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A USER-FRIENDLY GUIDE TO NEW LEGISLATION

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I. LEGISLATION BY REGULATION: 2016 IS NO EXCEPTION

In remarks delivered in 2013 to the Council of Canadian Administrative Tribunals, Canada's Chief Justice described a "revolution" in governance, from the traditional Rule of Law model to the regulatory state.[1] In the traditional model, she said, "Parliament and the legislatures pass laws. The executive implements and enforces these laws. The courts, for their part, interpret and apply the laws". In this model, the executive branch plays a "modest role". In the new, more complex model, the legislature's "basic objects and provisions" are set out in a general statute but most of the "heavy lifting" is done by regulations, adopted by the executive branch of government under orders-in-council.

This transition to regulatory governance, which the Chief Justice said has been "wildly successful", has not been without its detractors. In the early '80s a Canadian member of Parliament, Mr. Waddell, brought a case in British Columbia Supreme Court challenging orders made by the executive branch of the federal government. He said the orders changed the legislative scheme under which the orders were made from one that allowed a pipeline to transmit American natural gas, to one that allowed a pipeline for Alberta gas. He attacked the orders on two fronts, saying either the statute authorizing the orders was unconstitutional, or the orders themselves were beyond the authority the statute conferred on the Governor in Council (the head of the executive branch). These two arguments evinced what Mr. Waddell testified was his broader concern with:

> [W]hat he perceived to be a growing trend on the part of the Executive to exercise broad, general powers by regulation. In his view, Parliament was "by-passed" in the sense that it was being deprived of its constitutional role as the forum in which policy matters of vital political importance ought to be fully and publicly debated.[2]

Valid as Mr. Waddell's concerns may have been, they were not new. In fact, in 1918 the Supreme Court of Canada had considered, and dismissed, a similar complaint in even more volatile circumstances. In *Re Gray*[3] the nation's highest Court upheld regulations made under

[1] Administrative Tribunals and the Courts: An Evolutionary Relationship, Remarks of the Right Honourable Beverley McLachlin, PC Chief Justice of Canada delivered at the 6th Annual Conference of the Council of Canadian Administrative Tribunals Toronto, Ontario May 27, 2013 (http://www.scc-csc.ca/court-cour/judges-juges/spe-dis/bm-2013-05-27-eng.aspx)
[2] *Waddell v. Governor in Council*, 1983 5 DLR (4th) 254 at para 4.
[3] [1918], 57 SCR 150.

the federal *War Measures Act*, despite what the applicant challenging an order that he join the army characterized as an unconstitutional abdication of the legislative function. Section 6 of the *WMA* authorized the Governor in Council, by regulation:

> to do and authorize such acts and things, and to make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection, deem necessary or advisable for the security, defence, peace, order and welfare of Canada.

On the basis of this section, an order was made repealing an exemption in a separate piece of legislation (the *Military Service Act*) that would have relieved Mr. Gray from the requirement to enter military service. The result: he was arrested for refusing to join.

Two dissenting judges said the *WMA* amounted to a "wholesale surrender of the will of the people" to an "autocratic power".[4] Justice Anglin agreed the "exercise of legislative functions … by the Governor-in-council rather than by Parliament is no doubt something to be avoided as far as possible", but he and the other judges in the majority did not find it unconstitutional. In the regulatory state, the preferred solution to concerns with such broad delegations of what the traditional model of governance considered to be strictly legislative-type decisions has been, in Chief Justice McLachlin's words, "judicial review".[5] The role of courts is simply to ensure that the delegating body has the power it purports to delegate, and the delegate exercises only the power it has been given. The problem of over-delegation is given short shrift.

If the governance concerns associated with the shift to a regulatory state have been largely put to bed, the legislation-by-regulation revolution does raise a more mundane problem: at any given moment, it can be tricky to figure out what the law actually is. Because so much legislation is brought into force, and reified, by regulation rather than in a statute itself, navigating what ends up looking like a maze of orders from various sources containing sometimes convoluted cross-references gets exhausting. Recent changes of note for local governments, enacted by both the legislative and executive branches, are no exception.

This paper provides an update on the following statutory and regulatory changes of importance to local governments:

- *Building Act*;
- *Water Sustainability Act*;
- *Riparian Areas Protection Act*;

[4] *Ibid*.
[5] Op. cit.

- *Conflict of Interest Exceptions Regulations* (under the *Community Charter*);
- *Local Elections Campaign Financing Act*;
- *ALR Use Subdivision and Procedure Regulation* (under the *Agricultural Land Commission Act*);
- *Fire Safety Act*;
- *Access to Cannabis for Medical Purposes Regulation* (under the *Controlled Drugs and Substances Act* (Canada));
- City of Vancouver "Vacancy Tax"; and
- *Strata Property Act*.

II. THE *BUILDING ACT* UNFOLDS

The *Building Act* is wide open for criticism as "legislation by regulation". Shortly before its enactment one MLA said:

> One only needs to read section 3 of this new act to understand what new powers the minister will be able to exercise in the cabinet rooms of the Legislature through regulation ... This is not a closely restricted regulation-making power for technical matters, structured to require the minister to come back to the Legislature for approval for major changes. This is regulation-making power for literally everything relating to buildings in the province … in many ways, some might say that it creates a building czar.[6]

Most local governments in BC are likely now well-apprised of the *Building Act*, and familiar with the provincial mantra behind this significant new piece of legislation: consistency, competence and innovation. Still reeling from the leaky-condo crisis, among other building-related concerns, the Province was eager to address what was being maligned as a patchwork of local building regulations enacted under the broad power the *Community Charter* granted to municipalities to regulation in relation to buildings. That power was checked only by the paramountcy rule in s. 10 of the *Community Charter* ("a provision of a municipal bylaw has no effect if it is inconsistent with a Provincial enactment"), and the specific prohibition in s. 2 of the *Buildings and Other Structures Bylaws Regulation*, barring "standards that are additional to or different from the standards established by the Code". Apparently the old regime wasn't enough to curb the enactment, by over-zealous local authorities, of ill-conceived building regulations.[7]

[6] British Columbia, Legislative Assembly, *Official Reports of Debates (Hansard)*, 40th Parl, 2nd Sess, (26 February 2015) at 6170 (Farnworth).

[7] British Columbia, Legislative Assembly, *Official Reports of Debates (Hansard)*, 40th Parl, 2nd Sess, (26 February 2015) at 6179 (Coleman).

The *Building Act* accomplishes the Province's consistency, competence and innovation goals by introducing three significant changes. It should come as no surprise the *Act* leaves many wrinkles to be ironed out by regulation.

The first of the three goals is codified in what seems to be among the more vexing sections of the *Act*: s. 5. Much to the chagrin of local governments who had long been agitating for broader power to make local building rules (and in some cases making them), particularly as regards fire safety and energy efficiency, s. 5 of the *Act* says local building requirements are "of no force and effect" to the extent that they relate to a matter that is the subject of provincial rule. In the absence of judicial consideration and despite the term being defined in the *Act,* it's not clear exactly what a "local building requirement" is. It's also hard to determine if such a requirement relates to a matter that is the subject of a provincial rule. What is clear, however, is that strictly speaking the *Act* doesn't require local governments to do anything (although the Province is advising local governments to take a more proactive approach). Whatever a local building requirement is, and whether or not it relates to a matter that is the subject of a provincial rule, the clear scheme of the *Building Act* is to cast a wide net, and render anything it catches of no force and effect. Although s. 5 was brought into force by regulation on December 15, 2015, s. 43 of the *Act* says s. 5 doesn't apply until two years after that day.

Section 10 of the *Building Act*, not yet in force, is the linchpin as far as the Province's competence goal is concerned. When it does come into force (by regulation, of course), s. 10 and related provisions in *Part* 3 of the *Building Act* will usher in a new era of training and certification for building officials. Section 10(2) states that "a local authority must not allow" a person to decide on behalf of the local authority whether a matter conforms to a building regulation unless the person is a qualified building official or an exempt building professional. To the same effect, s. 10(3) states that a person must not decide on behalf of a local authority whether a matter conforms to a building regulation unless the person is qualified or exempt.

Part 3 of the *Act* establishes the requirements a person must meet in order to qualify as a building official, including exams, continuing professional development, membership in a professional association, payment of fees and annual reporting to the registrar of qualified building officials. This Part also allows for different classes of building official by "scope of practice", and different exams and requirements for different classes.

Third, and finally, the Province said while promoting consistency it would foster, not stifle, innovation. The *Building Act* invites a "local authority" or "a person" to apply for variations, but there are purse strings attached. Whereas the *Building Act* itself is short on details in some areas (for example, the scope of the Minister's authority to make regulations) it includes elaborate provisions for the Province to recover costs of evaluating these variation requests. Even more scintillating details are provided in the much anticipated *Building Act General Regulation*, BC Reg 131/2016, deposited June 8, 2016. Thus, while maintaining its openness to innovation where appropriate, and citing for example the construction of tall wood buildings, there are clear administrative and financial hurdles to the actual enactment of different standards.

One obvious exception to what otherwise seems to be a general resistance to variation is the expected introduction of an energy efficiency "step code". The Province's August 2016 *Climate Leadership Plan* suggests interested local governments may soon be allowed to implement "energy efficiency requirements for new buildings that go beyond those in the BC Building Code" [8]. More details on this approach are emerging, and staff of the Building and Safety Standards Branch say a regulation allowing local governments to opt-in to an energy "step code" may be introduced by December 2017 (which is also when s. 5 of the *Building Act* will apply). In short, opting in to the Province's proposed step code would allow local governments to require new buildings within their jurisdiction to meet progressively more stringent energy performance targets without running afoul of the prohibition against local building requirements. At least as proposed, and acknowledging that it appears for now to be limited to new buildings, this arrangement seems to be exactly the kind of thing local governments interested in energy efficiency have been asking for: the authority to impose higher standards for building performance without relying entirely on voluntary or incentive-based compliance. Of course, the *Act* itself contains no helpful hints about this scheme; it will be introduced, if at all, by regulation.

Speaking of regulations, the Province early on acknowledged the *Act* left many other important questions about its substance and effect open for speculation; some of these are answered in the *Building Act General Regulation*. Sections 3-6 of the *Regulation* provide unremarkable details about the cost recovery scheme for variation requests; s. 2 is more interesting. It provides a list of "unrestricted matters" for the purpose of s. 5(4) of the *Act*, which shields local building requirements that relate to "unrestricted matters" from the neutering effect of s. 5. These matters now include:

- Parking stalls for persons with disabilities;
- Certain aspects of "access routes for fire department vehicles";
- Certain matters that might be regulated by development permit;
- "Any matter as it relates to a district energy system";
- Any matter as it relates to limiting the transmission into a building of sound that originates outside the building; and
- Radio repeater systems for emergency communications.

Of course, the list is not closed. It remains for the minister to add or subtract unrestricted matters, or to prescribe, under s. 5(3)(b) of the *Act*, "restricted matters". Whether and how the Province's new "building czar" will further exercise this broad authority remains to be seen.

[8] http://climate.gov.bc.ca/feature/climate-leadership-plan/

III. *WATER SUSTAINABILITY ACT*

The new *Water Sustainability Act* came into force February 29, 2016, replacing the old *Water Act*, which had its roots back as far as 1909. Like many newly-drafted statutes, much of the actual "meat" of the legislation is provided in regulations and Ministerial policies. The first set of regulations came into effect on February 29, 2016 and the next set is expected in 2017.

The big change for local governments to be aware of is that users of groundwater for non-domestic purposes will need a water license and pay application fees and annual water rentals (payments for the amount of water actually used) in the same way that surface water users had been used to. This change to the regime is critical for local governments that use groundwater for their local irrigation and waterworks systems. On the positive side, licensing gives groundwater users defined water rights (which were not so clear under the old *Water Act*) and greater precision as to priority of use among multiple users. However, the introduction of annual rentals fees will not be welcomed - local governments as "local providers" will be charged as set out in s. 5 of the *Water Sustainability Fees, Rentals and Charges Tariff Regulation*.

There is a three year transition period in which to apply for a groundwater license under the new regime. Existing groundwater users are encouraged to get their new licenses early: the application fee will be waived until March 1, 2017 and the user will be able to preserve precedence based on the date the user began their use of the groundwater as against all other users of the same water source. British Columbia has a "First in Time, First in Right" system, so a local government that can prove its historic use of an aquifer will be given priority over junior licensees when it comes to exercising its full rights to the aquifer. To establish the date of first use, the applicant must provide the following when applying for a new license:

- Name (or location) of the aquifer;
- The location of each well from which the person diverts groundwater;
- The water use purposes for which the person diverts groundwater;
- The land, mine or undertaking to which the water use is appurtenant; and
- History of the groundwater use (such as the date from which the use started, the quantity of water used, historical maps and reports) (section 15 of the *Water Sustainability Regulation*).

The new *Act* also permits the Lieutenant-Governor in Council (that is, Cabinet) to make extensive regulations establishing "water objectives" to sustain water quality and water quantity for existing and future users and for sustaining aquatic ecosystems. While these regulations have not yet been made available, the new *Act* signals that regional districts may be required to consider those water objectives when preparing or adopting their regional growth

strategies, and municipalities may be required to consider those water objectives when preparing or adopting Official Community Plans.

The new *Act* also allows the Minister to designate an area for the purpose of the development of a "water sustainability plan" needed to address conflicts between water users, environmental flow needs, risks to water quality or other risks to the ecosystem, and requirements for restoration, including other prescribed circumstances. This appears to replace the old water management plan process. Again, the content, process, and consequences for preparing and using water sustainability plans will be mandated by regulation which has not yet been enacted, but the intention here is to give the Province evidence and process for significantly changing licenses or drilling authorizations that have already been granted. This may go so far as freezing Approving Officers' ability to approve subdivision plans in an area covered by a water sustainability plan.

Parts of what used to be the *Fish Protection Act* that dealt with designation of sensitive streams, stream recovery plans and the protection of rivers from new dams are included in this Act. The Minister also has the ability under the new *Act* to issue temporary protection orders, such as declarations of significant water shortage and fish population protection orders. These changes are all being held up by the Province as a significant shift towards environmental protection under the new Act.

The new *Groundwater Protection Regulation* regulates the construction, operation and maintenance of groundwater wells. It does not appear to require any action to transition to the new regulatory regime, but we would encourage any groundwater user to review of the various requirements for well construction, decommissioning, testing, attaching identification plates, and keeping regular logs and reports.

The new *Dam Safety Regulation* applies to previously unregulated dams (such as groundwater or subsurface dams). The regulation has a number of transition provisions, including classification for dams that previously were unregulated.

Water user communities, previously dealt with in Part 3 of the old *Water Act*, are now regulated by the *Water Users' Community Act*, but the regulatory context is otherwise unchanged.

The government will be continuing to roll out regulations under the *Water Sustainability Act* over the coming year, which are expected to include measuring and reporting, livestock watering, and water objectives, planning and governance.

IV. *RIPARIAN AREAS PROTECTION ACT*

The Province's latest response in the battle of downloading the regulation of development in riparian areas onto local governments comes in the form of the *Riparian Areas Protection Act.* Essentially, this is a restatement of a small portion of what used to be the *Fish Protection Act.* Under the old *Act* and its regulations, any proposed development in a "riparian assessment

area" (as defined in the regulations) must not be approved by a local government unless a "qualified environmental professional" (as defined in the regulations) carries out an assessment in accordance with the assessment methods contained in the regulations. Despite the BC Court of Appeal's decision in *Yanke v. Salmon Arm*[9] from 2011 which strongly criticized the Province for encouraging the interpretation of its regulations and policies in a way that was not based in law, the Province has doubled-down on the regulatory scheme that it thought it had put into place. Through the enactment of the new *Riparian Areas Protection Act*, the ability of Cabinet to establish 'directives' by regulation regarding the protection and enhancement of riparian areas continues in the same fashion as it did before the *Yanke* decision, thereby removing uncertainty in this field. Section 13 of the new *Act* particularly authorizes Cabinet to make those regulations that *Yanke* called into question (e.g. establishing the QEP reporting scheme and notification of other levels of government, requiring local governments to impose the conditions from the QEP's report as conditions of development approval, and establishing criteria for QEP's assessment methods).

The *Riparian Areas Regulation ("RAR")*, which is the operative part of the legislation, remains generally unchanged. Under s. 4(1)(b), a local government (to which the *RAR* applies) must in its opinion ensure that its bylaws and permits under Part 14 (old Part 26) of the *Local Government Act* provide a level of protection that is comparable to or exceeds that of the *RAR*. There is a 2016 *Riparian Areas Regulation Guidebook for Local Governments* (replacing the 2006 version) regarding implementation tools and options that contains some helpful information for those who are in need a refresher on the Province's regime.

V. *CONFLICT OF INTEREST EXCEPTIONS REGULATION* (UNDER THE *COMMUNITY CHARTER*)

In April 2016, Provincial Cabinet approved a new regulation that insulates local government representatives from certain pecuniary conflict of interest restrictions when they are a board member of a society or corporation incorporated by a local government. This regulation was enacted in response to the BC Court of Appeal case *Schlenker v. Torgrimson*[10] in 2013, which held that an elected member of a local government will be in a pecuniary conflict of interest when s/he votes on a matter that involves funding a not-for-profit society of which the member is a director. This was a significant problem for societies and wholly-owned corporations that were established by local governments for the purpose of advancing intergovernmental cooperation or for local government purposes.

[9] 2011 BCCA 309.
[10] 2013 BCCA 9.

The new regulation deems that these local government members do not have a pecuniary interest in relation to their role as the local government's representative on the board, and permits them to participate in discussions and vote on:

- An expenditure of public funds to or on behalf of the society or corporation;
- An advantage, benefit, grant or other form of assistance to or on behalf of the society or corporation;
- 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 the society or corporation; and
- Agreements relating to any of the above.

This is important because elected officials are often placed on these boards for societies and corporations specifically for the purpose of influencing the boards on behalf of their respective local governments. However, as Francesca Marzari and Rosie Jacobs point out in their newsletter article from June 2016, this regulation addresses some but not all of the potential conflicts of interest that a representative could have, specifically potential non-pecuniary conflicts, nor does it affect the inside and outside influence rules in sections 102 and 103 of the *Community Charter*.

VI. *LOCAL ELECTIONS CAMPAIGN FINANCING ACT*

The Province enacted significant amendments to the *Local Elections Campaign Financing Act*, which received Royal Assent on May 19, 2016.

Most of the changes arise from a new distinction between the campaign period and the election period of an election cycle. The campaign period is the 28 days before the general voting day for an election, but the election period extends much earlier – to the beginning of the calendar year for a general local election, or to the date a seat becomes vacant for the purpose of a by-election.

New local election expense limits for candidates apply to all campaign spending during the campaign period, not just during the election period, and those expense limits will be adjusted to reflect the increase in CPI over the years. Candidate disclosure statements and elector organization disclosure statements must now include information about both campaign period expenses and election period expenses. The applicable expense limits which differ for local governments of varying populations, are set by regulation, which have not yet been brought into force.

Third party advertising limits are now set at prescribed amounts during the campaign period for election areas of various populations, which will be adjusted to reflect the increase in CPI. The limits are broken down for 2 or more third party sponsors that jointly sponsor advertising and for direct advertising that relates to one or more candidates from one or more third party advertisers. Significant new penalties are also brought into effect against candidates, elector organizations and third party advertisers who run afoul of these rules.

Though not all regulations to fully enact these processes are in effect, we can expect them before the next general local election.

VII. *ACCESS TO CANNABIS FOR MEDICAL PURPOSES REGULATION*

On the federal scene, the evolution of the law governing the production, distribution and possession of marihuana is starting to resemble a game of Pong. In 2000, the *Ontario Court of Appeal* decided that denying access to marihuana for patients who need the drug for its palliative effects amounted to an infringement of their *Charter* rights.[11] In August 2016, after two strikes (first, the *Medical Marihuana Access Regulation* and second, *Marihuana for Medical Purposes Regulation*, both of which were declared unconstitutional) the federal government enacted the third in its series of attempts to allow limited exceptions to the longstanding and absolute criminalization of the drug: the *Access to Cannabis for Medical Purposes Regulation*.

In *R v. Boehme*, Mr. Justice Baird helpfully summarized the lay of the land:

> The constitution recognises no free-standing right to use or supply marihuana … The government must ensure, by whatever means it deems suitable, that there is an adequate exemption for authorised medical marihuana patients, but otherwise criminal prohibition is constitutionally acceptable. A legal framework that incorporates a reasonable medical exemption will accord with the principles of fundamental justice. One that does not will violate those same principles by depriving patients of medicine or forcing them to break the law to get it.[12]

It remains to be seen, of course, whether the *ACMPR* will pass constitutional muster, but as far as local governments are concerned, a few features of the current regime are worth noting.

The *ACMPR* is a hybrid of its predecessors. Individuals can now get the drug by registering with licensed industrial producers, producing a limited amount for their own purposes, or designating another individual to produce it for them. One significant change is the return of federally authorized, but only loosely federally regulated, cannabis production on residential property. The *ACMPR* allows indoor or outdoor production, at a private residence, for an individual license holder or up to four registrants. It does not permit a license for outdoor

[11] *R v. Parker,* 2000 CanLII 5672, 188 DLR (4th) 385.
[12] 2016 BCSC 2014 at para 29.

production of cannabis if the production property is adjacent to a school, public playground, or other public place frequented mainly by persons under 18 years of age. The implementation of a federal scheme that allows for production at a residence seems to preclude local government from prohibiting such a use, since to do so would likely be seen as frustrating the paramount federal purpose.

The *ACMPR* does not address odour control and ventilation for an individual indoor production licence. Health Canada has suggested installing ventilation to prevent mould by removing excess moisture and humidity and has also recommended that, if a registered individual producer needs to make changes to the structure of their home or electrical system to support their marihuana production, they should seek the advice of a licensed professional to ensure compliance with municipal building codes. These recommendations reflect arguments the government raised (to no avail) in *Allard v. Canada*[13]. Because they are not codified in the *ACMPR* it's probably reasonable to assume local governments can still regulate with a view to preventing nuisances or unsafe production practices.

While industrial producers must implement strict security measures, an individual's production site is subject only to Health Canada recommendations. For example: lock your doors, get an alarm. Once again, if local governments regulate within their jurisdiction, it's likely they can impose requirements aimed at reducing the potential for crime or other perceived side-effects that might be associated with the production of medical marihuana.

An applicant for an industrial production license must notify, before submitting the application, the local government of the name of the applicant, the date on which the applicant will submit the application, the activities for which the license is being sought and the address of the site and of each building on the site at which the applicant proposes to conduct the proposed activities. For individual or designated producers: no notification requirement.

Finally, on the distribution side, the retail sale of cannabis for any purpose is still illegal.

VIII. *AGRICULTURAL LAND RESERVE USE, SUBDIVISION AND PROCEDURE REGULATION*

The history and importance of British Columbia's Agricultural Land Reserve is well-documented. The mandate of the Agricultural Land Commissions is also beyond dispute, as s. 6 of the *Agricultural Land Commission Act* states plainly the Commission's purposes: preserve agricultural land; encourage farming; and encourage local governments, First Nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies. Finally, the paramountcy of ALC over local government land use is unassailable.

[13] 2016 FC 236.

One key regulation through which the provincial scheme for protecting agricultural land is implemented, with a specific view to the role of local governments, is the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*. For the last couple of years the Province has been tinkering with the *ALR Regulation*. In May 2015 it added medical marihuana production to the list of farm uses which local governments must not prohibit. In June 2015 it made some changes to the size and nature of liquor-related farm uses, and ancillary uses. In July 2016 the *ALR Regulation* was again amended to introduce and define the term "gathering for an event", which means:

> [A] gathering of people on a farm for the purpose of attending
>
> (a) a wedding, unless paragraph (c) (ii) applies,
>
> (b) a music festival, or
>
> (c) an event, other than
>
> (i) an event held for the purpose of agri-tourism, or
>
> (ii) the celebration, by residents of the farm and those persons whom they invite, of a family event for which no fee or other charge is payable in connection with the event by invitees.

Gathering for an event, as it is now defined, has been added to the list of ancillary uses permitted in association with a brewery, cidery, distillery, meadery or winery, where that use is conducted as a farm use. Gatherings are also permitted as a non-farm use subject to certain conditions stated in s. 3(4)(k) of the *ALR Regulation*. The *ALR Regulation* stops local governments from prohibiting farm uses. Somewhat counter-intuitively, even when gathering for an event is a "non-farm use", the *ALR Regulation* still says a local government must not prohibit these things.

IX. *FIRE SAFETY ACT*

Though most of the action is on the regulatory field, the Legislature has introduced, in 2016, at least one new law that will be of interest to local governments. The *Fire Safety Act*, if and when it receives Royal Assent, will replace the *Fire Services Act*. Sections 8 and 9 of the new regime oblige local governments to designate "fire inspectors to conduct fire safety inspections … for the purpose of determining compliance" with the *Act*. The *Act* also designates municipalities as "monitoring entities" and obliges these entities to "implement a risk-based compliance monitory system for public buildings…to determine if an owner" complies.

X. "CITY OF VANCOUVER VACANCY TAX"

One new statute with the unwieldly name of the *Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act*, enacted August 2, 2016 has generated an enormous amount of headlines. It enacts a 15% property transfer tax on residential property in the Lower Mainland bought by foreign nationals or foreign corporations, makes sweeping changes to the regulation of realtors and real estate brokerages, creates a provincial Housing Priority Initiatives special account, and authorizes the City of Vancouver to impose an annual vacancy tax on specified residential properties.

This amendment provides Vancouver City Council with the authority to impose and administer, by bylaw, an annual vacancy tax on a parcel of "taxable property". Taxable property is defined as residential (class 1) property that is all of the following:

- Vacant property (unoccupied during a vacancy reference period to be described in the bylaw),
- Not exempt from taxation under s. 373 [the annual rating by-law] of the *Vancouver Charter*, and
- Not in a category of property of residential property that has been exempted under the taxation bylaw by Council

The vacancy tax bylaw may compel owners of taxable residential property to report the status of their property by way of a Property Status Declaration and to provide supporting evidence if necessary to City staff. City staff are also authorized to enter onto residential property to confirm the vacancy status of the property after taking reasonable steps to advise the owner of entry.

So far, early indications are that the vacancy tax will be administered using a process similar to the Provincial Home Owner Grant Program.

The City is currently in public consultations regarding the proposed tax. The tax could be applicable starting January 2017, but more likely it will start in 2018 (or at least data will be collected in 2017 for application in the 2018 tax cycle). There is no indication of the tax rate at this point, or whether the tax will be based on a flat rate or fair market value. We understand other municipalities have expressed interest in similar changes being made to the *Community Charter* to permit vacancy tax bylaws outside of the City of Vancouver, but so far Victoria has not responded to these calls.

XI. *STRATA PROPERTY ACT*

The Provincial government has heard concerns about the advancing age and deteriorating condition of many older strata titled buildings, and about how difficult it was to wind up strata corporations and sell the underlying property. On November 17, 2015, Royal Assent was given

to Bill 40, the *Natural Gas Development Statutes Amendment Act*, which made significant amendments to the voluntary winding up of strata corporations under the *Strata Property Act*. There are two important consequences of this change in legislation:

- Lowering the voting threshold required to wind up a strata from a unanimous vote to 80% of the strata's eligible voters; and

- Requiring a strata to apply to court for an order confirming a resolution to wind up the strata.

Through the winding up process, the strata corporation is dissolved, the strata plan is cancelled at the Land Title Office and all owners become tenants-in-common of all land shown on the strata plan and the other assets of the strata corporation. Practically speaking, the strata corporation would have a developer ready to purchase all the land in the strata plan, and would appoint a liquidator who would handle the sale and paying out of all the owners and their mortgagees from the proceeds of sale.

We expect that this winding up process would not require municipal permits or Approving Officer approval as it is a consolidation of all the strata lots and the common property into one big lot. However, any local government with aging or neglected strata buildings in the jurisdiction should be prepared for a developer who is interested in purchasing a wound up strata building to go through an entire rezoning or development permit process in advance of the strata winding up resolution having been passed. In practical terms, the developer will want to be sure of the development potential of the newly consolidated lot before waiting for the strata to embark on the political and lengthy winding up and liquidating process.

The new legislation also makes strata disputes subject to tribunal proceedings under the new *Civil Resolution Tribunal Act*. To the extent that you find any of your local governments pulled into neighbour disputes, you will welcome the new Civil Resolution Tribunal as an online self-help dispute resolution forum. Currently, its jurisdiction is limited to strata disputes, but it will be opening up to small claims actions in 2017.

NOTES