

UBCM PRESENTATION TO SENATE COMMITTEE ON ABORIGINAL PEOPLES

*Presented by Mayor John Les, Chair, Fraser Valley Regional District,
Mayor, District of Chilliwack, May 4, 1999*

Honourable Senators, I would like to express sincere thanks on behalf of UBCM for this opportunity to discuss Bill C-49 with you.

I am here at on behalf of the Fraser Valley Treaty Advisory Committee (the FVTAC) and the Union of British Columbia Municipalities (the UBCM) Aboriginal Affairs Director Jim Abram. I am the Mayor of the District of Chilliwack, a municipality in which eight Indian Reserves are located, and adjacent to which an additional three are located.

I am the past President of the Federation of Canadian Municipalities and current Chairman of the Fraser Valley Regional District. I am also a member of the Aboriginal Affairs Committee for the UBCM, a committee which was involved in negotiating the 1993 Memorandum of Understanding that provided for local government participation in the treaty process in BC through membership in the Provincial Negotiating Teams. I sit as part of the Provincial team at the Sto:lo Negotiating Table on behalf of the FVTAC. As a member of the FVTAC Executive I sit as a participant at the only treaty table Intergovernmental Affairs Working Group in BC, where we are exploring, with Canada and the In-SHUCK-ch N'Quat'qua, how to ensure that relationships between local governments and First Nations are productive and meaningful post-treaty.

My primary purpose in addressing you today is to recommend changes to this Bill which will more adequately meet the interests of the entire population of BC and the 152 municipalities and 27 Regional Districts that make up the membership of the UBCM. It is my hope and firm conviction that the changes we are recommending can and should be acceptable to the first nations involved. These amendments are also endorsed by my colleagues from the Lower Mainland Treaty Advisory Committee.

UBCM

The first thing I would like to emphasize is that the UBCM and local government is committed to building stronger relationships between First Nations and local governments. Forty-five Indian reserves are located within the municipal boundaries in BC. Many others are located in Electoral Areas of Regional Districts. There is a level of interdependency and interconnectedness between these communities that is not always commonly found in the rest of the country.

CHALLENGES AND OPPORTUNITIES IN B.C.

Residents of both aboriginal and non-aboriginal communities often share commercial, shopping and recreation facilities regulated and in many cases owned and operated by local governments. Aboriginal and non-aboriginal residents also often work side by side with aboriginal people in their local communities.

We at the UBCM have a vision for aboriginal-local government relations, and it involves aboriginal self-government. We appreciated that these inter-governmental relations between our communities are in some cases very sophisticated. Sometimes they are strained and sometimes they are more harmonious, but there is generally reason for optimism that the foundations for good relations can be and are being developed. No government can operate in a vacuum and the local governments and the UBCM emphasize the tangible interface between municipal and aboriginal interests. As well, local governments have for years entered into service agreements with neighbouring bands for a wide variety of necessary services. There are, in fact, over 100 servicing agreements between local governments and neighbouring Indian Bands in B.C. covering everything from roads, water, and sewers to libraries, schools, and policing. It is at the local community level that aboriginal self-government will be realized. We prefer to be partners in the process to ensure that this new form of local government is developed and implemented with foresight and harmony.

We are the level of government closest and most accountable to our constituents. We have a responsibility to ensure that when government powers are delegated to first nations appropriate measures are taken to ensure compatible and harmonious regulatory and governmental structures. This must not be an after-thought. It is essential that federal legislation be drafted in such a manner that the progress already made in establishing positive and harmonious relationships with aboriginal peoples and their governments not be impeded or destroyed inadvertently.

We at UBCM are not disinterested by-standers regarding the issues at stake in Bill C-49. After all is said and done, co-operation and co-ordination between first nations and local governments will play an important role in ensuring that Bill C-49 actually works on the ground.

CONCERNS WITH BILL C-49 and RECOMMENDED AMENDMENTS

We agree that first nations should have the ability to opt out of the land management provisions of the *Indian Act*, but, again, we have concerns about Bill C-49. We hope that the honourable Senators on this Committee will give serious consideration to the changes to Bill C-49 that we will propose today. We believe that the changes are necessary to address our concerns.

UBCM has 4 main concerns. They are:

1. **BC Treaty Commission Process** The Bill creates potential confusion in situations where land management agreements are being implemented at the same time as self government authorities are being negotiated through the BC Treaty process.
2. **Inter-governmental Relations** There has been no consideration given in the Bill to mechanisms for the harmonious evolution of intergovernmental relations between neighbouring first nations and local governments;
3. **Expropriation** The Bill contains unnecessarily broad expropriation powers that can be exercised in relation to local government interests.

4. Notification and Voting Additional First Nations may be granted Bill C-49 authority without Parliament's review or notification of other levels of government.

These concerns with the Bill have been communicated by UBCM to the federal government on numerous occasions over the past several years. Director Jim Abram and UBCM staff have been meeting and exchanging correspondence with officials from Indian and Northern Affairs Canada and with representatives from the Chief's Land Advisory Board since 1996, shortly after the Framework Agreement was signed. During the ensuing years our concerns have been consistently voiced.

It was unfortunate that UBCM's recent support for a reciprocal consultation agreement with five BC First Nation signatories was referred to by some members in the House of Common in support of Bill C-49 without any reference to our long standing concerns. In addition, Mr. Abram asked me to clarify comments made by Robert Louie, leading a delegation, to the Senate Committee on Aboriginal Peoples on April 20, 1999. Mr. Abram does support the reciprocal consultation agreement as stated by Mr. Louie, but he also strongly supports inclusion of that principle in Bill C49.

The importance of the first concern cannot be under-estimated. All 5 B.C. first nation signatories to the Framework Agreement are in the BCTC process. The integrity of that process can be undermined if a perception develops that first nations can get what they need through other channels. The BCTC process is the best chance we have in British Columbia for resolving issues relating to aboriginal rights and title. The process is important in maintaining social harmony and

creating sustainable development in many regions of the province. These are important things for all British Columbians, aboriginal and non-aboriginal alike. Therefore it is our opinion that initiatives which create disincentives for first nations to engage in treaty negotiations are not in the best interest of British Columbians generally. The B.C. government has stated on a number of occasions that Bill C-49 has the potential to create just such a disincentive. UBCM concurs with the province's assessment in this regard.

You will note in the documentation that we have provided that we have not suggested any amendments to the Bill to address this first concern regarding the BCTC process. This is because the concern goes to the very root of the proposed legislation. However, the Bill might best meet the interest of local government if some of the following concerns were adequately addressed.

As I have previously mentioned, we have provided wording for a number of suggested amendments to the Bill relating to intergovernmental relations, expropriation, notification and voting, and environmental protection. The suggested amendments are contained in the documentation which you have before you. I do not intend to describe each of the suggested amendments in this presentation. My colleagues and I look forward to answering questions that Honourable Senators may have regarding any of the specific amendments, and my colleagues from the LMTAC have already provided some greater detail.

I will just make one or two comments relating to dispute resolution, expropriation, and environmental protection.

Dispute Resolution

As you will note in Amendment 2, we have included suggested wording for an amendment which would require a land code to contain a mechanism for resolving disputes between neighbouring jurisdictions in respect of land use issues. The Bill is entirely silent on resolution of disputes where a conflict or incompatibility arises between a land use on first nations land and land uses in adjacent jurisdictions. It is completely unrealistic to suppose that these types of conflicts will not arise, and it is bordering on irresponsible to delegate land management powers to first nations in an urban or semi-urban region without addressing this important issue. UBCM acknowledges that the issue is very difficult, but it must be addressed. It does a disservice to everyone concerned to ignore it.

Expropriation

I believe that our suggested amendments in relation to expropriation are self-explanatory. UBCM is concerned about the prospect of first nation expropriation of local government interests on reserve lands. Section 28 in Bill C-49 stipulates that a first nation can expropriate any interest in its land if necessary for community works or other first nation purpose, and the Bill specifies that fair compensation must be paid according to the rules set out in the *Canada Expropriation Act*.

Only interests obtained by way of expropriation by Canada and subsequent transfer to the province or a local government [s.35 of the *Indian Act*] are exempt from expropriation by a First Nation under the Bill. Local governments have

interests in Reserves created in other ways, such as, for example, GVRD's water main rights of way through the Capilano Indian Reserve in North Vancouver, or local government leasehold property in reserve lands.

UBCM believes that local government interests ought to be expressly excluded from the expropriation power.

Furthermore, the expropriation power contained in the Bill is considerably broader than the expropriation power delegated to local governments in the *B.C. Municipal Act*. And I am referring specifically here to the ability to expropriate interests in reserves for "community works or other first nations purposes." This particular clause is brand new and has never been judicially considered. We believe the words "or other first nation purpose" ought to either be deleted, or the purposes ought to be exhaustively listed in the legislation itself. In our opinion it would not be inconsistent with the Framework Agreement to list "other first nation purposes" exhaustively rather than expressing this category in exactly the same way it is expressed in the Framework Agreement. As it stands, section 28 introduces an unacceptable level of uncertainty as to the extent of the first nation expropriation power.

Environmental Protection

Regarding environmental protection, we are concerned to ensure that environmental protections in provincial legislation will apply to lands covered by this Bill. Amendment 9 in our documentation contains suggested wording to address this concern.

At present, section 21.2 does require that first nation's environmental standards be at least equivalent to provincial standards. This reflects a similar provision in the Framework Agreement (section 24.5). But there is a jurisdictional problem which has the potential to defeat the intention of the Framework Agreement in this regard.

Section 40 of Bill C49 states that federal environmental standards prevail over first nations standards in the event of a conflict. The effect of this provision is that federal standards regarding any particular environmental subject matter on lands subject to a land code would prevail over provincial standards dealing with the same subject matter. Higher provincial standards would, in effect, be irrelevant, and first nations would not be bound to meet or beat those standards. This could not have been the intention of the drafters of Bill C-49. It appears to be a technical oversight in drafting that definitely ought to be remedied, especially since Bill C-49 and the Framework Agreement both state that the first nations signatories have agreed to meet or beat provincial standards.

CONCLUSION

To conclude, we believe that our suggested changes to Bill C-49 are reasonable, and we believe that they are necessary to ensure that sound intergovernmental relationships will continue to develop between first nations signatories to the Framework Agreement and their neighbouring local governments.

Thank you Chairman and Honourable Senators. This concludes our collective presentation.