

# DELEGATION OF ENVIRONMENTAL RESPONSIBILITIES

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## **DELEGATION OF ENVIRONMENTAL RESPONSIBILITIES**

### **EXECUTIVE SUMMARY**

The British Columbia Ministry of Environment, Lands and Parks has initiated a five-year action plan to revise and renew the province's environmental policy and legislative framework. All environmental legislation will be folded into four acts: The Environmental Protection Act; The Environmental Assessment Act; The Water Management Act; and, The Wildlife, Fish and Endangered Species Act.

At the same time, the Commission on Resources and Environment, and the Round Table on the Environment and the Economy continue their work, and are proposing changes that may have implications for regional and municipal government.

The provincial government wishes to delegate or devolve responsibility for many environmental programs to local government, while retaining some authority for setting standards and criteria. These programs include aspects of pollution prevention and waste management, environmental assessment, water management and wildlife, fish and endangered species.

The government's move towards devolution is not in theory, inconsistent with the UBCM policy, "Local Government and the Constitutions". Local governments desire to be recognized as an order of government and have more real authority to meet community needs. Devolution proposals may go some way to meeting those desires.

The UBCM draws a distinction between devolution and delegation. Delegation means local government acting for the province. Devolution means local government acting for itself.

Devolution means the actual transfer of power, and implies a government to government relationship between equal partners. It cannot be the simple "downloading" of financial and administrative responsibility without commensurate authority and resources.

Similarly, it is unacceptable that the province unilaterally allocate powers in a way that significantly alters institutions of local governance, as it did recently in amending the Waste Management Act through Bill 29. As well, devolution must take account of the varying interests and capabilities of different local governments.

Devolution may provide opportunities to local government, but if it is to proceed it must do so on a principled and considered basis, with full consultation, a mechanism for dispute resolution and the appropriate allocation of resources and powers for local government to do the job properly.

# **DELEGATION OF ENVIRONMENTAL RESPONSIBILITIES**

## **SUMMARY OF RECOMMENDATIONS**

### **RECOMMENDATION #1:**

THE BASIC PRINCIPLES FOR SUCCESSFUL DELEGATION/DEVOLUTION ARE THAT THE PROCESS MUST BE FAIR, OPEN, AND EQUAL.

### **RECOMMENDATION #2:**

NO DELEGATION OR DEVOLUTION OF AUTHORITY OR RESPONSIBILITY SHOULD TAKE PLACE UNTIL A COMPREHENSIVE PROCESS OF CONSULTATION, AGREEABLE TO BOTH PARTIES, IS ESTABLISHED.

### **RECOMMENDATION #3:**

NO DELEGATION OR DEVOLUTION OF AUTHORITY OR RESPONSIBILITY SHOULD TAKE PLACE UNTIL THE PARTIES HAVE AGREED THAT CERTAIN BASIC CONDITIONS OR CRITERIA HAVE BEEN MET.

### **RECOMMENDATION #4:**

NO DELEGATION OR DEVOLUTION OF AUTHORITY OR RESPONSIBILITY SHOULD TAKE PLACE UNTIL LOCAL GOVERNMENT IS SATISFIED THAT THE APPROPRIATE FUNDING AND RESOURCES ARE AVAILABLE TO MEET THE NEW RESPONSIBILITY.

### **RECOMMENDATION #5:**

NO DELEGATION OR DEVOLUTION OF PLANNING AUTHORITIES OF ANY KIND SHOULD TAKE PLACE UNTIL THE PLANNING PROCESSES OF ALL MINISTRIES, COMMISSIONS AND AGENCIES HAVE BEEN FULLY COORDINATED.

### **RECOMMENDATION #6:**

ANY DEVOLUTION OF AUTHORITY OR RESPONSIBILITY SHOULD BE SUPPORTED BY THE APPROPRIATE LEGISLATIVE, REGULATORY AND POLICY AUTHORITIES.

### **RECOMMENDATION #7:**

ANY DEVOLUTION OF AUTHORITY OR RESPONSIBILITY SHOULD PROVIDE LOCAL GOVERNMENT WITH PROTECTION FROM ANY LIABILITY ARISING FROM THE DELIVERY OF PROVINCIAL PROGRAMS OR STANDARDS.

### **RECOMMENDATION #8:**

NO DEVOLUTION OR DELEGATION OF AUTHORITY OR RESPONSIBILITY SHOULD TAKE PLACE UNTIL ALL PARTIES HAVE AGREED TO A PROCESS FOR THE RESOLUTION OF DISPUTES.

# DELEGATION OF ENVIRONMENTAL RESPONSIBILITIES

## 1. INTRODUCTION

The British Columbia Ministry of Environment, Lands and Parks has initiated a five-year action plan that will revise and renew the province's environmental policy and legislative framework. A major component of the plan is the devolution of programs and responsibilities to local governments.

Legislation discussion papers are being circulated, consultation processes are underway and new legislation is being drafted. Local government has a role to play.

The process calls for major changes in the areas of environmental protection, including pollution prevention and waste management; environmental assessment and project review; water management; and, fish, wildlife and endangered species;

Reforms will be undertaken as well in a number of areas related to procedure, decision making, taxes, charges and incentives and enforcement and compliance.

The entire legislative base for the government's environmental programs will be consolidated into four new acts:

- The Environmental Protection Act
- The Environmental Assessment Act
- The Water Management Act
- The Wildlife, Fish and Endangered Species Act

At the same time, the Commission on Resources and Environment (CORE), and the Round Table on the Environment and the Economy continue their work in the areas of land use, resource and environmental management and sustainable development, and are proposing changes that have implications for local government.

A consistent theme throughout these proposals is "partnerships". The provincial government and CORE are advocating partnerships and agreements with other governments and stakeholders in land use planning, environmental management and planning and a host of other areas. A key component of the proposals is the devolution or delegation of regulatory authorities and powers to local governments.

This is naturally, of concern to local governments. Numerous issues arise, perhaps foremost among them the nature of the process and how local governments' new responsibilities will be funded.

However, proposals for the devolution and delegation of power also offer new opportunities to local government that are consistent with the principles set out in "Local Government and the Constitutions", a policy paper passed at the 1991 UBCM convention.

The following paper sets out the proposed policy and legislative changes, analyses them from a local government perspective and proposes certain principles and policies that may assist local government in dealing with those changes.



## **2. THE ENVIRONMENTAL ACTION PLAN**

The government's "Environmental Action Plan for British Columbia" is based on several "broadly supported conclusions", which include; the need to change present practices; the recognition that the most serious problems are the result of urban pressures and demands; that environmental well-being and economic prosperity are both essential to sustainable development; that many British Columbians criticize government's ability and commitment to protect the environment; and, that more individuals and communities are demanding more responsibility and a say in environmental protection programs.

From these conclusions the Ministry draws several principles, which form the basis for the Action Plan:

we are all in this together; finite resources must be managed sustainably and decisions made based on entire ecosystems; polluters must pay; tough and fair environmental standards are necessary; and finally, and perhaps most relevant to this paper, that attitudes must change and environmental decision making must be shared by all citizens and local governments.

As noted above, the entire legislative base for the government's environmental programs will be consolidated into four new acts which provide the foundation for the government's Action Plan. As well, the Commission on Resources and Environment's proposals will be reflected in policy and legislation.

These will be addressed in turn.

## **3. THE ENVIRONMENTAL PROTECTION ACT**

The B.C. Environmental Protection Act (BCEPA), which is expected to be before the spring 1993 session of the Legislature, will be the primary environmental protection legislation in the province, bringing within it's ambit the general principles of environmental management, enforcement, rights and obligations, appeals and emergency measures.

Of all the proposed legislation this Act has perhaps the greatest implications for local governments, calling for a dramatic revision of roles, authorities and responsibilities in the areas of pollution prevention and waste management.

The new Act will establish the legislative base for programs related to pollution prevention and control, air and water quality, all types of waste and pesticides. The current Waste Management Act, the Pesticide Control Act and the Environment Management Act will all be abolished and their contents folded into the new Act.

### **3(a) General Principles**

The provincial government's legislative discussion paper, "*New Approaches to Environmental Protection*", makes the intent of the Act clear.

The discussion paper sets out several general principles and related recommendations that have implications for local governments:

"It is proposed that the BCEPA should authorize the Minister... to enter into agreements and partnerships with key stakeholder groups (and)... delegate authority and provide support to

local governments, so that they can assume responsibility for certain acts of environmental protection, while remaining accountable for their actions."; and,

"Integrated decision making under the BCEPA will help shift the regulatory responsibility to local, provincial and individual sectors. The BCEPA should continue to allow the Ministry to set environmental quality objectives and discharge performance standards, to prohibit certain activities and also to require the development of comprehensive waste management plans. The Act should allow Cabinet to designate air or water basin authorities to regulate the total combined discharge of pollutants into a geographically defined area."

In relation to "agreements" with other parties, current legislation provides the province with authority for entering into agreements with the federal and other provincial governments. It is proposed to extend that reach:

"The BCEPA should explicitly provide authority for the Minister... with the approval of (cabinet)... to enter into agreements with... local governments..."

Agreements for the stewardship of resources and the management of waste are mentioned specifically:

"The BCEPA should enable the Minister to establish programs and enter into agreements... to recognize, encourage and support the stewardship of products and wastes."

The paper addresses the "confusing mix of overlapping responsibilities and requirements between different levels of government under the current legislation" - waste management planning being one example, and states:

"For planning at the local government level to be effective, the technical and scientific expertise of Ministry officials in Victoria or regional offices should be made available. Also the planning responsibilities to be imposed by the BCEPA should be coordinated with other planning responsibilities conferred under other Ministry legislation"

Then, the paper states that an expanded planning approach to environmental protection...

"... must not be an excuse for endless delays and lingering non-compliance. Municipalities and regional districts cannot be allowed to avoid their environmental responsibilities, merely by a failure to implement the plans mandated by the act. An array of "carrots and sticks" must be available to environmental protection officials to help ensure compliance"; and,

"The BCEPA should clarify the obligation and authority for designated local governments to prepare a variety of plans to address municipal solid waste, liquid waste, air quality management, biomedical waste and environmental emergencies, with approval required by the Minister. Moreover, such planning should apply specifically to pollution prevention and apply to transportation policy and energy policy as well, which may be of particular significance in air management. At the same time the act should provide mechanisms to generate the necessary funding to enable local governments to undertake this planning and implementation including associated public consultation."

The paper notes that under the present Waste Management Act the GVRD, for example, has been delegated authority to deal with air pollution control within its boundaries, and suggests that "authority for some other aspects of environmental protection might also be exercised more efficiently by other levels of government", and recommends that:

"The BCEPA should provide statutory authority for the Minister to assign certain powers to local governments, other ministries and federal authorities."

However, the paper makes it clear that local government will remain accountable to the provincial government and the Minister and Cabinet will retain significant authority to control the local process - "with responsibility ... comes accountability".

The paper suggests that there are precedents in B.C. for the retention of some powers over local matters with the central government. The Municipal Act, the Health Act and the School Act are given as examples of legislation providing authority to the Cabinet or Minister, in certain instances to have by-laws passed or decisions made that would normally fall within the jurisdiction of local authorities, school and hospital boards. The paper recommends:

"Under the BCEPA, the Minister should be able to set criteria for environmental planning to be undertaken by local governments and for the approval of their plans, and also to issue policy statements and the like, binding on local governments, in order to achieve greater accountability."; and,

"To help increase local governments' accountability for the environmental protection responsibilities assigned to them, the BCEPA should contain provisions for the Minister to issue province-wide minimum standards and policy statements on the protection of the environment which, in the opinion of the Minister, are in the provincial interest. As well, local governments should be required to provide the Minister with annual reports on their implementation of the requirements of the BCEPA."; and,

"The BCEPA should include powers to devise, foster and ensure the implementation of plans and programs for environmental protection and to formulate environmental quality criteria, objectives, guidelines, standards and codes of practice."

The discussion paper also contemplates an increased role and powers for the Ministry's regional director's, suggesting that they should serve as the link between local and provincial authorities and assist with the resolution of conflicts over environmental protection and resource uses:

The act should give Ministry regional directors authority either to mediate disputes concerning environmental protection in their regions, or to appoint someone skilled in alternative dispute resolution techniques, if the parties feel that such a step could be productive and could avoid a formal appeal. It should likewise delegate to Ministry regional directors explicit authority to "sign off" the several planning processes to be undertaken by local governments, and to resolve disputes between local governments in this context".

### **3(b) Pollution Prevention and Waste Management**

The government proposes a major shift in the area of pollution - from waste management or pollution control to pollution prevention.

"The BCEPA should enable a comprehensive pollution prevention strategy to be established. The Ministry's mandate should no longer be restricted to "waste management". The new emphasis should be upon voluntary stewardship, education, information exchange and partnerships with others, with the ultimate reserve authority for the Minister to make regulations, as deemed necessary.

Local governments will be expected to take part in implementing this strategic shift in emphasis both through the new provisions of the Waste Management Act and through the process of devolution.

In support of such a pollution prevention strategy the discussion paper makes several proposals, including; the adoption of a "precautionary approach" where emissions may be controlled if they are "likely" to cause harm, even in the absence of conclusive scientific data; a comprehensive waste reduction strategy involving the "three R's"; and, a litter control strategy, which (should) "... as much as possible .. be delegated to local governments".

The discussion paper also proposes a broad revision of the manner in which decisions are made in relation to the granting of permits, recommending that the "class discharge" provisions of the current Waste Management Act be broadened, the introduction of a "regulatory" approach rather than the classic permitting method of control, and a system of rating or evaluation for industry and local government that would provide the basis for the granting of economic incentives or awards. All of this will affect local government if the devolution proposals are accepted.

### **3(c) Bill 29 and the Waste Management Act**

Recently the province undertook to amend the Waste Management Act, in what was essentially an experiment in redefining responsibilities of local government. In the spring of 1992 the government introduced, through Bill 29, amendments to the Waste Management Act. These amendments, particularly those to Part 3 dealing with municipal waste management, clarified and expanded upon similar amendments of 1989 and have significant implications for local governments.

The amendments essentially removed the power of municipal government over solid waste management. Prior to the spring of 1992 municipalities could still submit waste management plans to the Minister. Now, regional districts have been given power over municipal waste management.

Section 16 of the Act now calls for every regional district to prepare a waste management plan, on or before December 31, 1995, for the storage of recyclable material and the management of municipal solid waste "for the benefit of the total area of the regional district". Regional districts also have the power to specify operating requirements for and collect fees relating to the storage of recyclable materials or the management of municipal solid waste.

The recent amendments have also broadened the definition of waste, adding the definitions of "municipal liquid waste", "municipal solid waste" and "recyclable material".

As well, municipalities are now required to "provide a process for comprehensive review and consultation with the public respecting all aspects of the .... plan..", to the "satisfaction of the Minister."

The amendments provide the Minister with far more discretionary power than previously: to direct a municipality to prepare or revise a waste management plan; to show proof of compliance and progress; to amend or cancel a plan; and, to exercise the powers of cancellation and approval given in Section 22.

Municipalities still retain the option of preparing liquid waste plans, but the powers relating to solid waste management are clearly now in the hands of the regional districts, and ultimate power still rests with the Minister.

The government's consultation process on these changes did not meet with universal approval. It was regarded by some as too quickly implemented and too narrow, focusing on regional district interests, sometimes to the apparent exclusion of municipalities. Now the government is proceeding with a Bill 29 "Implementation Task Force".

Bill 29 instituted a significant change in regional institutions of governance, and the UBCM is of the view that the consultation process was deficient. Indeed, at one point the UBCM withdrew from the process altogether, which did not stop the provincial government from forging ahead. In the view of some, the process and implications were not well thought through and failed to adequately address sensitive issues of regional-municipal governance.

### **3(d) Other Issues**

The Legislation Discussion paper also addresses a number of other issues, including; fairness; the harmonization of enforcement powers; freedom of information; mediation and appeals; protection of "whistle blowers"; and, greater powers to issue pollution abatement or prevention orders to... "regulated entities such as local governments...";

The paper also addresses the issue of contaminated sites:

"As the issue of contaminated sites often appears during the development approval process at the municipal or regional government level, it seems desirable, where mutually agreeable, for the Ministry to delegate appropriate responsibilities to local government official, while reserving the power to set guiding standards in criteria or regulations.",

and goes on to recommend that:

"The BCEPA should enable the Ministry, where mutually agreeable, to delegate responsibility to appropriate local governments to manage the site evaluation and remediation planning process, with the Ministry providing technical assistance and the necessary criteria and regulations to ensure uniform program delivery."

The discussion paper addresses as well issues related to new systems of taxes, emission or effluent charges, transferable emission rights, tax incentives and subsidies, pollution control delay penalties and the environmental choice program and procurement policies, all of which may impact on local governments

## **4. THE ENVIRONMENTAL ASSESSMENT ACT**

The Ministry of Environment, Lands and Parks is in the process of developing new environmental assessment legislation. It is expected that the new Environmental Assessment Act will be passed into law in the spring of 1993. The current review processes - the Energy Project Review Process, The Mine Development Assessment Process and the Major Project Review Process will all be subsumed under the new act.

The Ministry's Legislation Discussion Paper, "*Reforming Environmental Assessment*", ("the Paper") was widely circulated and hearings and meetings were held throughout the province in the spring of 1992. In early September a "*A Report on the Consultation Process*" ("the Report") was released, which contains a review of the responses to the legislative discussion paper and final conclusions and recommendations to guide the development of the new Environmental Assessment Act.

One of the primary goals of the new legislation, as set out in the Paper, is to "integrate... local government participation" in the assessment process:

"Major developments may result in significant environmental, economic and social impacts that directly affect local government. A new environmental assessment process should reaffirm and formalize local governments efforts to protect the environment and sustain local economies.

In addition, the environmental impacts of major subdivisions roads and other community-based activities must be carefully assessed. The roles and responsibilities of provincial and local government in the environmental assessment of such projects should be clearly identified."

The intent of the provincial government to provide a role for and assign some responsibility to local government in the environmental assessment process is made clear in the Report on the Consultation Process:

For certain types of projects and activities, local government may be in the best position to efficiently administer the environmental assessment process. However, it will be essential to ensure that the process is being administered in a consistent manner. To meet this objective, the legislation should define equivalency criteria as the basis for enabling local government to assume responsibility for environmental assessment. Regular auditing of local government performance should be included as a standard component of agreements to devolve responsibility to local government.

Many small projects and activities authorized by local government should not be subject to the legislation. It is important that these activities be subject to an appropriate degree of environmental assessment. To meet this need, the province should explore means of increasing local governments' ability to require assessment as a condition of its approval process."

The UBCM has expressed the view, in its submission to the government's consultation process, that the new legislation should provide local government explicit opportunities to conduct environmental assessments of projects where local government is presently the lead approving authority. These powers would be best contained in the Municipal Act.

The establishment of equivalency criteria would be an appropriate method of ensuring local governments' consistency with provincial standards.

The legislation discussion paper recommended that public sector projects should be subject to detailed justification analysis. The UBCM has suggested that projects undertaken by local government not be subject to justification, as decisions as to "need" and "public interest" are made at other levels in the process such as the development of a community plan or waste management plan.

The legislation discussion paper proposed and the Report on the Consultation paper confirmed that a Project Review Committee should be formed at the outset of each review.

The Report concluded that:

"The project review committee should be viewed as the primary link among the proponent, the community and the environmental assessment process... The composition of the committee should reflect the characteristics and needs of the project and the concerns expressed by the community."; and,

"... the legislation should enable the participation of local government on project review committees.

The UBCM agrees that local government participation on project review committees is appropriate.

## **5. THE WATER MANAGEMENT ACT**

On May 8, 1992, the Minister of Environment, Lands and Parks stated that the government intends to undertake a "complete review and revision of water management policy and legislation."

The Minister said that the review is driven by three factors: demands for water are escalating; there is a fundamental shift in attitude, from resource allocation to stewardship; there is a need for shared decision-making, including partnerships with local (and federal and aboriginal) governments, the delegation of authority to regions and shared management responsibilities with users.

A new legislative discussion paper is forthcoming - "*Stewardship of the Water of British Columbia: A Review of Water Policy and Legislation*". This will be followed by a consultation period and the introduction of a new Water Management Act, into which all water legislation and regulations will be folded.

The current Water Act is outdated and inadequate to address current and anticipated problems. It does not protect groundwater, it neglects the crucial issue of water quality, it does not provide instream uses (fish, riparian habitats, aesthetic values, etc.) the same recognition as consumption and it ignores the need for water management and planning, particularly in relation to watersheds.

In early 1991 the provincial government released its discussion paper, "*Sustaining the Water Resource*". The paper was widely circulated and received a significant amount of comment, much of it from local government.

The paper reiterated the government's commitment to sustainable development and set out several criteria for and implications of that commitment for water management policies, including sustainable use, protection of ecological systems, comprehensive planning, public consultation, integrated use, protection of public health and well-being, user pay and finally, and of interest to local government, "devolution of responsibility".

In this regard the paper stated that:

"The appropriate decision-making role of governments at all levels must be reviewed to ensure that decisions are made expeditiously and fairly".

The government's vision of comprehensive water management and planning involves the devolution and delegation of some jurisdiction and authority to local governments. It is clear however, that the basic jurisdiction for standards and criteria will remain with the province. This will have implications for local governments in several key areas.

Local governments may be expected to develop "community based water management plans" involving all stakeholders, that include the criteria for sustainability outlined above and lead to clear policies for water allocation and quality.

According to "*Sustaining the Water Resource*", watershed management plans are meant to:

"... ensure that water use is compatible with the goals of sustainable development and integrated resource management. The plans also make sure that water is allocated for the use of highest value, and that impacts of proposed development projects on water quality and quantity are fully addressed."; and,

"Comprehensive planning could include regional plans for major basins or major power projects, and subregional plans for managing surface water and groundwater. Operational plans could also be developed to govern groups of water licence holders. The plans would complement, and be coordinated with, existing government planning processes."

Water quality will be of primary concern in the new policy and legislation. Again, the province will be responsible for establishing overall standards and criteria, but issues relating to public consultation, stream designation and uses, the protection of the quality and quantity of in-stream flows and monitoring and reporting may be the responsibility of local authorities.

Water pricing and conservation measures will also be an important part of the new policy, including the restructuring of price formulas, use restrictions, public education, improving the technology of water use and recycling.

New licensing regimes will be introduced, including provision for changing the uses and priorities of a given water source, the reservation of water sub-basins for certain uses, the licensing of all wells and where necessary the expropriation of licences with appropriate compensation.

Finally, "improved floodplain management would be carried out by local government." Approximately 85 percent of local governments now have floodplain by-laws. The government is considering shifting responsibility for floodplain management to local government, with the province continuing to set standards and regulations for dam and dyke safety during design, construction, maintenance and removal.

In summary, the government's "Sustaining the Water Resource" proposals make it clear that:

"Responsibilities must change ... (and) ... Partnership is essential between all levels of government. The new emphasis on water management planning, water quality objectives and floodplain management provides additional opportunities for local levels of government to become directly responsible for aspects of water management, based on the principles of sustainable development."

## **6. THE WILDLIFE, FISH AND ENDANGERED SPECIES ACT**

The new Wildlife, Fish and Endangered Species Act will have some implications for local government, in that the provisions for the protection of wildlife, both flora and fauna, will be broadened.

The government's "**Managing Wildlife To 2001: A Discussion Paper**" suggests that legal protection for rare plant and invertebrate species be included in the new act, and that protection mechanisms for wildlife beyond those now in place (e.g., parks, preserves, etc.) be broadened to include wildlife wherever it is found.

The Discussion Paper states:

"Municipalities and regional districts make decisions daily that affect wildlife species and habitats on lands under their jurisdiction. Formal agreements should be prepared identifying prescriptions for protecting and enhancing species and habitats on those lands - for example, preserving eagle trees, preserving wetlands in parks and controlling goose populations. Information packages on species and habitats should be provided to local governments."

The paper goes on to recommend that the government should:

"Encourage local governments to assume more responsibility for managing wildlife and habitat lands under their jurisdiction."

One direct impact on local government may be proposals for the protection of endangered species that are identified as being in the path of a development. The legislation will require that such species be protected by leaving an area (e.g. 20 meters) around the area where the endangered species is present.

## **7. THE COMMISSION ON RESOURCES AND ENVIRONMENT**

The Commission on Resources and Environment (CORE) is a permanent body, independent of government ministries and mandated to develop province wide strategies for community- based regional planning processes and dispute resolution systems. The Commission's role is to inquire into and advise the public and government on land use and related resource and environmental issues.

CORE's "*Report on a Land Use Strategy for British Columbia*" was released in August, 1992. The provincial land use strategy will incorporate three levels of planning:

- provincial principles, goals and policies;
- regional negotiation processes where broad land use allocations will be determined;
- community-based processes where resource and environmental issues will be managed.

The Report sets out a draft "Land Use Charter". The Charter:

"is a first step in building a provincial strategy that aspires to harmonize all levels of Provincial Crown land use planning and enhance coordination and consistency between Crown land planning and that of municipal government."

The Commission has designed a framework for regional negotiation processes to determine the most appropriate allocation or large scale zoning of land for different regions of the province. Participants in this process, including local governments, will establish the regional boundaries for the planning process.

The allocation or zoning of land will take place at the regional level, while "resource management and planning issues" will be undertaken at the "community" level.

CORE promotes a "shared decision-making" process, which means that:

" ... on a certain set of issues, for a defined period of time, those with authority to make a decision and those who will be affected by that decision are empowered to jointly seek an outcome that accommodates rather than compromises the interests of all concerned."

Over the next year the Commission will be attempting to determine the most effective framework and mechanism for local resource management decision making. Pilot projects will be undertaken to assess alternative models and examine key policy issues including participant selection and accountability, relationships to regional and provincial authorities and the establishment of community boundaries.

Clearly, CORE is setting out to design another planning process for regional and municipal governments. What remains unclear is how that process relates to that of the Ministry of Environment, Lands and Parks Environmental Action Plan.

## **8. LOCAL GOVERNMENT AND THE CONSTITUTIONS: UBCM POLICY**

The UBCM and its constituent local governments have often expressed an interest in achieving recognition as an order of government in their own right, and obtaining greater powers and authorities to meet community needs.

These interests are reflected in the policy passed at the 1991 UBCM convention, "Local Government and the Constitutions". That policy calls for the province to:

"... 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."; and,

"The province would agree to respect areas of local government jurisdiction to the extent of the provincial interest."

The policy paper calls for the creation of a "Local Government Bill of Rights" that 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 government 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.

Local governments would have "general powers" to manage their communities in the areas of

"economic development, resource management, social development, health, environment, etc., (which) would be limited if there were provincial or federal legislation and by conformity to the constitutions."

Finally, 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."

The government's proposals for the devolution of responsibilities to local government are not, then, inconsistent with UBCM policy. In fact, the proposals provide opportunities for the fulfillment of that policy and the development of new relationships and institutions of governance with the province.

## **9. DEVOLUTION, DELEGATION AND LOCAL GOVERNMENT**

The legislation discussion papers and other documents circulated by the Ministry make it clear that a fundamental aim of the Action Plan is to assign authority for a variety of programs to local government.

The Ministry wishes to enter into agreements and "partnerships" with local governments that will provide for the transfer of authority and the shifting of regulatory responsibility, while at the same time local government would remain accountable to the province for that authority.

The province will retain the authority to set policy, regulations, criteria and standards that are seen as being in the provincial interest. Local governments will be required to audit and report upon their performance.

The legislation discussion papers use a variety of words and phrases to describe the proposed changes in the administration of environmental programs: "partnerships"; "shifting the regulatory responsibility"; "responsibilities to be imposed"; "assuming responsibility"; "assigning powers"; "delegation"; and, "devolution".

The UBCM considers that there is a real need for clarification of terms, and that "devolution" and "delegation" mean different things. For the purposes of this process the UBCM assumes that delegation means that the province would appoint local government to act for it or administer its policies and programs. This would involve a narrow decision-making authority for local government, acting virtually as an arm of the Ministry of Environment, Lands and Parks, with power still in the hands of the Ministry. A delegation of responsibility may be appropriate in certain instances if such considerations as liability protection and funding are in place.

The UBCM, however, is uncomfortable with the notion of simple "delegation" of powers.

Devolution, on the other hand, is understood to mean that responsibility is actually passed to local government, with clear lawful authority, enabling power and the tools to do the job - e.g., the power to make by-laws and enforce them.

The concept of devolution is consistent with the UBCM's policy, "Local Government and the Constitutions". It implies a government to government relationship, a real "partnership" between equals, not the unilateral imposition or "assigning" of responsibilities by one party.

Both concepts may have their place but both must deal with the accountability question in its full complexity. With a narrow delegated responsibility the notion of local government remaining accountable to the provincial government presents few problems. But local government would argue that otherwise, their primarily they are accountable to their electors and tax payers. It is those interests that local government must also respect; although it could be accountable to the provincial government to ensure it respects the defined provincial interests. Local government being responsible to the Ministry's regional directors is an inappropriate relationship. A local elected council or board must have clear connections to the Minister or Cabinet.

Neither Delegation or Devolution can mean simply "downloading" - the shifting of financial and administrative responsibility without a corresponding allocation of resources to meet that responsibility. That is unacceptable to the UBCM.

Similarly, it is unacceptable that the province should allocate powers in a way that significantly changes regional and local institutions of governance, without the assent of local government. As well, delegation/devolution must respect the differing capabilities and interests of different local governments.

The UBCM is of the view that if local government is to successfully assume greater powers and responsibilities, there must be a clear, understandable process, based on mutual consent and clear principles, that respects the position of all parties. The UBCM sees the need to go beyond the "Bill 29" process, which was not satisfactory, and should not be seen as a model for future delegation/devolution processes.

## **10. PRINCIPLES AND PROCESS FOR DELEGATION/DEVOLUTION**

The UBCM believes that there are eight basic principles for the successful delegation/devolution of environmental programs to the local level.

### **RECOMMENDATION #1:**

**THE BASIC PRINCIPLES FOR SUCCESSFUL DELEGATION/DEVOLUTION ARE THAT THE PROCESS MUST BE FAIR, OPEN, AND EQUAL.**

To be successful, the process must be:

- **fair**, that is it must be equitable, impartial and respectful of the rights of all parties;
- **open**, that is that all parties must be heard, have complete information about potential impacts on their interests and have equal access to the decision-making process;
- **equal**, in that it is based on a true partnership, where both parties are in agreement and power and decision-making are clearly shared.

### **RECOMMENDATION #2:**

**NO DELEGATION OR DEVOLUTION OF AUTHORITY OR RESPONSIBILITY SHOULD TAKE PLACE UNTIL A COMPREHENSIVE PROCESS OF CONSULTATION, AGREEABLE TO BOTH PARTIES, IS ESTABLISHED.**

The province and the UBCM should jointly agree on a policy and process for consultation before any further movement is made by the province towards delegation or devolution. The consultation process experienced in the Bill 29 Waste Management Act amendments must not be repeated.

Local government must have complete information as to the implications of the delegation/devolution of each program or responsibility.

The province must not promote changes in relationships between regional and municipal governments without the consent of both parties.

### **RECOMMENDATION #3:**

**NO DELEGATION OR DEVOLUTION OF AUTHORITY OR RESPONSIBILITY SHOULD TAKE PLACE UNTIL THE PARTIES HAVE AGREED THAT CERTAIN BASIC CONDITIONS OR CRITERIA HAVE BEEN MET.**

Basic criteria and conditions for delegation/devolution should be agreed upon by the parties. Prior to the transfer of any power or responsibility, the parties should agree that those conditions have been met; e.g. the rationale for devolution, what is to be devolved, when, how, etc.

### **RECOMMENDATION #4:**

**NO DELEGATION OR DEVOLUTION OF AUTHORITY OR RESPONSIBILITY SHOULD TAKE PLACE UNTIL LOCAL GOVERNMENT IS SATISFIED THAT THE APPROPRIATE FUNDING AND RESOURCES ARE AVAILABLE TO MEET THE NEW RESPONSIBILITY.**

The province's discussion papers state that it will "provide support" to local government, including the provision of "technical and scientific expertise" and "mechanisms to generate the necessary funding" to undertake the necessary planning and implementation.

No delegation/devolution should take place unless:

- (a) it is supported by a comprehensive analysis as to the present and future costs and benefits to the local government; and,
- (b) local government is satisfied that the appropriate resources or mechanisms are in place to properly fund the program or responsibility.

**RECOMMENDATION #5:**

**NO DELEGATION OR DEVOLUTION OF PLANNING AUTHORITIES OF ANY KIND SHOULD TAKE PLACE UNTIL THE PLANNING PROCESSES OF ALL MINISTRIES, COMMISSIONS AND AGENCIES HAVE BEEN FULLY COORDINATED.**

The Ministry of Environment, Lands and Parks and the Commission on Resources and Environment have both proposed initiatives that would dramatically alter provincial, regional and local planning processes and authorities.

At the same time the Ministry of Forests continues with its Forest Land Management Planning and Local Resource Use Planning, and regional and local governments continue with their planning processes.

The UBCM believes it would be wrong for the Ministry of Environment, Lands and Parks to proceed with the delegation of planning authorities, as suggested in its discussion papers, until all of those processes have been reviewed and coordinated.

**RECOMMENDATION #6:**

**ANY DEVOLUTION OF AUTHORITY OR RESPONSIBILITY SHOULD BE SUPPORTED BY THE APPROPRIATE LEGISLATIVE, REGULATORY AND POLICY AUTHORITIES.**

The devolution process should result in clear, unambiguous legislative, regulatory and policy changes that meet the needs and requirements of both parties.

Provision should be made for flexibility and change in the legal and policy instruments **to reflect changing social, economic and environmental conditions.**

**RECOMMENDATION #7:**

**ANY DEVOLUTION OF AUTHORITY OR RESPONSIBILITY SHOULD PROVIDE LOCAL GOVERNMENT WITH PROTECTION FROM ANY LIABILITY ARISING FROM THE DELIVERY OF PROVINCIAL PROGRAMS OR STANDARDS.**

Local governments which are carrying out programs and responsibilities where standards and criteria have been set by the provincial government should be saved harmless and protected from liability.

**RECOMMENDATION #8:**

**NO DEVOLUTION OR DELEGATION OF AUTHORITY OR RESPONSIBILITY SHOULD TAKE PLACE UNTIL ALL PARTIES HAVE AGREED TO A PROCESS FOR THE RESOLUTION OF DISPUTES.**

Pursuant to the principle that the devolution process should be based on a real partnership, no party should have the authority to unilaterally make decisions that will affect the other.

The UBCM believes that the theory and practice of dispute resolution best meets the requirements of this process, and will lead to the best results in the devolution process.