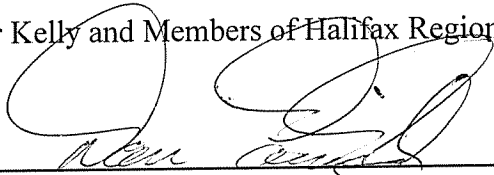


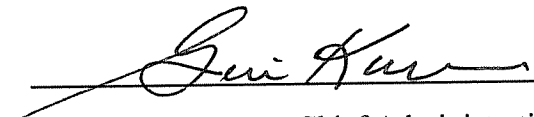
**Halifax Regional Council
September 11, 2007**

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Dan English, Chief Administrative Officer



Geri Kaiser, Deputy Chief Administrative Office - Corporate Services
& Strategy

DATE: August 27, 2007

SUBJECT: New Municipal Charter for HRM

ORIGIN

Legal Services has prepared the attached Discussion Paper in support of a new municipal *Charter* for HRM.

RECOMMENDATION

1. It is recommended that Halifax Regional Council approve the Discussion Paper and that it be forwarded to the Province of Nova Scotia for consideration.
2. It is recommended that Halifax Regional Council approve in principle the concept of a municipal *Charter* and direct staff to work towards obtaining a new legislative relationship between HRM and the Province.

BACKGROUND

Prior to amalgamation in 1996, the cities of Halifax and Dartmouth were governed by *City Charters*, the town of Bedford by the *Towns Act*, the County of Halifax by the *Halifax County Charter*, and the Metropolitan Authority, by the *Metropolitan Authority Act*. The Halifax Regional Municipality was created on April 1, 1996 by the passing of the *Halifax Regional Municipality Act*. The *HRM Act* was repealed on April 1, 1999 by the enactment of the province wide *Municipal Government Act*. Since then, difficulties have been experienced with effecting amendments because *MGA* amendments have province wide implications requiring broad provincial consultations causing delays and, in some cases, refusal of proposed amendments.

Government, business and community relationships are important in developing a solid foundation upon which HRM successes can be built. Within the 2007/08 HRM Corporate Direction, under Organizational Leadership, there is a CAO goal which highlights relationship and partnership building. Working with the Province of Nova Scotia to create a new Charter for HRM will help to advance this, and will be consistent with the Government Relations and Strategic Partnership Development Policy adopted by Council. In addition, this initiative will help to fulfill the priority of practising fiscal responsibility by balancing public expectations and needs with the efficient and effective management of municipal resources.

DISCUSSION

Strategic Goal Three of Legal Services' Business Plan for the 2007/2008 fiscal year is to work towards securing provincial support for the development of new governance legislation. Legal Services has drafted the attached Discussion Paper requesting the Province create a new *Charter* for HRM.

The Discussion Paper proposes using the existing *MGA* as a framework, with necessary modifications for HRM. In general terms, the Discussion Paper proposes two additions to the *Charter* from the current *MGA*, as follows:

1. Clarification of powers. The *MGA* grants Council general powers for: (a) the health, well being, safety and protection of persons; (b) the safety and protection of property; and (c) in respect of persons, activities and things. Questions arise from time to time whether a specific grant of power on a topic in the *MGA* limits the broader grant of power which covers the same subject matter. This is an issue that has arisen in other jurisdictions. For example, the issue has been addressed by the City of Winnipeg and it is proposed that HRM adopt a similar approach to that of Winnipeg. It is recommended that the new *Charter* contain a provision to clarify that, if the action falls under a general power, a specific power does not limit the scope of the general power.

2. Eliminating the need for administrative amendments. Many of the amendments HRM regularly seeks to the *MGA* are administrative in nature rather than policy oriented. It is recommended that Council seek the authority to make administrative changes without the need for an amendment to the *MGA/HRM Charter*.

BUDGET IMPLICATIONS

At present, there are no budget implications associated with these recommendations.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

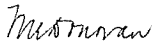
- (1) Council could decide to continue under the existing *MGA*, in its current form.
- (2) Council could request that the Province amend the *MGA* to reflect the changes recommended in the Discussion Paper but abandon the concept of an *HRM Charter*.
- (3) Council could request that the Province enact an *HRM Charter* without additional powers.

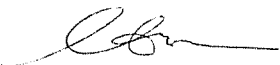
ATTACHMENT

1. Discussion Paper.

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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Finance Approved by: 
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DISCUSSION PAPER

**MEETING THE CHALLENGES:
THE NEW HALIFAX REGIONAL
MUNICIPALITY CHARTER**

**A MODEL OF
GOOD GOVERNMENT
FOR THE 21ST CENTURY**



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BACKGROUND

The Halifax Regional Municipality was created on April 1, 1996 by the *Halifax Regional Municipality Act*. The *HRM Act* was repealed on April 1, 1999 by the *Municipal Government Act*.

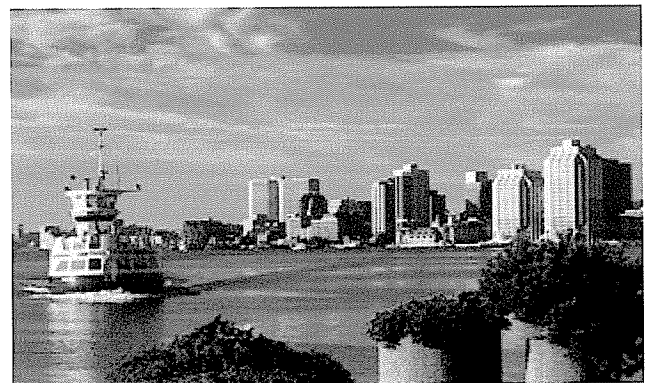
HRM has evolved into a major city region facing competition on the national and international scene. HRM is the economic centre of Atlantic Canada and accounts for forty percent of the provincial GDP. It is a regional focal point for technology industries, energy development and is a major manufacturing centre. HRM is experiencing strong population growth and sustained commercial and residential developments. The evolution of HRM creates needs for innovative policy design, regulatory flexibility, and an ability to secure legislative amendments within a reasonable period of time in order to manage local challenges more effectively.

In comparison to HRM's needs, the *MGA* has created municipalities whose powers are limited in scope, hindering Council's ability to respond to local challenges even when the matter is purely administrative in nature, resulting in matters being left unaddressed until a legislative amendment is received. As well, the general grant of powers in the *MGA* to Regional Council for the: (a) health, well being, safety and protection of persons; (b) the safety and protection of property; and (c) persons, activities and things in, on or near a public place¹ may be limited by the list of specific powers. Since courts interpret specific powers as limiting general powers,

when a specific power is silent whether an action may be performed, the general power cannot be relied upon and the specific power must be amended. The need to amend the legislation is contrary to the general powers granted under the *MGA* impacting Council's ability to act promptly and respond to local challenges.

A *Halifax Regional Municipality Charter* would provide:

- ◆ the necessary flexibility to enable Council to respond to administrative amendments in a more timely manner,
- ◆ clarify that specific powers do not limit general powers, and
- ◆ recognize the scope, sophistication and the needs of the HRM.



¹*MGA*, s. 172.

THE CHALLENGES

A municipality's enabling legislation is of paramount importance as the statute has a direct impact on its ability to govern and respond to its residents. The power granted by the legislation either assists or hinders the municipality's ability to respond to changing local challenges and economic realities. Well designed legislation fosters Council's flexibility, creativity, efficiency and effectiveness in solving problems in a rapidly changing and evolving environment, without the need for legislative amendments.

In response to increasing responsibilities and expectations placed on local governments along with changing urban conditions, some provinces have amended their municipal legislation to grant municipalities broader powers and greater flexibility², and clarified that general powers are not limited by specific powers³, with a corresponding shift to reaffirm the importance of city charters⁴. A common theme is emerging: local governments are pressing for more autonomy and greater flexibility. Charters, rather than statutes of general application, are becoming the legislation of choice for cities, by providing a customized legal framework to reflect the uniqueness of a city region and allowing for legislation that is

easier to amend, as the amendments relate to only one city, rather than to the entire province, thereby permitting the Legislature to efficiently respond to the changing urban realities.

In contrast to the current trend, the need for flexibility and the expansive nature of the development and growth within HRM, the municipality's current governance legislation is rigid and restrictive in scope and requires frequent administrative amendments. While HRM is at the forefront of local policy initiatives, the current legislation impairs HRM ability to set urban priorities, in exercising its regulatory powers, and in positioning itself to compete with other cities.

The *MGA* recognizes the primary functions of the municipality are to provide "good government", services, facilities, and "other things" for all or part of the municipality, to develop and maintain "safe and viable" communities and "to give broad authority to councils". This mandate mainly translates to providing services to land and properties; however, communities are inhabited by people and a mandate to develop and maintain "safe and viable" communities has implications which are not adequately addressed under the current legislation. Changes in the justice system can affect police services, changes to social programs can affect the local economy and changes in public policy often manifest themselves in the form of problems experienced at the municipal level. HRM needs the flexibility granted by the general powers in the *MGA* to address such issues without concern as to whether the issue is limited by the specific powers set out in the legislation.

²Toronto: Comparison of Powers and Revenue Sources of Selected Cities, June 2000, p.2.

³See Appendix "A".

⁴The following municipal units are examples of chartered entities: *City of Toronto Act, 2006*, *Vancouver Charter*, *City of Winnipeg Charter Act*, *Charter of Ville de Québec*, *Charter of Ville de Montreal*, *The Lloydminster Charter* (Alberta), and *Saint John Royal Charter, 1785*.

In addition, the current legislative process results in significant delays in securing legislative amendments to the *MGA* to support HRM's initiatives. This is compounded in the case of minority governments with the requirement for broad agreement on a province-wide basis for legislative change. The difficulties and delays associated with legislative change is partly caused by the need to amend legislation of general application that must fit within provincial policies and programs designed for province-wide operations.

THE NEW CHARTER

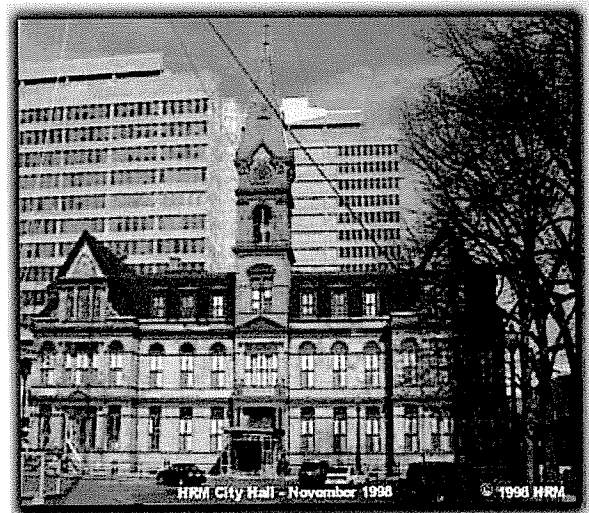
It is proposed that the new *Halifax Regional Municipality Charter* be modelled off the current *MGA*, with the necessary modifications for the realities of a modern regional municipality. The *Charter* should start with the current *MGA*'s general powers but add a provision that clarifies that specific powers are not limited by the grant of related general powers. It is also proposed that Council be granted the power to make administrative changes to the legislation, thereby minimizing legislative requests for such amendments, which by their very nature constitute non-policy issues and do not affect the provincial interest.

The combined effect of the new *Charter* with the addition of the new provisions will be to protect the Province's interest in setting any new policy direction, while providing HRM the tools necessary to protect its citizens' interests, reduce the need for legislative amendment while providing a more efficient process to receive amendments when they are necessary and place HRM within the legislative sphere of modern Canadian municipalities.

RECOMMENDATION

HRM is recommending the Province of Nova Scotia enact a new *Halifax Regional Municipality Charter* to reflect the needs of HRM, which will create a model for good government for a regional municipality through the modernization and clarification of the legislation. In particular, a *Halifax Regional Municipality Charter* would provide:

- ◆ the necessary flexibility to enable Council to respond to administrative amendments in a more timely manner,
- ◆ clarify that specific powers do not limit general powers, and
- ◆ recognize the scope, sophistication and the needs of the HRM.



STATUTE	GENERAL INTERPRETATION PROVISION
<p>Northwest Territories <i>Cities, Towns and Villages Act</i>, S.N.W.T., 2003, c. 22.</p>	<p>4. (1) The general legislative powers of a municipal corporation to make bylaws are to be interpreted as giving broad authority to council to govern the municipality in whatever way council considers appropriate, within the jurisdiction given to a municipal corporation under this or any other enactment, and to address issues not contemplated at the time this Act is enacted.</p> <p>(2) The power to make a specific bylaw under any other enactment is to be interpreted as giving supplementary authority to council to govern in accordance with the general legislative powers of a municipal corporation under this Act.</p>
<p>British Columbia <i>Community Charter</i>, 2003, S.B.C. c. 26.</p>	<p>4 (1) The powers conferred on municipalities and their councils by or under this Act or the <i>Local Government Act</i> must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.</p> <p>(2) If</p> <p>(a) an enactment confers a specific power on a municipality or council in relation to a matter, and</p> <p>(b) the specific power can be read as coming within a general power conferred by or under this Act or the Local Government Act,</p> <p>the general power must not be interpreted as being limited by that specific power, but that aspect of the general power that encompasses the specific power may only be exercised subject to any conditions and restrictions established in relation to the specific power.</p>

STATUTE	GENERAL INTERPRETATION PROVISION
<p>Manitoba <i>The Winnipeg Charter Act, S.M., 2002, c. 39.</i></p>	<p>6(1) The powers given to council under this Act are stated in general terms (a) to give broad authority to council to govern the city in whatever way council considers appropriate within the jurisdiction given to it under this or any other Act; and (b) to enhance the ability of council to respond to present and future issues in the city.</p> <p>6(2) If this Act confers a specific power on the city in relation to a matter that can be read as coming within a general power also conferred by this Act, the general power is not to be interpreted as being limited by the specific power.</p> <p>128 If authority is granted to council under a provision of this Act to pass by-laws in respect of any matter, that authority shall not be construed to reduce or limit authority granted under any other provision of this Act</p> <p>(a) to pass by-laws in respect of the same or a related matter; or (b) to deal with the same or a related matter in a manner other than by by-law.</p>
<p>Ontario <i>Municipal Act, 2001, S.O. c.25.</i></p>	<p>8(1) The powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues.</p> <p>(2) In the event of ambiguity in whether or not a municipality has the authority under this or any other Act to pass a by-law or to take any other action, the ambiguity shall be resolved so as to include, rather than exclude, powers the municipality had on the day before this Act came into force.</p>
<p>Ontario <i>City of Toronto Act, 2006 S.O. c. 11.</i></p>	<p>6. (1) The powers of the City under this or any other Act shall be interpreted broadly so as to confer broad authority on the City to enable the City to govern its affairs as it considers appropriate and to enhance the City’s ability to respond to municipal issues.</p> <p>(2) In the event of ambiguity in whether or not the City has the authority under this or any other Act to pass a by-law or to take any other action, the ambiguity shall be resolved so as to include, rather than exclude, powers the City had on the day before this section came into force.</p>

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