



City of Richmond

Report to Committee

To: General Purposes Committee
From: George Duncan
Chief Administrative Officer
Date: November 7, 2001
File: 0035-02
Re: **Community Charter Content (Discussion Paper)**

Staff Recommendation

That the positions contained in this report from the Chief Administrative Officer dated November 7, 2001 regarding the Community Charter be forwarded to the Minister of State for Community Charter and to the Community Charter Council.

A handwritten signature in black ink, appearing to read "George Duncan", with a long horizontal flourish extending to the right.

George Duncan
Chief Administrative Officer

Att. 1

Staff Report

Origin

The Provincial Government has prepared the attached Discussion Paper which contains the provisions that are being considered for inclusion in the Community Charter. Consultations overseen by the Community Charter Council are occurring throughout the Province in November. The philosophical thrust of the proposed Charter is to provide municipalities with greater autonomy and more powers, remove layers of approvals, give assurances on revenue sources, provide a mechanism for greater provincial-municipal consultation, and recognise local government as a true form of government. For the most part, it appears that the Charter will provide a more significant degree of change for the smaller Municipalities, as cities with larger populations such as Surrey or Richmond are already utilising the corporate structures and many of the mechanisms proposed in the Charter.

It is expected that an interim Community Charter Report will be presented to Cabinet on January 15, 2001. Introduction of the Community Charter in the Legislative Assembly for enactment is expected in the Fall session of 2002.

To date, senior staff have only seen discussion papers as opposed to the draft Charter. This is because, staff have been instructed by the Ministry that if the draft is reviewed that staff would not be able to share any of its contents with their City Council. It is for this reason, that we felt that it would be more prudent to provide both the Minister of State for Community Charter and the Community Charter Council with a letter which highlights Richmond's position on some of the proposed key provisions.

Thus, the purpose of this report is to highlight some of the key provisions proposed in the attached Community Charter Discussion Paper. Brief summaries of suggested staff positions on the key provisions are provided in this report to assist Council in providing a City position on the Charter to the Minister. However, in order to provide a more in-depth examination of the Community Charter content, a more extensive position paper prepared by a committee of the Local Government Management Association (Richmond's CAO is a member of the Committee) is attached for Council's consideration.

Analysis

1. Broader Powers

Municipalities presently have broad corporate powers subject to limitations which enables them to: make agreements; provide assistance; acquire, hold, manage and dispose of property; delegate powers; incorporate corporations and establish commissions. It is proposed in the attached Discussion Paper that municipalities should be granted the powers of a "natural person of full capacity" which eliminates the need to itemize corporate powers.

Staff Position

Staff agree that Municipalities should have the same legal powers of "natural person", subject only to restrictions that relate to rights of individuals, limitations of deficits and prohibition of enacting regulations that conflict with existing federal and provincial legislation.

(a) Broad "Service" Powers

Currently, the scope of broad municipal powers is limited and prescriptive in nature. It is proposed that the broadening of service powers be considered to provide municipalities with more flexibility to deliver services. The stated intent is to enable governments to deliver traditional services in new ways as well as to consider new service delivery opportunities. In particular, these new powers could enable local governments to determine which services to provide, how to deliver them, and how they will be financed.

Staff Position

Staff recommend that the Charter should prohibit any downloading unless the municipalities consent and there are sufficient sources of funds to provide the service at the municipal level. Staff believe this important, because if the Province decides to discontinue delivering a service without providing adequate funding sources, the Municipalities may receive public pressure to deliver the service without additional Provincial funding.

Broad "Regulatory" powers

Currently, the areas in which a municipality can regulate are clearly itemized. It is proposed in the attached discussion paper, that regulatory power of municipalities be broadened provided that the consistency rule is maintained. It is also proposed that the power to *prohibit* should be limited. For example, it would not apply to businesses and business activities.

Staff Position

Staff recommend that the ability for Municipalities to prohibit businesses and business activities should be included in the Charter. The need for such powers is apparent when considering community issues such as body rub parlours which have monopolized City and police resources in Richmond over the past year.

2. Municipal Bylaw Courts

Currently, municipalities enforce their bylaws through the provincial court system. As a result, municipal violations are often set aside for provincial court priorities. It is proposed in the attached discussion paper that municipalities be given the opportunity to enter into agreements with other municipalities to establish municipal courts.

Staff Position

Although staff agree in principle with the concept of a Municipal Bylaw Court, at the option of a Municipality or a group of Municipalities, staff recommend that this should only be

undertaken after the Municipalities have an opportunity to do a business case analysis on the concept. In other words, perhaps Municipal Bylaw Courts should be allowed rather than required.

3. Road Title

Presently, municipalities have the right of possession of every highway within municipal boundaries. Even though municipalities have this right of possession, legal title rests with the Province. As a result, a complicated process must be undertaken in order to close or dispose of a road. With some exceptions such as roads classified as highways, it is proposed that the Province transfer all freehold titles of roads to municipalities. This new provision would enable municipalities to directly sell or develop any unused portion of a road.

Staff Position

Thus, staff agree with the concept that Municipalities should have title to parks and roads dedicated by subdivision plans within their jurisdictions, with the exception of those highways that are part of the provincial highway system. Staff believe that this provision would help eliminate unnecessary bureaucracy, and as a result could create more opportunities for public-private partnerships in Richmond.

4. Role of Mayor and Council

It is proposed in the attached discussion paper that the roles of the Mayor, Councillors and the Chief Administrative Officer need to be clarified. There is also some indication that the Mayor's duties may be expanded to include the initiating of policies and programs. It is also discussed, that an acting Mayor should be appointed in the Mayor's absence.

Staff Position

It appears that what is being considered will have more of an impact on some of the smaller municipalities rather than Richmond which is already operating under a professional corporate model. However, staff do recommend that the Community Charter Council provide more information on how they plan to clarify roles so that conflicts do not occur in the future between the duties of the Mayor, Council and the CAO. Given the varying complexity of issues across the province, staff also recommend that it is not appropriate to have an uniform role for the CAO prescribed across the Province.

5. Finances

(a) Revenues

It is proposed in the discussion paper that municipalities may receive the power to earn revenues from water, sewage, and sewage treatment systems. It is also proposed that municipalities be able to create new ways to raise revenues such as amusement taxes, tourism enhancement taxes, special geographical area charge or tax. It is important to point out though, that these revenue ideas cannot create a net loss to provincial revenue.

Richmond has and will continue to seek out new ways of raising revenue. Some of the examples, provided in the discussion paper such as a Hotel Tax have already been implemented in Richmond.

Staff Position

Staff agree with the concept that Municipalities should and need to be allowed to access new revenue sources in order to reduce our dependency on property taxes.

(b) Liabilities and Borrowing

Two processes for seeking public input on long term borrowing are discussed in the attached Discussion Paper.

Staff Position

Staff recommend that the requirement to consult the citizens prior to long term borrowing be regulated by the amount to be borrowed. The specific amount should be set in accordance with the individual Municipality's financial situation.

(c) Tax Exemptions

The attached Discussion Paper proposes that existing statutory tax exemptions included in existing legislation be retained, and is also considering additional exemptions which would stimulate economic development.

Staff Position

Staff recommend that the City should have the power to provide exemptions which further City goals strategically in the areas of business retention and that attract corporations that are large employers.

6. Provincial- Local Government Relationship

It is the vision of the Charter that local governments should have the freedom and resources they need to do their jobs better . The emphasis is on providing assistance and advice rather than Provincial approval. In the discussion paper on the Community Charter, potential policy directions are provided on: consultation; dispute resolution; off-loading, and amalgamation.

Staff Position

Staff recommend the following:

- *that the Community Charter Council or a like body should be dissolved after the Charter is adopted.*
- *the Charter should contain a clear dispute resolution method for disputes between individual Municipalities and between Municipalities and the Province.*

- *the province should not adopt any new regulations or legislation which impact Municipalities without consultation.*
- *that the Charter should specifically prohibit any down-loading of responsibilities to Municipalities unless the Municipalities consent and there are sufficient and sustainable sources of funds to provide the service at the municipal level.*
- *the Charter should contain provisions to ensure that the Province cannot force amalgamations.*

7. Public Participation, Access and Accountability

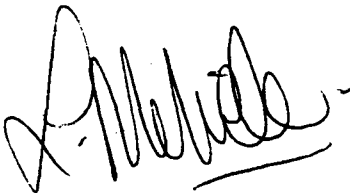
Several clauses are proposed that are intended to support open and transparent government at the Municipal level. For example, it is proposed that Municipal Councils be subject to performance reports.

Staff Position

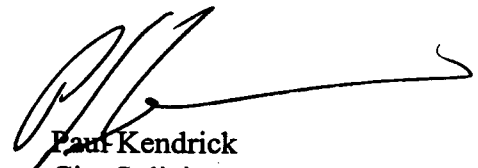
- *Referendums should only be used for significant borrowing and spending decisions.*
- *Interim Municipal Council reviews are an unnecessary bureaucratic step, because the existing election process is an efficient performance measure.*
- *That the Charter should permit Councils to have more flexibility in considering matters in closed meetings, specifically business negotiations.*
- *That any guidelines for conflict of interest for councillors should be clear and tailored to meet individual city's needs*

Conclusion

This report highlights and provides staff positions on some of the key provisions presented in the attached discussion paper on the Community Charter in order to assist Council on providing Richmond's position to the Minister of State for Community Charter.



Lauren Melville
Manager – Policy & Research



Paul Kendrick
City Solicitor

The

Community Charter

The Community Charter –
A Discussion Paper

*Minister of State for
Community Charter*

October 2001



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Note:

This document presents highlights of the Community Charter, and has been prepared by the Minister of State for Community Charter for the purposes of regional consultations.

The document presents the current thinking about the Community Charter, in the form of proposals, but does not represent decisions made by Community Charter Council appointed under the *Community Charter Council Act*.

The Community Charter

Introduction

The British Columbia government is developing a Community Charter to give communities the powers and resources to make local decisions locally. The Charter seeks to strike an unprecedented partnership between municipalities and the province where municipal councils will look after community governance and the province will address the public interest of British Columbia as a whole. The Charter will build on the *Local Government Act* and reinforce in law that municipalities are an order of government in British Columbia. The Charter will give municipalities greater powers and new freedom to take action and make decisions.

This discussion paper will outline the most significant provisions proposed for the Community Charter. Because the provincial government continues to seek ways to strengthen the local government-provincial government relationship, and gain the full benefit of local input, this paper will be used as part of the consultation process seeking feedback on the content and implications of the Community Charter.

Overview of the Community Charter

The Charter will be based on the principle of respect and recognition for communities and their local governments. It will enable municipalities to become more self-reliant by providing them with greater autonomy, independence, new powers and better financial and other tools for governing communities and delivering services.

It will also create a new accountability framework for citizens to make sure government remains accessible and accountable in every community. Its vision continues to be based on principles of open, accountable and financially responsible municipalities.

The Charter itself will be shorter and easier to read than existing legislation and will eliminate red tape for citizens and municipal councils alike.

Background

Municipalities are an engine of our well being, and provide the government and services that are closest to the people.

The provincial government is responsible for the framework that creates and maintains the system of local government within the province. Since the 1880's, British Columbia provided this framework through the *Municipal Act*, and, more recently, through the *Local Government Act*.

In 1991, the Union of British Columbia Municipalities (UBCM) proposed a Bill of Rights for municipalities. This Bill of Rights sought greater freedom and broader powers for municipalities and proposed that municipalities be recognized as an order of government.

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In 1995, while in Opposition, the BC Liberals introduced the Community Charter in the form of a private member's bill containing a draft statement of principles, and promised to enshrine municipal rights in legislation.

Although the detailed provisions of the Community Charter have been refined, and will continue to respond to the consultation process, the principles have remained.

Reasons for Reform

True reform is long overdue. Despite gradual changes over time, British Columbia's existing legislation no longer meets municipal needs:

- There are too many limitations on municipal powers.
- Municipalities have too little power and not enough resources to fulfill their responsibilities.
- Municipal authority to raise funds locally is too limited.
- The provincial government is too involved in telling municipalities what they can and cannot do, second-guessing municipal decisions.
- The approval process is time-consuming and costly because of too much red tape.
- The approval process often means local opportunities are lost.
- Steps taken toward evolutionary change have been too slow.

The provincial government is now ready to move beyond the tradition of having local government legislation that is narrow, paternalistic and bound by strict rules. The province has heard the demands of local governments and is ready to provide legislation that suits the unique needs of municipalities in the 21st Century.

The Community Charter Process

As a priority of the provincial government, the Community Charter is on track to become law in the fall of 2002. The first step in this process was taken when the *Community Charter Council Act* was given Royal Assent in August, 2001. The Act created the Community Charter Council to oversee the development of the Community Charter.

The Community Charter Council

The Community Charter Council is a joint provincial-municipal advisory body that will give the provincial government the advice it needs to develop a Community Charter that meets provincial and municipal needs. The *Community Charter Council Act* makes the Council responsible for preparing a report to Cabinet that includes a draft of the Community Charter.

The council has 12 members: four selected by the UBCM, four selected by the provincial cabinet on the advice of the UBCM to be members at large, three selected by the

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provincial cabinet to represent provincial interests, and the Minister of State responsible for the Community Charter. Council members are:

Provincial Representatives

- Ted Nebbeling, Minister of State for Community Charter, Chair
- Keith Saddlemyer, management consultant, former provincial DM, former chair Property Assessment Appeal Board
- Ben Marr, retired provincial DM and GVRD manager
- Don Avison, President of University Presidents' Council, former provincial DM

UBCM Representatives

- Jim Abram, UBCM Past-President, Comox Strathcona RD
- Hans Cunningham, UBCM President, Central Kootenay RD
- Patricia Wallace UBCM Vice-President, Kamloops councillor
- Frank Leonard, UBCM Vice-President, Saanich mayor

Members At Large

- Joyce Harder, former UBCM president, former Lillooet mayor
- Marilyn Baker, former UBCM president, former North Vancouver District mayor
- Gerry Furney, Port McNeill mayor
- Helen Sparkes, UBCM Vice-President, New Westminster mayor

Consultations

The Community Charter Council will oversee the consultation process. This process began with consultations and information sessions at the UBCM Convention in Vancouver during September, 2001. It will continue with regional consultation meetings throughout October and November, 2001 (A list of scheduled meetings is attached in Appendix A). In addition, after a white paper is tabled, there will be extensive opportunities for input from local governments and other interested parties.

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Timetable

Regional consultations	October to November, 2001
Interim CCC report to Cabinet	January 15, 2002
Draft Charter tabled in Legislative Assembly in white paper form	February, 2002
Public consultation	March to mid-June, 2002
Final CCC report to Cabinet	July, 2002
Introduction of Community Charter in the Legislative Assembly for enactment	Fall Session, 2002

Phased Legislation

The province is taking a phased approach to reforming local government legislation. Phase One of the Community Charter will deal only with providing more and broader powers to municipalities, strengthening inter-governmental relationships and improving public participation. Not until Phase Two will key issues like regional districts, elections, regional growth strategies, planning and land use, and heritage conservation be addressed.

The province is addressing municipal reform first. The regional district system will be examined within two years during Phase Two of the legislative review. The province hopes to start significant reform for all communities while allowing more time to consult on changes at the regional district level. In addition, the two-phase approach will give regional districts time to adjust to the impacts of legislative changes already in force through the *Local Government Act*.

Despite focussing on municipal reforms in Phase One, regional districts will play a vital role in shaping the Community Charter. Regional districts were presented with information on the Community Charter at the UBCM Convention. They are also included in the planned series of regional consultations taking place in October and November.

Interim Measures: The Local Government Act

The *Local Government Act* will remain in force until the Community Charter is passed. Once the Community Charter has been given Royal Assent, Part 24 of the *Local Government Act* governing regional districts will continue to apply until changed during Phase Two of the Community Charter process. Other provisions not addressed by the Community Charter are:

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- Elections.
- Land use planning.
- Improvement districts.
- Heritage conservation.
- Regional districts.
- Regional growth strategies.

The associated parts of the *Local Government Act* will also remain in force until addressed in Phase Two.

Principles of the Community Charter

In preparing the Community Charter, the Community Charter Council is guided by the following key principles:

- The residents of British Columbia have the right to form autonomous municipalities that provide for the residents' needs for community association.
- Municipalities are recognized as an order of government in British Columbia.
- Municipal governments must be democratically elected, responsible, accountable and accessible.
- Municipal governments must be provided with adequate powers and discretion to address existing and future community needs.
- Municipal governments have authority to determine the public interest of their communities, including authority to determine the level of municipal expenditures and taxation.
- Municipal governments have authority to determine their administrative mechanisms in order to adapt them to community needs and to ensure effective management and delivery of services.
- Municipalities must be able to draw on financial and other resources that are adequate to support community needs.
- Before new responsibilities are assigned to municipalities, there must be provision for resources required to fulfill the responsibilities.
- The provincial government must respect municipal authority in areas of municipal jurisdiction.
- The provincial government must respect the varying needs and conditions of different municipalities in different areas of British Columbia when taking actions that directly and specifically affect municipalities.
- The provincial government must notify and consult with municipal governments before it takes actions that directly and specifically affect municipalities and when addressing inter-provincial, national or international issues or agreements that affect them in that way. The provincial government and municipalities will attempt to resolve conflicts by consultation, negotiation, facilitation and, if necessary, formal dispute resolution.

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Together, such principles will combine to guide the Community Charter so that municipalities have more autonomy, broader powers, and more financial flexibility. The need for provincial approvals will be greatly reduced and red tape will be cut – allowing municipalities to do their job more effectively.

Broader Powers

The Community Charter will be founded on the key principle that municipalities must be recognized as an ‘order of government’ within British Columbia. This principle has been a demand of the UBCM since it published its watershed policy paper, *Local Government and the Constitutions*, in 1991. With this recognition, the provincial government is going as far as it can – in the absence of constitutional change at the federal level – to respect the important role of local governments in British Columbia, and to base its reform of local government legislation on that role.

Natural Person Powers

Currently, municipalities are corporations provided with broadly worded corporate powers (*LGA* s.176), including powers to:

- make agreements,
- provide assistance,
- acquire, hold, manage and dispose of property,
- delegate powers,
- incorporate corporations,
- establish commissions.

These corporate powers are subject to some requirements, including limitations on the making of agreements, providing assistance, land disposition, delegation and incorporating corporations.

The Community Charter proposes that municipalities be granted the powers of a ‘natural person of full capacity’. Pioneered in Alberta, this method of drafting legislation does away with itemizing corporate powers. Today, some provinces have adopted the natural person power approach, while others take a corporate powers approach. Natural person powers do not confer or expand any regulatory or taxing powers since *natural persons* don’t have any such authority.

Generally, natural person powers do not give municipalities more jurisdiction than they normally have: such powers merely increase the corporate capacity in relation to powers that have already been delegated. From a policy viewpoint, greater corporate powers are generally balanced by greater ‘shareholder remedies’, such as public participation, accountability and transparency rules. When considering natural person powers, the

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Community Charter Council will be giving careful thought to the kinds of requirements that may be needed.

Broad Service Powers

The Community Charter proposes to give municipalities general authority to act within broad areas of responsibility. This reverses the traditional approach to municipal powers that legislated powers one by one in a rigid manner. The scope of municipal action could be defined broadly to include such things as:

- peace, order and good government,
- health and well-being of persons,
- safety and protection of persons and property.

Where local bylaws might overlap an area occupied by provincial or federal law, the 'consistency rule' would apply: a municipal bylaw is allowed if it does not force a person obeying it to violate a law of another level of government. The consistency rule also applies to regulatory powers, as described below.

The Community Charter proposes to give municipalities broad powers to deliver services. Unlike narrow, prescriptive powers, the powers proposed for the Community Charter would allow municipalities to do business more effectively and with greater flexibility. If these powers are adopted, municipalities ought to be able to deliver traditional services, like recreation, in new ways. They will also be able to consider new service opportunities in areas like economic development and safety. These broad powers and adaptable service delivery options should enable municipal councillors to consider which services to provide and how to deliver them. It will be up to municipal councils to decide what services a municipality needs and how they will be provided and financed.

Regulatory Powers

Unlike the traditional approach to regulatory powers, the Community Charter proposes to broaden the regulatory powers of municipalities. Municipal jurisdiction could be expanded, but, if so, the 'consistency rule' would be maintained. This rule holds that a municipal bylaw is permissible if, when following it, an affected person is not made to violate any law set by another level of government. For example, if a municipal bylaw *requires* an action that a provincial regulation *prohibits*, then the municipal bylaw would be inconsistent with the provincial regulation because obeying one law necessarily involves breaking the other law.

Providing broader regulatory capacity would allow municipalities to define where and how they want to act in a particular area. This opens municipalities up to acting on new matters now not possible under existing legislation. As an example, the current legislation

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provides municipal authority to regulate animals in six different sections, itemizing specific authorities one by one.

The broadest definition of 'regulation' includes several things. Regulation includes the power to authorize, control, inspect, limit and restrict the actions of the person, property or thing being regulated. Significantly, it also includes the power to *prohibit* and the power to *impose requirements* in relation to persons, property, things and activities. These are strong powers that, in most provinces, are subject to statutory restrictions and limitations, or are specifically itemized. The Community Charter Council will examine which statutory restrictions and limitations may be required on the power to regulate. One of the key considerations for the Council will be clarifying and balancing municipal versus provincial interests, where these intersect.

Under the proposed Community Charter, municipalities could have the power to vary regulations by class and set terms and conditions considered appropriate. Municipalities could also be authorized to develop a comprehensive system of licenses, permits and approvals.

Under the Community Charter proposal, municipalities could – at their discretion, but subject to the consistency rule and any statutory restrictions or limitations – use the proposed new regulatory powers to:

- Impose residential sprinkler requirements.
- Set local speed limits lower than provincial limits.
- Impose building maintenance requirements on property owners.
- Control pawnshops.
- Customise regulatory tools to promote economic development or other reasons.
- Top-up pesticide regulations.

Clearly, the question of how to deal best with the extent of the powers of regulation, prohibition and imposing requirements is an area for legislative development. The Community Charter proposes that the power to prohibit would be limited – for example, it would *not* apply in relation to businesses and business activities. Prohibition authority, the power to regulate and the power to impose requirements may be subject to further refinements based on the advice of the Community Charter Council.

Municipal Bylaw Courts

Currently in British Columbia, municipalities enforce their bylaws through the provincial court system via Municipal Ticket Information (MTI) or a municipal bylaw violation notice ('long form'). Unfortunately, the costs of prosecution are often too high for municipalities. As well, the volume of cases appearing before the courts cause municipal cases to be set aside for other provincial court priorities, such as criminal matters. Municipalities face the ongoing problem of not being able to enforce bylaws designed to

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assist and enhance their communities. Citizens, too, suffer from a lack of access to the provincial courts for municipal matters. MTI's represent the most recent attempt by the provincial government to provide better municipal bylaw enforcement. However, MTI's must be personally served and increase the cost of processing parking tickets – the vast majority of municipal bylaw violations.

The Community Charter proposes to enable municipalities to enter into agreements with other municipalities and/or regional districts to establish municipal courts. One possible form these courts could take is that of the pilot 'municipal bylaw courts' that have been in place in British Columbia for the past decade. In Kelowna, Prince George and Kamloops, a Judicial Justice of the Peace (JJP) has authority to hear all municipal bylaw matters. This has provided these municipalities with better access to the provincial court. Throughout the rest of BC, JJP's may only deal with tickets for matters like parking. Only Provincial Court Judges may hear actions commenced by long form. There may be other models that can meet municipalities' needs as well as those of the judiciary and province. The Community Charter Council will be considering a range of local, provincial and judicial issues, including access to courts, fine / penalty collection, costs, and judicial independence.

Road and Park Title

Currently, municipalities have the right of possession of every highway within municipal boundaries. Even though municipalities have this right of possession, legal title to these highways rests with the provincial government. This means that a complicated, inter-governmental process must be completed before closing and disposing of a road. This creates difficulties for the municipalities in achieving some of their objectives, like supporting an affordable housing project or creating a park.

The Community Charter proposes to transfer the soil and freehold title to all roads within municipalities from the province to municipalities, with the exception of highways:

- through or in provincial parks,
- over First Nations reserves,
- under federal jurisdiction,
- on public rights of way on private land, and
- classified as arterial highways.

The real property would be vested in fee simple, as is now the case in Vancouver and New Westminster. This proposed change would remove the requirement for provincial approval of road abandonment, with the exception of roads that might affect provincial highways. Transfer of title is not intended to affect the integrity of the provincial highway system. The new rules would allow municipalities to sell any unused portion of a highway directly to a developer for housing construction, following notice.

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Municipalities could also include title to a portion of road as part of a consideration in a public-private partnership to develop a municipal site, following notice.

As a result of previous amendments, title to municipal parkland dedicated to the public by subdivision plan after January, 2001, is vested in the municipality. The Community Charter proposes to transfer the title to municipal parkland provided by subdivision *before* January, 2001, to municipalities, since title still rests with the Crown.

Municipalities will continue to have the power to dispose of parkland either by selling it or by exchanging it for other land suitable for a park. As before, proceeds will have to be placed in a parkland acquisition reserve fund. In addition, before moving park boundaries or disposing of parkland, the Community Charter proposes to make assent of the electors a requirement.

Role of Mayor and Council

The Community Charter proposes to change the assigned duties and powers of mayors. Existing powers will continue, and the mayor will continue to be the chief executive officer of the municipality. But the mayor would have anew duty of initiating policies, programs and bylaws and would be required to lead the process for setting priorities and objectives. The mayor's role in suspending officers and employees will be clarified.

To improve the stability and continuity of municipal governance, the Community Charter proposes to make it mandatory for municipalities to designate a councillor to act in place of the mayor when the mayor is absent.

The Community Charter proposes, for the first time, to set out the roles of council members and specify a number of new requirements for council. These new requirements include requiring participation in council meetings and keeping information in confidence, with penalties for a breach of confidentiality. The legislation proposes to clarify reconsideration of matters, including that the power of reconsideration extends to the council. As well, the role of the Chief Administrative Officer (CAO) will be explained in relation to the mayor and council, and in relation to other officers and employees.

Some important considerations will underlie the actual legislative draft. A critical one is how the role of the CAO is best clarified. The legislation could allow councils to define the duties of a CAO, or it could prescribe the duties in order to provide a level of consistency across the province.

Finances

Like other orders of government, municipalities face demands for more and better services in a time of fiscal restraint. Currently, municipalities rely primarily on property

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tax revenues to fund and maintain an acceptable level of service. As demands for new and better services increase, so too must the municipal ability to draw on financial and other resources that meet community needs. Municipalities need more flexibility to design local service models and tap revenue sources to meet their unique local priorities. Local self-sufficiency is critical to the kind of local self-determination the Community Charter is meant to support.

Revenues

The Community Charter proposes to introduce new flexibility such as the power to earn revenues from water, sewage and sewage treatment services.

It also proposes that municipalities be able to apply to put in place new ways to raise revenues, such as amusement taxes, tourism enhancement taxes, or revenue programs that have worked in other jurisdictions. In their application concerning new powers, municipalities would need to show that their revenue ideas are necessary and workable, and that they will not create a net loss to provincial revenue.

This is not an entirely new concept. For example, a municipality in British Columbia can now apply to the provincial Consumer Taxation Branch to levy, on its behalf, a two per cent tax on accommodation sold within their whole jurisdiction or defined areas in addition to the eight per cent tax normally collected. The extra tax collected is remitted to the municipality and is to be used to finance and operate new tourism facilities or tourism promotion.

In addition, the Community Charter proposes to expand the power to create and finance services within defined geographic areas using any type of tax, fee or charge. This is the kind of authority regional districts have enjoyed for years. Under Part 19 of the *Local Government Act* (Local Improvements and Specified Areas), there are some fairly archaic provisions for providing services to smaller geographic areas of municipalities. The Charter concept of geographic areas for service delivery could also encompass business improvement areas, but, if so, its provisions would be simpler and more straight-forward. The Community Charter proposes to have a single process for all small-area services, with a broad range of cost recovery and regulatory powers.

Liabilities and Borrowing

Currently, municipalities cannot incur a liability unless they are empowered by statute. In most cases, the total liabilities that may be incurred are limited by the value of municipal assets and the size of the tax base. Voter approval, either by referendum or by counter-petition, is generally needed for any liabilities greater than five years. The approval of the Inspector of Municipalities is required for most borrowing. All long-term borrowing must be undertaken through the Municipal Finance Authority, and all municipalities and regional districts are ultimately liable for the repayment of an individual local government's debt. These limitations sometimes make it difficult for municipalities to

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respond quickly to financial opportunities because of the costs and delays of procedural restrictions. However, these same limitations are the underpinning of the very sound system for capital finance already in place, through the Municipal Finance Authority, for British Columbia local governments. The Community Charter will maintain the integrity of this system.

Adjusting the role of the voters in decisions surrounding the creation of long-term liabilities is a key issue requiring careful thought by Community Charter Council. Clearly, voters want – and the MFA system demands – that voter approval be part of the decision making process for all significant decisions. But what is ‘significant’? The question is surprisingly tricky to answer.

Understanding the idea of *materiality* is a key to redesigning the system for voter approval. All involved in municipal issues agree that voters should approve significant decisions through referenda. Most agree that it ought to be possible for less significant decisions to be made by councils without direct voter involvement. There are two possible ways to establish the line between the two, that is, to define materiality:

- One approach is similar to s.231 of Alberta’s municipal statute that enables electors to petition for an assent vote – the ‘direct democracy’ approach which seeks voter input on the question of materiality.
- The other approach is to prescribe a threshold level, above which a referendum would be required – the ‘statutory threshold’ approach that provides more certainty over which spending proposals fall outside of the referendum requirement.

The Community Charter Council will compare and contrast the two different approaches.

Whatever the outcome of Council’s deliberations, these new powers should allow municipalities more flexibility in structuring financing opportunities that maximize municipal abilities to find local solutions to local issues. They also must preserve the integrity of the existing Municipal Finance Authority-based system for long-term finance and maintain the strong credit rating of municipalities within British Columbia. Maintaining all the key existing features of the long-term finance system is a key Community Charter deliverable.

The Community Charter proposes that municipalities must notify the public before adopting a borrowing bylaw. Borrowing will be restricted to loans that do not exceed the ‘probable life’ of the asset, or 30 years, whichever is less. As well, funds that have been borrowed must be used for the purpose and in the manner described in the borrowing bylaw. Under the Charter proposal, a statutory official like the Inspector of Municipalities must still approve all borrowing. This is a key foundation for the strong local government credit rating.

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In addition, the Community Charter proposes that municipalities have the power to lend money and guarantee the repayment of loans to municipally controlled corporations, non-profit agencies, public authorities and persons providing services. All activity under this provision, as well as any liabilities incurred under agreements such as public-private partnerships, would be included in the calculation of municipal liability limits, to ensure there is no perception of an increase in the local government credit risk.

Tax Exemptions

The Community Charter proposes to retain statutory tax exemptions as set out in the existing legislation. However, the Community Charter proposes to allow the possibility of new exemptions that have not previously been used. One of the areas under consideration is the notion of providing tax relief to business enterprises, either to stimulate new economic activity or as a hedge against threatened job loss. This is not a completely new concept: during the recession of the 1980's, municipalities had the power to offer tax exemptions of 50 to 100 per cent to promote economic development. A provincial school tax exemption of 50 per cent also applied. Municipalities also had the authority to reduce the business license fee and development cost charges applying to eligible businesses for up to five years. These exemptions were used to kick-start an economic recovery, not to engage in long-term inter-municipal competition for business.

The Community Charter Council will examine the merits of introducing similar flexibility through the Community Charter. The 1980's program serves as one model of how these exemptions might proceed. The Council will consider matters such as whether to repeal the existing rule that prevents local government from aiding industrial, commercial or business undertakings, and what kinds of assistance are appropriate. It will also consider whether municipally determined exemptions should trigger automatic reductions in provincial school tax payable.

Provincial-Local Government Relationship

The vision of the Community Charter is that local governments should have the freedom and resources they need to do their jobs better. By continuing to recognize municipalities as an order of government within British Columbia, the Community Charter will support municipalities to reach their goal of more autonomy and self-reliance. More powers, better tools and more access to financial and other resources will reduce the dependence of municipalities on the provincial government, creating a more equal relationship. The Community Charter seeks to reinforce a new attitude of partnership.

The Community Charter proposes a shift from an emphasis on giving provincial approval to an emphasis on providing high quality advice and assistance to local governments. Provisions in the Community Charter will enhance consultation mechanisms for everything affecting municipalities, including changes to any legislation affecting municipalities and jurisdictional issues.

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Consultation

The Community Charter proposes to provide a requirement making consultation mandatory when the province intends to take actions that affect local governments directly. For example, there could be an expectation for provincial consultation with municipalities whenever the province wants to change legislation that might have a direct impact on specific communities. By requiring consultation, the Community Charter would make sure that provincial initiatives meet local needs. This would create a more cooperative provincial-local government relationship that reduces tensions and disputes. The establishment of the Community Charter Council, which has members selected by both the provincial government and the UBCM, illustrates the kind of shared decision-making that could be supported by the Community Charter. The Community Charter Council will be considering a range of options for promoting productive, efficient consultation opportunities.

Dispute Resolution

The Community Charter recognizes that disputes between municipalities and another local government, the province or a public authority will sometimes occur. In the past, these disputes have been decided either through arbitration or the courts, processes that have been costly, time-consuming and adversarial. Within the existing legislation, alternative dispute resolution (ADR) tools, such as mediation, facilitation and interest-based negotiation, are available only for disputes arising from regional growth strategies and regional district service conflicts.

The Community Charter emphasizes inter-governmental consultations that try to avoid disputes before they happen. It proposes to expand ADR options to any inter-governmental dispute. It would retain powerful, built-in incentives to resolve conflicts without going to formal dispute resolution processes such as arbitration. These provisions would save disputing parties time and money but will not prevent them from having access to arbitration or the courts if ADR methods fail. As well, it would encourage non-binding dispute resolution methods that are efficient, cost-effective and beneficial for building long-term, positive and productive relationships.

Offloading

Municipalities have long been concerned about 'offloading', for instance, being required to take on new duties. Concerns about municipalities being saddled this way with new responsibilities focus on how they will be able to afford such responsibilities (provision of resources) and the lack of due process in the offloading decision (consultation). In making its recommendations on the Community Charter, the Community Charter Council is guided by the principle that the required resources must be provided to fulfill responsibilities before new responsibilities are assigned to municipalities. The Council will be considering how to make this principle into a workable and effective requirement.

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It will fully consider the nature of consultations that would be required of the provincial government.

Amalgamation

The Community Charter proposes to make sure there is no forced amalgamation of one or more municipalities. The legislation could, for instance, require that electors in each municipality give their approval before municipalities can be amalgamated.

Public Participation, Access and Accountability

The Community Charter proposes many clauses that will support open, transparent government at the municipal level. A corporate model of accountability would improve the effectiveness and accountability of municipal governments by streamlining decision-making processes. A key benefit of using this model is that municipalities would be able to make decisions efficiently while remaining open to public scrutiny.

Elector Assent

Under existing legislation, elector assent is required either by referendum or counter-petition for issues like making long-term financial commitments or providing a long-term tax exemption. Currently, votes are required for decisions like changing the size of the municipal council, stopping municipal sewer and water services, and fluoridating water.

The Community Charter Council will be considering a move to a more corporate model of accountability by ending counter-petitions and eliminating referenda for a range of issues.

Some assent requirements would remain under the Charter proposal: assent will still be required for decisions that would affect the Municipal Finance Authority (MFA) and its "triple-A" rating. This restriction has been put in place because the MFA credit rating is built on the joint and several liability of all of its members. The use of elector assent and the provincial approval of borrowing are part of the framework that reduces the risk of defaults on loans that would negatively affect the credit rating for all municipalities in British Columbia.

By eliminating many elector assent requirements, local governments may be able to operate more effectively and efficiently, saving both time and money. Instead of relying on voter assent to allow public input into decision-making, municipalities would be accountable to its citizens through public notice, hearings, annual reports, annual meetings and performance measures. The Community Charter proposes that referenda would continue to be used in the case of significant spending decisions.

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Open Meetings

To make sure local governments remain accountable to their citizens, the Community Charter proposes that open meetings of municipal councils, committees and other municipal bodies, like boards of variance and advisory planning commissions, should still be required. The Community Charter may also require greater statutory disclosure and consultation. For example, regulatory bylaws will require notice. Community Charter Council will consider the question of whether or not more notices and more public hearings may be required in other areas of municipal activity.

The Community Charter Council will consider whether to provide additional permissive exceptions that allow closed meetings based on the subject matter being considered. Specifically, the Community Charter Council will be considering whether some negotiations can be discussed in private. The goal is to enable municipal councils to perform their administrative duties more efficiently, while remaining suitably accountable to the public.

Open Government Provisions

Under the corporate model of municipal governance, the Community Charter proposes to continue the existing requirement that municipalities develop five-year financial plans based on public consultation. In addition, an annual general meeting and an annual report would also be required. The Community Charter proposes that municipalities should continue to audit their finances and disclose these audits publicly. Any financial irregularities must be reported to the auditor and to the municipal council.

The Community Charter proposes that municipal councils must report on their performance to their citizens, based on flexible guidelines. The guidelines would reflect the wide range of circumstances within the province. For example, performance guidelines could be more elaborate in a large Lower Mainland city than they would be in a smaller village in the Interior.

Redress will still be possible through application to the court, the Ombudsman, or the Privacy Commissioner. No change is proposed in the application of ombudsman or information and privacy legislation to municipalities.

Conflict of Interest Guidelines

To maintain public confidence in fair decision-making, the Community Charter proposes new conflict of interest guidelines. These guidelines would be locally focussed to meet local needs. Specifically, the rules for provincial MLA's will not be imposed on local governments.

The Community Charter proposes to expand and clarify guidelines on conflict of interest for financial interests. The Charter Council will be considering a list of exceptions to

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identify situations where no conflict exists. These guidelines would apply to members of municipal councils. Exceptions where no conflict exists could include situations such as:

- Being a volunteer who receives remuneration.
- Holding a municipal debenture.
- Receiving a municipal service under similar conditions to others.
- Remote or insignificant interests.

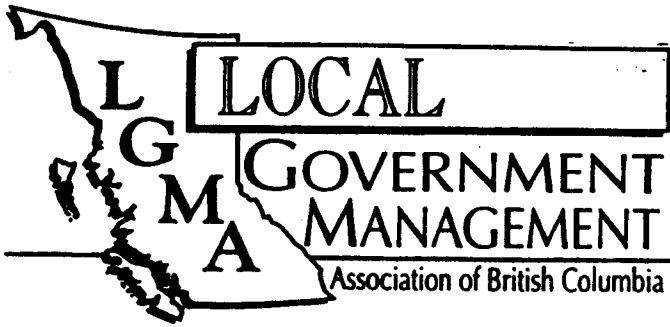
As well, the Community Charter proposes to set up the first rules ever for receiving gifts and benefits. It is proposed that members will be prohibited from accepting gifts as a result of performing their duties. Exceptions could be made for situations like:

- Compensation authorized by law.
- Campaign contributions.
- Gifts below a set value.

The Community Charter proposes to restrict former council members for a set period from being awarded or granted a contract or benefit. Charter Council will be considering necessary refinements to this principle.

Conclusion

The Community Charter seeks to provide municipal governments with a level of autonomy and self-reliance unprecedented anywhere else in Canada. It points to a new era of partnership and cooperation between local governments and the provincial government and heralds a more equal relationship between these orders of government. Working together to shape the draft legislation for the Community Charter, the province and local governments can make sure the Community Charter addresses existing legislative problems and meets local needs.



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PRINCIPALS OF THE COMMUNITY CHARTER

**Submitted to: Honourable Ted Nebbeling
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November 08, 2001

PRINCIPLES OF THE COMMUNITY CHARTER

Introduction

This paper considers some issues relating to the proposed *Community Charter* legislation. For the most part, the comments in this paper are based on material concerning the *Community Charter* provided to delegates at the 2001 UBCM Convention Pre-Conference Session on September 24, 2001; a document dated September 26, 2001 entitled "Community Charter Consultation, Phase I: Some Selected Highlights of the Proposed Community Charter for Initial Discussion Purposes", and a paper presented to the 1999 Annual Conference of the Federation of Canadian Municipalities entitled "A Comparison of New and Proposed Municipal Acts of the Provinces".

The discussion of the proposed *Community Charter* in this paper is, necessarily, very general in nature. The current draft or "working document" of the proposed legislation is not available for review. Until the proposed legislation is available, it is impossible to evaluate its possible impact or to comment on it other than in a most general way.

The Constitutional Framework: Can a *Community Charter* make municipalities an order of "government"?

Under the Canadian Constitution (the *Constitution Act, 1867*) all legislative jurisdiction or lawmaker powers are conferred on the federal Parliament and the provincial Legislatures. Parliament is given the exclusive power to legislate in relation to ". . . all Matters coming within the Classes of Subjects . . ." set out in s. 91 of the *Constitution Act, 1867*. Similarly, provincial Legislatures are given exclusive legislative jurisdiction in relation to the "Classes of Subjects" set out in s. 92 of the *Act*. One of those (s. 92 (8)) is "Municipal Institutions in the Province".

Unlike the federal and provincial governments, municipalities derive no powers or jurisdiction directly from the Constitution. Municipalities derive their existence, and their powers, solely from the provincial Legislature as it exercises the power conferred on it under s. 92 (8) (and other provisions) of the Constitution. As recently stated succinctly (and bluntly) in *Canada (Commissioner of Official Languages v. Canada (Department of Justice)*, [2001] F.C.J. No. 431 (T.D.) at para. 131:

Municipalities are creatures of the provincial government, and there is nothing in either the Constitution or the Charter [of Rights and Freedoms] that guarantees their existence.

Just as the existence of municipalities is entirely dependent upon the provincial government, so is the scope of their powers. Municipalities only have those powers which are specifically delegated to them by the provincial Legislature. For the most part, these powers are currently delegated to municipalities under the *Local Government Act*.

This constitutional reality is acknowledged in the 1999 FCM Annual Conference discussion paper (at page 1):

The Canadian constitution does not recognize local governments as an order of government, despite expectations on the part of local citizens that municipal institutions act as if they constituted a level of government . . .

In the context of proposals for future constitutional change, local governments must be careful to articulate local interests and needs in a way that will result in formal recognition as an order of government with enumerated powers. In the meantime, it will be necessary for the provinces to enact legislation to expand the jurisdiction and capacity of municipal institutions, permit greater local autonomy, force meaningful consultation and permit greater innovation.

Furthermore (at page 3):

Local authorities may only accede to autonomy and to recognition as an order of government through constitutional change. Most of the principles of local self government . . . can only be realized as result of an amendment to the Constitution Act, 1867. To the extent there is not an adequate public appetite for such change during the next round of constitutional talks, local citizens and authorities will have to be satiated with protocols and entrenchment structures that strive to approximate the international principles of local self government in the context of the existing Constitution, pursuant to which local governments suffer a subordinate, delegated legal status.

The Canadian Constitution creates the relationship of "dependency" that exists between municipalities and the provincial government. **Assuming that the phrase "order of government" means an autonomous, independent level of government whose existence and powers are not dependent on and determined by another order of government, a municipality cannot be an "order of government". The enactment of *Community Charter* legislation will not change this Constitutional reality.**

Spheres of Power

Although the Canadian Constitution prevents municipalities from being an "order of government in the constitutional sense described above, the provincial government may delegate to municipalities the power to regulate any matter that comes within the legislative jurisdiction given to the province under the *Constitution Act, 1867*. This enables the provincial government, if it chooses to do so, to confer broad powers on municipalities. Depending on the nature and scope of the powers delegated to municipalities, the effect may be to treat local governments "as if" they were an order of government.

This seems to be one of the reasons motivating the enactment of the proposed *Community Charter*: to create a new relationship between the provincial government and municipalities and to give municipalities broader powers that will make them more like (or "as if") they are an independent, autonomous order of government. It appears that one mechanism proposed to accomplish this goal is a dramatic change in how powers are delegated to municipalities.

Historically, provincial Legislatures have conferred powers on municipalities by detailed empowering provisions in provincial enabling legislation. The current *Local Government Act* is an example of this approach to legislative drafting. The 1999 FCM discussion paper says the following (at page 11) about this approach to delegating powers to municipalities:

The traditional approach to granting powers to local governments is to provide in a provincial statute for detailed, express empowering provisions for each type of local bylaw or resolution. . .

This approach is the furthest from the concept of local self government in terms of autonomy, jurisdiction, the capacity to meet local needs, and freedom from direct control by a paternalistic provincial government. However, it continues to dominate most provincial legislation. . .

It seems that a different approach to the delegation of power will be utilized in the proposed *Community Charter*--an approach referred to as "spheres of power". Rather than defining in detail exactly what powers municipalities have, the proposed *Community Charter* will empower municipalities by a general grant of power in relation to a number of "spheres" of municipal activity. Instead of expressly defining in the legislation what municipalities may do, local governments will be able to regulate in any manner they wish in relation to the specified "spheres of power"-- provided that the *Community Charter* (or other provincial legislation) does not prohibit it and provided that the power is not exercised in a manner inconsistent with any provincial or federal enactment. The rationale behind the "spheres of power" approach to the delegation of power appears to be that, in the long run, it will expand municipal powers, or at least

make them easier to exercise as new and perhaps unforeseen issues or problems arise. Municipalities only have those powers which are expressly conferred on them. If these powers are expressed in broad, general terms, rather than in detailed empowering provisions, it is more likely that municipal by-laws can be enacted and amended in response to new problems and changing conditions without municipalities having to ask the provincial government for amendments to their enabling legislation to allow them to respond to a changing world.

The "spheres of power" approach to delegation of powers may result in *Community Charter* provisions that looks rather similar to sections 91 and 92 of the *Constitution Act, 1867* under which the federal and provincial governments are given legislative jurisdiction in relation to "Classes of Subjects" (and this may reflect the desire to treat municipalities "as if" they were an independent order of government). However, "spheres of power" cannot change the underlying constitutional reality. **Absent significant amendments to the Canadian Constitution, no matter what powers are delegated to municipalities and no matter how they are delegated, the "dependent" status of municipalities will not change. They will only have those powers conferred on them by the provincial Legislature. And whatever powers are granted by the Legislature can be unilaterally changed or withdrawn. Municipal governments have no constitutional right to be consulted about, or consent to, changes in their structures, functions and financial resources** (*East York (Borough) v. Ontario (Attorney General)*, [1997] O.J. No. 3064 (Gen. Div.); appeal dismissed [1997] O.J. No. 4100 (C.A.); leave to appeal to S.C.C. denied.

Although the "dependent" status of municipalities is constitutionally entrenched and cannot be changed by the enactment of a *Community Charter*, the ability of municipalities to function "as if" they are an independent order of government is clearly affected by the breadth of the powers conferred on them and on their relationship with the provincial government. In so far as the proposed *Community Charter* legislation actually achieves its stated goals, goals such as broader municipal powers, fewer provincial approvals, the capacity to draw on financial and other resources to meet local needs, and stronger provincial and municipal relationships, it will increase the ability of municipalities to respond to and deal effectively with local issues and problems.

It must be recognized, however, that whether the proposed *Community Charter* will ultimately assist municipalities in a meaningful way will depend on the nature and scope of the "spheres of power" conferred on them, the limits (if any) imposed on those powers in the *Community Charter* (or other provincial legislation), and existing provincial and federal legislation (because municipalities will not be able to exercise their powers in a manner that is inconsistent with this legislation). Accordingly, the practical advantages that will be derived from the

enactment of a *Community Charter* may vary among municipalities—depending on specific, local needs and concerns.

At least two words of warning should be expressed concerning the “spheres of power” approach to delegating powers to municipalities. As noted above, this is a dramatic change from the traditional approach of drafting municipal enabling legislation which sets out municipal powers in great detail. It is imperative when drafting a *Community Charter* which confers general power in relation to “spheres of power”, that it does not inadvertently result in the omission of existing municipal powers. As reflected in the continuing litigation (for more than 130 years) over the provisions in the *Constitution Act, 1867* which confer legislative jurisdiction on the federal and provincial governments, it is an historical reality that it is very difficult to draft general “spheres of power” language in a manner that is not “fuzzy at the edges”. No matter how carefully it is drafted, it is impossible to create legislation that is completely free from ambiguity. If existing municipal powers do not clearly come within the “spheres of power” in a *Community Charter*, it could lead to significant problems for municipalities. **It is imperative that no existing municipal powers are inadvertently “lost” as the very specifically worded empowering provisions in the *Local Government Act* are transformed into broadly articulated general empowering provisions in relation to “spheres of power” in a *Community Charter*.**

General statements in the new legislation that it should be broadly construed, or construed so as to include powers that municipalities had before the coming into force of the new legislation, may assist. However, such statements cannot replace the specific grant or delegation of powers. As recently stated in the concurring reasons of LeBel J. in the decision of the Supreme Court of Canada in *114957 Ltee v. Hudson (Town)*, [2001] S.C.J. No. 42 (at para. 49):

A tradition of strong local government has become an important part of the Canadian democratic experience. This level of government usually appears more attuned to the immediate needs and concerns of the citizens. Nevertheless, in the Canadian legal order, as stated on a number of occasions, municipalities remain creatures of provincial legislatures . . . Municipalities exercise such powers as are granted to them by legislatures. . . They are not endowed with residuary general powers, which would allow them to exercise dormant provincial powers. . . If a local government body exercises a power, a grant of authority must be found somewhere in the provincial laws. Although such a grant of power must be construed reasonably and generously. . . it cannot receive such an interpretation unless it already exists. Interpretation may not supplement an absence of power.

This leads to a second word of warning. Ultimately it is the Courts who will determine the scope of the powers given to municipalities under the proposed *Community Charter*. Because municipalities are statutory delegates, the provincial Legislature cannot insulate them from jurisdictional review by the

Courts. While Courts should apply a "reasonable and generous" approach to determining questions of jurisdiction, the fact remains that the "last word" regarding jurisdiction resides with them. It seems very likely that, if "tried and true" legislation such as the *Local Government Act* (which gives municipalities their powers in the traditional manner by setting out those powers in detail) is replaced by *Community Charter* legislation (which gives powers to municipalities in a dramatically different way through "spheres of powers"), it will tend to engender litigation as Courts interpret these new "spheres of power". This increases the importance of the initial task of drafting the new *Community Charter* legislation. It is imperative that the new legislation be carefully drafted to ensure that the new "spheres of power" include all existing municipal powers, as well as enlarging those powers to respond to new issues and problems.

"Natural Person" Powers

The 1999 FCM discussion paper correctly acknowledges that conferring "natural person" powers on municipalities will not enlarge their legislative jurisdiction (since natural persons have no such jurisdiction). "Natural person" powers are merely a device to amplify corporate and business powers, and thereby to encourage "creative" business and grant arrangements.

In theory, granting a corporation "natural person" powers means that, subject to specific exclusions, its business and spending decisions cannot be declared "ultra vires" (outside the powers of the corporation). A corporation with "natural person" powers can do anything in private and civil law that a free human person can do, subject to any statutory qualifications on that power. However, it seems likely that even "natural person" powers conferred on a municipality would be interpreted as being limited to proper municipal purposes.

In so far as the powers conferred on municipalities under the *Local Government Act* are limited in a manner that fetters the business and corporate powers of municipalities, then the addition of "natural person" powers could add to local government authority.

Conclusion

1. Although by increasing the powers granted to municipalities and creating a new relationship between them and the province, a *Community Charter* may result in municipalities being treated "as if" they are an autonomous, independent order of government, it will not make municipalities an order of government in a constitutional sense. Municipalities will continue to derive all of their powers from the provincial Legislature which can unilaterally change or limit those powers.

2. In so far as the powers conferred on municipalities under the *Local Government Act* are limited in a manner that fetters their business and corporate powers, the addition of "natural person" powers could add to local government authority.
3. Assuming that the proposed new *Community Charter* legislation will replace the existing *Local Government Act*, it is imperative that before it is enacted an extremely careful comparison is made between the provisions of the old and the new legislation to ensure that no existing municipal powers are inadvertently "lost". This will require a "line by line" comparison of the *Local Government Act* in relation to the proposed *Community Charter*.
4. As part of the consultation process with the provincial government in relation to the proposed *Community Charter*, municipalities should identify local issues and problems they feel they are not able to deal with adequately within the powers conferred on them under the *Local Government Act*. Municipalities can then request that new powers be given to them under the *Community Charter* to address these issues and problems.
5. Until the proposed *Community Charter* legislation is available for review, its real implications cannot be known. The ability of municipalities to participate in an effective consultation process will be significantly enhanced once the proposed legislation is available.

Broad Powers

If local governments are to be treated as an "order of government", such as the Provincial or Federal Governments, they must be allowed to conduct their business in a fashion similar to those senior governments.

Whenever there is a suggestion that local governments receive more autonomy there is an accompanying suggestion they must be fettered by requirements such as increased use of referenda, counter petitions, more open meetings and public consultation to ensure they do not act in a fashion contrary to the good or wishes of the community they serve.

Local councils and boards are the most open and accountable level of government. The public can attend, and in most municipalities, comment on agenda items at any regular council meeting. Public hearings are required for any zoning and official community plan issues, budgets are adopted in open council meeting and the vast majority of council business takes place in a very public forum.

The Canadian governance system is based on the principles of representational democracy. Citizens elect a Federal, Provincial or Local Government by casting votes for those candidates they feel can best serve their constituency. The elected officials are accountable to the electorate when they seek re-election. Local government is the only level of government subjected to the type of consent and accountability measures mentioned above.

Broad Service Powers

Local government welcomes the opportunity to provide more effective and efficient services for their citizens through the elimination of provincial approvals. We suggest the Charter Council place a priority on reducing the number of provincial approvals required by local government. Local governments should be free to make decisions within their sphere of jurisdiction in the same fashion exercised by the provincial government.

Notwithstanding, being given the legislative authority to take on additional services, this should not be construed that local governments should necessarily go searching for new things to do or assume new areas of responsibility. Local governments exist to fill local needs and not to take on the responsibilities normally controlled by senior levels of government in such fields as social services, education, health etc. The province should continue to provide those services for which it is currently responsible. Where there is a need for a uniform set of standards throughout the province, the responsibility for developing and maintaining that standard should rest with the province.

Regulatory Powers

One of the basic questions under the expansion of regulatory powers is the ability to prohibit as well as regulate. The Community Charter document states municipalities will be given the power to regulate which includes the power to authorize, control, inspect, limit and restrict the actions of the person, property or thing being regulated and further states that this includes the power to prohibit except in the case of business and business activities.

Great care must be taken in drafting the legislation for broader regulatory powers to ensure local governments do not operate in a discriminatory manner. The opportunity to use broad regulatory powers should therefore not result in the undue fettering of any part of the community in a social or geographic sense.

On the other hand, any new legislation should provide local government with enough latitude to prohibit and regulate according to the social and moral tenets of the community.

The Charter Council should consider legislation which will allow municipalities to better control or prohibit "vice " activities such as massage parlours, etc. The use

of these expanded regulatory powers must meet the test of the "consistency rule" i.e., not contradict a provincial regulation.

The principle that the power to prohibit does not apply to business should not be a blanket exemption. There should be some latitude for local governments to deal with the types of businesses that impact negatively on the well being of the community such as massage parlours, pawn shops, etc.

The province should continue to regulate in those areas in which it is currently involved. There should, however, be some rationalization in areas where overlap may exist. The Provincial Government enacts and administers the Building Code, and yet local governments are exposed to considerable liability because they are expected to carry out inspections and approve buildings constructed under a provincial statute.

Local governments are feeling the impact of the recent Delta leaky condo case and may not be able to obtain reinsurance to cover such drastic losses. Although the Delta case was based on a specific set of circumstances which probably do not apply to other municipalities, the expectations of all leaky condo plaintiffs have been raised to new heights, causing lengthy court cases with little ability for municipalities to settle. The joint and several liability provisions have placed municipalities squarely in the position of the "deep pockets" contributor for damages incurred as the result of negligence by others.

If some relief is not forthcoming through the Community Charter or other means, local government may be forced to consider repealing their building bylaws, stop inspections and allow the provincial government to administer its own building code and be responsible for its enforcement.

There is overlap in environmental regulation amongst Federal, Provincial and local governments. These regulations should be rationalized within the "consistency rule " by allowing local governments to impose regulations that are consistent with community values as well as federal and provincial legislation.

Municipal Bylaw Courts

The Municipal Bylaw Court pilot projects have proven to be very successful. They provide for a more cost effective and timely administration of justice for infractions of local bylaws.

Municipal jurisdiction should be expanded to include moving vehicle violations with all such cases being handled by Municipal courts and all proceeds from moving violations going to the local government. There should be a provision to allow for individual municipalities that share a common geographic area to share the services of one municipal court.

Title to Municipal Roads and Parks

Municipalities currently enjoy the use of these roads and are responsible for their maintenance. There is no good reason for the province to retain title to roadways and title should therefore be passed to the municipalities. This should be done in the most cost effective manner possible and at the expense of the province.

Some abutting municipalities may be concerned that municipal ownership of these roads may result in disputes about road openings and traffic volumes at municipal boundaries. These difficulties exist today and should be overcome through a dispute resolution process.

Parkland should also be transferred to local government to allow them to better plan and administer these lands. Local government should also be able to determine which parkland it wishes to retain.

Role of Mayor and Council

There is a need to more clearly define the role of the Mayor and individual councillors. Whilst there is a need for better understanding of their respective roles and responsibilities, there should not be a significant shift from the existing powers of the Mayor and Council.

Municipalities in British Columbia are governed by the entire Council as a collective body which consists of the Mayor and a certain number of Councillors. They set the policy and direction for the delivery of services to the community and their instructions are carried out by the staff.

Whilst the Mayor has a responsibility to ensure good government, the Charter Council should not consider the situation which exists in some U.S. cities, where the Mayor is, in effect, the Chief Administrative Officer as well as the Chief Executive Officer. The combining of these two positions blurs the line between policy setting and administration and can be subject to abuse.

There is also a need to define the role of the Chief Administrative (Appointed) Officer in relation to the Mayor and Council. As stated above the CEO and CAO positions should be clearly enunciated and separated. The Charter Council should consider some roles and responsibilities and a mechanism whereby Council in communities of all sizes can appoint a CAO with province-wide consistent duties and responsibilities, but flexible enough to meet the needs of all sizes. For example, in a smaller community there will likely be a need to assign more than the CAO duties to one individual.

Finances

Revenues:

The Community Charter document proposes that municipalities be given other opportunities to generate revenue such as amusement tax, recreation tax, etc.

Local governments welcome additional opportunities rather than relying solely on property tax and user fees.

Additional revenue streams allow local government to generate revenue from those activities which impact on their municipalities and allow for an application of the user pay principle.

The current legislation which allows for a hotel tax is an example, but not one that should be followed in its entirety. The hotel tax must be designated for tourism development and the fund is actually administered by a programme which involves the hotel industry.

Any additional revenues generated from new sources should flow to general revenue in the same fashion as property taxes and user fees to allow Council the greatest flexibility in setting priorities and providing services to their communities.

Local jurisdictions that are host to regional or provincial recreation facilities such as ski hills should be able to apply a tax or fee to the price of the lift ticket or admission as a source of revenue.

As mentioned under the section on Municipal Bylaw courts, all revenues from traffic fines within the local jurisdiction should flow to the local government.

Local government should also receive the proceeds of crime for criminal activities within their jurisdiction. Currently, those funds are distributed to the federal and provincial coffers, while local government incurs a considerable portion of the cost of investigation and trying of criminal offences.

Liabilities and Borrowing

With respect to referenda for long term borrowing authority the Municipal Finance Authority enjoys the highest possible credit rating in North America. This is due to the good management of local governments, the excellent policies of the MFA and the pooled borrowing power of all local governments in British Columbia. It is not due to long term borrowing authority requiring the assent of the electors through a referendum. The referendum only gauges the popularity of the proposed project in the community and obtains the assent of the electors to bear the project cost through long-term borrowing.

Local government can dispose of other assets, such as land, or use reserve fund proceeds to build major capital projects without going to referendum.

Tax Exemptions

The Community Charter document asks if municipalities should be able to grant tax exemptions to business to stimulate the local economy.

Property taxes should continue to be applied in the current fashion. Allowing a local council to grant exemptions will lead to an uneven playing field both within the local jurisdiction and from community to community. The present system of setting rates by property class provides Councils with the flexibility to ensure that the tax load is distributed in accordance with council's priorities vis a vis economic stimulation for business and fairness to all taxpayers.

The provision for business or investment tax exemptions is counter to an open competitive market economy and rational regional growth objectives. Competition should be based on the business environment, local government services and land use policies, not on financial incentives or tax exemptions. Inter-city competition based on such incentives would ultimately be destructive to the tax bases of all municipalities.

The current provincial government has stated it will not provide subsidies to business. It has also stated it will not download to local government without providing offsetting resources. It seems logical, therefore, that the Charter Council should not entertain municipal subsidies to business.

If the province recognizes a need for incentives through tax policy, then that incentive should be applied at a provincial level rather than at the local government level and should affect provincial revenues not municipal revenues.

Provincial - Local Government Relationship

Consultation:

The Community Charter document's commitment to improved communication and consultation between the province and local government is welcome. It should be tempered, however, with a need to ensure the business of local government does not become impeded by a lengthy consultation process. If local government is to be responsible for its destiny, then there should be minimal need for consultation beyond its borders unless the provincial interest is impacted.

There is need to define the roles of provincial regulatory agencies and crown corporations within local jurisdiction. There should be better consultation on major provincial projects which impact on local jurisdictions.

Dispute resolution

It is proposed that a mechanism be put in place whereby disputes between local governments, and local governments and the province, would be subject to alternate dispute resolution (ADR) measures as an alternative to the courts. Care must be taken to ensure that ADR does not become as lengthy a process as the courts and to ensure that a body of arbitration law is not built up to supplant the common law. Care must also be taken to ensure that local government and the province are not responsible to an appeal board or quasi-judicial tribunal.

The Charter Council should resist the notion that its mandate includes acting as a mediation, arbitration or appeal board. There are already alternate dispute resolution methods available to local government and the province. We should all be encouraged to use them, but not at the exclusion of the court system.

Offloading

The Province has issued an undertaking that responsibilities will not be downloaded to local government without the provision of adequate resources. The Charter Council should consider ways to eliminate other methods of downloading which are currently available to and practiced by the provincial government.

Rather than officially announce a download to local government, the province can simply stop providing a service. Eventually the community realizes they still require the service and they turn their attention to the local government for provision of the service. This is especially true in the social service area where municipalities are providing larger than ever grants to local societies and organizations to provide services to their citizens.

Downloading also occurs through reduction or elimination of provincial grants and through phase out of cost-sharing programmes. The province begins a programme in partnership with the municipality with a provision that provincial funding will be phased out over time. The result is usually an ongoing programme for the provision of a service under a provincial mandate fully funded by the local property taxpayer.

The Charter Council should also keep in mind the resources the province may be making available to offset the cost of downloaded programmes. It is not clear whether this includes the local government's ability to apply a new user fee or form of taxation to pay for the downloaded service. If these tools are considered a resource, then there will be a direct cost impact to the local citizen for the provision of a service which was previously supplied by the province.

Amalgamation

There is support for the province's assurance that there will be no forced amalgamations and that a referendum will be required in any community considering amalgamation.

Public Participation, Access and Accountability

Elector Assent

The use of binding referenda should only apply to amalgamations. Amalgamations can greatly affect the level of service, cost of service and the social fabric of the communities involved and, therefore, all voters should have a say in whether an amalgamation takes place.

Broad powers should allow local governments to enter into long-term contractual agreements to provide facilities and services. The current requirement for referenda on anything greater than 5 years places an undue restriction on local governments who are not able to take advantage of the flexibility required to enter into long term agreements with the private sector. The private sector requires a long term arrangement to provide security towards their capital investment in major project and service contracts.

Open Meetings

Several municipal councils already publish an annual report in conjunction with their annual financial statement. These documents are received at a regular public council meeting. They contain a summary of the Council's activities throughout the year and allow the citizens an opportunity to gauge a council's performance.

Providing a stipulation that all councils report in this fashion will provide local residents throughout the province with the opportunity to see how their local government is meeting their objectives.

The Community Charter discussion paper also suggests that performance measures be established for local government. Many local governments currently have performance standards based on their strategic plans and financial plans. The Charter Council should exercise care if it intends to develop performance measure by which municipalities will be compared or to establish a basic acceptable level of service.

Each municipality, by its very nature, is unique and has different priorities for services to be provided, the way in which the service is provided and the level at which the service is provided. There are also differences in economic, social and

environmental conditions in each municipality throughout the province. Geography, topography, geology, demographics and climate all have a bearing on the types of services provided and the cost of those services.

Performance measures may be more relevant if they are targeted to the individual council's strategic and financial plan. In other words, based on Council's strategic and financial plans, are we giving the people what they need at the best price given our specific circumstances?

Conclusion

The principles enunciated in the Community Charter document provide an opportunity for local government to become more autonomous and provides greater flexibility in delivering services to our residents.

We appreciate the opportunity to make these initial comments and look forward to further opportunities once the legislation has been tabled.