

APPENDIX F

TO: UBCM Members

FROM: UBCM Executive

DATE: September 21, 1992

RE: **LOCAL GOVERNMENT AND
THE CONSTITUTIONS 2**

ITEM #3(b)

September 23, 1992

B.C. COMMUNITIES AGENDA

There was agreement at the 1991 UBCM Convention that local government must be finally recognized in the Canadian constitution. We recommended a 'basic' form of recognition that would say:

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

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

We did not achieve this. Our federal, provincial, territorial and aboriginal leaders have said that local government isn't a government and that they have more important things to consider than the governance of the communities of all Canadians.

Their conclusion, means that local government, the government that is truly by and for the people, may be worse off under the current constitutional proposals than it was before.

In terms of the perception of the status of local government and in terms of the substance of the proposals for communities and the constitution this is cause to be concerned.

THIRD ORDER OF GOVERNMENT

Local government is one of the three orders of government in Canada. It has been recognized and referred to by the public, provincial and federal governments as such for decades (despite any legal definition to the contrary, this was the accepted view).

Local government is the 'first' among governments in terms of public rating of accessibility, responsiveness, accountability, etc.

Yet, the new constitutional proposals now say the three orders are federal, provincial and aboriginal.

Local government, the one that relates most to the day-to-day lives of Canadians, is sent to the constitutional dust-bin.

We must have in British Columbia a clear guarantee that local government is an ‘order’ of government. If Canada can’t offer us that, then B.C. must.

It must provide that recognition in a Charter of Rights entrenched in the BC Constitution.

COMMUNITIES AND THE CONSTITUTION

The new Constitution divides up the powers among federal, provincial and aboriginal governments; and local government is left pondering its powers and relationships.

Cities and the Federal Role

Ponder this distinction between provincial exclusive jurisdiction before and after the August 28th agreement.

Current provincial jurisdiction	Proposed provincial jurisdiction
‘municipal institutions’	‘municipal and urban affairs’

Cities are home to 80% of our population. Municipal and urban affairs are immigration, crime, etc. – which we thought were important national issues and responsibilities. The role of the federal government in cities is in question.

The federal government also is willing to give to the province exclusive jurisdiction for housing, recreation and other functions. We support a clear definition of responsibilities, but at what cost? What role is the federal government meant to play in the home to 80% of our citizens?

We must have in B.C. a clear statement of the responsibilities and authority of local government. This must be expressed in a B.C. Charter of Rights entrenched in the B.C. Constitution.

Aboriginal Self-Government

One constituency has gained the recognition of self-government and we acknowledge their achievement.

Another constituency, (communities/local government), has lost its recognition as a government and its relationship to this new government must be defined.

Negotiations to implement self-government will be very important in defining the relationship to local government. For example, aboriginal jurisdiction is both broad and can extend beyond their land based territories. Local governments will have to develop experience and approaches to the

concept of certain citizens otherwise within our boundaries and beyond aboriginal territories who are not subject to **our** laws or institutions but **theirs**.

We must have in B.C. the certainty that a statement of principles will govern the settlement of aboriginal and local government jurisdictions. This certainty is again best expressed in the Charter of Rights.

ACTION PLAN

Local government, as the bastion of democracy and foundation of national unity, must be:

1. Recognized by the provincial government in a Charter of Rights (see attached).
2. Recognized by the federal and aboriginal governments as an order of government in B.C.
3. Recognized to have powers and authorities that should be defined.
4. Recognized to have a special relationship with aboriginal self-governments that must be defined through the participation of local governments in self-government negotiations and guided by a statement of principles.
5. And that the 1991 policy statement "Local Government and the Constitutions" be reaffirmed.

LOCAL GOVERNMENT CHARTER OF RIGHTS

A Local Government Bill of Rights would contain:

a. Founding Principles

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

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

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

b. Responding to Community Needs

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

c. Financing Communities

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

d. Community/Provincial Relations

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

- guaranteed access to provincial decision-making;
- consultation on all matters affecting local government;
- an amending formula for local government legislation;
- joint decision-making in areas of shared responsibility;
- negotiation of conflicts; and

- ensuring local government jurisdiction is respected by provincial ministries, Crown corporations and agencies.

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

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