited.

213 (3) a by-law made under subsection (2) may:

- (a) define public place for the purpose of the by-law;
- (b) require a person who owns or occupies a place designated in the by-law to post signs referring to the prohibition or to such other information relating to smoking as is required by the by-law;
- (c) prescribe the form and content of signs referred to in clause (b) and the place and manner in which the signs shall be posted;
- (d) permit persons who own or occupy a place designated in the by-law to set aside an area that meets criteria prescribed by the by-law for smoking within the place;
- (e) prescribe the criteria applicable to smoking areas in clause (d) including the standards for the ventilation of such areas;
- (f) require areas set aside for smoking in places designated by the by-law to be identified as an area where smoking is permitted; and
- (g) require the employer of a workplace or the owner or occupier of a public place to ensure compliance with the by-law.

[19] In *R. v. Greenbaum* (1993) 1 S.C.R. 674, it was held that a court should look to the purpose and wording of the provincial enabling legislation when deciding whether or not a municipality has been empowered to pass a certain by-law. The by-laws themselves are to be read to fit within the parameters of the empowering provincial statute where they are susceptible to more than one interpretation. Iacobucci J. refers to *The Ontario Interpretation Act* R.S.O. 1990 c I.II in which every act shall be deemed to be remedial and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent meaning and spirit. In interpreting the legislation before him, Iacobucci J. expressed the view that the sections were entitled to a broad and reasonable if not a benevolent construction. However he then went on to say that a somewhat stricter rule of construction than that suggested by Davies J. in *City of Hamilton v. Hamilton Distillery Co.* (1907) 38 S.C.R. 239 is in order where the municipality is attempting to use a power which restricts common law or civil rights.

[20] In *114957 Canada LTÉE v. Town of Hudson* 2001 S.C.C. 40 it was held that municipalities as statutory bodies may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation. At paragraph 23, Madam Justice L'Heureux-Dubé quotes McLachlin J. as she then was in *Shell Canada Products Ltd. v. Vancouver City* (1994) 1 S.C.R. 231 at p. 244:

“Recent commentary suggests an emerging consensus that courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those

of municipal councils. Barring clear demonstration that a municipal decision was beyond its powers, courts should not so hold. In cases where powers are not expressly conferred but may be implied, courts must be prepared to adopt the benevolent construction which this Court referred to in *Greenbaum*, and confer the powers by reasonable implication. Whatever rules of construction are applied they must not be used to usurp the legitimate role of municipal bodies as community representatives.”

Mr. Justice LeBel after agreeing with I. Heureux-Dubé J. as to the validity of the by-law in *Hudson*, goes on to state that municipalities may only exercise such powers as are granted to them by the Legislature. They are not endowed with any residuary powers and their grant of authority must be found somewhere in the provincial laws. Although such a grant of power must be construed reasonably and generously, it cannot receive such interpretation unless it already exists. Interpretation may not supplement the absence of power.

[21] In *Nanaimo (City) v. Rascal Trucking Ltd.* (2000) 1 S.C.R. 342 it was held that the standard upon which the courts may review intra vires municipal decisions must be one of patent unreasonableness. Major J. concluded that there was ample authority on the interpretation of municipal statutes to support a broad and purposive approach. Here again, Major J. referred to the reasons of Davies J. in *City of Hamilton v. Hamilton Distillery Co.* (*Supra*) and R. v. *Greenbaum* (*Supra*). This conclusion he states at paragraph 20 follows recent authorities dictating that statutes be construed purposively in their entire context and in light of the scheme of the Act as a whole with the view to ascertaining the legislatures true intent.

[22] The case of *Cambridge Bingo Centre Inc. v. Waterloo (Regional Municipality)* was decided on July 25, 2000. It dealt with a non-smoking by-law in public places which was attacked on the basis that it improperly delegated enforcement of the by-law to proprietors of public places. The applicants relied on the case of *R v. Weir (Supra)*. The application was dismissed. The impugned by-law in *Weir* was passed pursuant to general provincial enabling legislation dealing with public health and nuisance. There were no specific enabling legislations dealing with the right to delegate enforcement obligations. In the case at bar, Reilly J. held that Section 213 (3)(g) of *The Municipal Act* specifically authorizes the region to pass a law requiring the owner or occupier of a public place to ensure compliance with the by-law. This is what distinguished the case from *R. v. Weir*.

[23] *Pub and Bar Coalition of Ontario v. Ottawa City (2001)* O.J. No. 3496 was a case where an application was brought to quash two by-laws of the City of Ottawa namely by-law 2001-148 respecting smoking in public places and by-law 2001-149 respecting smoking in the workplace, on the grounds that the City exceeded its jurisdictions under the enabling legislation Section 213(2) of *The Municipal Act*. It must be noted that by-law 2001-149 contained similar provisions as to the responsibilities of the employer respecting adoption of a non-smoking policy as in the case at bar. After reviewing the principles as set out in the cases and revisiting the provisions of Section 213 of *The Municipal Act*, Mr. Justice Morin held that the applicants had not discharged the onus of proving by-laws 148 and 149 to be ultra vires the City and the applications were dismissed.

DECISION:

[24] Recent Supreme Court of Canada decisions suggest an emerging presumption against pollution of the environment. Madam Justice L'Heureux-Dubé in the opening paragraph of her judgment in *Hudson* (Supra) states:

“The context of this appeal includes the realization that our common future, that of every Canadian community depends on a healthy environment. Twenty years ago there was very little concern over the effect of chemicals such as pesticides on the population. Today we are more conscious of what type of an environment we wish to live in and what quality of life we wish to expose our children to. This court has recognized that everyone is aware that individually and collectively we are responsible for preserving the national environment... environment protection has emerged as a fundamental value in Canadian society.”

[25] As to the role of government in the protection of the environment, L'Heureux-Dubé J. goes on to state that:

“The case arrives in an era in which matters of governance are often examined through the lens of the principle of subsidiarity. This is the proposition that law making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs.”

[26] The quotation of McLachlin J. in *Shell Canada v. Vancouver City* which is reproduced in paragraph (20) also emphasizes the principle of subsidiarity by stressing the respect that courts

should demonstrate for the responsibility of elected municipal bodies to serve the people who elected them. Barring a clear demonstration that they exceeded jurisdiction the courts should not substitute their views for those of Municipal Councils.

[27] The narrow focus of this application is that the enabling legislation by its specific wording does not provide for the employers adoption of a written non-smoking policy and therefore that requirement is illegal as are those provisions premised on the employer's adoption of such a policy. The argument advanced was that the applicant would not voluntary choose as an employer to write a non-smoking policy for his workplace, nor would he voluntary adopt as his own a non-smoking policy for his workplace. Although it was acknowledged that Section 213(3)(g) requires an employer to ensure compliance of the by-law, it was submitted that compliance does not go so far as to compel adoption. In this regard a distinction was drawn between "ensure compliance and adoption". It was further submitted that the court must look to the purpose and wording of the enabling statute and in interpreting the provincial legislation a broad if not a benevolent construction should be used. However, when citizen rights are restricted a somewhat stricter rule of construction is in order, where the municipality is attempting to use a power which restricts common law or civil rights.

[28] The broad general rule for the construction of statutes is that a section or enactment must be construed as a whole; each portion throwing light if need be on the rest. It is assumed in adopting a contextual approach that language is used consistently, that tautology is avoided, that the provisions all fit together to form a coherent and workable scheme. When analyzing the scheme of an Act, the Court tries to discover how the provisions or parts of the Act work together to give effect to a plausible and coherent plan. It then considers how the provision to be

interpreted can be understood in terms of that plan. (See Sullivan and Driedger on the Construction of Statutes Fourth Editions pages 281 – 284, and *Mehnychuk v. Heard* (1963) 45 W.W.R. 257 at 263 (Alta S.C.).

[29] In the herein matter it can readily be seen that the provisions of Section 213 of the *Municipal Act* present a coherent, plausible and workable scheme to implement and enforce a smoke free environment in all public places and work places in the City of Greater Sudbury. To say that this has been a mammoth effort is perhaps an understatement. One need only consider that 7,400 education packages were mailed by the City to business owners and another 207 education packages were hand delivered to various business owner/employers.

[30] An analysis of the plan or scheme shows that it was designed to be a cooperative effort with on site implementation and enforcement by the employers of workplaces and the owners or occupiers of public places. To do otherwise would not only be economically unfeasible but would also render enforcement almost meaningless because of the lack of a presence at all appropriate times. Accordingly Section 213 (3)(g) imposes upon employers the positive duty to ensure compliance. A benevolent construction of this provision leads to the reasonable conclusion that in considering the section as a whole, that ensuring compliance equates with the requirement that the employer adopt the City's Smoke Free Policy. Relating the by-law to the plan or scheme as depicted in the enabling legislation it can be seen that the by-law fits within the parameters of the enabling act.

[31] The purpose of the Smoke Free By-Law as stated in its preamble is to protect the inhabitants and workers in the City of Sudbury from the discomfort and known health hazards

of second hand smoke. This was the true intent of the by-law. It was to suppress a health hazard and not to interfere with property rights.

[32] Speaking of the presumption against legislative interference with property rights, *La Forest J.A.* as he then was in the case of *Re Estabrooks Pontiac Buick Ltd.* (1982) 44 N.B.R.(2d) 201(c/n) stated:

“The principal I have described is fundamental . . . , like other constitutional principles its precise content will vary over time and the legislature undoubtedly has the major burden of adjusting its application to changing circumstances. Accordingly the courts must in applying it do so with great caution to ensure that its application conforms to changing social values and affords the legislature the widest possible scope in the performance of its task of adjusting private rights to meet evolving social realities. The courts should not for example place themselves in the position of frustrating regulatory schemes or measures obviously intended to reallocate rights and resources simply because they affect vested rights.”

It was further stated that the fundamental approach by the Courts to legislative actions is that a high premium is placed on individual liberty and private property... If the legislation is clear then of course the intent of the legislature must be respected.

[33] The modern approach is to place less reliance on strict construction and to look at the remedial side of legislation with a broad and liberal construction which will give effect to the

purpose of the legislation and the attainment of its objects. (See Section 10 of *The Interpretation Act R.S.O. 1990 G. 1.11*)

[34] A broad, liberal and benevolent interpretation of the enabling legislation leads this Court to the conclusion that the mandatory orders were specifically authorized under Section 213 (3)(g) and the applicants arguments therefore fails.

[35] The applicant not having discharged the onus of proving the by-law to be *ultra vires*, the City or the portions relating to non-smoking policies to be *ultra vires* the herein application is dismissed.

[36] It is further ordered and declared that:

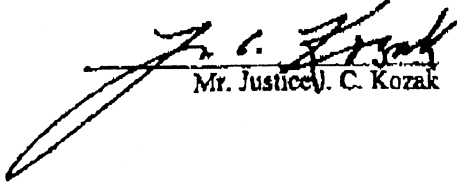
1. By-Law 2002-300 of the City of Greater Sudbury being a By-Law Regulating Smoking in Public Places and Workplaces was validly enacted by the City pursuant to enabling legislation and was expressly authorized under Section 213(2) of *The Municipal Act R. 50 1990 c. M. 45*
2. Portions of By-Law 2202-300 of the City of Greater Sudbury, being a By-Law Regulating Smoking in Public Places and Workplaces which obliges employers to
 - (i) adopt and implement a non smoking policy;
 - (ii) inform all employers that smoking is prohibited in the workplace;
 - (iii) post and keep continuously displayed a copy of the non-smoking policy;

were validly enacted by the City pursuant to enabling legislation and was expressively authorized under Section 213 (2) of *The Municipal Act* R.S.O. 1990 c. M.

45.

[37] Counsel may speak to the matter of cost by arranging an appointment with the trial coordinator.

[38] Order to issue accordingly.



Mr. Justice J. C. Kozak

Released: August 5, 2003

Request for Decision City Council

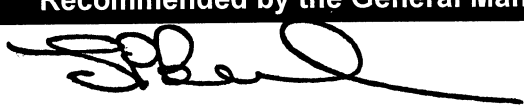


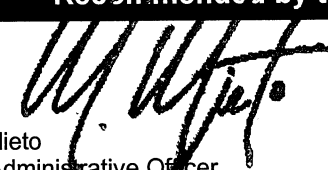
Type of Decision									
Meeting Date	August 12, 2003				Report Date	July 7, 2003			
Decision Requested	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	Priority	<input checked="" type="checkbox"/>	High	<input type="checkbox"/>	Low
	Direction Only				Type of Meeting	<input checked="" type="checkbox"/>	Open	<input type="checkbox"/>	Closed

Report Title
Emergency Services Department Purchase of Time and Attendance/Scheduling and Payroll Integration System Software

Policy Implication + Budget Impact	
<input checked="" type="checkbox"/>	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.
<input checked="" type="checkbox"/>	Background Attached

Recommendation
<p>THAT the purchase of Integrated Time and Attendance Payroll Software from Kronos Computerized Time Systems Inc. Canada, for the Emergency Services Department, be approved in the amount of \$114,883 including taxes; and</p> <p>THAT the remaining funding established for this system be used to cover project implementation and training costs.</p>
Recommendation Continued

Recommended by the General Manager

Tim P. Beadman Acting General Manager, Emergency Services

Recommended by the C.A.O.

Mark Mieto Chief Administrative Officer

Date: July 7, 2003

Report Prepared ByJoseph Nicholls
A/Director, Emergency Medical Services**Division Review****EXECUTIVE SUMMARY**

The Emergency Services Department seeks the authorization of Council to purchase an integrated "Time and Attendance/Scheduling" software solution from Kronos Computerized Time Systems Inc.. This report also requests a change in vendor, from Simplex Grinnell as was previously authorized in resolution 2002-47, dated January 31, 2002.

The change in vendor request is a result of the purchase of the Time and Attendance Division of Simplex Grinnell by Kronos Computerized Time Systems Inc.. Following the purchase, Kronos Computerized Time Systems Inc. was unable to honour the original Simplex Grinnell proposal therefore, requiring that the City go back to the market through the Request for Proposal process.

BACKGROUND

On January 31, 2002 Council Report (attached) "*Purchase of Time and Attendance/Scheduling and Payroll Integration System Software for Emergency Services Department*" was submitted to Council for consideration.

Council through resolution 2002-47 (attached) authorized the Emergency Services Department to purchase the E-Force Time and Attendance/Scheduling Solution from Simplex Grinnell at a price of \$134,175 plus applicable taxes and allocating a project contingency fund for a total cost of \$163,170. This purchase would have standardized technology within the City as this system was already in operation at Pioneer Manor.

However, prior to the City being able to complete the software purchase from the selected vendor, the Time and Attendance Division of Simplex Grinnell was purchased by Kronos Computerized Time Systems Inc.. As the new vendor, Kronos Computerized Time Systems Inc. stated that they were unable to honour the proposed solution until a review of the Simplex Genial E-Force product was complete. This product review ultimately resulted in Kronos Computerized Time Systems Inc. withdrawing the Simplex Grinnell product from the market.

As a result of the company purchase and subsequent withdrawal of the selected product from the market, the City of Greater Sudbury returned to the software market through the Request for Proposal process.

While this process was being undertaken, the City of Greater Sudbury Police Service in discussion with the Emergency Services Department, asked to participate in the Request for Proposal process. The initial project team was then expanded to include the Police Service. A new process was then initiated that permitted the Police Service to explore and define the scope of their needs within the project.

The resultant Request for Proposal reflected the ability of the Emergency Services Department and the Police Service to either select different vendors or not to purchase any product, as the Police Service had no committed funds and different operational requirements than those of the Emergency Services Department. The Police Service has decided not to purchase a software solution at this time.

Date: July 7, 2003

The Request for Proposal for a Time Attendance/Scheduling Software Solution was sent out and resulted in a total of eight (8) responses. These responses to the Request for Proposal were then short listed to three (3) based on a pre-defined scoring criteria. With Supply and Services participation, the selection team chose Kronos Computerized Time Systems Inc. as the successful vendor at \$114,883.

However, the total price of the project will be approximately \$163,170 including the project contingency fund. The additional financing is required to cover those costs not covered under the scope of the proposal from Kronos Computerized Time Systems Inc. including items such as: city hardware, data terminal installation, electrical and IT cabling, server needs (if required), city staff implementation costs, travel and training and unforeseen contingencies is in the approved project funding.

Request for Decision City Council



Type of Decision

Meeting Date	August 12, 2003				Report Date	August 7, 2003			
Decision Requested	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	Priority	<input checked="" type="checkbox"/>	High	<input type="checkbox"/>	Low
	Direction Only				Type of Meeting	<input checked="" type="checkbox"/>	Open	<input type="checkbox"/>	Closed

Report Title

Trillium Centre

Policy Implication + Budget Impact

This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.

Background Attached

Recommendation

Whereas City Council decided to keep the Trillium Centre open during budget deliberations; and whereas staff were directed to bring a report back to Council indicating how the tenants could be brought up to pay market rent, therefore, after considering all uses and factors, it is recommended that Council pursue one of the two options as follows:

- A) Bring the Trillium Centre to market rent for all tenants, including community groups and civic uses by January 2004
- B) Refocus the Trillium Centre as the City of Greater Sudbury's combined training and community centre for a period of two years at which time Council to review their support of this City owned facility.

Recommendation Continued

Recommended by the General Manager


Doug Nadorozny, General Manager
Economic Development & Planning Services

Recommended by the C.A.O.


Mark Miéto
Chief Administrative Officer

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Report Prepared By

Helen Mulc
Manager of Business Development

Division Review

Doug Nadorozny, General Manager
Economic Development & Planning Services

EXECUTIVE SUMMARY

During budget deliberations, City Council requested that the Economic Development & Planning Services report back with a plan to bring Trillium Centre tenants to market lease rates. Staff reviewed the operation and assessed the feasibility of obtaining market rent from existing tenants.

The Trillium Centre, a City owned asset has developed into a community asset which to date has not generated a break even position. The Trillium Centre was developed as a community centre for the residents of Rayside Balfour. Prior to 2001, INCO was a significant tenant whose rent proceeds managed to cover the operational costs of the building. It is highly unlikely that any such tenant will replace the revenues which were generated by INCO. The 2003 budget for the Centre is \$311,260. While it is not likely that the Economic Development & Planning Services department can reduce this to zero, there are ways in which we plan to decrease the Centre's cost to the City. Accordingly, Council must decide whether they consider the Trillium Centre a community asset; one which they are prepared to financially support to some degree.

CHALLENGES

Zoning of the Property

INCO operated their trades training program through the Trillium Centre in partnership with Cambrian College and eventually decided that greater efficiencies could be achieved by locating the facility at the college. It was at that time, that the financial challenges of the Trillium Centre surfaced. Although repeated efforts were made to attract tenants to the facility, its location relative to other commercial and industrial spaces combined with the zoning of "institutional training" limited the possible tenants to the site. Any re-zoning efforts will involve obtaining the comments and feedback of other private sector landlords in the general vicinity. It is highly probable that several private property owners will oppose the re-zoning application. These businesses revolve around the leasing of commercial / industrial space and it may be perceived that the Trillium Centre, a City owned asset will create unfair competition especially if more flexible zoning is allowed.

Rental rates of existing tenants

Other than two tenants at the Trillium Centre, all others pay well below the calculated \$9.00/sq.ft. break even point. The 5000 square feet of space occupied by the Sudbury Regional Police and NOPAAT contribute no annual revenue to the Centre. This figure alone at a break even rent rate would generate an additional \$45,000 in annual revenues to the Centre. The police require space from which to operate and although they do not pay rent, they provide a community service whose costs are sponsored through an allotment of City Council. The questions then becomes whether City Council treats this absence of revenue as "lost" or as a cost of conducting the City's business. Either way, it must be taken into account when analyzing the Trillium Centre's financial performance.

The same challenge can be applied to the Rayside Balfour fitness centre which occupies 4600 square feet of space and is operated by community volunteers. Their current rate of \$2.60 per square foot is much lower than the required \$9.00/square foot break even rent rate. The fitness centre could not afford to absorb the tripling of the rent rate.

These two examples alone, at break even rental rates, would decrease the cost of the Trillium Centre by almost \$75,000.

Lack of available rental space

Although the centre does not generate sufficient revenues, its tenants occupy the majority of the rentable space within the building. A 3200 square foot space is available and two tactical bays (1125 sq.ft each) remain empty but are now being requested for training purposes by various groups. For example, the Sudbury Regional Police has taken on an additional 2315 square foot space to be used as an evidence room. Again, no incremental change in revenue to the Centre but a decrease in rentable space.

Increased Costs to Operate the Trillium Centre

Not only are the revenues of the Trillium Centre compromised, but the operational costs saw some recent challenges also. Energy costs have reached \$112,800 on annual basis. Salaries and benefits have increased by over \$62,000 as a result of the unionization of the original three janitorial employees. Information Services now charges the centre \$7,500 for the use of telephones and photocopiers. Collectively, estimated expenditures for 2003 are \$536,160; an increase of close to \$99,165 from \$432, 995 in 2002.

OPPORTUNITIES

The Trillium Centre is an ideal location to deliver training sessions and small conferences. Although originally utilized for boxers in training camp, the dormitories are now utilized as overnight accommodations for employees on multi-day training sessions from provincial ministries and government sponsored agencies. Abiding with the zoning status, the Trillium Centre has established itself as a location of choice for groups that are looking for a private, clean and comfortable location to conduct courses and professional development training. On an annual basis, close to \$150,000 is derived from overnight accommodation, meal revenue and use of meeting room space. In 2002, an Industry Canada sponsored conference delivered at the Trillium Centre generated a net revenue of \$10,000. Steadily, the Trillium Training Centre has positioned itself to offer a private and secluded setting for groups that can range from as little as eight to small conferences of up to three hundred participants. It offers complete privacy, an all inclusive meal package, overnight dormitory accommodations and ample parking.

The following are examples of agencies which use the Trillium Training Centre on a regular basis. Each overnight participant generates a minimum of \$75.00 per day.

Ministry of Natural Resources

- ▶ 12-14 sessions annually
- ▶ 3-5 day duration per session
- ▶ 30 participants

Ministry of Transportation

- ▶ 4 sessions annually
- ▶ 2 days in duration per session
- ▶ 25 participants

Ministry of Public Safety and Security

- ▶ 6 sessions annually
- ▶ 2 days in duration
- ▶ 36 participants

Ontario National Boxing Training Centre

- ▶ 4 sessions annually
- ▶ 1 week in duration
- ▶ 12 participants

Date: August 7, 2003

Sudbury Racetrack Slots

- ▶ 12 sessions annually
- ▶ 1 day in duration
- ▶ 25 participants

Both INCO and Falconbridge are now conducting a variety of 5 day training sessions at the centre. The centre is both building new, and maintaining repeat clientele.

City departments utilize the Centre as a training/meeting facility

The availability of committee room space at Tom Davies Square has become a challenge for employees organizing longer meetings and training sessions. City departments are now starting to use the Trillium Centre as a training and meeting facility. City departments that are conducting training and meeting sessions include Corporate Services, Public Works, Economic Development & Planning, CAO's office, Health and Social Services, Sudbury Regional Police, Alertech and the Fire Department. They are all part of a growing list of City Departments which recognize the centre's ability to meet the needs of training session requirements. Whether the sessions calls for a gymnasium, traditional meeting room or tactical bay, the Trillium Centre can deliver an ideal training space.

It must be noted that this growing list of City departments are not being charged back for their use of meeting room space but rather only for meal consumption. A meeting room space at a traditional hotel for a one day rental is approximately \$250. For example, this would translate into a cost of \$3 500 for meeting space that the City's Occupational Health & Safety Division would have had to pay for their recent 14 day procedural training of students.

The intent of this example is not to introduce "charge backs" to City departments but rather to illustrate that the Trillium Centre has become a training location of choice for City departments. Utilizing a City owned asset to conduct that training is a saving to the City; one which should not be overlooked or undervalued. There is no other City owned property that can deliver the space, layout, flexibility and suitable nature for meetings and training sessions as can the Trillium Centre. From sporting groups and associations to City departments, government agencies to large corporations, the centre is viewed by many as a valued City asset.

The City's Information Technology Department utilizes a basement room at Tom Davies Square for all staff computer training sessions. It has been suggested that the Trillium Centre can offer a spacious, bright and well ventilated area for computer related training which is more conducive to learning. Also, staff will not encounter the distractions normally associated with training sessions held at their place of work. The existing basement room at Tom Davies Square can instead be utilized for much needed storage space.

Financial Comparison between Trillium Centre and City owned facilities

Centre	Cost to Net Budget	Total Expenses	Total Revenues
Howard Armstrong Recreation Centre	261,611	597,413	335,802
Dowling Leisure Centre	142,089	205,639	63,550
Dowling CSC Town Library	179,412	182,912	3500
Community Recreation Centre	174,512	204,584	30,072
Trillium Centre	311,260	536,160	224,900

Date: August 7, 2003

As the chart indicates, there are several community based facilities that are in varying degrees financially supported by the base budget. The Trillium Centre was created to serve as a community centre and although it serves countless community based groups, it has also established itself as a training facility for provincial ministries and more recently our internal City departments. City staff are organizing training sessions at the Centre and are saving a minimum of \$250/day in meeting room costs.

The net loss in rent revenues from the fitness facility, NOPAAT and the Greater Sudbury Police must be taken into account when reporting the Trillium Centre's cost to the net budget. In most instances, these groups are sponsored by the City and the costs should not reflect on the operating performance of the Trillium Centre.

Present Situation

In 2003, it is projected that the Trillium Centre will end the year with a cost of approximately \$311,260. Total expenditures will reach almost \$536,160 while revenues will reach \$225,000. The Trillium Centre, operated as a City owned asset is unlikely to ever become a self sustaining entity. If City Council chooses to maintain ownership and responsibility for the Trillium Centre, it cannot do so without a financial commitment.

Several city sponsored tenants that pay minimal to no rent coupled with ongoing City department meetings and training sessions at no cost to their respective budgets must be taken into account when assessing the financial situation of the Trillium Centre. With only limited rentable space remaining, the Trillium Centre must consider an alternative strategy to further minimize the cost to the CGS.

Staff are convinced that as the Trillium Centre continues to attract additional training sessions and overnight stays throughout the year, they can improve the negative effect on the net budget by as much as \$75,000 in the next fiscal year.

The Action Plan

The name of the Trillium Centre should be changed to City of Greater Sudbury "Trillium Training Centre". This will communicate to interested groups an alternative to traditional training establishments. Prices charged for accommodations, meals, meeting rooms and gymnasium will be reviewed and adjusted upwardly where appropriate by an amount that will not deter repeat customers. Charges for audio-visual and support equipment and meeting set-up will be introduced starting in September 2003.

A day and overnight meeting package will be introduced to ensure a more efficient booking system for both the manager and client.

The "in house" web marketing assistant within the economic development department will design and print a bilingual brochure which will highlight the Trillium Training Centre facility, its amenities, prices and contact information. A targeted mail-out to federal, provincial and municipal agencies/departments across Northeastern Ontario will successfully reach those individuals organizing training sessions for the upcoming year. The Centre will position itself as an alternative to traditional training settings; one which can deliver privacy, flexibility, diversity all at a reasonable cost.

During 2004, City staff will be in a better position to evaluate the success of the Trillium Training Centre. In order to develop a full fledged all inclusive training centre which can host groups of up to 200 in total at any one time, changes will need to be made to the kitchen facilities. The second floor kitchen in its current form cannot accommodate larger groups or more than two groups that wish to eat during traditional lunch time hours. Efforts are currently made by management to stagger lunches but in some cases, this interferes with a group's training schedule for the day. Ideally, a lunch buffet for all groups being trained at the Centre on a given day should be offered between the hours of 11:00 am to 1:00 pm. Groups can then decide at which time they are prepared to break for lunch. The opportunity exists to convert the main floor cafeteria, currently used occasionally as a meeting room, into the main lunch mess hall. There is a kitchen off of the main cafeteria which can be renovated to current day standards. The preliminary cost estimate for the proposed kitchen re-location is \$30,750.

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Staff will look to City Council to realize and place a value on the City sponsored tenants and departments using the Centre for their own purposes. Those areas include Greater Sudbury Police, NOPAAT, Heritage Museum, Fitness Centre and the municipal election office. This approximate value of \$90,000 in costs is what the City would otherwise have to absorbed in other departments' budgets.

SUMMARY

The City of Greater Sudbury owns and operates the Trillium Training Centre. As an organization, we must commit to utilize this asset for City sponsored training sessions. The location is in close proximity to Tom Davies Square, offers privacy, ample parking, access to meals on site in a bright and well maintained property. This facility should not be viewed as a liability but rather an opportunity for the City to extend its use and market the training facilities to other government sponsored agencies and ministries.

OPTIONS

- Council does not approve the strategy of the development of a training centre and directs staff to inform all tenants that they must meet the minimum break-even rent rate of \$9.00/square foot by January 1/04. Those tenants that do not comply will face notice and eviction. This will result in higher vacancy and, therefore, costs in the short term.
- Council approves the development and marketing of a "training centre" and agrees to absorb the revenues of City sponsored tenants such as the Greater Sudbury Police and fitness facility and NOPAAT. Should Council approve the proposed \$30,750 in kitchen re-location costs to the cafeteria area on the first floor, staff will return to Council with a report which identifies a funding source. Staff will be given a period of two years to increase the total revenues of the newly developed Trillium Training Centre by at least \$100,000. In December 2005, Council will review the financial performance of the Trillium Training Centre and their decision to support the City owned facility.

Request for Decision City Council





Type of Decision									
Meeting Date	August 12, 2003				Report Date	July 31, 2003			
Decision Requested	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	Priority	<input checked="" type="checkbox"/>	High	<input type="checkbox"/>	Low
	Direction Only				Type of Meeting	<input checked="" type="checkbox"/>	Open	<input type="checkbox"/>	Closed

Report Title
Options for the Greater Sudbury Housing Corporation

Policy Implication + Budget Impact	
n/a	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.
<input checked="" type="checkbox"/>	Background Attached

Recommendation	
<p>BE IT RESOLVED that Council amend resolution 2001-177 as follows: 1. the requirement that four (4) directors including the Chair of the Greater Sudbury Housing Corporation (GSHC) board be Members of Council is rescinded and replaced with a requirement that a minimum of two (2) GSHC directors shall be Members of Council; 2. the GSHC Board will appoint from its directors a Nominations Committee. As the need arises, this Committee will be responsible for recruiting and recommending citizen directors to serve on the Board. The Committee recommendation(s) is to be forwarded to the GSHC Shareholder for approval. The selection of Councillors to serve as GSHC directors will be of a process at Council's discretion; 3. the requirement for the GSHC Board to report to the Committee of the Whole Planning is rescinded. The GSHC Board will report to the GSHC Shareholder, being Council in its capacity of sole GSHC Shareholder or a shareholder representative duly appointed by Council.</p>	
<input type="checkbox"/>	Recommendation Continued

Recommended by the General Manager
 D. Naborozny, General Manager Economic Development and Planning Services

Recommended by the C.A.O.
 Mito Chief Administrative Officer

Date: July 31, 2003

Report Prepared ByD. R. Desmeules
Manager, Housing Services**Division Review**W. E. Lautenbach
Director of Planning Services**Background**

The Province created the Greater Sudbury Housing Corporation (GSHC) on January 1, 2001. Although the articles of incorporation permitted as few as two (2) and as many as 13 members on the board, the Province chose to appoint nine (9) members. The members were given a three (3) year term. All previously served as members of the former local housing authority board. These appointments ensured continuity for the GSHC in times of great change.

Included in the Province's appointments were two City of Greater Sudbury (CGS) Councillors – Councillor Kilgour and Councillor Bradley. The Chair is not a member of Council though Councillor Kilgour is the Vice-Chair.

The Province directed that the CGS complete a Joint Local Transfer Plan. The Plan would describe how the CGS would address the social housing transfer. As part of this process, Council passed Resolution 2001-177 on April 10, 2001. The resolution stated the following:

1. the management of the former public housing portfolio was assigned to the GSHC
2. the number and composition of the GSHC board was set at seven (7) members, four (4) of which including the Chair were to be from Council and three (3) citizen members appointed by Council
3. the Board of GSHC would report to Council through the Committee of the Whole Planning
4. the CGS's Housing Services Section was created and its mandate set
5. the geared-to-income rent calculation function was assigned to the housing providers
6. the CGS would provide administrative services to the GSHC formerly provided by the Province
7. CGS staff were to begin implementing the housing service delivery model as detailed in the Joint Local Transfer Plan in anticipation of Council and Ministry approval of the Plan

Council approved the Joint Local Transfer Plan in May 2001 while Provincial approval was received in June 2001. At that point, full implementation of the Plan could begin.

Over the latter part of 2001 and into 2002, the Province introduced a series of regulations affecting social housing administration. These impacted on the proposed delivery model and on the GSHC's management practices. Given the changes, the timing and implementation of components of Resolution 2001-177 and the Joint Local Transfer Plan had to be continually adjusted.

As of today, only two (2) parts of Resolution 2001-177 are yet to be fully implemented. With the bulk of the Provincial changes having been introduced and with the CGS now having the benefit of a few years of direct social housing administration, Council can re-examine the outstanding items to determine if they continue to meet today's reality.

GSHC Governance Structure

The cornerstone to the relationship between the CGS and the GSHC was Council's decision to retain the

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GSHC as an arm's length not-for-profit corporation that would own and operate the former public housing portfolio. This meant that the CGS would not become a direct social housing landlord. Instead, Council chose the role of program funder, administrator and policy maker. This left the social housing community, including the GSHC, to continue to deliver the housing services as they previously had done under the Province.

The GSHC receives approximately \$8,000,000 annually in subsidies from the CGS. Provincial funding to the CGS is contingent on GSHC compliance with the legislation. Given these factors, Council originally selected a GSHC governance model which ensured a good degree of direct oversight and accountability. They created a board where Council members would form the majority and a member of Council would serve as Chair. Council took a further step requiring that the GSHC Board report to Council through the Committee of the Whole Planning. Unfortunately, the impact of the Social Housing Reform Act and its regulations were not known at the time Council was required by the Province to make its governance model decisions.

Subsequent to those decisions, the Province has provided alternate mechanisms which can provide municipalities a high degree of provider and program oversight without over-committing Council's resources. The CGS as the GSHC's sole shareholder can issue a Shareholder's Declaration. This document can specify processes and reporting procedures which would limit and direct the GSHC's operations.

The CGS as Shareholder can: decide the board size and composition; appoint the board members; select the GSHC auditor; put systems in place to assess the performance of the GSHC; limit the powers of the Board; and establish a communication protocol. This can be done while still respecting the board's role as employer and housing provider. This will ensure the board's autonomy and accountability. All the Shareholder's decisions regarding these matters would be articulated in the Shareholder's Declaration.

The legislation/regulations have also given the CGS, as social housing Service Manager, additional mechanisms to monitor programs and ensure housing provider compliance. These rules apply to all providers including the GSHC. The CGS can establish a provider Operating Framework that will detail: funding allocations; reporting procedures and communication protocol; performance standards and clearly defined remedies for non-compliance. The Framework can form part of the Shareholder's Declaration.

The creation of the CGS Housing Services Section has given Council a very strong tool to ensure the legislative compliance of both the CGS and all local social housing providers. The Section has been given the mandate to: monitor GSHC operations; review and recommend subsidy levels to Council; flow approved subsidies to providers; set program policies and procedures; and enforce program compliance.

Housing and Legal Services have prepared a GSHC Shareholder Declaration and Operating Framework. It addresses the points identified above. The document will be presented to the Shareholder (the CGS) at a special GSHC Shareholder's meeting this September. Once approved, the CGS's administration of the GSHC will be more streamlined and consistent with that implemented with other local housing providers.

Staff are seeking Council direction in confirming the GSHC board size, composition, nomination process and relationship to Council. The final decisions will be reflected in the Shareholder's Declaration and Operating Framework.

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Summary of Options

The chart below provides a quick overview of the options. Those indicated with an asterisk (*) are the options being recommended by staff. A notation to the table advises Council if the recommendation is consistent or reflects a change from an earlier decision.

Board Size

OPTION	BOARD SIZE
A	*7*
B	9
C	5

This option is consistent with Council's earlier decision.

Council Representation

OPTION	NUMBER OF COUNCIL REPRESENTATIVES
A	MAJORITY (INCLUDING CHAIR)
B	*MINIMUM 2 COUNCIL MEMBERS*

This option is a change from Council's earlier decision.

Board Member Selection Process

OPTION	SELECTION PROCESS
A	CGS CLERK'S OFFICE COMPLETES PROCESS
B	*COUNCIL MEMBERS - COUNCIL PROCESS CITIZEN MEMBERS - GSHC NOMINATION COMMITTEE*

This process was not spelled out in Council's earlier decision. This option clarifies the process.

++ Note: Regardless of which option is selected, Council as the Shareholder appoints all members of the Board

Reporting Relationship To Council

OPTION	REPORTING METHOD
A	PLANNING COMMITTEE
B	*SHAREHOLDER'S MEETING SHAREHOLDER'S DECLARATION GENERAL MANAGER, ECONOMIC DEVELOPMENT AND PLANNING SERVICES*

This option is a change from Council's earlier decision.

The details surrounding the options are provided on the pages that follow.

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GSHC Board Number And Composition

With the new oversight mechanisms and Housing Services in place, Council can now better determine its level of direct oversight and participation in the day to day management of the GSHC.

OPTIONS - Board Size

There are several considerations in determining the size and composition of the GSHC board. The Province has set the minimum and maximum parameters. Council had previously debated the question and set the number at seven (7). The Province however, had set the board size at nine (9) members. The board has operated with nine (9) members since its inception.

Option A

This option proposes to set the number of the board members at seven (7).

This option is consistent with Council's earlier decision. This size is sufficient to ensure quorum while allowing the creation of sub-committees to deal with areas such as tenant selection, appeals, tender awards etc. The workload of members can be distributed.

Option B

This option proposes to set the number of board members at nine (9).

This option is consistent with the current board. This size further facilitates quorum and the participation of members in sub-committees. The member workload can be further distributed. It may be more difficult to achieve consensus. Board management may be more challenging.

Option C

This option proposes to set the number of board members at five (5).

This option creates a focused workgroup. Consensus may be easier to achieve. With the smaller number, each member may play a larger role. The workload may be heavier on individual members. It may be more difficult to achieve quorum. A strong personality may dominate the board.

OPTIONS - Board Composition

This area addresses the number of Council and citizen members to serve on the GSHC board. With several administrative mechanisms now available to ensure a strong degree of accountability, Council may wish to reconsider its level of direct participation in the day to day management of the GSHC. Listed below are various factors for consideration.

The CGS as sole GSHC Shareholder controls the number of members, how they are selected and the number of Council members which can/will serve on the board. A strong Council presence either in majority representation and/or with a member of Council being the Chair can give Council direct control over the GSHC. Having a large number of Councillors serving as members will raise the profile of the GSHC and potentially give it a higher priority among the City services. Many members of Council will become more familiar with social housing issues and concerns.

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This strong link may appear to conflict with Council's decision to create an arm's length corporation. This may cause confusion with GSHC employees, tenants and the public. Employees may consider themselves CGS employees given that a Councillor is signing their paycheque. This may lead to human resources issues. Tenants may feel that they can contact Council and Council members directly over problems with their tenancy or units. The public may view Council as a landlord and therefore biased in their decisions affecting private landlords and private sector rental developments. Other local non-profit providers may perceive that Council favours one provider over all others in terms of budget and/or program administration.

Having a majority of members from Council would require the involvement of many Councillors. This participation assumes individual Council member interest and may come at the expense of other Council priorities.

With the implementation of the Shareholder's Declaration and Operating Framework and with Housing Services being mandated to oversee the GSHC, having Councillors in the majority may be viewed as reducing the GSHC's autonomy thus clouding the issue as to who is the employer.

Whatever the composition of the board, the CGS as Shareholder will always approve the selection of all the members.

Option A

This option proposes that Council members be the majority of the board and that a Council member be elected Chair.

This option is consistent with Resolution 2001-177. The Council board members would have intimate knowledge of the GSHC operations and could advocate directly for GSHC issues. The option does not recognize the other mechanisms in place to achieve GSHC oversight. The GSHC will continue to be treated in a different manner than other non-profit providers. The issue of GSHC autonomy may be questioned.

Option B

This option proposes that regardless of the size of the board size, no less than two (2) members of the board would be from Council. The Shareholder could appoint more members from Council if it was felt that this was appropriate.

The number of Council members proposed (2) is consistent with the current practice. With fewer Council members, the board will resemble other community based non-profit housing boards, The Shareholder continues to appoint all board members thus maintaining its level of involvement and control. The Council presence, along with the Shareholder's Declaration and Operating Framework, should provide the CGS with a strong level of oversight without compromising the Board's autonomy.

There will be fewer Councillors with direct exposure to the management issues facing local social housing providers.

OPTIONS - Board Nomination Process

Other than with the GSHC, Council has no involvement in the selection or appointment of the board members of its local housing providers. Board member selection is completed by the various non-profit

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corporations based on their by-laws. Some corporations have their members appointed by the local club or society who sponsored the original project. Other non-profit providers recruit and advertise for board members. The existing board screens the applicants based on their requirements and makes the appointments.

Regardless of which nomination process is selected for the GSHC, the CGS as Shareholder will continue to approve the appointment of all the members.

Option A

This option proposes that the CGS Clerk's office, on behalf of the Shareholder, complete the board member recruitment process. The process would follow the established protocol used for other City boards.

This option would keep the full recruitment and selection process within CGS protocols. The Shareholder would review and select members from the slate of nominees gathered by the Clerk's Office.

This process differs from past practice in that the former Housing Authority would participate in the recruitment and selection of its members. The option is not consistent with that utilized by other housing providers. In implementing the option, the CGS would have to indicate that the GSHC is not a local board of the municipality. The Clerk's Office does not provide this service to other non-profit providers.

Option B

This option proposes that the GSHC establish a Nomination Committee to complete the recruitment and nomination process for citizen board members. Council would continue to appoint the appropriate number of members of Council through its traditional process. The Shareholder (CGS) would review and appoint both the citizen members brought forward by the GSHC Nomination Committee and the Councillors identified by Council.

This process allows the GSHC a degree of ownership and input into the process. This approach would be consistent with that utilized by other non-profit providers.

The process is slightly more complicated as two bodies, the CGS and the GSHC, are involved.

OPTIONS - Relationship with Council

In its April 2001 resolution, Council had indicated that the GSHC board would report to Council through the Committee of the Whole Planning. Since that time, Council has adopted a different committee structure.

The recognition of the CGS's role as sole GSHC shareholder and as Service Manager makes other avenues of reporting possible ie. annual GSHC shareholder's meeting, operational reviews. The Shareholder's Declaration and Operating Framework also incorporate a reporting structure for both program and funding requirements. In addition, GSHC board minutes are reviewed by Housing Services and circulated to Council for information. Currently, GSHC issues and anomalies are reported to Council through the General Manager, Economic Development and Planning Services. These can also be brought forward by the Councillors who serve on the GSHC board.

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Option A

In this option, the GSHC would now report to the new Planning Committee.

This option is consistent with Council's earlier intent. The option would make Planning Committee responsible for reporting on GSHC issues to Council. It does not reflect the past practice and does not acknowledge the other avenues available for reporting. A structure for the reporting would have to be developed to determine the level and frequency of committee reporting ie. would it be in person or through the circulation of minutes.

Option B

In this option, the CGS would rely on its role as Shareholder and Service Manager along with the protocol established in the Shareholder's Declaration and Operating Framework as the key vehicles for keeping Council informed on GSHC activities. The General Manager, Economic Development and Planning Services would continue to bring forward GSHC issues/concerns as appropriate. The GSHC board minutes would continue to be circulated to Council for information purposes on a monthly basis. The Councillors who serve on the GSHC board are also available to bring forward matters and speak to issues impacting on the GSHC.

This option is most similar with the current practice. It recognizes the other mechanisms available to Council to deal with the GSHC issues ie. Shareholder's meeting, Council members on the board, Shareholder's Declaration and Operating Framework provisions, General Manager Economic Development and Planning Services issue identification. This option would create a reporting structure which most closely resembles that available to other housing providers. This option does not impose an additional responsibility on Planning Committee.