



CONSULTATION AGREEMENT

between

The Union of British Columbia Municipalities

AND

**The Ministry of Community Aboriginal and
Women's Services**

This consultation agreement sets out principles, processes and other considerations for implementing required consultations under *Community Charter (CC) s. 276* between the Ministry of Community, Aboriginal and Women's Services (MCAWS) and the Union of British Columbia Municipalities (UBCM)

MINISTRY OF COMMUNITY, ABORIGINAL AND WOMEN'S SERVICES AND
UNION OF BRITISH COLUMBIA MUNICIPALITIES

Required Consultation under the *Community Charter*

Whereas the *Community Charter* explicitly affirms the principle that consultation is needed between the province and municipalities on matters of mutual interest, including consultation by the province on specified types of proposed changes;

Whereas section 276 of the *Community Charter* builds on that principle to require consultation by the province with the Union of British Columbia Municipalities on specific matters;

Whereas the Ministry of Community, Aboriginal and Women's Services and the Union of British Columbia Municipalities recognize that consultation which promotes effective information sharing, healthy debate, and mutual understanding of respective interests is critical to a constructive governmental working relationship, more effective provincial policy development and improved implementation at the local level;

Whereas the Ministry of Community, Aboriginal and Women's Services and the Union of British Columbia Municipalities have a longstanding and positive relationship based on consultation, demonstrated in numerous joint local-provincial initiatives, including the development of the *Community Charter*;

And whereas the Ministry of Community, Aboriginal and Women's Services and the Union of British Columbia Municipalities wish to build on that positive tradition by setting out their shared understanding of the basis for required consultations under the *Community Charter*.

PURPOSE:

This consultation agreement sets out principles, processes and other considerations for implementing required consultations under *Community Charter* (CC) s. 276 between the Ministry of Community, Aboriginal and Women's Services (MCAWS) and the Union of British Columbia Municipalities (UBCM).

BACKGROUND:

CC s. 276 requires the minister responsible to consult with representatives of UBCM, as described in the section, before the provincial government:

- (a) reduces the amount of revenue transfers under the *Local Government Grants Act* (LGGA);
- (b) proposes the amendment or repeal of the CC, the LGGA or the *Local Government Act* (LGA); or
- (c) proposes the enactment, amendment or repeal of specified CC regulations (property tax rates; mandatory binding arbitration), a LGGA regulation or another prescribed enactment.

In relation to consultation on a proposed change, CC s. 276 requires the minister responsible to provide representatives of UBCM with sufficient information and sufficient time to consider changes and provide comments before the change is made, and it requires the minister to consider any comments provided and if requested by the UBCM representatives, to respond to those comments.

CC s. 277 empowers the minister responsible and UBCM to enter into an arrangement respecting consultations on provincial and municipal enactments, policies and programs; interprovincial, national or international issues or agreements; and any other matter affecting local government or the province. Such an arrangement can cover many issues, including:

- who is to be consulted;
- when and how consultation takes place;
- information to be provided for the purposes of consultation;
- how responses are to be provided and dealt with; and
- confidentiality.

This consultation agreement is made further to CC s. 277. This agreement does not diminish the commitment of MCAWS and UBCM to regular information sharing and ongoing dialogue on local government matters.

APPLICATION:

This consultation agreement applies to proposed actions covered by CC s. 276 for which the Minister of MCAWS is the minister responsible.

Those proposed actions are in relation to the following:

- **CC or LGA legislation** – amendment (substantive or routine), or repeal of those Acts, where those changes are being put forward by the Minister of MCAWS.

- **CC regulations specified in s. 276** -- enactment, amendment (substantive or routine), or repeal of those regulations;
- **LGGA revenue transfers, legislation or regulations** -- reduction in amount of LGGA revenue transfers; amendment (substantive or routine), or repeal of the LGGA; and enactment, amendment (substantive or routine) or repeal of a LGGA regulation (all in consultation with the Minister of Finance).

PRINCIPLES:

One of the fundamental guiding principles for provincial-local government relations is that consultation is needed on matters of mutual interest (CC. s. 2). That includes consultation by the provincial government on such matters as changes to local government legislation, to revenue transfers and to provincial programs that will have a significant impact on municipal jurisdiction.

Required consultations under CC s. 276 are in addition to this fundamental principle, and should be guided by the following specific principles:

- **flexibility:** the nature of what constitutes sufficient consultation (i.e. scope, process and timing) will vary depending on the nature of the proposed action (e.g. its significance; its impact; its priority);
- **efficiency:** the process for conducting consultations on a proposed action should be timely and cost effective;
- **clarity:** the process for conducting consultations on a proposed action should be clear and transparent to those involved;
- **cooperation:** while recognizing that a requirement to consult does not mean a requirement to reach agreement, MCAWS and UBCM will try to resolve any differences over consultations on a proposed action in a cooperative, respectful and mutually acceptable manner, having regard to the principles and considerations in this consultation agreement and the principles in the *Community Charter*, and
- **confidentiality:** the nature of consultations must take into account the requirement for confidentiality in the development of matters for Cabinet consideration.

CONSULTATION PROCESS CONSIDERATIONS:

The following sets out process steps, sufficiency indicators, and other considerations for implementing required consultations under CC s. 276 in relation to a proposed action.

These considerations are provided for guidance, and should be adapted as needed to meet the specific circumstances of a proposed action (e.g. what constitutes “sufficient” consultation on a particular amendment).

These considerations do not diminish the value that MCAWS and UBCM place on early and ongoing consultations on matters of mutual interest. UBCM and MCAWS have undertaken numerous successful collaborations and consultations.

Examples of such consultations are included in these considerations to illustrate the variety of consultation types and processes that can be undertaken successfully.

Consultation examples:

- development of the *Community Charter*, through the statutory Community Charter Council comprising provincial, UBCM and “at large” appointees, with assistance from a technical implementation committee and input from individual local governments, the business community, other interests, and the public;
- development of new legislative authority to enable local governments to levy school sites acquisition charges, through discussions among representatives of the province, UBCM, the development industry and school districts;
- ongoing review and recommendations on development finance legislation, policy and practices, through a standing Development Finance Review Committee representing the provincial government, local government and the development industry

Process Steps

Initiating consultations

MCAWS identifies a proposed action as being subject to required consultations under CC s. 276 and contacts UBCM as soon as practicable. In the absence of specifically identified points of contact, the Assistant Deputy Minister, MCAWS, and the Executive Director, UBCM, are the points of contact for consultations under CC s. 276.

Classification of proposed action

Proposed actions subject to required consultations under CC s. 276 fall into 2 categories: **routine changes**; or **substantive changes**.

When MCAWS initiates consultations, the assumption is that a particular matter is a substantive change unless MCAWS and UBCM agree that it is routine, as described below.

Note: Because of the importance of confidentiality, substantive or routine changes that are part of **budget enactments** are not covered by the process steps, sufficiency indicators or other considerations set out in this consultation agreement. Budget enactments are proposed new/changed legislation and regulations developed as part of the provincial budget process to implement the Provincial budget. Consultations on budget enactments are the subject of a separate understanding between UBCM and the Ministry of Finance.

Sufficiency Indicators

Routine changes

Routine changes cover proposed actions (i.e. amendment to legislation; enactment of a regulation) that:

- are “housekeeping” or more technical in nature, so will not have a material effect on local governments or the local government system; or
- respond directly to and are consistent with established UBCM policy

Examples of routine changes include: cross reference changes consequential to other legislation; error corrections; and an amendment to legislate a change as requested in a UBCM resolution.

Consultation example:

Many, many changes to other Acts were required as a result of the *Community Charter*. The vast majority of these changes were routine (e.g. replacing references to the *Local Government Act* with *Community Charter*; updating section number references; ensuring that local government provisions continue to cover both municipalities and regional districts). MCAWS staff members provided information to UBCM staff outlining the nature of the changes, and engaged in a dialogue to deal with any points of clarification raised by UBCM and to ensure that the changes were truly routine. Given the number of changes being made, that dialogue included the UBCM staff having the opportunity to review drafts of the proposed legislative changes, on a confidential basis.

The following considerations should guide required consultations on routine changes:

- the points of contact are the MCAWS staff person and the UBCM staff person designated by the Assistant Deputy Minister, MCAWS, and the Executive Director, UBCM, respectively;
- consultations will typically start later (i.e. towards the end of the drafting process), once the routine changes are identified;
- MCAWS will identify a matter as routine in initiating consultation with UBCM;
- in initiating consultation, MCAWS will provide information describing the particular matter; why it is routine, and the timeline for comments;
- if UBCM indicates at that time that it does not agree that the matter is routine and provides reasons to support that view, it will be dealt with as a substantive change;

- MCAWS will typically initiate consultation by telephone or e-mail and UBCM will typically provide comments in the same manner;
- the nature of consultations should not be elaborate – e.g.
 - review of the draft enactment will generally not be required;
 - time between provision of the information by MCAWS and response by UBCM should be short, reflecting the straightforward and non-controversial nature of routine changes;
- consultations will take into account confidentiality issues, especially the need to respect any particular confidentiality interests of other parties (e.g. in relation to changes arising from another Ministry’s legislative amendments);
- initiation and conduct of consultations by MCAWS, and comments from UBCM, will be completed by staff.

Substantive changes

Substantive changes cover proposed actions (e.g. amendment to legislation; enactment of a regulation) that will have a material effect on local governments or the local government system (e.g. granting a new power; imposing a new restriction; creating a new process).

Consultation example:

A review of regional district legislation leading to amendments to the *Local Government Act* in 2000 was undertaken through the Regional District Issues Steering Committee (RDISC). RDISC comprised representatives from the UBCM Executive, regional district and municipal administrators, and the then Ministry. The RDISC produced a report on regional district issues and proposals for legislative change to address some issues, augmented by the findings of a consultant expert on the regional district system which were discussed at the UBCM Convention. The RDISC proposals were reviewed at a forum of local government representatives from throughout B.C. In Spring 2000, a sub-committee of RDISC reviewed the drafts of the proposed legislative changes, on a confidential basis.

The following considerations should guide required consultations on substantive changes:

- when MCAWS identifies a proposed action for consultation, MCAWS and UBCM should, as soon as practicable, discuss the appropriate process for consultation on that matter, including issues such as:
 - **points of contact**, within MCAWS and UBCM
 - **level and scope of contact** (e.g. direct involvement of UBCM Executive or Committee members? direct staff-to-staff consultations only? involvement of other ministries, UBCM members or other stakeholders? use of existing forums, such as Development Finance Review Committee?)
 - **scope of process** (e.g. a “one-off” consultation process? part of a larger process involving other interests?)
 - **timelines** (for MCAWS to provide information; for the consultation process; for UBCM to make comments; for MCAWS to respond)

- **level of confidentiality** (e.g. limited to selected representatives? open consultations? different levels for different phases of the consultation process?)
- **nature of information** provided by MCAWS (e.g. policy documents? draft legislation? explanatory materials?)
- **nature of comments** provided by UBCM (e.g. single response from UBCM Executive? statement of reactions from individual local governments?)
- **form** (e.g. face-to-face discussions? exchange of written information, comment and response?);
- consultations should be early (i.e. begin at the policy stage and continue through the legislative development and drafting process, as necessary);
- information provided by MCAWS should explain the rationale for and potential impact of the substantive change;
- time for consultation should, at a minimum, be long enough to allow for provision of information about the particular matter; UBCM comments; and MCAWS response to those comments;
- consultations should include opportunities for discussion (formal or informal) between UBCM and MCAWS about the proposed action (e.g. to clarify the nature of the proposed change and its implications; to better understand UBCM's comments; to discuss other approaches and their implications);
- consultation should provide the opportunity for some review of the draft enactment on a confidential basis.

Other Considerations

Confidentiality

Draft enactments will only be shared with UBCM staff/representatives that have provided MCAWS with a personal undertaking of confidentiality acceptable to MCAWS,

which may be specific to a proposed change or general to matters covered by this agreement.

Consultation example:

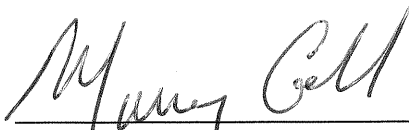
As part of the Safety System Transformation Project, consultations have been undertaken with UBCM and individual local governments leading to a new *Safety Standards Act* and regulations, and delivery of safety services through a BC Safety Authority. Over 3 years, a Local Government Forum, comprising technical representatives from the 11 municipalities that administer gas or electrical regulatory services and from UBCM, met at least quarterly with MCAWS staff members to provide input, including reviewing draft legislation and regulations on a confidential basis. Local government was identified as a key stakeholder in the Project, and a Local Government Forum representative was part of the Minister's Review Committee, a 10 member committee established to review and make recommendations to the Minister on the proposed technical regulations for each of the safety disciplines.

TERM AND REVIEW:

Recognizing that it will take some time to gain experience with required consultations under CC s. 276, MCAWS and UBCM agree to review this consultation agreement after 3 years from the date of its signing, to determine whether it continues to meet the needs of the parties.

In undertaking that review, MCAWS and UBCM will each use their best efforts to address any issues that may arise and make any needed changes in keeping with the principles in this consultation agreement and the principles in the *Community Charter*.

SIGNATURES:



Minister of Community, Aboriginal
and Women's Services



President, Union of British
Columbia Municipalities

Date: M/9 6/04