

## **Supplementary report on the legal mechanism for amending the Constitution to recognize and enshrine certain City of Toronto authorities**

**Date:** March 19, 2024  
**To:** Executive Committee  
**From:** City Solicitor  
**Wards:** All

### **REASON FOR CONFIDENTIAL INFORMATION**

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The attachment to this report contains advice or communications that are subject to solicitor-client privilege.

### **SUMMARY**

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This report responds to a request for the City Solicitor to outline the legal mechanisms for amending the Canadian Constitution to recognize and enshrine certain City of Toronto authorities to establish what has been referred to as a "Charter City". The potential use of various approaches to seek an amendment is discussed in detail in the Confidential Attachment 1.

### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege.

### **FINANCIAL IMPACT**

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There are no financial implications to the City arising from the recommendation in this

report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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At its meeting on June 14 and 15, 2023, City Council adopted Item MM7.23 which, among other recommendations, directed the City Solicitor to report to City Council by the end of 2023 on the legal mechanism for making an amendment to the Canadian Constitution that would recognize and enshrine certain City of Toronto authorities.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.MM7.23>

## **COMMENTS**

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City Council Item MM7.23, outlines the purpose of recognizing and enshrining certain City of Toronto authorities by an amendment to the Canadian Constitution as follows:

A Charter City in Toronto would be created by transferring jurisdiction of certain divisions of powers in the Constitution from the Provincial Government to the City in order to give more autonomy and decision making power to City Council. The goal of a Charter City is to give City Council the ability to have more control over areas such as planning, taxation, and elections that directly affect the City's ability to deliver services to its residents.

Part V of the Constitution Act, 1982 establishes the amending procedures for the Canadian Constitution. Different amending procedures are required depending on the nature of the proposed constitutional amendment.

The consent requirements for the various procedures differ as follows:

- (a) Unanimous consent of the Senate, House of Commons and all ten provinces (section 41);
- (b) Consent of the Canadian Parliament and seven out of ten provinces, which collectively represent at least fifty percent of the Canadian population (Section 38); and
- (c) Consent of only the Senate, House of Commons and the province(s) affected by the amendment (section 43).

Part V of the Constitution Act, 1982, is contained in Attachment 1 to this report.

Only thirteen recognized amendments to the Constitution have been made since the patriation of the Canadian Constitution in 1982. In eight cases, those amendments were made following the amending procedure contained in section 43, requiring only the authorization of the Senate, House of Commons and the impacted provinces. Four amendments occurred under section 44, requiring only the approval of Parliament (an

amending procedure not relevant to this issue). Only one amendment using the general amending formula in section 38 has occurred. Two potential amendments that would have required the unanimity formula in section 41 failed - the Charlottetown and Meech Lake Accords.

Confidential Attachment 1 contains further information about the mechanisms to recognize and enshrine certain City of Toronto authorities by an amendment to the Canadian Constitution. The potential use of these various approaches is discussed in detail in Confidential Attachment 1.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Attachment 1 - Part V Procedure for Amending Constitution of Canada  
Constitution Act, 1982

Confidential Attachment 1 - Confidential Information