

FCM should pursue its quest for constitutional recognition

In June, mayors and councillors from around the country participated in the Federation of Canadian Municipalities (FCM) conference in Vancouver. Important issues were debated. Wishful resolutions were adopted.

Some of FCM's resolutions produced very positive results. The gas tax program introduced in 2005 and extended in 2013 comes to mind. However, many of today's demands are to resolve decades-old concerns. On those issues, further letters will be sent to federal ministers asking for the government's goodwill in a system that keeps cities hoping for handouts.

The opening paragraph of the FCM's 2013 report on the *State of Canada's Cities and Communities* makes it clear that constitutional change is a dream long abandoned: "Some 22 years ago, municipalities moved their campaign for recognition of the role and place of local governments in a modern Canada from the constitutional to the political arena ... FCM abandoned its decade-long campaign to change the 19th century constitutional framework that is holding municipalities back and opted for a more pragmatic approach based on aggressive, issue-by-issue advocacy."¹

Cities Remain Shut Out

Cities were not recognized in Canada's constitution when it was repatriated in 1982, so FCM launched a lobbying campaign. Moving the municipal campaign from the constitutional to the political arena

simply means they stopped trying to gain legal recognition. Cities had repeatedly asked for constitutional changes to address what was holding them back. In 1991, they resigned themselves to being held back.

The FCM's more "pragmatic approach" based on issue-by-issue advocacy sounds very much like "one practical step at a time" (which, as we learned in BC's recent election, may not be the best slogan to get people excited about change).

A key reason why constitutional change is no longer on the FCM radar is that our constitution's amending formula sets the bar very high. Evidently, most politicians are not prepared to attempt such a leap. Besides, the mere mention of constitutional change makes their constituents yawn.

"Some 22 years ago," the FCM submitted a brief to the Special Joint Committee on a Renewed Canada² asking that the constitution be amended to recognize municipalities. Provincial and federal governments refused to add municipal proposals to the constitutional agenda. That's when municipalities decided to drop their weapons, rather than reload.

Since 1991 – nearly one-sixth of our history as a nation – Canada has become more urban (81 percent of us now live in cities). We have 30 metropolitan areas with more than 139,000 residents, exceeding the population of our smallest province (PEI). Metro Vancouver would be Canada's fourth largest province, if it were a province. Despite the growth of our cities as mature economies that rival the GDP of many small countries, the constitutional status of Canadian cities is the same as in 1867.

Today, the FCM calls for re-inventing the federal-municipal relationship.³ Despite having tacitly agreed to our constitution being sealed shut, cities still want the federal government to "explicitly recognize the role of cities and communities in national prosperity."

Why is now the right time to revisit constitutional status?

In the past year, I took a close look at the constitution of other countries and how their cities were performing, analyzing the constitutional framework of nearly 100 countries,



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- 1 FCM, *The State of Canada's Cities and Communities 2013: Opening a New Chapter*.
- 2 *Report of the Special Joint Committee on a Renewed Canada*, February 28, 1992, The Honourable Gérard Beaudoin, Joint Chair.
- 3 <www.fcm.ca/Documents/reports/The_State_of_Canadas_Cities_and_Communities_2013_Executive_Summary_EN_web.pdf>.

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and speaking with officials from many countries and cities.

There is strong evidence that, when countries unleash the creativity and energy of their cities, they perform better. Countries that extend broader powers to cities and give them more autonomy do better. The trend seems to be: relax rules, allow for municipal self-governance in the constitution, then watch cities blossom and lead the nation to prosperity.

The Czech Republic stands out as an enlightened country that was forced to go through significant constitutional introspection in the last few decades. After having been artificially pressed into a nation called Czechoslovakia under the Soviet Union umbrella, the Czech Republic broke away from both the Soviet empire and its Slovak neighbour at a time marked by idealism. It's hard to describe it as anything but idealism when an uprising is called a Velvet Revolution.

Czech leaders smartly shopped around the planet's constitutional libraries for best practices. In 1992, they approved a new constitution adopting democracy. Less well-known is the fact that it declared, "the Czech Republic shall be divided into municipalities, which shall be fundamental self-governing territorial divisions, communities of citizens which have the right of self-government." They used the expression "self-governing" twice in that clause, so we can guess they really meant it.

Are local government autonomy and economic success joined at the hip? According to Eurostat, Prague (the Czech Republic's capital) ranks fifth among Europe's 271 regions in terms of gross domestic product per capita, achieving 172 percent of the EU average. It ranks just above Paris. A city of two million, Prague has attracted the European headquarters of many

international companies. In 2008, there were 13,000 researchers, representing a three percent share of Prague's economically active population. Gross expenditure on R&D accounted for \$1.4 billion.⁴ Those are numbers economic development officers dream of. They are also remarkable numbers for a country that was not a western democracy 21 years ago.

Nick Clegg, British deputy prime minister, believes that handing more power to cities is one answer to the imbalance in the British economy.⁵ Alberta's municipal affairs minister, Doug Griffiths, identified population growth as a key catalyst for the Big Cities Charter that Alberta is proposing to adopt in Fall 2013. Speaking about people moving to Alberta, Griffiths said "... they don't bring their water or waste water or their sidewalks or their recreational facilities or all the other services that get provided by municipalities. And so, it's not just the Province of Alberta that has challenges in adapting to the growth; it's many of our municipalities from one end of the province to the other."⁶

Recognition of cities as an autonomous level of government and decentralization of key powers will benefit Canadian communities, provinces, and Canada as a whole. Business groups tell us how government regulations have a negative effect on private sector investment. Centralized regulations have just as much impact on municipalities. Rules created decades ago are certainly not a recipe to make cities responsive to rapidly evolving economic and social conditions.

Clawing a Place at the Negotiation Table

Today is the right time for cities to re-open the constitutional recognition

dialogue. Issues that deserve constitutional change have been piling up for years. While we can tweak a few rules, we simply cannot meaningfully address senate reform, empower cities, resolve aboriginal concerns, and bring closure to a host of longstanding issues without re-opening the constitution. Cities have to brace themselves for a long and hard process, and be prepared to claw themselves a place at the negotiation table.

Amending the constitution should be hard. *Lincoln*, a recent movie focused on the 13th amendment to the United States constitution, does a good job of highlighting the crucial importance of enshrining certain rights into a country's founding document. Regardless of how tough they are to achieve, constitutional amendments are worth the effort.

The FCM's annual report highlights unfunded mandates and inefficiencies as illustrations of a "broken system."⁷ The FCM acknowledges that the current division of powers encourages short term, informal, and ad-hoc federal policies that respond to short-term political pressures and fail to address structural issues in the municipal sector.

It is therefore time to do what the Federation of Canadian Municipalities calls for – to explicitly recognize the role of cities and communities in national prosperity. In Canada's constitution. **MW**

4 <<http://euobserver.com/regions/29502>>.

5 *The Telegraph*, editorial, 18 February 2013.

6 Video: *Alberta Government Partners with Calgary and Edmonton to Develop Big City Charter*, Government of Alberta Ministry of Municipal Affairs (18 June 2012), online: Alberta Ministry Municipal Affairs.

7 Note 1, supra, p. 24.