

SULLIVAN | MAHONEY LLP  
LAWYERS

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Reply to St. Catharines office  
**THOMAS A. RICHARDSON, C.S.**  
905.688.2207 – Direct line  
[tarichardson@sullivanmahoney.com](mailto:tarichardson@sullivanmahoney.com)

*Certified Specialist (Municipal Law – Local  
Government/Land Use Planning & Development)*

Optimus SBR  
33 Yonge Street, Suite 900  
Toronto, ON M5E 1G4

Left Turn Right Turn  
2080 Danforth Avenue  
Toronto, ON M4C 1J9

Dear Sirs:

We have been requested to provide our opinion on matters related to the possibility of creating a Niagara Region Transit Commission to provide inter- and intra-municipal transit throughout the Regional Municipality of Niagara. The letter below addresses a brief history of ongoing developments in the creation of a Regional transit system, the need for a triple-majority in the uploading of lower-tier municipal powers and the creation of a Regional Transit Commission.

**Facts**

The Regional Municipality of Niagara is a Municipal Corporation pursuant to the provisions of the *Municipal Act, 2001*. Within the area of the Regional Municipality, there exists twelve (12) local area municipalities. The Region is termed an “upper-tier” municipality while the local area municipalities are captioned “lower-tier” municipalities.

The *Municipal Act, 2001*, Section 11, refers to “Spheres of Jurisdiction”. It then assigns those spheres of jurisdiction which are exclusive to the upper-tier municipality or some of them throughout Ontario. Subsection 11(3) provides, in part, that a lower-tier municipality and an upper-tier municipality may pass by-laws respecting matters within the listed spheres of jurisdiction, one of which is “transportation systems, other than highways”. Consequently, both

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40 Queen Street, P.O. Box 1360, St. Catharines, ON L2R 6Z2 t: 905.688.6655 f: 905.688.5814

4781 Portage Road, Niagara Falls, ON L2E 6B1 t: 905.357-3334 f: 905.357.3336

[sullivanmahoney.com](http://sullivanmahoney.com)



Official Counsel

the lower-tier municipalities and the Regional Municipality of Niagara as an upper-tier municipality may pass by-laws for transportation systems.

The City of St. Catharines has a Transit Commission which was established pursuant to special Provincial legislation. The City of Niagara Falls formerly had a Transit Commission which was also established pursuant to special Provincial legislation; however, the Commission has been disbanded and Niagara Falls Transit operates now as a division of the Transportation department. The City of Welland Transit also operates as a municipal department. So far as we have been able to determine, it was created by the passage of a by-law or by-laws. The City of Thorold contracts transit service from the St. Catharines Transit Commission. Port Colborne contracts transit service from Welland Transit. Lincoln, Fort Erie, Pelham and Niagara-on-the-Lake operate their own local transit services through third-party private contractors authorized by by-law. Grimsby, Township of Wainfleet and Township of West Lincoln have no existing conventional transit service.

The Regional Municipality of Niagara has established inter-municipal specialized transit services for persons with disabilities pursuant to By-law No. 64-2004, being "A By-law to assume inter-municipal specialized transit services within the Regional Municipality of Niagara". The Regional Municipality of Niagara has established an inter-urban transit system pursuant to By-law No. 2017-21, being "A By-law to establish an inter-municipal passenger transportation system in the Region of Niagara". Those by-laws were passed pursuant to the provisions of the *Municipal Act, 2001* and were each subject to the condition that a triple-majority, described below, was achieved. It is our understanding that those conditions have been met, in both instances and consequently the Region has established a Niagara Region inter-municipal transit system serving several municipalities, and inter-municipal specialized transit services. In addition, the Region has recently established an inter- and intra-municipal transit service in the lower-tier municipalities of Grimsby, Lincoln and Pelham, by contract with those municipalities.

The Region is now considering the establishment of a Regional Transit Commission to provide inter-and intra-municipal transit services throughout the Regional Municipality of Niagara.

### **Transfer of Powers Between Lower and Upper Tiers**

The provisions of the *Municipal Act, 2001* provide for the "transfer of powers between tiers". Specifically, subsection 188(1) defines "Lower-Tier Power" and "Upper-Tier Power". Public transportation systems, other than highways, are defined as both a "Lower-Tier Power" and an "Upper-Tier Power".

Subsection 189(1) provides that "an Upper-Tier Municipality may pass a by-law to provide for:

- (a) The transfer of all or part of a Lower-Tier Power to the Upper-Tier Municipality from one or more of its lower-tier municipalities which are specified in the by-law; and
- (b) Transitional matters to facilitate the assumption of the Lower-Tier Power."

Subsection 189(2) imposes conditions which are required to be met before a by-law to provide for the transfer of a Lower-Tier Power to an Upper-Tier Municipality may come into force. Those conditions are as follows:

- (a) “A majority of all votes on the Council of the upper-tier municipality are cast in its favour;
- (b) A majority of the Councils of all the lower-tier municipalities forming part of the upper-tier municipality for municipal purposes have passed resolutions giving their consent to the bylaw; and
- (c) The total number of electors in the lower-tier municipalities that have passed resolutions under clause (b) form a majority of all the electors in the upper-tier municipality.”

Consequently, in order to transfer the Lower-Tier Power of public transportation systems to the upper-tier municipality, it will require a by-law passed by the Regional Municipality of Niagara subject to the conditions listed above.

The by-law to transfer the power from the lower-tier municipalities to the upper-tier municipality may come into effect upon receipt of the Triple-Majority or, it may come into effect, after obtaining the Triple-Majority, at a date specified in the by-law.

#### **Legal Process for Establishing a Regional Transit Commission**

We have been asked for confirmation on the proposed process for establishing the Commission and how consent is to be achieved from the local area municipalities (Lower-Tier).

We have described above the manner in which the transfer of the Lower-Tier Power of public transportation systems, other than highways, to the upper-tier municipality must occur. Once the power to establish a transit system has been effected pursuant to the provisions of subsections 189(1) and (2), the Region is then in a position to determine the manner in which it will operate the transit system. Section 196 of the *Municipal Act, 2001*, provides to a municipality to establish a “Municipal Service Board”. Section 197 of the *Municipal Act, 2001*, provides, in part, that a Municipal Service Board is a body corporate unless the municipality provides otherwise when establishing the board. It also provides a Municipal Service Board is an agent of the municipality and is a local board of the municipality for all purposes.

Section 198 of the *Municipal Act, 2001* describes the functions of Municipal Service Boards and provides that a municipality may give a Municipal Service Board the control and management of such services and activities of the municipality as the municipality considers appropriate and shall do so by delegating the powers and duties of the municipality to the board in accordance with the *Municipal Act, 2001*.

The *Municipal Act, 2001*, subsection 203(1) authorizes a municipality to establish a corporation.

In our opinion, the appropriate methodology to create a Transit Commission for the operation of the Regional transit system is pursuant to the provisions of Sections 195, 196 and 197, which

permits the creation of a Municipal Service Board. Having transferred the Lower-Tier Power to operate a public transportation system other than highways, through the obtaining of the “Triple-Majority” described above, it is not necessary to obtain a Triple-Majority with respect to the creation of the Commission. No additional consent is required from the lower-tier municipalities to operate intra-municipal transit routes. No further approvals should be required.

As noted above, the Region has, through the “Triple-Majority” process, already transferred the power to operate inter-municipal specialized transit services within the Regional Municipality of Niagara for persons with disabilities.

### **Securing the Exclusive Right to Operate Public Transit in Niagara**

The intent of the proposed by-law is to transfer power relating to public transportation systems from the lower-tier municipalities to the Region with the exception of GO Transit and WEGO, which will continue to operate independently of the Regional Commission.

The *Municipal Act, 2001* addresses the process by which the Region may secure exclusive rights to operate public transit in Niagara, with the exception of GO Transit and the WEGO system. The ability to secure exclusive rights is provided in subsection 190(1) and 69(2).

Subsection 190(1) provides as follows:

“When a by-law passed under Section 189 comes into force,

- (a) the upper-tier municipality may exercise the transferred lower-tier power of the lower-tier municipalities specified in the by-law;
- (b) The lower-tier municipality specified in the by-law and its local boards are bound by the by-law and no longer have the power to exercise the transferred Lower-Tier Power; (emphasis added)
- (c) An existing by-law or resolution of the lower-tier municipality and its local boards that relate to the transferred lower-tier power shall to the extent it applies in any part of lower-tier municipality, be deemed to be a by-law or resolution of the upper-tier municipality; and
- (d) The existing by-law or resolution referred to in clause (c) shall remain in force in that part of the lower-tier municipality until the earlier of two (2) years after the transfer by-law comes into force and the day the existing by-law or resolution is repealed by the upper-tier municipality.”

The effect of subsection 190(1)(b) is that, upon the passing of the by-law, the lower-tier municipalities will lose the ability to exercise any power related to public transportation systems. By-laws and resolutions of the lower-tier municipality regulating the transit service then become by-laws and resolutions of the upper-tier municipality. The upper-tier municipality then has a

period of two (2) years in which to replace the lower-tier by-laws and resolutions with its own by-laws.

The *Municipal Act, 2001* subsection 69(2) provides:

“A municipality that has authority to establish, operate and maintain a type of passenger transportation system may,

- (a) By by-law provide that no person except the municipality shall establish, operate and maintain all or any part of a passenger transportation system of that type within all of the municipality or that area of the municipality designated in the by-law; and
- (b) Despite section 106 and any by-law under clause (a) enter into an Agreement granting a person the exclusive or non-exclusive right to establish, operate or maintain all or any part of a passenger transportation system of that type within all of the municipality or that area of the municipality designated in the Agreement under such conditions as the municipality provides, including a condition that the municipality pay any deficit incurred by the person in establishing, operating and maintaining the system.”

Subsection 69(2)(a) provides authority for the municipality to prohibit anyone, other than the municipality, whether public or private, from establishing, operating or maintaining all or any part of a passenger transportation system of the same type within the municipality.

In order that a by-law passed under subsection 69(2)(a) not affect WEGO’s ability to operate, the Region should enter into an Agreement with WEGO pursuant to subsection 69(2), to permit WEGO to continue to operate.

### **Approval of a Financial Model to Fund the New Transit Commission**

In our opinion, there is no further requirement to obtain a Triple-Majority vote on the Commission’s financial model once the power has been transferred.

As noted above, we have recommended the establishment of the Regional Transit Commission as a Municipal Service Board, pursuant to subsection 196(1). Subsection 196(1)(1) specifically authorizes a municipality to establish a Municipal Service Board and to provide for matters such as the name, composition, quorum and budgetary process of the Board.

### **Implications for Existing Public Vehicle Licences**

We are informed that as Niagara Region Transit services are contracted to the transit systems of Niagara Falls, St. Catharines and Welland, the Region does not hold any public vehicle licences. We believe that the St. Catharines Transit Commission, the Niagara Falls Transit Commission and the Welland Transit Commission hold public vehicle licences as their buses service routes beyond the lower-tier municipality boundary.

The *Public Vehicles Act*, R.S.O. 1990, c.P.54, ("*Public Vehicles Act*") requires the operators of public vehicles to have an operating licence. The definition of "Public Vehicle" explicitly provides that it does not include "motor vehicles operated solely within the limits of one local municipality". The public vehicles act defines the term "Local Municipality" as not including a municipality that had the status of a Township on December 31, 2002 and, but for the enactment of the *Municipal Act, 2001*, would have had the status of a Township on January 1, 2003." Further, the *Municipal Act, 2001*, defines "Local Municipality" as "a single-tier municipality or a lower-tier municipality".

The above review leads us to conclude that those local municipalities which have public vehicle licences do so because some of their routes extend into other municipalities.

It is our opinion that upon the passage of the proposed by-law to transfer the power relating to public transportation systems to the Region, public vehicles licences will be required, as the public vehicles would be operated beyond the respective limits of the lower-tier municipalities. As noted above, we have been informed that Niagara Region Transit does not currently have any public vehicle licences. As a result, the Commission would need to obtain new public vehicle licences for the public vehicles which will be operated in inter-municipal routes. Moreover, the licences currently held by the lower-tier municipalities, or their Transit Commissions, will be required to be transferred to the Regional Commission.

The *Public Vehicles Act*, subsection 7(1) provides that a licence may only be transferred with the permission of the Ontario Highway Transfer Board. The process for the transfer of such licences is outlined in Section 7 and Ontario Regulation 982.

Yours very truly,

**SULLIVAN, MAHONEY LLP**

**Per:**



**Thomas A. Richardson, C.S.**  
Thomas Richardson Legal  
Professional Corporation



**Andrea M. Mannell**

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