

Beavers and Cats Revisited

Creatures & Tenants vs. Municipal Charter(s) & Home Rule

Has the Local-Intergovernmental Game Shifted?

Patrick J. Smith (psmith@sfu.ca)
Kennedy Stewart (kennedys@sfu.ca)
Institute of Governance Studies
Simon Fraser University
Vancouver, British Columbia, Canada

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In the mid 1980's, Victor Jones and Patrick Smith considered whether the intergovernmental settings in which local-senior jurisdictional exchange occurred in Canada and the United States might best be described by the notions of Canadian 'beavers' – with one life, prone to slapping tails when in danger and running from inter-jurisdictional conflict, in Canada – and US 'cats' – with nine lives able to play intergovernmental games with considerably more potential for advantage than their northern counterparts.¹ Jones noted that while Canadian-American differences had, and did, exist, the metaphor of local governments as 'creatures of the province', as defined by Section 92-8 of the Canadian *Constitution Act*, or 'tenants at will', according to 'Dillon's Rule' in (most of) the United States, "continues to thrive on both sides of the border."² Recent legislative re-assessments of notions of local home rule or municipal charters in a number of Canadian provinces would appear to cast doubt on whether Jones assertion

¹ Victor Jones, "Beavers and Cats: Federal-Local Relations in the United States and Canada", in H.Peter Oberlander and Hilda Symonds, eds., *Meech Lake: From Centre To Periphery-*, Vancouver: Centre For Human Settlements, University of British Columbia, 1986), pp.88-115. And Patrick J. Smith, "Local-Federal Government Relations: Canadian Perspectives, American Comparisons-", *same volume*, pp.127-136.

² Jones, op.cit., p.90.

still holds in the 21st century.³ Thus this paper revisits the beavers vs. cats metaphor by examining conflicting explanations and experiences of local governments in the United States and Canada with specific focus on British Columbia. After discussing intergovernmental aspects of policy making in three Vancouver-specific cases the paper asserts:

- The polarized notions of limited ‘creatures of the province’/Dillon’s Rule ‘tenants at will’ vs. home rule/autonomous local actors mask more than they illuminate.
- Most local governments operate in a mushier policy and administrative middle – or if not quite the middle at least somewhere along the spectrum between American ‘beavers’ and Canadian ‘cats’, even if closer to the beaver pole in the Canadian context.
- There is little in the experience of home rule/charters in America, or beyond principles in the legislative language of recent Canadian charter experience which suggests a dramatic shift in local-senior intergovernmental relations in BC or Canada.
- Local governments are often more limited by their own lack of imagination or political will as much as by either strict constructionism or constitutional and legislative hindrances of senior jurisdictional authority - although revenue-raising capacity often continues to matter.

1. THE AMERICAN EXPERIENCE: HAS HOME RULE TRUMPED DILLON’S RULE?

In 1868, Judge John F. Dillon, of the Iowa Supreme Court, ruled that “municipal corporations owe their origin to, and derive their powers and rights wholly from the (state) legislature.... They are... the mere tenants at will of the [state] legislature”.⁴ The contrary pole to the dependent/Dillon’s Rule municipal - and limited-powers - status has been a notion of home rule – where municipalities are given “greater leeway to undertake a variety of actions of their own without first having to obtain expressed state permission.”⁵ This found expression first in 1875 when Missouri amended the state constitution to allow ‘home rule’.⁶ A number of other states soon followed suit - granting home rule

³ On this, see for example, papers/presentations at the 2003 Urban Affairs Association meetings, panel on *Home Rule and the Canadian Charter Movement: Should Canada Emulate the United States?*, Urban Affairs Association: *Shaping Our Urban Future* Conference, Cleveland, Ohio, March 26-29, 2003.

⁴ *City of Clinton vs. Cedar Rapids and Missouri River R.R.Co.* (1868), 24 Iowa 455,475. Later in 1868, Dillon re-iterated this view in *Merriam v. Moody’s Executor’s*: “...it must be taken for settled law, that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporations – not simply convenient, but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation.” [25 Iowa 163 at 170]

⁵ Bernard H. Ross and Myron A. Levine, *Urban Politics: Power In Metropolitan America*, 6th edn., Itasca, Ill.: F.E.Peacock, 2001), “Home Rule and Home Charters”, p.94.

⁶ See Dale Krane and Robert Blair, *The Practice of Home Rule*, Report for the Nebraska Commission on Local Government Innovation and Restructuring, (Omaha: January 29, 1999). In a 1985 case, the majority on the Missouri Supreme Court found FOR Dillon’s Rule; the minority dissent argued that Article VI,

charters to American cities, and other local governing entities such as counties, providing them with a substantial degree of independence to manage their own affairs. The Dillon’s Rule view was upheld by the US Supreme Court (USSC) in a number of subsequent iterations. In *Atkins v Kansas, 1903* the USSC ruled that “local governments are the creatures – mere political subdivisions – of the state, for the purpose of exercising a part of its powers. They may exert only such powers as are expressly granted to them.”⁷ A similar ruling was made in *City of Trenton v. New Jersey, 1923*.⁸

In many instances the 18th to mid-19th century notions of local authority as dependent creatures or tenants at will of senior provincial/state authorities have persisted into the 21st century and contemporary US court rulings are entirely consistent with the US Constitution’s 10th Amendment that “powers not delegated to the United States ... are reserved to the states respectively, or to the people”.⁹ Dillon’s Rule notions have been recently re-iterated by the USSC. In *Community Communication Co. v. Boulder* (1982) the USSC ruled that:

...all sovereign authority within the geographic limits of the United States resides either with the government of the United States or (with) the states of the Union. *There exist within the broad domain of sovereignty but these two.* There may be cities, counties and other[s] ... but they are derived from, or exist in, subordination to one or the other of these.¹⁰

In *Southern Contractors Inc v. Loudon County Board of Education* (2001) the Tennessee Supreme Court concluded that Dillon’s Rule was not “an irrational interpretive cannon, [instead], the doctrine of strict, but reasonable construction of delegations of state legislative power seeks only to give effect to the practical nature of local governmental authority in Tennessee.”¹¹ And in 2002 – in *Pennington County v*

Sec.19(a) repealed Dillon’s Rule. See *State ex.rel St.Louis Housing Authority v Gaertner*, 695 S.W.2d 460 (Mo.,1985).

⁷ *Atkins v. Kansas, 191 U.S. 207 1903*. Here they noted that municipalities “may be created, or, having been created, their powers may be restricted or enlarged, or altogether withdrawn at the will of the legislature ... subject only to the fundamental condition that the collective and individual rights of the people of the municipality shall not thereby be destroyed.”

⁸ *City of Trenton v. New Jersey, 262 U.S. 182 1923*.

⁹ *US Constitution – Bill of Rights, Amendment X*, (1791).

¹⁰ *Community Communication v. Boulder* 455 U.S. 40 1982. (Emphasis in original.)

¹¹ *Southern Contractors Inc v. Loudon County Board of Education*, 58 S.W.3rd 706 (Tenn.2001). The Tennessee court concluded that “as in many jurisdictions throughout the nation, Dillon’s Rule has been applied in this state for more than a century to determine the scope of local government authority.... The

State, ex.rel.Unified Judicial System - the South Dakota Supreme Court concluded that “[a municipality] has only such powers as are expressly conferred upon it by statute and such as may be reasonably implied from those expressly granted.”¹²

Despite a more than century-old movement for home rule, fully 40 of the 50 US states apply some form of Dillon’s Rule to their local-state relations. Only Alaska, Iowa, Massachusetts, Montana, New Jersey, New Mexico, Ohio, Oregon, South Carolina and Utah currently could be defined as ‘non-Dillon’s Rule’ states. Even amongst the so-called non-Dillon’s Rule states the local-state relationship is seldom fully defined by home rule: in Iowa, for example – Judge Dillon’s home – while the state constitution rejected Dillon’s Rule, a 1998 ruling (*Goodall v Humbolt County*) raise doubts about whether Dillon’s Rule remains inapplicable today.¹³ In Massachusetts Dillon’s Rule applies to ‘quasi-municipalities’.¹⁴ Only a handful of states can be defined as explicitly and close to fully anti-Dillon in their view of the local-state relationship. The Alaskan constitution for example clearly abrogates Dillon’s Rule for all of its municipalities. The Montana state constitution (Article XI, Sec 4) repeals any Dillon’s Rule application. In South Carolina the state constitution states, “all laws concerning local government shall be liberally construed in their favor...” – a clause though which any application of Dillon’s Rule is effectively abolished.¹⁵

Where there has been a considerable tradition and legislative history of home rule in a number of states in the US which has confronted a more restrictive Dillon’s Rule judicial interpretation and legislation on local autonomy in a majority of other American states, how this has played out on the ground in terms of defining the local-state (and federal) relationship in the United States are far less clear than the notions of home rule vs. Dillon’s Rule would seem to imply. As Richardson, Gough and Fuentes conclude in their 2003 study of intergovernmental proclivities in all 50 United States:

Dillon’s Rule and home rule states are not polar opposites. No state reserves all power to itself, and none devolves all of its authority to localities. Virtually every local

Rule has been consistently applied to all forms of local government...” (pp.710-11). However according to the *Tennessee Constitution, Article Xi, Sec.9*, ‘Dillon’ does not apply to home rule municipalities.

¹² *Pennington County v State, ex.rel.Unified Judicial System*, 641 N.W.2d 127 (S.D.,2002)

¹³ *Goodall v Humbolt County*, 575 N.W. 2d 486, Iowa, 1998.

¹⁴ *Cohen v Board of Water Commissioners, Fire District No.1, South Hadley*, 411 Mass.744, 585 ME 2d 737 (1992).

¹⁵ See *South Carolina Constitution, Article VIII, Sec.17*.

government possesses some degree of local autonomy and every state legislature retains some degree of control over local governments.¹⁶

As with Jones' original conclusion, in reality the mushy middle defines local intergovernmental settings better in the United States than polar home rule vs. Dillon's Rule opposites. While some US local authorities do have room for maneuver in the United States municipalities are often still circumscribed by senior constitutional authority. In Pennsylvania, for example, there is a home rule constitutional provision which simply states that "municipalities shall have the right and power to frame home rule charters." With such charters, "a municipal may exercise any power or perform any function *not denied by this Constitution, by its home rule charter, or by the General Assembly.*"¹⁷ In Pennsylvania this limitation was affirmed by a state courts in *Naylor v. Township of Hellam*, (2001).¹⁸ Thus state capacity to circumscribe local home rule activities is not confined to the legislature. As Katz notes:

...while home rule charters go far in restoring the historical independence and autonomy of local communities, citizens cannot adopt charters that offend the state constitution or state laws. Furthermore, state courts are called upon to interpret home rule charters and often fall back on Dillon's Rule to take a narrow view of local authority.¹⁹

Despite such re-affirmations of Dillon's Rule status, Katz also states that "the political reality is that America's cities and towns enjoy a remarkable degree of autonomy and independence."²⁰ One reason for this divergence between formal authority and on-the-ground experience is that analysts often over-emphasize legal theory over practice. Jones reminds on this need to distinguish between authority and power: "the right of a legislature to create, modify or destroy is just a right, that is, it is only a legal *authority* to act. Even though the right may be plenary, it must be distinguished from *power*, or the ability of the authority to act in full or in part, to exercise unfettered choice to act at any time, any place, or to any extent it chooses."²¹

¹⁶ Jesse Richardson, Meghan Zimmerman Gough and Robert Fuentes, "Is Home Rule the Answer? Clarifying The Influence of Dillon's Rule on Growth Management", (Washington, DC.: The Brookings Institution, January 2003), 51pp.

¹⁷ State Constitution, Pennsylvania. (Italics added.)

¹⁸ *Naylor v. Township of Hellam*, 773A 2d 770 (Pa, 2001)

¹⁹ Ellis Katz, Temple University, "Local Self-Government in the United States", report for the US Embassy, Thailand, at www.usa.or.th/services/docs/work16.htm (accessed March 19, 03, p.4.

²⁰ Katz, op.cit., p.1.

²¹ Victor Jones, op.cit., p.90.

The at-ground experience on local government in the US supports this mushier middle view: despite being a ‘nation of cities’ - there are over 36,000 cities and towns in America – almost half the US population live in ‘cities’ under 10,000 population, towns, unincorporated and rural areas.²² In the Chicago metropolitan area, for example – one of the more complex metropolitan regions in the United States - the population of almost 9 million is governed by over 1250 local governments, including more than 500 special districts.²³ As Katz notes:

...in many countries of the world, this proliferation of governments would be intolerable, and cities would simply expand to annex surrounding areas, or some...metropolitan government would be created (or)...would be forced to consolidate into larger units. In the United States, however, citizens have resisted these efforts, and have been quite ingenious in finding ways to coordinate public services while maintaining the integrity of their local communities.²⁴

The reality of the current US local governmental experience then is that, as Tocqueville observed in the 19th century,²⁵ while advocacy of local autonomy remains strong, there will always be a tension between local self government and centralization forces. This means that local governments and states will need to bargain with each other over the relative powers of each, somewhere between Dillon’s and Home Rule.²⁶ That middle-ground position is re-iterated by Liebshutz and Zimmerman:

Dillon’s Rule is interpreted improperly by most observers who conclude that the Rule centralizes all exercisable authority in the state legislature and local governments possess very limited discretionary authority....What these observers fail to recognize is the fact that the state legislature is free to grant broad discretionary powers to local governments and several legislatures have done so. The Commonwealth of Virginia, for example, is a Dillon’s Rule state. Nevertheless, the state legislature has devolved relatively broad powers to cities with respect to functional areas, finance and personnel.²⁷

²² Katz, p.2

²³ On this case example, see George C. Hemmens, “Planning and Development Decision-Making in the Chicago Region”, in Donald Rothblatt and Andrew Sancton, eds., in *Metropolitan Governance Revisited: American/Canadian Intergovernmental Perspectives*, (Berkeley, CA: IGS Press, University of California, 1998), pp.121-159.

²⁴ Ibid., p.3

²⁵ Alexis de Tocqueville, *Democracy in America*, (Paris: Gosselin, 1835); Part II of *Democracy in America*(1840) includes the most relevant section here in “Influence of Democracy on the Feelings of Americans”, Part II:Section 2.

²⁶ Katz, op.cit., p.5.

²⁷ S.F. Liebshutz and J.F. Zimmerman, “Fiscal Dependence and Revenue Enhancement Opportunities For Local Governments in the United States”, in F.Horie and M.Nishio, eds., *Future Challenges of Local Autonomy in Japan, Korea and the United States: Shared responsibilities Between National and Sub-National Governments*,(Tokyo: National Institute for Research Advancement, 1997).

It is confirmed by Mead's conclusion that rather than, as noted above, 40 states being defined by Dillon's Rule, "home rule, in one of its variants, is the practice in 45 states...."²⁸ Krane and Blair's Report to the Nebraska Commission on Local Government Innovation and Restructuring (1999) concluded that there are actually three categories for scope of local government powers in the US:

1. **Non-home-rule states** – where Dillon's Rule applies;
2. **Home rule charter governments** – where a city may exercise those powers expressly granted in their own locally adopted charter; and
3. **Home rule grant governments** – where powers are 'devolved' to local authorities.²⁹

The difficult task is in deciding which state mirrors which category. Mead found 19 'home rule' states following the devolution model, 26 states with legislative home rule where local governments exercise any powers granted to them or not prohibited by either the US or state constitution, and just 5 strict Dillon's Rule states.³⁰ The distinction is some way from Richardson, Gough and Puentes who found 40 Dillon's Rule states.³¹ In either case, general powers and specified powers "may change over time" – again with the mushy intergovernmental middle.

Krane and Blair suggest that the misconceptions of Home vs. Dillon's Rule in the US is based on what they term the "Lexis-Nexis Fallacy" – an over-reliance on legal sources and "the assumption that the legal language of constitutions and statutes accurately reflects actual practice."³² According to Krane and Blair, this strictly legal, Lexis-Nexis focus creates several important problems in trying to unravel the scope of local powers and local-senior intergovernmental relations in the United States:

1. "[I]n actuality, the amount of discretionary authority available to (local governments) is often not explicit, and varies significantly from state to state. (Zimmerman, 1995);"
2. "a classification based solely on the availability of the charter option completely misses other important dimensions of local government authority. (Liner, 1989; Gold, 1989);"

²⁸ T.D. Mead, "Federalism and State Law: Legal Factors Constraining and Facilitating Local Initiatives", in J.J.Gargan, ed., *Handbook of Local Government Administration*, (New York: Marcel Dekker, 1997), ch.3.

²⁹ Dale Krane and Robert Blair, *The Practice of Home Rule*, Report for the Nebraska Commission on Local Government Innovation and Restructuring (1999).

³⁰ Mead, "Federalism and State Law", op. cit.

³¹ Richardson, Zimmerman Gough and Fuentes, "Is Home Rule the Answer?", op. cit.

³² Krane and Blair, *The Practice of Home Rule*, op.cit. pp.13-14.

3. “a legalistic approach to local autonomy does not clearly distinguish between the activities of local governments and local governments and policy makers. (Gargan, 1997);” and,
4. “the traditional legal approach to home rule provides little, if any basis for the development of systematic knowledge about the discretionary authority of municipal government and the consequences of variation in that authority (i.e., what difference does home rule make?).”³³

Russell Hanson has made the same point more recently: “Relatively few scholars know much about the constitutional, political and fiscal ties that bind states and localities, and even fewer have much information about the complex interactions between state and local governments engaged in the delivery of public goods and services. Research continues to suffer from this blind spot on state-local relations....”³⁴ For Krane, this continuing “blind spot” means that “without more comprehensive information about local government discretionary powers in all fifty states, any understanding of local governmental capacity in the United States, will be” limited.

Rigos and Bertalan (1996) have suggested criteria to measure the degree of local autonomy vis-à-vis state governments in the US: they argued that the powers of the local state could be defined in three ways - through; territorial autonomy; fiscal and financial autonomy, and, governance capacities. In other words, the relative power of the interacting units is defined through the restraints on its autonomy and the degree to which they control their own resources (economic, territorial and political).³⁵ The extensive research base on local-senior intergovernmental relations in the US would suggest these are more useful criteria than Dillon’s vs. Home Rule distinctions. Recent empirical research on local autonomy and discretion in the US supports a conclusion that most local activity sits well between the polar Home vs. Dillon’s Rule opposites - a finding that may offer the best clue to re-evaluating such relations in Canada in the 21st century.

³³ Ibid., p.13. See also J.F. Zimmerman, *State-Local Relations: A Partnership Approach*, (Westport, CT: Praeger, 1995); E.B. Liner, “Sorting Out State-Local Relations”, in E.B. Liner, ed., *A Decade of Devolution: Perspectives On State-Local Relations*, (Washington, DC: The Urban Institute Press, 1989); S.D. Gold, *Reforming State-Local Relations: A Practical Guide*, (Washington, DC: The National Congress of State Legislatures, 1989); and J.J.Gargan, ed., *Handbook of Local Government Administration*, (New York: Marcel Dekker, 1997)

³⁴ R.L. Hanson, ed., *Governing Partners: State-Local Relations In the United States*, (Boulder, CO: Westview, 1998), p.3.

³⁵ See www.plsc.uark.edu/local_government_ark.htm. Zimmerman - in 1981 – suggested 4 components of local discretionary power: 1) structure; 2) functions; 3) finances; and 4) personnel. See Dale Krane, “Local Government Autonomy and Discretion in the USA”, (Washington, DC: National Academy of Public Administration, 2001) for the most recent use of this Zimmerman index. (accessed February 11, 2003).

2. CANADIAN INTERGOVERNMENTAL RELATIONS – A BRITISH COLUMBIAN PERSPECTIVE

In 1867, Canada's constitution, the British North America Act, determined that "municipal institutions in the province" would be the "exclusive power of the province legislatures".³⁶ Hence local governments were, and still are widely, considered "creatures of the province".³⁷ The presence of home rule legislation and such traditions in the United States, and its absence in Canada, has often been considered a major point of difference between cities in the two countries. Now, however, a homegrown charter movement is coming to life in Canada. For example, in Toronto local charter advocates have been inspired by Jane Jacobs's assertion that, as the real generators of wealth, cities ought to be in a position to manage their own affairs and in Winnipeg the Manitoba legislature has considered a new provincial law entitled The City of Winnipeg Charter Act.³⁸ In Vancouver a city option of 'cherry-picking' better aspects of a new provincial Community Charter exists.³⁹ The rest of this section explores three features of local autonomy and local-senior intergovernmental relations for British Columbia and Canada spotlighting Vancouver and its longstanding city charter. More specifically the section explores some of the implications of Section 92 (8) constitutional authority vs. on-the-ground practice in Canada, US lessons on its Bill of Rights 10th amendment and Dillon's Rule vs. Home Rule/Local Charter experience; and the implications of a 'mushy middle'

³⁶ The *Constitution Act, 1867* (formerly, the *British North America Act*), Section 92-8.

³⁷ Virtually every text on Canadian local government starts with this definition: Grant Crawford, for example, stated that "local governments in Canada are in a different constitutional position than either of the two senior levels of government.... They are creations of the provinces; their powers can be extended or contracted at will by the provincial legislatures." K.Grant Crawford, *Canadian Municipal Government*, (Toronto: University of Toronto, 1954), p18; or Don Higgins: "Municipalities are created by the provinces....The British North America Act ...gives to the provinces the unrestrained power to create, alter and abolish municipalities, and to exercise whatever degree and methods of control over municipalities and over actions taken by municipalities that the provincial government cares to implement." Donald Higgins, *Urban Canada: Its Government and Politics*, (Toronto: Macmillan, 1977), pp.52-53; or Richard and Susan Tindal, in *Local Government in Canada*, state simply that "the Constitution Act of 1982 enshrined this concept of municipal governments as 'creatures' of the provincial governments which incorporated them. This meant...that the modern municipal corporation would have two essential characteristics:

1. It is created at the pleasure of the (provincial) legislature ...; and
2. The authority conferred on the corporation is not local in nature but derives from the provincial government."

Richard Tindal and Susan Tindal, *Local Government in Canada*, 5th edn., (Toronto: Nelson, 2000), pp.8-9/

³⁸ On Toronto see Jane Jacobs, *Cities and the Wealth of Nations: Principles of Economic Life*, (New York: Random, 1984). On Winnipeg see, the City of Winnipeg Charter Act at www.city.winnipeg.mb.ca/interhom/highlights_three.stm (accessed March 3, 2003).

³⁹ On Bill 14, the BC Community Charter, see www.mcaws.gov.bc.ca/charter (accessed March 11, 2003).

vs. polar opposites for understanding local-provincial-federal relations in British Columbia, Canada's third largest province. The final section presents evidence of these claims from Vancouver case studies.

British Columbia and the Greater Vancouver Region

British Columbia is Canada's third most populous province - 4.2 million citizens (2001) - representing approximately 13.2% of total Canadian (32,000,000+) population. Despite being Canada's third largest province (948,600 square kms), 83% (just under 3.5 million) of the provincial population resides in under 160 incorporated municipalities encompassing less than one percent of provincial territory.⁴⁰ Over half (54.4%) of the citizens of the province reside in the 'Lower Mainland' - two regional districts along the Fraser River adjacent to Vancouver. This 'Lower Mainland', [bounded on the south by the U.S. border, on the north and east by mountains and with its western extremity,⁴¹ including the City of Vancouver, the gulf waters of the Pacific Ocean] represents the economic engine of the Province.⁴²

Politically, the region elects just over half (50.7%) of the Members of the Legislative Assembly of the Province. In Jacobs' terms, this Vancouver-centred 'Lower Mainland' forms one coherent 'city region'.⁴³ Indeed, between 1948 and 1967, it was so represented - in the Lower Mainland Regional Planning Board.⁴⁴ Greater Vancouver is Canada's third largest metropolis. It is one of the four fastest growing urban areas in North America, Canada's fastest. The Greater Vancouver region has grown to over 2 million (as of July 1, 2001) - and is expected to reach 2.5 million by 2025. It is the core of British Columbia's 'Lower Mainland'.⁴⁵

⁴⁰ Ministry of Finance, Province of British Columbia, *BC STATS*, October, 2000 and *Canadian Census, 2001*, (Ottawa: Statistics Canada, 2001).

⁴¹ The Canadian Decennial Census of 2001 confirmed the Vancouver CMA as the third largest metropolitan region in Canada, and the 29th largest in North America. [In comparison, the Toronto metropolitan region, Canada's largest, is 8th in North America; Vancouver's neighbour, Seattle is 19th.]

⁴² See David Bond, "Sustaining the Metropolitan Economy" in P.J. Smith, H.P. Oberlander and T.Hutton, eds., *Urban Solutions To Global Problems: Vancouver - Canada - Habitat II*, (Vancouver: University of British Columbia, Centre for Human Settlements, 1996), Ch 12, pp.68-71.

⁴³ H. Peter Oberlander and Patrick J. Smith, 'Governing Metropolitan Vancouver: Regional Intergovernmental Relations In British Columbia', in Donald Rothblatt and Andrew Sancton, eds., *Metropolitan Governance: America/Canadian Intergovernmental Perspectives*, University of California, Berkeley/Institute of Governmental Studies, Berkeley, California, (1993), pp.329 -73.

⁴⁴ On the LMRPB see *ibid*, pp.334-38.

⁴⁵ Current population calculated from 2003 *GVRD Board of Directors*, (Burnaby: GVRD, March 2003).

This Vancouver census metropolitan area now essentially corresponds with the recently redefined Greater Vancouver Regional District. Established in 1967, the GVRD is an amalgam of twenty-one municipalities and one unincorporated electoral area, covering 3250 sq. kms. The Greater Vancouver Region includes a majority (eight of twelve) of the largest (over 50,000 population) local authorities in the province. The central city, *Vancouver*, has a population of 545,671 and is, since its incorporation in 1886, governed by a separate legislative Charter, the Vancouver Charter.⁴⁶ All other municipalities in the province are governed by general municipal legislation. The ethnic makeup of the Vancouver-centred region's population is highly multicultural: over half of the public school population of Vancouver has English as a Second Language, for example. This translates, increasingly, into politics around who will represent these communities – and how structures might be adapted to be more reflective of the changing social and political makeup of the region.⁴⁷

One additional factor that impacts on development decision making in the Vancouver-centred region is the fact that most of the best arable land in the province is found in the Lower Mainland. Only one-quarter of the land in the province is suitable for *any* form of farming - and most of this prime agricultural land is in the Vancouver-centred region. Thus, the potential for policy conflicts and the necessity of devising regional vs. municipal solutions to resolve urban development problems as part of any economic development strategy - domestic or international - become immediately apparent.⁴⁸

Vancouver – The First Canadian Charter City

The City of Vancouver is the earliest 'exception' in the Canadian case to all-encompassing Baldwin Act style municipal legislation was. BC entered Canada's

⁴⁶ From Ibid.

⁴⁷ On this, see P. Smith, "The Making of a Global City: Fifty Years of Constituent Diplomacy – The Case of Vancouver", *Canadian Journal of Urban Research*, vol 1, no.1, June 1992, pp.90-112 and Caroline Andrew, "World Class Cities Can or Should Canada Play?", in Caroline Andrew, Pat Armstrong and Andre Lapierre, eds, *World Class Cities: Can Canada Play*, (Ottawa: University of Ottawa, 1999), pp.5-26.

⁴⁸ On recent efforts to develop a strategic plan for Greater Vancouver see Patrick Smith, "Urban Governance and Growth Management: Greater Vancouver and British Columbia" in P.Smith, et.al., *Urban Solutions To Global Problems: Vancouver-Canada-Habitat II*, (Vancouver: Centre for Human Settlements, University of British Columbia, 1996), pp.156 - 168 and P.J. Smith and H.Peter Oberlander, "Restructuring Metropolitan Governance: Greater Vancouver - British Columbia Reforms", in Donald Rothblatt and Andrew Sancton, eds., *Metropolitan Governance Revisited: American/Canadian Intergovernmental Perspectives*, (Berkeley, CA: IGS Press, University of California, 1998), pp.371-406.

Confederation in July, 1871 and passed initial general municipal legislation in 1873 allowing local governments “to undertake a range of activities, but it did not provide for incurring debt or include any mandatory activities that were required to be performed by municipalities.”⁴⁹ Later amendments allowed for municipal borrowing (1881) and in 1896, “the Municipal Incorporation Act and Municipal Clauses Act (‘governing all new municipalities ... and providing for a system similar to that of Ontario, but without a county level’⁵⁰ provided more detail (such as ‘a requirement to make suitable provisions for the poor and destitute’) and set a basic framework for municipal government.

The policy concerning municipal legislation continuously followed by the Legislature of this Province “has been to give as large as possible a measure of local and self-government autonomy to municipal corporations, and to facilitate the incorporation of municipalities wherever warranted by population and property. The general legislation ...in force respecting municipalities (wa)s contained in three Statutes passed during the session of 1896 known as the Municipal Incorporation Act, the Municipal Elections Act, and the Municipal Clauses Act and amendments to the two last-mentioned Acts, passed in 1897, dealing respectively with municipal incorporations, elections, government and internal management. Adequate provisions in these Acts conserve the corporate rights, powers and liabilities of existing municipalities.”⁵¹

Despite the fact that most of British Columbia remained unorganized and local services in these unincorporated areas were provided through the province until the mid-1960s, the early history of local government in BC was what Robert Bish has called “of the open-ended ‘home-rule’ type.”⁵² Incorporations were mostly by local request and “from the very beginning local governments have been the essential providers of streets, water, fire protection and other services that residents desired. The province was too large geographically, and the needs of people in different areas ... too diverse for either the colonial, or later provincial government to play an effective role in providing local services. The initiative had to be left to the citizens. Local people had only the choice of

⁴⁹ Robert Bish, *Local Government in British Columbia*, 1st Edition, (Richmond: UBCM, 1987), p.15.

⁵⁰ Richard Tindal and Susan Nobes Tindal, “The Foundations of Local Government”, Ch.2, pp.13-42), in R. Tindal and S.N. Tindal, *Local Government in Canada*, 3rd edn., (Toronto: McGraw-Hill Ryerson, 1990), p.37.

⁵¹ See K. Grant Crawford, *Canadian Municipal Government*, (Toronto: University of Toronto, 1954), pp.47-48.

⁵² R. Bish, *Local Government in British Columbia*, op.cit.,p.15.

waiting for the provincial government to act, or of creating their own municipality or improvement district.”⁵³ This system of municipal administration essentially continued in British Columbia – with 99% of the province ‘unorganized’⁵⁴ - until the addition of a system of intermediate Regional Districts across the province in 1965.⁵⁵

Bish notes three trend lines in terms of provincial control and local autonomy in BC through till the late 1980’s:

1. Permitting municipalities to do only what is specified, but expanding permission to more and more functions as requested
2. Increasing mandates, or requiring local governments to perform particular activities, both with and without provincial financial aid, and
3. Supervision local government finances and compliance with legislation more closely.⁵⁶

For example, while local governments did not possess ‘home rule’, in the 1936 BC Municipal Act, “266 voluntary functions” for local governments were listed and in British Columbia “few constraints have been exercised if a municipality had a good reason for wishing to undertake some new function.... The range of functions municipalities perform has expanded greatly over time.”⁵⁷

The one anomaly to this comprehensive municipal legislation was the City of Vancouver. On April 6, 1886, the provincial legislature of British Columbia passed a City of Vancouver Charter, thus ensuring a separate legislative identity from all other municipal structures in the province. This Vancouver exception has remained despite subsequent BC Municipal Acts and Local Government Act variants.⁵⁸ Vancouver’s incorporation by separate Charter in 1886, came about because the Canadian Pacific Railway decided to extend its western terminus of the new transcontinental railroad from (the now-Vancouver suburb of) Port Moody to the deeper port at Coal Harbour (in Vancouver). As Bish has noted, “the City of Vancouver was incorporated in a separate

⁵³ Ibid., p.16.

⁵⁴ On this point, see Donald Higgins, *Urban Canada: Its Government and Politics*, (Toronto: Macmillan, 1977), p.36.

⁵⁵ Ibid., pp.15,18.

⁵⁶ Ibid., p.18.

⁵⁷ Ibid. pp.16,18. In 1987, Bish numbered the functions listed as close to 300.

⁵⁸ On more recent BC Municipal legislative reform – since the start of the 1990’s – see Patrick Smith and Kennedy Stewart, “One Oar In The Water: Local Government Reform in British Columbia, 1993-2003”, in Garcea, J. & Lesage Jr., E. (eds.) (2003), *Municipal Reforms in Canada: Dimensions, Dynamics, Determinants*, Toronto: Oxford University Press.

private bill to encompass the terminal area.”⁵⁹ The railroad’s decision caused an immediate population boom and within a year of its 1887 completion, the new City of Vancouver was providing local services to more than 8000 people – and within five years of incorporation there were 15,000 residents.⁶⁰

Despite early experience with ‘open-ended home rule’, municipalities such as Vancouver came to be guided by delegated powers from the province – albeit rather permissive delegation. The provisions of the Vancouver Incorporation Act – renamed the Vancouver Charter in 1948/9 - allowed somewhat more leeway than for all other BC municipalities, however, the main impact of Vancouver’s separate legislative base was to shield it somewhat from all-encompassing municipal legislative change. The BC legislative setting – whether for Vancouver or all other municipalities – was essentially to list corporate powers, and to tend to expand these as local requests arrived at the provincial government.

The ‘home rule’ movement in the United States did come to affect British Columbia’s thinking on local government at least once after the initial colonial/immediate post-colonial periods, but not until the end of WWI. In 1919, under the new Liberal administration of John Oliver, legislation was introduced which would have permitted home rule.⁶¹ It failed to pass, but its consideration was not surprising given the popularity of the idea in the Western United States.⁶² As Bish noted, “home rule ... would have permitted local governments to do anything that was not prohibited by provincial legislation, instead of only what the legislature specifically authorizes.”⁶³ While a concept relatively foreign to discourse on Canadian municipal governing – where

⁵⁹ Bish, op. cit., p.16.

⁶⁰ In the 1901 Canadian Census Vancouver’s population was 27,000 and 120,000 (with its Point Grey and South Vancouver neighbours) in 1911. When these were amalgamated in 1929, the 1931 census recorded a city population of 250,000 – up almost a thousand-fold its original size. See Graeme Wynn, “The Rise of Vancouver”, in Graeme Wynn and Tim Oke, eds., *Vancouver And Its Region*, Vancouver: UBC Press, 1992), pp.65-145.

⁶¹ Oliver had taken over as Premier of BC on March 6, 1918 from Harlen Brewster, who won the 1916 BC General Election; Brewster died March 1, 1918. The 1916 election saw the return of Liberals to government after several prior general election defeats to the Tories. See www.elections.bc.ca/bcpremiers.

⁶² See *Journals of the Legislative Assembly of the Province of British Columbia – From the 30th January to 29th March, Session 1919*, vol.XIVIII, (Victoria: King’s Printer, 1919), e.g. – An Bill to Amend the Municipal Proportional Representation Act, (Bill 37), Introduced, March 3, 1919, 1R,p.113.

⁶³ R. Bish, op. cit., p.16.

conventional wisdom is that the ruling sun in the municipal sky is the province⁶⁴ – it was the case that increasingly municipalities took lack of legislative *authority* as an excuse for inaction. As Frances Frisken has argued, much of the onus of meeting modern urban challenges has fallen on local governments: “whether they test the outer limits of their powers or use those limits as excuses for inaction; whether they cooperate or compete with each other ... they will have considerable influence on the future form of metropolitan areas....”⁶⁵

In the BC Liberal Party *New Era* election platform document of 2001, one of the ‘first 90 days’ commitments was action on the creation of new municipal legislation - a Community Charter. In May 2002, the Ministry of Community, Aboriginal and Women’s Services (MCAWS - which replaced the old Ministry of Municipal Affairs with the new 2001 Government) released *The Community Charter: A New Legislative Framework for Local Government*. According to Ted Nebling, the Minister of State for the Community Charter, the new legislation would:

...replace a provincial tradition of rigid rules and paternalism with flexibility and co-operation,... will encourage municipalities to be more self-reliant...(and) presents simple, concise legislation that balances broad municipal abilities with public accountability and protection of province-wide interests in key areas like the economy, environment and public health (Ministry of Community, Aboriginal and Women’s Services: 2002, 3).

Structurally and functionally little was to change under the Charter, but, as passed, the legislation will bring a number of financial and jurisdictional reforms - all of which are aimed at freeing up the hands of local government; these include:

- **‘Natural person’ powers** – Currently BC municipalities are corporate entities meaning that their powers are subject to some limitations on the making of agreements, and providing assistance. Natural person powers do away with itemized corporate powers and increase the corporate capacity of the municipality in relation to already delegated powers.

⁶⁴ See Victor Jones, “Beavers and Cats: Federal-Local Relations in the United States and Canada” in H.Peter Oberlander and Hilda Symonds, eds., *Meech Lake: From Centre to Periphery- The Impact of the 1987 Constitutional Accord on Canadian Settlements*, (Vancouver: Centre For Human Settlements, University of British Columbia, 1988), pp.80-126; and P.J.Smith, “Local-Federal Government Relations: Canadian Perspectives, American Comparisons – A View through a Kaleidoscope”, in H.Peter Oberlander and Hilda Symonds, eds., *Meech Lake: From Centre to Periphery- The Impact of the 1987 Constitutional Accord on Canadian Settlements*, (Vancouver: Centre For Human Settlements, University of British Columbia, 1988), pp.127-140.

⁶⁵ On this idea, see, for example, Frances Frisken, “Metropolitan Change and the Challenge to Public Policy”, in F. Frisken ed., *The Changing Canadian Metropolis: A Public Policy Perspective*, Vol. 1 – of 2, (Berkeley, CA.: IGS Press, University of California, 1994), p.32.

- **Service Powers** – municipal councils may now provide any service they consider necessary and bylaws are no longer required to establish or abolish services.
- **Agreements** – in terms of public-private partnerships, municipalities gain a simplified authority to grant an exclusive or limited franchise for transportation, water or energy systems and provincial approval for agreements between a municipality and a public authority in another province is eliminated.
- **Additional Revenue Sources** - the Community Charter ‘puts forward for discussion’, but does not yet commit the province to, a number of potential municipal revenue sources outside of property taxes including: fuel tax, resort tax, local entertainment tax, parking stall tax, hotel room revenue tax, and road tolls.

In addition, the proposed Community Charter would go some way in clarifying the local-provincial relations by recognizing municipalities as ‘an order to government’ and promising:

- **Consultation** - the provincial government agrees to consult with the UBCM before changing local government enactments or reducing revenue transfers.
- **No forced amalgamations** – Amalgamations between two or more municipalities will not occur unless electors within the affected communities approve the merger.
- **Reduction of provincial approvals** - Under the community charter the number of routine provincial government approvals will be reduced. As well, the community charter allows the province to reduce approvals further over time through regulations.

After much delay the Liberal Government started to re-reform the province’s only recently revised *Local Government Act* by introducing the *Community Charter Act* (Bill 14) to BC the legislature.⁶⁶ The Bill sets out its purpose in language recognizable to at least some advocates of modest home rule. BC’s Community Charter legislation also includes language which students of Section 92 (8) recognize as maintaining provincial jurisdictional oversight potential. American local governance observers might simply recognize this as Dillon’s Rule Lite (aka ‘Home Rule Even Lite’). This is clearest in Section 3 of the Act that outlines the purposes of the Community Charter:

⁶⁶ On the 1990’s reforms of BC municipal legislation, including the Local Government Act, (1998 and 1999), see P.J. Smith and K. Stewart, “One Oar In The Water: Local Government Reform in British Columbia, 1993-2003”, chapter in Garcea, J. & Lesage Jr., E. (eds.) (2003), *Municipal Reforms in Canada: Dimensions, Dynamics, Determinants*, Toronto: Oxford University Press. (Forthcoming)

The purposes of this Act are to provide municipalities and their councils with:

- (a) a legal framework for the powers, duties and functions that are necessary to fulfill their purposes,
- (b) the authority and discretion to address existing and future community needs, and
- (c) the flexibility to determine the public interest of their communities and to respond to the different needs and changing circumstances of their communities.⁶⁷

The principles of the Act appear closer to local autonomy/home rule advocates' views. They reflect a desire to clarify both the municipal and the provincial components of the provincial-municipal relationship in British Columbia, and, potentially, to add to local autonomy:

Principles, Purposes and Interpretation - Principles of municipal governance

- (1) Municipalities and their councils are recognized as an order of government within their jurisdiction that:
 - (a) is democratically elected, autonomous, responsible and accountable,
 - (b) is established and continued by the will of the residents of their communities, and
 - (c) provides for the municipal purposes of their communities.
- (2) In relation to subsection (1), the Provincial government recognizes that municipalities require
 - (a) adequate powers and discretion to address existing and future community needs,
 - (b) authority to determine the public interest of their communities, within a legislative framework that supports balance and certainty in relation to the differing interests of their communities,
 - (c) the ability to draw on financial and other resources that are adequate to support community needs,
 - (d) authority to determine the levels of municipal expenditures and taxation that are appropriate for their purposes, and
 - (e) authority to provide effective management and delivery of services in a manner that is responsive to community needs.

Principles of municipal-provincial relations

- (1) The citizens of British Columbia are best served when, in their relationship, municipalities and the Provincial government:
 - (a) acknowledge and respect the jurisdiction of each,
 - (b) work towards harmonization of Provincial and municipal enactments, policies and programs, and,
 - (c) foster cooperative approaches to matters of mutual interest.
- (2) The relationship between municipalities and the Provincial government is based on the following principles:
 - (a) the Provincial government respects municipal authority and municipalities respect Provincial authority;
 - (b) the Provincial government must not assign responsibilities to municipalities unless there is provision for resources required to fulfill the responsibilities;
 - (c) consultation is needed on matters of mutual interest, including consultation by the Provincial government on
 - (i) proposed changes to local government legislation,
 - (ii) proposed changes to revenue transfers to municipalities, and

⁶⁷ Bill 14 - *Community Charter Act*, First Reading, 4th Session, 37th Parliament © March, 2003: Queen's Printer, Victoria, British Columbia, Canada.

- (iii) proposed changes to Provincial programs that will have a significant impact in relation to matters that are within municipal authority;
- (d) the Provincial government respects the varying needs and conditions of different municipalities in different areas of British Columbia;
- (e) consideration of municipal interests is needed when the Provincial government participates in interprovincial, national or international discussions on matters that affect municipalities;
- (f) the authority of municipalities is balanced by the responsibility of the Provincial government to consider the interests of the citizens of British Columbia generally;
- (g) the Provincial government and municipalities should attempt to resolve conflicts between them by consultation, negotiation, facilitation and other forms of dispute resolution.

However the language hides as much as it illuminates. For example, despite talk of limiting interference by the senior provincial authority, should local governments under BC's Community Charter decide to raise local taxes – such as to businesses – rather than opt for the newly-preferred user-fees and the like, the province reserves the right to impose limits on property tax rates. This oversight would appear to be in direct contradiction of the Community Charter's 'empowering local autonomy' intent. Also, under a re-defined provincial-municipal relationship, the Community Charter reminds local governments that apart from acknowledging and respecting each other's jurisdiction, the legislative intent is to "work towards harmonization of Provincial and municipal enactments, policies and programs."⁶⁸ This may work in many instances, but not where a local government wishes to take a very divergent policy tack. Here, the intergovernmental game becomes more perilous for local authorities. The dismissal of school boards, the weekend order-in-council elimination of the GVRD's authority over the region's watershed when it tried to block provincial implementation of a natural gas pipeline through that watershed to Vancouver Island,⁶⁹ and the overturning of a local (Delta) bylaw to limit negative air quality impacts of large greenhouses by requiring them to utilize natural gas or propane vs. wood waste,⁷⁰ all serve as recent enough reminders

⁶⁸ Bill 14, The Community Charter, "Principles of the Provincial-Municipal Relationship", Part 1, Sec 2.

⁶⁹ On this example, see Smith and Oberlander, (1998), op. cit.

⁷⁰ See Derrick Penner, "Tomato King cheers right to burn wood: Court overturns bylaw that restricted growers fuel – Delta bylaw 'set undue restrictions' ", *Vancouver Sun*, April 19, 2003, pp.C1-2. In this case the Municipality of Delta had passed a bylaw to provide some local controls of large (eg in this case 18 acre) greenhouse operations, in particular their use of less-clean fuel sources for heating. The BC Government intervened when a Grower challenged the bylaw, citing Right to Farm legislation over the right of a municipality to legislate on local businesses. The province also argued that the local bylaw contradicted the provincial Waste Management Act which exempts agricultural operations. Urban-Rural issues of this sort are not new to Delta, a Vancouver suburb. In the late 1980's and 1990's, Delta held the longest land use dispute hearing in Canadian history over efforts by to develop farmland for urban use. The debates over the so-called Spetifore lands near the Tswassen ferry terminal to Vancouver Island initially led

that constitutional authority does matter when significant policy differences arise between local and provincial players. School board experience in several of Ontario's largest cities mirrors this lesson.

3. LOCAL EFFORTS TO STABILIZE THE MUSHY MIDDLE: THREE VANCOUVER CASES

In support of the 'mushy middle' thesis vs. dependent creatures or promised local charters, there are several BC examples which illustrate in support of the capacity of local governments to act *despite constitutional and statutory inferiority*. These include: (1) Vancouver's *four pillars approach* on its downtown drug problem and the intergovernmental lessons from this experience; (2) Vancouver's February, 2003, Olympic plebiscite; and, (3) the international activities of BC cities such as Vancouver. These three cases are explored in some detail below to add substance to claim that the despite legislative boundaries municipalities can often control their destiny if they have the political will to do so.

Case I: The Vancouver Agreement

There are examples of where cities exercise policy ascendancy despite inferior jurisdictional status. On the City of Vancouver's Four Pillars approach to drug treatment, the city has lead the way in Canada on a policy direction away from the US-dominated War on drugs to a Harm-Reduction model. Contained in the *Vancouver Agreement*, it has been the city which has lead the way in the intergovernmental dealings. While at time of writing the city still awaits the promised financial contributions of senior federal and provincial governments, each has committed to a plan begun under former NPA Mayor Phillip Owen and continued under COPE Mayor Larry Campbell. With help from Vancouver East MP Libby Davies, (a former Vancouver City Councillor), the federal government committed to contributing to a pilot project which would shift the emphasis from policing to health and treatment. The Vancouver Agreement's four pillars are (i) enforcement; (ii) ; (iii) ; and (iv).

Vancouver has led the way on this partly because of the existence of a local party system. When NPA Mayor Phillip Owen led the way for a new approach to dealing with

to the Bill Bennett Social Credit government abolishing regional planning in 1983 when the GVRD initially prevented development plans by a Delta Social Credit supporter.

drug and other related issues in Vancouver's Downtown Eastside (DTES), one of the poorest neighbourhoods in urban Canada, it created some controversy within his Non Partisan Association. Despite that, Owen's championing of the issue led to the signing of the tri-level Vancouver Agreement. When the NPA was defeated in the November 2002 Vancouver civic election, the party policy commitment of the Committee of Progressive Electors to the four pillars approach and harm reduction carried this initiative forward. COPE Mayor Larry Campbell and city council remain the main policy advocate of making Vancouver the first city jurisdiction in Canada to move to a European harm-reduction, health model of dealing with non-medicinal drug use.

As noted in the opening list of premises for this article, money remains a constraint. Here the city championing of a harm reduction treatment centre has been frustrated. Initially Campbell announced a centre would open on January 1, 2003, just weeks after his election; then he stated that the date would be April, 2003. Most recently he has suggested January 1, 2004 – that after a recent City Council meeting where the Council was criticized for abandoning its electoral policy promise to help the DTES when Vancouver City Police independently began a major 'cleanup' of drug-pushers in the area, essentially embarking on one pillar – enforcement – before the other pillars were in place. The most ambivalent partner in this intergovernmental enterprise has been the province. The federal government seems fully committed – just waiting for an opportunity to maximize its \$-contribution; the province, with health responsibilities, has also promised \$'s as well but remains quiet on helping what is now its political enemies at the city level. Making an electoral policy commitment as a political party before being elected has armed the City with the capacity to resist pressures to 'go slow' on this issue – at least slower than incoming monies might allow.

Case II: Vancouver's Olympic Plebiscite, February, 2003

If the drug treatment issue demonstrates the capacity of a city to lead in a policy field where it has little jurisdiction, Vancouver's decision to hold a 'referendum' on Canada's bid for the 2010 Winter Olympics illustrates the capacity of municipal institutions to insulate themselves from senior frustration of their policy positions by ensuring public support. During the autumn 2002 Civic Election, COPE mayoral candidate Larry Campbell promised to hold a Vancouver-wide referendum should the province not seek

popular approval for its commitment of hundreds of millions of public dollars at a time when it was engaged in major cuts across social, educational and health programs.

This commitment was also a way for Campbell to electorally assuage divergent party views on such a major public undertaking which appeared contrary to slow and limited provincial funds being made available in the city for DTES rebuilding. The left support of COPE included many who – as in Toronto – called for bread not circuses and opposed Vancouver spending any public dollars on the Olympic bid.

The timing of this was also tricky. There had been several years of commitments and contracts involving tri-level co-operation to even get the Vancouver-Whistler Olympic bid submitted – all of it done during the right-wing NPA administrations led by Phillip Owen. With a November, 2002 election date, and a final site visit by the Olympic Selection Committee due in March, 2003, fitting in Campbell’s promise of a referendum between a late December, 2002 swearing-in and the Olympic selection Committee visit was clearly problematic. Initially both senior levels of government voiced concerns. For the province these were more like objections, suggesting that they could “hold” the city to a commitment made by a previous administration. Questions were also raised about the legality of a referendum, its costs and whether it would be binding – as there are provisions for such in the Vancouver Charter, though only for capital expenditure votes.

On costs, the estimates were between \$350,000 and \$750,000. Then there was the question of this expenditure on a referendum – subsequently renamed a non-binding plebiscite – vs. other city initiatives. Unlike the Harm Reduction Plan in the Vancouver Agreement, here the city had the capacity to control all cost issues internally. That, and a party electoral commitment by a new Mayor and Council provided the capacity of the new COPE administration to overcome initial bureaucratic resistance, and some federal and significant provincial pressure not to hold such a vote, because – as critics pointed out – it might easily imperil Vancouver’s Olympic bid. An external policy memo outlined for the new administration how it might overcome these roadblocks in holding such a vote - recommending even the timing of such a vote (just before the March 2003 visit by the Olympic Selection Committee team.)

In late February, 2003, Vancouverites (though not the rest of BC or voters in adjacent municipalities with planned Olympic venues) voted in a significant majority to

support the Olympic bid. The mayor and key councilors from COPE sided with the Yes side. More importantly, in the game of intergovernmental advantage, key city actors were able to leverage important benefits for the city from the province. The best example of this is around the downtown Woodward's Building. A decade ago the Woodward's shopping empire dissolved, leaving a large store building between Vancouver's downtown and the DTES. What to do with the building or the site had bedeviled the city, the province and private developers for a decade.

In the dying days of the NDP provincial government in 2001, former Vancouver city councillor (and former Municipal Affairs Minister) Jenny Kwan 'bought' the Woodward's building from a developer who had not been able to complete a city-acceptable plan. The building had by that point been the site of years of protest activity by DTES and housing activists wishing a public housing component included vs. all higher end stores and offices. The cost to the province was more than \$20million. Then the NDP government was wiped out (77 seats to 2) in the May, 2001 provincial election by Gordon Campbell's right-wing Liberals.

Provincial concern over the City's announced plebiscite on the Olympic bid, an initiative strongly supported by the province, and COPE's party electoral commitment to hold such a vote, allowed COPE city councillors such as Jim Green (former head of the DTES Residents Association – DERA) to suggest to the province that his support for the YES side could be ensured with a 'gift' by the province to the DTES. This was a way of managing internal party ambivalence on the Olympics, but it also was a way to leverage provincial concerns into a real benefit for the city. Up to that point, Woodward's had been the subject of a lengthy housing protest where the block-sized building was surrounded by tents and other forms of temporary housing for many of the city's homeless. The optics of this for a provincial government anticipating the imminent visit of the Olympic Selection Committee proved too much.

The province, in very short order, sold Woodward's to the city for \$6million, and Green and COPE council was also able to whipsaw a provincial commitment to fund 100 social housing units at or in conjunction with the Woodward's building sale – a provincial expense of up to \$10million in the midst of social cuts across the province. Green signed on to the YES side, the city vote was 65% in favour of the Olympics (with

a surprising 45% turnout where ‘usual’ Vancouver electoral participation is closer to 30%) and all this just days before a now-happy Olympic Selection Committee visit occurred. By July, 2003 all senior governmental players will know if the Vancouver bid has been successful. For the city, many of the benefits of its Olympic bid have already been secured.

Case III: City Internationalism

The Olympics and Vancouver Agreement cases demonstrate that a city often has only itself to blame for being reactive and dependent on senior governments vs. proactive and more self-reliant in policy terms; it also suggests lessons on what is possible without jurisdictional authority, as well as providing instruction for any local government on ways to insulate itself from such dependency; finally, it does remind for senior governments (if they need any such reminding) that intergovernmental deal-making influence with local authorities often may have less to do with constitutional and statutory authority than with persuasion and incentives. Nothing exhibits this more than the international activities of cities such as Vancouver.

Vancouver was the first city in Canada, indeed amongst modern western democracies, to enter into an international twinning arrangement: in 1944 it became (what was then called) a sister city of Odessa, in the Soviet Union. This was premised on aid to a then-allied port city and encouraged by links in the local Jewish community. Over the next decades, Vancouver added four more ‘twins’, initially for social/cultural reasons and later, under Mayor Mike Harcourt in the 1980’s, for more economic (and increasingly “globalist”) reasons. That more strategic focus has remained since, though Vancouver has added no more formal twins.⁷¹

What has been most interesting about Vancouver’s global involvements is that there is no jurisdictional basis for formal twinings, for informal linkages, for declarations of peace, anti-war or Vancouver as a “nuclear weapons free zone”. The city has just done it; sometimes with the encouragement of senior authorities, occasionally, in conflict.

What began as a minor addition to the municipal policy arsenal has grown in both scope and type: On *extent*, apart from Vancouver – with five formal international city

⁷¹ On this history see, P.J. Smith, “The Making of a Global City: ...-The Case of Vancouver”, op.cit.

twinings - most other municipalities in the metropolitan region have one to several equivalent links.⁷² That is a far cry from 1967 when there were only 9 such formal global city links in all of Canada. With expansion, such linkages have often become less formal/protocol-based as well. Apart from its twins, for example, Vancouver has a new connection with Frankfurt, in terms of modelling a harm-reduction vs. war on drugs strategy for dealing with local urban drug issues.

More importantly, on changes in **type** of city international activity, initially these were largely cultural and educational, but have shifted to more strategic, business-oriented forms and increasingly to an even broader 'globalist' policy phase. This development of differing - and subsequent - forms represents a maturing of regional/city subnational constituent diplomacy and suggests that these territorial redefinitions matter. The more recent 'globalist' policy phase is one which links Vancouver to other cities around the world, no longer willing to simply wait for – and react to -senior governmental action on the array of sustainability issues confronting global sustainability. Such a globalist policy stance includes the following city-based international activities:

- 1. A World Peace/Disarmament component:**
- 2. A Foreign Aid component:**
- 3. A Global Ecological component:**
- 4. A Social Equity component**
- 5. A Community/Cultural Diversity component**
- 6. An Economic/Development component**
- 7. A Good Governance component**

Each policy phase and each policy component has reflected a series of choices by appropriate governmental and non-governmental actors and a different set of policy objectives in keeping with shifting policy determinants. Each also has represented different policy implications for senior jurisdictions. The shift from incremental to more rational forms - and then to more mature strategic and globalist responses - also has been reflected in a growing institutionalization of the subnational global policy-making process and form. This institutionalization of global activity in local government has occurred in support of both broadly-based 'external' international linkages beyond the region - as exemplified by much of the city-based 'twinings' and 'within region'

⁷² See Anrew and Smith, op.cit, for a listing of such Vancouver-area global-city links.

responses such as those exemplified in variations of the Cascadia option, such as the Cascadia fast train connection, the Georgia Basin Initiative or a sustainable Olympics.

4. THE WAY AHEAD – PROACTIVE LOCAL GOVERNMENTS

Amongst the lessons here on local control of agenda items are the following:

- Insulate local capacity from senior frustration by engaging in a real exercise in public support
- Isolate local capacity as much as possible from the impediments of senior money requirements
- Leverage such advantage as is provided for by circumstance
- Do not wait for senior governments to act; the old model of doing nothing without consulting the municipal solicitor is dead - though that does not mean that legal advice won't be necessary).
- Finally, do not use oft-perceived constitutional or statutory impediments as excuses for local governmental inaction.

The changes in local government legislation over the past decade in British Columbia leave a few key questions for those contemplating the local-provincial-federal relationship in Canada in the 21st Century:

- Does BC's Community Charter – and its Local Government Act predecessor - represent a real shift in terms of local governmental autonomy? and
- Is accountability sufficiently reflected in the Community Charter – or in its predecessor legislation? Or is it a sufficient priority to be on the Government's 2003-2005 agenda?

On the latter test, accountability is clearly insufficiently dealt with in THIS Community Charter – just as it was with the previous government's efforts to further empower municipalities in BC. With much in next/Phase II of the Community Charter concerning regional districts, it will be a tall legislative order to answer the second test – even in the next two years before the May 2005 provincial general election. It is possible that the BC Premier's commitment to undertake a review of provincial electoral matters might consider municipal electoral reform - a Citizens' Assembly is working on this province-wide electoral reform issue – but it seems likely that agenda capacity will leave local democratic/accountability reform for another process and the end of the decade.

As with previous left/New Democratic governments, the rightist/Liberals are clearly aware that if they are to bring more efficiency through decentralization, they must also empower local citizens with the appropriate tools to help them hold local officials responsible for their actions. Although annual reports and revised conflict of interest legislation are small steps in that direction, these so-called accountability measures will be effective only if barriers to electoral participation are lowered, local elector

organizations are helped to mature, council seats are distributed more fairly, and local election expense reforms are put in place. The Minister responsible for BC's Community Charter thinks that an adequate balance has been struck between local autonomy and accountability.⁷³ He is far from correct. The continuing democratic deficit in BC's largest municipalities means that on good (local) governance much is left to be done.

One other unintended outcome of BC's Community charter – one noted by American commentators on Home Rule – is the distinct possibility that increasingly empowered municipal entities – if that is indeed the result – may be less likely to cooperate on finding regional solutions to pressing metropolitan issues.⁷⁴ On that pudding, time will tell. One of the outcomes of the November, 2002 change of local government in Vancouver – from a long-serving rightist 'Non-Partisan Association' to a leftist "Committee of Progressive Electors" will possibly be use of the separate powers of the Vancouver Charter to initiate its own electoral reform in BC's largest municipality. That will require Vancouver's new Mayor and Council to overcome the excuse of provincial oversight and power as preventing reform action. The outcome of that looming contest might say more about the impact of home rule and community charters for British Columbia than the earlier debates about Section 92-8 "creatures of the province" - or Dillon's Rule 'tenants at will' local governments in the United States.

While Home Rule/Charter puddings are still in the oven in Canada – indeed in some provinces, proponents are just considering going shopping and uncertain about what ingredients - the capacity of the province of BC to add new grounds for firing locally elected school boards⁷⁵, the removal of public accountability and freedom of information requirements for recently privatized Crowns like BC Ferries,⁷⁶ and the Community Charter's reminder that the province can over-rule a municipality's capacity to raise property taxes beyond a level the province does not support, serve as important reminders that the *Swainson Rule* does not apply so much as the *Smith Corollary*: Neill

⁷³ Hon. Ted Nebbling, BC Minister of State for the Community Charter, "Community Charter Strikes The Right Balance", Letter to the Editor, *The Vancouver Sun*, March 20, 2003, p.A23 – (in response to Stewart/Smith, Op Ed article of March 14, 2003. See reference #22, above.)

⁷⁴ On this question, see, for example, Jesse Richardson, Meghan Zimmerman Gough and Robert Fuentes, "Is Home Rule the Answer? Clarifying The Influence of Dillon's Rule on Growth Management", (Washington, DC.: The Brookings Institution, January 2003), 51pp.

⁷⁵ BC School Act amendments, 2002.

⁷⁶ On this, see, for example, re; the newly (April, 2003) privatized/created BC Ferries Services Inc.

Swainson, reflecting on the provincial-municipal relationship in British Columbia in the 1980's, concluded that 'both levels of government have the capacity to frustrate the other, but neither benefits from such.'⁷⁷ The *Smith Corollary* to Swainson is that in Canada, there is a continuing link between constitutional *authority* and political *power*. Local governments – whether armed with community home rule charters or not – play the game of *substantial* local-senior (at least provincial) governmental conflict at their peril. BC's Community Charter – as currently constituted - does little to alter that formal Dillon's Rule-like 'creature of the province' state.⁷⁸

As Victor Jones has reminded, while "recognizing that, in at least one respect, Canadian and American local governments are alike...,in both countries they are at common law and under the constitution, 'tenants at will' of the provinces or states."⁷⁹ Jones analogy for the main difference between Canadian and American local-senior governmental relations was from the comic strip, *Jiggs*: "Jiggs, in a comic strip of my childhood...finally recognized the difference between *authority* and *power* when, after repeated attempts to put the cat out for the night, followed each time by the cat's re-entrance through other doors and through many open windows (the multiple cracks of the organization), he gave up and said, 'Well, stay in then, I will be obeyed'". Local governments in the United States behave like Jiggs' cat and frequently enough to make a systematic difference, and state and national governments often behave like Jiggs. However, the latter are able to exert their authority often enough that local governments can still be called "tenants at will". *The questions are when, how, and where will the state governments exercise their will against their recalcitrant or innovative children.*⁸⁰ Thus there is still obviously considerable room in the mushy (policy) middle for proactive local governmental engagement in the intergovernmental game. All levels of government do well to increasingly recognize that fact.

⁷⁷ Neill Swainson, "Provincial-Municipal Relations" in T. Morley, et.al, *The Reins of Power: Governing British Columbia*, (Vancouver: Douglas and McIntyre, 1983).

⁷⁸ P. J. Smith, various, e.g., "Governing Metropolitan Change: Public Policy and Governance in Canada's City Regions", in James Lightbody, ed., *Canadian Metropolitics: Governing Our Cities*, (Toronto: Copp Clark, 1995), pp.161-192.

⁷⁹ Victor Jones, "Beavers and Cats:...", op.cit., pp.89-90.

⁸⁰ Ibid., pp.90-91. Latter italics added.