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Dear Sir:

RE: APPLICATION OF SECTION 3 OF THE CHARTER TO MUNICIPALITIES

I. QUESTIONS PRESENTED

You have requested my opinion on the question of whether section 3 of the Canadian Charter of Rights and Freedoms ("**Charter**") prevents the imposition of term limits or citizen recall upon members of the Calgary City Council?

II. BRIEF ANSWER

Section 3 of the Charter does not mention municipalities. Therefore, municipal politicians may be subjected to term limits and citizen recall without violating the Constitution.

III. DISCUSSION

By its terms, section 3 of the Charter only applies to elections to the House of Commons and provincial or territorial legislatures:

- 3. Every citizen of Canada has the right to vote in an election of the members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

It is noteworthy that the European Union has taken a different approach and expressly protected the right to vote and to stand as a candidate at municipal elections in Article 40 of the EU Charter of Fundamental Rights.

The absence of reference to municipalities in section 3 of the Charter is determinative of the question presented.

The courts in Canada, including the Supreme Court of Canada, have addressed the question of whether section 3 Charter rights can be asserted in elections involving political jurisdictions in addition to those expressly mentioned in section 3. The consistent answer from the judiciary is no.

The courts have expressly held that section 3 of the Charter does not apply to:

1. Referenda (*Haig v. Canada*, [1993] 2 SCR 995 ("**Haig**"));
2. Municipalities (*Haig*; *Rheaume v. Ontario*, 7 OR 3d 22 (1992 Ont CA), leave to appeal refused [1992] SCCA No 146; *Nunziata v. Toronto*, 50 OR 3d 295 (2000 Ont CA));
3. Indian Band Councils (*Corbierre v. Canada*, [1999] 2 SCR 203).

If section 3 of the Charter does not apply to municipal elections, then the Legislative Assembly of Alberta may allow municipal councils to create term limits for councillors and grant to citizens the right to recall members of council.

Sincerely,

MILLER THOMSON LLP

Gerald Chipeur, Q.C.

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