Introduction
Applying human rights legislation to government action—including challenges to municipal action—is a growing concern. Government action that is consistent with human rights legislation is a constitutional requirement and, above all, a moral issue. Within such a context this chapter evaluates the soundness of plans and bylaws of Alberta municipalities in relation to the Alberta Human Rights Act¹ and the Canadian Charter of Rights and Freedoms.² It methodically analyzes a select set of municipal plans and municipal bylaws, such as zoning and community standards, as well as the narrative data from interviews with key informants in five major cities and five rural municipalities across Alberta.

The chapter begins with a background on the legislative context of human rights, including the Alberta Human Rights Act. It then describes how the study was conducted and details its findings. Much of the human rights issues at the municipal level concern affordable and social housing, such as secondary suites, permanent supportive housing, and group homes. Following this are new emerging issues associated with locating safe injection sites, methadone clinics, and marijuana retail and
production places. The chapter concludes by sketching two broad sets of patterns observed across Alberta: (1) increasing challenges to municipal bylaws based on Sections 2, 7, and/or 15 of the Charter and court decisions in favour of protecting these rights; and (2) enactment of new federal legislation or amendments to existing federal regulations, resulting in new land uses that did not exist in the zoning bylaws.

**Legislative Context of Human Rights**

Human rights are the rights an individual has by virtue of being human; they represent one’s dignity and are the equal, inalienable, and universal rights of all human beings. In Canada these rights are entrenched in the Constitution through the *Canadian Charter of Rights and Freedoms*. The *Charter* sets out the rights and freedoms of people only in relation to government activities, which distinguishes it from the quasi-constitutional legislation—the federal, provincial, and territorial human rights acts—that encompasses both private and public acts.

Constitutional guarantees are not, however, absolute. Section 1 of the *Charter* places “reasonable limits [on rights] prescribed by law as can be demonstrably justified in a free and democratic society.” Section 32 of the *Charter* declares that it applies to the legislature and government of each province in all matters within the authority of the legislature of each province. Laws, including municipal government bylaws, that are inconsistent with the *Charter* or human rights legislation may be declared invalid and may lead to the payment of damages or other remedies. The Supreme Court of Canada decision *Godbout v Longueuil (City)* established that municipalities are also subject to the *Charter*.

As the *Charter* does not apply to non-governmental activities, interactions between individuals and organizations (such as those between individuals and employers or landlords) are governed instead by human rights legislation, such as the *Alberta Human Rights Act*. However, regional human rights legislation and the *Charter* may overlap when an act of government occurs in an employment context or when services, facilities, or accommodations are provided by the federal, provincial, or municipal government. The following two subsections briefly describe the *Alberta*
The *Human Rights Act* and the *Alberta Bill of Rights*, which seemingly guarantees property rights in Alberta.

**Alberta Human Rights Act**

The *Alberta Human Rights Act* has evolved over the years. The birth of the Act goes back to 1966 when the Alberta legislature passed it as a part of the nationwide effort to promote awareness of human rights. It was intended as a comprehensive system for dealing with discrimination, but it was understaffed, with only a single administrator. Fortunately, in 1972 the province strengthened the legislation by creating a human rights commission and by hiring staff to administer it. In 2000 the *Individual Rights Protection Act of 1972* was renamed the *Alberta Human Rights Act* (henceforth, *AHRA*).

It is noteworthy that the Act was contested in the late 1990s for continuing to exclude sexual orientation as a ground of discrimination. The Supreme Court of Canada ruled in 1998 that the Act’s omission of sexual orientation violated the *Charter*. The Act was eventually amended in 2009 to include protection against sexual orientation. Another amendment was added in 2015 to include gender identity and expression as further prohibited grounds of discrimination. The Act went through yet another amendment recently, following a court ruling in 2017, to add age as a prohibited ground of discrimination.

**Alberta Bill of Rights**

The *Alberta Bill of Rights*, enacted in 1972, is unique. The bill still exists alongside the *AHRA*, while carrying overlapping rights. Except for the federal government’s *Canadian Bill of Rights* and the *Alberta Bill of Rights*, other provinces and territories, like Ontario and Quebec, have combined their bill and act provisions into one human rights act (or code).

The *Alberta Bill of Rights* contains only rights and freedoms extended or guaranteed by the Crown to individuals (and not corporations). It is a statute that imposes limits on the Alberta legislature only and can be overridden by the legislature as per the notwithstanding clause in Section 2 of the bill. Usually, many of the rights and freedoms in a
region’s bill of rights are guaranteed in the Charter and/or provincial and territorial acts. However, the Alberta Bill of Rights provides for the right to “enjoyment of property,” which is not covered by the Charter, placing the bill at odds with the constitutional provision to Canadians. Also, the Alberta bill does not have a limitation clause similar to that of Section 1 of the Canadian Charter. So, in theory, it grants more rights than the Charter does.

The Alberta Bill of Rights’ lack of status as ordinary non-entrenched legislation has resulted in a conservative approach to its interpretation (Bowal & Thul, 2013). The courts have generally avoided giving priority to the Bill of Rights so as to respect legislative supremacy (Greene, 2014); in other words, the Bill of Rights is generally interpreted in such a way that it does not take priority over other statutes. The repeal of the Communal Property Act is the only significant example that relied on showing an alleged violation of the Alberta Bill of Rights, in that the Act was being used to restrict the growth of Hutterite communities. These interpretations underscore Section 1a of the Alberta Bill of Rights, which allows the legislature to override the right of the individual to liberty, security of the person, and enjoyment of property by due process of law, as is the case with the Canadian Bill of Rights of 1960.

**Municipal Planning and Human Rights Legislation**

Many municipalities across Canada, irrespective of size or urban or rural status, face serious human rights challenges. Some of the areas where human rights have influenced land use regulations concern use restriction, limitations on numbers, parking standards, separation distances, and age restrictions. Many municipalities have responded to these issues with appropriate changes to their zoning bylaws. In several other jurisdictions, however, the issues remain very much alive. Toronto, Sarnia, Kitchener, and Smith Falls, for example, were all challenged, based on the definition of group homes and associated separation distances. Delta, British Columbia, had a bylaw that allowed secondary suites only when occupied by family members—this was quashed by the Supreme Court of British Columbia. Similarly, the Human Rights Tribunal found the
mayor of Kelowna, BC, guilty of violating the B.C. Human Rights Code when he refused to proclaim gay pride week in the city.11

In Calgary, Edmonton, and Red Deer, issues of locating group homes and supportive housing have surfaced.12 In Edmonton this author13 argued against the pause on funding for supportive and affordable housing in certain inner-city neighbourhoods,14 asserting that this was a violation of human rights. Calgary’s issues have focused on the prohibition of secondary suites and livestock within the city limits. As well, the Calgary water safety bylaw was unsuccessfully challenged in the court as ultra vires15 because it required the wearing of a personal flotation device in waterways, which was over and above the federal requirement.16 As well, other real and alleged planning and human rights violations have come to light in Alberta cities.

**Method**

This study used a mixed-methods approach. It analyzed the literature collected on human rights and planning jurisprudence and the case law pertaining to Alberta municipalities. The legal analysis looked for potential human rights violations in municipal development plans and zoning bylaws. This was layered with semi-structured interviews with human rights advocates and city officials of five large cities (Edmonton, Calgary, Red Deer, Lethbridge, and Medicine Hat) and five municipal districts in Alberta (Red Deer County, Parkland County, Grande Prairie County, Lethbridge County, and Clearwater County). A few interviews were conducted in large cities outside of Alberta—Vancouver, Toronto, and Montreal—to contextualize and compare the findings with other parts of the country. These interviews were conducted in 2017 and 2018.

**Findings**

The study elicits possible concerns related to the Charter and human rights legislation violations in several areas. The bulk of the human rights issues that emerged in the study concern the provision of affordable and social housing, such as secondary suites, permanent supportive housing, and group homes. The next most common set of issues relates to locating
safe injection sites, methadone clinics, and marijuana retail and production places. Freedom of expression issues in public spaces and on public properties, and issues concerning keeping livestock within the city limits, constitute the last group of concerns.

Housing
Secondary Suites
Restriction on developing secondary suites in certain parts of Calgary has been a perennial issue and has been repeatedly raised as a human rights issue by Calgarians, human rights advocates, and the Calgary mayor himself. The human rights aspect resides in how the ban on secondary suites restricts access to affordable housing. The new Calgary city council, however, took an extraordinary step in December 2017 (at the time the study was being conducted), making secondary suites a discretionary use across the city. Previously these units had been prohibited, especially in areas zoned for low density, single-detached housing residential districts, such as R-1, R-C1, and R-C1L, which constitute large sections of the city. This change from prohibited to discretionary use means that secondary suites can be handled by a normal development review process, without homeowners having to go to the city council for approval. Although still not straightforward, the revised process of discretionary use saves some time for applicants from a drawn-out and onerous approval process.

Supportive Housing
Supportive housing is a type of housing that provides permanent, affordable housing to at-risk populations under the supervision of on-site staff. Restrictive provisions in municipal bylaws affect the location and inhabitants of supportive and affordable housing, thereby turning the restrictions into a human rights issue. In several large and small municipalities across the country the most contentious issue concerns the placement of co-owned housing, communal dwellings or cohousing, rooming and lodging houses, and transitional housing. The issues related to group homes are explained later in the chapter. Some possible concerns in Alberta are related to the following aspects.
Direct Control Zones
Direct control (DC) zones are areas in which a municipality wishes to exercise control over the use and development of land or buildings. The uses in Calgary, such as emergency and temporary shelters, fall under the DC zones—which require the city council’s approval. This practice adds time, costs, and potential barriers to services intended to most likely shelter Charter-protected groups, such as people with disabilities, persons of colour, or those with ethnic backgrounds. Thus, in Calgary, issues pertinent to DC land use zones are of interest to housing advocates.

No Specific Zones
One key problem that the Edmonton-based housing providers and advocates mentioned in the interviews is that very few sites in the city are zoned appropriately to allow for the building of permanent supportive housing across the city. Since most of Edmonton’s neighbourhoods are zoned for single-detached housing, every multi-unit, high-density supportive-housing project requires a rezoning process, and a rezoning exercise for affordable housing is a hard and lengthy struggle. In Edmonton, getting a “buy-in” from the community regarding supportive-housing projects has also been a major challenge. At times the projects become embroiled in protracted legal battles with the community, resulting in further consternation and mistrust between the parties involved.

No Clear Land Use Definition
Another supportive-housing issue that the study informants identified is the absence of land use class definitions of supportive housing, especially in Edmonton’s zoning bylaw. The supportive-housing use does not fit into any existing residential or other use definitions because of the unique nature of this housing and the combination of uses involved. As well, the building usually has independent units with a common kitchen and community spaces. As a result, several uses can be combined in a congregate-living setting. Some permanent supportive-housing programs also offer meals, peer-support programs, case management,
and social activities, along with addiction, mental health, and health or medical services.

From the zoning perspective, because permanent supportive housing does not have its own classification, it straddles several already defined classes of use, including the following:

- apartment housing (because of the presence of multiple dwelling units);
- congregate living (because occupants share access to facilities like cooking, dining, laundry, or sanitary facilities);
- special residential facilities like group homes and lodging houses;
- extended medical treatment services, such as hospitals, sanitariums, isolation facilities, psychiatric hospitals, and detoxification centres.

For neighbourhood residents, all these uses—when linked together in supportive housing—raise red flags. Similarly, for the city’s development authority these uses are exceptions to the rules prescribed in the city’s zoning bylaw and thus warrant extra scrutiny.

The closest definition in Edmonton’s zoning to supportive housing is “supportive community provision,” which applies to apartment housing or group homes. This provision adds special criteria that the project must meet, such as indoor common space and amenities and outside landscaping, while incentivizing the development by allowing extra density and reduced parking. This use should also provide further additional benefits to developers to spur their interest.

In 2020, the city council created the new supportive housing use that encapsulates the temporary shelter services, seniors’ housing and hospice care, group homes, and limited group home uses—allowing them as permitted use in many zones across the city. The rationale for the changes was to remove current barriers and align the zoning bylaw with a modern human rights–based approach to land use planning. Still, other forms of housing such as lodging houses have problems finding locations (City of Edmonton, 2020).

Calgary appears to have a slightly better approach to such situations. Its zoning includes definitions for multi-residential, apartment-style
housing, and residential care that takes the form of on-site health and social support. It also allows up to 10 units, with one parking stall for three residents on the site in all residential zones. The residential care is, however, a discretionary use in the residential building; the city development officer is the individual with authority to approve this use, based on the compatibility, character, and other factors involved.

The advantage of having a zoning class of its own is that no barriers exist in constructing supportive housing. With such a unique zoning class, relevant projects would just need a development permit without going before council rezoning. In Calgary, while this permit may be appealed by the neighbours, the overall process is not as onerous as it is in Edmonton.

Lacking Strong Legal Ground
The housing advocates in Edmonton shared that it was difficult for them to challenge a rejection of a permanent supportive-housing project in the courts on human rights or Charter grounds. They argued that this was partly because either the project did not yet exist, or no units had been built at the time of an application being made to the court. Above all, no actual real-life clients existed who were being discriminated against.

Whether this argument holds any merit from a legal perspective remains an open question. A large body of case law exists on legal challenges to the municipal approval (or rejection) of development projects, based on a myriad of reasons: for instance, lack of due process, error in the application of relevant law, and/or jurisdictional overreach (ultra vires).

If we look at the issue raised by the housing advocates from the “standing” point of view, two recent court decisions—Abbotsford (City) v Shantz and Downtown Eastside Sex Workers United Against Violence Society v Canada (Attorney General)—are important to cite. Both cases affirm a liberal and purposive approach to public interest standing. Public interest litigation allows a person or organization to bring a case, notwithstanding their lack of direct involvement in the matter or any infringement of their personal rights.
In *Abbotsford* the British Columbia/Yukon Association of Drug War Survivors and the British Columbia Civil Liberties Association were granted the public interest standing to challenge the constitutionality of city bylaws that endangered lives of homeless people. In the *Downtown Eastside Sex Workers* case, the court granted an advocacy group, the Downtown Eastside Sex Workers United Against Violence Society, the standing to challenge a broad range of laws against prostitution on the basis that they infringed several of their members’ *Charter* rights. Noteworthy here is that these two judgments could help the housing advocates’ standing to mount a legal challenge on behalf of their future clients.

**Group Homes**

Group homes are another form of supportive housing, the location of which has raised issues across Canada. Alberta municipalities are no exception to this, with two specific issues documented in Red Deer and Edmonton. Red Deer has struggled over whether to allow a special form of group home in a residential area for people who have very severe mental health issues, so much so that the residents of the facility need to be physically restrained for their own safety, and the facility needs to be fitted with bullet-proof windows. This is an especially interesting example because the zoning actually allows these group homes to be situated right in the residential areas. The occupants of these group homes, however, might not be appropriate for living in such a residential setting.

The zoning in Red Deer is partially a product of its history of having Michener Centre in the city since 1923. Michener Centre is a government-run, residential facility for people with developmental disabilities. Furthermore, many social agencies look to locate these homes in Red Deer because of facilities and related supports that are already available in the city. Owing to this long institutional presence and other similar facilities, the City of Red Deer has had extensive experience in accommodating very complex special needs cases.

The Edmonton zoning has undergone its own set of changes in dealing with issues of group homes. In 1983 the city added the “limited
“group homes” zoning use class. In 2010, in response to a Charter challenge, the city removed user characteristics from this definition, as well as the minimum separation distance (MSD) of 150 metres. Nevertheless, in 2012, zoning was amended only to add new neighbourhood- and block-level thresholds to limit the number of group homes in a neighbourhood.

The current zoning allows group homes in almost all residential zones, as either permitted or discretionary use. The Edmonton zoning does not use an MSD between group homes to restrict the number of group homes, which is, or was, the case in many other municipalities across Canada. To avoid overconcentration, it limits their numbers in a neighbourhood by the following three criteria:

• A maximum of three facilities per 1,000 residents of a neighbourhood;
• Two facilities on a block in a residential zone;
• Twelve residents (discretionary use) and 30 residents (permitted use) in opposing block faces in a residential zone.

It is not clear whether this kind of restriction on the number of group homes in a neighbourhood contravene human and Charter rights. Case law suggests that overconcentration of a use can be reason for a municipality to establish certain thresholds.29

Homelessness and Tent Cities
The tent-city phenomenon is not new to Canadian cities. By some accounts, the size of tent cities has increased over the years in places like Vancouver and Toronto. Edmonton and Calgary have long grappled with the emergence of such squatters, and have seen a rise in them, along with illegal camping in parks and river valleys and under city bridges. Housing advocates attribute this to rising homelessness coupled with a limited capacity of city-run emergency shelters, along with the limited supply of new supportive housing. In 2017, several tent-city residents were evicted from Calgary’s Shaganappi Point Golf Course, just southwest of the downtown core, and from Edmonton’s North Saskatchewan river
valley. As recently as 2021, the raging pandemic and the limited capacity of the shelter system pushed more people to find shelter in encampments. Evictions from these encampments made their situation worse (Snowdon, 2021).

Such evictions may contravene Charter rights, just as what happened in Abbotsford and Victoria. In these tent-city cases the courts said that the homeless have a constitutionally protected right under Section 7 of the Charter to erect a temporary shelter and sleep overnight in parks. Neither of the two decisions, however, affirm that Section 7 grants the homeless with a constitutionally protected right to adequate food or shelter or any other necessities of life. Further, the cases do not impose any obligation on a municipality to provide individuals with adequate shelter.

These two decisions aligned with the Ontario Court of Appeal’s decision in Tanudjaja v Canada (Attorney General), which upheld a Superior Court of Ontario’s decision to strike an application brought under Section 7 of the Charter. This application sought to require the federal government and the Ontario government to provide “affordable, adequate, accessible housing.”

Balancing the Rights of Charter-Protected and Other Groups
The issue here is how to balance the rights of an average Canadian with that of a Charter-protected group, such as Indigenous Peoples, in combating a serious social problem such as homelessness. A study participant from a rural county raised this matter. How does a municipality prioritize one group’s needs over another when providing accommodation and services? Alternatively, how does a municipality tackle a need that is more severe within the general population—in other words, one that is not specific to the Charter-protected group? One solution may lie in a collaboration of First Nations reserves and municipal governments so that together they can provide housing for both groups, rather than providing shelter exclusively for either group.
Definition of Uses
The analysis of zoning bylaws elicits three possible issues. Of note, at the time of the study, the City of Edmonton took the extraordinary step of comprehensively reviewing its zoning bylaws and making necessary adjustments to ensure consistency with the Charter and the AHRA.

Reference to User Characteristics
The study identified issues with the definitions of permanent supportive-housing facilities in the municipal zoning bylaws of Grande Prairie County, Calgary, Red Deer, and Lethbridge. These definitions explicitly identify the users of these facilities. However, by regulating users rather than the use, the bylaws could be declared as ultra vires (Agrawal, 2014). Some excerpts of the bylaws are below (the italicized text highlights potentially objectionable phrases):

“Social Care Facility” means:
   a) places of care for persons who are aged or infirm or who require special care or a day care facility;
   b) a building or part of a building, other than a home maintained by a person to whom the children living in that home are related by blood or marriage, in which care, supervision or lodging is provided for four (4) or more children under the age of 18 years, but does not include a place of accommodation designated by the Minister of Family and Social Services as not constituting a child care institution; or
   c) a hostel or other establishment operated to provide accommodation and maintenance for unemployed or indigent persons. [Grande Prairie County]

“Assisted Living Facility” means a building, or a portion of a building, operated for the purpose of providing live-in accommodation for six or more persons with chronic or declining conditions requiring professional care or supervision or ongoing medical care, nursing or homemaking services or for persons generally requiring specialized care. [Red Deer]
“Group Home” means development using a dwelling for a residential social care facility providing rehabilitative, and/or supportive care for 4 to 10 persons who, by reason of their emotional, mental, social or physical condition, require a supervised group living arrangement. [Lethbridge]

Restrictions on Who Can Occupy Which Type of Housing
Zoning here considers who can live in which type of housing. The following example is from Red Deer, which could potentially violate the Charter and the AHRA because of the nature of restrictions placed on the type of individuals who can occupy garden suites: “Garden Suites residence is restricted just to ‘elderly parents’ or ‘cognitively impaired adult’ of the registered owner.”

Minimum Separation Distance
Zoning bylaws that take up the issue of minimum separation distance are concerned with prescribing MSDs to dissuade concentration of one type of use, especially when the use is permanent supportive housing. MSDs for certain controversial uses, such as adult mini-theatres and liquor stores, are common in the case studies. It might be challenging for municipalities to defend MSDs based on a planning rationale.

Keeping Livestock within the City Limits
The issue of keeping livestock within the city limits—such as bees, chicken, sheep, and other animals—has come up often in the last few years as a human rights issue. The rules surrounding backyard chickens vary across the country, with only a few major Canadian cities allowing them. Keeping chickens in the backyard is legal in cities such as Vancouver, Victoria, Kelowna, Surrey, and Montreal, but Toronto, Ottawa, Calgary, Halifax, Winnipeg, Regina, and Saskatoon prohibit the practice at the time of writing this chapter. As of 2015, a few Alberta cities, such as Grande Prairie, Airdrie, Peace River, and Fort Saskatchewan, allow the keeping of chickens within their municipal limits, although Edmonton and Calgary did not (McKechnie, 2015). Municipalities argue that keeping livestock in urban settings can present public health or cleanliness concerns.
A human and Charter rights case related to keeping livestock arose in Calgary a few years ago. A city resident kept chickens in the backyard of his residential property in violation of the city’s bylaw that prohibits this practice. He was fined by the city for illegal urban livestock operations, but he challenged the bylaw, arguing that it affected his right to make decisions about what he eats and what he grows or produces—in breach of his rights under Sections 2 and 7 of the Charter and human rights legislation. The city, however, argued that having a livestock (such as the chickens) within the urban area was considered a nuisance in terms of noise, odours, or accumulation of waste. The provincial court found the defendant guilty and ruled that the bylaw did not infringe upon the defendant’s Charter rights. The issue of raising hens in backyards came to the city council for a vote in 2015, the second time in five years, but the council again rejected the idea.

Also in 2015, an urban farmer in Edmonton faced a fine of $500 per sheep (or $25,000 for 50 sheep) after a bylaw officer found him in contravention of the city’s Animal Licensing and Control Bylaw that prohibits keeping any livestock—which is any large animal over 10 kilograms (in the case of Edmonton)—on residential property (Lazzarino, 2015). As of 2015, while keeping sheep is against city regulations, Edmonton allows residents to keep other creatures, including bees. A pilot project is currently underway to study the potential issues and concerns that are associated with keeping urban hens. As of May 2019, all backyard chicken coops are allowed in Edmonton. Limits are still in place for the number of pigeons or dogs one can keep at a property.

Freedom of Expression

Several Charter challenges have also taken up concerns with the use of public space by politically or religiously oriented signage or behaviour. Here are a few examples.

Calgary

An Alberta provincial court decision upheld the city’s traffic bylaw, which prohibits joining or interfering with a parade or special roadway...
event. Its violation is punishable by a maximum fine of $10,000 and costs, and up to 60 days imprisonment in default of payment. This bylaw was the basis for a street preacher to be charged with causing extreme noise and trespassing on the city’s Stampede Parade. It was arguably the most highly visible challenge brought to a city bylaw, based on Charter Section 2(b), with an allegation that the Charter rights of freedom of religion and freedom of expression were infringed upon. The court decision stated that such a limitation is reasonable and demonstrably justified in a free and democratic society.

Edmonton
The Alberta Queen’s Bench 2016 decision required removal of an American Freedom Defence Initiative advertising sign that made explicit references to the honour killings of Muslim girls. Under Charter Section 1 the courts concluded that the city’s policy imposed a reasonable limit that is justified in a free and democratic society.

Grande Prairie
An Alberta Queen’s Bench decision supported the city’s refusal to allow a pro-life advertisement on the city buses.

Red Deer, Leduc, and Mountain View Counties and Municipal District of Foothills
According to one of the study participants, Red Deer, Leduc, and Mountain View counties have teamed up to assert their authority to regulate and enforce their respective municipal bylaws on the type and number of signs on private properties along provincial highways, at the sections that pass within their municipal boundaries. In 2019, Foothills followed suit and prohibited signs attached to trailers or vehicles unless they are advertising the business for which the vehicle is being used. The private landowners and signage companies claimed that the municipal prohibition of signs along the highway, which should be a provincial matter, violates their freedom of expression. While the provincial government has authority over land immediately adjacent to provincial roads,
it has deferred actions on signage to local governments. In the lawsuit against Foothills, the court ruled that although the vehicle signs are protected by Section 2(b) of the Charter, the local government’s restriction on unattractive or distracting forms of advertising is a reasonable limit under Section 1 of the Charter.\textsuperscript{37}

**Effect of Changes in Federal Regulations**

Recent changes to federal regulations related to safe injection sites, methadone clinics, and the consumption of marijuana have precipitated the need for the creation of new land uses at the municipal level. All of these federal regulatory changes emanated from legal decisions in which, under Charter Section 7, the courts found the benefits of safe injection sites,\textsuperscript{38} methadone clinics, or marijuana use outweighed any potential detriment to the community or to society.

**Safe Injection Sites**

Municipal authorities must heed the Supreme Court decision when dealing with land use decisions related to safe injection sites.\textsuperscript{39} If the public is not consulted or involved in siting such facilities, municipalities may run into tough opposition from their residents. For instance, a proposal by Edmonton City Council to place three of the four Health Canada–approved safe injection sites in the inner-city neighbourhoods came under fire from the residents of Chinatown in the area. In 2017 the residents applied to the federal court, seeking a judicial review of the federal health minister’s decision to approve safe injection sites in Edmonton. They termed the city’s decision “systemic ghettoization” of their neighbourhood, which they felt was already overrun by shelter beds and social agencies (Theobald, 2017). In 2019 the federal court allowed the requested locations of safe injection facilities, dismissing the argument that the residents were unfairly burdened by the facilities.\textsuperscript{40}

**Methadone Clinics**

The location of methadone clinics is a persistent issue in many municipalities across Canada.\textsuperscript{41} In Ontario the Human Rights Code covers a broad
range and degree of disabilities, including addictions. On this basis the Ontario Human Rights Commission advises several Ontario municipalities not to discriminate against people with addictions through restrictive zoning regulations for the methadone clinics; instead, the commission suggests including them as “medical clinics.”

Relocating methadone clinics in the downtown areas of several Alberta municipalities, such as Lethbridge and Calgary, has become an issue as well. In Lethbridge, businesses in the area were opposed to the siting of such clinics because existing issues with the homeless, street drug users, panhandlers, and vandalism would be compounded by the clinics, which they argued would attract more opioid-addictive users. However, zoning in Lethbridge did allow such clinics as a right.

**Marijuana for Medical Purposes**

The new federal *Access to Cannabis for Medical Purposes Regulations* of 2016, which replaced the *Marijuana for Medical Purposes Regulations (MMPR)*, responded to two court decisions that stated that the *MMPR* must allow reasonable access to marijuana to protect the right to security as set out in Section 7 of the *Charter*.

Health Canada now requires applicants to meet existing municipal regulations pertaining to medical marijuana facilities. If no such regulations exist, Health Canada can still approve a facility without prior site approval from municipalities. Future marijuana grow operations could be seriously affected either by the absence of land use regulation or by overly rigid municipal restrictions—currently the case in many Ontario municipalities—which could lead to human rights challenges.

The Alberta Urban Municipalities Association (*AUMA*), now Alberta Municipalities, asked municipalities in its 2014 report to develop a specific land use class to regulate the siting and operation of medical marijuana production facilities (*AUMA*, 2014). This should be in place before the possibility of a production facility arises. They also suggested municipalities use their *Community Standards Bylaw*, which is intended to regulate the conduct of production facilities based on noise, odour, and unsightly appearance.
The Alberta Association of Municipal Districts and Counties (AAMDC), now Rural Municipalities of Alberta, issued a similar cautionary note to Alberta’s rural communities, warning its membership to proactively address the siting of the facilities through land use bylaws (AAMDC, 2015). If a municipality does not have a land use bylaw in place that specifically addresses medical marijuana facilities prior to a development application being submitted, municipalities may miss their opportunity to have a say in the location of such facilities. AAMDC drew attention to potential negative externalities that the marijuana grow-ops carry with them, just like any other industrial operation. For example, if municipalities prefer that these facilities be situated in industrial-zoned areas rather than in agricultural areas, they must develop bylaws that establish this.

Marijuana for Recreational Purposes
A recent decision by the federal government to legalize marijuana for recreational purposes added further complications to municipal land use regulations because marijuana could be grown at home as of July 1, 2018. The federal decision, as well as corresponding provincial legislative changes to the sale, purchase, possession, and consumption of cannabis, affects municipalities in several ways, including land use management, business licensing, bylaws, public health and education, law enforcement, and human resource policies.

Both the AUMA and the AAMDC call for sufficient fire and building codes to regulate the growing of marijuana, particularly in residential properties. This is to ensure that current and prospective property owners are protected from the adverse effects that home growing can create. The Federation of Canadian Municipalities further suggests that land use planning bylaws, such as MSDS, need to be put in place to limit the proximity of cannabis dispensaries to schools and playgrounds (Federation of Canadian Municipalities, 2017). They can also define and classify cannabis retail and lounge facilities distinctly from other zoning categories like general retail, where alcohol sales are permitted.
Community Standards Bylaws

Community Standards bylaws in Alberta municipalities have a long and contentious history. They attempt to regulate individuals’ behaviour and activities in public spaces, based on local standards of social and moral values, and issues related to the maintenance of private properties. They can regulate noise, graffiti, panhandling, littering, and loitering; they also place limits on public assembly. Critics argue that sections of the bylaws, such as those that put limits on peaceful assembly, go against the Charter, which allows “freedom of peaceful assembly” as a fundamental freedom assured to Canadians.

These bylaws came to greater public attention when a southern Alberta municipality, the Town of Taber, enacted a Community Standards Bylaw in 2015 that implemented a curfew period during which minors were not allowed in public places unaccompanied by an adult (CBC News, 2015). The bylaw puts strict restrictions on acceptable behaviour in public places, such as prohibitions on spitting, assembly, and panhandling.

Of note, it is not just Taber that developed this bylaw. A few other Alberta municipalities had similar bylaws in their books, long before Taber enacted its own. We located sections in municipalities such as the City of Red Deer, Strathcona County, and the Town of Ponoka, which could lead to potential human rights violations. As an example, the following is an excerpt from Community Standards Bylaw 3383/2007 of the City of Red Deer:

> No person shall be a member of an assembly of three or more persons in any public place or any place to which the public is allowed access where a peace officer has reasonable grounds to believe the assembly will disturb the peace of the neighbourhood, and any such person shall disperse as requested by a peace officer.

Of note is that the enforcement of these bylaws is not widespread, which begs the question of whether these bylaws are even effective or relevant today.
Conclusion
The study set out to evaluate whether the policies and bylaws of Alberta municipalities are consistent with the *Charter* and the *AHRA*. The findings show that municipal regulations are mostly congruent with the *Charter* and the *AHRA*. Two factors, in particular, are responsible for the way in which human rights have affected planning at the municipal level:

- increasing challenges to municipal bylaws and decisions based on Sections 2, 7, and/or 15 of the *Charter* and court decisions in favour of protecting these rights; and
- new federal legislation or amendments to existing federal regulations, which resulted from the court rulings that protected Canadians' right to life and security as guaranteed in the *Charter*.

These two factors have prompted municipalities to review, revise, or even rescind existing bylaws, create new land use classes, or revise existing zoning bylaws to accommodate new resulting land uses.

The new federal legislation influenced land use planning at the municipal level in an unprecedented way. At the same time, it gave rise to a new set of human rights issues, such as locating safe injection sites and cannabis dispensaries in the municipal fold. These issues are becoming part of the perennial and outstanding issues of secondary suites, user characteristics, minimum separation distances, and livestock kept within the city limits. All of this makes human rights, now more than ever before, a critical issue at the municipal level.

Nevertheless, over the years, both the province and municipalities have made significant progress on the human rights front. For instance, in the last decade or so the province revised the *AHRA* to include age (in relation to the provision of goods, services, accommodation, or facilities), sexual orientation, and gender identity, as well as expression, as grounds of discrimination.

Concomitantly, municipalities in Alberta have amended their bylaws to bring them in line with the *AHRA* and the *Charter*. Interestingly, many significant changes, especially in the provision of affordable and supportive housing, occurred while the study was in progress. For
instance, Calgary removed the prohibition on secondary suites in residential areas. Edmonton introduced changes to the group-home use class, created a new use class for supportive housing, and approved the keeping of backyard chickens. Most potential human rights and Charter issues in other Alberta municipalities still involve the prohibition or exclusion of definitions of various forms of supportive housing, restrictions on their locations, and the problematic inclusion of user characteristics in the zoning class definitions.

The lack of legal aid services makes it difficult for Albertans to pursue a case on human rights grounds. This essentially amounts to the denial of justice to those who have encountered discrimination. The province is also missing any civil society organizations such as the Pivot Legal Society in British Columbia, which would help marginalized people challenge legislation, policies, or practices that undermine human rights.

The Alberta government’s Property Rights Advocate Office documents concerns about individuals’ property rights that are affected by various factors, including municipal planning and zoning decisions, and communicates these concerns to the provincial government. It, however, does not provide direct assistance for property rights disputes. The Property Rights Advocate Office could be a place to raise issues that result from the intersection of human rights and municipal planning and zoning. However, because of the lack of direct assistance and the potentially lengthy delays in government action, this office may not be the most effective means to provide immediate remedies.

A service in Alberta, similar to the Ontario Human Rights Legal Support Centre, may be most effective. Ontario’s legal centre is a Government of Ontario–funded agency that provides direct legal services to individuals who have experienced discrimination. Such a legal centre could provide advice on human rights inquiries, assist individuals with human rights applications, and even represent applicants at mediations and hearings at the Alberta Human Rights Commission.45
NOTES
4. Section 2 of the bill says this: “Every law of Alberta shall, unless it is expressly declared by an Act of the Legislature that it operates notwithstanding the Alberta Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared.”
6. Legislative supremacy provides judges with a guide for ranking legal rules. If a judge encounters a conflict between a statute and a cabinet order, or between a statute and the common law, the statute takes precedence in both cases because legislatures, which create statutes, are superior to cabinets and the judiciary. If there is a conflict between two statutes, the more recent one takes precedence because a current legislature is legally supreme at any given time.
9. The author’s report to the City of Toronto was instrumental in obtaining recognition of the group that was inhabiting the group home and in having separation distances between them removed from the bylaw. It also helped in introducing human rights in Ontario’s Public Policy Statement. See Agrawal (2013).
12. Supportive housing is a combination of housing and social services meant for those who may have health issues, including addiction or alcoholism, mental health concerns, HIV/AIDS, or diverse disabilities.
13. The author made a deputation to the Edmonton city council on April 12, 2016.
14. Although housing itself is not included as a human right, it has a place within the human rights discussion, especially given that it often applies to groups who are protected under the Charter or human rights legislation and who have trouble accessing affordable and safe housing.
15. This is a legal term for going beyond one’s legal power or authority.

19. Co-ownership is ownership of the same housing, jointly and at the same time, by several persons, each of whom has privately bought a share in the right of ownership.

20. Cohousing is a collection of private homes with shared common facilities, such as a kitchen.

21. A rooming or lodging house is a private house in which rooms are rented to persons unrelated to each other, for living or staying temporarily, who share kitchen and bathroom facilities.

22. Transitional housing refers to temporary accommodations for displaced individuals and families, which also provide some supportive services.

23. *Standing* is the legal term for one’s ability to bring a case in court against the conduct of another person.


28. Group homes are residential facilities in which a small number of unrelated people in need of care, support, or supervision live together. They include correctional group homes, juvenile group homes, residential care facilities, and group foster homes. The focus here is on residential care facilities.

29. *See Toronto (City) Zoning By-law No. 138-2003 2004 OMBD No. 280 (Deveau); Advocacy Centre for Tenants Ontario v Kitchener (City) (2010) OMBD Case No. PL050611.*


32. *Tanudjaja v Canada (Attorney General), 2014 ONCA 852, 123 OR (3d) 161 [Tanudjaja].*


38. Safe or supervised injection sites are legally sanctioned, medically supervised facilities designed to reduce overdose mortality and communicable diseases through the sharing of needles. These sites provide a hygienic and stress-free environment in which individuals can consume illicit recreational drugs intravenously.

40. Chinatown Area Business Association v the Attorney General of Canada and Access to Medically Supervised Injection Services Edmonton, 2019, FC 236.

41. A methadone clinic is a place where a person who is addicted to opioid-based drugs, such as heroin or prescription painkillers, can receive prescription-based methadone as a method of treatment.

42. See also Entrop v Imperial Oil Limited, 2000 CanLII 16800 (Ont. C.A.).


44. Strathcona County and the Town of Ponoka are outside the scope of the study.

45. This chapter has been updated since it was first written in 2018 to account for some of the recent bylaw changes.

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