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BCCA POSITION PAPER

The Community Charter What does it mean for the BC Construction Industry?

The Provincial Government recently appointed the Community Charter Council, for the purpose of developing Community Charter legislation. This legislation will provide greater autonomy to local governments, giving them new powers and abilities to make decisions for their communities. While the actual content of this legislation is not known, the Ministry of State for Community Charter has released initial discussion papers, and it is on the basis of this early information that we wish to provide our comments. While the Ministry has indicated that public consultation will be taken in March of 2002, following the tabling of a Draft Charter in the Legislative Assembly, the BC Construction Association feels it is imperative that the concerns of the construction industry be voiced as soon as possible. It is our position that the potential problems that may arise out of the proposed legislation need to be addressed prior to proceeding with this initiative.

The construction industry is an important contributor to the BC economy. On average, over the past 10 years, the industry has accounted for about 7.4% of the provincial GDP each year. Investment in construction has averaged around 15 billion annually. Given the recent reforms and initiatives being proposed and implemented by the provincial government, we look forward to increased construction investment in our province over the next few years. To enable such activity it is important that provincial reform, such as that being proposed in the Community Charter, proceed carefully after proper consultation with those stakeholders most impacted. As the voice of the construction industry in BC, it is incumbent upon the BC Construction Association to address the issues. Our organization is province-wide and represents over 1700 corporate members active in all sectors of the construction industry. The Community Charter stands to impact every one of our members, and the importance of "getting it right" simply cannot be overstated for our industry.

MEMBER: CANADIAN CONSTRUCTION ASSOCIATION

I. Potential Advantages of Community Charter Legislation:

It is our understanding that the purpose of the Community Charter is to enable municipalities to become more self-reliant. The Charter will give them greater autonomy and independence, with greater power to finance their governance and services. The Charter can potentially create a new level of accountability for citizens by introducing “open government provisions” such as expanded public consultation requirements, new public complaint and dispute resolution opportunities, and new performance measurements set by local councils based on guidelines provided by the province. Basically, Community Charter legislation allows the province to get out of the business of municipalities.

There is a theory (prevalent in the USA) that “*government is best that is closest to the people.*” Local government is potentially the most “open” and accountable level of government. The public can generally attend and comment on meetings held at the local level. Public hearings are often held on issues. This makes the elected officials immediately accountable to those people who elect them. Local government is “close” to the local people therefore they are best suited to make decisions regarding local needs. More powers to local government will allow municipalities to regulate according to the social and moral tenets of the area. With good management and sound governance, local government will be free to increase revenues in a manner that is most effective for their area. The recent trend towards decentralization and devolution in the USA has encouraged local governments to generate more creative schemes for raising revenues and more efficient methods of handling services. This could happen here in BC as well and it could be good for local economies.

A well-drafted Community Charter could:

- a) Attract business and create jobs with tax incentives and credits.
- b) Get governments working together.
- c) Reduce bureaucracy by letting local government deal with issues without the need for approval by the province.
- d) Clarify responsibility and promote accountability, resulting in a local government with an eye towards customer (the electorate) satisfaction and market success based on efficiency and results.

The construction industry would be in favour of Community Charter legislation that accomplishes these results. There does need to be a reform of local governance, and this could be the vehicle to accomplish such reform. It is essential, however, that any development of such legislation proceeds only after proper public consultation to ensure that the consequences of providing local

government with new and greater authority are clearly understood and potential problems solved sooner rather than later.

II. Potential Problems with Community Charter Legislation:

Providing local government with greater autonomy and a wider sphere of powers may not result in better governance for the community. In some communities in the USA people have actually voted for restrictions to be placed on local councils that have become too powerful. Along with power comes the potential for an abuse of discretion. Local government must not be allowed to act in a discriminatory manner. Their actions should be based on clear and equitable guidelines, and they must be accountable for those actions. In addition, greater authority and discretionary powers for local government may give rise to some municipalities discouraging development and setting up road-blocks to investment. At a time when the B.C. economy needs to be stimulated this could be very damaging to our province as a whole.

Contracting Out: In making decisions regarding local services, local government should be careful not to compete with their electorate. Government services should be those that, for public policy reasons, cannot appropriately be provided by the private sector. Everything else should be contracted out to the private sector. For the construction industry this issue has arisen with alarming regularity in recent years. For example: Infrastructure works; sewer and water; road construction; electrical work. Some municipalities have gone far past managing simple maintenance work, using in-house forces to work on major road construction and upgrades. Given that the use of in-house forces has been on the rise in the past few years, the concept of providing local government with more authority and jurisdiction to make decisions for their community causes some concern. There must be a mechanism in place to ensure that a local government's power to navigate its own future does not end up in an abuse of that power--to the detriment of the local economy. There must be measures in place to ensure transparency and accountability to the public.

Standard Tendering Procedures: In addition to concerns regarding the use of in-house forces, the construction industry would also like to see local government and their agents using standard, industry approved tendering procedures. This would include not only standard contracts such as the CCDC-2 but also the use of established industry guidelines for project delivery methods. Over the years such guidelines and contracts have been developed through consultative efforts with industry and government to ensure the most equitable and efficient results for all stakeholders. To ignore these established standards opens the door to a Pandora's box of legal disputes. The question for the industry is: If the Community Charter provides new autonomy and decision-making power for local government, what assurance will there be that they will follow proven guidelines and use appropriate contracts in tendering public construction? Where public money is footing the bill it is critical that the process be fair and cost-effective.

There must be a clear responsibility placed on local government to achieve such results, and there must be consequences if they do not.

Uniformity and Standardization: For the construction industry, the issue of standardization is perhaps the most important argument against increased regulatory power to local government. It is clear that situations that require uniformity throughout the province are most likely to be detrimentally effected by allowing each municipality more power to form its own “rules”. The construction industry is in favour of more standardization of building codes, inspection and permitting services across the province--not less. Consequently, the potential of further fragmentation brought on by Community Charter legislation is a serious concern.

Construction companies need to be mobile. Projects do not come to them--they must go to the project. As a result most companies will find themselves operating in a number of different municipalities as a matter of course. Local government as a source of regulation can seriously impede the competitive ability of the construction industry. Without some level of standardization among local governments the contractor is faced with re-learning the rules for each new project. Costs to the industry resulting from development costs; obtaining approvals licenses and permits; and coping with the interpretations of municipal inspectors, vary dramatically from municipality to municipality. The current regulatory structure needs to be reviewed and a method of standardization put in place. The Community Charter may simply add to these problems.

Apart from the obvious cost of paying stated fees, there are far more significant costs that arise during the process of simply trying to comply with all the requirements. Time is money and lost time is a certainty in the current system. Perhaps more than any other area of regulation, the red tape resulting from the actions of local government is the most burdensome for the construction industry, and creates the highest barriers to the industry’s ability to be competitive. Other provinces have already begun the process to correct similar problems. Significant reform has already taken place in Alberta. In Ontario the Building Regulatory Reform Advisory Group (BRRAG) has done extensive work towards streamlining building regulations, and process standardization across the province is well underway. Should B.C. be going in the opposite direction by allowing local government more power to “do their own thing”?

In order to create a fair and understandable arena from which those in the construction industry can operate and compete, the co-operation of local governments should be sought with a view to examining and streamlining the requirements and process for issuing business licenses, approvals, permits and handling building inspections. Local government regulations and requirements impacting the construction industry should be standardized whenever possible across the province. If the Community Charter is going to provide more powers to

local government, then it must also provide a mechanism whereby this co-operation will be obtained.

III. Some Examples of Areas in Need of Standardization:

Obtaining a business license should be a simple one-time event. For the average contractor, however, it is a process that must be repeated in every municipality they do business in. It is a waste of time and money, and to what purpose? It would be difficult to argue that the public is being served in any way by requiring such duplication.

The process involved in **getting a building permit** issued can be very time consuming for large projects. The time frames and costs will vary from municipality to municipality. Standardization of the process would increase the potential for builders and owners to get their permits faster, at less cost and with greater certainty.

During the construction process there are a great many **inspections** required by regulation. Some are handled by provincial inspectors, but many more are handled by municipal inspectors. Inspections are required to ensure compliance with regulations relating to fire safety, building code, plumbing, electrical, health, gas, boilers, refrigeration, elevators, waste management, and septic systems. Some of these inspections occur more than once on any given project. There are many different approaches to handling inspections. One glove does not fit all—particularly when inspection services fall to the jurisdiction of municipalities. Not only is there no consistency with process or interpretations, there can also be an imbalance in the quality level of inspectors from region to region.

Problems with building inspections more often than not relate to the **interpretation of the Building Code**. This is one of the areas of regulation most in need of centralization—not decentralization. Perhaps one of the most troublesome side effects of the current regulatory system is the lack of a central authority able to oversee and interpret the Building Code, and provide the industry with some consistency across the province. The Building Standards Branch once provided this service, and it is a service that should be reinstated. The Building Standards Branch could provide the following functions:

- Be a centralized agency to encourage and oversee uniform interpretation of the Building Code throughout the province.
- Be a conduit to the National Building Code
- Building Code interpretation bulletins in response to questions from the construction industry.
- Maintain an internet site designed to keep the construction industry fully informed of the BC Building Code Appeal Board and Interpretation Board decisions, creating established precedents for the industry.
- Grant equivalencies

- Review new building materials and systems

Having such a central authority would go a long way towards reducing conflict and increasing efficiencies across the industry. Having uniform Code interpretations and a system for reviewing new products also reduces risk for all the participants in the construction process, including local government. Inspectors can receive more support to consider innovative technical approaches. Contractors can proceed with some level of certainty regarding Code requirements.

IV. Conclusions and Recommendations:

The majority of construction businesses in B.C. are small companies. The nature of their business requires them to interact with many different municipalities. In the process of doing so they become essential supporters of the local economies. Local governments, in turn, must support them. It is imperative in any effort to reform local governance that the work of these businesses is not further ham-strung by a series of municipalities all “doing their own thing” and creating their own procedures and rules. The current regulatory scheme affecting the construction industry and in place across this province is already fragmented and made unnecessarily complex and redundant thanks to the many different approaches created by local governments. The result is unnecessary delays and inefficiencies throughout. Obviously this has a negative effect on the economic development in our province. It translates into missed opportunities for investment and innovation and lowers the ability of B.C. to compete with other provinces that have embraced the standardization process. Clearly, the idea of reforming local governance is a good one. There is certainly room for improvement where construction is involved. This reform however must be tempered with consideration for the potential consequences of greater autonomy for local government. Checks and balances must be put in place to make sure that this reform equals good value for the businesses and individuals who build these communities.

Any further development of Community Charter legislation should consider the following recommendations:

- 1. Insist on collaboration:** While many opportunities exist for collaboration among local governments, long-established parochial interests or institutional rigidity often prevent such activity. It is therefore vital in any further development of Community Charter legislation that there be a requirement for local governments across BC to initiate a process to examine their current governance structure, methods of service delivery and assignment of responsibilities and powers with an eye towards standardization and uniformity across the province.

2. **Contract out:** All local governments and their agents, should be required to contract out construction work and services to the private sector.
3. **Standard Tendering Procedures:** A uniform set of policies and standard contracts be adopted and used by the various local government organizations involved in tendering public construction. Any time public money is being accessed these policies should be followed. Local government should look to CCDCC, the Canadian Construction Association and the BC Construction Association, for contract language and guidelines.
4. **Make Full Use of Information Technology:** Certainly one of the most obvious solutions is the use of available computer and information technologies. Not only can it be an effective tool towards standardization of services--Information Technology can improve the management and administration process, and lower costs. There can be improved efficiency, speed and quality of communication and reduced cycle times, resulting in a gain for all parties. In addition, effective use of IT works to create a transparent, common record of documents, changes, enquiries, correspondence and time-line, potentially reducing litigation—a huge value for local governments and the taxpaying electorate.
5. **Public Participation:** The Community Charter legislation must include clear measures ensuring public participation in local government policies and decisions. Local government must maintain a high level of transparency and accountability to its electorate **and** to those businesses that support the local economy.
6. **Central authority to deal with Building Code issues:** In the review of local government consideration must be given to creating a central provincial forum with authority to deal with issues and concerns that arise in regard to interpretation of the Building Code, the granting of equivalencies, and the introduction of new building materials and systems. It is an area that simply cannot afford further decentralization.
7. **Consult with industry:** On issues impacting the construction industry there should be significant consultation with the BC Construction Association and other industry organizations. It is important that consideration be given to the consequences of this legislation prior to its introduction. Only with proper consultation can this be achieved.