

LIDSTONE & COMPANY

ALBERTA LAW LETTER

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Addressing Homelessness Encampments: Guidelines for Alberta Municipalities

Introduction

As municipalities across Alberta grapple with the challenge of homeless encampments, one pressing issue is dealing with homeless encampments on vacant municipal land. These situations raise concerns about disorder and criminal behavior and require municipalities to consider their options for managing encampments in these circumstances. This article provides an overview of the obligations municipalities have regarding the removal of homeless encampments, along with practical recommendations for navigating this complex issue.

Understanding Municipal Authority

Municipalities have the authority to regulate or prohibit sheltering on public land through bylaws under section 7 of the *Municipal Government Act*. It is essential for municipalities to ensure that any actions taken are grounded in law. If the municipality does not currently have a bylaw addressing this issue, legal assistance can be sought to draft one that aligns with the community's needs and legal requirements.

Reasonable Alternatives for Shelter

In general, municipalities may require the removal of encampments if alternative shelter options are available in other locations. Recent legal precedents indicate that courts have recognized a “right to camp” when individuals lack reasonable alternatives. Therefore, it is crucial for municipalities to ensure that alternative sheltering options are genuinely accessible to homeless individuals. The courts have established that even the availability of

shelter space does not necessarily constitute a reasonable option if it is deemed unsuitable for those in need.

For example, cases such as *Victoria (City) v. Adams* and *Abbotsford (City) v. Shantz* highlight that while prohibitions on sheltering may be permissible in some locations, adequate alternatives must be provided for individuals experiencing homelessness.

Prohibitions on Daytime Sheltering

While current legal interpretations suggest that municipalities can prohibit daytime sheltering, the situation remains complex. In the case of *Victoria (City) v. Adams*, the court clarified that the protection of temporary sheltering applies primarily to overnight accommodation. This means municipalities may regulate daytime sheltering without infringing upon the rights of homeless individuals if there are provisions for overnight sheltering.

Municipalities should exercise caution in enforcing any prohibitions on daytime sheltering, as the legal landscape continues to evolve. The emerging consensus indicates that while courts have not established a recognized right to daytime sheltering, there is a growing awareness of the need for accommodating vulnerable populations, particularly in colder climates where daytime warming options may be limited.

Practical Recommendations for Managing Encampments

Some practical recommendations for managing encampments include the following:

- **Addressing Entrenched Encampments:** Municipalities should aim to prevent the establishment of large, entrenched encampments, which often lead to increased disorder and safety concerns. Regular clean-up efforts and voluntary compliance initiatives

are recommended to minimize the visibility and impact of encampments without resorting to court injunctions, which can escalate tensions and draw public scrutiny.

- **Communication and Public Awareness:** When conducting clean-ups or removals, it is essential to communicate the goals to all stakeholders, including encampment occupants, municipal staff, and law enforcement.

Emphasizing that the objective is not to force people out but to reduce the footprint of the encampment can foster cooperation and understanding.

- **Bylaw Enforcement and Compliance:** If a bylaw is enacted, peace officers or municipal employees should follow specific procedures during removals. This includes informing encampment occupants of the need to vacate by a specified date and time, ensuring the presence of peace officers for safety, and documenting any confiscated personal property.

All items should be photographed and stored for a reasonable period, typically at least 30 days, to protect the municipality from liability claims regarding lost or damaged property.

Conclusion

Addressing homelessness is a multifaceted challenge facing municipalities across Alberta. By enacting clear bylaws, offering reasonable shelter alternatives, and employing a compassionate approach to managing encampments, municipalities can navigate this complex issue more effectively. Collaborative efforts involving community stakeholders, outreach organizations, and legal advisors can foster solutions that prioritize the dignity and safety of all individuals while ensuring public order and safety.

~ James Yardley

Best Practices for Conducting Internal Workplace Investigations

Introduction

This article outlines best practices when conducting internal workplace investigations. It is essential to note that these guidelines do not apply when policies or bylaws mandate formal external investigations. A workplace investigation serves as a crucial process for fact-finding related to workplace incidents, ensuring legal compliance, and maintaining a harmonious work environment.

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What is a Workplace Investigation?

A workplace investigation is a process aimed at determining whether specific events occurred in the workplace. This process is vital for employers to address workplace issues proactively, resolve disputes, and mitigate potential legal risks.

Why Conduct a Workplace Investigation?

Employers may be required or advised to conduct investigations in various scenarios:

Statutory Requirement: Under laws such as the *Alberta Occupational Health and Safety Act*, employers have a duty to provide a safe work environment and must investigate any hazards that threaten employee health and safety.

Human Rights Legislation: Employers are obligated under the *Human Rights Act* to ensure a discrimination-free workplace. Investigating complaints of harassment or discrimination is essential to fulfill this duty and avoid potential liability.

Establishing Cause for Discipline: Should an employer decide to discipline or terminate an employee, a thorough investigation may be necessary to substantiate the decision and demonstrate good faith.

When to Conduct a Workplace Investigation

Investigations can be triggered by various sources:

Formal Complaints: Employees may submit formal complaints through established channels. For instance, a workplace harassment policy may provide a specific complaint form, which aids in evaluating the issue from the outset.

Informal Complaints or Observations: Concerns may also arise from informal conversations or management observations. Documentation of such complaints is crucial, as employers may still have a duty to investigate even without formal submissions.

Threshold Questions: Before initiating an investigation, consider whether the complaint warrants an investigation based on whether it breaches policies or creates legal liability.

Who Should Conduct the Investigation?

The choice of investigator is critical and should be based on the complexity of the case as well as other factors:

Internal Investigators: In straightforward cases, an internal manager may suffice. A designated Human Resources representative should assign the investigator, who must be trained in workplace investigations.

Senior Investigators: For serious allegations, such as discrimination or bullying, appointing a senior manager with experience in complex investigations is advisable.

External Investigators: Certain situations, such as conflicts of interest or the need for impartiality, may necessitate hiring an external investigator. Examples include complex allegations of harassment or systemic issues.

Best Practices and Procedures for Conducting Investigations

Investigation Plan and Preparation: Develop an Investigation Plan documenting the investigation's scope, including:

- A description of the issue.
- The mandate of the investigation.
- Identification of parties involved and relevant documents.
- An interview strategy.

Gathering Evidence: Conduct interviews with the complainant, respondent, and witnesses. Each interview should be documented meticulously:

- Ensure participants know their rights, including applicable rights to representation.
- Use a note-taker to record interviews accurately.

Making Findings of Fact: After gathering evidence, assess the credibility of witnesses and determine

what likely occurred based on a “balance of probabilities.” Document the reasoning behind credibility assessments and findings.

Conduct a Policy Analysis: Evaluate whether the findings breach any policies or legal obligations. Include relevant policy excerpts in the investigation report.

Drafting the Investigation Report: The final report should summarize the investigation's findings, including:

The investigation's description and mandate.

- Evidence summary and findings.
- Policy analysis and potential liability considerations.
- Principles of Fairness in Investigations
- A fair investigation upholds procedural fairness and includes:

Impartiality: Investigators must remain neutral and avoid any appearance of bias. They should test all evidence, not just support the complaint.

Confidentiality: Maintain confidentiality for all parties involved, informing them of the limits of confidentiality.

Timeliness: Conduct investigations promptly to avoid prolonged uncertainty for the parties involved. Adhere to any deadlines set by workplace policies.

Thoroughness: Ensure all relevant evidence is gathered and that all parties have the opportunity to respond to allegations against them.

Interim Measures

In some cases, it may be necessary to remove an employee from the workplace during an investigation. This should be considered

carefully to avoid negative impacts on morale and fairness.

~ *Maria Zacharias*

Duty of Care and Public Safety on Municipal Structures

Introduction

As municipalities evaluate the structural integrity and safety of public infrastructure, understanding the legal implications of duty of their care under the *Alberta Occupiers Liability Act (OLA)* is essential. This article examines the legal threshold for public protection concerning municipal structures, using the example of a playground facility with significant structural issues located on municipal property.

Background

In our hypothetical situation, the municipality is exploring options for the replacement and rehabilitation of a large raised wooden platform on municipal property. Following inspections, the structure was found to have serious structural deficiencies, including delamination and structural vulnerabilities. Also, exposed beams beyond the railings have been used for “stunt jumping” and a suicide attempt. The municipal Council is concerned about public safety and is considering various railing and fencing options for the deck.

Executive Summary

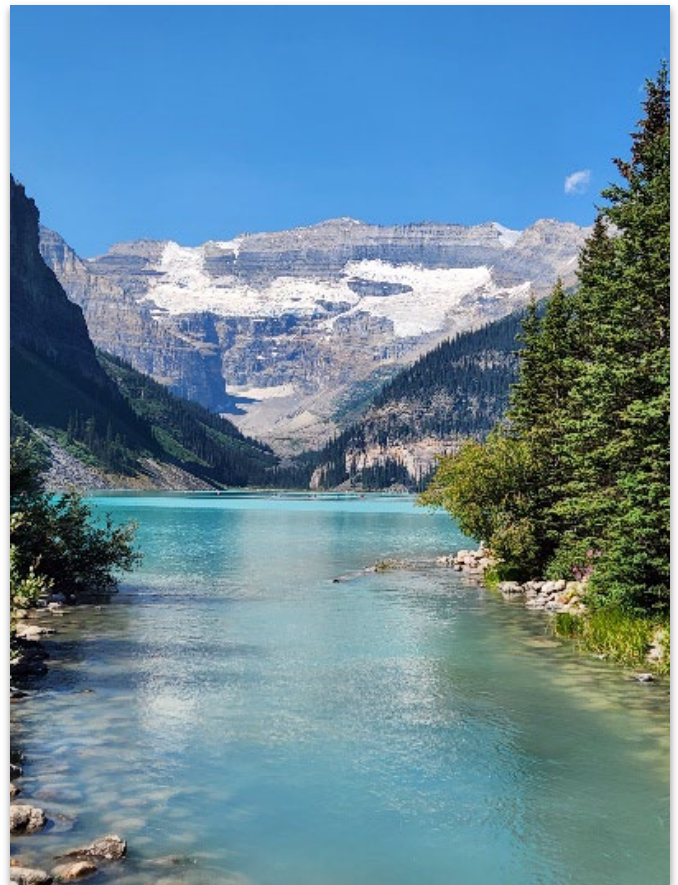
The municipality has a duty of care under the OLA to ensure reasonable safety for users of municipal property covered by the Act. As such, the standard of care expected of the municipality may be adjusted based on the inherent risks associated with specific activities users engage in, such as climbing. Out of available alternatives, the municipality can justify choosing a less expensive alternative only if a financial analysis supports this decision. However, a larger municipality with greater resources may face increased scrutiny

regarding its decisions concerning safety measures.

Key Issues

Legal Threshold Under the Occupiers Liability Act (OLA)

The duty of care owed by the municipality, as an occupier of the structure, requires that reasonable care be taken to ensure users are safe while using the structure. However, it is important to note that an occupier is not liable for risks that individuals willingly accept. Thus, if a user climbs the fencing



to take photographs, jump, or engage in risky behavior, this may influence the standard of care expected from the municipality.

Recommended Methods for Ensuring Public Safety

To mitigate risks associated with the structure, the following measures are recommended:

Adequate Fencing: The minimum requirement is the installation of railing or fencing based on documented expert advice that complies with building codes and best practices and discourages jumping from railings or access to the exposed beams. However, this may need to be adjusted based on the structure's accident history.

Warning Signage: Clear and visible no-trespassing signs should be placed along the railing to alert users to the dangers posed by the exposed beams.

Legal Framework

Duty of Care

Under section 5 of the OLA, an occupier must take reasonable care to ensure that individuals are safe while on their premises. The municipality, as the control and responsible party for the structure, is classified as an "occupier". Importantly, the law does not require perfection; rather, it mandates reasonable care given the circumstances.

Standard of Care

The standard of care is evaluated based on what a reasonable person would do in similar circumstances. Factors influencing this determination include, but are by no means limited to:

Foreseeability of Risk: The likelihood that users will engage in risky behaviors, such as climbing to take photographs.

Cost of Preventative Measures: The financial implications of various safety options, such as fencing types, must be considered.

Defences to Negligence

In assessing potential liability, the municipality could invoke defenses such as:

Contributory Negligence: If users engage in inherently risky behavior, this may diminish the municipality's liability.

Core-Policy Defense: If the fencing decision is made at a policy level, the municipality may be shielded from liability due to the nature of the decision-making process.

Conclusion

The municipality must navigate the complexities of ensuring public safety on municipal structures while adhering to legal obligations. It is recommended that a comprehensive risk assessment be conducted, weighing the costs of potential safety measures against the expected benefits. In our example, this would include a detailed analysis of the proposed railing or fencing solutions and the implementation of clear signage to alert users of inherent dangers. Ultimately, the formulation of a written safety policy including signage, adopted by Council resolution, can further bolster the municipality's position in demonstrating due diligence under the OLA.

~ Ashley Cosgrove

Rights of Homeless Persons

Overview

In *Heegsma v. Hamilton (City)*, the Ontario Superior Court addressed a significant case involving the rights of 14 homeless individuals challenging the City of Hamilton's enforcement of its Parks By-law from August 2021 to August 2023. The applicants sought a declaration that the by-law's enforcement breached their rights under sections 7 (life, liberty, and security of the person) and 15 (equality rights) of the Canadian Charter of Rights and Freedoms, alongside seeking damages from the City.

Background

The applicants claimed that they were unlawfully evicted from encampments in public parks, which they argued exacerbated their vulnerabilities and health issues. The court noted the extensive record of the case, comprising approximately

10,000 pages, reflecting the complexity and depth of legal examination involved.

The City of Hamilton enforced two primary by-laws: By-Law 01-219, which prohibits camping in parks and restricts access to parks during nighttime, and By-Law 97-162, which regulates congregating and obstructing pedestrian and vehicular traffic.

Legal Issues

The legal issues revolved around:

- Whether the enforcement of the parks by-law constituted a breach of the applicants' rights under the Charter.
- The admissibility of expert evidence regarding homelessness and health impacts associated with encampments.
- The implications of the City's enforcement protocols on the rights of the homeless.

Court's Analysis

The court examined the context and enforcement of the by-laws during three distinct protocols:

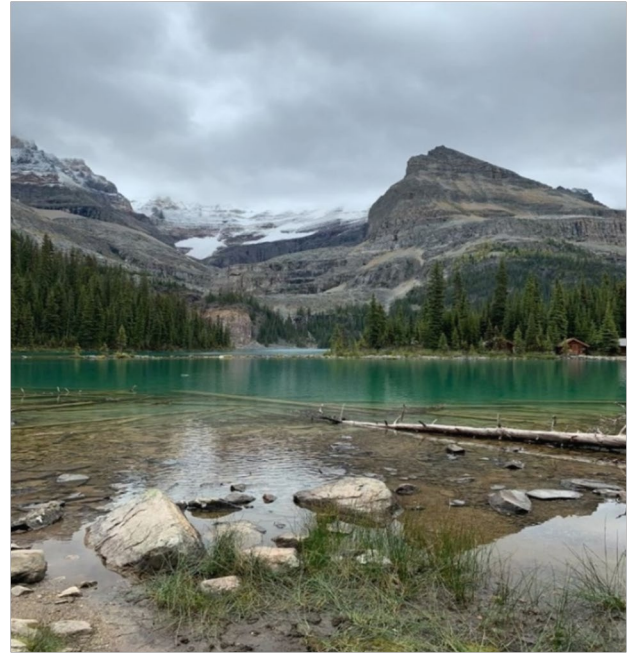
- Old Protocol (October 2020 - August 2021): Allowed encampments with outreach support for residents.
- Encampment Process (August 2021 - August 2023): Enforcement was complaint-driven, with police involvement to serve trespass notices if individuals did not comply.
- New Protocol (2023 onwards): Permits temporary shelters in parks with an established enforcement process.

The court found that during the encampment process, the City did not evict individuals at night, allowing them to remain in the parks. The applicants contended that the enforcement forced them to vacate during the day, leading to further distress and a breach of their rights.

Admissibility of Evidence

The court assessed various expert testimonies. It accepted the evidence of Dr. Sharon Koivu, who

provided insights on the health risks associated with homelessness and encampments. The court found that her medical background offered a relevant perspective on the intersection of health and homelessness. In contrast, it was cautious regarding the evidence from other experts, such as Leilani Farha, who focused on international housing rights but did not provide direct insights



into the Hamilton context.

Decision

Ultimately, the court ruled in favor of the City of Hamilton, concluding that the enforcement of the parks by-law did not violate the applicants' Charter rights. The judgment emphasized that the City acted within its legislative authority and did not display bad faith or abuse of power in its enforcement actions.

Implications

This ruling has significant implications for municipalities dealing with homelessness. It underscores the balance between public order and the rights of vulnerable populations. The court's decision reaffirms that municipalities can enact and enforce by-laws aimed at maintaining public spaces, provided they do not contravene established legal rights.

Conclusion

The *Heegsma v. Hamilton (City)* case illustrates the complexities surrounding homelessness, public policy, and legal rights. The court's thorough analysis highlights the importance of legislative authority and the challenges faced by municipalities in addressing homelessness. The ruling serves as a reminder of the need for comprehensive solutions that consider the diverse needs of homeless individuals while ensuring the integrity of public spaces. Legal practitioners and policymakers should take note of this case as it may influence future approaches to homelessness and related legal frameworks.

~ *Lindsay Parcells*

Free Speech and Judicial Review of Safe and Inclusive Access Bylaw

(*R v Heather*, 2024 ABCJ 229)

On November 26, 2024, the Honourable Justice P. B. Barley delivered a significant ruling in the case of *R v Heather*, which has implications for the balance between public protest and the rights of individuals to access public facilities without fear of harassment. Larry Heather was charged with violating the City of Calgary's Safe and Inclusive Access Bylaw (SIA Bylaw), enacted to ensure that recreation facilities and libraries remain safe and accessible to all members of the community.

Background of the Case

The SIA Bylaw prohibits specified protests within 100 meters of entrances to public recreation facilities and libraries. It aims to prevent confrontations and intimidation that may arise from protests, particularly those targeting marginalized communities, such as the 2SLGBTQIA+ community. The city council enacted this bylaw after numerous reports indicated that protests had caused significant distress among individuals attending community events, leading to cancellations and a general sense of unease.

On April 15, 2023, Heather participated in a protest at the Calgary Central Library, where he expressed his disapproval of a "Reading with Royalty" event featuring drag performers reading to children. He used a bullhorn and held inflammatory signs, which led to his arrest for violating the SIA Bylaw.

Legal Arguments and Constitutional Considerations

The crux of Heather's defense rested on two main arguments: first, that the SIA Bylaw was ultra vires (beyond the legal authority) of the City of Calgary, as it purportedly encroached on criminal law, which is under federal jurisdiction; and second, that the bylaw infringed upon his rights under the Canadian Charter of Rights and Freedoms, specifically his freedoms of religion, expression, peaceful assembly, and his right to liberty.

Justice Barley considered these arguments carefully, recognizing the historical context of the division of powers in Canada. The ruling noted that while the federal government retains jurisdiction over criminal matters, municipalities have the authority to enact bylaws that promote the safety and welfare of their communities. The SIA Bylaw was characterized as a measure designed to prevent potential harm and ensure access to public facilities without intimidation, thus falling within the city's jurisdiction.

Charter Rights and Limitations

Regarding the Charter implications, Justice Barley acknowledged that the SIA Bylaw did impose limits on Heather's rights to freedom of expression and religion. However, the court applied the Oakes test, which assesses whether such limitations can be justified in a free and democratic society. The ruling emphasized that the bylaw serves a critical public interest—protecting individuals from harassment and ensuring their ability to access public facilities.

Justice Barley pointed out that the 100-meter exclusion zone was a reasonable measure, designed to minimize the potential for conflict while still allowing individuals like Heather to

express their views, albeit from a distance. The judge noted that Heather had successfully protested outside other libraries without incurring charges when he remained outside the exclusion zone, indicating that the bylaw did not completely restrict his right to protest.

Conclusion of the Ruling

Ultimately, Justice Barley concluded that the SIA Bylaw was constitutionally valid and served an important societal purpose. The decision highlighted that while individuals have the right to protest, this right is not absolute and can be subject to reasonable restrictions designed to protect the rights and safety of others.

As such, the court found Heather guilty of violating the SIA Bylaw. This ruling underscores the ongoing tension between freedom of expression and the need for safe public spaces, particularly in the context of protests that may target vulnerable communities.

Implications for the Future

The *R v Heather* decision illustrates the complexities of managing public discourse in a diverse society. It sets a precedent for how municipalities can enact bylaws that both protect the rights of individuals to protest and ensure that public facilities remain accessible and safe for all citizens.

As communities navigate the challenges presented by public demonstrations, the principles established in this case will likely influence future discussions on the balance between free expression and the need for inclusive access to public spaces. The ruling serves as a reminder of the importance of thoughtful legislation that considers both individual rights and community welfare in an increasingly polarized environment.

~ ***Lindsay Parcells***

Bill 50 The Municipal Affairs Statutes Amendment Act

Bill 50 came into force May 15, 2025. The legislation makes significant amendments to key municipal legislation affecting local governance in Alberta. The Bill modifies three acts: the *Local Authorities Election Act* ("**LAEA**"), the *Municipal Government Act* ("**MGA**"), and the *New Home Buyer Protection Act* ("**NHBPA**"). Bill 50 will also make some changes to the *Safety Codes Act*.



This article provides an brief overview of the changes to the *MGA* and the *LAEA*.

In the next edition of the Alberta Law Letter, we will provide advice and recommendations in relation to this legislation, as *we are awaiting provincial regulations and announcements around a potential provincial standard for meeting procedures, a possible provincial integrity code, and a regulation governing CAO reporting of the exercise of natural person powers.*

Changes to the Municipal Government Act

Bill 50 introduces several noteworthy amendments to the *MGA* with changes to intermunicipal collaboration and municipal governance:

- **Intermunicipal Collaborative Frameworks (“ICFs”):** The new definition of “mandatory service” includes five mandatory services that municipalities must consider for ICFs: transportation, water and wastewater, solid waste, emergency services, and recreation. Additional services can be included only with mutual consent.
- **Cost-Sharing and Data Requirements:** Municipalities are required to back their positions in ICF negotiations with data. This change is intended to promote a more data-driven approach to decision-making.
- **Exclusion of Third-Party Services:** Services mandated by legislation with a requirement for an outside entity to be involved in service delivery (e.g., policing, libraries) cannot be included in ICFs. This change is intended to simplify negotiations between municipalities.
- **Mutual Support for Capital Costs:** New capital costs in ICFs require mutual input and support from neighbouring municipalities. Bill 50 also has a provision allowing rural municipalities to opt out of ICFs by mutual agreement.
- **Meeting procedures:** Bill 50 allows the Minister to issue orders to establish or amend procedures for council and committee meetings and to prohibit municipal councils from including certain matters in their bylaws. This means, municipalities will only be able to develop procedural bylaws if they align with the ministerial guidelines.

- **Arbitration Rules:** Bill 50 clarifies arbitration processes for disputes regarding cost-sharing and service agreements, and focuses arbitration eligibility on the mandatory services.
- **Councillor Code of Conduct:** One of the



more controversial changes is the removal of mandatory councillor codes of conduct. Consultation by the Province with municipalities and municipal officials is expected on how councillor conduct issues will be managed. As mentioned, many pundits expect provincial regulations and announcements around a potential provincial standard for meeting procedures and a possible provincial integrity code.

- **Chief Administrative Officer (CAO) Reporting:** Bill 50 mandates CAO reporting to council on exercise of natural person powers and to share information with council members upon request. While this aims to enhance accountability, it raises concerns about the potential burden on CAOs and the implications for their administrative functions. Details are expected in a provincial regulation that is expressly authorized under Bill 50.

Changes to the Local Authorities Election Act

The amendments to the *LAEA* focus on enhancing the electoral process and ensuring participation:

- **Campaign Finance Rules:** Bill 50 updates local political party campaign finance regulations by formally recognizing local parties and allowing unrestricted transfers, both financial and non-financial, between local parties and their candidates.
- **Elector Assistance Terminals:** Bill 50 introduces elector assistance terminals for local elections, aiming to facilitate accessibility for voters with disabilities.
- **Clarification of Election Rules:** The changes refine recount procedures and clarify the rules for candidates who withdraw from local elections, which are changes aimed at ensuring a more streamlined electoral process.
- **Jasper Residents' Voting Rights:** In a significant provision, residents of Jasper displaced by wildfires will be allowed to vote and run in the upcoming local elections. This change recognizes the unique circumstances of Jasper residents.

The removal of codes of conduct for councillors has raised some concerns prompting local governments to seek further clarification on the implications for governance and accountability in local councils. To date, the Province's communications on this matter indicate it has plans to move toward a province-wide accountability system to replace councillor codes of conduct; however, timelines and details relating to these plans have yet to be released. The proposed regulations governing CAO reporting obligations may also increase the burden on CAOs significantly due to the breadth of the concept of natural person powers.

Municipalities must be prepared to adapt to these significant changes. While the Province has said the proposed amendments are intended to enhance collaboration, transparency, and consumer protection, they also present challenges that require new tools for management and implementation. By staying informed and prepared, municipalities can ensure compliance with the new regulations and foster a more efficient and accountable local governance structure.

~ Alex Lidstone

About Lidstone & Company

Lidstone & Company Law Corporation is a local government law firm with offices in Calgary, Alberta, and Vancouver, British Columbia. Each of our lawyers has specialized knowledge and particular expertise in the areas of municipal law and collaborates closely with local government officials. In our Calgary office we have seven Alberta-licensed lawyers, and two articling students, who act exclusively for municipalities.

We act as if we are in-house counsel for local governments in terms of response times and care and concern. You can visit our website at www.lidstone.info or contact us by email info@lidstone.ca or by telephone at 587.852.4500 (Calgary) or 1.877.339.2199 (toll free).

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Maria Zacharias practices in all areas of workplace law and has a particular interest in labour relations, collective agreement interpretation, discipline and grievance management, human rights issues, workplace policy development, and workplace investigations. She has extensive experience in representing and advising public sector employers on a wide range of labour and employment matters. Maria has represented clients before the BC Supreme Court, the Labour Relations Board, the Human Rights Tribunal, and various labour arbitrators. Maria is currently on her leave.