

THE TOWN OF THE CITY OF DAWSON

Trusteeship: Background and Consequences

This Report has been prepared for the Hon. G. Hart, Minister of Community Services, Government of Yukon, and for the citizens and taxpayers of the Town of the City of Dawson by André Carrel, appointed Supervisor for the Town of the City of Dawson by the Minister on October 3, 2003, under the authority of s.335, *Municipal Act*, Chapter 19, Statutes of the Yukon 1998.

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INTRODUCTION

TO THE MINISTER

The Town of the City of Dawson could have been placed under trusteeship as early as October 4, 2003, when the municipality defaulted on its debt obligation. Nonetheless, the suspension of elected local government in Dawson could not have been an easy decision to make when you accepted my recommendation to do so on April 13, 2004.

My six-month term as supervisor for the Town of the City of Dawson was a roller coaster ride of hope, despair, disbelief, frustration, anger, and finally disappointment. I believe with a passion in small communities running their own affairs and taking responsibility for their own common good in a democratic manner. To find myself in a position of responsibility where I could see no alternative but to recommend that a democratically elected local government be removed and a trustee appointed left me with a profound sense of sadness and failure.

I believe that "democracy is founded on the premise that citizens live with the political, social, cultural, and economic consequences of their government's decisions."¹ The citizens of Dawson have experienced that reality and they will have to live with that reality for years to come.

TO THE CITIZENS OF DAWSON

What happened in Dawson on April 13, 2004, was not a take-over by "Big Government." It was the financial collapse of a democratically elected local government.

Power, accountability, and responsibility are words used freely and with little thought as we complain about what governments have done, or when we pontificate about what governments should do. Citizens often speak of governments in the third person, as if citizens were isolated from their government. Too often, citizens in a democracy fail to appreciate that, in the end, *they are their own government*.

The *power* of government lies in their constitutional access to resources and the authority that enables them to implement their vision for the community. Governments use that power to enact laws and to collect taxes.

Accountability means having to answer for decisions made. The law requires that Council meetings be open to the public for that very reason, to allow citizens to hold their local government accountable. Some will argue that governments are held accountable through democratic elections. That is a mistaken belief; elections are not about what happened in the past, elections decide who will decide what is to happen in the future.

Responsibility is where the buck stops. As citizens of Dawson are about to learn, governments are not responsible, citizens are. The enormous debt held in the name of the Town of the City of Dawson (more than \$4,000 for every man, woman, and child in the city), the problems with the incomplete recreation complex, and with the still-to-be constructed secondary sewage treatment facility are *your* responsibility, not the former (or future) Council's, and not "The Government's."

¹ André Carrel, *Citizens' Hall: Making Local Democracy Work*, (Toronto, Between The Lines, 2001), p. 106.

MAJOR FACTORS

CAPITAL FUNDING AGREEMENT

Part I – The Original Agreement

The Capital Funding Agreement (CFA)² set the stage for the financial failure of Dawson's municipal government.

The CFA called for a capital program of \$11.6 million (a Yukon grant plus a mandatory municipal contribution). Based on the 2001 census, an equivalent capital program in Haines Junction would have had a value of \$4.9 million, in Watson Lake \$8.5 million, and in Whitehorse \$191.9 million. The administration of a capital program of this magnitude would have been a challenge for any municipality.

Dawson's Financial Plan contains a chapter devoted to the CFA's shortcomings.³ The Plan also includes recommendations addressing the inadequacy of the CFA (as it was used in Dawson) as a means to provide capital funds to municipalities.⁴

Briefly, the CFA has the following problems:

Problem #1: The CFA provided funding for three projects: a pool, a recreation centre, and a sewage treatment facility. Funding is specified for the sewage treatment facility, but funding for the two recreation facilities is combined into a single amount.

Problem #2: The recreation projects were optional, but the sewage treatment facility was a legal requirement.

Problem #3: The CFA identified two phases for the recreation project, but did not specify funding limits for each phase.

Problem #4: Design and construction of the pool was to be completed by September 30, 2000. Construction of the recreation complex was not to begin until 2000. The recreation complex was the more ambitious of the two pro-

jects. By proceeding with the pool first, the option of deferring the lesser project to release funds for the recreation centre project in the event of cost overruns was lost.

One-third of the total CFA recreation grant was spent on the pool project. Had the recreation complex been given priority, the pool project could have been postponed once problems arose with the recreation complex, making \$2 million available for that project.

Problem #5: The CFA provides that "if necessary to meet Territorial Water Board requirements, funds will be re-allocated from the Recreation Project to the Sewage Project."⁵ The CFA also states that if the Territorial Water Board postpones the requirement to have the secondary sewage treatment facility operational to December 2004 or later, the recreation complex would proceed as a priority. The two provisions contradict each other.

Problem #6: The three projects were estimated to cost \$11.6 million. The CFA was to contribute \$10.4 million in grants and the City was to contribute the remaining \$1.2 million and assume responsibility for any cost overruns.

Problem #7: At the time the CFA was signed, the City of Dawson held \$1.24 million in unfunded capital reserves (book reserves only – no cash).

The City's long-term debt was \$2.24 million. Its statutory debt limit (3 per cent of assessment) was \$2.63 million. The City's remaining borrowing capacity was \$400,000. Only 44 days before signing the \$10.4 million CFA, the City borrowed \$1.275 million to install a cable TV system in Dawson.

Problem #7: To raise its \$1.2-million share for the three CFA projects, the City would have to:

- a) sell assets to convert the book value of its reserves into cash, or
- b) assume a debt in excess of its legal borrowing limit.

² Agreement #99-0727, September 20, 1999.

³ André Carrel, *Town of the City of Dawson, Financial Plan 2004-2007, Report*, February 3, 2004.

⁴ *Ibid.*, *Addendum, Government of Yukon Recommendations*, February 3, 2004, pp. 7 to 9.

⁵ Capital Funding Agreement #99-0727, art. 2.2.

Problem #8: Selling municipal assets to raise \$800,000 was at best a hypothetical option.

It was evident when the Government of Yukon and Council signed the CFA that Dawson did not have the financial capacity to contribute its share of the cost of the three CFA projects, even if all three projects could have been completed at the costs projected at the time.

Part II – CFA Amendment

The CFA was amended in the Yukon government's fiscal year 2001/02⁶ to accelerate the payments, advancing \$1.8 million from the original 2003/04 allocation to fiscal year 2001/02.

The preamble of the amending agreement simply states that "a need has arisen for funding during this fiscal year." The agreement goes on to confirm that "The Original Agreement and this Agreement will be read and construed as one document"⁷ and that "Except as modified by this Agreement, the parties ratify and confirm the Original Agreement."⁸

Despite the existence of numerous notes, letters, and e-mails (some signed, others not) on the subject of the CFA amendment, there is no document that qualifies the original CFA in any way, other than what is expressly provided for in the amendment. \$800,000 of the accelerated payment was deemed to be an advance from the sewer project to the recreation complex project. I could find no credible plan to indicate how the City would refund the \$800,000, having already assumed a debt in excess of its borrowing limit.

Part III – CFA Administration

On the day the CFA was signed, the City's auditors completed a report on the relocation of Dawson's City Hall/Fire Hall complex to Front Street.⁹ This project had experienced considerable cost overruns, and the report refers to six "Lessons Learned" from that project:

1. Thorough communications were lacking;

⁶ CFA #99-0727, Amendment One, undated.

⁷ Ibid., art. 2.

⁸ Ibid., art. 3.

⁹ BDO Dunwoody, September 20, 1999.

2. The budget did not reflect a contingency for other costs;
3. Very tight deadlines led to a lack of appropriate preplanning;
4. A project committee did not formally exist and include the proper representation;
5. The project was about to go forward without a breakdown of detailed cost estimates;
6. Either insufficient information was given during the tendering process, or the companies bidding on the project did not perform sufficient background work prior to submitting their bids.

If the three CFA projects had been subjected to a forensic audit, it is likely that the findings would not have differed substantially from those of the City Hall/Fire Hall project. In other words, "lessons" were identified, but few were learned.

Problem #1: The CFA required Dawson to have the CFA projects audited.¹⁰ However, not one of the City's audited statements from the years 2000 to 2002 includes a schedule for the CFA projects. When I met with the City's auditor in Penticton on December 12, 2003, the auditor was not aware of the CFA, and he could not find a copy of the CFA in his Dawson file.

Problem #2: The CFA provided that no funds beyond the initial advance would be paid until Dawson prepared detailed cost estimates for the recreation complex and the secondary sewage treatment facility.¹¹

To this date Dawson does not have a workable design, much less a detailed cost estimate for either the completion of the recreation complex or the construction of a secondary sewage treatment facility. Nonetheless, the full \$10.4 million of the CFA was paid to Dawson as if the CFA had been an automatic payment agreement.

Responsibility:

The CFA was not imposed on Council, nor was the Government of Yukon obligated to pay Dawson a \$10.4-million grant.

¹⁰ CFA #99-0727, art. 1.4.

¹¹ Ibid., art. 2.5.

The political responsibility for the CFA fiasco rests equally with the Government of Yukon and Dawson Council.

However, to blame everything on Cabinet and Council would be to absolve those who, in my view, are effectively culpable. The Chief Administrative Officer (CAO) of the City of Dawson and the Deputy Minister (DM) of Community Services for the Government of Yukon are responsible for the fact that neither the Minister nor Council were presented with the kind of hard, realistic information that politicians need to come to an informed decision.

I have not undertaken a forensic search for evidence. However, in my limited research I have found no documents that indicate that either the DM or the CAO alerted their respective political bodies to the reality that Dawson could not possibly afford to accept a \$10.4-million grant. Nor did I see evidence to indicate that either administration made a concerted effort to ensure that Dawson complied fully with the terms of the CFA.

Recommendations:

The City's Financial Plan includes specific recommendations on the format and content of CFAs. In addition to the two Financial Plan Recommendations, future CFAs should be contingent on the municipality's providing proof of and security for its share of the funds required to complete the project, including a contingency to cover cost overruns.

BYLAW #00-17¹²

This Bylaw gave Council the authority to borrow \$4.48 million. The purpose was to refinance an existing loan the City owed the Government of Yukon, and to complete the recreation complex. The Bylaw was adopted on October 16, 2000.

As stated in the CFA section of this report, it should have been obvious to both Council and the Government of Yukon at the signing of the CFA that the City would have to exceed its borrowing limit to complete the projects.

The Minister's letter of approval stated that she was "*pleased to confirm that I have*

authorized the Town of the City of Dawson's 2000 Borrowing Bylaw #00-17."¹³

The Minister's letter ignored three facts:

1. The debenture to be refinanced was a 10-year \$1.3-million loan¹⁴ due to mature in July 2007. Refinancing the loan reduced the rate of interest from 7.5 percent to 6 percent, but also extended the term of the loan by 19 years from 2007 to 2026, thereby increasing the cost of interest to Dawson taxpayers by nearly half a million dollars.
2. The City had a second outstanding loan of \$1.05 million for the cable TV system. Although the Minister's letter leads the reader to assume that the City's total approved debt would be \$4.46 million, Dawson's long-term debt was by then \$5.51 million; 6.1 percent of the City's taxable assessment.
3. When the Minister approved the \$4.46 million loan, the City was still under obligation to construct a secondary sewage treatment facility. The City's financial obligation for the sewage treatment project under the CFA was at least \$0.5 million.

By the end of 2000, the City's capital reserves had been reduced from \$1.2 million in 1998 to \$57,000.

Problem: Assuming that the secondary sewage treatment facility could have been constructed at the CFA projected cost of \$5.3 million, a possibility already in serious doubt by late 2000, Dawson would have had to borrow a further \$0.5 million, raising the City's debt to \$6.6 million. The annual cost of servicing such a debt at 6 percent over 25 years is \$535,000 – slightly more than half of the total taxes the City collected in 2000.

A 25-year loan at 6 percent for the legal maximum in 2000 would have cost Dawson taxpayers \$219,300 a year, or 20 percent of the general taxation in that year.

Responsibility:

The loan was not imposed on the City of Dawson. Council had a duty to conduct a

¹² 2000 Borrowing Bylaw No. 1.

¹³ Minister Buckway to Mayor Everitt, October 13, 2000.

¹⁴ Debenture Bylaw #95-32.

realistic assessment of the impact of such a loan on its taxpayers. Council did not have a legal, but a political duty at least to submit the loan bylaw to a referendum.

The Minister's letter of approval¹⁵ opens with "I am pleased to confirm that I have authorized..." and concludes with "I am delighted that we were in a position where we could assist you in this endeavor." Not a word of caution. No hesitation.

To be critical now of the manner in which that loan was authorized by the Minister is not a case of 20-20 hindsight. The inevitable consequences of this loan were plainly visible at the time the loan was approved. A dispassionate look at the City's financial position at the time, including the City's remaining obligations under the CFA, should have made it obvious to all parties that this loan, combined with the CFA obligations, would set the City of Dawson on a path that could result only in financial ruin.

The political responsibility for the consequence of Bylaw #00-17 rests equally with the Government of Yukon and the Council of the City of Dawson. Again, Dawson's CAO and the Yukon Government's Community Services DM failed in their duties by not producing, in writing, an urgent warning about the financial consequences that a loan of that size would have on Dawson and the Yukon.

Debt limits serve a purpose

The 3 percent debt limit¹⁶ is not an arbitrary figure. Depending on the rate of interest and the established rate of taxation, it limits the municipal cost of servicing a long-term debt to an affordable amount, generally in the range of 20 percent of taxes.

If the Government of Yukon does not relieve Dawson's debts, the municipality's debt-servicing burden will lead to a serious deterioration, if not the ruin, of its core infrastructure. Sooner or later Yukon taxpayers will have to bail out Dawson and assume a share of that debt.

A municipal debt in excess of the legal limit has serious consequence for both local and Yukon taxpayers. Exceeding the *Municipal*

Act's borrowing limit should never be left to the Minister's discretion.

Recommendation:

Section 252(1) of the *Municipal Act* should be amended to require the approval of a double majority to permit a municipality to exceed its long-term debt limit.

First, approval by referendum of the voters in the municipality that is seeking to borrow the money should be required. Second, the approval of the Yukon Legislature should be mandatory, because of the real possibility that such an approval will have consequences for taxpayers far beyond the boundaries of the municipality seeking the loan.

¹⁵ Minister Buckway to Mayor Everitt, October 13, 2000.

¹⁶ *Municipal Act*, s. 252(1).

CONTRIBUTING FACTORS

The previous chapter focused on the financial instruments that set the Town of the City of Dawson on the road to financial ruin. However, setting that course did not make trusteeship an unavoidable consequence. Many contributing factors kept the municipality on the road to ruin, and even accelerated the pace to the point at which trusteeship became unavoidable.

GOVERNANCE

Making Decisions. Open Council Meetings in Dawson were, for the most part, used to ratify decisions that were largely framed, if not already made. An appropriate example to confirm that assessment is the award of the garbage contract. There are no documents and no records of Council's deliberations leading to that decision. On February 23, 2004, when I learned that Council had decided to accept the second-highest bid and to increase some garbage fees beyond the Financial Plan target for garbage collection, I asked Council to confirm or deny the information I had received.

One Councillor responded by e-mail "We haven't awarded the garbage contract. We're holding off until the arbitration is completed and we have a better idea of what our financial situation is."¹⁷

The Mayor subsequently advised me that Council had indeed awarded the contract, and that the Councillor who had advised me otherwise was not aware of the decision because he had been absent.

At Meeting #C04-03 of February 3, 2004, a bylaw to increase garbage rates¹⁸ in compliance with the Financial Plan was given first and second reading.

Two weeks later, at Meeting #C04-04, the bylaw was amended at final reading to further increase garbage fees. Later in the meeting, the decision was made to award the garbage contract to the second-highest bidder.

¹⁷ Councillor Potoroka to Carrel, e-mail, February 24, 2004, 1:28 p.m.

¹⁸ Bylaw #04-05.

There is no written record of decisions that must at some time have been made to:

- a) "hold off" with the awarding of the garbage contract until Council had certainty about the arbitration award;
- b) change course and proceed to award the garbage contract before the arbitration award decision was released;
- c) conclude that awarding a contract to the second-highest bidder was the most cost-efficient and affordable solution to solid waste collection;
- d) amend Bylaw #04-05 to raise sufficient revenues to pay for the contract about to be awarded.

Planning Meetings. Council routinely held so-called "planning meetings" at which, in contravention of the *Municipal Act*, minutes were not kept.¹⁹ In the case of the garbage contract incident, it appears that *de facto* decisions were made in one or more planning meeting, decisions that were later ratified at regular Council Meetings.

The number of "planning meetings" held to deal with the CFA projects and their financing, the information considered by Council at such meetings, and the decisions formulated to be ratified at subsequent public meetings are open to speculation. What can be assumed with certainty is that the Mayor's influence at such planning meetings (see comments on Professional Mayor, pages 10-11), and the reliance of Council members on hearsay evidence was overwhelming.

The governance style adopted by Dawson Council under the outgoing Mayor and Dawson's last two CAOs contributed to the City's current financial problems.

Priority and Planning. That Dawson Council proceeded with the purchase and installation of a cable TV system shortly after the financially disastrous City Hall/Fire Hall relocation project, and just before signing an ambitious \$11.6-million capital program suggests that Council had acquired a habit of making million-dollar decisions with no concern for the financial

¹⁹ *Municipal Act*, s. 211(1).

realities of such decisions. Ignorance? Arrogance? Irresponsibility? Who can say?

Wheeling and Dealing. I asked Council in October 2003 to confirm that "the Mayor's letter of Feb/24/03 fairly represents Council's current position [on the reservation of the \$930,000 loan proceeds for the arbitration contingency]." ²⁰ My request went unanswered.

On December 5, 2003, the City of Dawson launched a lawsuit against the Government of Yukon. ²¹ The City wanted the court to compel the Government of Yukon to lend the City the final \$930,000 authorized in Bylaw #00-17. This is the same money already committed by the Mayor to the arbitration contingency. ²²

Dawson Council's minutes contain no reference to a resolution by Council to sue the Government of Yukon. If Council did not vote in a duly constituted meeting to sue the Government of Yukon, who made that decision? Why should Dawson taxpayers be responsible for the legal costs, if Council did not vote to proceed with this frivolous action?

This incident, perhaps more than any other, is an example of the utter disconnection from reality prevalent in the governance of the municipality of Dawson. A local government suing a senior government for refusing it a loan already spent! Only under the midnight sun!

Recommendation:

Section 211(2) of the *Municipal Act* should be deleted. A record of all meetings of a council should be kept for the following reasons:

- a) members absent from any meetings (regular, committee, or *in camera*) must have access to a record of the proceedings of meetings from which they were absent;

section 166(2) of the *Municipal Act* makes it imperative that newly elected members have accurate information relating to decisions and deliberations of preceding councils;

²⁰ Carrel to Mayor & Councillors, fax, October 28, 2003.

²¹ S.C. No. 03-A0126.

²² Mayor Everitt to Hodgins, February 24, 2003.

- b) notwithstanding the confidential nature of *in camera* meetings, ²³ minutes of such meetings may be called in evidence by subpoena in legal proceedings.

ADMINISTRATION

Nobody in Dawson's municipal organization appears to have lost much sleep over problems of financial management. The CAO has a statutory duty ²⁴ to "advise and inform the council on the operation and affairs of the municipality" and to "notify council if any action or inaction by council or the municipality is contrary to a bylaw or resolution of council or a provision of this or any other Act." This did not happen in Dawson. Following are a few examples:

Overdraft Resolution. I found an "overdraft resolution" ²⁵ used by Council in late 2002 to borrow \$900,000. The most Dawson could lawfully have borrowed at the time was \$287,000. All borrowing is approved by bylaw, never by resolution.

Nobody appeared to be concerned: not the treasurer, not the CAO, and not the supervisor of the day. When I asked about the resolution, I was told that City had followed the supervisor's and the DM's advice. The lending bank responded with a confident "we assumed that YTG [Yukon Territorial Government] would be good for it." When I raised the question in a meeting with the City's auditor, ²⁶ he confirmed that this borrowing contravened the *Municipal Act*, and that it should have been noted in the audit report.

My comment to a Councillor ²⁷ that members of Council might be held liable to the municipality for money borrowed in contravention of the Act ²⁸ caused only mild surprise.

2003 Budget Error. The 2003 budget ²⁹ included two revenue items for the capital expenditure program that pushed the municipality over the financial edge.

²³ *Ibid.*, s. 213(3).

²⁴ *Ibid.*, s. 184.

²⁵ City of Dawson, Resolution #C02-24-02.

²⁶ BDO Dunwoody, Penticton, December 12, 2003.

²⁷ Dawson, November 26, 2003, CAO's Office.

²⁸ *Municipal Act*, s. 254.

²⁹ Bylaw #03-12, 2003 Operating Budget and Capital Expenditure Bylaw.

The budget mistakenly projected a CFA grant of \$2.1 million (already received in 2002) to be received in 2003, and a \$0.3 million grant due in 2003 to be received in 2004 instead.

The budget also included revenue of \$930,000, this being the remaining loan approved with Bylaw #00-17. However, the Mayor had already made a written commitment to the Government of Yukon that this \$930,000 would be held back as a contingency for the arbitration award.³⁰

The 2003 budget thus included fictitious revenues of \$2.73 million!

If the error had been noticed before the budget was approved in April 2003, the City would have had to reduce expenditures by 36 percent (or increase taxes by 177 percent!) to balance the 2003 budget. The severity of the City's financial position would have been evident long before my appointment as supervisor.

The error went unnoticed by the treasurer, the CAO, the Mayor, Council, and the supervisor of the day. I pointed out the error in my November report to the Minister.³¹

The attitude to financial management displayed by the CAO is best described as casual. This attitude allowed an error of enormous consequences to pass unnoticed. Yet, when the error and its consequent problems were brought to their attention, Council and management rejected any suggestion that they themselves might be responsible at least in part for the municipality's precarious financial position.

At the public meeting of April 14, 2003, when the Minister introduced the trustee, recently retired members of Council still claimed that the City's financial position looked bleak only because the auditor's draft financial statements had been prepared in accordance with the recommendations of the Public Sector Accounting Board (PSAB).

2004 Budget. At the Council Meeting of April 6, 2004, the CAO presented a budget for 2004 to Council, which included a comparison of past years' revenues and expenditures.

The CAO's budget document showed that the City had achieved a \$562,000 operating surplus in 2003 and confidently projected an operating surplus of \$113,000 for 2004.

When the CAO presented this information to Council, the City was already in possession of the draft audit report indicating that 2003 had produced an operating *deficit* of \$7,600, and that 2003 consolidated expenditures (operations and capital) had exceeded consolidated revenues by more than \$1.1 million! Not a word was said by the CAO at the public budget meeting about these facts.

Financial Control. The auditor reported in 2001 that "our review of minutes for the year indicates that the financial status of the Town was only reviewed on a very infrequent basis at Council meetings."³²

Not much has changed. In 2003 City cheques were still routinely issued without review or specific approval by Council. Only after I insisted on it in early 2004 did Council finally adopt the practice of approving all expenditures by resolution.

Minding the Pennies. On April 2, 2004, the City received a fax from its solicitors³³ advising Council that the cost of the arbitration award – principal, interest and GST – was \$970,536.70. Council was reminded that interest was accumulating at the rate of 12.75 percent compounded monthly, that is \$339 *per day*!

At Council's regular meeting of April 6, 2004, the interest due had already grown by nearly \$2,000, yet the situation was not mentioned at the meeting.

After the trustee had been appointed and before he arrived in Dawson, I served as acting trustee. It took me less than 24 hours to arrange the financing, establish the payment procedure, and execute the payment of the award, interest, and GST in trust to the City's solicitor. By that time the interest accumulated from the date the City had been first notified amounted to more than \$4,000.

Credit Cards. The auditor reported that "during our review of expenditures it was noted that the Mayor did not submit travel

³⁰ Mayor Everitt to Supervisor Hodgins, February 24, 2003.

³¹ *City of Dawson Supervisor's Report #2.*

³² BDO Dunwoody, 2001 Audit Management Letter, August 7, 2002.

³³ Fasken Martineau DuMoulin LLP, April 2, 2004.

receipts for his reimbursement claim, only his Visa statements." The auditor recommended "that receipts be required for travel expense reimbursements."³⁴ By the end of 2003, outstanding expense advances incurred by the Mayor and paid by the City amounted to tens of thousands of dollars.

Travel expenses were one area in which the City could have reduced expenditures, and I directed Council to terminate the corporate credit cards (Visa) held by the Mayor and the CAO. The Mayor advised on December 16, 2003, that "the credit cards have been cancelled, a new system for FCM [Federation of Canadian Municipalities] and AYC [Association of Yukon Communities] will have to be developed by them."³⁵

After the City's bank account was frozen in late March 2004 and all expenditures had to be submitted to the supervisor for approval, I discovered a Visa payment and asked the CAO to explain. He informed me that "personal credit cards were cancelled. City of Dawson needs a card for vendors that will not accept PO's."³⁶

After Council was suspended, the treasurer asked me what he should do about the Mayor's credit card. It was still being used.

Cell Phones. After Council was suspended, the treasurer asked me what he should do about the Mayor's and the CAO's cell phones. Although there is no cell phone reception in Dawson, the Mayor and the CAO had cell phones paid for by the City under a contract extending to 2005. The phones were for use by the Mayor and the CAO on their travels.

Council is responsible, but the CAO is accountable for the management and administration of the municipality's financial affairs. Dawson's CAO was, to say the least, deficient in the performance of his duties. Whether that deficiency was due to ignorance, negligence, or malfeasance is not for me to determine.

Recommendations:

³⁴ BDO Dunwoody, 2002 Audit Management Letter, April 2, 2003.

³⁵ Everitt to Carrel, e-mail, December 16, 2003, 3:28 p.m.

³⁶ Coulson to Carrel, e-mail, April 7, 2004, 10:45 a.m.

1. Section 255 of the *Municipal Act* should be amended to include a requirement for monthly revenue and expense statements and balance sheets to be presented for ratification by council.
2. Section 258(3) of the *Municipal Act* should be amended to designate the auditor's separate report a public document.

PROFESSIONAL MAYOR

The political and administrative roles in a local government organization are shown graphically in appendix A.

Some years ago Dawson Council decided to move from a volunteer mayor to a professional mayor. The expectation may have been that a professional mayor would provide the City with a more effective lobby at senior government levels. A professional mayor in a small municipality may well raise the community's profile, but he or she may also diminish Council's ability to perform its duties.

There are not enough mayoral duties to perform in a small municipality such as Dawson to keep a professional mayor fully occupied. What does the mayor do for eight hours a day? He becomes involved in external activities (e.g., the Association of Yukon Communities and the Federation of Canadian Municipalities) and in the municipality's management and administration.

External activities are undeniably attractive. They involve travel, high-level meetings, and encounters with well-known politicians and other personalities. Involvement at this level can benefit the community, but the cost of these benefits to the municipality exceeds their value to the community.

More significant than the direct costs of salary and travel expenses are the indirect costs paid by the organization when Council's ability to set the municipality's priorities, and its freedom to critically evaluate the performance of its management and administration are weakened because of the ever-present mayor. Can-do overtakes caution.

Dawson Council relied on the Mayor's assurance that within the organization, things were under control and running smoothly. It would have been difficult for Council to

critically evaluate the municipality's administration and management staff, holding them to account for the poor financial management practices referred to in consecutive audit management letters, without aiming at least some criticism at the Mayor.

The Mayor dominated the organization. He was in a position to control and manage the information available to other Council members. Professional managers, who should have provided guidance for Council in the area of expertise for which they were paid, were instead submissive and simply followed orders.

Council minutes lead the reader to assume that Council did not act as a governing body whose responsibility it was to exercise the powers of the municipality.³⁷ Rather, it performed in a manner that could best be described as the "Mayor's advisory committee."

Recommendation:

Small municipalities should be discouraged from creating a professional mayor position. There are not enough mayoral tasks to justify a professional mayor in a small town.

Also, section 173 of the *Municipal Act* should be amended to establish a ceiling for the remuneration paid to mayors and councillors serving in towns. The ceiling should be determined through negotiations with the Association of Yukon Communities. It should be high enough to provide reasonable compensation for services provided, but not so high as to constitute a living wage, not even at the Yukon's minimum wage rate.

³⁷ *Municipal Act*, s. 167.

RESTORING ELECTED GOVERNMENT

The Minister has the option to keep Dawson under trusteeship for an indefinite period.³⁸ However, it would not be in the best interest of Yukon society, much less the community of Dawson, to retain a trustee for Dawson for a single day longer than absolutely necessary. As desirable as it may be to restore democratically elected local government to Dawson without delay, it would be foolish to do so without giving Council not just a fighting chance, but a realistic chance to succeed.

There are two impediments to be overcome: the municipality's enormous debt load and the matter of secondary sewage treatment.

DEBT RELIEF

Dawson's debt has been written about in some detail on pages 3 to 6 of this report. As long as Dawson is burdened with that debt, elected local government cannot survive, much less succeed. It is not just a question of paying the principal and interest. For a council to succeed, the municipality must be able to finance capital projects to safeguard the operational viability of the municipality's basic infrastructure: water, sewer, drainage, roads, solid waste disposal, fire protection, and public buildings.

At the present value of taxable assessment, the City's legal debt limit is \$3 million. To provide for future capital needs, Council should have access to at least 50 percent of its legal borrowing powers.

Recommendation:

The municipality's total long-term debt, including the cable TV loan³⁹ and the recreation complex loan,⁴⁰ should be reduced to \$1.5 million. To achieve this reduction, the Government of Yukon should assume responsibility for the first three debentures under Bylaw #00-17, leaving the City with responsibility for the fourth debenture (\$730,000) and the CIBC loan.

³⁸ *Municipal Act*, s. 336(1).

³⁹ Bylaw #99-19.

⁴⁰ Bylaw #00-17.

SECONDARY SEWAGE TREATMENT

The matter of secondary sewage treatment in Dawson requires immediate attention. It cannot be shelved until elected local government is restored to Dawson. Key decisions on secondary sewage treatment will have to be made by the trustee (with the Minister's approval) in the months to come. It would not be reasonable to expect a newly elected Council to take over a project of this magnitude in mid-stream.

Recommendation:

The Government of Yukon should assume full responsibility for a secondary sewage treatment facility in Dawson, including design, construction, and financing. Once the facility has been constructed, the City should be required to lease it from the Government of Yukon on terms to be negotiated between the parties, and to operate the facility as a lessee for at least five years.

It can be reasonably assumed that, after having operated the plant for five years, initial start-up problems will have been resolved and that the cost of operating and maintaining the plant over the long-term will be fairly predictable.

At that point, the plant should be sold to the City at a discounted price, low enough not to exceed 80 percent of the City's statutory borrowing limit. To protect the interests of Yukon taxpayers, it would be reasonable, therefore, to make any debt Council wishes to assume during the secondary sewage treatment facility lease subject to the Minister's approval. I recommend this restriction to prevent Council from incurring debt for "nice-to-have" but non-essential projects, leaving Yukon taxpayers to carry the full financial burden for Dawson's secondary sewage treatment.

RECREATION COMPLEX

What to do with the recreation complex, how to finish it, and how to pay for remedial construction and any outstanding costs in connection with the arbitration should be left to the community to decide.

The City of Dawson landed in a financial pickle not only because of decisions made (or not made) by the Government of Yukon, but also because of scrambled priorities and short-sighted decisions made by the community's own elected Council, and because of the way their CAO managed the municipality's affairs.

I am recommending a limit to the "bail-out" Yukon taxpayers offer to Dawson residents. My recommendations would have Yukon taxpayers assume the bulk of Dawson's debt and all the risk associated with the design, construction, and financing of a secondary sewage treatment facility. That is a lot, and it would be most generous of Yukon taxpayers. They should not be expected to do any more.

Recommendation:

The recreation complex should remain a problem for Dawson citizens, taxpayers, and their Council to sort out among themselves.

COMMENTS & OBSERVATIONS

With these measures in place, the Minister should return the government of Dawson to a democratically elected Council.

The Minister should also arrange for qualified CAO services provided to the municipality for a limited transition period after the election.

I encourage the citizens of Dawson to demand of their next Council that they direct their attention to the home front, and that they make an effort to learn something about the duties and responsibilities of a municipal council.

There is one more contributing factor for which neither the Government of Yukon nor the City of Dawson is responsible: the media.

What citizens in Dawson needed during the past number of years was the thorough and persistent investigative reporting made famous by the *Washington Post* with Woodward and Bernstein. What Dawson had instead was Limbaugh-style personal-

ity attacks and *Pravda*-style praise for the local governing authority.

Perhaps, if Dawson readers were exposed to tough but fair and unbiased reporting on facts rather than a continuation of he-said-she-said gossip trivia, things might have turned out differently.

"We'll cross that bridge when we come to it" is a comment I heard more often than I care to remember. It is the advice alleged to have been given by Yukon Government officials to members of Dawson Council whenever they raised a difficult question.

Well, we have come to "it" and there is no bridge, not even a ferry. Citizens in Dawson have to get across their municipality's financial quagmire somehow.

SUMMARY OF RECOMMENDATIONS

A. POLICY

#1 - CFA Format⁴¹

The 1999 Dawson CFA included three projects (pool, recreation centre, and secondary sewage treatment) from design to completion. The agreement allocated \$5.6 million for the pool and the arena, without stating how much was to go to which project, and \$4.8 million for secondary sewage treatment.

The only limitation in the agreement was the provision that "no funding beyond the initial advance [of \$2 million] shall be provided for Phase 2 of the Recreation Project nor for Phase 1 of the Sewage Project until revised project estimates confirming the total project costs reflected in this Agreement have been properly prepared by the City of Dawson."⁴² That condition was ignored.

Typical major capital projects progress through the following stages:

The Idea

A community may decide that it wants a new facility (such as a recreation facility) or needs one (such as a water or sewage treatment plant). At this stage in the development, the notion of a "recreation centre" may encompass anything from a simple community hall to a multi-function, multi-purpose complex. Similarly, the idea of a treatment plant may include conventional or innovative technology.

The Concept

The concept, or pre-feasibility study, defines the idea. It identifies the physical, operational and financial issues that must be considered in the design for the project.

The Feasibility Study

The feasibility study refines the concept. The physical, operational, and financial issues identified in the concept are researched and documented. The feasibility study supplies the information needed to limit the scope of the project. The financial impact of the project,

capital and operational, can be determined from the findings of the feasibility study.

Financial Analysis

The financial analysis is based on the feasibility study and has three purposes. First, it determines the source of the capital required for the project, and the impact of the debt-servicing obligation on the municipality's finances. Second, it evaluates the impact of the cost of operating the facility over the life of the project. Third, it analyzes the consequences of the new financial obligations on other municipal services, both current and anticipated.

The Design

The design phase proceeds on the basis of proven feasibility and assured financing for the project.

If the anticipated cost of the project exceeds \$4 million, it is prudent to provide for a value engineering review of the project when the design is 30 percent complete. A value engineering review, which can take from three days to two weeks, subjects the project's design to a critical review by a group of independent experts in the field.

The purpose of the value engineering exercise is not to find fault with the design team or to question the team's qualifications, but to give the team the benefit of their colleagues' experience and to identify weaknesses, oversights, and errors in the design. At the 30 percent stage, the design for the project can easily be adjusted to incorporate the value engineering review's recommendations.

At the end of this stage, the municipality is in a position to secure financing for the construction of the project with a high degree of certainty about the final costs.

Construction and Commissioning

This stage is self-explanatory. The contingencies included in the design will, in all but the most exceptional cases, be adequate to accommodate unforeseen events and costs.

Capital Grant Programs

The Capital Funding Agreement format should be replaced with the following formula:

1. Idea: 100 percent municipal
2. Concept: 100 percent municipal

⁴¹ Dawson Financial Plan 2004-2007, Report Addendum, p. 7.

⁴² CFA #99-0727, art. 2.5.

3. Feasibility Study: 50 percent municipal, 50 percent Yukon
 4. Financial Analysis: 50 percent municipal, 50 percent Yukon
 5. Design: 25 percent municipal, 75 percent Yukon
 6. Construction and Commissioning: 10 percent municipal, 90 percent Yukon.
-

#2 – CFA Content⁴³

The reason why each capital project should be financed through a separate funding agreement is explained under recommendation #1 – CFA Format.

However, if these recommendations are not accepted and the CFA format used for the Dawson projects is retained, future agreements should nonetheless be limited to individual projects.

Even if funding for each project is kept distinct (e.g., recreation \$5.6 million and secondary sewage treatment \$4.8 million) and project expenditures are accounted for using PSAB standards, accountability and administration would be improved by separate agreements.

It is essential to avoid providing one lump sum grant for two related but distinct projects (e.g., swimming pool and recreation centre).

#3 – CFA Municipal Share⁴⁴

The City's Financial Plan includes specific recommendations on the format and content of CFAs. In addition to the two Financial Plan Recommendations, future CFAs should be contingent on the municipality's providing proof of and security for its share of the funds required to complete the project, including a contingency to cover cost overruns.

#4 – Debt Relief⁴⁵

The municipality's total long-term debt, including the cable TV loan and the recreation complex loan, should be reduced to \$1.5 million. To achieve this reduction the Government of Yukon should assume responsibility for the first three debentures under Bylaw #00-17,

⁴³ Dawson Financial Plan 2004-2007, Report Addendum, p. 9.

⁴⁴ See p. 5.

⁴⁵ See p. 12.

leaving the City with the responsibility for the fourth debenture (\$730,000) and the CIBC loan.

#5 – Sewage Treatment⁴⁶

The Government of Yukon should assume full responsibility for a secondary sewage treatment facility in Dawson, including design, construction, and financing. Once the facility has been constructed, the City should be required to lease that facility from the Government of Yukon on terms to be negotiated between the parties, and to operate the facility as a lessee for a period of at least five years.

It can be reasonably assumed that, after having operated the plant for five years, initial start-up problems will have been resolved and that the cost of operating and maintaining the plant over the long-term will be fairly predictable.

At that point, the plant should be sold to the City at a discounted price, low enough not to exceed 80 percent of the City's statutory borrowing limit. To protect the interests of Yukon taxpayers, it would be reasonable, therefore, to make any debt Council wishes to assume during the secondary sewage treatment facility lease subject to the Minister's approval. I recommend this restriction to prevent Council from incurring debt for "nice-to-have" but non-essential projects, leaving Yukon taxpayers to carry the full financial burden for Dawson's secondary sewage treatment.

#6 – Recreation Complex⁴⁷

The recreation complex should remain a local problem for Dawson citizens, taxpayers, and their Council to sort out among themselves.

⁴⁶ See p. 12.

⁴⁷ See p. 13.

B. MUNICIPAL ACT

#7 – Section 252⁴⁸

Section 252(1) of the *Municipal Act* should be amended to require the approval of a double majority to permit a municipality to exceed its long-term debt limit.

First, approval by referendum of the voters in the municipality seeking to borrow the money should be required. Second, the approval of the Yukon Legislature should be mandatory, because of the real possibility that such an approval will have consequences for taxpayers far beyond the boundaries of the municipality seeking the loan.

#8 – Section 211⁴⁹

Section 211(2) of the *Municipal Act* should be deleted. A record of all meetings of a council should be kept for the following reasons:

- a) members absent from meetings (regular, committee, or *in camera*) must have access to a record of the proceedings of meetings from which they were absent;
section 166(2) of the *Municipal Act* makes it imperative that newly elected members have accurate information relating to decisions and deliberations of preceding councils;
 - b) notwithstanding the confidential nature of *in camera* meetings, minutes of such meetings may be called in evidence by subpoena in legal proceedings.
-

#9 – Sections 255 & 258⁵⁰

1. Section 255 of the *Municipal Act* should be amended to include a requirement for monthly revenue and expense statements and balance sheets to be presented for ratification by council.
 2. Section 258(3) of the *Municipal Act* should be amended to designate the auditor's separate report a public document.
-

⁴⁸ See p. 6.

⁴⁹ See p. 8.

⁵⁰ See p. 10.

#10 – Section 173⁵¹

Small municipalities should be discouraged from creating a professional mayor position. There are not enough mayoral tasks to justify a professional mayor in a small town.

Also, section 173 of the *Municipal Act* should be amended to establish a ceiling for the remuneration paid to mayors and councillors serving in towns. The ceiling should be determined through negotiations with the Association of Yukon Communities. It should be high enough to provide reasonable compensation for services provided, but not so high as to constitute a living wage, not even at the Yukon's minimum wage rate.

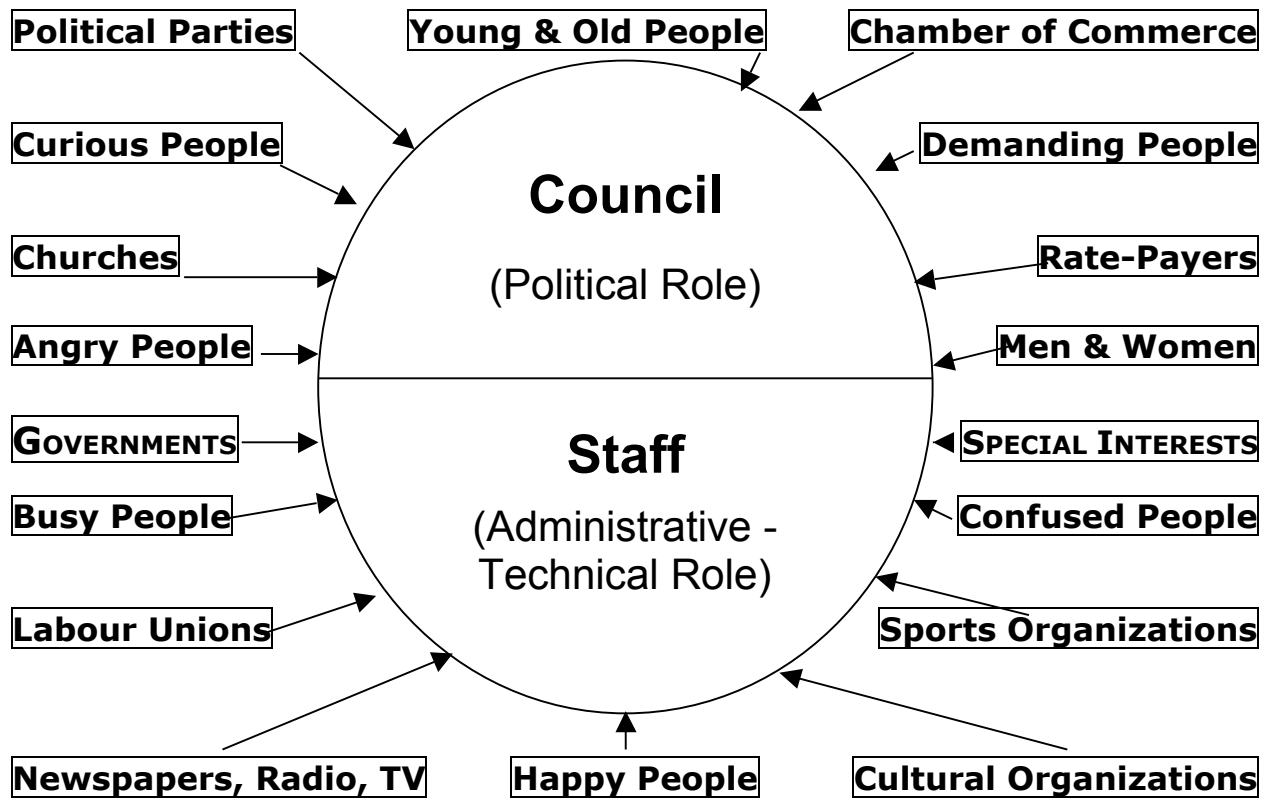
⁵¹ See p. 11.

FINDING AND KEEPING EQUILIBRIUM IN LOCAL GOVERNANCE

*It is easier to build a road than to build an organization
to maintain that road*

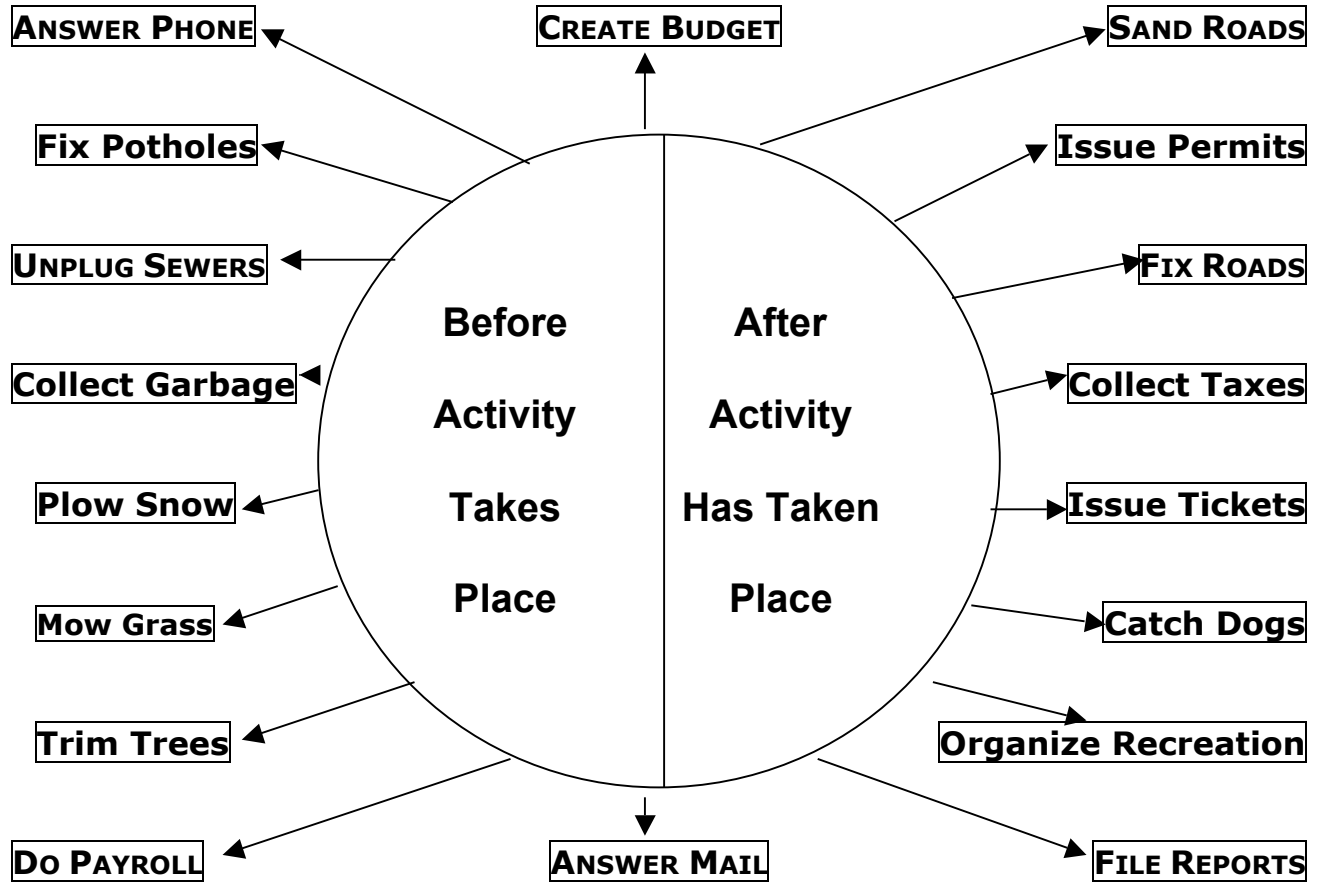
Arturo Israel

COUNCIL ORGANIZATION & ACTORS



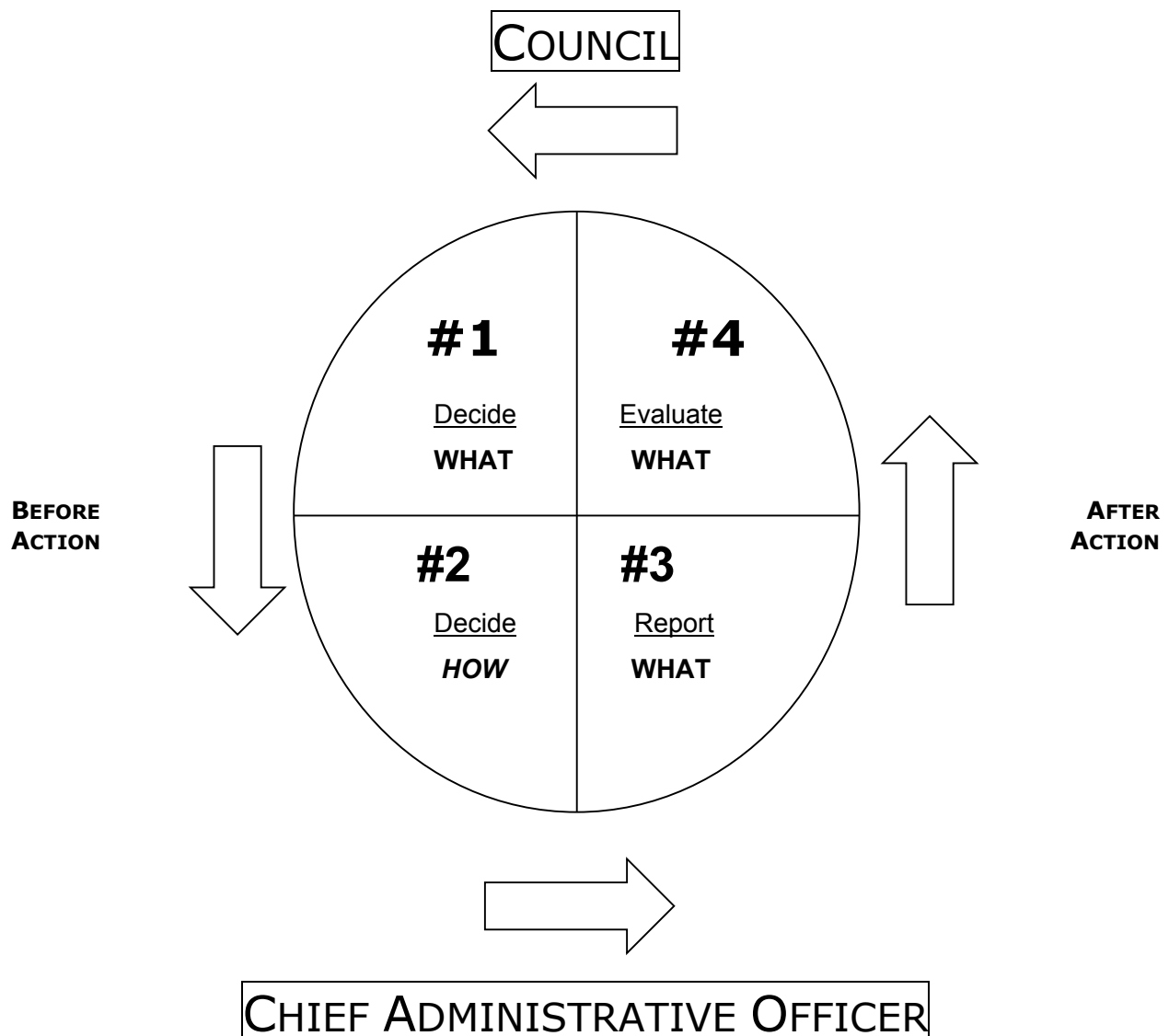
- The organization does not function in a vacuum; it is centred in, and surrounded by the community and its multiple organizations.
- Council and staff are members of the same organization; they each play a role without which the whole of the organization cannot function.
- The organization functions best when council trusts its staff to perform the organization's administrative and technical role (policy implementation role) with skill, diligence, and responsibility.
- The organization functions best when staff trusts its council to perform the organization's political role (policy definition and evaluation role) with skill, diligence, and responsibility.
- The organization functions best when both council and staff trust each other, and when both make an effort to continuously demonstrate their trust in each other.

DECISIONS & ACTIVITIES



- Decisions both precede and follow activities.
- Decisions are the expression of preference for a desired result; they are made for either emotional or rational reasons.
- Decisions determine the values created, or to be created from activities.
- Decisions made without adequate time for consideration and reflection, without adequate opportunity for debate and the expression of doubt, are more likely to be made for emotional rather than rational reasons.
- Decisions made before activities take place speak to desired result to be achieved from the activity. These are policy decisions.
- Decisions made after activities have taken place speak to the judgment on the values of the results achieved. These are evaluation decisions.

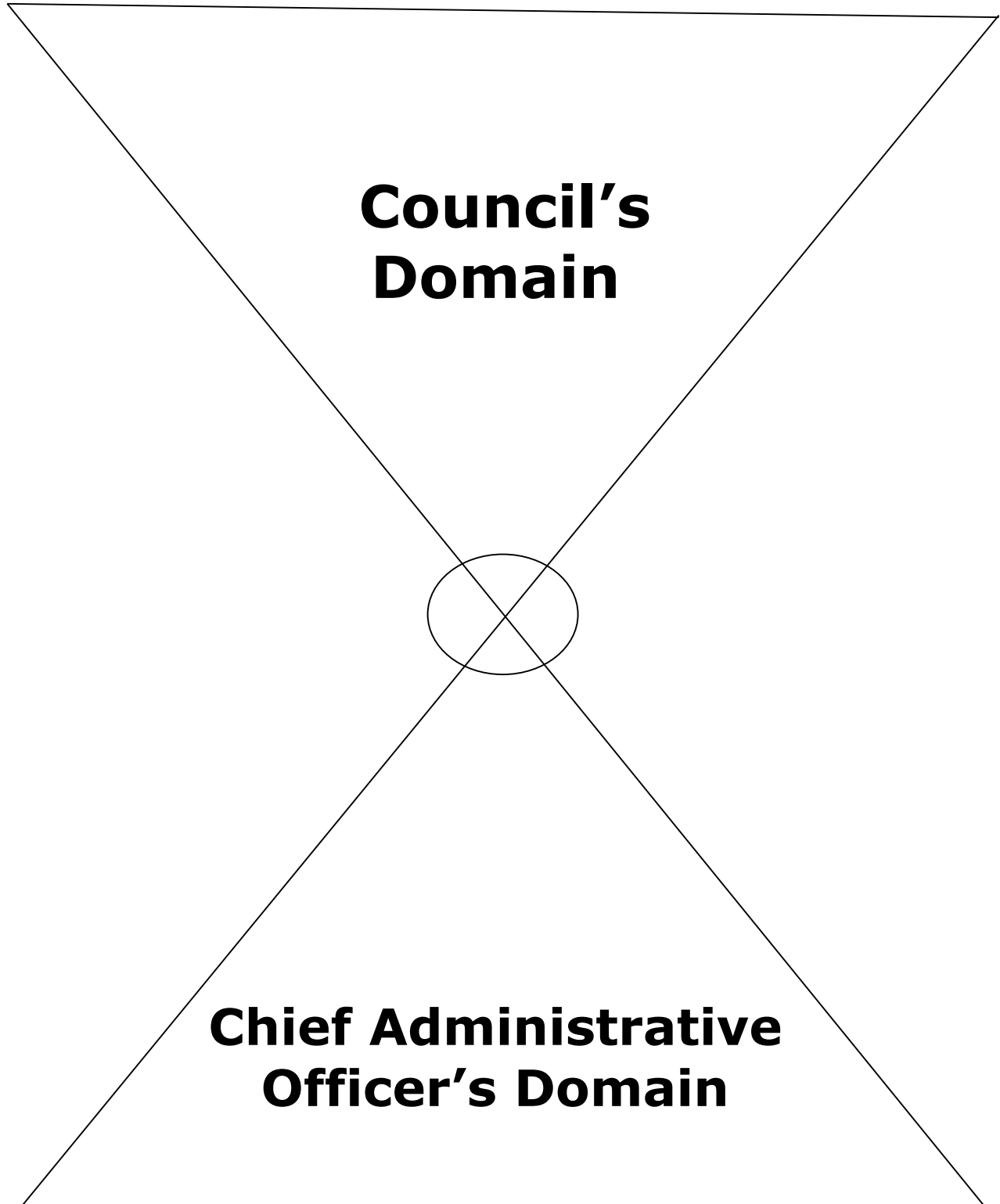
THE POLICY GOVERNANCE DANCE



- #1 **Before anything is done:** council decides WHAT is to be accomplished.
- #2 **After council has decided what is to be accomplished:** The chief administrative officer decides HOW to accomplish what council has decided to accomplish.
- #3 **After the job is done:** The chief administrative officer reports to council WHAT has been accomplished by the local government's staff and contractors.
- #4 **After council receives activity reports:** council evaluates the chief administrative officer's performance by evaluating WHAT has been accomplished, and how that compares to what council wanted to achieve in the first place.

... and round and round it goes ...

A HEALTHY RELATIONSHIP



A Confused Relationship

