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Toward City Charters in Canada

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Toward City Charters in Canada

JOHN SEWELL*

FOR MORE THAN 30 YEARS, there has been discussion about how cities in Canada can gain more authority and the freedom, powers, and resources necessary to govern their own affairs.

The problem goes back to the time of Confederation in 1867, when eighty per cent of Canadians lived in rural areas. Powerful provinces were needed to unite the large, sparsely populated countryside, to pool resources, and to provide good government. Toronto had already become a city in 1834 with a democratically elected government, but its 50,000 people were only around three per cent of Ontario's 1.6 million. Confederation negotiations did not even consider the idea of conferring governmental power to Toronto or other municipalities, dividing it instead solely between the soon-to-be provinces and the new central government. Those negotiations were concluded in the British North America Act, Section 92 of which states:

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say,

...

(8) Municipal Institutions in the Province.

Thus, provinces were allocated absolute power over municipalities. Cities were left with no powers or authorities of their own.

The courts have often interpreted this section strictly. As the Supreme Court of Canada stated in a 1993 decision summarizing the view established by previous courts, “[m]unicipalities are entirely the creatures of provincial statutes. Accordingly, they can exercise only those powers which are explicitly conferred upon them by a provincial statute.”¹

As many have noted, these arrangements are antique and inadequate to the demands placed on cities in the 21st century. Today, eighty per cent of Canadians live in cities. Almost one in ten Canadians live in Toronto. Toronto's 3,000,000 residents elect the sixth-largest government in the country but have far less power over their own affairs than the 150,000 people of Prince Edward Island. Other large Canadian cities clearly compete with provinces for economic and social importance. Calgary and Edmonton, for example, represent more than fifty per cent of the population of Alberta. It can hardly be doubted that Canada's cities today are mature levels of government in their own right, capable of handling the full range of municipal responsibilities, given the resources and the authority to do so.

At different times, some Canadian cities have been allocated special powers by provincial legislation with good intentions. This is the case with Calgary and Edmonton in Alberta, as well as Toronto in Ontario. Those cities were given their own special legislation, defining new powers for those cities which other municipalities did not have, such as the ability to design their own governance structures, guaranteed fiscal frameworks and some limited powers of taxation. But

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¹ *R v Greenbaum* [1993] 1 SCR 674. [1993] 1 SCR 674

these special powers have been subject to limitations. Exercising them often requires provincial approval in advance. The province is able to unilaterally change or repeal those powers with no enforceable requirement to consult the city, as both Ontario and Alberta have done in the past two years; Ontario with respect to Toronto and Alberta, both Edmonton, and Calgary.

Further, many programs and services delivered by cities are cost-shared with the provincial government. Whenever the provincial government decides to reduce its share of funding or refuses to augment it to keep pace with inflation, municipal programs suffer. Since city governments typically have very limited powers to raise their own revenue, they are often unable to find the money to continue those programs and residents lose out.

For most of Canada's history, despite the inherent power imbalance, provinces have supported cities as close partners and allies. But since the late 20th century, provinces have sought instead to impose their will on cities.

The example of Toronto is instructive. In 1998, the province forced Metropolitan Toronto's six municipalities to amalgamate into a single mega-city over the objections of their governments, and of the seventy-six per cent of residents who voted against the scheme in referenda. The Municipality of Metropolitan Toronto had been one of the most admired structures for municipal government in the world. The amalgamation has not been a success: its cost was estimated at about an extra \$300 million a year, and local government became much less accessible for most residents.

A few years later, the province downloaded many responsibilities to the city without adequate revenue sources, including the public housing projects owned by the province, and the complete funding of the public transit system which the province had contributed to for twenty-five years. The city thus became dependent on the province for handouts in order to pay its day-to-day expenses.

In 2017, the city requested the power to levy tolls on inner-city expressways to raise money for transit operations. The province refused, instead increasing the city's financial dependence on provincial transfers by substituting a (revocable) portion of the provincial gas tax.

In 2018, the province vaporized half of City Council in the middle of the municipal election and took away the city's ability to design its own forms of governance which had been guaranteed in the *City of Toronto Act, 2006*. When the city and others challenged this decision in court, the province threatened to rescind Torontonians' rights under the *Charter of Rights and Freedoms* by using the so-called "notwithstanding clause," to universal outrage.

In 2019, the province passed legislation permitting it to take ownership of the city's subway system without compensation. It then agreed not to exercise that power if the city would agree to support four subway lines and extensions that the province wished to implement, even though those plans and additions were contrary to the city's long-developed plans and priorities for transit.

Also in 2019, the province rejected two critical urban plans for the city's downtown and midtown, wasting years of work and consultation with city residents. Instead, the province—unilaterally and without consultation—increased allowable densities in those areas. It rescinded much of the city's power to get property developers to pay for community infrastructure and benefits such as parks, libraries, and childcare spaces.

These provincial actions, and others, have left the city poorer and less able to run its own affairs. A city can't succeed when its decisions are continually subject to arbitrary provincial override, or the fear of it. Nor can cities succeed when provincial plans are foisted upon it against its will, or when the city is perpetually denied the ability to raise the funds it needs.

This power imbalance does not make Toronto a better managed or more efficient city. The people of Toronto have the brains, talent, ambition, and love for the city to successfully run their

own affairs. Like other Canadian cities, Toronto is a diverse, wealthy, fast-growing city that strives to be confident, inclusive, innovative, modern, and forward-looking. Toronto is a global city that competes internationally in such fields as culture, finance, sports, health sciences, manufacturing, and technology.

The quality of life in large Canadian cities is among the highest in the world. Canadian cities have been ranked among the top twenty-five or thirty global cities for safety, livability, cost of living, business environment, democracy, and food security. On a planet of increasing global mobility, Canadian cities are among the best at attracting the sophisticated, educated, and innovative talent from around the world. Each year, for example, the Greater Toronto Area welcomes and settles more than 100,000 newcomers—refugees and immigrants alike—from other parts of the world seeking a better life.

Cities are the economic drivers of Canada. Toronto, for example, contributes one-tenth of Canada's GDP every year—about \$200 billion. Cities recognize that partnerships with provinces and the federal government are vital to their success and they embrace their responsibility to fairly share their wealth with the province and the country.

However, city taxpayers also contribute billions more tax dollars a year to the provinces than come back in contributions to cities' budgets. It's estimated that in Canada, cities typically keep a mere ten per cent of the taxes paid by city residents. The rest goes to senior levels of government. Tax money that is returned to the city from those levels of government often comes with strings attached that do not allow the city to spend as it thinks is best.

Cities need new arrangements in order to succeed. They need clear jurisdiction and authority over city affairs. They need to control revenues sufficient to meet the city's needs. They need constitutional protection from provincial interference.

City Charters from other jurisdictions have been suggested as models from which ideas might be taken—Los Angeles, San Francisco, and Chicago, for example. California alone has more than 100 Charter Cities with dedicated municipal powers, including the broad power of taxation, and a high level of autonomy from state governments.

In Canada, the process to create a charter would be as follows. The province and the city would agree on the powers and other arrangements to be included. The province would pass it in the form of provincial legislation, which the city would ratify by majority resolution. The province and city would then jointly request of the federal government an amendment under Section 43 of the Canadian Constitution, often called a "single province" or "bilateral" amendment. The amendment would at a minimum set out the requirement that any future changes to the City Charter would require the consent of the city. It might also outline the procedure by which other cities could achieve a City Charter.

Finding the province and city in agreement, and assuming public support for the idea, the federal government would place the amendment before the House of Commons. If passed by a majority vote, the amendment would then go to the Senate for ratification.

This is a simple and straightforward process that can be used by any province and any city. It has been used for other matters seven times in the past thirty years. The federal government has never declined a request from a province for a single province amendment. It would give the City Charter a great deal of protection and the certainty that the province could not unilaterally change it.

Several objections have been raised to City Charters, and it is important that they be responded to.

The first objection is that the province may cease to care about or lose interest in urban issues if the city has a high level of autonomy and the province is no longer central to its decision-making. A City Charter does not separate the city from the province, it simply augments and clarifies city powers, gives them certainty, and provides accountability. The city would remain subject to all provincial laws unless they specifically conflicted with charter provisions. It would also remain a fact that provinces have a constitutional obligation to municipalities. As cities will continue to be among the most important contributors to the economy of the province, it would be short-sighted to lose interest in their success. Greater equality as defined in a City Charter will in fact enable a new relationship between cities and the province—one not of subservience and control, but of partnership, based on the pursuit of mutual interests.

Second is whether a charter will interfere with, or stand in the way of, the resolution of regional or metropolitan issues. Any wisely drafted charter will mention regional issues (such as transit, affordable housing, the natural environment, and policing) and suggest how they might be addressed, given the current absence of a regional decision-making body. Hopefully it will specify that the city will be involved directly in decision-making about these issues, since their involvement can help lead to effective solutions, and that the bodies overseeing these issues are accountable to the cities involved.

A third objection is that it would be easier for the province to simply adopt a “manner and form” approach, where a charter is agreed to between the city and the province and the province then passes legislation restricting its ability to amend the charter by requiring, for instance, a two-thirds vote of the legislature, or certain elements of consultation. This has apparently been used successfully by the British government in restraining the House of Commons. Others have suggested that in the Canadian tradition nothing would prevent a province from unilaterally breaching such limitations, as indeed occurred when the Ontario government refused to honour its legislative commitment in the *City of Toronto Act, 2006* to consult the city before intervening in 2018 to upset the city’s decision to create forty-seven wards. A single province amendment requiring explicit city consent to change the charter, and federal consent to alter the amendment itself, seems much more powerful.

For the above reasons a charter secured under Section 43 of the *Constitution Act* seems the best approach.

Why would the province agree to restrict itself by giving a City Charter powers? The simplest answer is that what is good for cities is good for provinces. Successful cities with accountable local governments are a significant asset to provinces.

This question is answered more fully in the charter document, but briefly there are three good reasons. A charter ensures that the city is accountable for its actions rather than counting on province to “bail it out” on contentious issues and forcing provincial politicians to take the heat on those issues. A charter will allow the province to concentrate on matters of provincial interest, leaving city issues to city representatives who are much more knowledgeable about local matters. A charter will help sort out financial interests instead of relying on shared cost programs with mixed, and sometimes conflicting interests.

The most important question is what powers and authorities a charter should include. The province will have its list and each city will have its list. The two parties will be required to sit down and sort them out. We—a group of engaged residents of Toronto—have proposed a charter for Toronto which includes the issues we believe the city should propose when the time comes for discussion about what’s included in the document. For some, the list will be too long, for others, too short. It is a draft, and now the subject of public discussion which we hope continues for a year

or more to determine what people in Toronto wish their City Council to ask from the provincial government in a charter.

This draft can be a template for the thinking in other cities, both in Ontario and across Canada. We hope it begins a wide-ranging discussion about empowering cities.

Charter City Toronto Proposal

Starting the Conversation Around
Empowering Toronto and Other Canadian Cities



CHARTER CITY TORONTO

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Proposal Overview

There's been a lot of talk lately about empowering the city of Toronto and other big cities. Adopting a City Charter is often mentioned as a way to give the city the power and authority it needs to govern its own affairs.

But what would a City Charter look like? What would be in it? What would it do for cities? This proposal is an attempt to begin that conversation.

Two-Part Process

Charter City Toronto proposes a two-part process toward greater power and autonomy for the city of Toronto. We believe this can serve as a template for other cities in Ontario and Canada who wish to achieve greater control over their own affairs.

1 City Charter

The city and the province--with substantial public consultation--will create and pass a City Charter for Toronto. The Charter will give the city enhanced power and jurisdiction over city affairs.

2 Constitutional Amendment

The province and federal government will pass a single-province amendment to the Canadian Constitution that enables the creation of Charter Cities in Ontario and protects them from provincial interference in areas of municipal jurisdiction.

This proposal is not a final set of ideas, but rather the start of a conversation. We hope it will be widely discussed, massaged, amended, and changed to produce a document that has wide agreement.

Four Key Principles

This proposal makes recommendations for a City Charter to cover four key principles: Governance, Protection, Authority and Resources.

Governance

The city of Toronto would regain the authority to determine its own governing structures. The province unilaterally revoked that authority in 2018. The city would have full control over: city council and the Mayor's office; the city bureaucracy; agencies, boards, commissions; community councils; oversight and accountability, and elections, including ward boundaries.

Protection

We propose that the provincial and federal governments create and pass a single-province amendment to the Canadian Constitution. The amendment would define Charter Cities and end their status as “creatures of the province” whose every decision--

and very existence--is subject to provincial override. No changes could be made to the City Charter without the express consent of the city.

Authority

The Charter would place exclusive responsibility and authority for key municipal functions clearly in the hands of an empowered city government. The starting point is all the powers the city has now in the City of Toronto Act. Other areas for exclusive city authority would be: land use planning, streets, housing, local transit, human services, public health, education up to Grade 12 and selected powers of taxation.

Where necessary, the city and province would share authority in certain areas, but with clear rules defining the roles and authorities of the two partners. These could include: health, immigrant settlement, policing and others. The city would be empowered to make arrangements, financial and otherwise, directly with other governments, including other cities.

Resources

The Charter would give the city control over (not just access to) the revenues and resources it needs to meet its responsibilities. It would also continue the practice of sharing the wealth generated in the city with its municipal neighbours, the province and the country as a whole.

Context

Charter Cities are Common

City Charters that give cities strong inherent powers are common in Europe and the US, with over a hundred in California alone. Many European cities have Charters also.

Several Canadian cities have what are commonly referred to as City Charters, including Vancouver, Calgary, Edmonton, Winnipeg, Saint John and others. In each case, these Canadian "Charters" are provincial legislation, which can be unilaterally amended or revoked by the province. By contrast, we propose a constitutionally protected City Charter that can only be adopted or amended with the consent of the city.

Single Province Amendments are also Common

There have been eight such amendments since the Constitution was repatriated in 1982. Under Section 43 of the Constitution, single-province amendments need only the approval of the provincial legislature and the federal parliament. This makes them easier to achieve than amendments covering the country as a whole, which require the consent of at least seven provinces that have 50 per cent of Canada's population.

How a Charter Protects the City

Once the basic rules of governing a city are laid out and adopted in a City Charter, constitutional protection means those rules can only be changed if the city consents.

If Toronto had a City Charter as we propose in 2018, the Ford government would not have been able to reduce city council and revoke Toronto's powers of governance against the will of the city. Nor could the province unilaterally change the rules for amending the Charter. That would require the agreement of the federal parliament.

No rules are fireproof, but the ones we propose would afford solid protection for the city.

The Case for a City Charter

Toronto has been democratically governed even before Canada was created in 1867. But at Confederation, provinces were allocated absolute power over municipalities. Cities were given no powers or authorities of their own.

In 1867, 80 per cent of Canadians lived in rural areas. At that time, powerful provinces were needed to unite the large, sparsely populated countryside, to pool resources and to provide good government.

Cities were an afterthought.

These arrangements are antique and inadequate to the demands placed on cities in the 21st century.

Today, 80 per cent of Canadians live in cities. 1 in 10 lives in Toronto. 1 in 5 lives in the GTA.

Toronto's 3,000,000 residents elect the sixth-largest government in the country, but have far less power over their own affairs than the 150,000 people of Prince Edward Island.

Canada's cities are mature levels of government in their own right, capable of handling the full range of municipal responsibilities, given the resources and the authority to do so.

The Power Imbalance

For most of our shared history, despite the inherent power imbalance, the province has supported cities as a close partner and ally. It recognized that Toronto's success meant success for the province and the country. But since the late 20th century, provinces have sought instead to impose their will on cities and on the city of Toronto in particular:

Ontario forced the amalgamation of Toronto's six municipalities into a mega-city over the objections of the city government and citizens in a referendum. This has been recognized by most as a major mistake for which the city is still paying. Over many years, the province has

downloaded responsibilities to the city without adequate revenue sources, leaving the city dependent on the province for handouts in order to pay its day-to-day bills.

The city was made more dependent on and more vulnerable to the province when it vetoed the city's decision to toll inner-city expressways in order to raise money for transit.

The province vaporized half of City Council in the middle of an election and took away the city's ability to design its own forms of governance. It threatened to rescind Torontonians' rights under the Charter of Rights and Freedoms in order to do achieve the cuts. The city, powerless under the Canadian constitution, could do nothing to stop it.

The province took control of decision-making over Toronto's local transit projects and threatened to take ownership of the city's subways. It threw out two critical urban plans for the city's downtown and midtown, wasting years of work and consultations with city residents. It rescinded the city's power to get property developers to pay for community infrastructure and benefits such as parks, libraries and child care spaces from property developers.

All of these provincial actions, and others, have left the city poorer and less able to run its own affairs. A city can't succeed when its decisions are continually subject to arbitrary provincial override. Or when provincial plans are foisted upon the city without consultation or notice. Or when the city is perpetually denied the ability to raise the funds it needs.

By giving the city more control over its own affairs through a City Charter, and by giving the city a veto over any changes to the Charter, unilateral provincial interference would be made much more difficult, if not impossible. A more even playing field will help return Toronto and Ontario to a relationship of co-operation and partnership.

Benefits of a City Charter for Toronto

A City Charter will empower the city of Toronto to face its future with new democratic and financial tools and without fear of provincial interference.

- A constitutionally protected City Charter outlining the city's authority, governance and taxation powers, amendable only with city consent, will lend the city status, stability and protection.
- Strong local decision-making will put the city's future in our own hands. Decision-makers will be accountable to city voters, not to voters from across the province.
- The city will be free to consider new and innovative forms of government that can bolster public participation and decisions that reflect the diversity of the city, local values and urban aspirations.
- The city will be free to innovate and find creative solutions to city issues, including congestion, density, affordability, livability and sustainability--without unnecessary provincial

permissions or fear of a provincial veto.

- Stable, predictable, city-controlled, multi-year revenues will provide sufficient funds to pay for necessary programs and services and ensure that growth pays for growth. Access to progressive revenue sources that grow with the economy will restore balance and fairness to its financial relationship with the province.
- Eliminating duplicate levels of approvals and achieving clarity over who makes decisions will be a significant benefit for the business community, which values regulatory simplicity and certainty.
- Establishing clear jurisdictions and roles for both the city and the province in municipal affairs will streamline decision-making and reduce duplication, unnecessary oversight and friction between governments. This will clear the decks for co-operation on matters of truly mutual interest.

Cities Need Tools for the Future

The people of Toronto have the brains, talent, ambition and love for the city to successfully run their own affairs. We are a diverse, wealthy, fast-growing city that strives to be confident, inclusive, innovative, modern and forward-looking. Toronto is a global city that competes internationally in such fields as culture, finance, sports, health sciences, manufacturing and technology.

Our quality of life is among the highest in the world. In study after study, Toronto has been ranked among the top 10 global cities for safety, livability, cost of living, business environment, democracy, and food security. On a planet of increasing global mobility, Toronto is among the best at attracting the sophisticated, educated and innovative talent from around the world. Each year, the Greater Toronto Area welcomes and settles more than 100,000 newcomers—refugees and immigrants alike—from other parts of the world seeking a better life.

Toronto is an economic driver of Canada, contributing one-tenth of Canada's GDP every year—about \$200 billion. Toronto recognizes that partnership with Ontario and Canada is vital to its success and embraces its responsibility to fairly share its wealth with its neighbouring cities, the province and the country.

However, city taxpayers also contribute billions more tax dollars a year to the province than come back in contributions to the city's budget.

It's estimated that in Canada, cities typically keep a mere 10 per cent of the taxes paid by city residents. The rest goes to senior levels of government. Contributions from those levels of government often come with strings attached that do not allow the city to do what it thinks is best.

Toronto needs new arrangements in order to succeed:

- Clear jurisdiction and authority over city affairs
- Control of revenues sufficient to meet the city's needs
- Constitutional protection from provincial interference

Accordingly:

- 1 The city and the province should, through public consultation, negotiation and joint legislation, create a City Charter for the Toronto which:

Creates a more equal relationship between the city and the province, empowers local democracy and protects the city from undue provincial interference in city affairs.

Establishes exclusive city jurisdiction, and removes provincial oversight, over all municipal functions not specifically allocated to the province, including city

governance, land use planning and appeals, streets, housing, local transit, public health, and education up to Grade 12.

Establishes clear roles for the city, province and federal government, including protected funding arrangements, in areas of overlapping or shared jurisdiction such as health, human services (including social services and child care), immigrant settlement and policing.

Establishes a new, stable fiscal regime whose aim is to give the city control of resources commensurate to its responsibilities, allowing Toronto to keep a greater share of the taxes currently paid by city residents to higher levels of government. It will give the city access to new, progressive revenue sources, such as income and sales tax, and to new financing tools such as municipal bonds.

- 2 The province and the federal government should enact a single-province amendment under Section 43 of the Canadian Constitution that enables City Charter status for Toronto that requires the city's consent for any changes to the Charter.

The Charter Proposal

For more than 30 years, there has been discussion about how cities in Canada can gain more authority and the powers and freedom necessary to govern their own affairs.

City Charters from other jurisdictions have been suggested as models from which ideas might be taken – Los Angeles, San Francisco and Chicago, for example. California alone has more than 100 Charter Cities with dedicated municipal powers, including the broad power of taxation, and a high level of autonomy from state governments.

At different times, some Canadian cities have been given special powers by provincial legislation, but these special powers have been subject to limitations: the exercise of powers granted is subject to ongoing provincial approval and the province can unilaterally change or repeal those powers with no requirement to consult the city.

Another issue is that many programs upon which cities depend are cost-shared with the provincial government. Whenever that government decides to reduce its share of funding, programs delivered at the municipal level suffer. Since city governments typically have very limited revenue powers, they are often unable to find the money to continue those programs and residents lose out.

Our Charter proposal attempts to overcome those limitations in three ways.

First, we propose to remove provincial oversight and control over what are essentially municipal functions.

Second, we propose a constitutional amendment to protect the powers and arrangements contained in the Charter.

Third, we propose entrenching some permanent funding arrangements in the Charter.

A City Charter is essentially an agreement between the city and the provincial government outlining the powers and authorities of the city, some of which are exclusive to the city and some of which are shared with the province.

Our proposal covers four broad areas: Governance, Power and Authorities, Resources, and Constitutional Protection.

A. Governance

The City of Toronto Act (2006) gave the city the power to establish its own form of governance, subject to review by the Ontario Municipal Board. The province revoked that power in 2018 with legislation that unilaterally reduced the number of city councilors from 47 to 25, in addition to changing the ward system.

A Charter should restore those powers to the city and remove the provincial power of review. To ensure that City Council is not self-serving in setting out forms and structures and that the public interest is primary, Council decisions on governance should be reviewed by an independent agency appointed by City Council.

- 3 The city should have the power to adopt decision-making procedures and structures that ensure fair representation of the many diverse voices, minorities, and communities in the city, which enhance residents' involvement in decisions about their communities, and which enshrine and enact principles of equity.
- 4 The city should have the exclusive authority to decide the form and structure of its government, including the composition of city council and ward boundaries, the mayor's office, the city bureaucracy, agencies, boards and commissions, community councils, and other such bodies as it finds appropriate. Council should have the power to decide on approval mechanisms, including innovative ones designed to enhance citizen involvement, such as deliberative democracy and referendums.
- 5 An independent, city-appointed body should review changes to the ward system. Its decision, after a fair hearing, will be reported to Council for a final determination. City Council should be given the exclusive authority to establish and fund this independent body.
- 6 The city should have the exclusive authority to conduct municipal elections, including regulation of campaign donations and finance, voting age and eligibility, including the ability to extend the vote to residents who are not citizens. Again, these rules should be subject to review by an independent, city-appointed body, and reported to Council for a final determination.

- 7 The city should have broad powers to pass bylaws respecting all aspects of city life, and establish penalties for contraventions.
- 8 The city should be required to establish an effective integrity and accountability regime including a Members Code of Conduct, an Integrity Commissioner, Auditor General, Lobbyist Registry, and Ombudsman.
- 9 The city should be permitted to delegate decision-making, including quasi- judicial

and legislative functions, to committees of council, staff, boards, community councils and other such bodies it thinks appropriate.

10 The city should work and co-operate with many other governments. It should be authorized to exercise any of its powers or perform any of its functions and may participate in the financing of its efforts, jointly or in cooperation, by contract or otherwise, with one or more other municipalities, regions, other governmental bodies, the Province of Ontario and the government of Canada.

B. Constitutional Protection

The key to the adoption of any City Charter is constitutional protection. Without such protection, Toronto will continue to be at the mercy of provincial whim. A City Charter that is merely provincial legislation, such as the City of Toronto Act, can be amended or revoked unilaterally by any provincial government, without notice to, consultation with, or agreement of the city.

It would be pointless for Toronto to do the considerable work necessary to negotiate and implement long-term powers, authority and funding arrangements if they are not then protected from the arbitrary actions of a more senior level of government. A deal that can be revoked by one party is no deal at all.

In order to protect and guarantee the City Charter, we propose a single-province amendment to the Canadian Constitution that would:

- Enable the creation of Charter Cities in Ontario
- Spell out the rules for amending any such Charter in the future
- Guarantee that changes can only be made with the consent of the city.

A single-province amendment, in this case applying only to Ontario, requires only the consent of the Ontario legislature and the federal parliament.

How It Would Work

Any Ontario city could request to negotiate a Charter with the province. The province would be required to enter into such negotiations in good faith and, once a deal is reached, it would be required to pass the necessary legislation to make it so. The resulting City Charter would be amendable only by agreement of the city.

A single-province amendment to the Canadian Constitution (under Section 43) is the proposed vehicle to achieve this protection.

There have been seven single-province amendments to the Constitution since it was adopted in 1982. Newfoundland passed one in 1997 to establish a secular school system. The same year, Quebec established a language-based school system through a Section 43 amendment. New

Brunswick passed one in 1993 to establish equality between the province's French and English-speaking communities.

Wording of the Amendment

This proposal does not suggest wording for such an amendment. Constitutional scholars differ on the best way to enshrine protection for a City Charter and they should be consulted on the best approach to achieve the principles outlined here.

However, we believe it's important that the City Charter itself not be entrenched in the Constitution. Doing so would mean any Charter change would be a constitutional change, involving the provincial and federal governments, but not the city. Putting the Charter in the constitution would in effect double the number of senior governments whose permission

Toronto would need to change its own Charter

Leaving the Charter as a freestanding document, protected by but not part of the Constitution, provides greater flexibility. Within existing city jurisdiction, Toronto could change the Charter on its own. For changes that alter the relationship between the province and the city, both sides would need to agree to such changes.

Some City Charters, such as the one adopted by Los Angeles, allow changes only through majority vote of city residents in a referendum. This additional level of Charter protection is somewhat foreign to the Canadian practice, but it could be considered, as a way to ensure voters agree to any change, as a way for a sufficient number of citizens to themselves propose a Charter amendment, or as a way to solve an impasse between the city and the province.

Protection

It's important to note that no constitutional arrangement can be one hundred percent effective at protecting cities from a province determined to interfere. A provincial government, with a compliant federal government, could ultimately override the City Charter through a new amendment to the constitution. But this would take time, and give the city the opportunity to mount a defence. Provincial and federal governments that conspire to thwart the will of a major Canadian city might pay such a political price that this avenue would be confined to infrequent use or never be used at all.

As has become very clear over the past year, the current constitutional arrangement, whereby cities are mere "creatures of the province" without any innate authority of their own, has left Toronto at an unacceptable disadvantage.

While Canada's constitutional rules do not allow for cities to gain co-equal status with a province, a City Charter with constitutional protection would give cities an immeasurably more powerful voice and status in any discussion of municipal affairs.

C. Powers and Authority

This section outlines the powers and authorities that seem appropriate for the city of Toronto. This is a draft set of proposals and can be changed and amended as public discussion proceeds.

GENERAL PRINCIPLES

The powers outlined in the Charter should be interpreted broadly, not in a limited fashion. The powers may be exercised by the city without provincial approval.

- 11 All powers given to the city in the Charter should be subject to all provincial and federal legislation of general province-wide application. However, if that legislation is contrary to the City Charter, the Charter should prevail. The city should be entitled with its own funds to increase or enhance any standards set by the province or the federal government.
- 12 The Charter should clearly define the jurisdictions in which the city acts exclusively, without provincial oversight or approval. It should clarify the roles of the city and province in shared jurisdictions where both parties co-operate and each contributes resources.
- 13 The city should continue to have all powers set out in the City of Toronto Act (and any other applicable legislation). Where there is a conflict between that legislation and the City Charter, the Charter should prevail. Where powers over any aspect of the municipal sphere has never been allocated to either government, particularly if the subject is new or not previously contemplated (an example might be ride-sharing), the city should be permitted to exercise the powers it deems appropriate to address the matter without a specific amendment to the Charter.
- 14 Generally, any matter within the municipal sphere of activities that is not allocated to the province in the Charter, should be deemed to be the exclusive jurisdiction of the city. As a starting point, jurisdictions already allotted to the city under the City of Toronto Act (for example: Parks and Recreation, Water and Waste Services, Parking, Municipal Licenses and Standards, Economic Development, Urban Forestry) should formally become the exclusive jurisdiction of the city not subject to provincial oversight, override or repeal.
- 15 In addition, the city should exercise exclusive jurisdiction over: City Governance, Land Use Planning, Streets, Housing, Local Transit and Education.
- 16 Where the city exercises shared jurisdiction over certain areas with the province, such as Health, Human Services (including Child Care and Social Services), Immigrant Settlement and Policing, the roles of the respective players and funding arrangements should be clearly defined.
- 17 There are bound to be disputes about the meaning of some sections of the Charter, or about activities of the province or the city, to which either party may object.
- 18 The Charter should define a dispute resolution process. If the disagreement persists, the parties should resort not to the courts, but to the Arbitration Act, which sets out a fair process to settle disputes.

EXCLUSIVE CITY JURISDICTION

Land Use Planning

Land use planning concerns all aspects of property development – rezoning, Official Plans, land severance, committee of adjustment and others. Currently, most land use matters require approval by a provincial body, so that City Council is not in the position of being able to make final decisions. Ontario is one of the few provinces that does not allocate land use responsibilities solely to municipalities.

19 The city should have the exclusive power to deny, approve, or place restrictions on any land use planning application including Official Plans, zoning and rezoning, subdivisions, minor and major variances, and severance consents, without requiring the approval of any provincial body.

20 To ensure Council decisions are appropriate and in keeping with the public interest, land use decisions should be reviewed by an independent, city- appointed body and its decision, after a fair hearing, will be reported to Council for a final determination. The city should be given the authority to establish and fund such an independent body.

21 The city should be given the exclusive authority to establish and enforce development and intensification conditions such as minimum and maximum densities, heights, development charges, brown-field development goals, and controls to protect heritage and cultural features of structures and areas.

Streets

Many of the regulations and restrictions the city wishes to place on streets – stoplights, or the use of traffic wardens, for example – require provincial approval. This creates unnecessary duplication and expense and there's no reason to think that provincial officials would have a better handle on local traffic conditions than local officials.

22 The city should have the exclusive power to regulate the sidewalks, lanes, bicycle lanes, streets, roadways and non-provincial highways within its boundaries, including road design and construction, speed limits, traffic calming, congestion and climate change strategies, signals and signage, tolls, cameras, road closures, vehicle restrictions and all other traffic measures.

Housing

The city has a great interest in housing supply and conditions, including temporary housing, housing the homeless, social and affordable housing, and rental housing. It's not clear that the city currently has the power to exercise control over all these matters. The funding of social and affordable housing can be done through cost sharing programs or, preferably, when the city secures the needed revenue tools, through its own financial resources.

- 23 The city should have the exclusive power to provide and regulate affordable and social housing, including setting rent/income levels.
- 24 The city should have the power to enter into cost-sharing arrangements with private and public agencies, other municipalities, Ontario and Canada for the provision of social and affordable housing.
- 25 The city should have the power to enter into agreements, including loans and mortgages, with various parties regarding the provision of social and affordable housing and to require certain levels of social and affordable housing be achieved in developments.
- 26 The city should have the exclusive authority to provide temporary housing accommodation for immigrants and refugees, and for the homeless.
- 27 The city should have the authority to control the demolition and conversion of rental housing, to control residential tenancies, to establish rent controls and to regulate short-term rentals.

Local Transit

Since the early 1920s, the city has always been a leader in public transit serving city and neighbouring residents. In the late 1940s it undertook the construction of Canada's first subway without provincial subsidies, using the surpluses produced by the transit system during the Second World War. Transit fares provide the majority of the Toronto Transit Commission's revenue base, unlike other North American cities, which receive much higher levels of government subsidies. Despite the lack of support, the TTC has often been voted the best transit system in North America, an accolade bestowed as recently as 2017.

Funding problems have hobbled the transit system since it was expanded to serve the lower density suburban areas of Metro Toronto from the mid-1970s. At that time, the city was supported by provincial subsidies for both operating and capital expenditures. But those arrangements meant the province had a major say in how transit would be structured and designed in the city, and often their demands did not advance the cause of good public transit or reflect Toronto's priorities.

More recently, the province has decided that it will take over parts of the transit system. Serious questions have been asked about what the province's plans entail and whether this change will be of any benefit to transit riders in the city. The system today integrates subways, buses, streetcars and LRTs into a fully integrated network, providing advantages that could be lost if the system were to be split between multiple owners.

The best people to decide Toronto's transit needs are transit users, city officials and city politicians accountable to city voters, not provincial officials and politicians, many of whom do not live in Toronto or use the TTC.

- 28 The city should have the exclusive authority to provide and regulate public transit in the

city. This should include Wheel-Trans, buses, streetcars, light rail, transit, subways, other transit conveyances and ancillary properties including Union Station (which the city owns.)

29 The city should have the authority to enter into agreements with other municipalities and/or transit agencies in the GTA, the province and Canada to provide and improve service, share costs, and to create a seamless regional transit system.

Health

Health policy and spending are matter of great importance to governments, particularly local governments. The Romanow Commission in 2002 recommended that much more attention be given to preventing illness and injury in order to reduce the need for hospitals and emergency medical treatments. The province has made moves to provide a more local health focus by coordinating services at the local level and strengthening local decision-making through the Local Health Initiative Network (LHINs).

LHINs were given control over all health expenditures at the local level, including hospitals, and were governed by provincially appointed boards. The province is now moving back to a more centralized health governance system without important local input and decision-making. The province has also announced its intention to substantially reduce allocations to public health matters, even though a robust public health system is thought to be the optimal way to contain health expenditures through improving social factors that lead to good health outcomes.

It is recognized that some health matters involve shared jurisdictions in decision-making and expenditures. It is also recognized that Toronto houses health facilities that serve the entire province and that jurisdictional arrangements must reflect this reality.

The city should have exclusive powers and functions similar to those granted to a Local Health Integration Network.

30 The city should have the authority to enter into agreements with the province for coordinating health issues and spending within the city.

31 The city should have exclusive responsibility for public health within the city.

Education

Until 20 years ago, education in the city was entirely funded from the property tax system, giving local school boards considerable flexibility in creating and operating programs to educate children within the city. The provincial government then took over all responsibility for funding education by seizing the property tax allocation for education purposes.

The result has been a provincial standardization of services and funding which has not served the city well: schools are falling into disrepair, and surplus school properties are not readily available for community purposes. Programs the school boards would like to fund are often cancelled when school boards are unable to find the needed money. The province dictates class

sizes that are often seen as inappropriate. Trustees are grossly underpaid for their work. The city needs to regain control of its education system.

32 Education responsibilities, including funding and property tax allocations for education, should be in the exclusive control of the city and local school boards. This should apply to pre-school, primary school and secondary school matters.

33 Local school boards should have the exclusive authority to determine the governance structure and elections of its boards. To ensure those decisions are appropriate and in keeping with the public interest, they should be reviewed by an independent, city-appointed body established and appointed by the boards and its decision, after a fair hearing, will be reported to the boards for a final determination. The boards should be given the authority to establish and fund such an independent body.

34 Pooling of equalization payments from Toronto's property tax base for education purposes at the provincial level will be a matter of agreement between local boards, the city, and the province, and such agreement will respect the unique needs of educational expenditures in Toronto.

SHARED JURISDICTION

Human Services

More than one quarter of children in Toronto live in poverty. There is a serious income distribution problem occurring in the city. Responsibility for poverty-related issues is shared between the provincial and the federal governments, with the city playing a crucial role in delivering, and sometimes sharing in the cost of, programs that it has no role in developing.

For instance, monthly payments may be appropriate for other municipalities in Ontario, but are much too low to meet the higher cost of living in Toronto. Current arrangements are necessarily complex and can result in people falling through the cracks and leaving families impoverished. The most vulnerable were further disadvantaged when the provincial government unilaterally decided to reduce welfare benefits.

The city is in the best position to provide human services at the local level in order to ensure that programs are adequately funded, supported, and coordinated. It is recognized some human services may involve shared decision-making and shared expenditures.

35 The city should have exclusive jurisdiction of all social services and childcare programs in Toronto.

36 The city will require funding support for these services. It needs to ensure such funding is not arbitrarily reduced. This can occur in one of two ways:

- i. Through the city receiving block funding from the federal and provincial governments equal to the amount spent on those programs in Toronto, to be increased annually according to some fair formula, for example, based upon cost of living increases; or
- ii. Through the province determining the amount currently being transferred to the

city for these programs, establishing that amount as a municipal revenue source representing a percentage of annual provincial revenue collected by the province, and transferring it annually to the city.

Immigrant and Refugee Settlement

More than 75 per cent of the immigrants and refugees coming to Ontario between 2011 and 2016 settled in the Toronto area. As Toronto City Council recently learned, it does not have the resources to ensure that they are adequately housed. There are also strains on programs related to teaching English as a Second Language, job training, and as well as other resettlement needs.

Successful immigrant settlement is important to the health and vibrancy of the city. It is recognized that these activities involve shared decision-making and shared funding. Given that the city already plays a large role in providing many of the services required by newcomers, such as housing, social assistance and counseling, it makes sense for the city to be the lead and coordinating agency for newcomer settlement.

37 The city should have the power to enter into agreements with the provincial source representing a percentage of annual provincial revenue collected by the province, and transferring it annually to the city.

38 The city must be involved with the provincial and federal governments in discussions about immigration, refugee levels and resettlement strategies.

Police and Security

Police governance in Toronto is provided by the Toronto Police Service Board (the size of which is constrained by provincial legislation) which sets how members will be appointed. The seven-member board has three members appointed by the province. A larger police board would allow for much more diversity in police management and decision-making.

The province makes some small grants for specific policing matters, but almost the entire one billion dollar annual police budget is funded from city sources. Policing involves shared responsibilities between the city and the province through the provincial Police Services Act.

In the interests of ensuring independent oversight of Toronto's police force, the province should continue to play its role in providing such oversight through such institutions as the Special Investigations Unit and the Office of the Independent Police Review Director.

39 The city should have exclusive power to determine the structure and size of the Police Services Board, including how members are appointed, while ensuring that the province may appoint one-third of the members of the board.

D. Resources: Revenue and Finances

REVENUE

Toronto recognizes that, as a strong generator and beneficiary of economic wealth, it has a responsibility to contribute its financial fair share to Ontario and Canada. Unfortunately, the current situation is not sustainable: with Toronto having access to only about 10 per cent of the taxes it sends to the two senior levels of government.

Given that imbalance, and the public's resistance to the introduction of new taxes, it is not enough to say Toronto should use the few revenue tools available to it under the City of Toronto Act. Such revenue tools are not progressive and simply cannot raise the amount of money required.

A greater share of existing taxation should accrue to Toronto as dedicated, Charter-protected municipal revenues. Toronto's share of these taxes should be commensurate with the city's contribution to Ontario and Canada and with the true cost of providing the programs and services as required by law. The city should control (not just be given or have access to) sufficient revenue to properly fund programs and services within its jurisdiction.

Toronto should also have control of sufficient revenue to properly fund its share of shared programs and services. Such an arrangement would provide stable, predictable revenue and reduce the friction of continually negotiating levels of funding, which fluctuate from government to government. To prevent duplication, the city could piggyback onto current provincial collection systems.

Time and again, Toronto has been deprived of important sources of revenue while expectations of service delivery at the local level have increased substantially.

Until 1936, when the province passed the Income Tax Act, Toronto and other Ontario municipalities had statutory authority to levy income taxes. Until 1944, Toronto had the authority to levy corporate taxes. In both cases, when the province removed these authorities, the city was paid a lump sum in compensation. Given current realities it now seems reasonable that these authorities be returned to the city.

Until the creation of the so-called megacity 20 years ago, the city had control of all the revenue produced by the property tax system, funding both city and Board of Education expenditures.

When the province took over the education system, it seized control of about half the city's property taxes for education funding purposes.

The province also has control over many aspects of the property tax system including assessment and the burdens placed on different classes of property, taking much of the important decision-making about property taxes out of the hands of the city. The negative results of this are now being felt by many of Toronto's property owners.

It is important that in the case of shared cost arrangements, the city be protected from unilateral provincial decisions reducing such payments.

40 The city should have direct access to existing progressive revenue sources that grow with the economy, taxes such as sales and income tax to be spent at the discretion of the city. The city should be given a dedicated portion of these existing taxes commensurate to current provincial contributions to the city's operating budget and the power to levy its own additional sales and income taxes if necessary.

41 The city should be given full control of the property tax system including the power to establish assessments, classes of property, and apportionment of tax burdens to different classes of property (such as to protect small business.) The city should control all property taxes raised in the city.

42 Responsibilities or expenditures should only be downloaded to the city from the province with the consent of the city, after adequate notice has been given in the budget cycle and revenues are transferred to city control sufficient to offset any additional costs to the city.

43 Arrangements for the funding of shared responsibilities must be worked out. The city could receive block funding from the federal and provincial governments equal to the amount spent on those programs in Toronto, increased annually according to some fair formula based upon, perhaps, increases in the cost of living.

Or the province could determine the amount transferred to the city for these programs and establish it as a municipal revenue source representing a percentage of annual provincial revenue collected by the province, and transfer it annually to the city.

No matter the form such funding arrangements take, it is essential that these revenues be stable, predictable, and permanent arrangements that can be changed or revoked only with the assent of the city.

FINANCES

Currently the city requires provincial approval to borrow money, a duplication of effort that is time consuming and costly. As well, some other financial matters require provincial approval.

44 The city should have exclusive authority to manage its financial affairs, including borrowing funds, budgeting for a short-term deficit, and tax increment financing with respect to property taxation.

45 The city should have the ability to use new financial tools, including self- financing powers such as municipal bonds, as required.

E. Access, Equity, and Inclusion

One of the extraordinary characteristics of Toronto is its diversity. And while it is remarkable that generally this incredible mélange of people lives together in relative harmony, many systemic inequities and structural barriers exist. Racism and other forms of systemic

discrimination that exist in our city rob members of marginalized communities of their opportunity to live a healthy, safe and fulfilling life.

City Council must have the power and authority to address these issues, to help dismantle all forms of systemic discrimination and remove barriers for all people. This includes the challenges resulting from the cultural genocide of Indigenous peoples over many years, the racism faced by African Canadians and other people of colour, and the intersecting discrimination faced by women, people with disabilities, people of Islamic and other faiths, immigrants, refugees, LGBTQ++ people and others with precarious status. These marginalized communities experience a much higher rate of poverty than the general population, with some communities being six times more likely than white Torontonians to live in poverty.

46 The City should formally acknowledge the deep-rooted history and present-day realities of colonialism and racism.

47 The City should adopt a racial equity lens and gender based equity analysis to develop, design, and evaluate all of its by-laws, policies, programs and services.

48 The City should require all of its departments to collect and use disaggregated data (on the basis of race and other demographics) to measure the impact of all of its policies, programs and services on diverse and vulnerable communities, and create appropriate transparency and accountability measures within each department to ensure full compliance with an Access, Equity and Inclusion Framework.

49 The City should actively communicate the Access, Equity and Inclusion Framework with the public and engage in ongoing and meaningful consultation with equity seeking groups to monitor the implementation of the Framework.

50 The City should ensure that it removes all barriers to its services on the basis of immigration status, and it should work with the province to remove such barriers to services that fall under their shared jurisdiction.

51 The City should adopt an Employment Equity Policy to ensure its workforce is reflective of the city's diversity.

The Bigger Picture

It has been noted that some city functions spill over Toronto's boundaries into neighbouring municipalities – transit, human services and the natural environment are three examples. This has highlighted a concern that a Charter for the city of Toronto alone is too limited.

This proposal makes it clear that Toronto should have the ability to enter into agreements with other municipalities to deal with such issues.

There is currently no structure within the Greater Toronto Area capable of becoming a Charter City beyond the city's boundaries – we have no choice but to work with the existing municipalities and their boundaries. Other municipalities may be interested in a Charter. This proposal could be a model on which they can build.

Whether or not they opt to pursue Charter status, neighbouring municipalities should work closely together to ensure that the issues that cross over municipal boundaries are reasonably addressed.

When Toronto secures a Charter, other cities in Ontario, indeed across Canada, can use Toronto's example to secure a Charter for themselves. There is no reason that the adoption of a City Charter should be limited just to Toronto.