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BULLETIN

LOCAL GOVERNMENTS GET ABILITY TO REGULATE SINGLE-USE PLASTICS

On July 26, 2021, the Province made [Ministerial Order No. M309](#), which amends the Spheres of Concurrent Jurisdiction - Environment and Wildlife Regulation, BC Reg. 144/2004 (the “Regulation”). MO309 is of significant interest to local governments as it will allow them to regulate in relation to single-use plastics.

Pursuant to section 8(3)(j) of the *Community Charter*, a council may, by bylaw, regulate, prohibit and impose requirements in relation to the protection of the natural environment. However, due to Provincial interest in bylaws respecting the protection of the natural environment, under section 9(1) and (3) of the *Community Charter*, a local government may not adopt a bylaw unless the bylaw is: (1) in accordance with a regulation; (2) in accordance with an agreement; or (3) approved by the minister responsible.

The effects of section 9 of the *Community Charter* were illustrated in *Canadian Plastic Bag Association v. Victoria*, 2019 BCCA 254 where the Court of Appeal found that a bylaw that prohibited businesses from providing or selling plastic bags to customers and required fees to be charged for paper or other re-usable bags was invalid. The Court concluded that the bylaw was “in pith and substance” intended to protect the environment. Because the City did not seek the approval of the Minister of the Environment, as required under section 9 of the *Community Charter*, the bylaw was invalid.

Likely in response to *Canadian Plastic Bag*, the Regulation amended under MO309 provides municipalities with the authority to regulate, prohibit, and impose requirements in relation to the protection of the natural environment by bylaw under section 8(3)(j) of the *Community Charter* in accordance with the Regulation. However, a municipality must consider appropriate exemptions in respect to a bylaw made under the Regulation, including exemptions for persons with disabilities and medical reasons.

Local governments may wish to seek legal advice on the effects of this Ministerial Order before adopting a single-use plastics bylaw.

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