

**LOCAL GOVERNMENT LEADERSHIP
ACADEMY 2019
Newly and Returning Local Government
Elected Officials: Current Legal Issues**

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Outline

1. New Cannabis Laws: Where does Local Government Fit In?

- Land Use
 - Production
 - Retail Sales
 - Agricultural Land Reserve
- Business Licensing
- Clean Air Bylaw



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Outline

2. Housing Issues

- Rental Zoning
- Vacation Rentals
- Homelessness and tent cities

3. Elected Officials' Codes of Conduct

4. Conflict of Interest

- Exemption Regulation



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New Cannabis Laws

Land Use Issues

- Local governments may use their zoning powers to prohibit, limit or restrict the use of lands for cannabis production and cannabis retail sales.



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New Cannabis Laws: *Cannabis Act*

- 2017 – Federal Government introduced Bill C-45 to legalize, regulate and restrict access to cannabis; amends the *Controlled Drugs and Substances Act*
- 2018 – *Cannabis Act* came into force on October 17, 2018

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New Cannabis Laws: *Cannabis Act*

- Production Offences
 - No more than 4 plants per dwelling house
 - No cultivation or propagation unless licensed
- System of production licences established

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Federal Cannabis Regulations, SOR/2018-144

- The Federal Cannabis Regulations, SOR 2018/144 regulate the production and distribution of cannabis and provide a scheme for the sale, growth and possession of cannabis for medical purposes
- The production and distribution of cannabis is regulated by the licensing system that provides a number of classes of licences

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Federal Cannabis Regulations, SOR/2018-144

Classes of Licences

- The Cannabis Regulations provide the following classes and subclasses of licences:
 - Cultivation
 - ❖ Subclasses: standard cultivation, micro-cultivation and nursery
 - Processing
 - ❖ Subclasses: standard and micro-processing
 - Sale
 - ❖ Subclass: sale of medical cannabis to an individual
 - ❖ Subclass: sale to other licensees or the Minister

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Federal Cannabis Regulations, SOR/2018-144

Classes of Licences Cont'd

- Research
- Analytical testing
- Cannabis drug licence
- The Regulations establish authorized activities associated with each class of licence

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Federal Cannabis Regulations, SOR/2018-144

Notification Requirements

- Pre-licensing requirements – before applying to the Minister for a cultivation, processing or sale licence – must notify:
 - Local government
 - Local fire authority
 - Local police or RCMP
- Opportunity for local government to determine if zoning permits the use contemplated under the licence and advise applicant

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Limits on Land Use Powers with Respect to Home Cultivation



Home Cultivation

Land Use Powers and Home Cultivation

- The growing of 4 cannabis plants per dwelling house would be considered incidental or accessory to the residential dwelling use; it is doubtful that a local government, through its zoning powers, may prohibit the growing of 4 cannabis plants
- Potential for regulation through nuisance powers?
- Provincial *Cannabis Control and Licensing Act* (CCLA), section 56 establishes rules for the personal growing of non-medical cannabis plants. This provision matches the Federal *Cannabis Act* limit of 4 cannabis plants per dwelling house
- Dwelling house includes the land on which the dwelling house is constructed.

Home Cultivation

Land Use Powers and Home Cultivation

- The Provincial CCLA includes rules applicable to home cultivation such as:
 - Cannabis plants may not be visible from a public place by an individual unaided by any device other than a device to correct vision
 - Home cultivation is not permitted in a home used as a daycare licensed under the *Community Care and Assisted Living Act*

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Provincial Legislation and Retail Sales



Provincial Legislation: *Cannabis Control and Licensing Act*

Retail Sales

- The Provincial *Cannabis Control and Licensing Act* (CCLA) and its Regulations regulate the licensing and retail sale of recreational cannabis
- Under the CCLA licensing process, retail licences may not be issued without the recommendation of the local government
- Zoning must permit retail cannabis sales before a local government recommends a cannabis retail sales licence
- Local governments wishing to comment on a licence application must engage in public consultation in prescribed circumstances

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Provincial Legislation: *Cannabis Control and Licensing Act*

Distribution Model for BC

- Retail model (mix of government run and private)
- Liquor and Cannabis Regulation Branch (“LCRB”) is sole wholesaler for recreational cannabis
- LCRB operates online sales
- Liquor and cannabis sales will be separate (subject to some exceptions in rural areas)
- LCRB licenses retail stores
- Hours of operation: 9am to 11pm (local government may reduce)
- No provincial limit on number of stores

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Provincial Legislation: *Cannabis Control and Licensing Act*

- Minimum age of possession set at 19
- LCRB will operate government retail stores and may license private stores
- LCRD is not required to consult with local government re: location of government retail stores but has indicated it will do so as a matter of policy
- Medical cannabis cannot be sold in retail stores

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Provincial Legislation: *Cannabis Control and Licensing Act*

- Medical cannabis will continue to be sold online by federally licensed producers
- Retail stores cannot name themselves using words such as “pharmacy”, “dispensary” or “apothecary”
- Recommendation of local government or indigenous nation must be obtained before the Province issues a licence
- If a local government chooses to respond to a notice of application for a licence a public consultation process is required in prescribed circumstances

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Provincial Legislation: *Cannabis Control and Licensing Act*

Provincial Licences for Private Retail Stores Selling Recreational or Non-Medical Cannabis

- Applicant pays \$7500 - Ministry of Attorney General reviews the application and documentation for completeness
- Application is forwarded to local government or indigenous nations where the proposed store will be located

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Provincial Legislation: *Cannabis Control and Licensing Act*

Provincial Licences for Private Retail Stores Selling Recreational or Non-Medical Cannabis

- Provincial issuance of the licence to sell requires:
 - Recommendation by local government or indigenous nation;
 - Financial integrity assessment of applicant and associates (Ministry of Attorney General); and
 - Security screening clearance of applicant and associates (Ministry of Public Safety and Solicitor General).

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Provincial Legislation: *Cannabis Control and Licensing Act*

Provincial Licences for Private Retail Stores Selling Recreational or Non-Medical Cannabis

- Once applicant satisfies these three items conditional approval may be granted
- Conditional approval means the applicant will be issued a licence pending final inspection
- Allows the applicant to buy, lease or finalize store location and make renovations for final inspection

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Provincial Legislation: *Cannabis Control and Licensing Act*

Current Number of Applications in British Columbia

- As of January 3rd, 2019 the Liquor Cannabis Regulation Branch has received 394 applications
- 232 applications have been referred to relevant local government or indigenous nations for decision as to whether applicant will be recommended
- 117 applications have been forwarded to “ready” jurisdictions
- Total of 7 licences have been issued for non-medical private cannabis retail locations

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Provincial Legislation: *Cannabis Control and Licensing Act*

Government Run Retail Stores

- Although the Province does not share information about where it has applied to open government-run retail cannabis stores, it has admitted to submitting applications to a number of municipalities focusing on the lower mainland and on Vancouver Island
- Although not legally required, as a matter of policy LCRB will seek approval from local government for government run retail stores

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Zoning the Growing of Cannabis in the ALR?



Zoning the Growing of Cannabis in the ALR?

Agricultural Land Reserve Regulation

- Previously the production of marihuana in accordance with the Federal legislation was designated a farm use for the purposes of the *Agricultural Land Commission Act*
- Effect was no local government bylaw could prohibit this use in the Agricultural Land Reserve
- The Agricultural Land Reserve Use, Subdivision And Procedure Regulation, B.C. Reg. 171/2002 now adds further restrictions for cannabis production in the ALR

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Zoning the Growing of Cannabis in the ALR?

Agricultural Land Reserve Regulation

- Cannabis production outdoors in a field or inside a structure that has a base consisting entirely of soil is designated as a farm use
- If the cannabis is grown in this manner local governments cannot prohibit this use in their zoning bylaws
- Structures built before July 13, 2018 for the purpose of growing crops above-ground may be converted to building that grows cannabis above-ground and still be considered a farm use

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Zoning the Growing of Cannabis in the ALR?

Agricultural Land Reserve Regulation

- Buildings constructed after July 13, 2018 for which the base does not consist entirely of soil cannot be used for cannabis growing in the ALR
- In accordance with section 46 of the *Agricultural Land Commission Act*, a local government may further restrict a farm use such as providing for setback areas and limiting the location of buildings and structures on a parcel provided that such restrictions do not prohibit the farm use.

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Zoning the Growing of Cannabis in the ALR?

Agricultural Land Reserve Regulation

- Local government may choose to amend its zoning bylaw to establish, in the ALR, setbacks for the growing of cannabis in a field or establish provisions for the location of a building in which cannabis is grown in the soil.

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Business Licensing

Business Licensing of Provincially Licensed Private Retailers of Recreational Cannabis

- Local governments have the authority to require provincially licensed retailers to apply for business licences
- Section 5 of the Cannabis Licensing Regulation adopted under the *Cannabis Control and Licensing Act* establishes many rules and requirements related to the operation of a cannabis retail store. These rules include:
 - No consumption on site;
 - 30g of dried cannabis limit on purchase; and
 - Rules regarding physical layout of the store including no shared entrances to other businesses other than a mall

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Business Licensing

Business Licensing of Provincially Licensed Private Retailers of Recreational Cannabis

- There are other restrictions that a local government might wish to impose as part of its business licensing regulation in addition to these requirements
 - Restrictions on advertising visible from street
 - Requiring proof of security alarm contract
 - Restricting the number of business licences that may be issued for retail sales in the local government

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Public Consumption



Public Consumption

Clean Air Bylaws

- Part 5 of the *Cannabis Control and Licensing Act* deals with the consumption of cannabis in public and to a large extent imposes regulations similar to those contained in the *Tobacco and Vapour Products Control Act* and its regulations in respect of the consumption of tobacco and vaping products
- Local governments may regulate consumption of cannabis in public places using their health powers

Public Consumption

Clean Air Bylaws

- *Cannabis Control and Licensing Act* contains a number of prohibitions against smoking and vaping of cannabis:
 - in parks and outdoor recreation areas including around sports fields and pools
 - public places
 - workplaces
 - common areas within apartment buildings or condominiums

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Public Consumption

Clean Air Bylaws

- Within 6 meters of doorways, windows or air intakes of any of the above-noted places
- Note that workplace includes only those that are substantially enclosed within the meaning of the regulations
- What is considered “substantially enclosed” is defined in the Cannabis Control Regulation B.C. Reg 204/2018

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Public Consumption

Clean Air Bylaws

- Under s.19 of the Cannabis Control Regulation, cannabis consumption in an outdoor public patio is not permitted
- Local governments may choose to regulate the consumption of cannabis in public in a more restrictive way. For example, by not defining workplace as one that is substantially enclosed

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Housing Issues: Rental Zoning; Vacation Rentals; Tent Cities



Housing Issues

Rental Zoning

- The *Local Government Statutes (Residential Rental Tenure Zoning) Amendment Act, 2018* authorizes local government to adopt a zoning bylaw that limits the form of tenure to a residential rental tenure
- Prior to 2018, local government zoning bylaws could not regulate *tenure* for housing purposes
- “Use” of land not interpreted by the courts as allowing regulation of form of tenure (ownership vs rental)

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Housing Issues

Rental Zoning

- *Local Government Act*
 - allows adoption of density bonus schemes, under which additional density is available in exchange for amenities, or affordable or special needs housing
 - allows local governments to enter into “housing agreements”

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Housing Issues

Rental Zoning

- Housing agreements (LGA section 483) may include terms and conditions for:
 - form of tenure of housing units
 - availability of the units to classes of persons
 - administration and management of the units
 - rents, lease, sale or share prices that may be charged

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Housing Issues

Rental Zoning

- The *Local Government Statutes (Residential Rental Tenure Zoning) Amendment Act*, 2018 added section 481.1(1) to Part 14 of the Local Government Act:
 - “A zoning bylaw may limit the form of tenure to residential rental tenure within a zone or part of a zone for a location in relation to which multi-family residential use is permitted.”
- Regulations under section 481.1(1) may limit the form of tenure in relation to a specified number, portion or percentage of housing units in a building.
- A zoning bylaw under section 481.1(1) does not affect lawful rental bylaws adopted by a strata corporation, or housing cooperative rules

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Housing Issues

Rental Zoning

- *Local Government Act* now contains rules for “grandfathering” of housing units that have a different form of tenure at the time of the adoption of the bylaw - may continue as a non-conforming form of tenure
- LGA includes non-conforming tenure protection for “in-stream” projects for which building permits or development permits have been issued

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Housing Issues

Rental Zoning

- LGA provides that a change of owners, tenants or occupants, of itself, does not affect the non-conforming tenure status of a housing unit
- LGA provides that for strata developments, non-conforming tenure status ends if the strata corporation is wound up and the land and building of the strata corporation is disposed of

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Housing Issues

Rental Zoning

- The purpose of this legislation is to give local governments greater ability to preserve and increase the overall supply of rental housing in their communities and increase housing choice and affordability
- However, market conditions will determine whether developers choose to build in areas where tenure is regulated
- Currently, only the City of Burnaby has adopted new zoning bylaw provisions for residential rental tenure

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Vacation Home Rentals



Housing Issues

Vacation Rentals

- Vacation rentals have increased worldwide causing some cities to impose significant restrictions
- Paris has the largest number of vacation rental listings in the world at approximately 65,000
- In the last five years the city has seen a loss of 20,000 homes in central Paris
- Professionals are buying apartments and entire buildings and turning them into “cash machines”

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Housing Issues

Vacation Rentals

- In 2016, Berlin implemented some of the world's strictest laws for vacation rentals
- Berlin's laws limits home sharing except for people wanting to rent out rooms
- According to one report, by the end of 2017, 4,000 apartments had been returned to the long-term rental market and approximately \$3.2 million in fines had been collected

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Housing Issues

Vacation Rentals

- In Los Angeles, City Council has passed a law which limits the number of days a host can rent out their home to 120 days per year
- Also bars residents from renting out any home or apartment that is not their primary residence (6 month residency requirement)
- In the City of Vancouver in 2018, short-term rentals had increased by 25% from 2016, totaling approximately 6,600 vacation rental units

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Housing Issues

Vacation Rentals

- City of Vancouver has required short-term rental operators to obtain a licence and to pay annual business licence fees, and has also limited the short-term rental to the principal residence only
- Online travel agents or platforms typically do not publish addresses making enforcement of these laws difficult

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Housing Issues

Vacation Home Rentals

- Benefits
 - Increase in tourism
 - Revenue generation assists with housing affordability by permitting people to rent out all or a part of their homes for a short period
- Problems
 - Can remove long-term rental stock from market
 - Can lead to conflict within neighbourhoods due to noise, and disturbances

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Housing Issues

Vacation Home Rentals

- Provincial Regulation
 - Accommodation tax levied on vacation rentals
 - Province collects directly from operators of sites like AirBnB
 - Some local governments receive revenue under Designated Accommodation Area Tax Regulation
 - Strata Property Act amended to increase fines for violating a strata bylaw regulating short-term rental use

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Housing Issues

Vacation Home Rentals

- Provincial Regulation
 - Provincial Speculation and Vacancy Tax Act applies in designated taxable region where property is not the principal residence of the owner or is not rented under one or more long term tenancy agreements for at least 6 months of the year
 - ❖ 2% of assessed value for foreign owners
 - ❖ 5% of assessed value for BC or Canadian owners

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Housing Issues

Vacation Home Rentals

- Local Government Regulation
 - Ranges from absolute prohibition through zoning, to limiting the number through business licensing power, to permitting short-term rental of a person's "principal" residence

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Housing Issues

Vacation Home Rentals

- Many local governments rely on bylaw provisions limiting use of property to “Residential” use
- Recent court decisions hold that Short-Term Rental is Not a “Residential” use
- *Nanaimo (Regional District) v. Saccomani*
 - Short-term Rental not “residential” use when “residential” defined as “accommodation and homelife of a person or persons in common occupancy”

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Housing Issues

Vacation Home Rentals

- *Mailloux v. Tofino (District)*
 - Short-term Rental not permitted in zone where bylaw permits use of a dwelling as a permanent home or residence
- Court cases trend towards no short-term rental use in residential zones, but bylaws need to be examined based on their individual wording

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Housing Issues

Vacation Home Rentals

- *Okanagan-Similkameen (Regional District) v. Leach*
 - Bylaw limited use to “Dwelling Unit” use
 - “Dwelling Unit” defined with reference to a building “used or intended to be used for living and sleeping purpose”
 - Court found that short-term rental was permitted in part because the definition of “dwelling unit” only referred to physical characteristics of the unit, and there were no express restrictions on length of stay

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Homelessness and Tent Cities



Housing Issues

Homelessness and Tent Cities

- 2018 was the “Year of the Tent City” for some local governments
- One encampment established in 2017 in Maple Ridge on City property remains in place
- Tent cities were established in Saanich and Nanaimo in 2018, in whole or in part within City parks - each disbanded by court order in September

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Housing Issues

Homelessness and Tent Cities

- Local governments are not the agencies with primary responsibility for dealing with the needs of the homeless
- However, the fact that local governments have regulatory powers over/ownership of public spaces increasingly puts local governments on the front lines of the homelessness issue

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Housing Issues

Homelessness and Tent Cities

- Parks, in particular, are often dedicated by subdivision plan or by bylaw – and are held for park use by local governments
- Park bylaws commonly prohibit overnight camping/regulate the hours within which parks may be accessed
- Parks and similar public spaces are places of refuge for the homeless, who may be in violation of local bylaws if they camp or stay overnight
- “Tent cities” emerged as a phenomenon beginning in the 2000’s

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Housing Issues

Tent Cities Case Law History

- *Victoria (City) v. Adams* (2006)
 - Municipal parks bylaw held to violate section 7 of the Charter of Rights to the extent that it prohibited the homeless from erecting temporary shelters overnight
 - Bylaw ruled to be inoperative to the extent it applied to prevent homeless people from erecting temporary overnight shelter in parks when the number of homeless people exceeded the number of available shelter beds in the City of Victoria
 - City subsequently amended its bylaw to permit use of temporary overnight shelters in parks by the homeless

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Housing Issues

Tent Cities Case Law History:

- *Victoria (City) v. Johnston* (2011)
 - City parks bylaw (post *Adams*) was upheld – limitations imposed were found to be reasonable and justifiable under the *Charter of Rights*

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Housing Issues

Tent Cities Case Law History

- *Abbotsford (City) v. Shantz* (2015)
 - Permanent injunction sought against the occupants of a tent city on municipal property
 - City bylaws prohibited sleeping/being present in a park overnight or erecting any form of shelter without a permit
 - Injunction refused
 - Bylaws declared invalid to the extent they applied to the homeless and prohibited sleeping/being present in a park overnight or erecting any form of shelter - court declaration limited to overnight stays between 7 pm and 9 am the next day

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Housing Issues

Tent Cities Case Law History

- *British Columbia v. Adamson* (2016)
 - Tent city on Provincial lands next to Victoria courthouse
 - Application for injunction initially refused – “balance of convenience” favoured the occupants
 - Injunction subsequently ordered when camp conditions deteriorated to the point where it was unsafe for the occupants
 - Province had invested significant funds to create housing and additional shelter spaces

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Housing Issues

Tent Cities Case Law History

- *Saanich v. Brett* (2018)
 - Tent city established in municipal park and on adjoining Provincial lands
 - District took a number of steps in response:
 - ❖ Bylaws amended to be consistent with *Adams*
 - ❖ Toilets, hygiene and storage facilities provided
 - Interim injunction ordered when camp conditions deteriorated to the point where it was unsafe for the occupants
 - Court expressed doubts about campers’ arguments that a ban on camping during the day was unconstitutional

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Housing Issues

Tent Cities Case Law History

- *Nanaimo (City) v. Courtoreille* (2018)
 - Tent city established in municipal park
 - Interim injunction ordered because of health and safety concerns
 - Court confirms that where a *Charter* defence is raised, the legal test for granting of an interim injunction is that established by the Supreme Court of Canada in *RJR MacDonald*:
 - ❖ Serious issue to be tried?
 - ❖ Irreparable harm if order not granted?
 - ❖ Balance of convenience

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Housing Issues

Tent Cities Conclusions

- Members of the homeless population have a constitutional right to take temporary overnight shelter in public places, at times when the number of homeless persons in the community exceeds the number of shelter beds
- Courts are sensitive to and concerned about the vulnerability of the homeless population
- Amending park bylaws to be consistent with *Adams* and other court decisions may assist in dealing with a tent city situation
- Dealing with a tent city can be a difficult and protracted exercise, and patience and sensitivity to the needs of the homeless as well as the concerns of the surrounding community are essential

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Code of Conduct



Code of Conduct

- UBCM Working Group on Responsible Conduct has developed a Model Code of Conduct to guide local governments in setting rules for elected officials' conduct
- A number of local governments have adopted their own codes of conduct
- Working Group on Responsible Conduct has been studying the issue of sanctions
- UBCM Model Code of Conduct does not recommend any form of sanction
- Provincial legislation does not provide for removal from office or other form of sanction, except in relation to pecuniary conflict of interest and related matters
- Unacceptable behavior that does not give rise to a disqualification may be subject to a motion of censure

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Code of Conduct

- A motion of censure is a resolution examining disapproval of misconduct
 - Rules of procedural fairness apply to hearing before the Council or Board
 - Motion made can include declarations of disapproval, resolutions to remove elected official from committees, and removal of other privileges. Appointment of municipal council member as regional director could be withdrawn
 - Remember Mayor Ford?
 - He was asked not to represent the City in the Santa Clause Parade or at Argo's football game...but he did anyway

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Code of Conduct

- Workplace harassment investigations
 - Elected officials' misconduct toward staff may have other consequences
 - Employers obligated to provide reasonable response to prevent or minimize workplace harassment and bullying in future
 - Worksafe may investigate on complaint
 - Worksafe may:
 - ❖ Publish written report and issue compliance orders
 - ❖ Impose fines
 - ❖ Seek court injunction

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Conflict of Interest Exemption Regulation



Conflict of Interest – Exemption Regulation

- Conflict of Interest Exceptions Regulation
- Provides limited relief against ruling in the *Schlenker v. Torgimson* decision that an elected official may be disqualified from holding office when voting on matters involving the expenditure of funds to a Society or Corporation for which the elected official is a director

Conflict of Interest – Exemption Regulation

Schlenker v. Torgrimson

- Society directors owe *fiduciary* duties to the society – they must act honestly and in good faith and in the best interests of the society (*Societies Act*, s. 53)
- A reasonably well-informed resident would conclude that the elected officials' position as directors of the two societies would likely influence their decision to award grants or contracts to the society
- The elected officials therefore had an indirect pecuniary interest in contracts awarded the society, even though there was no personal gain

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Conflict of Interest – Exemption Regulation

Schlenker v. Torgrimson - Implications

- Decision caused alarm among local governments, given the court's expansive interpretation of what constitutes an indirect pecuniary interest
- Decision created uncertainty for elected officials who sit on the boards of corporations or societies, even where appointed as an "official" representative of the local government

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Conflict of Interest – Exemption Regulation

New Regulations

- *Conflict of Interest Exceptions Regulation*, B.C. Reg. 91/2016
- Provides limited relief against the potential effects of the decision in *Schlenker*
- A pecuniary interest that arises as a result of a “*representative*” having been appointed by a “*governing body*” to the board of an “*entity*”, and attending a meeting, participating in discussion or voting in relation to a “*specific interest*” of the “*entity*” is “prescribed” as being exempt from the operation of section 101 – 103 of the *Community Charter*

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Conflict of Interest – Exemption Regulation

- “**entity**” means either of the following:
 - A society or extraprovincial society;
 - A corporation, other than a society, that is:
 - ❖ Incorporated by a “**public authority**”, and
 - ❖ Provides a service to the local government that appoints a representative to that entity.

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Conflict of Interest – Exemption Regulation

- The appointment of a representative to the board of directors must be made by the “governing body” (local government)
- “Appointment” could include a situation where the governing body nominates one of its members, and where that nominee must also be elected by the members of entity, where the entity’s articles or bylaws provide for this
- Where the governing body plays no role in the appointment, the Regulation does not apply

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Conflict of Interest – Exemption Regulation

- “specified interest” means:
 - a) An expenditure of public funds to or on behalf of an entity;
 - b) An advantage, benefit, grant or other form of assistance to or on behalf of an entity;
 - c) An acquisition or disposition of an interest or right in real or personal property that results in an advantage, benefit or disadvantage to or on behalf of an entity;
 - d) An agreement respecting a matter described in paragraphs (a), (b) or (c).

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Conflict of Interest – Exemption Regulation

Examples Where the Regulation Applies

- *Business Corporation*
 - Council establishes economic development service, incorporates business corporation to provide the service
 - Articles of incorporation require that one member of the council be appointed as a director
 - Elected official who was appointed to board of the corporation participates in discussion, votes on a contract for services with the corporation, at a council meeting

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Conflict of Interest – Exemption Regulation

Examples Where the Regulation Applies

- *Society*
 - Not for profit society operates affordable housing project
 - Society bylaws require that one director be appointed by the council
 - Elected official who was appointed to board of the society participates in discussion, votes on society's application for an operating grant at a council meeting

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Conflict of Interest – Exemption Regulation

Summary of New Regulations

- The appointment as a director of the “entity” must be made by the council
- In the case of an entity that is a business corporation, the corporation must be incorporated by a public authority *and* must be providing a service to the local government
- The exemption covers the appointee’s participation at meetings of the council, committees of the council or the other bodies referred to in s.93
- The exempted interest is a “specified interest” only

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Conflict of Interest – Exemption Regulation

Summary of New Regulations

- The Regulation does *not* provide a broad exemption for any and all pecuniary interests that might arise as a result of an appointment to an outside board, e.g. director stipend
- The Regulation does *not* provide relief where the elected official also has a personal pecuniary interest in the matter
- The Regulation offers no relief in situations where the local government does not make the appointment
- Would NOT have affected the actual outcome in *Schlenker* (Directors not appointed)!

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