

➤ BRIEFING PAPER ◀

**Municipal Act Reform in British Columbia:  
Implications for Local Governments and Aboriginal-Municipal Relationships**

**Summary of Considerations**

- An analysis of the implications of *Municipal Act* reform indicates that there are opportunities to introduce new legislative provisions and mechanisms to enable local governments to work more closely with self-governing First Nations.
- Further research and investigation into the type, nature, and scope of these provisions is needed.
- Attention must be given to case studies in British Columbia and across Canada that provide examples of how municipal act legislation has hindered the ability of local governments to create innovative partnerships with their Aboriginal neighbours.
- Such cases studies will serve as potential models on which to build the new *Municipal Act* in British Columbia; one that recognizes the inevitable results of treaty negotiations and empowers local governments in the process.

**Questions For Further Consideration by Local Government**

1. What provisions in the current *Municipal Act* have hindered the ability of local governments to deal independently with First Nation governments (i.e. Indian bands)?
2. What local government-First Nation scenarios (socio-economic, fiscal, governmental) could be developed to test the flexibility of the current *Municipal Act*? Do these scenarios suggest the need for possible reforms to the Act?
3. Are there any existing examples or case studies that highlight tensions in First Nation-local government relationships? Would legislative mechanisms help resolve them?
4. In which policy fields do local governments anticipate having the greatest conflict with First Nation governments?
5. Which local government powers could be enhanced to build better partnerships with Aboriginal governments?

## **A. Background**

The *Municipal Act* is arguably the most comprehensive piece of local government legislation in British Columbia. It gives local governments authority to deal with many local issues including elections, taxation, public works and utilities, planning and business regulation. It has evolved over time, with hundreds of changes in the past few years alone, but much of it remains outdated. The Act does not meet many of the more modern requirements of communities and of the local governments which serve them.

The Provincial of British Columbia is responsible for the *Municipal Act* and has recognized the need for new and more effective legislation to ensure local government meets the needs and expectations of communities. In September 1996, the Government of British Columbia and the Union of British Columbia Municipalities (UBCM) signed a Protocol of Recognition that committed the parties to a multi-year program to turn the current *Municipal Act* into a new legislative foundation for local government.

## **B. Linking Municipal Act Reform to Treaty Negotiations**

As the *Municipal Act* review process in British Columbia continues, a parallel process is also fundamentally changing the way in which governments interact with their communities: treaty negotiations. Nation-to-nation negotiations between Aboriginal communities and the federal and provincial governments in B.C. are incrementally redefining the rights and responsibilities of First Nations. The process of treaty-making is empowering and giving modern expression to the traditional values and practices of Aboriginal communities that were once self-governing. Indeed, treaty-making is the first step in fostering the self-determination of Aboriginal communities.

Since 1994, local governments involved in treaty negotiations have looked to their federal and provincial counterparts for further clarity on how their future relationship with neighbouring First Nations communities might be structured. Local officials are concerned that Aboriginal self-government will be realized without serious consideration of the sensitive community issues that local governments must daily address. After all, in the post treaty-environment, local communities (and the governments which serve them) will have to deal with the practical impacts of treaty negotiations.

While presently there are some local officials who are not prepared to accept that Aboriginal self-government will be an inevitable result of treaty negotiations, the majority of local governments have recognized that treaties will restructure their relationship to First Nation communities and have sought new and creative ways to build lasting partnerships with their Aboriginal neighbours. From this perspective, the revision of the *Municipal Act* therefore creates a unique opportunity to develop legislative mechanisms and provisions to empower local governments and enable them to act flexibly and independently when dealing with future self-governing First Nation governments.

### **C. Municipal Act Reform: Past and Proposed Changes**

A number of substantial changes were made to the *Municipal Act* in 1997. In addition to eliminating outdated provisions, the amendments in the *Local Government Statutes Amendment Act (No. 2), 1997* included:

- removal of 50 requirements for provincial approval/supervision of actions;
- provisions to make it easier for local governments to operate airports;
- provisions to allow regional districts and the Islands Trust to take on responsibility for subdivision approvals;
- enhancements so local governments can finance long-term leases at favorable rates through the Municipal Finance Authority; and,
- greater flexibility for local governments to enter development works agreements as an alternative way of recovering the costs of development.

For 1998, a number of *Municipal Act* reform actions are anticipated on the following topics. Consultation with local governments has already been completed for:

- a new preamble, purposes, and principles section in the Act
- guidelines for in-camera meetings
- public-private partnerships
- streamlining the text of the Act
- amendments regarding development financing.

Further issues for consultation in 1998, with anticipated future legislative action are:

- classification of municipalities
- broadening of corporate, service, and regulatory powers
- finance and taxation issues
- conflict of interest guidelines
- tax sales
- land use
- other legal matters

## D. Principles Guiding the Reform

Underlying the reform actions taken in 1997 and proposed changes for 1998 (and beyond) are nine 'guiding principles'. The principles were outlined in the September 1996 Protocol of Recognition signed between the Government of British Columbia and the UBCM. The principles are:

1. **Balance** - local government legislation should balance the interests of citizens, local government and the provincial government.
2. **Clear and simple legislation** - local government legislation and related administrative procedures should be clearly written and understandable.
3. **Broad powers** - local government legislation should replace specific, narrow local government authority with greater local government authority to do business in new, innovative and more effective ways.
4. **Flexibility** - local government legislation should enable local governments to respond practically to specific local needs and circumstances, including obtaining additional or customized powers where/when needed.
5. **Appropriate provincial government involvement** - provincial government involvement in local government activities should be justifiable and limited to instances where the provincial government has a clear purpose, responsibility or interest.
6. **Accountability** - local government legislation should ensure local governments are answerable to citizens, and include a variety of ways to determine citizen interest and enable citizen input on issues of concern to them. The legislation should also ensure that the local government decision-making process is fair and open.
7. **Matching resources to responsibilities** - local government legislation should enable local governments to obtain the financial resources they need to meet the responsibilities and provide the level of service expected of them.
8. **Consultation** - local government legislation should require provincial consultation with local government on matters which directly impact local government decisions and activities.
9. **Resolution of inter-local governmental issues** - local government legislation should establish the means for consultation, collaboration and closure on issues, to guide inter-local government relationships.

### Relating 'Principles' to Treaty Negotiations

A number of the principles guiding *Municipal Act* reform have a direct relationship to treaty negotiations. In fact, many of these principles are similar to the objectives sought by local

government in their future intergovernmental relationships with First Nations. In particular, local governments seek:

1. **Broad powers** - local government legislation should replace specific, narrow local government authority with new and flexible tools to enable municipalities and regional districts to do business with self-governing First Nations in innovative and more effective ways. More specifically, local governments will need the ability to create flexible public-private partnerships, particularly when dealing with First Nations governments that operate Aboriginal Development Corporations (ADC's) or Aboriginal Capital Corporations (ACC's).
2. **Flexibility** - the need for broader powers is directed related to the ability to deal flexibly with First Nations governments. Development cost financing, public notification, service agreement negotiations, and land transfers are examples of some areas in which local governments may need greater flexibility in order to build meaningful partnerships with Aboriginal governments. An analysis of how the current *Municipal Act* impacts the ability of local governments in these areas is needed.
3. **Appropriate government involvement** – First Nation government involvement in local government activities should be justifiable and limited to instances where the First Nation government has a clear purpose, responsibility, or interest. A clear articulation of these conditions is needed in the *Municipal Act*.
4. **Matching resources to responsibilities** - local government legislation should enable local governments to obtain the financial resources they need to meet the responsibilities and provide the level of service expected of them. This principle is particularly important if local governments continue to bear the financial costs of servicing First Nation communities and their off-reserve membership in the post treaty environment. *Municipal Act* reforms should enable local governments to develop and implement a host of mechanisms (from specialized user fees, variable-rate surcharges, to new land use designations) to protect their financial capacity.
5. **Consultation** – a reformed *Municipal Act* should require both provincial and First Nation consultation with local government on matters which directly impact local government decisions and activities.
6. **Resolution of intergovernmental issues** – the *Municipal Act* should establish the means for consultation, collaboration, and closure on issues, to guide First Nation-local government relationships. Perhaps the creation of a multi-party dispute resolution body, similar in form to the Fraser Basin Council, may be a useful means of creating effective closure on controversial community issues as well as shared opportunities for First Nation-local government capacity building. Local governments also need access to alternative dispute resolution mechanisms.
7. The importance of creating an effective First Nation-local government dispute resolution process cannot be emphasized enough. There are a number of cases in Canada and the United States in which self-governing First Nations are at odds with local governments over zoning regulations,

revenue sharing, and the costs and extent of service delivery. The results of these conflicts have divided communities, fueled racial tensions, and led to inequities in community standards.

**E. Possible Scenarios: How the Principles Might be Applied**

In *Getting Our Municipal Act Together*, a discussion paper on *Municipal Act* reform prepared by the B.C. Ministry of Municipal Affairs and Housing in 1997, a series of scenarios highlight issues and problems commonly raised by local governments. These scenarios suggest possible tools that could be developed to change the way local government operates. Such tools also have implications for the ways in which local government relates to First Nations.

**Scenario 1**

**Problem:** The current tax collection cycle results in revenue shortfalls for the first half of the year.

**Possible Response:** New legislative provisions in the reformed *Municipal Act* could grant local government discretion on how and when to collect tax revenue and user fees.

**Considerations:** Broad powers and clear and simple legislation would state the authority to levy taxes and user fees, and leave the details of how to collect these up to individual local governments. Such flexibility may, indeed, be necessary in cases where local governments collect taxes on behalf of First Nations governments. Local governments will need the flexibility to work cooperatively with their neighbouring Aboriginal government to develop collective and creative approaches to tax collection, particularly when First Nations tax priorities differ from the collection cycle of municipalities.

**Scenario 2**

**Problem:** A local government wants to charge each parcel of land a garbage pickup tax, but wants to vary the charge by the land use of the parcel (in recognition that a multi-family building will generate more garbage than a single family building), but the *Municipal Act* prohibits this.

**Possible Response:** Local government could be given authority to use its discretion to choose appropriate cost recovery tools (within a menu of allowable tools) for individual services, and to vary charges and taxes so long as those variances are not discriminatory.

**Considerations:** Broad powers and new legislation would state the overall revenue sources available to local governments (e.g. user fees and taxation based on assessed value, parcel or frontage), and would leave decisions to local governments about how and when these are to be applied. In this case, specific cost recovery guidelines may have to be established to ensure that differentiated user fees charged to First Nations remain fair and equitable, and are based upon mutually accepted assessment standards. The development of such standards would require the consultation and/or direct involvement of First Nation governments.

**Scenario 3**

**Problem:** A local government wants to give some land free of charge as part of a P3 (public-private partnership), but is required to call for bids or post notice of any intention to sell, and is required to sell for fair market value.

**Possible Response:** Mandatory calling for bids and the posting of notice requirement could be eliminated, and/or the requirement to sell for fair market value, but new requirements for an open, fair P3 procurement process (and for a new process to obtain public input on selling land) would be needed.

**Considerations:** Such a provision in the reformed *Municipal Act* would balance the rights of local government to negotiate an appropriate sale price with the rights of the public to an open, fair, and accessible local government. Such a provision would also enable local governments to dispose of limited tracts of land to First Nation governments without having to implement a formal bidding process. Indeed, there are a number of cases in Canada where local governments, working in partnership with neighbouring Aboriginal governments, have sought to 'donate' lands for development in exchange for tangible community benefits.

**F. Final Considerations**

Even a cursory analysis of the implications of *Municipal Act* reform indicate that there are opportunities to introduce new legislative provisions and mechanisms to enable local governments to work more closely with self-governing First Nations. However, further research and investigation into the type, nature, and scope of these provisions is needed. In particular, attention must be given to case studies in British Columbia and across Canada that provide examples of how municipal act legislation has hindered the ability of local governments to create innovative partnerships with their Aboriginal neighbours. Such case studies will serve as potential models on which to build the new *Municipal Act* in British Columbia; one that recognizes the inevitable results of treaty negotiations and empowers local governments in the process.

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