

Summary of additional points from Cannabis Panel Verbal Presentations

Professor Hoehn Presentation

- Local governments have enough powers to regulate
 - How far can local governments go? Are bans likely to succeed?
- Principle of subsidiary – laws made at the local level are closest to the citizens and impact citizens the most and can therefore be better tailored.
- Are local powers adequate? Yes. Land use control powers are robust and well tested. They have general grants of power protecting safety, health, welfare of people and property, people/activity and things in and near public places, nuisances, and business, (authority to prohibit and regulate).
- More than one area of authority to control:
 - Zoning tip: zoning power should happen before legalization – legally non-conforming uses = once a use is established and in use it is legal; it's too late to use the zoning power to prevent it from continuing to operate
 - Zoning bylaw should therefore:
 - define the uses broadly;
 - prohibit them in every zone in the municipality until it is clear where it will be rolled out; and
 - underline the importance for municipalities to be ready for legalization.
- Can municipalities ban cannabis activities?
 - Local plebiscites (some provinces allow local bans)
 - Local bans will only be valid if they:
 - are for a “municipal purpose”;
 - do not conflict with the *Cannabis Act* (or other federal/provincial legislation) or frustrate its purpose;
 - are not in “pith and substance” criminal, but “a moral aspect” is OK; and
 - do not violate the *Charter*.
 - Bans should be narrow in scope – do not want to infringe on federal legislation.

PPSB Presentation

- While most if not all provinces have yet to decide on the kinds of distribution models that will be used, municipalities in Canada (as in the US) will have an active role in aspects of regulation and enforcement. Additionally, municipalities will need to be aware of the various regulatory and licensing schemes to be set up federally (for production), provincially (for distribution and sale), and locally (business licensing; zoning etc.).
- US comparison:
 - While Colorado and Washington State have fully allowed for the legal production, sale and consumption of cannabis, states such as Oregon and Alaska have moved toward what is called a “relaxed recreational cannabis use” approach. Alaska has moved

toward legalized personal recreational use and possession as well and allowed for the creation of a commercial cannabis industry.

- Local opt-out provisions in each state's legislation are important. Given the amount of autonomy local governments have in the US, in addition to the diverse population and geography in any given state, opt out provisions allow local governments to regulate the time, place, manner, and number of marijuana establishments in their communities, including the power to ban establishments entirely within their jurisdiction. Localities may not ban possession or consumption on private property, but they similarly cannot be compelled to allow retail storefronts or growing and manufacturing establishments within their boundaries.
- There is variance among:
 - municipal sales and use tax, licensing and fees, land use and zoning as well as home or personal cultivation; and
 - licensing fees in terms of dollar amount and extent of licensing regime – can vary anywhere from cultivation and testing facility licences to retail sales establishments.
 - Local governments in Washington State for instance use a general business licence rather than a specific cannabis or marijuana business licence. Denver has a licensing system in place where the objective is to maximize the value leveraged from dispensaries in generating tax revenue and local business, while undermining the local black market by allowing the private sector to compete with the retail market.
- Land use and zoning have more similarities than differences among states, particularly looking at the banning of public use. This does not include allowances for dedicated places or spaces for consumption, such as cannabis clubs or other kinds of businesses where cannabis can be legally consumed.
- Canadian Examples:
 - Zoning and land use amendments:
 - City of Calgary regulates medicinal marijuana counselling services as a business with restrictions on location (150 metres from a school yard or 300 metres from each other), and all businesses require a development permit. Additionally, a bylaw amendment to their land use includes details regarding the conditions regulating the use of land for large-scale production with restrictions around building facilities, zoning requirements and other public-interest dimensions.
 - The City of Richmond in BC has taken steps to tightly control and limit marijuana dispensaries as well as production and research facilities –zoning amendments prohibiting production and research and development facilities as a permitted use in all of its zoning classifications –facilities are only considered on a case-by-case basis and can only be located in areas that do not negatively impact sensitive land uses such as schools, parks and community institutions.

- The City of Vancouver has taken steps re: business licensing including operating only in commercial zones, at least 300m away from schools, community centers, youth facilities etc., and require the payment of fees (\$1000 for compassion clubs and \$30,000 for medicinal marijuana related retail dealers).
- Municipal operations and delivery – OH&S concerns:
 - County of Lambton in Ontario has been looking at training and instituting workplace policies and guidelines to assist in dealing with OH&S issues. Educating municipal workers on impairment with the inclusion of cannabis use is obviously similar to what provinces are looking at, at the provincial level as well – ways to deal with impairment etc. Emphasis on early education and messaging are as important for municipalities as for all other businesses and organizations.
- Local task force panels or committees:
 - The City of Calgary has established discussions in their Intergovernmental Affairs Committee where concerns were discussed and outlined and information could be passed to the provincial and federal levels.