Charting a New Path: Does Toronto Need More Autonomy?
About IMFG

The Institute on Municipal Finance and Governance (IMFG) is an academic research hub and non-partisan think tank based in the Munk School of Global Affairs and Public Policy at the University of Toronto.

IMFG focuses on the fiscal health and governance challenges facing large cities and city-regions. Its objective is to spark and inform public debate, and to engage the academic and policy communities around important issues of municipal finance and governance. The Institute conducts original research on issues facing cities in Canada and around the world; promotes high-level discussion among Canada's government, academic, corporate, and community leaders through conferences and roundtables; and supports graduate and post-graduate students to build Canada's cadre of municipal finance and governance experts. It is the only institute in Canada that focuses solely on municipal finance issues in large cities and city-regions.

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Speaker Biographies from the IMFG-ULI Toronto Event “Charting a New Path: Does Toronto Need a City Charter?”

Kristin R. Good is an Associate Professor in the Department of Political Science at Dalhousie University. She is best known for her research on local immigration and diversity policies, particularly her award-winning book *Municipalities and Multiculturalism: The Politics of Immigration in Toronto and Vancouver* (2009). She is the founding co-editor (with Dr. Martin Horak) of the McGill-Queen's Studies in Urban Governance book series. Her IMFG paper “The Fallacy of the ‘Creatures of the Provinces’ Doctrine: Recognizing and Protecting Municipalities’ Constitutional Status” was published in 2019.

Bruce Ryder is one of Canada’s leading experts on constitutional law and an Associate Professor at Osgoode Hall Law School at York University. He is a member of the Law Society of Upper Canada and has appeared as counsel in constitutional cases at all levels of courts, including at the Supreme Court of Canada. He has served as Assistant Dean, Treasurer, and Vice-President of the Canadian Law and Society Association, and Director of the Centre for Public Law and Public Policy. He has published dozens of articles on constitutional law topics, including “Municipalities and the Right to Vote,” forthcoming in the *Journal of Law and Social Policy*.

Enid Slack is the Director of the Institute on Municipal Finance and Governance (IMFG) at the Munk School of Global Affairs and Public Policy at the University of Toronto. She has written extensively on property taxes, intergovernmental transfers, development charges, financing municipal infrastructure, municipal governance, and municipal boundary restructuring. Recent publications include *Financing Infrastructure: Who Should Pay?* and *Is Your City Healthy? Measuring Urban Fiscal Health* (both co-edited with Richard Bird). In 2012, she was awarded the Queen's Diamond Jubilee Medal for her work on cities.

Zack Taylor is Assistant Professor of Political Science and Director of the Centre for Urban Policy and Local Governance at the University of Western Ontario, as well as a Fellow at the Institute on Municipal Finance and Governance. His new book *Shaping the Metropolis* (McGill-Queen’s University Press, 2019), compares the different pathways taken in the historical development of Canadian and American urban governance and their implications for local autonomy and democracy, equity, and urban growth. A modified version of his panel remarks was published by Spacing.ca. His paper with Alec Dobson, “Power and Purpose: Canadian Municipal Law in Transition,” was published by IMFG in 2020.

Patricia Burke Wood is Professor of Geography at York University and a co-founder of its City Institute. With Alexandra Flynn (Allard School of Law, UBC), she is conducting international comparative research into urban governance, and public consultation about the future of Toronto’s governance structures. She is the author of *Citizenship, Activism and the City: The Invisible and the Impossible* (Routledge, 2017).
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Executive Summary

Across Canada, and particularly in Toronto, calls for increased municipal autonomy and the protection of municipal authority in the Canadian constitution have been getting louder. On November 28, 2019, the Institute on Municipal Finance and Governance (IMFG) convened a public panel discussion in partnership with the Urban Land Institute-Toronto to explore these issues, particularly the question of whether Toronto needs a constitutionally entrenched city charter. These issues have become no less significant following the onset of the COVID-19 crisis, which has revealed the limits of municipal powers and financial resources, while also demonstrating the importance of provincial and federal support for municipalities in difficult times. This paper contextualizes and summarizes the speakers’ remarks to explore whether Toronto needs greater autonomy, and if so, how that might be achieved.

The event examined the pros and cons of a constitutional amendment to entrench municipal authority. Bruce Ryder, Associate Professor of Law at Osgoode Hall Law School, noted that a single-province amendment being proposed by some groups has been used before to change religious education rights in several provinces, including Quebec and Newfoundland and Labrador, and so could be a feasible way to secure more autonomy for Toronto or other cities through a constitutionally protected city charter.

Kristin Good, Associate Professor of Political Science at Dalhousie University, defended the need for greater municipal autonomy, but raised concerns with entrenchment of municipal authority in the Canadian constitution. She argued instead for a more flexible option: protecting municipalities in provincial constitutions using “manner and form” provisions that would create a higher bar, such as a two-thirds majority, to amend laws that establish municipal systems. This option, she argued, recognizes both that local government is a provincial matter of jurisdiction and that provinces continue to have an important role to play in governing metropolitan areas and municipal affairs in the interest of the province as a whole.

Patricia Wood, Professor of Geography at York University, argued that it is important to consider the quality of local governance and democracy for all residents of the city. If a city charter is a solution crafted by and for the privileged, she argued, it will do little to bridge the city’s growing racialized socio-economic polarization.

Finally, Zack Taylor, Assistant Professor of Political Science and Director of the Centre for Urban Policy and Local Governance at Western University, noted that the American experience shows that constitutional protection of municipalities could make provinces less likely to address urban and metropolitan policy problems. If the major policy challenges found in our cities require the mobilization of all levels of government, we need to increase incentives for collaborative governance, not reduce them.
Charting a New Path: Does Toronto Need More Autonomy?

Introduction

Zack Taylor, IMFG Fellow

Do Canadian cities need more autonomy from provincial governments? Across Canada, but perhaps particularly in Toronto, the demand for fundamental changes to the legal, constitutional, and fiscal architecture of local government is growing. In its 2019 submission to the federal budget consultation, the Federation of Canadian Municipalities (FCM) called for a “modernized fiscal relationship” and a permanent seat for municipalities at the federal-provincial policymaking table. FCM made a similar call in its report on how to address the municipal financial crisis caused by COVID-19, noting that the crisis highlighted “the outdated tools and authorities granted to municipal leaders, and how they simply do not match the modern role cities and communities play in supporting Canadians and driving our economy.” A group called Charter City Toronto was formed in early 2019, held public meetings throughout the year, and published a proposal on November 5, 2019, advocating for the entrenchment of municipalities in the Canadian constitution.

Building on its extensive body of research on municipal finance and governance, the Institute on Municipal Finance and Governance (IMFG) is playing an active role in these debates:

- In November 2019, IMFG published “The Fallacy of the ‘Creatures of the Provinces’ Doctrine” by Dr. Kristin Good of Dalhousie University. This paper outlines the potential for establishing new protections for local governments within provincial constitutions through “manner and form” provisions that restrict the amendment process for municipal acts and similar legislation.

- As part of the Urban Project, an initiative led by FCM that brings city leaders together with other partners to identify actionable and scalable solutions to the biggest challenges facing Canada’s cities, IMFG published a comprehensive overview of Canadian municipal statute law across all 10 provinces in early 2020. In this paper, “Power and Purpose: Canadian Municipal Law in Transition,” Zack Taylor and Alec Dobson of Western University’s Centre for Urban Policy and Local Governance describe the ways in which municipal enabling legislation has changed considerably over the past 30 years.

- On November 28, 2019, IMFG convened a public panel discussion entitled “Charting a New Path: Does
Toronto Need a City Charter?” in partnership with the Urban Land Institute–Toronto, to explore recent calls for increased municipal autonomy, particularly in Toronto. The speakers were Kristin Good, Associate Professor of Political Science at Dalhousie University; Bruce Ryder, Associate Professor of Law at Osgoode Hall Law School; Zack Taylor, Assistant Professor of Political Science and Director of the Centre for Urban Policy and Local Governance at Western University; and Patricia Wood, Professor of Geography at York University. The discussion and follow-up questions by the audience brought to the surface a variety of perspectives, both pro and con, on a constitutionally protected Toronto city charter.

This IMFG Forum Paper follows on the November 28 event. It includes edited versions of three of the panellists’ remarks as well Enid Slack’s introduction. Bruce Ryder’s remarks are summarized in the discussion below.

**The context: Two steps forward …**

Today’s calls for greater local autonomy reflect two processes: one long-term, the other more immediate. Over the past 25 years, academics, civic advocates, local politicians, and business leaders have argued that cities—especially large ones—need more resources and authority and the discretion to use them to address new and unprecedented problems.

Starting in the 1990s, metropolitan areas have become recognized as crucial generators of national wealth and innovation. Canada’s four mega-regions—the Greater Golden Horseshoe, Greater Montréal, British Columbia’s Lower Mainland, and the Calgary-Edmonton corridor—contain more than half the national population, account for much of the country’s growth in population and jobs, and are the destination of the vast majority of the approximately 300,000 immigrants who arrive in Canada each year.

This recognition of big cities’ economic and social importance has elevated their position on national and provincial policy agendas, spurring the creation of new legal and policy frameworks as well as new public investments in infrastructure, housing, and economic and social development. More generally, both in Canada and internationally, there has been a growing revolutionary drive known as “new localism.” Recognizing that communities are best placed to understand their own needs, this approach calls for transferring authority and resources to lower levels of government, within supportive intergovernmental frameworks, to solve important policy problems.

We see considerable evidence of this trend in Canada. Municipalities participate directly in intergovernmental policymaking and policy implementation for transit, housing and homelessness, and urban Indigenous issues, and are now supported by more (and more consistent) federal and provincial funding through mechanisms such as the Gas Tax Fund. These new federal engagements in urban affairs have been paralleled by provincial actions. Over the past 20 years, most provinces have updated their municipal legislation to expand municipal authority and discretion.

At the same time, some provinces have established special statutory and regulatory arrangements, often labelled “city charters,” for their largest cities. Ontario passed the *City of Toronto Act* in 2006, and new special arrangements also exist for Montréal, Calgary, and Edmonton. Provincial governments have created or further empowered new institutions to facilitate intermunicipal collaboration and regional policymaking for transit and economic development in our largest metropolitan areas. Together, these legal and institutional shifts toward local empowerment constitute a quiet revolution in Canadian local governance and intergovernmental relations.

**… One step back**

The trend toward greater local autonomy and authority has nevertheless been accompanied by conflicts and crises. In 2015, the British Columbia government undercut a regional transit proposal from the Greater Vancouver mayors by requiring a referendum that, some have argued, was designed to defeat the proposal. In Ontario, one provincial government refused to allow Toronto to impose tolls on municipally owned highways but promised equivalent funds instead; the next government cancelled the funding. Ontario also took the extraordinary step of unilaterally redrawing Toronto’s ward boundaries in the middle of a municipal election. In Alberta, a new government has for the moment retained “city charter” arrangements for Calgary and Edmonton, but unilaterally dismantled the new revenue-sharing agreement that accompanied their adoption.

These events seemingly contradict Canada’s quiet revolution in local governance, fuelling more radical proposals for change. The Charter City Toronto proposal, which advocates for constitutional protections for municipalities, reflects growing frustration with provincial authority over municipalities and these recent unilateral actions.

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IMFG Forum
provincial argued, we should reinforce municipalities’ place within inhibit adaptation to changing circumstances; instead, she constitutional firewall around municipal authority would self-determination, Kristin Good noted that building a process, including Québec and Newfoundland and Labrador. The barriers to this process, Ryder argued, are eminently feasible. The process has been used seven times before, often to change religious education rights in several provinces, including Québec and Newfoundland and Labrador. The barriers to this process, Ryder argued, would be political, not legal.

The “Charting a New Path” panel discussion: A brief summary
The November 28, 2019, panel discussion was sparked by local autonomy debates in Toronto, and the Charter City Toronto proposal in particular. Enid Slack opened the discussion with some contextual remarks and questions.

She noted that demands for greater local autonomy for Toronto have ebbed and flowed since the forced amalgamation of Metro Toronto with its six lower-tier municipalities in 1998. As a result of local activism, we now have the City of Toronto Act and the additional authority it confers. If these powers are not enough, what else is needed to confront new and ongoing challenges, including housing unaffordability, transportation gridlock, and climate change? Would adopting the Charter City proposal help cities address these problems?

While the panel’s contributors were broadly favourable to greater autonomy for Toronto and other Canadian cities, they advanced cautions and qualifications and proposed alternative directions to pursue.

The discussion explored two general themes: whether constitutional protection is the most appropriate course of action, and what its political effects might be.

The pros and cons of constitutional protection
Bruce Ryder argued that cities deserve more autonomy and spoke in favour of the bilateral, single-province amendment to the constitution being proposed by Charter City Toronto. Such an amendment would require only the consent of the Ontario and federal governments and would protect Toronto’s city charter from unilateral provincial intervention. As a matter of constitutional law, Ryder said, proposals to entrench municipal authority in the constitution through this process are eminently feasible. The process has been used seven times before, often to change religious education rights in several provinces, including Québec and Newfoundland and Labrador. The barriers to this process, Ryder argued, would be political, not legal.

While arguing forcefully in favour of local democratic self-determination, Kristin Good noted that building a constitutional firewall around municipal authority would inhibit adaptation to changing circumstances; instead, she argued, we should reinforce municipalities’ place within provincial constitutions. She also raised concerns that if provinces agreed to decentralize significant responsibility for health care and education (as proposed by Charter City Toronto), intergovernmental relations could become unmanageable. In particular, if the country’s largest province were bound by “city charter”—type arrangements, collaboration on country- or province-wide standards in areas like health care and education would become even more difficult.

Good proposed an alternative: the use of quasi-constitutional “manner and form” provisions within provincial legislation. Little known outside the legal profession, but accepted as binding by constitutional lawyers across the Commonwealth, this approach means that the legislature embeds in certain laws a higher bar for their amendment while still making amendment possible. Making it harder to amend municipal legislation in this way (e.g., by requiring a two-thirds majority vote) would effectively constitutionalize Municipal Acts while avoiding rigidity, maintaining productive provincial engagement in municipal affairs, and avoiding federal involvement.

The politics of local autonomy
Establishing some form of protected municipal authority for Toronto or other Canadian local governments is not simply a matter of rewording legal documents. It is also fundamentally political in its motivations and implications. Patricia Wood focused on politics, characterizing demands for local autonomy from the province not as a provincial-municipal conflict, but a conflict between rival elites within the City of Toronto itself.

She argued that legal empowerment would not necessarily improve the quality of local governance and democracy for all residents of the city. If a city charter is a solution crafted by and for the privileged—the white and middle-class residents of the former City of Toronto who were never reconciled to amalgamation—it will do little to bridge the city’s growing racialized socio-economic polarization. She asked what an empowered city would do with its powers that it cannot do already. Indeed, the city’s democratic deficit could be addressed tomorrow with council’s existing authority, for example by decentralizing decision-making to empowered community councils.

Zack Taylor identified the potential negative effects of “home rule”—the legal or constitutional protection of local governments from interference from the provincial government. The American experience shows that with constitutional home rule, state governments lose their incentive to address urban and metropolitan policy problems while inequality and destructive competition increase between municipalities. If the major policy challenges found in our cities require the mobilization of all levels of government, we need to increase incentives for collaborative governance, not reduce them. He argued for a political solution, not a constitutional firewall. If the goal is to rebalance intergovernmental relations by elevating local
Kristin Good raised another political concern: Québec would resist any bilateral amendment to the national constitution that diminishes the scope of provincial jurisdiction. Doing so risks opening up a new line of federal-provincial conflict. The comparison to previous bilateral amendments concerning religious education rights is also not correct. Those amendments did not change the scope of provincial jurisdiction (education continued as an area of provincial jurisdiction), they merely changed its administration. More generally, single-province amendments have addressed elements of Canada’s constitutional order that are unique to a particular province, often involving minority rights. Entrenching municipal home rule in the Constitution Act, 1867, by creating a mechanism to remove municipal institutions from provincial authority in one or more provinces would create something new and unprecedented in Canada in an area of provincial jurisdiction that is currently established symmetrically (constitutional jurisdiction is the same across provinces).

By the end of the evening, it was clear that the discussion is just beginning, not only in Toronto, but also across Canada. There are still more questions than answers. What exactly is local autonomy? More powers? More money? A veto on provincial actions in municipal affairs? Or all three? What might cities gain from local autonomy? More powers? More money? A veto on provincial actions in municipal affairs? Or all three? What might be the costs of local autonomy? The loss of potential constructive engagement by provinces in urban affairs? And should greater local autonomy be pursued without first building a society-wide understanding of how it will be used?

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The following remarks were presented by Enid Slack, Zack Taylor, Patricia Burke Wood, and Kristin R. Good at the event, “Charting a New Path: Does Toronto Need a City Charter?”

**Introductory remarks: So here we are again…**

*Enid Slack*

After the 2018 provincial election, the Province of Ontario unilaterally imposed changes on Toronto that affect the very core of its governance. In response to these actions, we are hearing louder and louder calls for Toronto to be given more autonomy by becoming a charter city. If you’re feeling as if it’s 1999, a year after the Toronto amalgamation, and that you have lived through this before, you’re not alone. I want to open by asking two questions: What has changed in 20 years? Why is now the time to revisit this issue?

First, what has changed?

The City of Toronto has been growing. Today, the city is home to almost three million people—16 percent more than in 1999. Look at the number of cranes on the skyline; you can certainly see that change. At the same time, the Toronto region has been growing at an even faster rate—it has grown by 36 percent. This growth is not going to stop any time soon. Over the coming decades, all the regional municipalities around the City of Toronto are expected to grow at a faster rate than the city itself. Meanwhile, the importance of the Toronto region to the country also continues to grow. The region now accounts for 18 percent of the country’s GDP.

The other big change since 1999 is that Toronto got what, in everything but name, is a city charter. The *City of Toronto Act* was passed in 2006. Because of this legislation, we have a land transfer tax. Because of it, we had (for a while) a vehicle registration tax. And because of it, we almost had road tolls…

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So what has not changed?

The ability of the province to interfere in local decisions has not changed. We saw the provincial veto on road tolls a couple of years ago and the more recent intervention on council size (through Bill 5). And, of course, the challenges the city faces have not changed—they have only worsened: traffic congestion, lack of affordable housing, the impact of climate change, and more.

So why revisit this question about autonomy and charters now?

It’s precisely because so many of the challenges we face remain the same or have gotten worse that we need to revisit our governance. It’s still an open question whether Toronto has the powers and fiscal resources it needs to meet the challenges it faces. It’s an open question whether powers mean anything without sufficient autonomy (or protection from provincial interference). And finally, it’s an open question whether a city charter is the best way for the city to gain more powers and autonomy, or whether other approaches are preferable.

**What exactly does local autonomy mean?**

*Zack Taylor*

Is the answer to Toronto’s problems a city charter? To my mind, the Charter City Toronto proposal raises more questions than it resolves. In a column in *Spacing* in November 2019, journalist John Lorinc picked apart the
problematic assumption that increasing Toronto’s autonomy will somehow make its political leadership smarter and wiser or lead voters to elect smarter and wiser politicians. And then there’s the matter of feasibility: what incentive would a provincial government of any stripe have to limit its involvement in municipal affairs, let alone oversight over the province’s metropolitan economic engine, while still holding many of the purse strings?

I would like to focus on a different set of problems, the first of which is terminological. Toronto already has a city charter. It is called the City of Toronto Act, which became law in 2006. In legal terms, all a charter means is that a municipality derives its existence and much of its authority from a single piece of legislation, rather than from a general statute pertaining to all municipalities. The main outcome of the process in 2005 and 2006 was to detach the City of Toronto from the province-wide Municipal Act.

Let’s remember why the City of Toronto Act was created. Much as we see today, the politicians at that time argued that a large and fast-growing municipality like Toronto needed more powers and greater discretion in exercising them. This goal was achieved in several respects. The city gained access to additional revenue sources and borrowing powers. It also gained greater authority to manage its internal affairs, organization, and property. The importance of these changes was not diminished when the Ontario government almost immediately amended the Municipal Act to grant most of the same powers to all other Ontario municipalities. In fact, the City of Toronto’s advocacy for more powers and resources has driven changes to municipal governance across the province.

The bottom line is that Toronto already has a charter. Our current debate is really about other things—each of which deserves careful consideration.

Three dimensions of local autonomy

What is local autonomy? It seems to me that charter advocates are jumbling together three distinct dimensions of local autonomy: legal empowerment, fiscal sufficiency, and home rule.

1. Legal empowerment means having the legal authority and discretion to accomplish public objectives. Traditionally, Canadian municipalities operated under an “express-powers” legal framework, meaning that they could perform only those functions explicitly authorized in provincial legislation. More recently, laws in many provinces, including Ontario, have been revised to allow municipalities broad discretion to act within defined spheres of jurisdiction. These changes have been supported by the courts. The truth is that the City of Toronto Act confers broad authority whose limits the city’s leaders have as yet barely tested.

2. Fiscal sufficiency means having access to enough revenues to perform legally authorized functions. While economists argue that Toronto and other municipalities have not maximally exploited their existing taxing and borrowing power, most also agree that Canadian cities would benefit from more revenues from a more diverse range of sources. Provincial and federal governments should pay for some proportion of metropolitan services and infrastructure because these have positive spinoff effects for the province and nation as a whole. Given this context, the debate on fiscal sufficiency revolves around demands for access to new own-source revenue streams, more support from the federal and provincial governments, and fewer strings on how municipalities can spend their money.

3. Home rule refers to legal or constitutional protection for local government actions. The reference point here is the United States, where most state constitutions limit the ability of legislatures to enact municipal legislation. Many people are justifiably angry about the current Ontario Conservative government’s reduction of the size of Toronto City Council and the former Ontario Liberal government’s denial of the City’s request to impose road tolls. Their preferred answer is to erect a constitutional firewall around the city; in other words, home rule.

Mixing discussions about legal authority, fiscal resources, and home rule together, as I think the contemporary debate in Toronto does, obscures the fact that each can exist without the other two. Municipalities can have broad powers or sufficient financial resources, or both, without legal protection from interference from provincial governments. This is the Canadian best-case scenario under our current constitution. Municipalities can also enjoy home rule or broad legal authority, but if they do not have sufficient financial resources, these do not count for much. I will argue that this is the situation in which many Canadian municipalities might find themselves if a strong version of home rule is secured.

The risks of home rule

Let’s consider some of the risks of home rule, both as a constitutional provision and an operating principle.

First, the American experience shows that home rule has taken away the incentive for state governments to recognize their distinct interests in cities, and in municipalities
more generally. When the issues and problems of cities are understood to be exclusively local, state governments are less likely to assist declining communities and support major projects that benefit the state and national economies as a whole. If people think that home rule will enable municipalities to get more resources for housing or infrastructure out of provincial or federal coffers, they are dreaming. Just ask successive mayors of New York City how much having home rule and a city charter has protected New York City from Albany's disinclination to spend on maintaining critical infrastructure, especially the city's crumbling subway system.

Second, and as a result of this first point, home rule intensifies socio-economic disparities, not only between places, but also between people who live in different places. Especially when coupled with fiscal devolution, home rule has increased inequality. It has enabled rich places to get richer while blaming declining places for problems caused by forces beyond their control, including globalization and migration. On its own, home rule does nothing to alleviate disparities within or between municipalities.

Third, home rule also makes it harder, not easier, to address regional or metropolitan-scale problems. As I discuss in my recent book, many of the initiatives that laid the groundwork for Greater Toronto's and Southern Ontario's economic and social success were imposed by the provincial government over the objections or indifference of local governments: the creation of Metro Toronto and its planning board, the conservation authorities, the Niagara Escarpment, and the Greenbelt; not to mention equalization payments for less-well-off municipalities. If municipalities had been able to veto these initiatives, Greater Toronto and the province as a whole would look very different.

Finally, even when constitutionally entrenched, home rule has provided little protection from state politicians who want to scapegoat cities or punish local political adversaries. Americans talk about “state pre-emption”—state laws that unilaterally override local bylaws, including local minimum wages, gun-control measures, fracking bans, and protections for undocumented migrants. There is no real difference in state pre-emption activity in home rule versus non-home rule states. When states want to breach home rule, they find legal ways to do it. State governments have also used the allocation of funding for capital projects to reward or punish particular places without breaching home rule.

**We need a political, not a constitutional solution**

In striking a cautionary note, I do not want to leave the impression that I am against local democracy and innovative local problem-solving, nor am I comfortable with provincial governments making arbitrary interventions in essentially local processes. Far from it. Local governments have a crucial role to play in addressing problems of provincial and national significance, from housing unaffordability to transportation congestion, poverty, homelessness, and climate change.
Community self-determination is an attractive idea. Indeed, local democracy is the foundation of a free society. Nevertheless, we need to shine a critical light on what may be gained and what could be lost. Comparing the different histories of urban governance in Canada and the United States, I conclude the best guarantor of democratic, accountable, and effective local government in Canada has always been legal and fiscal support from the provinces. Citizens of Toronto and other Ontario municipalities feel whipsawed by provincial actions and want to change the rules. But instead of a quest to rewrite the constitution, let’s use this energy to create a province-wide political movement that will deliver on the promise of local democracy.

Who needs a city charter?
Patricia Burke Wood

Does Toronto need a city charter? What does this question mean? Equally importantly, whose question is it? Does the question mean, “Does Toronto need more powers?” If so, what kind of powers? And why?

Is this the same question as “Does Toronto need better municipal governance?” or “Does Toronto need more local democracy?” I think they are related questions, but the latter questions emphasize the purpose of governance reform rather than the form it takes, whereas asking ourselves if we need a city charter assumes a particular form of governance reform from the outset. I am interested in the way in which the idea of a city charter is framing the way we think about municipal governance in Toronto. We should always unpack the power relationships within reform movements, including progressive ones.

In 2019, it became clear that a lot of people think Toronto does need a city charter. In particular, many believe that the city needs more powers to defend itself against the province, which is assumed to be in some kind of power struggle with, or even hostile to, the city. At times, that is a fair assumption, but when considering governance structures theoretically, we need to ask whether such hostility is inherent in the relationship between cities and the province, or whether it arises from political differences and personalities.

We need to answer this question in order to understand what problem a charter would solve. Would it reduce hostility through a more balanced division of authority and greater clarity of responsibilities? The history of the relationship between the federal government and the provinces suggests it would not. There may still be other, good reasons for a city charter. Such reasons should be rooted in the structural provincial-municipal relationship, not just a disagreement on policy.

Let’s ask the question another way: In whose interest is it to have a charter? Whose solution is it, to what problem? Who would be empowered by a charter?

The answers to these questions trouble me, because it has also become clear that the vast majority of those who believe Toronto needs a charter to address its local democracy issues are white and middle-class, and from the old cities of Toronto, York, and East York. The urban residence of this group suggests a direct link to an interest in city powers, but the connection to race and class identities is not as obvious. Why are the audiences that are turning out in support of a charter overwhelmingly affluent white people? If a city charter is an answer to a perceived need for stronger local democracy, and that need is felt by racialized people too—which it plainly is—why are they choosing not to be present in equal numbers at such meetings, in a city where they constitute half the population?

Toronto journalist and activist Desmond Cole and others have specifically asked us to consider why these audiences are predominantly white. Is it possible that a charter is a solution for the privileged, for those already holding significant social power?

For a research project on urban governance reform in Toronto, my colleagues and I are conducting consultations with individuals and organizations from and working with equity-seeking groups, including focused meetings with Indigenous peoples, trans youth (especially racialized trans youth), and disabled people. These groups are among the most vulnerable in the city, and their right to participate in the life of the city is regularly compromised. Based on our research, I want to offer a few thoughts on the connections between different communities in the city and their understandings of governance problems and solutions. I am not representing or speaking on behalf of anyone who participated, but I do want to honour what we have heard and learned so far.

No one is happy about what happened during the 2018 election. But not everyone has the same concerns. Many are concerned that the City has done little to respond. A Special Governance Committee was struck, and hundreds of people spent hours in committee rooms offering suggestions on how to make the city more inclusive and participatory. These suggestions were almost entirely ignored by staff and councillors.
The people we’ve spoken to want communities to have better access to their councillors. They are turning instead to community organizations, which are feeling the strain. When we ask about what local democracy looks like to them, people want better information and better access to city services. They want the city to play a stronger role by providing better services: by that, they mean safer streets with less gun violence and fewer pedestrian and cyclist deaths, more and better parks, more and better libraries and public spaces, more community services, more housing, better public health services, better transit. They want a city that consults and engages them, but not in a tokenistic way and without making them pay for a babysitter and come all the way downtown. That is what local democracy looks like to them. Such things are all within the city's powers to do now.

The quality of public life—of safety and housing and parks—matters in a democracy, because democracy is fundamentally a public activity. It is not merely councillors discussing and voting. Democracy is also people gathering informally to discuss what matters to them, what needs changing, and what they can do about it. It is communities caring for each other. It is communities coming into meaningful existence in the first place.

What would the current council do with more powers? Would it reinstate 47 wards? I doubt it. Would it implement more and stronger local councils? It could do that now.

What do we want council to do with new powers that it can’t do now?

I am not persuaded the charter movement is only a structural power struggle between the city and the province as levels of government. I wonder if it is, in fact, a competition between city elites. The Premier comes from Toronto, once served on Council, and also ran for mayor. Is he doing anything more than using the powers at his disposal to shape the city as he wants it? Those who want to transfer some of the premier's powers to the city disagree with Ford's specific plans, but are the interests they represent more “local” than Ford’s? Is this group more representative of Toronto?

What if David Miller were premier and was trying to implement Transit City over Mayor Rob Ford’s objections? What if the province was trying to make us build more housing? What if the premier intervened to tear down the Gardiner Expressway?

The value of a local voice in democracy matters not because local is always better, but because there is a need for place-based governance and the governance of everyday life. As we know from NIMBYism, local is not always right.

Local governance must be grounded in inclusive practices of local democracy. Unfortunately, the City of Toronto is not, in practice, committed to such equity, participation, and inclusion. Certain individual councillors are. But the City as a corporation is not committed to inclusive governance, it is not committed to extensive public engagement (it voted in November 2019 not to review it), and it is not committed to sharing stewardship with Indigenous people (despite having endorsed the UN Declaration on the Rights of Indigenous Peoples). The City is not committed to ending carding. It is not committed to local democracy, nor any of the things for which it is the best tool. While there have been gestures and promises made, there has been no sustained effort accompanied by appropriate funding.

I suspect middle-class white residents in central and downtown Toronto prioritize new powers for the City because that would solve the only real governance problem they have. As a community, they don't struggle to get their voice heard by their councillors or by the media. They don't struggle to get access to housing or services. When there are gaps in public services, they can afford to supplement them with private ones. Their mobility in the city is unquestioned; their biggest problem on that front is congestion.

However, the rest of the city struggles to have its issues heard and addressed. The vulnerability of many people in this city is extraordinary, but their suffering is not the City’s priority. Racial polarization and its consequent material deprivation are growing. According to the latest Vital Signs report, middle- and high-income neighbourhoods are overwhelmingly white, largely because racialized populations have seen virtually no growth in their income over the last 35 years (roughly 1 percent), while white household incomes have grown by 60 percent. A charter won't improve local democracy for those racialized communities.

I think cities should be stronger, and I think they are best able to lead on many critical issues. But if the conversation about local democracy is all about a charter, we won't address the larger, more serious issues, and we won't even include most city residents in the conversation. A governance conversation that is only about a charter by definition excludes those for whom it is not a solution.

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would empower. To retrench racial and other inequities in the city would not constitute progress for local democracy.

Municipalities’ place is in provincial constitutions  
Kristin R. Good

Although the debate about whether Toronto needs a city charter was inspired by recent events in Ontario (including the provincial Conservative government’s unilateral reduction of Toronto’s council size in the middle of the 2018 municipal election), the debate about municipal charters and autonomy is of country-wide significance. For instance, Nova Scotia no longer has cities; the province imposed regional municipalities in the mid-1990s and, more recently (in 2018), it eliminated school boards with little public debate.

This type of unilateral imposition of provincial authority in relation to municipalities and other forms of local government has no place in a modern liberal democracy.

My own position on the panel’s question “Does Toronto need a city charter?” is “yes.” Toronto needs a city charter; in fact, it already has one. The real debate is about how to protect the city against unilateral provincial change. However, unlike the Charter City Toronto proposal, which has received public attention recently, my position is that such a charter should be protected at the provincial level and not through a bilateral amendment to the Canadian constitution (using the constitutional amendment formula in Section 43 of the Constitution Act, 1982).

Establishing and altering municipal institutions should be considered a form of constitutional politics at the provincial level.

Municipal institutions as a part of provincial constitutions

First, I offer a novel interpretation of municipalities’ place in the current constitutional order, arguing that establishing and altering municipal institutions should be considered a form of constitutional politics at the provincial level.

A lot of emphasis is put on the fact that, in the Canadian Constitution, municipalities are a legislative responsibility of provinces (in Section 92(8)) and not recognized as an independent order of government. They are so-called “creatures of the provinces” because they are created by provincial legislation. According to this logic, creating municipal institutions is no different from passing a law in health, education, or transportation policy.

We must abandon the legal and political fiction that creating democratically elected municipal institutions and/or amending long-standing municipal institutions is the same thing as passing a traffic law. Instead, we should see municipal institutions as a crucial part of provincial constitutions, an element of Canada’s constitutional tradition that warrants more attention in Canadian political discourse. Municipal acts and city charters divide power and responsibilities between two orders of government and establish democratically elected councils as governing bodies that serve constitutional functions at the provincial level and they should be recognized as such. Despite municipalities’ importance to our democratic federal system, the reality is that some provincial governments continue to impose changes to municipal systems unilaterally. Unless the constitutional significance of provincial municipal acts is recognized, the courts will uphold their actions.

There is a practical solution to this problem, one that reflects the idea that municipal acts and city charters serve constitutional rather than ordinary legislative purposes. In my IMFG Paper, “The Fallacy of the ‘Creatures of the Provinces’ Doctrine,” I propose a way to protect municipal autonomy by placing legal limits on provinces’ power to change municipal acts and city charters. Importantly, I propose a way of doing so without an amendment to the federal constitution.

The Charter City Toronto’s proposal for a Section 43 amendment is problematic

In contrast to the Charter City Toronto proposal, which proposes a bilateral amendment to the Canadian constitution (a Section 43 amendment), I believe that keeping the federal government out of the municipal autonomy debate is preferable for a number of reasons. The federal government should not be able to bind a province or a group of provinces to a restriction on such a crucial area of provincial legislative authority. Municipal autonomy should not be achieved at the expense of the provinces’ own autonomy from the federal government.

The Charter City Toronto group has advocated placing municipalities outside provincial authority, giving a municipality a veto over future changes to charters once they have been negotiated. This approach would introduce significant rigidities both at the provincial level and in the federal-provincial intergovernmental arena (possibly invoking other provinces’ constitutional interests and, therefore, the need for broader provincial consent to such a change). Provincial governments must be able to adapt municipal systems to changing settlement patterns and citizen needs even in the face of local municipal and citizen opposition. In order to make changes, however, provinces must be compelled to justify the urgency of their legislative objectives
in light of larger metropolitan or provincial interests as well as to demonstrate even-handedness in their legislative actions.

Furthermore, the constitutionality and political feasibility of a bilateral or limited provincial amendment under Section 43 is far from clear. Politically, such a precedent could be dangerous in a country in which several major rounds of large-scale constitutional negotiation have failed to meet the aspirations of Canada's only majority French-speaking province, whose concerns include federal incursions on provincial jurisdiction. It should take more than a majority vote in the federal parliament and a single provincial legislature to bind future provincial governments in an exclusive area of their legislative jurisdiction, particularly one such as municipal institutions which, because of the range of functions performed by municipalities, could involve multiple areas of provincial jurisdiction.

Theoretically, a province could empty its jurisdiction into a city charter which would then be outside its scope to change—including jurisdiction over health care and education policy. This hypothetical example illustrates that jurisdiction over municipal institutions is fundamentally different from other areas of provincial jurisdiction. This example also raises the question of how a province that willingly binds itself to massive decentralization of its authority could engage effectively in cooperative policymaking with other provinces and the federal government. Other provinces' interests are at stake in this initiative, which is why one might argue, and the courts might decide, that the constitution's general amending formula, which requires a broad provincial consent (seven provinces representing at least 50 percent of the population), ought to apply. What incentive would the federal government have to wage into this constitutional mess and political minefield?

Protecting municipal charters through “manner and form” mechanisms: A flexible process that respects provincial autonomy

If this logic is accepted, how could city charters be protected from a province that would like to change them unilaterally and against the wishes of a municipality and its residents? The dominant thinking has been that it cannot be done because the principle of parliamentary supremacy, so crucial to Canada's parliamentary democracy, means that a parliament (or, in this case, provincial parliament) in the present cannot pass laws that bind it in the future.

This means that a city charter enacted by one parliament could be amended at will by the next parliament by a simple majority vote, just as any ordinary law could be. (Indeed, the principle of parliamentary supremacy has also been invoked to justify the introduction of laws that violate previous ones without amending them, using arguments that amendment under these circumstances is implied.)

Some constitutional scholars, however, now hold a more nuanced idea of parliamentary supremacy. These scholars make a distinction between the substance of laws and the process by which they are passed. According to this version of parliamentary supremacy, a parliament can indeed bind a future one to a more difficult process to amend a law in the future, even though it cannot bind it to the law's substance. For instance, a provincial parliament cannot bind a future one to a particular policy about the size of a municipal council (or method of determining its size), but it could establish a more difficult procedure that a future provincial legislature would have to follow in order to amend the law establishing the council's size (or rules about how its composition is determined).

These self-imposed procedural constraints on a parliament's ability to amend laws are called “manner and form” requirements. Examples include a requirement of a supermajority vote (say a two-thirds majority vote) by a provincial legislature, or the requirement to hold a referendum or consult with a municipality before a change to a provincial law may be enacted.

The beauty of these legal mechanisms is that they are flexible and could be adapted to different laws that govern municipalities and city charters or even specific parts of these laws. They should be developed in a way that ensures that provinces still have the flexibility to pass laws in the interest of a metropolitan area or even province as a whole—in other words, if their legislative objectives are sufficiently important to warrant limiting the principle of local democracy by imposing an unwanted change upon a municipality.

The flexibility of the current system is a virtue that should be maintained. Provinces must be able to adapt municipal laws and city charters to the changing needs of metropolitan areas. It's all about striking a balance. For instance, the City of Toronto Act could be amended to require the City's consent prior to its amendment; however, the province could override a rejection of an important amendment by the City with a two-thirds vote of the provincial legislature if its objectives were sufficiently important.

Fellow panellist Bruce Ryder rightly argues that a Section 43 amendment to the Canadian constitution could also produce a flexible city charter amendment mechanism or mechanisms. Nevertheless, if, for instance, the amendment specified a municipal veto coupled with a supermajority override, then any change to this general process would require another constitutional amendment. One might envisage a carefully worded amendment that left the city charter amendment process open and subject to negotiation between the provinces and municipalities involved at a future date (when the charter legislation is passed). This latter option would leave room for tailored processes, providing flexibility
to address differences among municipalities and providing a similar legal result as the manner and form option.

Ultimately, this route would provide some flexibility and more secure protection for municipalities. At the same time, it would be more rigid, as restrictions on provincial legislative action would be entrenched in the country-wide constitution. In contrast, the courts would likely strike down manner and form rules that became overly rigid and unworkable, since they are not meant to provide the same type of constraint on a legislature as a constitutional amending formula. Manner and form mechanisms are consistent with a more organic form of constitutional evolution while still providing legal protection for municipalities.

The constitutional and political legitimacy of the process by which changes to protect municipalities’ legal security are enacted is critical. Municipalities are an exclusive area of provincial legislative jurisdiction and a crucial part of provincial constitutionalism. Municipal autonomy, including autonomy conferred through city charters, should therefore be protected in a way that respects provinces’ constitutional authority for municipal institutions and for provincial constitutions. Legal protection for municipalities can be achieved without federal intervention, which makes it the preferable route.

Although the notion of “manner and form” mechanisms may seem arcane, they are widely used. Upon learning of them, one begins to notice them everywhere in Westminster parliamentary systems. In the area of municipal law, British Columbia’s Community Charter (2003) contains manner and form provisions, for instance, restricting the legislature’s ability to impose amalgamations. Even Ontario has introduced such a mechanism in a provincial finance law. The United Kingdom’s fixed election legislation, which requires a two-thirds majority vote in Parliament to call an early election, is another example. In other words, this is not just a theoretical debate. It is emerging constitutional practice.

In conclusion, my answer to the panel’s guiding question is “yes,” the City of Toronto needs a charter with constitutional backing. However, its legal protection should be at the provincial level—in Ontario’s provincial constitution—and has no place in the Canadian federal constitution.