



Canada's cities seek new status

Municipalities push for a charter with new powers and funding.

BY DAVID LEWIS STEIN

Signs and portents are growing steadily more favourable for Canada's urban partisans. Many municipal politicians in Canada now believe that it is only a matter of time, and a short time at that, until Canadian cities at long last achieve a place in the country's federal system.

Already cities operate with what some have taken to calling "a *de facto* constitution" that is beginning to supersede existing formal structures. A number of recent trends and events have been cited as indications of greater autonomy for Canada's cities. First, a series of court cases has expanded the independence of city governments. Second, many provinces are rewriting legislation to give municipalities more degrees of freedom. And third, the federal government recently appointed a tough-minded, outspoken member of parliament from Toronto, the country's largest city, to head up a parliamentary task force on urban issues and then establish a civil-service task force to act on the report.

In addition, the leading candidate to succeed Prime Minister Jean Chrétien of the federal Liberal Party has declared himself a champion of cities, and prominent media, a national organization of municipalities and a group of politicians and community leaders in five of Canada's largest cities are all pushing hard for more money and power for municipalities.

However, Canadian cities still have a long way to go before they gain a permanent seat at the constitutional table. Legally, the Canadian federal system has only two orders of government, the federal and the provincial.

"Creatures of the provinces"

The legal status of Canada's cities dates back to an act of 1849 – to an era when a handful of rustic British colonies was scattered along the United States' northern frontier. The laws limited cities to such homely responsibilities as keeping pigs off the streets and controlling drunkenness. These responsibilities were not enlarged in 1867 when the British North America Act linked the colonies together to form the Dominion of Canada. Cities were still considered of such little importance that they could be left to the new provincial governments. Cities, as the popular phrase has it, were merely "creatures of the provinces"; they could only exercise such powers as provincial governments allotted them.

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Cities have changed a bit since 1867, even though their place in the constitutional structure has not. In many instances, cities and surrounding farm towns have grown into each other creating such urban regions as Greater Montréal, Greater Toronto, Greater Winnipeg, the "Calgary-Edmonton axis" and Greater Vancouver. Over half of Canada's population now lives in urban regions or, at least, in cities with more than 100,000 residents. Municipal responsibilities have grown to include public health, housing, social assistance, care for children and the elderly, and protection of the natural environment. And yet, cities' constitutional status remains unaltered.

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Cities' status changing

This is changing – in some cases dramatically.

When the town of Hudson, Québec, banned pesticides a chemical company launched a legal challenge to the municipality's action. The courts ruled that cities are competent to pass regulations to protect residents' health as long as these do not contravene provincial laws. Municipalities can even make their criteria more stringent than those of the provinces in order to promote residents' welfare.

The most important component of this acknowledgement of municipal responsibility is, according to constitutional expert Peter Hogg, the recognition of the "principle of subsidiarity". Hogg is dean of Toronto's Osgoode Hall Law School. Subsidiarity, as he pointed out, has been borrowed from the European Union. For some time, the EU has been trying to arrange matters so that broader policy decisions are handled at "upper levels" while the services on which people regularly depend gravitate "downward" to the order of government "closest" to the people.

"Nobody would deny the basic proposition that Canadian municipalities only have powers granted by provinces," Hogg said. "But this is open to interpretation. In the Hudson case, the courts gave a very liberal interpretation of the rights of a municipality. It was more the kind of interpretation you might expect in a ruling on the constitutional rights of a province."

The Hudson case was cited in an Ontario court decision that overturned a decision by the Ontario Municipal Board, a provincial tribunal, to prevent the City of Toronto from controlling the conversion of rental apartments to condominiums. Another decision stopped Ontario's Minister of Municipal Affairs from interfering with the City of Ottawa's plan to redraw ward boundaries.

And so legal precedents expanding municipal powers continue to pile up. At the same time, many provinces have, over the past decade, been revising legislation to give municipalities more autonomy.



Alberta has defined spheres of municipal interest and has given local governments the authority to act within those spheres. Ontario's new municipal act gives municipalities more leeway to borrow money. Just last June, Québec signed an agreement with the City of Montréal defining their relationship for at least the next five years and giving the city more revenue sources. Nova Scotia has given municipalities more freedom. On the other coast, British Columbia is introducing a bill that acknowledges municipalities as "an independent and accountable order of government."

Charter-city status

"It's the closest thing we have to the city-charter status that Toronto, Winnipeg and other big cities are trying to achieve," says Donald Lidstone, a Vancouver constitutional lawyer who acts as legal counsel for 150 Canadian municipalities as well as The Federation of Canadian Municipalities, or FCM.

"The constitution still recognizes only two orders of government, federal and provincial, but we are getting significant changes in customs, usage and tradition. They are beginning to create a *de facto* constitution that is getting close to providing cities with the legislative autonomy and adequate financial resources they should have according to the International Union of Local Authorities."

A caveat – a large caveat – is the absence of adequate financial measures from these new political and legal arrangements. Municipalities still depend on property taxes for 52 per cent of their revenues. They do not have a guaranteed share of the revenues that Ottawa and the provinces raise through income taxes and other taxes. Money for cities from the provincial and federal governments still comes in the form of grants and special-purpose funding that can be arbitrarily withdrawn at any time.

Throughout the 1990s, the federal and provincial governments steadily reduced their contributions to the programs municipalities depend on. The cutbacks have been most painful in the fields of infrastructure and housing. At the same time as the upper echelons of Canada's constitutional hierarchy were withdrawing support for cities, the insights of Toronto urban philosopher Jane Jacobs became a commonplace in Canadian political discourse. One can hardly go to a public meeting these days without hearing some politician solemnly proclaim that "The wealth of the nation depends on the economic activity of cities."

In 2001 Prime Minister Chrétien appointed Liberal MP Judy Sgro to head the Prime Minister's Caucus Task Force on Urban Issues. Sgro has a gut feeling for the problems of cities. She is a former Toronto city councillor who won great public respect for criticizing Toronto's police force.

Cities on the next PM's agenda?

In June, then federal finance minister Paul Martin announced at the annual meeting of The Federation of Canadian Municipalities that he favoured "a new deal for Canadian municipalities". Martin received a standing ovation but, upon returning to Ottawa, he lost his job as finance minister. Although it's not clear whether Martin was fired or was given

time to tender a resignation, this hardly matters from the municipal standpoint. Chrétien has announced that he will resign by early 2004 and Martin, who openly covets the top job, has already gathered so much support that he looks like a sure bet to become the next prime minister.

After the caucus task force recommended last November that Ottawa provide more support for housing, infrastructure and transportation, the federal government began to deal directly with cities in a quiet way. Ottawa has contributed C\$250 million to a "green fund" that cities can use for such environmental projects as retrofitting buildings to conserve energy and installing windmills to generate electricity. The money is actually distributed by The Federation of Canadian Municipalities, so Ottawa is one step removed from dealing directly with cities. But the point is that the provinces are not involved at all.

The Federation of Canadian Municipalities is itself a bit of an odd bird. Cities are the responsibility of the provinces, but the century-old FCM is a national organization that has grown from 350 member municipalities a decade ago to 1,050 today – a number representing 82 per cent of the population of Canada. The FCM has developed into a formidable pressure group. In its submission to the federal parliament's Standing Committee on Finance in November 2002, the FCM argued that, "The sustainability and vitality of our communities is threatened by outdated institutional and fiscal arrangements...."

Pressure from social democrats and the press

The FCM has made similar statements before, but now the language is getting tougher and political pressure is growing. Jack Layton, a Toronto city councillor who served as president of the FCM, became the leader of the left-leaning New Democratic Party, or NDP, in a landslide first-ballot victory at the party's convention in January. Layton pushed the FCM into endorsing the Kyoto Accord. This endorsement, in turn, helped push the federal government into backing the Kyoto Protocol. Over the last decade the NDP has been reduced to a handful of members in the House of Commons. Layton wants to broaden the NDP's appeal by getting the party to develop a solid urban base while downplaying its class-war social doctrines.

Meanwhile the *Toronto Star* launched a year-long campaign of editorials, stories and columns all designed to pressure Ottawa into reinvesting in cities. The country's two national newspapers, the *Globe and Mail* and the *National Post*, did not exactly join *The Star's* crusade, but they did increase municipal coverage, thus making readers more aware of urban problems. The mayors of five large cities – Toronto, Montréal, Winnipeg, Calgary and Vancouver – recently met in Winnipeg with Jane Jacobs. They decided to collectively call themselves the "C5" and initiated a campaign for "charters" aimed at giving cities more autonomy. The C5 movement has gained clout because it has drawn in boards of trade and heads of the United Way charitable drives to form a united urban front.

It would be rash to predict that this emerging *de facto* constitution means cities are about to secure a place in Canada's written constitution. But there has never been so much activity surrounding the challenges and the potential of urban governance. Indeed, for Canada's urban partisans 2003 is emerging as a year for living hopefully. (6)

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