

**MUNICIPALITIES, THE CONSTITUTION, AND  
THE CANADIAN FEDERAL SYSTEM**

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*Revised May 2006*



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**MUNICIPALITIES, THE CONSTITUTION, AND  
THE CANADIAN FEDERAL SYSTEM**

The following historical overview discusses the place of municipalities in the Canadian federal system with a particular emphasis on various attempts to gain constitutional recognition for municipal governments.

The major points relevant to a revival of any constitutional initiative are as follows:

1. The provinces will jealously guard the constitutional arrangements that give them exclusive control over their municipalities. Any injection of the municipal question into national constitutional discussions has, in the past, provoked a reaction that has jeopardized even the *ad hoc* relationship between the federal and municipal governments.
2. The municipalities' quest for constitutional recognition has been largely motivated by their search for practical ways of meeting the increasing demands upon their fiscal resources. They are not inherently interested in constitutional recognition (unlike Aboriginal peoples), but see it as one means of solving their financial problems. Municipalities have, however, given clear signals that they would be just as ready to deal with their fiscal situation outside the constitutional debate.
3. As a result of their lack of focus on constitutional issues, the municipalities have never formulated a comprehensive and specific set of constitutional proposals, and their demands have not dealt with the need to differentiate between constitutional recognition and constitutional powers.
4. Discussions have not so far explored the question of whether constitutional provisions for municipalities might add another dimension of inflexibility to the Canadian federal system.

5. One case for involving municipalities in constitutional discussions is based on the argument that their exclusion ignores the following facts: the vast majority of Canadians live in cities; and the problems of Canada's large cities are no longer merely local or municipal.

## **LEGISLATIVE FOUNDATIONS AND OVERVIEW OF MUNICIPAL POWERS**

The debate over the need for constitutional recognition of the status of municipalities predates Confederation. In fact, in his report of 1839, Lord Durham argued in favour of an organized system of municipal institutions on the basis of the need for people to settle their local problems and learn to become interested and involved in central issues. He argued that unless municipal institutions were guaranteed by the Constitution, “the legislature would never agree to renounce the taxation powers necessary for the establishment of municipal institutions.”<sup>(1)</sup>

Although Durham's contentions have been periodically echoed up to the present, his recommendation has never been embodied in Canada's constitutional law. The *Constitution Act, 1867* established the parameters of current federal and provincial relationships with municipalities. Section 92 of the Act sets out the exclusive powers of provincial legislatures in 16 areas, with section 92(8) giving the legislature of each province exclusive responsibility for making laws relating to that province's municipal institutions. Of the other sections of the *Constitution Act, 1867* with implications for municipalities, section 92(2) grants the provinces the power to impose direct taxes to carry out provincial responsibilities. Because local governments are legally subordinate to provincial governments, the only sources of authority and revenue available to municipalities are those that are specifically granted by provincial legislation.

The scope of provincial control over municipalities is largely unfettered, and municipal responsibilities can be altered by votes of the provincial legislature. Although some cities have a separate legislative provision establishing their jurisdiction, most municipalities get their powers from a provincial municipal Act that applies to all local entities within a province. The provinces can alter municipalities' boundaries or powers, as well as their financial resources, and can abolish individual municipalities. This was the case when Ontario established a regional

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(1) Jacques L'Heureux, “Municipalities and the Division of Powers,” in Richard Simeon, ed., *Intergovernmental Relations*, Royal Commission on the Economic Union and Development Prospects for Canada, No. 63, University of Toronto Press, Toronto, 1985, pp. 199-200.

government in the Halton-Peel region, and more recently when it amalgamated the Ottawa-Carleton region into the new City of Ottawa, as well as the Greater Toronto Area into the “mega-city” of Toronto. Most municipal borrowing requires provincial approval by a provincially appointed board. At the same time, municipal activities result from the delegation of provincial responsibilities in the areas of local works, education, justice, hospitals and taxation.<sup>(2)</sup>

Up to now, municipalities have been allowed sole occupancy of the field of real property taxation, but, apart from convention, there is no constitutional prohibition against entry to this field of taxation by either the federal or the provincial governments. Furthermore, the regressive and restrictive nature of the property tax means that municipal revenues do not necessarily keep pace with economic growth or inflation, as do income taxes or even sales taxes. Property taxes include levies both for general municipal purposes and also for schools.

Provincial grants – the other source of municipal revenues – are given with strings attached in the form of conditions that govern how the money will be spent. These grants are made to further certain municipal objectives and can include money earmarked for schools and social services. The conditions placed on provincial money mean that municipalities are limited in their ability to spend their grants for locally determined purposes but must make choices that meet provincial policy goals. Interestingly, about 80% of provincial transfers to municipalities are for a specific purpose, while roughly 50% of federal transfers to municipalities are for a specific purpose.<sup>(3)</sup>

This situation has become increasingly difficult for municipalities because they are restricted in their ability to run a deficit budget and must obtain provincial approval before undertaking long-term budgeting. If provincial priorities or federal funding suddenly change, a municipality has very little room to manoeuvre between its existing financial obligations and the need to provide new services or to maintain existing services with reduced funds.

For many years, municipalities have complained about the restrictions on their decision-making, local autonomy, and revenue, and have tried to find alternatives.

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- (2) Harry M. Kitchen and Melville L. McMillan, “Local Government and Canadian Federalism,” in Richard Simeon, ed., *Intergovernmental Relations*, Royal Commission on the Economic Union and Development Prospects for Canada, No. 63, University of Toronto Press, Toronto, 1985, p. 220.
- (3) Karin Treff and David B. Perry, *Finances of the Nation*, Canadian Tax Foundation, Toronto, 2005, pp. 8:10-8:11.

## MUNICIPALITIES, PROVINCES AND THE FEDERAL GOVERNMENT

The level of urbanization appears to serve as the barometer for provincial attitudes towards municipal institutions. Except in extreme circumstances, such as the municipal default on loans during the Depression of the 1930s, provincial governments generally took a *laissez-faire* attitude to their municipalities from 1867 to 1960. In provinces with lower percentages of urban inhabitants, local governments were allowed to go their own way and generally provided their citizens with a minimum level of services, particularly in rural areas. Since then, however, in provinces where towns and cities have grown rapidly, the demand for services (and for money to pay for them) has led to increased provincial involvement and caused upheavals in local government systems.

As the growing urban centres came to play a more important role in the life of the nation, municipalities felt increasingly fettered by the unilateral control of the provinces. By the time of the 2001 census, for example, approximately 23 metropolitan areas had a larger population than the province of Prince Edward Island; six of Canada's largest metropolitan areas each had more citizens than any of the four Atlantic provinces; and 79.4% of Canadians lived in urban areas. Just over half (51%) of the nation's population lived in four major urban regions – Ontario's Golden Horseshoe; Montréal and the adjacent region; British Columbia's Lower Mainland and southern Vancouver Island; and the Calgary-Edmonton Corridor.<sup>(4)</sup> At the same time, none of the municipalities, whether large or small, could exercise any real fiscal or legislative autonomy.<sup>(5)</sup>

In recent years, provincial governments have increasingly exerted control over municipal activities (location of hospitals and provision of social services, for example). The provinces, however, have consistently resisted any direct and formal federal involvement with their subordinate level of government, even though the federal government – through joint federal-provincial programs – has been putting up money for services ultimately delivered by the municipalities. Provinces have particularly opposed the establishment of any federal department or agency with a mandate to deal specifically and directly with municipal governments. Apart

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(4) Statistics Canada, "A Profile of the Canadian Population: Where We Live," 2001 Census Analysis Series, 2002.

(5) L'Heureux (1985), pp. 199-200; Dr. A. J. R. Smith, Chairman of the Economic Council of Canada, quoted in *The Financial Post*, 13 February 1969.

from the grants that the federal government pays directly to municipalities in lieu of property taxes, federal funds are channelled to municipalities almost entirely through federal-provincial agreements. Infrastructure Canada's programs are cooperative ventures between all levels of government. For example, the provision of a share of federal gas tax revenues to municipalities is done through bilateral agreements with the provinces, territories and First Nations.

Because of the broad range of federal activities that impinge on local areas, however, the provinces have not been able to prevent at least *ad hoc* contact between federal departments and the municipalities. Historically, such linkages have followed informal and functional lines. For example, federal transportation specialists deal directly with municipalities about bridges over level crossings of railroads and roadways. It is also important to note that local governments are subject to various federal actions that can affect municipal options and significantly alter the physical and social fabric of urban centres. One example of this might be the impact of federal immigration policy on larger cities, such as Toronto, Montréal or Vancouver. A second example might be the impact that federal cuts to social programs, such as Employment Insurance, may have on homelessness and poverty. The federal government can also exert some control over municipal activities by means of the conditions it attaches to grants to the provinces.

Lack of coordination between *ad hoc* federal activities and relationships and the rapidly expanding municipalities began to cause problems in the 1960s. It became evident that the solutions to local problems often had more than a local impact and that federal projects could have undesirable environmental or developmental consequences for municipal governments. For example, the Canada Mortgage and Housing Corporation's financing of residential construction near Toronto International Airport in the 1960s pre-empted any plans by the federal Department of Transport to expand that facility. In the late 1960s, programs administered by 27 federal agencies had some influence over urban development plans. Other federal actions had unintended consequences for urban life. For example, the *Income Tax Act* deduction for businesses providing parking spaces to employees contributed to urban street congestion.

Insofar as municipalities are concerned, recent social and economic developments have conclusively demonstrated that a major argument for changing either government structures or the Constitution is that:



... the problems of our large cities are no longer merely municipal or local problems. The Canadians whom our provincial and federal governments serve are now predominantly urban Canadians. The national goals of high employment, high growth, stable prices, viable international payments' balance, the equitable distribution of rising incomes must now be primarily accomplished within our cities.<sup>(6)</sup>

## **A HISTORY OF FAILURE: DIRECT FEDERAL INVOLVEMENT IN URBAN ISSUES**

Although the constitutional/jurisdictional position of the provinces prevented direct federal intrusions in areas of exclusive provincial jurisdiction, the federal government has made sporadic efforts to rationalize its *ad hoc* linkages with the municipalities. Initially, this was accomplished through the Canada Mortgage and Housing Corporation (CMHC), the federal agency with the closest relationship to urban and municipal issues.<sup>(7)</sup>

The contacts between the CMHC and the municipalities evolved over time. In 1949, amendments to the *National Housing Act* (originally passed in 1938) authorized joint federal-provincial programs to provide low-priced homes for sale or rent. The amended Act authorized cost-sharing by the federal and provincial governments for land assembly and servicing (75% was paid for by the federal government). Municipalities were allowed to participate in this program if their province passed legislation authorizing local administration of the provincial aspects of these housing activities. A further series of amendments to the *National Housing Act* in 1964 created more comprehensive programs aimed at overall urban renewal and not just housing. As a result, the federal government could authorize a 50% contribution towards the preparation of plans, the acquisition of land and buildings, and the installation of municipal services in urban renewal plans. The federal government could also make loans to the provinces and municipalities to finance up to two-thirds of their costs.

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(6) Smith (1969).

(7) To help ease the temporary wartime housing shortage, in 1944 the federal government created a Crown corporation, the Wartime Housing Corporation, to spend federal money creating housing in urban centres during the remainder of World War II. Under the *War Measures Act*, the constitutional prohibitions that restrained federal involvement in areas of provincial jurisdiction were loosened and the federal government began to build housing in areas where shortages inhibited the production of essential defence projects. In 1946, the assets of this Crown corporation passed to the Central Mortgage and Housing Corporation, later the Canada Mortgage and Housing Corporation, to carry on the stimulation of housing construction by providing mortgage money at favourable rates.

Until the end of the 1960s, the provinces generally went along with these activities, in large part because the condition in the cost-sharing agreements gave them considerable control and also because, as a Crown corporation, the CMHC developed its policies with relative autonomy and without direct control by the federal Cabinet. The CMHC also established functional relationships with municipalities and interest groups, which tended to minimize Cabinet intervention in its affairs.

The intense constitutional discussions of the late 1960s produced a set of circumstances that ultimately altered this relationship but did not satisfy either the municipalities or the federal government. The Canadian Federation of Mayors and Municipalities intervened in the constitutional debate to state its position, but the municipalities consistently related their vaguely expressed constitutional propositions directly to their very specific financial difficulties.

The Federation established a Joint Municipal Committee on Intergovernmental Relations (JMCIR) to elaborate its views throughout the constitutional debate. In 1971, the JMCIR presented a brief to the Special Joint Committee of the Senate and the House of Commons on the Constitution. However, the only clear conclusion that emerged from the municipalities' submissions appeared to be that there should be some form of "tripartitism" either in the division of powers or, more commonly, in a consultation process. For example, the JMCIR proposed that federal-provincial conferences should become trilateral meetings. Constitutional recognition of federal-provincial-municipal conferences would mean that the municipalities would still be "subject to provincial law but this would be modified by their right to be consulted and to be heard, a right which would be formally recognised and would no longer be a matter of provincial sufferance..."<sup>(8)</sup>

The Trudeau government tried – unsuccessfully – to marry the municipalities' concept of "tripartitism" (although not enshrining it in the Constitution) with the "pragmatism" of the historical links between the federal and municipal governments. In theory, not only could this avoid the constitutional hurdles but it would "rationalize" federal-municipal relations and establish greater political control at the federal level. Accordingly, in March 1971, a Minister of State for Urban Affairs was appointed to take on responsibility not only for the CMHC but also for a new Ministry of State for Urban Affairs (MSUA). Given the inescapable constitutional

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(8) Canadian Federation of Mayors and Municipalities, Joint Municipal Committee on Intergovernmental Relations, Presentation to the Special Joint Committee of the Senate and the House of Commons on the Constitution, 2 March 1971, p. 11.

limitations, this ministry had no program responsibilities but had a mandate to: plan, coordinate and develop new urban policies; integrate federal urban priorities with other federal policies and programs; and develop coordinating intergovernmental relationships. Given this mandate and its lack of funds for programs, the MSUA had to rely on the clout and persuasive powers of its Minister to achieve its goals.

The federal urban initiative had a mixed reception. Hoping that the federal action might help to liberate them from some of the constraints imposed by the provinces, municipalities across the country hailed the formation of the MSUA and welcomed federal support of any action that might give them access to greater financial resources. The provinces, particularly Quebec, remained sceptical of the new agency and wary even of practical adjustments that might lead to intrusions into their jurisdiction.

The true municipal agenda remained the belief that a constitutionally enshrined role would mean little unless it led to new financial arrangements for sharing revenue between the federal, provincial and municipal governments. This meant that the municipalities' involvement in the constitutional debate ultimately challenged provincial pocketbooks and eventually led to the downfall of Trudeau's intervention in federal-municipal relations. Although the provinces agreed to send delegations to the first tri-level meeting organized by the MSUA in November 1972, the provinces viewed the tri-level process with suspicion. They saw the meetings as one means of providing *de facto* recognition to the municipalities as a third order of government with a legitimate relationship to the federal government. For their part, the municipalities – even when they attempted to downplay their constitutional aspirations at the first tri-level conference and to concentrate on national solutions to urban problems such as housing and transportation – again raised the spectre of linkage.<sup>(9)</sup>

The first and second tri-level meetings confirmed that the municipalities and the federal government had become allies against the provinces. When the delegates from all three levels of government agreed to set up a task force on all levels of public finance, even Alberta and Ontario (the only provinces to support it) soon withdrew their approval. They believed that the task force would not adequately protect the provincial positions in its fact-finding and recommendations. When the task force reported, it confirmed that the system of public finance in Canada prevented municipalities from meeting their responsibilities. The Canadian

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(9) The municipalities based their presentation on the argument that the municipal tax base should not be eroded for the provision of education, which seriously reduced the amount that was available for strictly municipal purposes.

Federation of Mayors and Municipalities issued a polemical response, *Puppets on a Shoestring*, that directly blamed the provinces for the financial problems of local governments. After the provinces refused to attend a third tri-level meeting scheduled for August 1976, the conference was cancelled, and the tri-level process ended.

As a result, by threatening not to cooperate with the federal government in programs of interest to the municipalities, the provinces gained even greater power at the expense of the other two levels of government. Ontario refused to accept CMHC money for a new town in Pickering rather than share planning authority with the MSUA. In view of the Ministry's lack of credibility and the government's desire to cut expenditures, the MSUA was abolished on 31 March 1979. In that year, the federal government also moved to consolidate provincial control over funds for urban redevelopment. The CMHC's money for the Neighbourhood Improvement Program, for land assembly (the Municipal Incentives Program) and services (the Municipal Infrastructure Program) was put into a single block-funding program (the Community Services Contribution Program). As a result, the provinces were able to allocate funds to the three program areas according to provincial priorities.

### **CANADIAN MUNICIPALITIES AND THE CONSTITUTIONAL NEGOTIATIONS OF THE LATE 1970s**

The municipalities' participation in the round of constitutional talks which began in the late 1970s demonstrated that they again had no clear suggestions. Their position appeared, as before, to be founded on the belief that mentioning municipalities in the Constitution would help them to solve the problem of how to finance the services imposed upon them by more senior levels of government. The Federation of Canadian Municipalities (FCM) rejected the argument that local government "... is the level of government responsible for the basic needs of people. We believe it is essential to enlarge and enhance the role of local governments in any new constitutional framework and to ensure its autonomy."<sup>(10)</sup>

The Resource Task Force on constitutional reform, which assisted the FCM in preparing a resolution for the annual meeting, recognized that municipalities would remain under provincial jurisdiction, but asked that the "Constitution of Canada expressly recognize and protect Municipal government" and further, that the "Constitutions of the Provinces expressly recognize and protect autonomy of Municipal government."<sup>(11)</sup>

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(10) Federation of Canadian Municipalities, Brief to the Task Force on Canadian Unity, 20 June 1977.

(11) Federation of Canadian Municipalities, Resource Task Force on the Constitution, *Municipal Government in a New Canadian Federal System*, Ottawa, 1980.

On 20 November 1980, the FCM made a presentation to the parliamentary Joint Committee on the Constitution, based on the Resource Task Force report. In its presentation, the FCM sought the recognition of municipalities as a “distinct level of government under the new constitution” and, moreover, that the Constitution assign certain powers to the municipal level of government.<sup>(12)</sup> In the opinion of the FCM, municipalities should be responsible for local issues, such as “housing, job opportunity programs, fire protection, education, public health, social welfare, air quality, water services, sewage service and treatment, policing, environmental protection, and recreation.”<sup>(13)</sup>

An analysis of the FCM position suggests that the municipalities were as much interested in constitutional recognition as in constitutional powers. After the First Ministers’ constitutional talks in September 1980, the FCM statement set out the objective of recognition as an additional legislative level. The FCM’s president chose to amplify this by offering examples of recognition, such as the federal government’s decision to accord official observer status to representatives of the FCM at the First Ministers’ meetings and the inclusion of municipal representatives in the delegations from Nova Scotia and Ontario. He expressed the wish that all provinces should follow suit.<sup>(14)</sup>

Essentially, however, the statements of the FCM suggest that municipalities had a greater concern with entrenched financial resources than with entrenched legislative powers. As a representative of the FCM told the Joint Committee on the Constitution with regard to municipal requests for entrenchment of their power to tax:

I think that what we are talking about when we are asking for income tax is a clear defined portion of the income tax settled upon by the provinces and by the federal government, that we could rely on as an added income to the municipality so that we could release the burden of property tax.<sup>(15)</sup>

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(12) Minutes of the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada, 20 November 1980, 9:10.

(13) Federation of Canadian Municipalities, Presentation to the Special Joint Committee of the Senate and the House of Commons on the Constitution, 20 November 1980, p. 9.

(14) *Forum*, Vol. 4, No. 12, October 1980, p. 1.

(15) Minutes of the Special Joint Committee of the Senate and the House of Commons on the Constitution, (1980), 9:12.

## REACTION TO THE MUNICIPALITIES' INTERVENTION

The federal government had learned from its “tri-level” experiments of several years before and took a safe position. On 9 October 1978, Prime Minister Trudeau wrote to the FCM agreeing to consider municipal recognition in a revised Constitution, provided that this recognition did not interfere with provincial powers. He stated that:

The federal government thinks it would be desirable to consider whether a new Constitution should not recognise specifically the existence, and the need for existence, of the third level of government...

Provided that the ultimate responsibility of the provinces is not in question, there could be merit in trying to describe in the Constitution the role which the “third level” plays in the total fabric of Canada. It could also be useful to try to spell out the basic kinds of services that are traditionally provided by the “third level.”

Given this guarded statement from the federal level and their own earlier experience, even the municipalities were unwilling to tackle the provinces head-on. One of the main barriers to a constitutional amendment that would enhance the powers of the municipalities was obtaining approval from the required number of provincial legislatures. Mayor Dennis Flynn of Etobicoke, a member of the FCM national executive, told the Joint Committee on the Constitution on November 1980 that the FCM understood the provinces’ “reluctance to have municipalities talk directly to the federal government.” He stated that the FCM would consider other options, including the establishment of provincial charters that would give municipalities autonomous areas of power “as long as that was folded in the Canadian constitution as a whole.”<sup>(16)</sup>

Commentators at the time, as well as later analysts, have agreed that constitutional recognition of municipalities became a dead issue in light of provincial opposition. The analysis prepared for the Macdonald Commission stated that “it is out of the question that the legislative assemblies of such a majority of provinces would agree to this loss of power.”<sup>(17)</sup>

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(16) *Ibid.*, 9:13, 9:20.

(17) L’Heureux (1985), p. 201.

Experts have often raised another problem: What would be the long-term effect of another constitutional tier of government? They have concluded that, given the difficulties already inherent in federal-provincial relations, constitutional recognition of the municipalities might only add another combatant and increase the existing inflexibility and complexity.

If local governments were to have their way, they would likely ask for constitutional standing as equal partners in Confederation. Ideally this recognition would provide the legislative and fiscal autonomy which local governments require to meet the demands for local goods and services. But, if this were done, how successful would it be? Federal-provincial relations are defined by the Constitution, yet the extent of federal-provincial discord is well known. Provincial governments criticize the intrusion which they see the federal transfers of expenditure powers making into their areas of responsibility. In some ways, the delineation of authority provided by the constitution has impeded a rational reallocation of responsibilities over time as conditions changed from those of the nineteenth century. Might a constitutional standing for local government impose another element of inflexibility while protecting and enhancing local government?<sup>(18)</sup>

## **PATRIATION AND THE CONSTITUTIONAL NEGOTIATIONS**

Since the enactment of the *Constitution Act, 1982*, the question of constitutional status for local governments seems to have faded from the limelight. The municipalities did not address the issue in any presentations to the various parliamentary committees that held hearings on the 1987 Meech Lake Accord, much to the surprise of at least some commentators:

It seems curious that 4,500 municipalities large and small have not taken this opportunity to assert themselves and enter the debate and thereby assure themselves of a legitimate and constitutionally confirmed place in Confederation.<sup>(19)</sup>

Moreover, during the Meech Lake negotiations and the studies that resulted in the Charest and Edwards-Beaudoin Committee reports, the FCM did not take public positions.

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(18) Kitchen and McMillan (1985), p. 245.

(19) H. Peter Oberlander, "Preface," *Meech Lake: From Centre to Periphery*, University of British Columbia Press, Vancouver, 1988, p. 3.

This situation began to change when the Municipality of Metropolitan Toronto made a public submission to the Citizens' Forum that called for a "new arrangement for large urban centres such as Toronto, Montreal, Vancouver if not for all local governments." Metropolitan Toronto again called for constitutional recognition of municipalities as a means of meeting the problems of municipal financing, service delivery and planning.<sup>(20)</sup>

Following this, as Canadian municipalities began to consider how to ensure their participation in the constitutional debate, they moved cautiously in order not to arouse provincial opposition. In June 1991, the FCM adopted an emergency resolution at its annual meeting in St. John's and presented it to Constitutional Affairs Minister, Joe Clark, who attended the meeting. The resolution reiterated the municipalities' concern with fiscal matters and their desire to be recognized in a renewed constitution.

Also in 1991, the FCM submitted a brief to the Special Joint Committee on a Renewed Canada, asking that the status of municipal governments be redefined and that the Constitution be amended to recognize municipal governments. Provincial, territorial and federal governments refused to add these proposals to the constitutional agenda.<sup>(21)</sup>

## TRENDS AND DEVELOPMENTS

Since the 1960s, the issue of constitutional status for municipalities has received little or no media or academic attention. Indeed, despite the efforts of municipalities to secure constitutional recognition, the possibility of achieving this goal seems doubtful. The FCM itself recognizes this reality, noting in its 2000 policy statement that achieving constitutional recognition for "the role that municipal governments already play in the nation's political and economic spheres" is a "long-term" goal.<sup>(22)</sup>

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(20) Quoted in Evelyn S. Ruppert, *Municipalities and a Changing Canadian Federalism: A Background Paper Prepared for Delegates to the 1991 AMO Conference*, Association of Municipalities of Ontario, August 1991.

(21) Federation of Canadian Municipalities, "The Future Role of Municipal Government," Policy statement, Federation of Canadian Municipalities, Ottawa, June 2000, p. 4.

(22) *Ibid.*, p. 1.



### **A. Lobbying for Specific Goals**

Since the mid-1980s, the municipalities and their organizations have concentrated on lobbying for practical and specific services. The FCM reorganized and began to look for partners in joint ventures. For example, in 1985, an agreement with the Department of Regional Industrial Expansion established the Municipal Economic Development Program to strengthen the ability of local governments to promote economic development. The FCM has also established a series of task forces to devise a municipal point of view on national issues that affect its members. These task forces and their yearly policy statements assist the FCM in lobbying the government on an issue-by-issue basis with the relevant federal authority.

This is the case with the FCM's affordable housing strategy, which was presented as part of a brief during the federal government's pre-budget consultations in 1999.<sup>(23)</sup> Other groups – including the Tenants' Rights Action Coalition, the National Coalition on Housing and Homelessness, and the Ontario Non-Profit Housing Association – also submitted briefs urging the federal government to set aside funds for social housing.<sup>(24)</sup> It is interesting, and somewhat telling, that these organizations have concentrated their efforts on the federal government, given that housing is predominantly a local issue. It appears that municipalities and other organizations now recognize that federal support is essential for completing many projects which, at first glance, would seem purely local.

Nonetheless, some have pointed out that federal support for these types of projects has not been overwhelming. It could be argued that, as a result of the constitutional division of powers, the federal government views local issues – such as social housing and urban crime – as matters of provincial jurisdiction, and thus has traditionally chosen not to become involved.

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(23) Minutes of the Standing Committee on Finance pre-budget consultation, 17 November 1999, 16:00.

(24) Minutes of the Standing Committee on Finance pre-budget consultation, 23 November 1999, 14:40; 19 November 1999, 9:40; and 9 November 1999, 16:40.

## **B. Increased Intergovernmental Cooperation**

### **1. Infrastructure Issues**

Intergovernmental cooperation on some matters of local concern, particularly on infrastructure issues, has been increasing. Some analysts have argued that federal-municipal infrastructure cooperation dates back to the winter works programs implemented during the Great Depression.<sup>(25)</sup> The principal vehicle for this cooperation is regional development grants, which “[wind] their way from a succession of federal departments concerned with regional affairs ... through the channel of federal-provincial agreements, to provide funds for the construction of water mains, sewers, and roads in various urban centres.”<sup>(26)</sup>

Consistent with this history of intergovernmental cooperation on infrastructure projects, Canada Infrastructure Works was introduced in 1993 as a job creation initiative. The program – which became the Department of Infrastructure Canada in 2002 – provides funding to municipalities for water, sewer, and transportation projects, as well as for construction or improvement of community facilities and other special projects. All three levels of government have played important roles in this program, with the costs being shared among them. As Caroline Andrew and Jeff Morrison point out, the program “could be described as a federal-provincial-municipal program because the provinces had given their approval and because municipalities had initiated it.”<sup>(27)</sup>

In the 2001 budget, the federal government created a \$2-billion Canada Strategic Infrastructure Fund and a \$600-million Border Infrastructure Fund. It also renewed its involvement in housing with the \$680-million Affordable Housing Program. Additional infrastructure spending was announced in the 2003 budget, including a new \$1-billion Municipal Rural Infrastructure Fund.<sup>(28)</sup>

In the March 2004 budget, the federal government announced it would provide municipalities with a full rebate of the goods and services tax (GST) and the federal portion of the harmonized sales tax for municipalities, up from the previous rebate of 57%. The government also accelerated funding under the Municipal Rural Infrastructure Fund. In the

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(25) Katherine Graham, Susan D. Phillips and Allan M. Maslove, *Urban Governance in Canada*, Harcourt Brace, Toronto, 1998, p. 187.

(26) *Ibid.*, p. 186.

(27) Caroline Andrew and Jeff Morrison, “Canada Infrastructure Works: Between ‘Picks and Shovels’ and the Information Highway,” in *How Ottawa Spends 1995-96: Mid-Life Crises*, ed. Susan D. Phillips, Carleton University Press, Ottawa, 1995, p. 112.

(28) TD Bank Financial Group, *Mind the Gap: Finding the Money to Upgrade Canada’s Aging Public Infrastructure*, 20 May 2004, p. 23, <http://www.td.com/economics/special/infra04.pdf>.

February 2005 budget, the federal government announced it would share gas tax revenue with municipalities. The funding would be distributed through bilateral agreements with the provinces, territories, and First Nations.<sup>(29)</sup>

## 2. Other Issues

In 1994, federal, provincial, and municipal governments produced the *National Action Plan to Encourage Municipal Water Use Efficiency*, which was based on six fundamental principles. Three of these – leadership, partnership, and harmonization – addressed the need for intergovernmental cooperation and consistent, Canada-wide regulations for water use efficiency.<sup>(30)</sup> The action plan provided objectives and a timeline, but not a funding component.

Municipalities have, in recent years, also called on the federal government for military support during natural disasters. In January 1998, the Canadian Forces were dispatched to assist during the ice storm that ravaged eastern Ontario and parts of Quebec. The Treasury Board reimbursed the Forces for the \$60 million that they spent on the relief efforts.<sup>(31)</sup> In January 1999, the Canadian Forces were again dispatched to assist with municipal relief efforts, this time in Toronto, after a massive snowstorm crippled the city.<sup>(32)</sup>

In September 2004, the provincial and territorial ministers responsible for local government agreed on principles that should underlie federal initiatives regarding municipalities. The provinces and territories reasserted their constitutional authority, saying that, among other things:

- Programs stemming from federal initiatives in respect of the municipalities must be covered by federal and provincial-territorial agreements;
- It is incumbent upon the provinces and territories to determine individually the appropriate type of consultation with their municipalities; and
- Federal government initiatives and programs likely to concern the municipalities should be elaborated and planned following consultation and in agreement with the provinces and territories.<sup>(33)</sup>

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(29) Department of Finance Canada, “A New Deal for Communities,” *Budget 2005*, February 2005, <http://www.fin.gc.ca/budget05/pamph/pacome.htm>.

(30) Canadian Council of Ministers of the Environment, *National Action Plan to Encourage Municipal Water Use Efficiency*, Canadian Council of Ministers of the Environment, Winnipeg, 1994, p. 2.

(31) “Forces Reimbursed,” *Calgary Herald*, 26 March 1998, p. A9.

(32) Basem Boshra, “Toronto storm snow job of the year: Lastman’s appeal to army rates as top weather story of 1999,” *The Montreal Gazette*, 24 December 1999, p. A1.

(33) Canadian Intergovernmental Conference Secretariat, *Principles Underlying Federal Government Initiatives Regarding Municipalities*, 16-17 September 2004, [http://www.scics.gc.ca/cinfo04/860493004a\\_e.html](http://www.scics.gc.ca/cinfo04/860493004a_e.html).

### C. Downloading and Tri-level Relations

Relations between the municipalities and the federal and provincial governments are not always amicable, however. Since 1986, the provinces have been faced with cuts to federal funds and, as a result, they have tended to push the burden downwards to the municipalities, which in turn pass the costs on to the consumers. This practice is often referred to as downloading. Graham, Phillips and Maslove argue that downloading may occur through one of two ways: either the government mandates that another level of government provide a specific service and does not provide compensation for doing so; or the government simply discontinues the provision of a service, leaving another level of government to fill the gap.<sup>(34)</sup> Municipal governments have interpreted the *Government Expenditure Restraint Act* (S.C. 1991, c. 9), which was passed in 1991, as the most visible and symbolic downloading exercise. Under the Act, the federal government was able to impose limits on payments provided to the provinces under Established Programs Financing provisions, money traditionally spent on health care and education. This freeze was passed on to the municipalities.

The most severe example of downloading occurred in January 1997 when Ontario's Progressive Conservative government "initiated massive changes to the governing and funding arrangements for education, welfare, and a wide range of other urban services, consulting neither the municipalities nor their associations."<sup>(35)</sup> The province withdrew its funding from a number of areas, including social housing, public transit and ambulance services, while maintaining control over the design and implementation of those programs. As a result, municipalities were burdened with new responsibilities, but no additional funding or real political autonomy.<sup>(36)</sup>

Similar, although less drastic, examples can be found in almost every Canadian city. Municipal organizations have attempted to negotiate with provincial governments to reduce the effects of downloading. In addition, as Graham, Phillips and Maslove point out:

Municipal associations in Nova Scotia, Ontario, Alberta, and British Columbia have proposed the establishment of a 'municipal charter' ... [that would] enshrine the notion of partnership in the relations between municipalities and other levels of government. This implies significant intergovernmental consultation before provinces re-align responsibilities and fiscal arrangements affecting cities.<sup>(37)</sup>

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(34) Graham, Phillips and Maslove (1998), pp. 174 and 287.

(35) *Ibid.*, p. 181.

(36) *Ibid.*, p. 282.

(37) *Ibid.*, p. 184.

Some municipalities have chosen to lobby the provincial governments in an effort to more clearly establish the position of municipal governments. For example, in September 1991, the Union of Nova Scotia Municipalities urged the Nova Scotia Working Committee on the Constitution to consider “provincial legislation that spells out in broad terms, the rights of municipalities” and “enabling provincial legislation that gives municipalities the practical ability to manage their day-to-day affairs.” Mayor Gordon Campbell of Vancouver presented a similar program to the Union of British Columbia Municipalities.<sup>(38)</sup>

#### **D. Charter Cities**

Some cities have moved beyond this approach, advocating “Charter city” status for themselves. A Charter city is defined as a city that operates under its own “stand-alone” legislation, or Charter, designed to meet the particular needs of that city and provide for powers and responsibilities not contained in the municipal Acts of general application.<sup>(39)</sup> In a May 2000 report entitled *Towards a New Relationship with Ontario and Canada*,<sup>(40)</sup> the City of Toronto argued that it required Charter status because of its unique position as the largest city in the country and as the economic centre of Canada. Further, the report contended that Toronto must compete with nearby North American cities and thus, it needed different tools than other municipalities. Moreover, Charter legislation would allow the province to consolidate the large volume of special legislation that applies to Toronto. The report proposed that the Charter would be custom-built to meet Toronto’s needs, but could be achieved within the existing legal framework that currently governs municipalities in Canada.

Recent arguments for a municipal bill of rights at the provincial level, or for Charter city status, have the advantage of simplicity and flexibility but may not solve the municipalities’ complaints about lack of autonomy. Such a bill or Charter might be subject to the same regular legislative procedures for amendment or repeal that currently apply to the

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(38) Union of Nova Scotia Municipalities, *Submission of the Union of Nova Scotia Municipalities to the Working Committee on the Constitution*, September 1991; Gordon Campbell, *Local Government and the Constitution: Outline for a Presentation to the Union of B.C. Municipalities 1991 Convention*.

(39) Further information on existing Charter cities in Canada can be found at City of Toronto, Corporate Services Legal Division, *Powers of Canadian Cities: The Legal Framework*, June 2000, <http://www.city.toronto.on.ca/ourcity/citycharterrepl.pdf>.

(40) See the City of Toronto’s Web site for this and other reports on Charter city status, <http://www.city.toronto.on.ca/ourcity/citycharter.htm>.

provinces' municipal Acts.<sup>(41)</sup> In addition, bills of rights and Charter cities could lead to a fragmentation of the current standard forms of municipal administration, thereby creating a patchwork of municipal governmental structures across the country.

### **E. Federal Government Interest in Urban Affairs**

Although not formally discussing constitutional recognition or guarantees of legislative autonomy, in the early 2000s the federal government became more interested in urban matters. In 2001, Prime Minister Jean Chrétien created a Prime Minister's Caucus Task Force on Urban Issues, chaired by York West MP Judy Sgro. In its interim report issued in May 2002, the Task Force recommended that the government develop an urban strategy that would include "A strong urban partnership developed in collaboration with all orders of government, the community, the private sector, and citizens through bilateral, trilateral and multilateral agreements and initiatives."<sup>(42)</sup> In its final report, released in November 2002, the Task Force recommended that "a designated Minister be given the responsibility to coordinate the Government of Canada's efforts in urban regions and to provide a 'voice' for the urban regions in Cabinet."<sup>(43)</sup> In August 2002, the federal government established Infrastructure Canada as a new department to provide a focal point on infrastructure issues and programs.

Prior to becoming Prime Minister, Paul Martin promised a new deal for cities that would include transferring to municipalities a portion of the federal government's gas tax revenue.<sup>(44)</sup> Upon taking office in December 2003, Prime Minister Martin created a Cities Secretariat within the Privy Council Office and gave his Parliamentary Secretary, John Godfrey, special responsibilities for cities. In July 2004, the Cities Secretariat was combined with Infrastructure Canada and John Godfrey was appointed Minister of State (Infrastructure and Communities). As well, the government established an External Advisory Committee on Cities and Communities, chaired by former B.C. Premier Mike Harcourt.

The Martin government's new deal with communities was one of the main themes of the 23 March 2004 budget. The objectives of the new deal were to ensure predictable long-

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(41) Amendment might be made more difficult by, for example, replacing the requirement for a simple majority with a requirement for agreement of 60% of the members of the legislature.

(42) Prime Minister's Caucus Task Force on Urban Issues, *Canada's Urban Strategy: A Blueprint for Action*, November 2002, p. 29.

(43) *Ibid.*, p. 8.

(44) Graeme Smith, "Cities will get part of gas tax, Martin pledges," *The Globe and Mail* [Toronto], 20 May 2003, p. A4.

term funding for communities of all sizes, provide more effective program support for their pressing infrastructure and social priorities, and give communities a stronger voice.

To meet these objectives, the government gave municipalities a full rebate of the GST and the federal portion of the harmonized sales tax for municipalities, up from the previous rebate of 57%. The budget also accelerated funding under the Municipal Rural Infrastructure Fund, allocated new funding to language training for immigrants, and provided funding to improve programs and services for Aboriginal Canadians in urban areas. In addition, the government agreed to consult formally with municipal representatives prior to every federal budget.<sup>(45)</sup>

In the 23 February 2005 budget, the Martin government implemented its pledge to provide cities and communities with long-term funding by sharing gas tax revenue. The funding, worth \$5 billion over five years, would be distributed through bilateral agreements with the provinces, territories, and First Nations.<sup>(46)</sup>

When Prime Minister Steven Harper named his cabinet in February 2006, he combined the portfolios of Transport and Infrastructure and Communities, and appointed Lawrence Cannon as Minister. In the 2 May 2006 budget, the Harper government maintained the gas tax funding commitment and the full rebate of the GST and the federal portion of the harmonized sales tax that municipalities pay.<sup>(47)</sup>

## CONCLUSION

Although constitutional recognition remains a goal, municipalities seem to have adopted a more flexible and diverse approach to the current constitutional circumstances. Perhaps this is related, in some ways, to the federal and provincial governments' relative reluctance to reopen constitutional negotiations. Municipalities have chosen instead to lobby the federal government for greater fiscal support, and the provincial governments for legislative changes to the provincial-municipal relationship. However, it is not likely that calls for constitutional recognition of municipalities and guarantees of fiscal security are going to die down in the near future.

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(45) Department of Finance Canada, "A New Deal for Communities," *Budget 2004*, March 2004, <http://www.fin.gc.ca/budget04/pamph/pacome.htm>.

(46) Department of Finance Canada, "A New Deal for Communities," *Budget 2005*, February 2005, <http://www.fin.gc.ca/budget05/pamph/pacome.htm>.

(47) Department of Finance Canada, *The Budget Plan 2006*, May 2006, p. 10, <http://www.fin.gc.ca/budget06/bp/bptoce.htm>.