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June 29, 2015

BY EMAIL: angeline.webb@cancer.ab.ca
Angeline Webb, Senior Public Policy Advisor
Canadian Cancer Soicety-Alberta/Northwest Territories Division

Dear Ms. Webb:

Please find below the legal opinion you requested in response to the four questions you posed regarding smoking in multi-unit dwellings in Alberta. These written responses represent my opinion as a lawyer in the Province Alberta with six years of experience practicing tobacco law in Alberta and other provinces, and a further two years of experience practicing residential tenancy law in Alberta.

This opinion is a general description of the state of the law in Alberta at this time, but is not the same as legal advice with respect to any person's specific situation. Every individual situation is unique, so anyone with questions about a specific situation should seek legal advice specific to that situation.

No solicitor-client relationship exists between me and anyone who relies on this opinion, other than between me and the client for which I prepared this opinion, being the Canadian Cancer Society.

Question One: Does the *Canadian Charter of Rights and Freedoms* or the *Alberta Human Rights Act* prevent government at any level, or a private person (including a corporation, organization or other body), from prohibiting smoking within an apartment or condominium?

Response One: No, the *Canadian Charter of Rights and Freedoms* (*Charter*) and the *Alberta Human Rights Act* (AHRA) do not prevent any government or private person from prohibiting smoking within an apartment or a condominium.

The *Charter* applies to governments and government agencies, and the AHRA applies to all housing providers, including the Government of Alberta and its agencies (s. 12). Most of the leading cases in Canada on this issue were applying the *Charter*, but it is well established in law that the interpretation of the equality provisions in the *Charter* informs the interpretation of equality provisions in other human rights legislation (*Andrews v. Law Society of British Columbia,* [1989] 1 SCR 143, 1989 CanLII 2 (SCC); *Law v. Canada (Minister of Employment and Immigration),* [1999] 1 SCR 497, 1999 CanLII 675 (SCC) (*Law*)).

Whether applying the *Charter* or the AHRA, the same two-step test applies to determine if a smoking prohibition would be a breach of the equality rights of people who smoke. The first step is to determine if people who smoke are a protected group. If people who smoke are not a protected group, then a smoking prohibition is not a breach of their equality rights.

If people who smoke are a protected group, then the second step of the test is to apply a legal concept called the duty to accommodate to determine if a smoking prohibition is allowed.

The question of whether people who smoke are a protected group has not been considered in Alberta's courts. Judicial decisions in the rest of Canada lean heavily toward the conclusion that people who smoke are not a protected group, but the caselaw has evolved over time and is not unanimous. It is therefore possible, if unlikely, that an Alberta court or tribunal could decide that people who smoke are a protected group when applying the *Charter* or the AHRA.

However, even if people who smoke were found to be a protected group in Alberta, the duty to accommodate that this would trigger would not prevent a smoking prohibition in an apartment or condominium.

Whether people who smoke are a protected group under the* Charter *and the AHRA

Section 15(1) of the *Charter* prohibits discrimination on the basis of mental or physical disability, and applies to all levels of government in Canada. Sections 4 and 5 of the AHRA prohibit discrimination on the basis of mental or physical disability with respect to services, accommodation and tenancy, and so apply to residential tenancies and condominiums.

Persons with mental or physical disabilities are therefore protected groups under both the *Charter* and the AHRA.

Addiction has generally been recognized in human rights law to be a form of physical or mental disability. However, Canadian courts have held that, despite the addictiveness of smoking, people who smoke are not a protected group. The leading case on this point is *McNeill v. Ontario (Ministry of Solicitor General and Correctional Services)*, 1998 CanLII 1497 (ON SC) (*McNeill*), an Ontario Superior Court decision in a *Charter* challenge brought by an inmate against a smoking prohibition in the jail where he was residing. Although Justice O'Connor acknowledged in this judgment that nicotine is addictive, he held that to include people who smoke in the *Charter* protection against discrimination on the basis of physical disability would trivialize and minimize this protection (para 32). He reasoned that people who smoke "are not a 'discrete and insular minority' nor have they 'suffered historical disadvantage…'" (para 34).

Justice O'Connor acknowledged that "various human rights codes in Canada include addiction to alcohol as a disease creating a degree of disability", but distinguished smoking from alcohol consumption on the basis that "smoking and the addiction that

often accompanies it does not interfere with a person's effective physical, social or psychological functioning…" (para 33).

Although Justice O'Connor's decision in *McNeill* is not a binding precedent on courts in other provinces, courts have explicitly followed his reasoning and conclusion that people who smoke are not a protected group in British Columbia (*R. v. Denison,* 1999 CanLII 13155 (BC SC)) and the Northwest Territories (*Yellowknife (City) v. Denny*, 2004 NWTTC 2 (CanLII)).

On the other hand, people who smoke have been found to be a protected group by a labour arbitrator in *Cominco Ltd. v. United Steelworkers of America, Local 9705* ([2000] BCCAAA No. 62) (*Cominco*). Labour arbitrators can have jurisdiction to decide human rights cases related to employment in unionized workplaces, and this was the situation in *Cominco* where unionized employees were challenging an employer policy that prohibited smoking on all company property, including outdoor areas. The arbitrator held that he could "simply not accept that nicotine addiction, as a pure matter of principle, is not a disability in the same manner as an addiction to alcohol or heroin and cocaine" (para 186).

The crucial distinction between *Cominco* and *McNeill* is that the arbitrator in *Cominco* found that there was sufficient evidence to conclude that nicotine-addicted people could not control their addiction. This allowed him to distinguish his decision from Justice O'Connor's reasoning in *McNeill* that nicotine addiction was unlike alcohol addiction because, unlike alcohol, it did "not interfere with a person's effective physical, social or psychological functioning."

Following the publication of the *Cominco* arbitration decision, a challenge to the *Smoke-Free Ontario Act* asked the Ontario Superior Court to find that *McNeill,* and a subsequent Ontario court decision that agreed with *McNeill* (*R. v. Ample Annie's Itty Bitty Roadhouse,* [2001] OJ No. 5968 (CJ)) (*Ample Annie's*), were wrongly decided on the issue of whether people who smoke are a protected group (*Club Pro Adult Entertainment Inc. v. Ontario (Attorney General),* 2006 CanLII 42254 (ON SC) (*Club Pro*)).

Ontario's Attorney General brought a pre-trial motion to dismiss the *Club Pro* claim, arguing that the *McNeill* precedent settled the matter. Justice Spies denied the Attorney General's motion to dismiss the claim on this point, stating that although "the conclusions reached in *McNeill* and *Ample Annie's* are compelling" (para 214), it was still possible that they could be overturned. The Attorney General's motion to dismiss the claim succeeded for other reasons and the *Club Pro* case never did go to trial.

In explaining why it was possible for *McNeill* to be overturned, Justice Spies wrote:

> In my opinion, even accepting that smoking is addictive, it is unlikely that a court would find smoking is a disability within the meaning of s. 15 of the *Charter.* I recognize, however, that our courts have not reconsidered this issue for some time since the *McNeill* decision was decided in 1998. Given the advancement of

> knowledge since then in the effect of smoking, if the plaintiffs could otherwise meet the test in *Law*, I would be prepared to consider the possibility that a court might reach the conclusion that smoking is a disability within the meaning of the *Charter* if that court had before it the type of evidence that was before the arbitrator in *Cominco*. In other words, I would not strike the claim on this basis alone (para 214).

Whether prohibiting smoking in an apartment or condominium would be permissible under the* Charter *or the AHRA if people who smoke were found to be a protected group

A finding that people who smoke are a protected group would trigger a duty for housing providers to accommodate them. However, the duty to accommodate ends at the point of "undue hardship". The Supreme Court of Canada has held that "[a]ny significant interference with the rights of others" will ordinarily constitute undue hardship (*Central Okanagan School District No. 23 v. Renaud*, 1992 CanLII 81 (SCC), [1992] 2 SCR 970 (*Central Okanagan*)).

The challenge with accommodating smoking is that smoking emits second-hand smoke, which is extremely harmful to neighbours and bystanders who are exposed to it. According to the Canadian Cancer Society[1]:

- No amount of second-hand smoke is safe. Non-smokers exposed to second-hand smoke take in the same harmful chemicals as smokers.
- More than 70 chemicals in second-hand smoke cause cancer. The International Agency for Research on Cancer (an agency of the World Health Organization) has classified second-hand smoke as a known carcinogen.
- Studies show that even low levels of second-hand smoke exposure can be harmful.
- Exposure to second-hand smoke increases risk for lung cancer, laryngeal cancer, pharyngeal cancer, lung disease, heart disease, heart attacks and stroke. It also makes allergies and breathing problems like asthma worse and causes congestion, coughing and irritation of the skin, eyes, nose and throat.
- Every year, more than 800 Canadians who don't smoke die from second-hand smoke.
- Children are at greater risk of getting sick from second-hand smoke than adults.
- Second-hand smoke can get into an apartment or condominium unit through shared vents and openings, under doors, and through cracks and air leaks around electrical outlets, plumbing and windows.

Strong evidence therefore supports the position that exposing neighbours and bystanders to second-hand smoke is a significant interference with those peoples' rights, and that it is therefore an undue hardship to accommodate addiction to nicotine by allowing smoking in a multi-unit premises where second-hand smoke could affect other people.

[1] http://www.cancer.ca/en/cancer-information/cancer-101/what-is-a-risk-factor/tobacco/second-hand-smoke/?region=ab (Accessed March 30, 2015)

Also relevant to the undue hardship analysis is the fact that the duty to accommodate is not a one-way street; people seeking accommodation have a duty to cooperate to arrive at a reasonable accommodation (see, for example, *Central Okanagan* and *McDonald v. Cornwall Public Library*, 2011 HRTO 1858 (CanLII) at paras 7-8).

Thus, people who smoke, if found to be a protected group because of addiction, would be under a duty to cooperate with alternative solutions for their addiction that do not expose neighbours and bystanders to second-hand smoke. This could include smoking outside or obtaining nicotine through alternative means that do not emit second-hand smoke, such as nicotine gum, nicotine lozenges, nicotine inhalers and smokeless tobacco products.

The two-way nature of the duty to accommodate was demonstrated in *Cominco* where, despite deciding that people who smoke are a protected group, the arbitrator still upheld the company's non-smoking policy because allowing them to smoke on company property would have been an undue hardship to others. Instead, the accommodation required for the addicted employees was limited to modified break times to give these employees enough time to leave the property to smoke during their breaks, and this modification to the break policy was only required for three months to give the addicted employees a reasonable period of time adjust to not being able to smoke during work hours and to take advantage of the employer's benefit program that offered a cost-shared smoking cessation program.

Altogether, given the harmful health effects of second-hand smoke to neighbours and other bystanders, the availability of alternative sources of nicotine that can be consumed indoors without emitting second-hand smoke, and the possibility of smoking outside, it is highly implausible to imagine that a court or tribunal applying the duty accommodate would fail to uphold a smoking prohibition in an apartment or condominium setting where smoking would expose neighbours to second-hand smoke. The balance of harms between the harms of second-hand smoke exposure to the neighbours and bystanders on the one hand, and the inconvenience of needing to smoke outside or obtain nicotine by means other than inhaling burning tobacco on the other, clearly weighs in favour of upholding smoking prohibitions, as was the outcome in *Cominco*.

Question Two: Does the *Alberta Housing Act* permit a housing provider to prohibit smoking in an apartment in Alberta?

Response Two: Yes, housing providers under the *Alberta Housing Act* (AHA) may prohibit smoking in an apartment in Alberta.

Social housing providers designated under the AHA are no different than landlords governed by the *Residential Tenancies Act* (RTA) with respect to having the ability to prohibit smoking in an apartment. This is because, except where the AHA expressly provides otherwise, the RTA also applies to tenancies in housing accommodations governed under the AHA (*Housing Accommodation Tenancies Regulation*, Alta. Reg. 242/94, s. 2(1)). The AHA contains no provisions relevant to the housing provider's

ability to prohibit smoking in apartments and does not expressly override any relevant RTA provisions.

Please therefore see the response to Question Three, below, regarding RTA tenancies.

Until 2010, senior citizens' accommodations were also governed by the AHA. Most seniors' accommodations are now governed by the *Supportive Living Accommodation Licensing Act* (SA 2009, c S-23.5), and smoking is prohibited in these accommodations except in designated smoking rooms that meet the requirements for designated smoking rooms under the *Tobacco and Smoking Reduction Act* (SA 2005, c T-3.8, s 5(1)).

Question Three: Does the *Residential Tenancies Act* permit a landlord to prohibit smoking in an apartment in Alberta?

Response Three: Yes, the *Residential Tenancies Act* (RTA) permits a landlord to prohibit smoking in an apartment.

The RTA applies to most tenancies for the purposes of housing in Alberta, subject to certain exemptions such as hotels, mobile homes, student housing, rooms in the living quarters of a landlord, and seniors' accommodations (s. 2(2)). As discussed in the response to Question Two, the RTA applies to social housing accommodations governed by the *Alberta Housing Act* (AHA) except where the AHA explicitly overrides the RTA, and the AHA does not override the RTA in any respect relevant to prohibiting smoking in apartments.

There are two distinct situations to consider when determining whether the RTA permits a landlord to prohibit smoking in an apartment. The first situation is where the tenancy agreement between the landlord and tenant explicitly prohibits smoking in the apartment. The second situation is where the tenancy agreement does not explicitly prohibit smoking in the apartment.

If the tenancy agreement explicitly prohibits smoking in the apartment
Landlords and tenants in Alberta have the freedom to agree to any provision in a tenancy agreement that they wish, except that the RTA does not permit a tenant to waive or release any of their rights, benefits or protections under the RTA (s. 3). The RTA prevails over any lease term that purports to waive any of the tenant's rights, benefits or protections contained in the RTA or its regulations.

Nothing in the RTA or its regulations prevents a lease provision from prohibiting smoking in an apartment. As noted in the response to Question One, landlords must also comply with the *Alberta Human Rights Act* (AHRA) (and, if the landlord is a government agency, the *Canadian Charter of Rights and Freedoms* (*Charter*)), but, as explained in detail in the response to Question One, neither the *Charter* nor the AHRA prevent such a lease provision either. Therefore, a residential tenancy agreement may include a prohibition on smoking in an apartment.

If the tenancy agreement does not explicitly prohibit smoking in the apartment

Unlike similar legislation in some other provinces, Alberta's RTA does not set out an explicit process for a landlord to introduce new rules for a tenant after the initial tenancy agreement is made. This may lead some to the view that landlords in Alberta are required to "grandfather" existing tenants, even if they require new leases to contain non-smoking clauses. However, a strong argument can be made that the RTA permits Alberta landlords to prohibit smoking in apartments, even where the lease does not contain an explicit non-smoking provision, where reasonably necessary to fulfill the landlord's covenants under the RTA. This argument, which is explained in detail below, has not been tested in court.

Before explaining why a landlord's covenants mean landlords can likely impose a smoking prohibition regardless of whether the tenant agrees to it, it is worth noting that a simpler solution in many cases could be for the landlord wishing to prohibit smoking to simply negotiate the change with the tenant. For example, if the tenancy is a fixed term tenancy, meaning it expires on a specified date, and the tenant wishes to renew the tenancy upon expiry, the landlord could make the addition on a non-smoking clause a condition of renewal.

In a periodic tenancy, which continues indefinitely until either the landlord or the tenant end the lease for a valid reason, a landlord has less negotiating leverage than in a fixed term tenancy because a landlord can only end a periodic tenancy for one of the reasons set out in the RTA (these reasons include a substantial breach of the lease by the tenant, violent conduct by the tenant, conversion of the premises to a condominium and occupation of the premises by the landlord or a member of the landlord's immediate family). Nevertheless, a landlord wishing to prohibit smoking in apartment might still wish to attempt to renegotiate a periodic tenancy rather than simply impose the change. For example, if the landlord expected to benefit from lower insurance premiums and maintenance costs by making the apartment facility smoke-free, it might be worth the landlord's while to split the savings with tenants in the form of a rent reduction, or otherwise give tenants an incentive to agree to the change.

Should a landlord be unable, or not wish, to renegotiate with an existing tenant to prohibit smoking in an apartment, it is likely that the landlord could impose such a policy to fulfil their covenants under the RTA:

- The landlord's covenants include ensuring that the premises "meet at least the minimum standards prescribed for housing premises under the *Public Health Act* and regulations" (RTA, s. 16(c));
- The *Housing Regulation* (Alberta Regulation 173/99), which is a regulation made under the *Public Health Act*, states in subsection 5(2) that "[n]o person shall cause or permit any condition in housing premises that is or may become injurious or dangerous to the public health, including any condition that may hinder in any way the suppression of disease." (emphasis added)

Thus, the landlord's covenants include not permitting any condition in housing premises that may become injurious, because this is one of the standards prescribed for housing premises under the *Housing Regulation* made under the *Public Health Act*.

To meet the threshold of subsection 5(2) of the *Housing Regulation*, Alberta's Provincial Court has held that the injury risk must be more than trivial, on the principal that "the law does not concern itself with trivial matters" (*R. v. Wannas,* 2004 ABPC 85 (CanLII), para. 279). In that case, the court found that leaving exposed screws in a door frame, although potentially injurious, was a trivial matter. A significant factor in this finding was the fact that anyone, including a tenant, could easily have removed the screws (paras. 277-278).

Unlike exposed screws, abundant caselaw establishes that exposure to second hand smoke is injurious enough to surpass a triviality threshold, and therefore trigger subsection 5(2) of the *Housing Regulation*. If exposure to second hand smoke can cause compensable injuries then it is by definition not trivial, and such exposure has been held to cause compensable injuries under provincial workers' compensation regimes, such as cancer (eg. *2010-112-AD (Re)*, 2011 CanLII 26314 (NS WCAT); *Decision No. 1746/05,* 2006 ONSWIAT 2050 (CanLII)). Even in cases where claims for workers' compensation benefits arising from occupational second-hand smoke exposure have not been successful, tribunals consistently acknowledge that such exposure may cause compensable injuries (eg. *Decision No.: 2008-612,* 2008 CanLII 86002 (AB WCAC); *Decision No. 2007-74,* 2007 CanLII 79857 (AB WCAC)). These kinds of cases generally turn on whether the second-hand exposure in the workplace outweighed other causes of the claimants' injuries, such as if the worker smoked or was exposed to second-hand smoke in other places besides work, since causation directly connected to employment must be proven to establish an entitlement to workers' compensation benefits.

The Federal Court of Canada, in a judicial review of a grievance brought by unionized federal corrections officers, has also held that exposure to second-hand smoke can cause injury (*Union of Canadian Correctional Officers v. Canada (Attorney General)*, 2008 FC 542 (CanLII)).

Another factor distinguishing exposure to second-hand smoke in an apartment setting from the trivial injury risk posed by exposed screws in *Wannas* is that occupants of apartments that second-hand smoke seeps into from neighbouring apartments cannot help breathing second-hand smoke, unlike the scenario in *Wannas* where the court held that a tenant could have easily removed the exposed screws.

Where the RTA imposes a covenant on landlords not to permit something, as it does with respect to not permitting "any condition in housing premises that is or may become injurious", then the law must enable landlords to prevent that which they are duty-bound not to permit.

The RTA is very specific about the remedies available to landlords for various form of tenant actions, and the most applicable tenant action to causing a condition "that is or may become injurious" by smoking is causing a significant interference with the rights of either the landlord or other tenants. Subsection 21(b) of the RTA specifies that the requirement not to significantly interfere with the rights of other tenants or the landlord is a tenant covenant that forms part of every residential tenancy agreement. Breaking this covenant is a "substantial breach" of the tenancy agreement by the tenant (s. 1(p)(i)), and the landlord's remedy for this is termination of the tenancy agreement (s. 29).

A single incident of smoking would not usually be reason enough for a landlord to terminate a tenancy, barring rare circumstances such as causing a fire, but "a series of breaches of a residential tenancy agreement, the cumulative effect of which is substantial" is also considered a substantial breach of the agreement (s. 1(p)(i)).

Therefore, it follows that if a tenant were to persist in smoking in an apartment despite repeated requests to stop, and the smoking repeatedly caused second-hand smoke to escape into other apartments or common areas, which would create injurious or potentially injurious conditions that the landlord has a covenant to prevent, then this would be a substantial breach of the tenancy agreement for which the landlord's remedy would be termination of the tenancy.

Question Four: Does the *Condominium Property Act* permit a condominium corporation to prohibit smoking in a residential condominium in Alberta?

Response Four: Yes, the *Condominium Property Act* permits a condominium corporation to prohibit smoking in a residential condominium in Alberta.

The *Condominium Property Act* (CPA) gives condominium corporations the authority to create bylaws to "provide for the control, management and administration of the units" (s. 32(1)), and further specifies that "owners of the units and anyone in possession of a unit are bound by the bylaws" (s. 32(2)). This is the same provision that allows condominiums to create common rules like restrictions on keeping pets or creating general nuisances like disruptive odours or noises. Smoking is a nuisance in that it releases toxic fumes that can escape into common areas and neighbouring units, and clearly falls under the same very broad power to provide for the "control" of the units.

The condominium corporation's power to control the units must be exercised in a manner consistent with the *Alberta Human Rights Act* (AHRA), but, as discussed in the response to Question One above, smoking prohibitions in apartment units are permitted under the AHRA.

Until very recently there was no caselaw interpreting subsection 32(1) of the CPA with respect to providing for control of units, but *Condominium Corporation No 0312235 v Scott* (2015 ABQB 1717 (CanLII)), a very recent decision of the Court of Queen's Bench (March 2015) provides some guiding principles. Discussing the bylaw-making power,

Justice Ackeri wrote "unit holders decide how they want their condominium run through their bylaws, and courts will not intervene unless such bylaws run contrary to the Act" (para 17).

Nothing in the CPA prevents a condominium corporation from prohibiting smoking through its bylaws. A condominium corporation can amend its bylaws subsequent to its founding with the consent of owners representing at least 75% of the ownership units of the corporation (s. 1(1)(x)).

A condominium corporation can therefore amend its bylaws to explicitly prohibit smoking, provided a sufficient majority of the owners agree.

Question Five: Does the *Cooperatives Act* permit a housing cooperative in Alberta to prohibit smoking in a multi-unit premises?

Response Five: Yes, the *Cooperatives Act* permits a housing cooperative to prohibit smoking in a multi-unit premises.

The power of a cooperative to make bylaws is as broad as it could possibly be worded in law. Section 9(2)(e) of the *Cooperatives Act* gives every cooperative the power to make bylaws regarding "any other matter the members consider necessary or desirable." This clearly includes prohibiting smoking.

Any member of a cooperative has the right to propose to create, amend or repeal bylaw (s. 11), so any member of a housing cooperative can propose to prohibit smoking in their cooperative.

The exact procedure for amending the bylaws may vary from cooperative to cooperative, since bylaws may contain amending rules (s. 10(1)). Thus, in any individual case, it would be important to first check the bylaws to see if there is an amending process. If not, the bylaw amending default process set out below would apply.

The default bylaw amending process allows a cooperative to amend its bylaws at a meeting of the members, or even just a meeting of the directors, by a simple majority of the votes cast (ss. 10(1) and 1(1)(jj) read together). However, if the directors make the bylaw, they must present it to the next meeting of the members to be confirmed (s. 10(3)). The *Cooperatives Regulation* sets out detailed rules for how and when meetings of the members can be called.

Any bylaw change made by a cooperative must be filed with the Director of Cooperatives within 60 days of coming into force (s. 13(2)). Cooperative bylaws are binding on the members of the cooperative (s. 13(1)).

Like other forms of housing providers, housing cooperatives are bound by the *Alberta Human Rights Act* (AHRA) and therefore must exercise their bylaw-making power in

accordance with this Act. However, as discussed in the response to Question One above, smoking prohibitions in apartment units are permitted under the AHRA.

Enforcement of a smoking prohibition in a housing cooperative would generally take the form of terminating the membership of members who persistently smoke or permit smoking in their units. There are two types of housing cooperatives, "continuing housing cooperatives" and "home ownership cooperatives", each with slightly different rules. Continuing housing cooperatives may terminate the membership of a member who "has, on more than one occasion, contravened the bylaws of the cooperative and the contraventions have continued to occur after written notice of contraventions has been given to the member by the cooperative." (s. 395(1)(c)). Thus, at least two smoking incidents would have to occur before the cooperative could move to the step of terminating the membership, and a written warning would have to have been provided and not heeded by the member.

A home ownership can only terminate a membership when a member "repeatedly contravenes the share subscription agreement, the articles, the bylaws or the policies of the cooperative or any agreements between the member and the cooperative." (s. 404(1), emphasis added). Although a written warning is not specifically required for this type of cooperative, providing a written warning would be advisable for the cooperative in order to establish an evidence trail of repeated violations.

Because termination of the cooperative will generally lead directly to the eviction of the member, members of housing cooperatives have certain special procedural rights that cooperatives must follow before terminating a membership. These requirements are set out in section 396 for continuing housing cooperatives and section 404 for home ownership cooperatives. Both sets of rules require a vote on the termination, at least 14 days' notice of the meeting where the vote will take place to the member facing termination of their membership, and a ¾ supermajority of votes cast. In the case of a continuing housing cooperative, only a directors meeting is required, but if the directors vote to terminate the membership the member has a right to appeal the decision to the next meeting of the members. In a home ownership cooperative, the vote must take place at a meeting of members with a minimum quorum of 70% of the members.

The bylaws of the housing cooperative may modify or add steps to the above procedures for terminating a membership, and in every case will require mediation to be attempted at some point in the dispute resolution process, so in every case it would be important to consult the bylaws as well.

All of the foregoing is my opinion as a lawyer in the Province of Alberta.

ORIGINAL SIGNED BY

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