

TESTIMONIAL TO SENATE COMMITTEE ON ABORIGINAL PEOPLES

Local Government Amendments to Bill C-49 First Nations Land Management Act

Presented by Lower Mainland Treaty Advisory Committee (LMTAC), May 4, 1999

Good evening Mr. Chairman and Honourable Senators.

My name is Nancy A. Chiavario, I am a Councillor with the City of Vancouver, Chair of the Lower Mainland Treaty Advisory Committee in British Columbia, and a member of the Union of British Columbia Municipalities' Aboriginal Affairs Committee. Thank you for the opportunity to speak to you this evening on Local Government concerns regarding Bill C-49, the First Nations Land Management Act.

Before I begin, let me introduce the organizations that are represented here this evening and the members of those organizations who are part of our delegation.

Collectively, we represent:

- the Federation of Canadian Municipalities;
- the Union of BC Municipalities;
- the Lower Mainland Treaty Advisory Committee;
- the Fraser Valley Treaty Advisory Committee; and,
- the Lower Mainland Municipal Association.

Co-presenting with me tonight is Mayor Don Bell of the District of North Vancouver. Mayor Bell is an executive member of LMTAC and is the Local Government

representative to the Tsleil-Waututh (Burrard) treaty negotiating table. He is also an executive member of the Lower Mainland Municipal Association (LMMA). Also presenting this evening in partnership with LMTAC is Mayor John Les, representing the Union of BC Municipalities. Mayor Les is past President of the Federation of Canadian Municipalities, current Chairman of the Fraser Valley Regional District, Mayor of the District of Chilliwack, and a member of the Fraser Valley Treaty Advisory Committee. Also with our delegation this evening is Councillor James Coleridge from the City of White Rock who is Chair of LMTAC's Communications Sub-Committee; Mr. David Didluck, LMTAC's Executive Director; and Ms. Robin Tourangeau, Policy Analyst with the Federation of Canadian Municipalities.

After my opening remarks and some commentary on our key concerns regarding Bill C49, Mayor Bell will provide an overview of our proposed amendments and make some concluding remarks. Following Mayor Bell, Mayor Les will highlight some of our shared concerns from UBCM's perspective.

In short, we have come here together to collectively express specific Local Government concerns regarding Bill C-49 and to present some suggested amendments to the Bill. I understand that copies of these prepared amendments were already provided to you by the Senate Committee Clerk. However, I wish to submit another copy, along with our speaking notes, at the end of our presentation for the official record.

Mr. Chairman and Honourable Senators, let me begin by providing you with some context for our presentation.

The Lower Mainland Treaty Advisory Committee – more commonly referred to as the “LMTAC” – works to represent and coordinate the interests of Local Governments and their constituents in Lower Mainland treaty negotiations. The LMTAC is comprised of 23 municipal and 3 regional governments; and acts as a full member of the Provincial negotiating team. Our role is to provide advice from a Local Government and community perspective on Aboriginal and treaty negotiation issues; and, to assess the post-treaty impacts of Aboriginal policy on local communities. As Chair of LMTAC and as a member of the UBCM Aboriginal Affairs Committee, I am here to express the collective concerns of Local Governments regarding Bill C-49.

But let me emphasize, LMTAC is not here to oppose the replacement of the current land management provisions, sections 53 to 60 of the *Indian Act*, nor do we oppose the principle of Aboriginal self-determination. Rather, it is our belief that Bill C-49 establishes rules and procedures for creating land codes without due consideration of neighbouring Local Government jurisdictions, or of the many urban issues such as growth management and land use, which are of critical interest to local governments and their constituents. In short, we believe some of the current provisions in Bill C-49 do not work to improve or enhance Local Government and First Nation cooperation, but rather could further the divisions between us that are currently set out in the federal *Indian Act* – divisions which the British Columbia Treaty Process is attempting to address.

Furthermore, given that there already is a comprehensive treaty negotiation process underway in British Columbia to deal with issues like land and land uses, the application of Bill C-49 appears to be creating a parallel process to the treaty negotiations already

underway in BC. We believe that some reference to the BC Treaty Process is needed in the Bill to clarify the link between the BC Treaty Process and the rights and responsibilities transferred to First Nations under Bill C-49. In short, a provision needs to be added to the Bill to clarify how the development of the land codes are linked, or not linked, to the BC Treaty Process and whether these codes will have any force or effect in the post treaty environment.

In the BC Treaty Process, for example, Local Government acts as full members of the Provincial negotiating team and provides advice on treaty proposals. But under the current provisions of Bill C-49, there are no provisions for Local Government and neighbouring community input into the development of the land codes. Honourable Senators, these are serious issues for Local Governments, and we thank you in advance for giving due consideration to LMTAC's concerns.

I will now ask Mayor Don Bell to speak to specific proposals for Bill C-49.

Thank you Councillor Chiavario and Honourable Senators. In the interest of time, and recognizing that the UBCM, in their presentation, raise concerns which are shared by the LMTAC, I will focus primarily on two specific concerns regarding Bill C-49.

Firstly, the Bill provides no requirement for a First Nation to consult with neighbouring Local or Regional Governments on the development of the land code, or on land use decisions made pursuant to the land code. This lack of a consultation process with neighbouring jurisdictions affected by the land code stands in sharp contrast to existing

consultation requirements between municipalities and regional governments under the provincial (*British Columbia*) *Municipal Act*. This Act requires Local Government to refer their land use plans to the Boards and Councils of adjoining regional governments and municipalities for comment if the proposed plans affect those municipalities. This provides the adjoining municipality not with a veto, but rather with an opportunity to become informed and comment prior to a land use decision being finalized.

The BC *Municipal Act* (section 855.2) also requires the Board of a Regional Government developing a regional growth strategy to adopt a consultation plan that provides opportunities for early and ongoing consultation with citizens of that area, affected local governments and Boards, and First Nations.

We recognize that not all Provinces have legislation requiring consultation by adjoining jurisdictions on local land use issues. Nor do many make reference to consultation with adjoining First Nations. We would suggest that this principle, which speaks to the concept of providing an opportunity and a process for informed comment from those who will be affected by proposed government land use legislation, should be included in this landmark Bill C49. In addition, the recent decision of the Supreme Court in *Delgamuukw* further reinforces the requirement and necessity for meaningful consultation between First Nations and existing governments.

Consultation with affected parties is a critical and fundamental principle of Local Governments. Land use decisions on reserve lands can have significant impacts on neighbouring Local Governments, particularly in urban settings such as Greater Vancouver where there are currently 21 different reserves. As such, Bill C49 should

give consideration to those reserves located within and adjacent to urban centres, and not deal solely with reserves in rural contexts.

Secondly, while we recognize and appreciate that Bill C-49 is attempting to devolve the responsibility of land management to the local Aboriginal community, the Bill contains no requirement for mechanisms to address and resolve disputes between adjacent jurisdictions, particularly when those disputes involve land use and the servicing, infrastructure, fiscal, and planning issues that are connected to land use. The only reference to dispute resolution in the Bill centres on disputes between a First Nation and the Minister of Indian and Northern Affairs, not with neighbouring Local Governments.

I would also like to acknowledge that consultation must be a two-way process. The land use decisions of a municipality can have impacts on reserve lands as much as land use decisions on reserve lands can have impacts on a municipality. As such, we suggest that the principle of reciprocal consultation be added to the Bill. Our amendment in section 20(5) proposes that a First Nation law be referred to an adjacent Local and Regional government only in cases where the laws of the province governing land use by that adjoining Local Government require notification of the First Nation in equivalent circumstances.

You will also notice that our suggested amendment 6(1)(n) calls for a 'mechanism' to assist Local Governments and First Nations in resolving their disputes. We have at this

point not elaborated on the specifics of this mechanism, but would offer and request our involvement at the Bill's regulatory stage when such a mechanism would be developed.

As a result of the concerns I have just outlined, the Lower Mainland Treaty Advisory Committee in conjunction with the Union of BC Municipalities and the Fraser Valley Treaty Advisory Committee have developed a list of draft amendments to the Bill which have also been formally endorsed by the Executive of the Lower Mainland Municipal Association. I strongly urge you to consider these amendments.

To better assist the Senate Committee, we wish to present you with a detailed "briefing package" for your review and consideration. This package includes five documents: one which outlines the proposed amendments within the context of the overall Bill; a second companion document which summarizes the amendments according to the priority which Local Governments believe they need to be addressed; a copy of LMTAC's and UBCM's speaking notes; and, finally, a letter of support from the Federation of Canadian Municipalities.

[GIVE CLERK SUBMISSION]

Thank you again Mr. Chairman and Honourable Senators for your time. I would now like to introduce Chairman John Les who will speak to FCM's and UBCM's positions on Bill C49, and also make some comments on the inconsistencies in the Bill regarding environmental protection. Following this presentation, we would be happy to answer any questions you might have.

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