

LOCAL GOVERNMENT AND THE CONSTITUTIONS

1. INTRODUCTORY QUESTIONS

Some questions of concern to Canadians:

Why does local government, which:

- has the highest level of public confidence; and
- has the best financial track record;

shares a place with penal institutions, asylums and licensing of saloons and taverns in the present Canadian constitution?

Why do we persist with top-down approaches to constitution-making when the public's message is that such institutions and approaches are irrelevant and do not reflect their interests And why do we persist with top down approaches when we know we can build stronger, more lasting and more flexible structures from the ground up?

Why should a province with a contract for 93 RCMP officers have a place at the federal negotiating table when a single municipality with three times that number does not?

Some questions of concern to British Columbians:

Why must communities seek provincial legislation to do the simplest things and may have to wait years to get the power? Why should a responsible government representing 1.4 million people wait 4 months to obtain provincial approval for a simple regulatory bylaw? Why are business licence fees prescribed in legislation that hasn't changed since 1957 when the Act was introduced?

Why is it in the provincial interest that municipalities are, by law, limited to charging 25¢ per page for copies of council minutes?

Why do the public increasingly turn to local government to act on issues that traditionally have been the responsibility of other levels of government? And why are communities expressing a need for more local input into social and resource policies that are determined by provincial and federal governments?

The answer in all cases is that our system of government is out of step with our citizens' needs and aspirations. Canadians aspire to have more control over their own communities' destinies and they know that, in a healthy democracy, the best way to achieve that is through their local institutions. As Alexis de Tocqueville put it 200 years ago: "*Municipal institutions constitute the strength of free nations.*"

The very foundation of Canadian democracy greatly needs reform. Democracy needs to be restored through a real process of constitution building that starts where it should – at the community level. Reform of the Canadian constitution must be based on a solid foundation of strong and self-reliant, local governments.

The one level of government that has no constitutional recognition is the level that has the only recognition that counts – public recognition.

It is time to reflect in the Canadian constitution this simple reality.

2. BASIC PRINCIPLES AND A MANDATE FROM THE PEOPLE

What are the democratic principles that Canadians and British Columbians have over and over again stressed as the acid test for government? They want:

- access;
- accountability;
- responsiveness; and
- the best use of their tax dollars.

And which level of government does the public think:

- is the most accessible?
- is the most accountable?
- has the best appreciation of their needs?
- provides the best overall performance, especially in giving the best value for the tax dollar?

Local government.

Which level of government has a superior track record, demonstrated through:

- a history of balanced budgets;
- excellent credit ratings compared to other governments; and
- declining debt load per capita.

British Columbia local government.

British Columbia's local governments can speak with credibility and with the conviction of its public support and an proven track record on the need for a new constitutional framework.

This is our proposal for *Local Government and the Constitutions*.

3. LOCAL GOVERNMENT AND THE CONSTITUTIONS

This proposal has three complementary steps:

- a federal constitutional initiative;
- a parallel provincial constitutional element a local government Bill of Rights; and
- a framework for implementing legislation.

a) Federal Constitutional and Intergovernmental Recognition

What is needed in the Canadian constitution is a "basic" form of recognition of local government. Provincial prerogatives to legislate in the local government sphere would be preserved and the Government of Canada would be required to take in to account the interests of local government in exercising federal powers.

In practice, Federal recognition would mean local governments must participate in the formulation of federal policies, such as immigration, trade and criminal law that impact on communities – particularly in large urban regions.

To be more precise the amendment would be:

"Without altering the legislative authority of Parliament or of the provincial legislature, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the government of Canada:

- a) recognizes municipalities, where created by a legislature, as an order of Canadian government playing a role in the provision of essential public services;*
- b) will consider the impact on municipalities of the exercise of federal powers; and*
- c) will promote opportunities to ensure federal laws, policies and programs are supportive of municipal government's responsibilities."*

PROVINCIAL ELEMENTS

b) Local Government Bill of Rights

Constitutional reform will be meaningless to most Canadians if it affects only the federal veneer.

The critical element missing from much of the constitutional discussion is the provincial and local elements. Recent proposals have focussed on the Canadian constitution and that narrowness is a failing.

Since the federal constitutional proposal advanced above retains a province's prerogative to establish the legislative frameworks for local government, it is incumbent to have a parallel provincial constitutional provision for local government. In this province, this would take the form of an amendment to the B.C. Constitution Act in the form of a Local Government Bill of Rights.

A Local Government Bill of Rights would contain:

a. Founding Principles

The Province would recognize local government as an order of government and be committed to maintaining a legislative framework to allow local governments full authority to meet community needs. The basic role of provincial government and provincial legislation would be enabling local governments to meet community needs rather than supervising the way they did this. Accordingly, the province would only restrict or regulate local government activities where it is in the provincial interest.

Preserved as a founding principle of local governments would be the requirement that any local government would conform to the following:

- no deficits;
- debt limits;
- voter assent requirements for long-term borrowing;
- due process to respect rules of natural justice; and
- access to information.

b. Responding to Community Needs

The Province would provide to local government in legislation, responsibility to manage all areas of community life except those areas that it or the federal government has occupied or specifically reserved. The Province would agree to respect areas of local government jurisdiction to the extent of provincial interest.

c. Financing Communities

A Local Government Bill of Rights would recognize that local government must be provided areas of taxation and revenue authority requisite to its responsibility. It would also ensure that when the province wished local governments to take on new responsibilities they would be provided additional revenue services.

d. Community/Provincial Relations

The Local Government Bill of Rights would recognize that the Province and local governments were partners in providing essential services to the public and include a commitment to consultation and cooperation; including the rights of local governments to:

- guaranteed access to provincial decision-making;
- consultation on all matters affecting local government;
- an amending formula for local government legislation;
- joint decision-making in areas of shared responsibility;
- negotiation of conflicts; and
- ensuring local government jurisdiction is respected by provincial ministries, Crown corporations and agencies.

What the Local Government Bill of Rights provides is a bridge – a bridge between the federal constitutional recognition of local government and the provincial statutes that establish those frameworks.

c) Provincial Legislation

The third part of the process of full and real constitutional reform is at the local governance level.

The need for reform begins with one of many similar-type observations which finds:

“The current legislative process is overloaded – the backlog of housekeeping amendments grows yearly. In 1991, while demands to meet new and emerging local issues multiplied – the legislative response was negligible. The effectiveness of local government depends on having the powers to respond. The scope of powers and method of obtaining them is clearly outdated and must be reformed.”

The present process is too slow, it is too supervisory; and it doesn't recognize the advances in professional municipal management. What is needed is a new local government statute based on the provincial constitutional principles set out above.

The local government statutes would be in three parts.

Part I - General Powers

This would implement the Local Government Bill of Rights and would include the general powers of local government to manage their communities. These powers to act in economic development, resource management, social development, health, environment, etc. would only be limited if there were provincial or federal legislation and by conformity to the constitutions.

General powers would be enacted by bylaw.

An example might be the regulation of tree cutting (which would fall under the general powers to manage the community's development and environment) which a local council could decide ought to be a local decision, provided the provincial (forestry) interest was respected and any constitutional, common-law, private property rights were also respected.

Part II - Detailed Powers

This would be detailed enabling powers covering much of the current scope of the *Municipal Act* or *Vancouver Charter*.

A principle would be established to allow municipalities to vary or supplement the detailed provisions of the local government statutes where specifically authorized.

There could be detailed provisions that smaller local governments could follow without the need to enact their own bylaws but there would be the power for a local government to decide in its own bylaws how the system would work.

One example could be election policy.

The local government statute would contain the basic provincial interest on elections. It would then provide two options: (1) a set of detailed basic provisions, and (2) powers for the municipality to expand on or vary the detailed provisions, provided the basic provincial interests were upheld.

Part III - Method to Delegate Provincial Powers

This would provide for an application for powers of the province to be delegated to a local government. This would allow a specific local government to supplement the powers given in Part I when they were inadequate to meet the local situation.

An application would be sought if the new power to be exercised overlapped or sought delegation of a provincial power. This could also allow large urban regions to design the way they are governed when province-wide legislative approaches to "regions" do not accommodate the diversity of metropolitan and non-metropolitan regions.

4. CONCLUSION

In the latter part of the 19th century there were 3,463,000 Canadians and most lived in rural areas. In 1867, B.C.'s 32,000 residents weren't a part of the national confederation.

The last 125 years has been a profound transformation of Canadian society:

- a ten fold growth in population accompanied by a transformation from a predominantly rural to urban society.
- society has felt the assertion of minority rights and the importance of a multicultural diversity.
- the whole economic basis has transformed from agriculture to industry to information.
- Canada has taken its place on the international stage.

In B.C., our first local government was incorporated in 1860. Some of the more remarkable socio-economic changes in this province have been:

- a 100 times growth in population - yet still concentrated by geography to river valleys and coastal plains.
- local government institutions developed to meet the growth of most communities throughout British Columbia.
- a province where exports dominate more than any other provincial economy and which is focussing on the Pacific Rim.
- established infrastructure that is a catalyst for growth and cohesion.

Our communities have grown and changed but one thing has remain unchanged, British Columbians want their services provided by the level of government that can be the most:

- accessible;
- accountable;
- sensitive to their needs; and
- that provides the best value for their tax dollars.

They want control of their communities – and the only way to achieve that within the constitutional proposals is to build on a foundation of local government that is:

- recognized in the federal constitution;
- included in a new provincial constitution; and
- implemented through local government legislation.