

Municipal Auditor General Context Paper

**Background and context to the proposed
Office of the Municipal Auditor General under
consideration by the Province of British Columbia**

Prepared by: Union of British Columbia Municipalities



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EXECUTIVE SUMMARY

The Honourable Ida Chong, Minister of Community, Sport and Cultural Development, is surveying local governments about the design of a proposed Office of the Municipal Auditor General (MAG) in BC. The Minister has also invited us to share our views on MAG with her colleagues. This paper provides information to local governments to support these activities.

UBCM has declared a strong local government interest in a robust accountability system to the Minister and her staff, and has stressed that the MAG questions it poses should not be taken as questioning the need for local government accountability. Rather, UBCM is seeking clarity about what gaps there are in the existing accountability system, and if there are gaps, whether a MAG is the best corrective action.

The paper sets out UBCM's preliminary policy analysis, with the following key findings:

CONSIDERATIONS FOR FURTHER POLICY DEVELOPMENT

- Policy development has been challenged by a process that began with a solution rather than the identification of a problem to be addressed and an analysis of the options to resolve it.
- The approach carries a risk of creating a new public institution at considerable public cost, which does not address the public policy problem that it is intended to resolve.
- Problem definition could be enhanced through a review of the local government accountability framework, to consider whether or not the system is performing as intended. If weaknesses are identified, further policy development could be focused on options to address those weaknesses.
- Principles could be established that would help to evaluate options to resolve the problem that is to be identified, including both a MAG and alternative options.
- Principles under consideration by the Province are a good starting point, but policy development could benefit from a broader perspective, and consideration of additional principles, such as: ***Respect for local government policy choices; Respect for jurisdiction; Build on existing systems; and Maximize public accountability benefits while respecting local autonomy and recognizing local capacity.***

LOCAL GOVERNMENT FINANCIAL ACCOUNTABILITY SYSTEM IN BC

- While different, the local government and provincial accountability systems in BC compare favourably. The Provincial system relies more heavily on performance measurement and performance auditing; but the local government system is heavily reliant on statutory limitations imposed by the Province, and direct Provincial oversight roles.
- The Role of the Inspector of Municipalities is a significant component of the overall accountability system for local governments, and there is no equivalent in the Provincial system. Significant powers of the Inspector include: require local governments to provide financial information; require local government auditors to provide further reports; and ability to hold an inquiry into any local government matter, which may ultimately result in a Cabinet Order that is binding on the local government.

MUNICIPAL AUDITORS GENERAL IN CANADIAN PROVINCES

- MAGs are only required for municipalities in Nova Scotia, municipalities over 100,000 in Quebec, and for the City of Toronto; specific statutory provisions Ontario and for Winnipeg, and generalized statutory powers in Alberta and BC allow local government to establish a MAG and assign duties to the Office.
- Duties include compliance and performance auditing; auditors are typically prohibited from commenting on government policy and do not typically have the power to enforce recommendations.
- Most MAGs are appointed by, and report to, municipal Councils; the Nova Scotia MAG is to be appointed by the Minister, and report to Council(s) with a copy to the Minister.

INTRODUCTION

The Ministry of Community, Sport and Cultural Development (the Ministry) is engaged in policy development work towards the implementation of an Office of the Municipal Auditor General (MAG)¹ commitment made by Premier Clark.

UBCM does not have specific policy direction from the membership on a MAG, so has begun research and policy development work prior to seeking that direction, most likely through a Policy Paper to be presented for consideration at the next Convention.

The Minister has asked for a session at Convention, and is conducting a survey of Councils and Boards on various aspects of a MAG prior to Convention, in order that the results of the survey can be used to shape the Convention session.

UBCM is aware that information provided by the Minister in conjunction with the survey is brief. Consequently, UBCM has prepared this Municipal Auditor General Context Paper in order to provide further information to Councils and Boards as they consider their responses to the survey.

The paper identifies our early findings in relation to MAG across Canada, sets out the local government financial accountability framework in BC, and considers what further policy development work is needed.

It should be noted that UBCM's policy development on this file is just beginning, and as such, the paper identifies some information gaps. We apologize for these information gaps, and commit to a more fulsome discussion in the Policy Paper.

This paper presents UBCM's initial research relating to Auditors General and Municipal Auditors General across Canada; and the local government financial accountability framework in British Columbia; along with considerations relating to further policy development work.

The paper is intended to inform discussions of local government Councils and Boards as they consider responses to a survey on the proposed BC Municipal Auditor General from the Minister of Community, Sport and Cultural Development.

As well, this paper is intended to assist members as they prepare for a broader public discussion of the initiative within their communities.

This paper is not intended to influence the outcomes of Council and Board discussions in response to the Minister's MAG survey, but merely to inform them.

Local governments many also find the paper useful as they prepare for further discussions on MAG within their communities or with Members of the Legislative Assembly.

¹ While the commitments related to a Municipal Auditor General made by Premier Clark refer to municipalities only, the Minister's survey was directed to both municipalities and regional districts, and asks for feedback on whether the MAG should have authority to audit "just **municipalities and regional districts**, or should the office also have authority over other local bodies". Consequently, local governments are advised to consider that the discussion includes all local governments, despite language that would suggest that the MAG is intended only for municipalities.

PROVINCIAL POLICY DEVELOPMENT AND DISCUSSIONS WITH UBCM

The impetus behind the Province's policy development on the MAG file is the Premier's stated intention to implement an Office of the MAG. This intention was first expressed in a speech to the BC Chamber of Commerce, and later featured in the Families First Agenda.

Creating an Office of the MAG is one element of the Families First Agenda commitments related to the review of municipal taxation, but there are others, including funding the office as part of the Provincial Auditor General's office, reviewing the municipal taxation formula, and ensuring municipalities are properly funded.

Families First Agenda Review Municipal Taxation

Our government will:

- Create an Office of the Municipal Auditor General.
- Fund the office as part of the Auditor General's Office. The office will provide advice on financial decisions and provide a measure of accountability.
- Review the municipal taxation formula.
- Work with the Union of B.C. Municipalities to ensure municipalities are properly funded and communities can provide the services British Columbians want from local government.

UBCM has offered to participate in a joint Provincial/UBCM policy development process related to the MAG. To date the Province has not agreed to such a joint process. Consequently, UBCM is reliant on discussions with Minister Chong and her staff to become informed on the Province's policy development process and timelines.

Discussions between the Ministry and UBCM began in June, and Minister Chong and her senior staff devoted 2 hours to a discussion of the MAG with UBCM Executive on July 22.

Highlights of the Minister's July 22 Discussion with Executive

- Executive expressed concern about the lack of consultation with UBCM and local governments; the Minister clarified that consultations are ongoing and that government has not yet taken a position on the MAG;
- MAG is part of the Premier's platform and a key priority for the Ministry. The Minister is responsible for its implementation. No specific implementation timelines were given, but the Minister indicated it would likely not be ready for a Fall 2011 Legislative Session;
- Ministry officials indicated that although the local government accountability framework was strong, it could be strengthened, particularly in relation to performance auditing;
- Ministry research into MAG models found nothing suitable for BC; research is still underway; they are seeking input from local government, business and ratepayer groups on design;
- The Minister indicated that MAG was not intended to question local government accountability to the public, but rather to find best practices which could support local governments;
- The Ministry noted that AGs are usually precluded from a review of policy decisions of elected officials; no assurances were given that the design of a BC MAG would ensure this; the Minister indicated the MAG would initially be responsible for value for money auditing and best practices, but that further roles, including a municipal tax review, if suggested by the MAG, might be considered;

Highlights of the Minister's July 22 discussion with Executive, continued

- Executive asked for a commitment to undertake policy development on the Premier's commitment to ensure local governments are properly funded in parallel with policy development on MAG, since both issues have been connected by the Premier in the Families First Agenda; the Minister declined to make that commitment, stating a preference to ensure implementation of MAG was not delayed by dealing with the more complex issue of local government funding at the same time;
- Executive asked about the Premier's commitment that MAG be funded as part of the Provincial Auditor General's office; the Ministry advised that those decisions have not yet been made, and that they are gathering information about whether this would be appropriate;
- Executive asked the Minister to identify the problem MAG was intended to resolve, how MAG fits into the overall local government accountability system, what gaps there were in that system, if any, and whether any consideration had been given to strengthening existing mechanisms as an alternative to developing a new Office of the MAG if there were gaps. The Minister stated that specific problems may only come to light once a MAG is in place, but that a MAG will produce benefits by finding efficiencies and best practices to help local governments do things better;
- The Minister indicated her intention to survey local governments on various elements of the MAG prior to Convention, in order to use the results to help shape a Ministry session on MAG at Convention. In addition, the Minister invited UBCM to share its views on MAG with all of her colleagues.

UBCM RESEARCH AND POLICY DEVELOPMENT TO DATE

Extent of MAG in Canada

Nova Scotia legislation requires a MAG for all municipalities, although only the legislation specific to Halifax has been implemented. Discussions are ongoing between the Union of Nova Scotia Municipalities and the Province about how best to implement the 2008 legislation for all other municipalities.

The only other MAG requirements in Canada are for municipalities with populations greater than 100,000 in Quebec, and for the City of Toronto.

Both Ontario municipalities and the City of Winnipeg are specifically empowered to appoint a MAG, but are not required to do so (examples of those that have are Ottawa and Oshawa). More generalized legislative authority allows Alberta and BC local governments to appoint a MAG, and this power has been used by Edmonton and Calgary.

The legislative provisions relating to BC local governments warrant discussion. While there is no specific authority for a BC local government to appoint a MAG, the audit provisions relating to both municipalities and regional districts allow Councils and Boards to require reports (in addition to the required financial statement reports) from their auditors. This would allow Councils/Boards to require such things as performance audits. In addition, the natural persons powers' of municipalities and broad corporate powers of regional districts should be sufficient for Councils/Boards to establish an Office of the MAG and assign duties to that Office, if they so choose.

Legislation to require a MAG for all Alberta municipalities was introduced in 2009 and subsequently dropped in favour of other measures that the Minister stated “**would meet the intent of the Bill with current resources and without the creation of a new government body**”. The proposed alternatives to the creation of a MAG in Alberta are: rotating municipal corporate reviews; reviewing auditor independence; establishing an information portal to enhance public access to municipal financial information; and releasing recommendations made in audit letters.

This table shows an initial scan of MAG legislation for Canadian provinces:

MAG Required	Local government is empowered to appoint MAG	No provision for MAG (TBD) ²
Nova Scotia (all)	BC (through general corporate powers)	Saskatchewan
Quebec (over 100,000)	Alberta (through general officer powers)	Manitoba (except Winnipeg)
Toronto	Ontario (specific provisions)	Quebec (under 100,000)
	Winnipeg (specific provisions)	New Brunswick
		Prince Edward Island
		Newfoundland

Typical powers/duties, restrictions and reporting relationships of Auditors General

Early research into the structure of Auditor General (AG) and MAGs, where they are authorized or required, indicated that they typically undertake the following core functions:

- Compliance auditing: to determine whether financial and administrative rules have been complied with;
- Performance auditing³: to determine whether money was spent with due regard for economy and efficiency and whether appropriate procedures are in place to measure and report on the effectiveness of government programs; and
- Some form of special examinations at the discretion of the AG/MAG or upon request of the governing body of the entity being audited.

All federal and provincial AGs are also responsible for attest audits (i.e. to provide an opinion on the fair representation of the government’s financial statements in accordance with applicable accounting rules). External auditors carry out this function for local governments, and MAG legislation typically excludes this from MAG responsibilities.

² While the scan did not indicate a specific requirement for a MAG or specific municipal empowerment to appoint a MAG, local governments in these provinces may have sufficient generalized powers to appoint a MAG, under the same types of authorities as are available in Alberta and BC. Consequently, research into more generalize legislative powers that could be used for this purpose would be required before making a final determination as to the ability of local governments in these provinces to appoint a MAG.

³ Some statutes refer to “Performance Auditing” whereas others refer to “Value for Money Auditing”. While there may be some technical differences, for the purposes of this discussion they can be considered parallel terms; therefore, for simplicity, we refer to both as “Performance Auditing”.

In addition, some AGs/MAGs have duties/powers not listed above (e.g. some MAGs take on internal audit functions, some provincial AGs have customized review powers in areas of significance to that Province, such as government advertising or environmental stewardship).

AGs and MAGs are typically precluded from making comment on government policy. That is, they may consider how policy is implemented, how effectiveness is measured, etc, but cannot comment on the policy itself.

For instance, an AG would not report on whether or not a program or service should be undertaken or the extent of the program or service (since that is a matter of government policy) but could report on how well the program or service was meeting the objectives that it was intended to achieve. Similarly, it would not be typical for an AG/MAG to report on whether a government body should be undertaking a program or service on its own or in partnership with other governments.

All the research thus far indicates that AGs and MAGs are empowered to investigate, report and make recommendations. None of the legislation examined indicates that the powers of an AG or MAG extend to require compliance with recommendations.

Further, all of the research to date has indicated that AGs and MAGs are concerned only with the government entity being audited, along with other related government organizations, corporations, or grant recipients. That is, in undertaking duties such as performance auditing, the AG/MAG did not compare whether government entity A was getting better value for money than government entity B.

Finally, all AGs were appointed by the elected body representing the government entity being audited, and report to that body. Most MAGs have this same appointment and reporting structure (i.e. they are appointed by, and report to, the municipal Council). The one exception is the yet to be implemented MAG for Nova Scotia municipalities, which will be appointed by the Minister, and which will report to the Council(s) being audited with a copy of all reports to the Minister.

Canadian Auditors General and Municipal Auditors General

Typical Duties: compliance audit; performance audit; attest audit (AGs only; not typical for MAGs); special examinations; some customized powers.

All AGs and MAGs studied are precluded from reporting on government policy.

No AGs or MAGs studied have the power to enforce their recommendations.

No AGs or MAGs studied compared the government entity being audited with other government entities to determine their comparative performance.

All provincial AGs were appointed by the Legislative Assembly and reported to that body.

All MAGs studied were appointed by Council and reported to Council, except for Nova Scotia where the MAG is appointed by the Minister and reports to the municipality being audited, with a copy of the report to the Minister.

Financial accountability framework for BC local governments

UBCM is in the process of reviewing the financial accountability framework for BC local governments and comparing this to the financial accountability system applicable to the Province of BC.

One element that has drawn the attention of Provincial officials is that the local government system lacks mandatory performance auditing, whereas this is included in the provincial system, with the function carried out by the Auditor General. The lack of performance auditing in the local government system has been cited as a weakness of that system.

However, in order to evaluate whether or not the lack of mandated performance auditing is truly a weakness, the system needs to be evaluated as a whole to determine if it is operating efficiently and effectively. Considering one component of a complex system in isolation cannot give a complete picture of the adequacy of the checks and balances in the system.

The following table presents a summary of research to date.

Measure	Local Government System	Comparison to Provincial System
Statutorily provided responsibilities	5 year financial planning; expenditures limited to plan; ethical conduct for elected officials	Similar financial planning requirements (i.e., Estimates); expenditures limited to plan; ethical conduct provisions for elected officials are comparable
Statutory limits	Cannot budget for a deficit; no long term borrowing for operating; limitations on aggregate liabilities and/or debt servicing limits	Borrowing is not restricted to capital purposes; there is some history of balanced budget legislation, although since this is enacted by the Province, it can also be amended or repealed by the Province at its discretion.
Audit	External auditor responsible for attest/financial audit, and other reports required by Council, Board or Inspector, or on auditor's initiative	Auditor General responsible for attest/financial audits, performance audits, some compliance auditing, and special reports as required by the Legislative Assembly, or on the AG's initiative
Transparency and openness	Most meetings open, financial and performance reporting, specific expenditure reporting, access to information	More robust performance reporting requirements; parallel FOI rules except for arguably broader exclusions given the nature of the Cabinet system; similarly, while Legislative Assembly debates are open, Cabinet discussions are not, making local government decision-making arguably more open than Provincial decision-making
Public Participation	Some direct public participation mechanisms (borrowing, RD services); financial plan consultation; opportunities at annual meeting	<i>Recall and Initiative Act</i> provides opportunity for electors to initiate a legislative proposal on any matter within the jurisdiction of the Legislature
Third Party Oversight	Ombudsperson; Inspector of Municipalities (binding orders); Commissioner (replaces Council/Board)	Ombudsperson (which can make recommendations) is an exact parallel. No equivalent of the Inspector of Municipalities or Commissioner.

While different, the two accountability systems appear to compare favourably. The Provincial system relies more heavily on performance measurement and performance auditing; but the local government system is heavily reliant on statutory limitations imposed by the Province, and Provincial oversight roles, including the Inspector of Municipalities.

Role of the Office of the Inspector of Municipalities

The role of the Inspector of Municipalities deserves some discussion with respect to the oversight powers afforded the Office, since the powers provided to the Inspector add considerably to the checks and balances in the overall system.

The Inspector is responsible for approving a range of local government bylaws, primarily with respect to borrowing, establishment of services within Regional Districts, and some fees and charges. This approval provides a measure of assurance of compliance with applicable rules and restrictions.

Local governments are required to submit their financial statements to the Inspector, along with any other information the Inspector requests. This information is used to prepare and publish a range of local government financial statistics, including revenues, expenses, and tax rates, affording considerable centralized public access to local government financial information.

The Inspector may require a local government auditor to provide a report on any matter. In addition, upon request of the Inspector, the auditor must forward any recorded communication in relation to these reports.

With the approval of Cabinet, the Inspector may hold an inquiry into any local government matter, if the Inspector believes it to be expedient, or if a complaint is made to the Inspector about a matter of local government business. Powers related to inquiries include compelling witnesses and requiring documents, as well as powers to direct actions of the Board or Council, or suspend officers and employees.

The Inspector must report to Cabinet on the inquiry, and make recommendations in relation to it. Cabinet may then make any Order it believes is in the public interest, which is binding on the local government. The power to make Orders that are binding on the local government is an extremely significant component in the accountability system.

While the powers to require local government auditors to report to the Inspector and the Inspector's power to hold an inquiry are rarely used, they should not be discounted in the context of the strength they add to the overall local government accountability framework.

Role of the Inspector of Municipalities

- Formal approval/review role for: Borrowing, some fees and charges (e.g., DCC); RD service establishment bylaws; RD requisitions in rural areas
- Require that financial statements and any other financial information the Inspector requests be sent to Province; Province annually publishes local government statistics based on the financial information provided under this provision
- May require the local government auditor to make further reports
- May hold an inquiry into any local government matter; report to Cabinet on that inquiry, and make recommendations to Cabinet, after which Cabinet may make an Order which is binding on the local government

CONSIDERATIONS RELATING TO FURTHER POLICY DEVELOPMENT

Problem definition

Policy development on this initiative has been challenged by a process that began with a solution (i.e., MAG) rather than identification of a problem to be addressed and analysis of the options to resolve the problem. Adding to this challenge is the solicitation of views of interested parties about specific design elements of the solution, such as powers of the MAG, appropriate reporting relationships, etc, rather than a more broadly based problem identification exercise.

Since the problem is not well defined, there is a natural tendency for those asked about MAG design elements to suggest that the Office be used to resolve a broad range of things that they may perceive as problems. Without considerable policy analysis, this could result in powers bestowed on a MAG that would not be typical of such an Office.

Examples of MAG functions that would be atypical

Considerable recent discussion about municipal taxation may have prompted suggestions that a MAG could review the municipal taxation system, or individual municipal tax decisions. Based on our research to date, these would be atypical functions for an AG or MAG, and not be in keeping with the usual practice of precluding AGs/MAGs from reporting on government policy, given that design of the municipal tax system is a matter of Provincial policy and tax policy decisions at a local level are matters of local government policy.

Similarly, making recommendations in relation to governance, local government amalgamations or the efficiencies of joint or shared service delivery would be atypical of AGs/MAGs. Decisions about what types of services a local government offers, appropriate service levels, and methods of delivery are matters of government policy, as are decisions about whether or not to amalgamate service delivery amongst two or more local governments.

Further, this approach to policy development carries a risk of creating a new public institution at considerable public cost, which does not address the public policy problem that it is intended to resolve.

Problem definition could be enhanced through a more thorough review of the local government accountability framework in BC, to consider whether or not the system is performing its intended purpose of providing sufficient public accountability for local governments. If weaknesses are identified, then further policy development could be focused on options to address those weaknesses.

Problem Definition

Is the problem that is being considered a weakness in the local government financial accountability system, or is this initiative working towards resolution of a different problem?

If the problem is a weakness in the accountability system, what is the weakness?

If there is another problem to be addressed, what is it?

Principles development

The Province has suggested that the design of the MAG office should be guided by a number of principles, as set out in the text box below.

Provincial suggestions of principles to keep in mind in designing the Office of the new MAG:

- It should not duplicate the existing accountability framework for local government;
- It should have independence and credibility;
- It should be cost effective; and
- It should be accountable to the taxpayer (e.g., by making information publicly available).

Development of principles to guide the evaluation of options to resolve the problem, after the problem has been identified, is a good idea.

Principles could be established that would not only be useful to evaluate various design options for a MAG, but also to evaluate alternative options to resolve the problem if one is identified.

In this way, the various MAG design choices can be compared against alternative options to determine which, if any, of the MAG choices are the preferred option, or whether alternative options are in better alignment with the principles.

As part of its policy development towards a Policy Paper for consideration at Convention, UBCM will be considering principles that could guide policy development and options evaluation. While principles such as those suggested by the Province are a good starting point, policy development could benefit from a broader perspective, and consideration of additional principles, such as:

Principle	How the principle might be applied
<i>Respect for government policy choices</i>	Ensure that, like other AG and MAG legislation, a BC MAG would be precluded from reporting on local government policy choices.
<i>Respect for jurisdiction</i>	Ensure that individual local governments are treated as separate government entities, since they are autonomous, responsible and accountable orders of government.
<i>Build on existing systems</i>	Once a problem is identified, look to resolving the problem first through use of existing institutions/systems, rather than creating new institutions and bureaucracy.
<i>Maximize public accountability benefits while respecting local autonomy and recognizing local capacity</i>	Evaluate alternatives not only by how well they are able to overcome identified gaps in the local government accountability framework, but also by their ability to maintain local autonomy and their practicality given the range of local government capacity.

CONCLUSIONS

Further policy analysis is needed in order to properly identify the problem to be resolved and the best options to resolve it. UBCM is actively engaged in policy work towards that goal. Executive looks forward to presenting a Policy Paper on this issue for consideration of the membership in September. In the meantime, we are hopeful that the information provided in this paper has been useful to members as they actively engage in discussion of this initiative in their communities, and as they respond to the Minister's invitation to provide feedback.