

# **Not on My Main Street: Zoning Marijuana Prohibition and the municipal theatre of the War on Drugs**

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## **Abstract**

*This thesis examined the development and application of urban bylaws, in this case the City of Delta's, which regulate properties commonly hosting growing operations or laboratories producing and handling federally-listed controlled substances such as marijuana. The project was largely exploratory and involved qualitative examination public documents such as council meetings, reports, memos and correspondence regarding Delta's Zoning Bylaw and Controlled Substance Property Bylaw—which control how land and property are used in the municipality and impose punitive sanctions on owners and renters whom infract on these regulations. Prohibitionist bylaws such as these can have disruptive consequences on the national legalization of marijuana due to these bylaws de facto continuing prohibition on the local level. The project uncovered justifications behind the ordinance—both formal and informal—and found a legal ecosystem of related municipal ordinances interacting with the (specifically those involved with medical marijuana dispensaries and production facilities), potential overlaps between bylaws as a result of higher-level changes in law as well as legal and economic consequences—such as creating favourable conditions for large agribusiness.*

## **Keywords**

*Cannabis, medicinal cannabis, zoning, municipal bylaws, legal ecosystem, dispensaries, agribusiness, War on Drugs, legalization, city council, justification, ideology*

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## **Introduction/Background**

I had not heard the word “grow-op” until I was in Grade 7 when a Delta Police constable came to our class to give a drug safety talk to the students followed by a brief show-and-tell of her patrol cruiser. My classmates (unlike me) were familiar with the word since *they* had not spent the past five years (1999-2004) abroad as a Canadian expat in American Samoa and Trinidad. The constable informed us of the physical and mental harms caused by illicit drugs, noting that marijuana was the *least* harmful and addictive of the group. My interest in this topic was dormant until an undergraduate class on late Imperial China led to the subject of the Opium Wars. Our instructor made connections between the arguments and debate over opium liberalization and current discussions of marijuana legalization. This lecture motivated me to change the focus of my degree from General Studies to Criminology and sparked an interest in drug laws around marijuana or cannabis.

In this paper, I build on my initial (and general interest) in the regulation of marijuana and will critically investigate the development, objectives and application of cannabis-related municipal bylaws in Delta. This research will provide an understanding of the process behind the creation and enforcement of bylaws regulating land-uses and businesses that sell, handle or otherwise deal with controlled substances and chemicals. Since there is little research on this topic, my study fills a gap in the research on marijuana regulation in Lower Mainland municipalities. My focus on municipal bylaws led me to examine the specific bylaws that addressed activities related to marijuana and city documents and papers that discussed these bylaws, their effectiveness and context. Meanwhile, I paid close attention the content of my research to see if there were aspects of (latent/implicit) ideological influences on municipal bylaws that are not explicitly stated by the official wording of them. I maintained a critical view of municipal bylaws with the view that ideological influences might also coincide with potential economic and class-based characteristics in bylaws and questioned the role that they play in the “War on Drugs”. Overall in this paper I argue that municipal bylaws play an important, though less noticeable, role in the War on Drugs<sup>1</sup>.

Delta is a suburban municipality located south of the Fraser River, west of the City of Surrey and north of Whatcom County (Point Roberts) in the US State of Washington. It is the southwestern edge of the Greater Vancouver metropolitan area. Delta is comprised of three main urban centres/communities: Tsawwassen (furthest south; next to the US-Canada border), Ladner (in the center; next to the Fraser River) and North Delta (furthest north and east; next to Surrey). Besides being suburban, nearly half of Delta is agricultural land while one fifth is occupied by the Burns Bog. The city lies in the intersection of the region’s main transportation infrastructure (Corporation of Delta, *Official Community Plan*, 1-6). The city’s official name until recently was the

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<sup>1</sup> “War on Drugs” refers to the current global effort, started and led by the United States, to criminalize narcotic substances and their use that began in the latter half of the 20<sup>th</sup> century (Lopez, 2016). Canada is a participant in this effort in part due to how much the US has an influence over Canada—such as in trade policy (Major & Kapelos, 2018). The term “prohibition” means that, by law, a material product is forbidden from being produced, exchanged or consumed with the goal of eliminating the product itself or the practices around it (Thornton, 1991, 71-73).

<sup>2</sup>*Corporation* of Delta rather than “City of Delta”. This is a frequent source of frustration for city officials and confusion to outside parties—as was noted by civic delegations sent to Rotterdam, Netherlands and to Canada’s federal capital Ottawa. Since 2017, Delta’s local government has undergone the process of formally changing its name to “City of Delta” (Gyarmati, 2017) which was finalized on September 22<sup>nd</sup>, 2017 by order of British Columbia’s Lieutenant Governor, Attorney General and the Minister of Municipal Affairs and Housing (*Order in Council No. 362*).

Delta is a culturally diverse municipality but there are certainly areas of it that are more homogenous (European, Asian, conservative, bohemian, etc.) than the rest. Indeed, although Delta’s bylaws are not overtly or intentionally designed with racial or class categorization in mind, it is certainly the case that they may impact certain ethnic populations more than others and that fines and penalties imposed on properties would impact homeowners and tenants of certain income levels.<sup>3</sup> Delta is located on the traditional sovereign territories of the Tsawwassen First Nation—a Coast Salish people whom are the original inhabitants of the area and exercise local jurisdiction on the coastline southwest of the settler suburbs of Tsawwassen (Tsawwassen First Nation, 2016). The Musqueam First Nation are also present on a small patch of land west of Ladner (Musqueam Indian Band, 2011). The municipality as a political entity was incorporated in 1879 with Ladner as its administrative centre (Corporation of Delta, *About Delta*, 2017) and the authority of Delta and its *Official Community Plan* ultimately derives from the Province of British Columbia’s *Local Government Act* (Corporation of Delta, *Official Community Plan*, 1-3). In addition to changes in BC politics and marijuana laws, Delta’s current political focus revolves around issues of housing prices, the George Massey Tunnel and wastewater treatment plant and casino proposals.

By presenting an argument that situates municipal bylaws within in the broader and ideological framing of the War on Drugs, I suggest that municipal bylaws in Delta further the harmful policy regime of prohibition. Further, I argue that bylaws—particularly those regulating activities related to marijuana production and use—are developed based upon ideological factors or reactionary thinking (such as militant Drug War/Prohibitionist orthodoxy/rhetoric) rather than objective considerations of fact or reason. My research revolved around questions relating to how the bylaws were developed and applied, with a key interest in potential consequences. Particularly, I looked for evidence of ideological influences on policy and what sort of effects or applications would the bylaw have in a class dimension.

As such, I have organized this paper in the following order. First I elaborate on the context of drug regulation/policy on a local, region, national and international-level. I then review the academic scholarship on drug policy and municipal bylaws followed by a discussion of this project’s research methods. Third, I present the key findings of this study by highlighting particular themes in the data. After presenting the initial findings, I present an analysis and discussion of the potential implication this research might have

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<sup>2</sup> In this paper, the use of Delta’s former official name will be minimized except where necessitated in the in-text citations and bibliography. For the remainder of this paper I will refer to Delta as simply ‘Delta’.

<sup>3</sup> In Operation “Bud-Out” the pool of suspects arrested for marijuana growing operations were overwhelmingly of Vietnamese heritage (Bellett, May 15, 2000, p. B1/Front).

on future research and understandings of municipal bylaws and implementing drug-oriented policies on the local level.

### **Drug Regulation in Context (Local-Regional-National-International)**

There had been a growing concern about marijuana grow operations in the Lower Mainland in the early 2000s. British Columbia had seen the highest rate of drug-related offences and incidents in Canada. The City of Surrey had seen the rate of 247 incidents per 100,000 people in 1998 rise to 531 per 100,000 in 2002 while Vancouver saw, in the same period, a rise from 356 to 545 and Richmond 403 to 651 (Toronto, Canada's largest city<sup>4</sup>, saw a comparatively measly rise of 172 to 211). Many of these incidents involved marijuana (Fraser, March 19, 2004, p. A4). Police, in the early 2000s, estimated approximately 10,000 marijuana grow operations existed in BC and various initiatives were being looked at to respond to this growing issue. A few remedies proposed by police included registering landlords and their rental properties; bylaws ensuring that shops selling hydroponic equipment register their sales (including pawnshops); bylaws forcing landlords or their representatives to do certain checks on their property and renters; and asking city councils to refuse new licences for businesses selling hydroponics equipment (Dawson, April 16, 2000, p. A12).

During the early 2000s, other municipalities in the Lower Mainland of BC, namely Port Moody (with their *Controlled Substance Property Bylaw (No. 2523)*) and Surrey (with their *Community Improvement & Controlled Substance Manufacture Bylaw (No. 14422)*) (Corporation of Delta, *Council Report*, August 7, 2003), had enacted local government bylaws that would charge property owners for the costs of building safety inspections, removal and disposal of narcotics and drug equipment (which included both marijuana grow-ops and methamphetamine labs), search warrants and police overtime that a city would normally have to pay the bills on (*Delta Optimist*, February 11, 2004, p. 3). In January 2003, a landlord in the Whalley area of Surrey announced the sale of their house following multiple raids by RCMP on the property leading to the discovery of amounts of crack cocaine (Spencer, January 24, 2003, p. A7). In June that same year, a residential property in Surrey became the first in BC to be forfeited to the Crown under new Federal forfeiture laws (Corporation of Delta, *Council Report*, August 7, 2003). Municipalities clearly felt an urgency in regulating the situation of marijuana regulation.

In 2004, Delta passed a local statute called the *Controlled Substance Property Bylaw* (acting under definitions of the federal *Controlled Drugs and Substances Act*) (CSPB, 2004, 2) which includes the following prohibition: "No person, owner or occupant of property shall cause, permit or allow any property to become or remain a place for the manufacture, trade, use, sharing, sale or barter of a controlled substance" (CSPB, 2004, 3). The bylaw included provisions allowing for municipal enforcement inspection, cutting off of utilities and monetary penalties (CSPB, 2004, 3-6). This bylaw created in 2004 clearly was meant to control and prevent the incidence of marijuana grow-ops in Delta residential neighbourhoods.

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<sup>4</sup> Over 6.2 million people in 2016 according to Statistics Canada: <http://www.statcan.gc.ca/tables-tableaux/sum-som/I01/cst01/demo05a-eng.htm>

In 2016, the newly opened WeeMedical Dispensary in North Delta had its business license application rejected by the Corporation of Delta on the grounds that it contravened the city's bylaws. In this case, the WeeMedical Dispensary violated provisions of the *Delta Zoning Bylaw* that prohibited land-use for the production and retail sale of medicinal cannabis within the boundaries of the municipality (Kupchuk, 2016). Councillor Bruce McDonald emphasized that the decision by Delta Council was not about the medicinal qualities of marijuana itself—he stated: “We’re not here to talk about marijuana as good, bad, or indifferent. We’re talking about a business” (Kupchuk, 2016). However, it was clear that the Corporation wanted to be tough on drugs.

Despite this opposition from the city, WeeMedical continued to operate until it was ordered closed by the British Columbia Supreme Court. However, it reopened again under a different legal name, and the battle is still in the courts (Dimoff, 2016). During this legal battle in Delta, cannabis continues to be a major, multi-billion dollar industry in British Columbia's economy with significant potential tax revenue for cities looking to reinvest in infrastructure. Before being overshadowed by other societal concerns, cannabis regulation had initially been predicted to become an issue in BC's May 2017 provincial election (Bell, 2016).

The debate over marijuana prohibition occurs in a time of public fear and concern in Delta and the Lower Mainland of BC over the health risks posed to drug users—particularly the risk of death by the synthetic opioid known as fentanyl. In Delta nine people overdosed from fentanyl within 20 minutes of each other when they took what they believed was untainted cocaine (Jacques, 2016). Only the day before had the Vancouver Coastal Health Authority released data they had collected from the supervised injection site Insite which revealed that a vast majority of street drugs contained this highly dangerous opioid (*Canadian Press*, 2016).

In this fentanyl crisis, Delta (in coordination with Delta Police, Delta School District, Fraser Health and others) was prompted to host a series of public forums (one of which I attended) to discuss with and inform the public of the crisis (*Cloverdale Reporter*, 2016). At the forum, Delta Police made the interesting clarification that fentanyl posed more of a risk to drug users consuming heroin, oxycodone and cocaine and *not* so much for those using marijuana<sup>5</sup> (Vaughan-Smith, 2016. 4-5).

The local context of marijuana regulation in Delta occurs at an interesting moment in national and international approaches to drug policy and regulation. In the United States, we have seen the increasing visibility of conservative and far-right politics with the 2016 election of Donald Trump. While major US news media outlets focused on the results of the presidency (and a little on the Senate and House races), other important changes occurred on November 8<sup>th</sup>, 2016 that went underreported. In several states, voters passed ballot measures that legalized marijuana recreationally while several more (mostly land-locked) states' voters passed ballot measures legalizing marijuana medically (Levin, 2016). This, however presents a conflict of both laws and the opinions of government officials as marijuana may be legal on the state-level but not

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<sup>5</sup> The risk has more to do with cross-contamination due to poor quality control and not necessarily because of intentional use in the cannabis (Vaughan-Smith, 2016. 4-5).

the federal-level (Joachim, 2014). Developments in the US are influential on this project as they reflect overall cultural changes in attitude towards marijuana that are manifesting themselves in official local government reforms—reforms that may influence decisions by local governments in Canada (some of whom are literally adjacent to US districts that have legalized recreational cannabis)<sup>6</sup> to accommodate this change or resist it entirely. For municipalities in the Lower Mainland, this type of reform or reaction manifests itself in the form of bylaws and land-use regulations.

In April 2017, Prime Minister Justin Trudeau announced new legislation changing the legal status of marijuana (legalization) that would originally have become law on July 1, 2018 (Cochrane, 2017). However, the date was delayed and changed to October 17, 2018 after the Liberal government decided to allow the provinces more time to prepare for the coming legalization despite their previous promises of a summer deadline (although the Prime Minister was also under pressure for a full-year delay in legalization) (Courtenay, 2018). Cannabis legalization fulfilled the promise made by Trudeau's Liberal Party during Canada's 2015 federal election in which Trudeau had promised to remove the prohibition of marijuana consumption from the *Criminal Code* and design a regulatory regime for legalized sale and distribution (*Real Change*, 2015, 55).<sup>7</sup> Recreational cannabis did finally become legal across Canada on October 17<sup>th</sup>, 2018, but there are still numerous concerns and questions remaining about how legalization will be implemented—particularly regarding how cannabis can be sold commercially in the provinces (Butler, 2018).

The Liberals' legalization scheme has faced criticism from long-time cannabis advocate (the so-called "Prince of Pot") Marc Emery who has labelled it as "not a real legalization" due to the myriad number of rules and regulations that will continue to criminalize people for even minor or unintentional infractions (notably, one's own residence might not necessarily be a legal place to smoke). Emery has also called the legalization dysfunctional because, although October 17<sup>th</sup> is the date recreational cannabis became legal, it will not be available in for authorized government retail sale in most provinces (which Emery criticizes for making the product too expensive) until 6-7 months after that date—during which, raids and arrests will continue to be conducted against private, unauthorized sellers. A more ominous concern Emery raises (which, incidentally will come up again later in this paper) is the preferential treatment of cannabis production by large corporations and agribusiness (Coulter, 2018).

Likewise, concerns over the handling of criminal pardons for those previously convicted of simple marijuana possession have also been raised. The Liberal

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<sup>6</sup> Recreational Cannabis was legalized in Washington State in 2014 by voters in State Initiative 502. Delta physically borders the State's exclave of Point Roberts and is only a few kilometres from the rest of Washington.

<sup>7</sup> Curiously, despite the claims made by the Liberal Party platform, marijuana possession was actually listed under the *Controlled Drugs and Substances Act* (CDSA) and *not* the *Criminal Code* itself. Nevertheless, under the CDSA, anyone found in possession of Cannabis "is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years less a day" (CDSA, S4(4a)) and that is just one punishment for one type of drug possessed in one way it is possessed (there are many more variations).

government have proposed to waive the \$631 fee and 5-10 year waiting period to apply for a pardon and record suspension for those charged with marijuana possession. Public Safety Minister Ralph Goodale claims that the move will “shed the burden and stigma” and break down the barriers such convictions put for employment, housing, education or volunteering. However, the minister has so far not presented a timeframe for such pardons and the proposal has also faced further criticism in the House of Commons from the opposition New Democratic Party (NDP). NDP Justice critic Murray Rankin has called for complete expungement of such criminal records because simply suspending them (as Minister Goodale has proposed) does not actually remove the barriers people face for travel, housing or volunteer work. Specifically, people would still be required to answer “yes” on any form that asks if they have (even suspended) criminal convictions—thereby perpetuating punishment for a crime that is no longer one. The Liberal government, of course, would have precedent for expunging these records since, earlier in 2018, they tabled legislation that would expunge the records for those previously convicted of activities (buggery, etc.) that were aimed at criminalizing homosexuality. Although the Liberal government has claimed that marijuana conviction does not meet the criteria of “profound historical injustice” that homosexual convictions face, this rationale has been challenged by NDP Leader Jagmeet Singh because of the close relationship cannabis convictions have with discrimination against racialized communities, Indigenous peoples and other marginalized groups whom would still suffer without full record expungement (Harris, 2018). Undoubtedly, Canada’s post-legalization drug policy is certainly going to be a confusing and difficult chapter.

However, pre-legalization, Canadian drug policy had some exceptions particularly with regards to safe-injections sites like INSITE (Fafard, 2012, 906) and for medical use of cannabis in accordance with the *Access to Cannabis for Medical Purposes Regulations* (Health Canada). The legal exemption of using cannabis for medicinal purposes has had an impact on the municipal government-level. The City of Vancouver’s existing zoning regulations regarding the growing number of medical marijuana dispensaries arose out of a lack of a clear or transparent regulatory framework from the Canadian federal government. As such, Vancouver had to adopt regulations that were partially (and explicitly) based on the regulatory frameworks of the US states of Washington and Colorado (specifically with regards to appropriate distances between marijuana dispensaries and other types of property) (Vancouver, 2015). The legalization of marijuana will present questions for cities regarding how they should respond or regulate commercial activities on marijuana products that are used *recreationally*.

Like in the end of alcohol prohibition, local area governments still have the authority to enact measures of control (such as bylaws) around such products and activities associated with them (Locke, 2013). Prior to legalization, some BC municipalities already had bylaws on the books that regulate properties and businesses that deal with controlled substances like marijuana (Corporation of Delta, *Council Report*, August 7, 2003). There is comparatively little academic work on this subject as opposed to the criminal law aspects of drug liberalization. Thus, it is useful and timely explore how cities regulate controlled substances and how they decided upon the bylaws they enacted.

When discussing the regulation of drugs, it is important to acknowledge and address the meaning behind the “War on Drugs.” The “War on Drugs” is a term first used by US President Richard Nixon to describe the global, militarized effort to enforce strict prohibition against the production, transportation and consumption of certain narcotics and psychoactive substances—with a focus, ideally, on the production and transportation side of the issue (Lopez, 2016). Domestically, the “War on Drugs” calls for national governments to provide increasing assistance (this can include funding expenditures, equipment and more flexible laws) to local and regional police to intensify enforcement efforts (police departments in the US are incentivised to enforce prohibition under threat of losing funding). Internationally, national governments (notably the US government) provide aid to the governments of other countries in enforcing prohibitionist policies there—particularly military assistance to Latin American countries like Colombia where drug trafficking has allowed organized crime to establish their own armed forces or militias (Lopez, 2016). The “War on Drugs”, however, has had very problematic results. These include (but are not limited to) drug production expanding to other regions (rather than being reduced), disproportionate application of the law on communities of colour and leading to sharp increases in violence by organized crime (in some countries, this has led to major refugee crises) (Lopez, 2016). From a simple series of *national* efforts, drug prohibition is now manifested as a world-wide system held up by international treaties (overseen by the United Nations’ International Narcotics Control Board) in which every country on Earth is a signatory or is in legal compliance with one or more of said treaties (Levine, 2003, 145). Modern national (US) drug prohibition’s origins lay in the 1920s when the main focus for the US government was stamping out alcohol (Levine, 2003, 146).

However, national and multinational prohibition efforts against drugs and alcohol have existed in North America and Asia for centuries, primarily against opium. The Chinese Empire (Qing Dynasty) had enacted numerous bans on recreational opium throughout the 19<sup>th</sup> century in response to massive rates of addiction. Like what happened later in the 20<sup>th</sup> century, this led to the rise of organized crime (notably by members of the Triad Society), smuggling operations and familiar public debates led by legalization advocates (Rowe, 2009, 166-167). Eventually, concerns over opium-use grew in the West, leading to a proliferation of local bans on opium smoking (such in San Francisco in 1875) and eventually national regulatory regimes such as the 1914 *Harrison Narcotics Act* in the US (Windle, 2013, 1187-1188) and various statutes in 1920s Britain that had resulted from the 1926 *Rolleston Committee Report* on opium addiction and pharmacy control (Bennett, 1988, 301-302). In Canada, drug laws and drug “scares” had their origins in period of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries and were influenced by colonialism and racism (where regulation of First Nations people and Chinese immigrants was the focus) as well as from temperance and anti-opiate movements in society. Substance use regulation began as early as 1886 when amendments to the Indian Act established prohibitions against buying or possessing alcohol for First Nations people (which did not prevent them from doing so and led to otherwise unnecessary arrests and imprisonment) (Boyd & Carter, 2014, 43).



The arrival of Chinese migrants<sup>8</sup> led to the next phase of drug control: opium. Institutional anti-Asian sentiments of the white settlers coincided with mass fears of opium smoking spreading to white populations as well as racist fears of white women being victimized by “evil” Chinese men (Boyd & Carter, 2014, 45). These sentiments, fomented by media, labour, police and local politicians, eventually led to civil disorder such as Vancouver race riots of 1887 and 1907. Future Prime Minister Mackenzie King, visiting BC to settle damage claims of Chinese and Japanese residents caused by the 1907 riot, was contacted by the Anti-Opium League. King considered investigating prohibitionist policies—the hope was “to get some good out of this riot” (Boyd & Carter, 2014, 45).

Mackenzie King’s report on riot compensation was accompanied by another: *The Need for Suppression of the Opium Traffic in Canada*—which outlined some of the physical and moral (emphasizing Canada’s responsibility as a “Christian” nation) harms of opium smoking and recommended outlawing sales, production and imports of opium in order to protect the citizenry. King’s recommendation resulted in the *Opium Act* of 1908—notable for its passing with little parliamentary debate or pharmacological evidence or testimony to support it. It was also racially biased. The *Act* regulated smoke-able opium—an activity linked mostly to Chinese men—but not so much the elixirs and patent medicines associated with white settlers (Boyd & Carter, 2014, 45).

However, it was not until 1923 that cannabis was criminalized in Canada (like the *Opium Act*, it was done without debate). However, at the time, cannabis was not yet a popular drug in either Canada or the US (Boyd & Carter, 2014, 51). The demonization of cannabis use outside of the moral reformer discourse emerged in the 1930s. During the Great Depression there was a time of an increased influx of Mexican labourers—whom were unfairly demonized in the press for being associated with the introduction of marijuana-use amongst Americans and Canadians (Boyd & Carter, 2014, 52-53). Moral reformers and the media in the US and Canada identified marijuana use as threatening the middle-class society and youth (which conveniently was also experiencing demographic shifts from Hispanic North Americans). As such, it was the 1930s that saw increased efforts by law enforcement in both the US and Canada (at times these efforts were in direct coordination as was the case with the US Federal Bureau of Narcotics and the RCMP’s Narcotics Division operationally and policy-wise) (Boyd & Carter, 2014, 52-53). The years leading up to the 1960s saw an increase in the popularity of cannabis-use alongside increasingly sensationalist media reporting on the dangers of the drug. Indeed, prior to 1961, arrests for marijuana possession in Canada were considerably rare: no arrests were made until 1937 (which saw 4) and would remain stable in number until 1958 (14 people) and then more in 1960 (21 people) (Boyd & Carter, 2014, 55).

In 1961, Canada enacted, under pressure from law enforcement officials, the *Narcotic Control Act* which became notable for being one of the harshest drug laws of

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<sup>8</sup> First began during the 1858 gold rush in British Columbia but contributed to also by the construction of the Canadian Pacific Railway post-1867 (Belshaw, 2016, 274, 251); Japanese immigration began around the 1890s (Belshaw, 2016, 254); immigration from South Asia began roughly around the 1910s (Belshaw, 2016, 256).

any Western country<sup>9</sup>. As the 1960s progressed, cannabis-use increased in popularity and became associated with the growing counterculture movement—combined with increasingly harsher laws, this resulted in a substantial increase in arrests in both the United States and Canada; coincidentally accompanied by increased media hysteria around the drug in both countries (Boyd & Carter, 2014, 55-57). Changing attitudes and concerns around marijuana-use during the late 1960s to the late 1970s would see a temporary relaxation of anti-drug laws. In 1969, Canada gave its judges more discretion in their ability to impose lesser penalties for simple marijuana possession (but offences relating to trafficking would continue to be harshly punished) (Boyd & Carter, 2014, 58-59).<sup>10</sup> National cannabis prohibition and cannabis regulations enforcement in Canada have continued to evolve as such to the present day—but hardly in a situation free of international influences.

Not unlike modern multinational efforts, this emerging trend of domestic prohibition coincided with the US government lending support for China's opium ban and imposing similar bans on the Philippines (then a US colony) (Windle, 2013, 1187). A formal multinational effort to prohibit opium use began as early as 1909 at the Shanghai Opium Conference which was led and pushed for by the United States and included 13 other countries. Canada's Mackenzie King was in attendance and had established himself and Canada as pioneers in drug control (given his 1908 *Opium Act*). Most notably, King was quoted as saying that US delegations to the Conference had admitted to copying Canadian legislation in drafting drug suppression statutes. The Shanghai Conference laid the foundations for the 1912 (first) International Opium Conference in The Hague where the first international drug control treaty—the *International Opium Convention*—was signed by participating countries. Despite the Canadian legislative influence, leadership in opium control would be a predominantly American effort (applied largely to East and South Asian nations) (Boyd & Carter, 2014, 46-47).

Since the early 1980s there has been an increasingly militarized response to drug production and use, particularly in the United States (indeed, President Ronald Reagan made curtailing drugs a “national security” issue) (Bagley, 1988, 189). In this aggressive, modern policy regime, if a government sought to address drug consumption they have little room for any other response since, like the *18<sup>th</sup> Amendment* and *Volstead Act* limited US states' responses to alcohol, the 1961 *Single Convention on Narcotic Drugs* similarly restricts reform attempts by national governments (breaching or withdrawing from this treaty opens countries to severe sanctions) (Levine, 2003, 150).

The role of bylaws and municipalities play in prohibitions influenced by the War on Drugs has not been studied to the same extent as researchers have done for federal and state/provincial/territorial governments, police, schools or health authorities. Nor has there been much study of the reasoning processes behind the enactment and

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<sup>9</sup> The *Act* reinforced the (socially-constructed) notion that use, users, producers and sellers of drugs was naturally criminogenic; that same year, Canada signed onto the *International Single Convention on Narcotic Drugs* (Boyd & Carter, 2014, 56).

<sup>10</sup> The United States, in contrast, would see a period during 1973-1978 of decriminalization on the state-level only to revert back to criminalizing marijuana possession as public opinion began to shift again at the end of the 1970s (Nadelmann, 1998, 122).

enforcement of such bylaws. As such, Delta is an interesting place to study in that its municipal Council have been active in passing bylaws and fighting court cases that are clearly directed at addressing marijuana-related activities. Delta's location in Metro Vancouver and its proximity to Washington State (regions known for liberal attitudes towards cannabis; Washington legalized it recreationally in 2014) make studying this municipality's political activities even more intriguing. In order to situate my case study in the broader context of drug regulation, I will first discuss literature related to local government and narcotics regulation.

## **Literature Review**

### **Critique of local laws and the War on Drugs:**

For this paper, I have drawn from socio-legal studies, political and health sciences literature to examine the broad range of studies and documents in the area of drug policy and regulation. In this section, I will first examine the literature relating to the critique of legal mechanisms and local/municipal regulation. In the second section, I will approach laws from a class-based and intersectional perspective. In the third section, I frame local laws within critical discussion of the discourse of the War on Drugs.

It is imperative to first define bylaws and examine how they operate. Valverde, a leading scholar on municipal law, acknowledges that municipal laws govern, land and its uses or activities—not necessarily or directly the people on it (Valverde, 2005, 35). Municipal statutes regulate a space's access, control, "enjoyment of" by people, its division and its material contents like buildings and structures (Valverde, 2005, 36). Interference with any of these spatial characteristics (such as the "enjoyment") unreasonably can be considered "nuisances" and subject to legal consequences (Johns, 2005, 65). Under this system, for example, towns can forbid activities such as smoking too close to open windows or skateboarding in a shopping centre. Localities also use bylaws to regulate what has been termed locally unwanted land uses (Németh and Ross, 2014, 6). Indeed, much of the literature on local law is critical of certain local government uses of bylaws and some draw influence from critical or structural theories (Valverde, 2005, 35).

### **Local Legal Mechanisms & Division of Powers in Canada**

The function and effect of local laws<sup>11</sup> and the legal structures behind them have been criticized by several socio-legal scholars. Notably, the legal structure that bylaws operate under is inherently flawed with limited powers granted to local bylaws that forces governments to operate in a manner that appears to be oppressive on one hand or ineffective on the other. Scholars focus on the structure and vulnerabilities of local laws. Laws may be big and oppressive, but that is due to inherent flaws in the legal system itself. These flaws, in turn, affect the power of local laws and regulations to carry out their objectives. Canada's federalist Constitution grants and divides certain sovereign powers to the Federal and Provincial governments (*Constitution Acts, S. 91-95*). Municipal, local or city levels of government lack these powers and are legally subordinate to the Provincial and Federal governments—thus limiting their legal means and authority to effectively address social problems or matters of social justice. Zoning

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<sup>11</sup> Bylaws/ordinances/regulations created by municipal governments.

and land-use regulations are thus the only tools that many local governments have to respond to social issues (Ranasinghe and Valverde, 2006, 327). Additionally, international laws and treaties, like the aforementioned United Nations 1961 *Single Convention on Narcotic Drugs*, restrict reform attempts by national governments (Levine, 2003, 150).

Given the restrictive legal hierarchy that municipalities must operate in, municipalities are limited in their choice of actions. Actions which, consequently, can be interpreted as oppressive towards lower-income and/or marginalized groups of people. In *Allard v. Canada*, the Court noted issues with municipal bylaws in addition to the *Marihuana for Medical Purposes Regulations*' unconstitutionality (where plaintiffs' *Section 7 Charter* rights involving the right to life, liberty and security of the person were violated). Particularly, the judge noted that bylaw compliance inspections presented privacy issues for medical marijuana patients (*Allard v. Canada*, 2016). Essentially, as this case demonstrated, the lawful and dutiful enforcement of local government ordinance compliance can lead to violations of civil liberties of vulnerable groups.

Likewise, municipal processes attempting reform the system have similar structural flaws. Although local governments technically are open to public input on decision-making, not everyone is able to effectively utilize their rights or properly advocate for themselves. For example, municipal land-use laws are directly tied to ownership of property and the rights of landowners. As such, landless persons like the homeless cannot argue for or make claims on their shelters based on rights. At the same time, public consultations themselves operate under the presupposed assumption that all concerned parties to an issue are equal in status and stature (Ranasinghe and Valverde, 2006, 329). Effectively, the "right" to the city's space and land is only a right for some, not everyone (Mitchell, 2003, 189). Scholars like Mitchell views local laws, particularly in the present context, as a means (although not explicitly) for privileged groups in society—whom are tied to the new globalized, "symbolic" economy which values aesthetics—to rearrange and redefine public spaces as being only for those whom own property and that this arrangement is the natural order of things (Mitchell, 2003, 190-191).

Other researchers (Ranasinghe & Valverde, 2006; Németh & Ross, 2014) point to the system's flaws at *procedural* level. A frequent criticism is that municipal law processes get bogged down in delays and complexity that can stall attempts reform statutes and policies for years—as was seen in the City of Toronto's homeless shelter initiative in the early 2000s (Ranasinghe and Valverde, 2006, 339). At times, delays in the municipal process can be the impact of the phenomenon of NIMBYism (which will be discussed later in this paper).

Lastly, a systemic issue identified in the literature is that many local and regional policy processes are led from the top-down. Some government bodies charged with addressing an issue do so with little contribution from planning staff—whom may be more aware of socio-economic issues relevant to a case (Németh and Ross, 2014, 17). As a hypothetical example of this trend, a governing mayor and city council is in power that is staunchly against supporting a homeless shelter because they believe it discourages the homeless from working. Planning staff, consisting of urban policy and

homelessness experts, advises supporting the shelter because there is evidence of it helping the homeless stay employed. Despite the evidence, the mayor and council move against the shelter because, at the end, it is their choice whether to follow the advice of their subordinates. It is not unreasonable to conclude that the legal mechanisms and structures that local governments operate under are prone to issues that might hamper efforts to either carry out its mandate or reform itself. Even if a mayor and city council were elected on a Marijuana Party slate, the Canadian legal structure would restrict them from legalizing or decriminalizing cannabis. In fact, they may (inadvertently) be forced to take actions supporting War on Drugs efforts.

### **Class Conflict & Local Laws**

Bylaws and local regulations have been highlighted in the literature as manifestations of class and cultural conflicts, and can be understood as oppressive. Indeed, much of the literature on municipalities and local governance focus on issues relating to class-based conflict (particularly low-income populations and racial and ethnic minorities). In particular, bylaws have been shown to be instruments of (racialized) class-based oppression negatively affecting low-income populations. Additionally, bylaws have also come to represent cultural battlegrounds over meaning (for instance, ideas of property rights between First Nations cultures, settler Anglo-Canadian culture and recently immigrated Asian cultures). This section is divided into two subsections that focuses on local laws: as contributing to or manifesting as oppression and that as a battleground over meaning.

#### **Local laws as oppressive**

Local statutes negatively effecting the homeless are a frequent example cited by scholars in this field. Cities that enact local ordinances aimed at governing “disorder” in the urban landscape—often with a crime-reduction strategy in mind—all too often do so while ignoring underlying social issues (such as lack of affordable housing which is a source of, for example, the presence of homeless people in public spaces) (England, 2008, 3).

Other scholars identify local statutes as functioning to perpetuate oppression based on race and ethnicity. Bylaws in Seattle, notably SODA (“Stay Out of Drug Areas”) were found to have excessively targeted African Americans as potential drug trafficking suspects. The statute permitted police to remove from certain areas people whom seemed “out of place”—given that so few African Americans live in Seattle at all automatically makes them appear “out of place” in their area (the American Civil Liberties Union released statistics showing that three-quarters of SODA arrests were African-Americans) (England, 2008, 207).

Likewise, SOPA’s (“Stay Out of Prostitution Areas”) effect on sex workers was pushing them further into hiding—increasing their vulnerability to predatory violence (Herbert and Beckett, 2009, 18-19). The prohibition of people from public areas has ironically led them to be prohibited from the very sites where social services (such as bathrooms, meals and clothing donations) to assist them are located (Herbert and Beckett, 2009, 19). How and whom enforces local statutes, of course, varies. In the case of Seattle and its SODA ordinance, certain areas of the city were made to be off-

limits to or restricted from being patronized by people with past drug convictions. Heavy police presence and surveillance in these areas allow known persons breaking this order to be arrested by police (England, 2008, 202). Some of these arrests can be further justified as enforcing compliance of these individuals to their probation or parole duties (Herbert and Beckett, 2009, 2).

A significant amount of the literature on local law and class/culture oppression has been based on qualitative methods like interviews and storytelling (Mitchel, 2003; England, 2008). However, researchers using quantitative methods have arrived at similar conclusions to their qualitatively-focused colleagues. In Denver, for example, studies were conducted on how and where local authorities chose to permit businesses described as LULUs or “locally unwanted land uses” (Németh and Ross, 2014, 6). The authors highlighted that an overwhelming concentration of LULUs were in two major areas identified by census tracts as being less affluent or socio-economically disadvantaged—particularly those with high proportions of Black, Hispanic, Asian and Native residents (Németh and Ross, 2014, 6). The Denver example demonstrates evidence of racial and cultural oppression.

Furthermore, residential property owners exercise influence over decision-making regarding land-use and relevant statutes (Ranasinghe and Valverde, 2006, 328). The phenomenon of NIMBY or “not in my back yard” (Németh and Ross, 2014, 7) is a good example of the power of homeowners in municipal politics. City authorities in Seattle were tasked to decide on the location of social services agencies working tandem with their punitive policing measures and needed to keep in mind and avoid the rampant NIMBYism in their jurisdiction (England, 2008, 209). Similarly, a 2002 Toronto homeless shelter initiative involved NIMBYism. Then city councillor Jack Layton identified certain community groups, especially more affluent citizens with NIMBY sentiments, that subverted the needs of Toronto’s homeless population (Ranasinghe and Valverde, 2006, 338). This mobilization was founded upon fear and anger: fear that the homeless would cause neighbourhood disorder and anger that—allegedly—the City of Toronto’s review process for the shelter was made without consultation (Ranasinghe and Valverde, 2006, 337).

For the most part, land-use laws function to protect property values and minimize the impact that “undesirable” land-uses have on property values (Ranasinghe and Valverde, 2006, 327). Local laws and regulations have ideological underpinnings to them and are meant to displace scrutiny and blame for underlying social problems (Mitchell, 2003, 178). Often, the ideology that is cited as the foundation for modern-day oppressive measures is neoliberalism—a right-wing reaction to socially progressive movements and policies formed in the 1960s (Mitchell, 2003, 164). It is not unreasonable to think that a prohibitionist/War on Drugs ideology would influence the development of local land-use regulations to further its cause (future researchers might be well-advised to explore these links further).

### **Municipal bylaws and disputes over meaning**

Scholars like Nicholas Blomley focus less on municipal legislation themselves and more so on the underlying ideas—particularly of property and boundaries—that municipal laws tend to govern. He identified differences in how one treats property

between cultures, based on a study in a Vancouver neighbourhood. Asian respondents appeared to have more non-individualistic (collectivist) attitudes towards property compared to their Anglo-Canadian neighbours (Blomley, 2004, 95). The right to build fences along one's property also meant different things between these two groups: a Chinese woman was offended (she understood this to be severing neighbourly ties) when her white neighbour decided to build a fence between their properties. The white neighbour was shocked to find out his neighbour felt this way. Thus, demonstrating a sharp cultural contrast in the meaning of property rights between neighbours (Blomley, 2004, 98).

Blomley states that "[t]he power to define a place can often mean the power to decide its destiny" (Blomley, 2002, 574). Conflicts over the meaning of property also include colonial relationships between Western European societies versus North American Aboriginal societies. In Canada, Western European philosophical notions favor the view that land (in the state of nature) which is not enclosed and given over to productive use (such as industry or cultivation) is seen as "waste" and what or how the land has been used before is irrelevant to its value (Blomley, 2002, 561). Indeed, Western philosophical views of space view simply land as "an empty vessel existing prior to the matter which fills it" (Blomley, 2016, 251).

Aboriginal views of land-use (characterized as being mobile and communal) are viewed through the Western lens to be open to exploitation (Blomley, 2002, 567). Aboriginal, specifically the Coast Salish of Vancouver, notions of property and land-use are governed by seasonal use (temporary ownership) as a response to the ever-shifting availability of an area's resources. Western culture and law, conversely, require residents to be permanent and non-moving (Blomley, 2002, 566-567). Whatever the values of a dominant culture be, thus they serve to underpin and be foundational of the laws (and bylaws) put into place. The following quote effectively describes how class and cultural conflict impact laws regulating land: "The power to define a place can often mean the power to decide its destiny" (Blomley, 574). As such, should a dominating culture or ideology in an area define (in a prohibitionist tone) their community as intolerant of certain "outsider" activities and groups of people, it will define their area to exclude as such.

## **Discourse & the Drug War**

Much of the academic literature is critical of the various government drug policies that underpin the War on Drugs. There is also an increasing frustration within academia over the translation of academic scholarship around drug policy into effective legislative action by governments. Indeed, much of the literature highlights the role that ideological factors and morality politics play in the shaping of drug policy over the refined academic knowledge that has been accumulated and presented for governments (Fafard, 2012; Haden, 2008; Mosher and Yanagisako, 1991; Nadelmann, 1998). When there are successful changes in drug policy, it is almost always for the purpose of pragmatism and response to public pressure or brinksmanship (Levine, 2003; Fafard, 2012). Other critical discourse focuses on the ineffectiveness of drug policy and their failure to achieve their own goals (Bagley, 1988; Hughes and Stevens, 2010).

Some researchers argue that drug prohibition hampers research by preventing studies into these outlawed substances that could lead to better treatments for drug users and other diseases (Haden, 2008, 2). Others point to evidence that the rates of drug use are not affected by increasing punitive measures against drug use (Hughes and Stevens, 2010, 999). Indeed, even those few academics like Bagley and Nadelmann that don't necessarily oppose drug prohibition in principle take issue with the way it is being undertaken. For example, Bagley argues that far too much of the effort is being made towards strict, "supply-side" enforcement rather than more "demand"-oriented efforts including proper drug education, prevention and rehabilitation efforts (Bagley, 1988, 193).

Bagley highlights the role "realism" plays in the failure of drug prohibition. He notes that a realist paradigm holds that "nation-states are key actors in international politics" and that threats to the system are to be met with the full power of the state (Bagley, 1988, 195). However, this ignores the real role that non-state actors (like international market forces and commercial entities) play in nurturing the drug trade and that many nation-states are not willing to put in an effort to stamp out illegal markets (Bagley, 1988, 198). Furthermore, drug prohibition has been criticized as being useful for business, maintaining state control as well as providing excuses (usually aided by propaganda and demonization) for social ills and, otherwise unjustifiable, violent force (Levine, 2003, 147).

Regarding the involvement of political concerns or ideology in building drug policy and related laws as opposed to basing a public narcotics strategy on scientific data and scholarly work. There are many suggestions or direct assertions that political ideology of those in power influences the decision-making process of drug regulation and prohibition. Often these assertions are accompanied with frustration over the lack of scientific knowledge being utilized in the process.

A frequent example of this frustration is the issue of harm reduction—a model of drug control that aims to reduce harms (evidence-based and pragmatically-considered) created by drug use to individual users, families and society as a whole (Haden, 2008, 3). Harm reduction has been described in the literature as a radically tolerant and pragmatic approach to dealing with prohibition and drug use (Levine, 2003, 149). Likewise, others emphasize how drug prohibition itself can work better and more effectively by focusing on minimizing the negative consequences produced by it (Nadelmann, 1998, 114). Similarly, other research focuses on other concurrent attempts to impact the system of drug prohibition and criminalization—such as Drug Treatment Courts. Such specialized courts operate within the criminal justice system in response to drug use and emphasize drug users not as criminals but as patients suffering from the disease of addiction (Lyons, 2014, 291).

Examples of harm reduction strategies include providing clean syringes (to help reduce and prevent the spread of HIV/AIDS among users) and methadone. Furthermore, harm reduction strategies can cut down on the violation of civil liberties, keep non-violent offenders out of prison and stem disease epidemics resulting from strict punitive enforcement (Levine, 2003, 149). A frequently cited harm reduction effort is INSITE—the safe injection site (SIS) in the Downtown Eastside of Vancouver—



mentions or alludes to harm reduction goal. However, successfully implementing harm reduction strategies has required extensive lobbying, protest and aggressive pressure on public officials by both activists and harm reduction experts (Fafard, 2012, 908). Currently there are over 75 safe injection sites operating globally but the Downtown Eastside's INSITE is the only one in North America (Young, 2011, 87).

Other literature points to successful and beneficial de-prohibition efforts in other countries such as Portugal (which decriminalized many narcotics in July 2001). Positive changes in illicit drug use (down in key populations), deaths (down), drug profits (down), seizures (up) and other items as a result of decriminalization in Portugal were in contrast to its neighbours (Spain and Italy). Researchers were cautious on whether decriminalization itself or its implementation created such changes (Hughes and Stevens, 2010, 1017). Scholars stressed the importance of nuance in the discussion over drug prohibition and harm reduction as well as making policy decisions based on ethics as well as research (Hughes and Stevens, 2010, 1018).

Fafard notes that the distribution of scientific knowledge publicly may not be as effective on drug policy as one would hope (Fafard, 2012, 907). He asserts that a complex issue like drug policy is affected by political concerns (such as pragmatism) and differences in ideology more so than what is presented by science (Fafard, 2012, 909). For example, the creation of INSITE—a radical effort—was pragmatic and not necessarily scientific (they took inspiration from efforts in Switzerland) and health authorities applied for and received exemption from Canada's *Controlled Drugs and Substances Act* for this undertaking. However, a change in government (centrist Liberal to right-wing Conservative) saw a change in government ideology that sought to kill INSITE—no matter the science nor pragmatism over public health and harm reduction. The Supreme Court eventually ruled in favour of INSITE's exemption only on the grounds of individuals' Charter Rights; drug policy is otherwise unchanged (Fafard, 2012, 906).

Additionally, it has been pointed out that many state-sponsored messages published in support of prohibition and to get a fearful reaction from the public have directly and knowingly contradicted evidence from researchers (Haden, 2008, 6). This is compounded by the fact that scientific reports and recommendations have been repeatedly ignored by some politicians (Nadelmann, 1998, 121). In the face of this system, some academics argue for a system of drug policy based on "common sense, science, public health concerns, and human rights" (Nadelmann, 1998, 112). Others warn of the danger that a simplified and value-driven drug policy debate can have because policy based solely in political and moral values lacks the nuance and specifics provided by expertise (Mosher and Yanagisako, 1991, 314). Furthermore, moral arguments over drug prohibition have been challenged by researchers by arguing that a public health-based response ultimately best reflects society's moral values (Mosher and Yanagisako, 1991, 315). Moreover, the prohibitionists' moral arguments have been challenged by scholars such as Thomas Szasz on the grounds that a drug user has the right to choose to use drugs or not (he draws upon arguments from the assisted suicide debate) and that any sort of anti-drug action *must* be made by persuading the user to change of his/her own accord (Szasz, 1992, 161-162).

Thus, the literature on drug policy and Drug Prohibition suggests that there is a continuing struggle between knowledge on the issues and the politicians and bureaucrats that can translate and implement this knowledge into concrete public policy. Essentially, there seems to be a divide between what the academic literature advises to government and what policy is enacted by government. Most researchers appear to indicate more and more confidence in a change in public attitudes around drug policy.

Thus, from this literature, I view municipal bylaws both as tools for municipalities to participate in the larger War on Drugs as well as a means that oppresses or privileges certain classes of citizens over others. Similarly, I view municipal bylaws as imperfect tools since they are limited in their powers by higher levels of statutes and law. There is comparatively little work out there on the subject of marijuana as a municipal regulatory subject as opposed to the criminal law aspects of drug liberalization. Given the coming changes in drug policy, now is the time to look at how cities regulate controlled substances and how they came up with what they have enacted. Moreover, this paper aims to help fill this seemingly empty gap in drug, municipal law and socio-legal literature. Now I shall discuss the methods I used for this study.

## **Methods**

I conducted document and discourse analysis of relevant municipal records. This involved close examination of text and audio-visual records of municipal bylaw information and proceedings which took place from late January to early March of 2017. The research was conducted both at municipal archives (for the audio-visual component) as well as at home using access to Delta's online digital records database. These are records that few members of the public ever get a chance to see or even think about seeing despite technically being available for public scrutiny. As a Delta resident, I had the ability to reserve time and access these records that were related to my research interests.

Since I was using document analysis as my primary method, I examined various municipal records such as: internal emails, memorandums, Council reports (drafted by staff for members of Delta Council) and statements or quotes given to news media (where available) that might reveal latent justifications for such bylaws. In addition, I analyzed and documented direct statements made by Council members as some of these bylaws (specifically the *Controlled Substance Property Bylaw* and the *Delta Zoning Bylaw*) were being created or amended. During the research I discovered that the Corporation of Delta did not keep any written transcripts of their council meetings. Instead, they kept their records (from the 1990s and early 2000s) in VHS. Thus, in the absence of actual transcripts of proceedings, however, I viewed video recordings of Delta Council meetings and took hand-written notes.

There are particular reasons why I chose to use a qualitative documentary analysis for this study. For some of the subject matter, it is likely that many important individuals like councillors, planners and other city staff might have relocated to other jobs, retired, etc. since the early 2000s. Indeed, some city councillors referenced to later on in this paper, for example, have moved on to provincial or non-municipal politics. Even if they could be contacted, their memories of very specific policy discussions might

not be clear or fully accurate assuming they remember what happened at all—some might be hesitant to talk about what is still a controversial topic. Furthermore, qualitative documentary analysis also consists of audio-video content, allowing for the inclusion of more subjective data that one could also collect from interviews and allow for data that is more contextual. Subjectivities across time and place may differ for an individual being interviewed in the present versus who they were when they were recorded 15-20 years ago. Some documentary analyses allow for a clearer snapshot of the past than some interviews can (although recordings of interviews from the past could have provided helpful supplementary data).

Documentary analysis allowed for a broader range of information to be considered and given context that person-to-person interview might lack. Similar research has been conducted using document analysis methodology by numerous academics. Researchers conducted analyses on undergraduate health sciences' syllabi and study guides at a university in South Africa (Coetzee, Hoffmann, and de Roubaix, 2015, 390-391) to come up with their findings (which they found unsatisfactory application and education on human research ethics in the studied field). Likewise, investigative journalists are known to examine and publish findings on government documents that they have obtained via *Access to Information* or *Freedom of Information* requests made to government departments (Walby and Larsen, 2012, 32).

Before acquiring the videos, I examined the minutes of city council meetings and reports in order to find out the specific dates of meetings. However, according to the municipal clerk's office, video recordings of Delta Council meeting have not all been transferred to a digital storage media format (and were unlikely to be done so in an appropriate amount of time) and many thousands of hours of footage remain stored on their original VHS tape copies—of which these are the only known extant copies. Accessing these recordings was slowed by the fact that, at first, city staff were not sure where the tapes were stored and recommended that I also contact staff at Delta Cable, a privately-owned, local television provider which has recorded such proceedings for the city. However, the director (who had been director for the early 2000s recordings I was looking for) said that they did not keep their own copies from that particular era and advised me to check back with the municipality.

Fortunately, city staff contacted told me that they had managed to locate the tapes and we made arrangements to view their contents. However, the municipal clerk advised me of the possibility that not all potentially research-valuable meetings would have necessarily been recorded. She said that such executive or closed meetings were not available to the public and were unlikely to have been recorded on VHS or otherwise. I took this potential gap in information into account while conducting my examination.

Cognizant of the limited number of extant copies, I took extra care in handling these tapes and with attention to keeping them in working order for later use. Archive staff assisted me in being able to properly and safely view these video recordings by providing me with space and the necessary equipment. Initially there were issues in finding properly functioning equipment for viewing these tapes since use of VHS players are becoming more infrequent. Before acquiring the tapes, I examined the minutes of

city council meetings and reports in order to find out the specific dates of meetings so that I only required and played tapes that were relevant and reduced the unnecessary risk of potential damage or wear of unneeded tapes. Nevertheless, the quality of the recordings varied greatly as some of them suffered from poor audio and problems with the video feed (I suspect there were issues in the recording equipment since the player and tapes appeared to be in perfectly working order).

Most non-VHS recording data was collected primarily collected via access to publicly available documents including, but not limited to, official policy documents, city council minutes and others. Many of these are available electronically by searching of Delta's online, digital database known as the "Document Center" which is hosted on [delta.civicweb.net](http://delta.civicweb.net) (other municipalities in British Columbia are hosted on this network via their internet subdomain names). Information collection was also made through direct requests to the municipal clerk's office and visits to the local municipal archives.

The most important documents will be the *Controlled Substances Property Bylaw (CSPB)* and the *Delta Zoning Bylaw (DZB)* themselves, but these were the starting points from which related documents will be searched for. I was initially concerned that the web database may not have the necessary advanced search capabilities in order to narrow down categories such as the year of production. However, adequate search functions existed and were used accordingly. Searches of the municipal documents database involved inputting specific search terms such as "marihuana" (this term was frequently used by government and it became necessary to adjust my own language by spelling marijuana with an "h") and using narrowing search functions to dispose of documents that were either repetitive or not useful. Reports made by municipal staff to Delta Council were among the most useful documents as they contained information on the context and proposed ideas for the bylaws as well as specific examination of the bylaws as they were in development. Not all documents obtained were found to be relevant or useful to this research. Some documents were simply records of a document having been read or were internal letters/memos informing other members of the municipal staff that a bylaw has been adopted (with little to no other relevant information contained within them).

News articles relevant to my research were collected using a variety of methods: for news articles from the early 2000s (when print media was still more dominant than online content) I utilized news media search engines provided by the Kwantlen Polytechnic University Library—specifically the search engine Canadian NewsStream. For more current articles, simple Google news searches were used. In both of these methods, it was necessary to input specific search terms in order to find appropriate articles. For example, the following query, "(marijuana grow-ops) AND bylaw AND Delta", was entered—with full text and English-language options—in order to find newspaper articles that fit this specified category. Online news media had the advantage of being able to provide hyperlinks to related articles or source content that journalists were referencing.

The data analysis focused on two different bylaws representing two different categories of the regulation of marijuana: the first focused on a bylaw intended to address the phenomenon of illegal marijuana growing operations. This bylaw is called the *Controlled Substances Property Bylaw* of 2004 and analysis involved examining audio-visual recordings of city council meetings on the topic as well as with official

written documentation. The second section focused on a bylaw intended to regulate medicinal cannabis activities: specifically, the *Delta Zoning Bylaw* which, since it regulates land-use for virtually *all* categories in the municipalities, contains provisions specific to commercial activities involving the medicinal use of cannabis. Analysis of it involved examining documentation of its development and application (for which there are specific examples from both municipal databases as well as from the provincial judiciary).

Printouts were made of some documents so that any key observations can be made in pen, pencil and highlighter. By using physical copies, I was able to arrange and organize my time so that I could focus on one section and not get distracted by working on the other (I did this extensively while conducting my literature review). This is a personal organizational arrangement of mine that I find helps me organize time more effectively. Analysis of data involved note-taking and notes in the margins of the documents—the coding will open and be oriented more towards identifying latent content. Important sections or passages were highlighted and saved to be included in the final project draft.

Relevant court cases were accessed via the Kwantlen Polytechnic University Library's access to Canadian legal databases as well as through links provided in online news media articles (an ability that traditional printed media obviously lacks). Further information and commentary was also obtained through local news media (for instance, local newspaper *Delta Optimist*). Looking for information on the *CSPB*, I made an additional search for records post-2004 for the purpose of seeking information on challenges, amendments, enforcement and other relevant items made after the bylaw came into force.

Since this is information used in this research that is publicly available and in the public domain (created and published by a government institution) there can be no issue regarding any breach in research ethics. However, while research ethics is normally concerned with minimizing and/or preventing harm done to human subjects, there ought to be similar ethics discussions on records that are at heightened risk of loss or damage and are either extremely difficult or impossible to replace. The loss or damage of the medium results in the information becoming lost. Such information is the common property of all citizens whose ownership functions to hold their elected officials accountable and being able to make informed democratic decisions based on this information. Therefore a study like this one is needed to expand the field of research ethics to include provisions for more collective concerns—minimizing harms to individual research subjects but also minimizing harm to culture, society and institutions of democracy.

## **Research Findings**

There are two bylaws extant in Delta that address the production and manufacture of marijuana. One is the 2004 *Controlled Substance Property Bylaw* (or *CSPB*) which acts under definitions of the federal *Controlled Drugs and Substances Act* (*CDSA*) (*CSPB*, 2004, 2) and includes the following prohibition: “No person, owner or occupant of property shall cause, permit or allow any property to become or remain a place for the manufacture, trade, use, sharing, sale or barter of a controlled substance” (*CSPB*, 2004, 3). The bylaw includes provisions allowing for municipal enforcement

inspection, cutting off of utilities and monetary penalties (CSPB, 2004, 3-6). The financial disincentives introduced specifically were fines of \$5000 per day of continued non-compliance. The primary activities that the CSPB regulates are clandestine marijuana growing operations—targeting, in particular, the rental property owners on whose property activities take place (Corporation of Delta, 2004, pp.2-4, Attachment B). The official purpose behind the CSPB is as follows:

“WHEREAS the Community Charter as amended, provides that a municipal council may by bylaw:

a) regulate, prohibit and impose requirements for protecting and enhancing the well being of the community relating to nuisances, disturbances and other noxious or offensive business activities; b) provide for the recovery of costs incurred by the municipality in effecting compliance at the expense of a person who has failed to comply with the bylaw” (*Delta Controlled Substance Property Bylaw No. 6200, 2004, p. 1*).

The use of marijuana or cannabis for medicinal purposes may be not be prohibited (as per the *Access to Cannabis for Medical Purposes Regulations* of the *Controlled Drugs and Substances Act*) but Delta’s use of municipal zoning laws effectively enforces a prohibitionist agenda. The second bylaw in this study is the *Delta Zoning Bylaw No. 2750* or *DZB*. This bylaw, works in conjunction with other municipal ordinances (such as those regulating business licenses), as it regulates and enforces other aspects of marijuana prohibition. Specifically, this bylaw (No. 2750) contains provisions restricting and prohibiting (commercial) land-use within the boundaries of the Corporation of Delta for the purposes of *medical* marijuana manufacture and distribution. I studied these bylaws in order to search for the justifications or reasoning processes behind them as well as what sort of impacts (class, legal, economic or otherwise) that they have had on the community.

The ability to for the *Delta Zoning Bylaw* to regulate land-use with regards to medicinal marijuana was made possible through a bylaw amendment (*Bylaw No. 7313*) which prohibited the use of land, buildings or structures for the growing, cultivations, drying, testing, packaging, storage, distribution and/or the sale of marijuana in all zones with the exception Agricultural Land Reserve (ALR) where it does not apply (Corporation of Delta, *Memo*, 2014, Attachment A, 2). This amendment was done by adding new definitions to the *Part II General Interpretations* section of the *Delta Zoning Bylaw* (eg. “Medical Marihuana Production”, etc.) and under *Part III, Operative Clauses* explicitly prohibiting, under the sub-heading “Prohibited Uses in All Zones”, “Production of Medical Marihuana” and “Medical Marihuana Research and Development” (Corporation of Delta, *Council Report*, 2014, 2-3).

The amendment to the *DZB* (amendment No. 7313) initially came with a sister regulation—7314—that was to prohibit medical marijuana production inside of the Agricultural Land Reserve but was denied for reasons I will discuss later at length (Corporation of Delta, *Council Report*, 2014, 2). However, this denial as well as the wording of *Bylaw 7313* did open a loophole for medical marijuana production provided that, on the Agricultural Land Reserve, the property where production would take place

be classified as a Comprehensive Development Zone (Corporation of Delta, *Council Report*, 2015, 1). As such, any proposed medical marijuana production facility would require application to Council for a site-specific rezoning amendment (Corporation of Delta, *Council Report*, 2014, 4).

In conducting my research, I explored justifications used by members of local government to support these sorts of marijuana-restrictive bylaws and related legal activities enacted by the Corporation of Delta (as noted in the below sections). Using strategies I mentioned earlier in the methods section of this paper, I searched for the informal/latent justifications, reasoning and thought processes found outside of the formal justification (that is, the *official* reasons) and the announcements of them that one can read in official municipal statements and from the bylaws themselves (as well as in the minutes of the meetings themselves).

### **Bylaws for illegal grow-ops**

I watched and researched the meetings that involved the *CSPB* proposal and enactment since they are really the earliest bylaws in Delta that seem to deal with the subject of marijuana—specifically with the wave of marijuana growing operations raids of the early 2000s. In researching this bylaw, both pre- and post-enactment, themes of Council professionalism, frustration and regional tension, and issues requiring amendments to the bylaw.

#### **i. Professionalism**

One particular topic of discussion that came up repeatedly in the *CSPB* proceedings in Delta Council was the idea of using these prohibitionist bylaws as a means of generating a regular income or as a cost recovery mechanism for drug law enforcement operations conducted by Delta. However, from my observations (of video content) there seemed to be a noticeable difference in how members of council (which included Mayor, councillors and some of their staff) treated the content as serious. It is clear that some councillors took the matter of bylaws as a mechanism of drug law enforcement more seriously than others. For example, Cllr. Guy Gentner and Mayor Lois Jackson had an uneventful discussion regarding grow-op home seizures, provincial police board jurisdiction and proposing that city staff draft a report on federal drug legislation. Fellow Cllr. Scott Hamilton seemed to take this discussion down a more comedic road. Indeed, at two different meetings of Delta Council, Cllr. Hamilton made comments that quickly became jokes about the rather serious subject at hand. His first comment in June 16<sup>th</sup>, 2003 meeting went as follows: “Given new sophistication and upscale nature of grow-operations these days. Some of the people are setting up in \$3/4 million homes—It might be a whole new revenue source for us. So....” Cllr. Hamilton then laughs and is followed by the rest of Council in laughing as well—to which Mayor Lois Jackson replies somewhat nervously: “Be careful what you wish.” (Adlem, *Regular Meeting*, 2003).

Cllr. Hamilton made this seemingly careless comment again at the September 8<sup>th</sup> Council meeting where he goes: “It could be a great revenue source, you never know” after which he laughs and smiles. But unlike the previous meeting, Mayor Jackson was quick to correct the councillor as to the seriousness of the subject. It is disquieting to think that in the drafting stage of bylaws containing very real financial consequences

some members of a city council might take this process lightly. Even more troubling is the implication that such a bylaw might be considered as a regular revenue source for a city. For this to be a *regular* source of revenue would necessitate the continuing existence of clandestine marijuana grow-ops being set up in residential neighbourhoods and keeping them at risk—completely negating an otherwise prohibitionist statute's *raison d'être*. Likewise, the aforementioned 2006 evaluation of the CSPB showed an overall negative decline in the number of marijuana growing operations detected and responded to by enforcement officials via non-compliance notices (Corporation of Delta, *Council Report*, 2006, 2-3)—further putting into question the long-term viability of this as a municipal revenue source that Cllr. Hamilton seemed to imply.

In these proceedings there are also examples of rhetoric that appears oriented in favor of War on Drugs policies and attitudes. In the Delta Council meeting on June 16<sup>th</sup>, 2003, Cllr. Guy Gentner asks Mayor Lois Jackson for her comment, on the basis of her being chair of the police board, on a proposed report from staff on municipal implications on federal drug property confiscations. She states that Delta has a “zero tolerance level relative to [marijuana] grow-operations” (Adlem, *Regular Meeting*, 2003). In the Delta Council meeting on September 8<sup>th</sup> later that year, Cllr. Hamilton, when discussing previous bylaw fines imposed by the neighbouring City of Surrey in their drug-control bylaws, he noted that the average \$1500 fine for property owners in violation of the ordinance seemed “a little light” and considered the idea of increasing that amount for their own bylaw (Adlem, *Regular Meeting*, 2003).

In a consultation meeting on February 9<sup>th</sup>, 2004, Delta Police Chief Jim Cessford made a surprising comment on the proposed *Controlled Substances Bylaw*:

“Unfortunately, and I shouldn’t say unfortunately, I need to say that the driving force behind this particular bylaw is the planning department and I’m very much in support of this and it’s a great idea. I wish we had thought of it ourselves. I like to think we’re pretty proactive with things. But they were on top of this” and he described this proposal as a “huge victory” (Adlem, *Regular Meeting*, 2004).

Cessford also discussed how his department had been dealing with the issue of marijuana grow operations during the regional Operation “Bud-Out” and the risks involved in order to “take these things down”. Despite the casual use of paramilitary-style language in discussing counter-narcotics operations, the Chief, in reference to the reduced number of grow-ops found since the start of “Bud-Out” (from over 200 to less than 25), made a surprising remark that some of the grow-ops police had raided “weren’t that active” when they were found (Adlem, *Regular Meeting*, 2004). The casual use of austere and militant War on Drugs-style rhetoric in the development of the CSPB might impact how seriously members of municipal council will discuss potential outcomes of the bylaw, outcomes that could have serious human and financial consequences to those involved should the bylaw not be enforced with due care.

## **ii. Municipal Frustration & Regional Tensions**

Through analyzing council meetings footage, there were indications of dissatisfaction and frustration on the part of members of Delta Council in regards to higher levels of government (federal, provincial and the judiciary). In addition, there was evidence of regional tensions. On September 8<sup>th</sup> 2003, Mayor Lois Jackson responded



in a disciplinarily manner to Cllr. Hamilton (who had joked about cost recovery of police drug enforcement operations being a new revenue source), the Mayor gave this informative speech on the limited powers of municipal government: “We tend to forget at the local level that we don’t have any status...In dealing with the federal government, they deal with provincial governments. They do *not* deal with local governments. We are *not* entrenched in the Constitution. We are *not* a recognized local level of governance” (words italicized for emphasis) (Adlem, *Regular Meeting*, 2003). Her statement is related to her comments at the previous Council meeting on June 16<sup>th</sup>, 2003 where, on the subject of obtaining shares in the proceeds of crime, she stated that allocation of benefits were the responsibility of the BC provincial government. She further highlights problematic situation where money that ought to be used to assist local governments, whom are “going to the absolute “-nth” degree to protect the citizenry”, is going to other jurisdictions. She further indicated issues with fighting these problems in the court system “the way they are today” (Adlem, *Regular Meeting*, 2003).

In addition to simple frustration with Canada’s government superstructure, there appeared in the September 8<sup>th</sup>, 2003 meeting of Delta Council to be an underlying attitude of regional rivalry apparent to viewers (Gulyas, September 10, 2003, p. 5). At this meeting Jackson also shared with Council a “tongue-in-cheek” (her words) experience of hers at the 2000 Canadian Federation of Municipalities conference in Halifax, Nova Scotia. She reported that representatives of cities from the rest of Canada “didn’t know what we were talking about” when Delta and other BC municipalities discussed the topic of marijuana grow-ops. Mayor Jackson concludes her story with this remark:

“Quite interesting to note that now that Central Canada, Ontario, the Prairie Provinces and Quebec are experiencing large grow-operations—suddenly the federal government has taken some action.” (Adlem, *Regular Meeting*, 2003).

What is clear is that municipal government discourse of marijuana growing operations tend to exhibit underlying regional rivalries and alienation. Relevant to this tendency is a frustration with the overall structure of government authority, particularly when it comes to the ability (or lack thereof) of municipal/local governments to be recognized by federal authorities. Regional rivalries and feelings of alienation and frustration with governmental authority has both cultural (differences in *zeitgeist* and geographical inequalities) and practical (financial concerns and inequalities in power) origins.

### **iii. Continuous Evaluations & Amendments**

The 2006 evaluation of the bylaw by Delta city staff provides insight into the effectiveness of the bylaw as well as to unforeseen problems with the bylaw that necessitated amendments. On February 24<sup>th</sup>, 2006, two years after the *CSPB* was originally passed, the bylaw underwent an evaluation by the Corporation’s Community Planning and Development Department. The evaluation report noted that since the bylaw’s passing, 53 properties (27 in 2004, 20 in 2005 and 6 in 2006 before the review’s publishing) were issued non-compliance notices with 41 of them successfully meeting requirements for remediation (that is, becoming compliant with the bylaw so they can be re-occupied by potential tenants), 12 other properties had not remediated with the city. It

is important to note that only one other property was found to be in contravention of the bylaw. And, that property did *not*, in fact, have a grow operation on it (Corporation of Delta, *Council Report*, 2006, 2-3).

Corporation staff regularly visits non-compliant properties to ensure the notice remains posted and the building is unoccupied. They do not enter buildings without prior arrangements with owners and assess their occupancy based on residency indicators (such as lights, vehicles present, removal of “No Occupancy” sign, etc.) (Corporation of Delta, *Council Report*, 2006, 3). Inspection service charges include billings for regular and overtime pay for police officers involved in the relevant marijuana grow operation closure—about \$22,050 had been collected since the bylaw’s adoption (Corporation of Delta, *Council Report*, 2006, 4). However, inspection efforts had been hampered by unresponsive owners, purposefully inaccurate contact information, undeliverable mailing addresses and non-cooperation from owners (such as houses being boarded up to prevent inspection). Staff highlighted these barriers to bylaw compliance and stated they would report to Council regarding potential amendments to the bylaw (Corporation of Delta, *Council Report*, 2006, 3-4). Additionally, as late as 2014, amendments to the *Bylaw Notice Enforcement Bylaw* and the *Municipal Ticketing Information Bylaw* were required in order for bylaw inspectors and Delta police to be able to issue fines to non-commercial medicinal marijuana growing operations without the risk of lengthy, costly court processes (Corporation of Delta, *Council Report*, 2014).

This is important to my research in that it highlights potential, unintended flaws that even the most thoroughly discussed bylaw proposal can be affected by. Although bylaws, particularly those regulating controversial economic activities (such as cannabis-growing), are regularly and diligently subjected to evaluation and amendment, it is troubling know that such possibilities of thwarting the bylaws were not anticipated by staff or by Council.

## **Medicinal Cannabis and Zoning**

I read various council reports, memos and news items involving details of the *Delta Zoning Bylaw* provisions concerning medicinal cannabis-related businesses and commercial enterprises. It was here that I found documents relevant to two rezoning applications for businesses intending to establish facilities for the industrial production of medicinal cannabis on Delta’s Agricultural Land Reserve. Likewise, I examined news reports, memos and the Supreme Court of British Columbia case file on the WeeMedical medicinal cannabis dispensary in North Delta—a business enterprise that was attempting provide medical cannabis to eligible customers in the area and was ordered closed by the municipality or incur fines.

### **i. Production/manufacturing activity**

The *Delta Zoning Bylaw*, as mentioned in earlier, prohibits medicinal cannabis production outside of the Agricultural Land Reserve (ALR). Should an entity or business decide to establish medicinal cannabis production on the ALR, the municipality requires an application for rezoning to be made and approved (with appropriate feedback from the public). Delta Council opened discussion and feedback from local businesses, organizations and other members of the public for proposed projects involving zoning or business license applications (such as establishing commercial medical cannabis

manufacturing facilities in the Tilbury Industrial Park). The Document Centre contained several PDF files which included some of the emailed responses that the Corporation received. Two major medical marijuana production projects requiring rezoning applications were proposed to the Corporation of Delta by Canpacific Engineering Incorporated, for a business at 7331 Vantage Way operating under the subsidiary Delta Pharms Incorporated and International Herbs Medical Marijuana Limited (for a business at 1668 Foster's Way) respectively (Corporation of Delta, *Council Report*, 2015, 1) (Corporation of Delta, *Memo*, 2014, 2) (Corporation of Delta, *Council Report*, 2016, 1). It is here that one could suggest that prohibitionist responses affecting the decision-making process would emerge as a factor.

Unfortunately there was little material in Delta's government document database that discussed the Foster's Way application for an industrial marijuana production facility similar to the one proposed at the Vantage Way site. This is likely due to the Foster's Way medicinal cannabis production project being more recent. Information on the Vantage Way application for establishing a medicinal cannabis production operation, on the other hand, was more substantial and thus this case is the focus. A memorandum from the Director of the Community Planning and Development department was sent on June 17, 2014 to the Mayor and Council, in regards to the Vantage Way project, with attached public correspondence regarding proposed medical marijuana production facility. This memo was preceded by a report some weeks earlier on May 28<sup>th</sup> that summarized the contents of the memo. Only one letter out of eight from the public and business community was supportive of the proposed rezoning. The rest of the letters ranged in response from concern to outright hostility.

The May 28<sup>th</sup> report indicated overall concerns, reported by business owners, associated with an industrial medical marijuana facility. Specifically, they highlighted issues with odor, air quality reduction, potential criminal activity, employee safety and falling property values (Corporation of Delta, *Council Report*, 2014, 3). However, the report lacked the specificity or informality that the memo contained. In the memo itself, it was found many responses were not necessarily against the concept of pharmaceutical cannabis production but rather voiced oppositional concerns over the possibility of managing and regulating such a facility effectively. They regularly expressed concern over inventory control and frequently referred to fears of *unintended* crime and "misuse" (Corporation of Delta, *Memo*, 2014, Attachment, 3-4). Another based their concerns on the uncertainty of whether the facility would have the same type types of emissions controls found in heavy industry (Corporation of Delta, *Memo*, 2014, Attachment, 4). One such respondent even went so far as to clarify that they deemed the Delta Pharms owners themselves to be "men of character and trustworthy" (Corporation of Delta, *Memo*, 2014, Attachment, 3). A short letter by another business owner said simply that they "respectfully request" that the rezoning be dropped. That said, some letters (including the aforementioned) did not actually give reason or justification for their opposition (Corporation of Delta, *Memo*, 2014, Attachment A, 5, 9).

Other responses by Tilbury business owners contained statements indicating a more hostile skepticism. One respondent voiced their opposition to the project and wrote quotation marks around the word "medical" when referring to medical marijuana (Corporation of Delta, *Memo*, 2014, Attachment, 7) which seemed to suggest (stringent

government regulation and scientific research notwithstanding) that the whole concept of medicinal cannabis is inherently fraudulent. Another respondent stated that such a business would result in “lots of undesirable characters hanging around the area” (Corporation of Delta, *Memo*, 2014, Attachment, 6). A business owner that chose to remain anonymous disparagingly referred to the proposing as a “grow-op” and justified their stance stating: “I’ve heard nothing, but bad things about them and we certainly don’t want that type of activity within the Park! [sic]” (Corporation of Delta, *Memo*, 2014, Attachment, 8). Additionally, most of these responses (both mild and hostile) use, in some variation, the phrase “this *type* of business” (emphasis added) to refer to a medical marijuana enterprise.

## **ii. Retail and distributor activity**

Delta’s zoning bylaw has had negative legal and financial consequences for those establishing retail operations for medicinal cannabis. The provincial court case *Delta v. WeeMedical* was a specific example of bylaw enforcement being utilized as a means to regulate and minimize the presence of medicinal cannabis. In this case, the commercial enterprise being regulated is a medicinal cannabis dispensary in North Delta operated by the WeeMedical Dispensary Society.

In correspondence with the Corporation of Delta, WeeMedical appealed Council’s decision to deny their business license on several grounds with these most notable: their status and mandate as a non-profit society; they were following appropriate health, safety and patient privacy procedures; over 300 people had signed up indicating a local need for it; the lack of ease of accessing this medication; the hypocrisy of denying medicinal cannabis while permitting tobacco and alcohol; they did *not* keep any cannabis products on the premises after-hours; and the fact that the only *legal* method of obtaining medical cannabis is by Canada Post from licensed producers. Critically, they argued that the zoning law definitions of “Medical Marihuana Production” and “Medical Marihuana Research and Development” were not applicable to WeeMedical as they only operated as a retail-level intermediary between patient and producer. WeeMedical gave a final appeal on the grounds that the alternative to their existence was to put patients in danger by purchasing from criminal sources and that the changing legal landscape in Canada necessitates Delta to act in a progressive manner towards medicinal marijuana (M.J. Liu, business communication, May 12, 2016).

The Property Use and Compliance Department reported back to Council 6 days after WeeMedical filed its appeal. They recommended that Council uphold its decision to deny their business license and continue to fine the applicant for not ceasing business operations (Corporation of Delta, *Council Report*, 2016, 1). This decision was made on the basis that the Corporation does not issue business licenses for unlawful activities (for which they refer to the *Controlled Drugs and Substances Act of Canada* as foundation). They clarified that definition of “Medical Marihuana Production” found in the *DZB* included the use of a property and/or the buildings on a property for storage, distribution or sale of medicinal cannabis. Property Use and Compliance also noted that the WeeMedical Dispensary Society had not obtained (under the *Marihuana for Medical Purposes Regulations*) appropriate licensing from Health Canada.

There was also the issue of the WeeMedical facility being too close in proximity to a nearby pharmacy (Naz's Pharmacy), the *Delta Zoning Bylaw* also prohibits drug stores, polyclinics and pharmacies from being less than 400 metres apart (WeeMedical and Naz's were within 200 metres of each other) (Corporation of Delta, *Council Report*, 2016, 2). Likewise, WeeMedical's status as a non-profit society did not, under British Columbia's *Society Act*, exclude them from carrying out business and, likewise, did not exclude them from the jurisdiction of the *Business Licence Bylaw* (Corporation of Delta, *Council Report*, 2016, 3).

The owners of WeeMedical brought a legal challenge against the Corporation. However, the British Columbia Supreme Court ruled in favour of the Corporation of Delta against the dispensary over ticketed fines in contravention of their zoning and business license bylaws. Despite being denied a license by the city, the dispensary had continued to operate at their location and incurred approximately \$11,900 in fines from municipal bylaw enforcement. Lawyers for WeeMedical argued to put a hold on proceedings citing potential changes in law coming from then-concurrent legal cases (which will be addressed in the Discussion section) in the federal court system. However, BC Supreme Court Justice Shelley Fitzpatrick stood with her decision based on the legal landscape of the (relative) present—upholding the law prohibiting marijuana dispensaries: “Until that happens, all people in British Columbia, including WeeMedical, are required to obey those laws” (*Delta v. WeeMedical*) (Smith, 2016). In addition to being restrictive of allowing marijuana-related retail business into a municipality's commercial zones, it seems clear from the research is that the courts are not flexible or willing to take progressive actions even if consciously aware that the laws are about to change.

## **Statements to Media**

Local news media (digital/online and in traditional print) analyzed and recorded statements and opinions by local government officials on the subject of these ordinances on marijuana. The reason for looking at local media is to search for and analyze discourse on these bylaws with emphasis on quotes or statements made by the politicians involved. At times, quotes made by local politicians leave no doubt as what justifies their governing decisions.

Unfortunately, news articles from the period leading up to the creation of the *Controlled Substances Property Bylaw* did not contain very much subject matter or opinions from council-members or other officials that was unknown from looking at video-recorded Council proceedings. Local and community news sources from that time that I looked at included articles that appeared in the *Delta Optimist* (Delta's sole local print newspaper since the dissolution of the *South Delta Leader*), *The Vancouver Sun* and *The Province*. What does come up as a repeated theme is the framing of the bylaw and the issue of marijuana grow-ops in the context of health and safety and, in particular, as a fight to save the community.

Cllr. Robert Campbell was quoted as saying that a bylaw that addressed marijuana grow-ops was a “necessary step” because of the neighbourhood hazards created by these drug operations wherever they are found (*Delta Optimist*, February 11, 2004, p. 3). Mayor Lois Jackson was quoted in the *Province* saying that it would be

“necessary to sell out a neighbour to save a neighbourhood” (Dawson, April 16, 2000, p. A12) while in *The Vancouver Sun* she was quoted as saying that grow-ops had been allowed to move and start “destroying the neighbourhoods” because members of the community have “lost touch with one another” (Bellett, May 15, 2000, p. B1/Front). An idea highlighted in some of the news articles that rarely came up in conversation during proceedings is the idea that this type of bylaw can act as a “disincentive to discourage these facilities from becoming established” (*Delta Optimist*, February 11, 2004, p. 3). Such statements, however, drew criticism from BC Civil Liberties Association executive director John Westwood—who found such a “snitch” mentality to be lacking in any sort of sense of community. He argued that these sorts of anti-grow-op initiatives (where one “snitched” on one’s own neighbours) were “police-based” rather than “community-based” and were of a different sort from traditional community anti-crime programs such as Block Watch (Dawson, April 16, 2000, p. A12).

Articles that are relevant to the *Delta Zoning Bylaw*, such as zoning project proposal processes and municipal responses to wider government changes, were easier to find. Although her comments were focused on the wider issue of marijuana use rather than on municipal actions regarding the drug, Lois Jackson commented on the federal *Allard v. Canada* ruling (which will become more relevant in the Discussion section) with concern over the speed and uncertainty associated with legalization. She expressed the specific concern over the potential issue that industrial production of cannabis on agricultural land might displace food production from the land’s use. Jackson gave a simple warning: “We have to be careful what we create” before urging readers to wait for the (federal) Liberals’ centralized cannabis market scheme similar to liquor (Browne, 2016).

Councillor Bruce McDonald, in the vote to approve for third reading the Delta Pharms growing operation in Tilbury, noted that, aside from the business meeting the appropriate procedural criteria, he had a deceased friend who he states could have benefit from medicinal cannabis. At that same vote, however, Mayor Lois Jackson stated, in opposition, that Council had not considered the interests of neighbouring businesses and argued that “If this was proposed for a residential area, we would have paid more attention to what they had to say” (Gyarmati, 2014).

This claim by the Mayor runs counter to assurances made by Delta Pharms president David Rose of the involvement of Health Canada and Delta Police in ensuring regulatory compliance. He furthermore argued that his company be properly referred to as a pharmaceutical company and not a “grow op” (Gyarmati, 2014)—which would be a reasonable description from an objective viewpoint. Despite her opposition, she did state that other communities ought to take on their “fare share” of businesses of this type (Gyarmati, 2014)—not necessarily opposing licensed medical marijuana growing enterprises from existing, just not in Delta. This is reminiscent of NIMBY.

In short, the findings of this research uncovered important themes to consider in the study of municipal bylaws that are specific to the regulation of cannabis-related activities. There are multiple examples of prohibitionist-oriented rhetoric being used by either public officials or members of the community to justify regulatory efforts or to repudiate proposed changes to the prohibitionist system that is in place. However, this

was not always so as there were also examples (from members of Council mostly) of rhetoric that defied traditional talking-points defending marijuana prohibition. Indeed, not all prohibitionist rhetoric was necessarily made on the basis on the drug's immorality but on concerns that were reasonable and progressively-oriented.

For the *CSPB*, which penalizes land-use for illegal marijuana grow-ops in residential areas, there were frequently issues with how seriously some members of Council approached or discussed the subject of such residential property seizures and fines leading to other members disciplining them. Additionally, meetings discussing the development of the *CSPB* exposed clear frustration by members of Delta Council with higher levels of government regarding the limited powers that municipalities can leverage with provincial and federal authorities for what they believe are their dues. Furthermore, this bylaw contained flaws that required amendments and updates to be added in the years post-enactment. Likewise, there was also frustration and alienation with leaders of other Canadian regions whom, unlike municipalities in British Columbia, were unconcerned with the growing problem of marijuana grow-ops in the early-2000s. Similar emotions were also directed towards the federal government in Ottawa which, as mentioned early, appeared to not take action on grow-ops until they reached the central and eastern regions of Canada. What these particular findings suggest are the existence of East versus West cultural tensions, alienations and rivalries on the subject of drug policy—belief in the hegemony of one region over another is also possible.

The correspondence on proposed projects relevant to the *DZB*, which contain provisions imposing prohibitions and limitations on land-use for medicinal cannabis, similarly show evidence of prohibitionist/War on Drugs ideology and, sometimes vitriolic, rhetoric. This was especially so in public correspondence between landowners and the city on the subject of a proposed industrial development hosting medicinal cannabis growing facilities. For a dispensary in North Delta, correspondence between itself and the municipality displayed more of a dispute over legal definitions. Whereas the dispensary made arguments by both challenging the actual meaning of land-use definitions in the bylaw as well as appealing on situational grounds (such as the number of people reliant on the drugs, the risks of having them turn to illegal markets and the moral imperative for progressive change in a fast-changing legal landscape on cannabis), the municipality took a strict, black-letter position on the bylaw's definitions. It made no attempt to respond to extra-legal considerations in favor of relaxing bylaw enforcement.

The findings of this research outlined the development of marijuana-related bylaws such as the *Controlled Substance Property Bylaw* and relevant sections of the *Delta Zoning Bylaw*. These bylaws each address different aspects of marijuana production including illegal residential grow-ops and medicinal production in industrial and commercial zones. In the bylaws' development, it became clear that there were ongoing issues of how professionally or seriously some officials seemed to handle grow-op discussions as well as limited War on Drugs-style rhetoric. There were also clear indications of regional tension and frustration with higher levels of government (and the political structure behind it). The bylaws were also continuously amended due to problems with enforcement. Rezoning applications and business license appeals were also found that were filed on behalf of their business owners (whom were involved

in medicinal cannabis production and distribution) so that they could legally operate in their requested zone (as long as they were within the boundaries of the Agricultural Land Reserve). In these rezoning applications/appeals, evidence of prohibitionist ideology were more apparent. Ideological tendencies represented in media were mixed as city officials and commentators gave varying perspectives of the issue of recreational and medicinal cannabis. Overall, extra-legal justifications for these bylaws were varied: practical concerns were as prevalent as prohibitionist ideals.

## **Discussion**

### **Legal ecosystems-Division of Responsibility**

It is not unreasonable for the regulations of the manufacture and use of marijuana to be classified into different categories. This division of responsibilities leads to the formation of what could be referred to as a legal ecosystem of various related and interdependent regulations. Laws and regulations exist and interact alongside each other at the local level and with relevant regulations or instructions from higher levels and branches of government to maintain a specific system of policies and/or political ideals. In my research, the legal ecosystem exists to maintain a system of drug prohibition. In maintaining the system of drug prohibition, the legal ecosystem tacitly upholds a prohibitionist ideology. “Legal ecosystem” is related to but not the same as “legal landscape”. In this study, “legal landscape” refers to the *character* of the legal system such as what is legal or illegal. This is distinct from “legal ecosystem” which refers to the internal relationships *between* regulations themselves regardless of the “legal landscape” it exists on.

The separation of responsibilities regarding bylaws regulating marijuana grow operations, like the *Controlled Substances Property Bylaw*, and bylaws governing land use pertaining to medicinal cannabis production and sale—*Delta Zoning Bylaw No. 2750, 1977* forms a separate legal ecosystem. This legal ecosystem can be observed in two respects: a local ecosystem that is strictly intra-municipality; an overall ecosystem involving the interaction of the local as well as higher levels of government law (federal, provincial and judiciary).

The legal ecosystem, in this case, exists to propagate and coordinate a prohibitionist system that is supportive of the overall War on Drugs. Local bylaws are the manifestation of national and international prohibitionist policies on the local government level and provide direct support for agencies engaged in enforcement efforts through their power to regulate land-use (other aspects of drug policy are the responsibility of higher levels of government). It could be said that local bylaws fill a “gap” left behind by other levels of government as they seek to regulate responsibilities that are mandated to them by legislation or the *Constitution Act*.

The justifications and purposes behind the existence of the bylaws forming this legal ecosystem are discussed critically. Critiques of the purpose and functioning of the bylaws are centred on differences between the formal (the stated purpose in the regulations themselves) and the informal purposes as found in examination of relevant audio, print and digital documents. The effects of these bylaws are also discussed in



relation to how they permit an economic environment that is favourable to the interests of industrial agriculture or agribusiness.

### **Jurisdiction and responsibilities (Intra-Municipal)**

The *Controlled Substance Property Bylaw (CSPB)* and the *Delta Zoning Bylaw (DZB)* exist in conjunction with each other and further interact with various lower-order municipal bylaws that regulate and enforce other aspects of local economy where marijuana is present. However, there are certainly areas that more involve one of the two bylaws over the other. With regards to the *CSPB*, the focus is on illegal marijuana growing operations in residential areas. Meanwhile, the relevant amendments in the *Delta Zoning Bylaw* apply primarily to operations involved in the federally permitted area of medicinal cannabis.

Some of the definitions in the original *CSPB* come from other bylaws, such as the definition for “occupancy permit” as referenced in the *Delta Building/Plumbing Bylaw No. 6060, 2002 (Delta Controlled Substance Property Bylaw No. 6200, 2004, Part 1—Introductory Provision 5, 2)*. Additionally, as mentioned earlier the *CSPB* also works alongside ordinances such as the *Bylaw Notice Enforcement Bylaw* and the *Municipal Ticketing Information Bylaw* (Corporation of Delta, *Council Report*, 2014). The bylaw does not exist and operate on its own. The require interaction with and the conditions established by other bylaws and regulations from the same municipality, specifically those pertaining to building codes, ticketing and inspection, to operate legally and effectively. Operating in an appropriate legal *ecosystem* is a necessity for the existence and continued operation of the *Controlled Substance Property Bylaw*.

The use of marijuana or cannabis for *medicinal* purposes may be exempted, but are not totally uninfluenced by national marijuana prohibition. In the case of Delta, marijuana use is tightly controlled and is just as subject to regulations as illegal marijuana growing operations are. Only in this case, the city utilizes zoning regulations, specifically the *Delta Zoning Bylaw No. 2750, 1977 Amendment (Prohibition of Medical Marihuana Facilities – P13-10) Bylaw No. 7313, 2014*, to enforce a prohibitionist agenda. Like the *CSPB*, the *Delta Zoning Bylaw* operates and interacts alongside other municipal regulations such as the *Delta Business Licence Bylaw No. 4019, 1986*.

### **Jurisdiction and responsibilities—Extra-Municipal**

These bylaws must follow or be consistent with statutes of higher and sovereign levels of government. As stated in the first line of the *CSPB*, the bylaw invokes for its definitions Schedules I, II, III, IV, V and VI of the federal *Controlled Drugs and Substances Act* and acknowledges the act’s occasional amendment (*Delta Controlled Substance Property Bylaw No. 6200, 2004, Part 1—Introductory Provisions, Definitions, 2*). Likewise, the *Delta Zoning Bylaw* is pursuant to Sections 903, 904, 906, 909 and 917 of British Columbia’s *Local Government Act (Delta Zoning Bylaw No. 2750, 1977, Part I-Title)*. Delta’s bylaws on narcotic substances (as well as many other unrelated subjects) exist as a part of a larger ecosystem of laws, statutes and judicial rulings. As such, municipal bylaws must interact and work within frameworks imposed by these higher levels of law and are subject to requirements and limitations under them.

Perhaps the best statement of how much force a municipal government has in addressing wider societal issues (or phenomena that are seen as issue by some) was made by Delta's Mayor Lois Jackson regarding how best to obtain the benefits of drug raids from the federal government: "We tend to forget at the local level that we don't have any status" (Adlem, 2003). The structure of the political system and the order of precedence for federal and provincial levels of government and their agencies means that some concerns of local/municipal-level governments and agencies are either under-addressed or ignored.

As an example, the Delta and the Delta Police Department, until the enactment of bylaws such as the *CSPB*, were not able to receive benefits or cost-recovery from the proceeds of crime despite the majority of efforts in support of federal drug law enforcement being carried out by municipal agencies (Adlem, *Regular Meeting*, 2003). This problem of governmental subordination is relevant to problems noted in scholarship in the ability of municipalities to address social issues. Not unlike the inability to collect on the proceeds of crime, municipalities in general are limited in their ability to address societal problems and have only the ability to govern through zoning and land-use (Ranasinghe and Valverde, 2006, 327), which precisely describe the bylaws being studied in this paper.

In 2014, major amendments were proposed and enacted for *Delta Zoning Bylaw No. 2750, 1977* that would legally prohibit *medical* marijuana facilities to operate within the jurisdiction of the city. Two amendments, 7313 and 7314, were proposed but only one was ultimately adopted. *Bylaw No. 7313* amends the *Delta Zoning Bylaw* by prohibiting medical marijuana production facilities. This would forbid the use of land, buildings or structures for the growing, cultivations, drying, testing, packaging, storage, distribution and/or the sale of marijuana) in zones outside of the Agricultural Land Reserve (ALR) (Corporation of Delta, *Council Report*, 2014, 2-3).

*Bylaw No. 7314* would have made likewise prohibitions on the medical marijuana production on lands within the Agricultural Land Reserve—the reason they drafted a separate bylaw for the ALR is because Delta is subject to a Provincial Order-in-Council. This Order-in-Council requires the city to get the approval of the Provincial Minister of Agriculture to pass any bylaw that would affect businesses operating in the ALR (Corporation of Delta, *Council Report*, 2014, 3). However, BC Minister of Agriculture Norm Letnick rejected *Bylaw No. 7314* effectively allowing medical marijuana facilities to exist on the ALR—at least in theory. Neither the Minister nor Provincial government provided any guidelines or criteria for local governments (like Delta) to regulate the permitted medical marijuana facilities on the ALR (Corporation of Delta, *Council Report*, 2014, 2).

In the end, the amendment (referred to as 7313) to the *Delta Zoning Bylaw* banning medical marijuana facilities on city land outside of the Agricultural Land Reserve which amended was passed unanimously by Delta Council (Delta Municipal Council, *Minutes*, 2014, 8-9), effectively contributing to a prohibitionist regime on a local level. But, because of the legal ecosystem and superstructure that municipalities are a part of, the impact of this prohibitionist regime has been limited. This loophole, so to speak, left open by the provincial government allows the possibility for medicinal

cannabis to be grown and farmed industrially in the Agricultural Land Reserve (provided that all the necessary regulatory procedures have been applied and followed).

The fact that amendments to existing bylaws are themselves titled “bylaws” complicates research on this subject. Certainly, improved legal style formats ought to be adopted by cities (and perhaps other levels of government) to more specifically segregate/identify which pieces of regulation are amendments to statutes and which pieces are the true statutes in force. This would certainly contribute to ease of understanding of bylaws for the ordinary citizen and potentially reduce instances of offending by them as well as financial burdens normally created by fines (which could be argued as contributing to class oppression).

The recent Federal Court case of *Allard v. Canada* ruled that the *Marihuana for Medical Purposes Regulations* were unconstitutional since they infringed on the defendants’ *Section 7 Charter* rights (which are those involving the right to life, liberty and security of the person) and was not justifiable under *Section 1* of the *Charter* (which would have allowed exception only if it passed the test of being demonstrably justifiable in a free and democratic society; it did not pass). The *MMPR* was struck down for a period of six months by the courts to allow for the federal government to create a more compatible medical marijuana regime (*Allard v. Canada*). The ruling effectively supports the right of medical marijuana patients to grow their own cannabis plants in their own homes (Browne, 2016).

The separation of responsibilities of bylaws pertaining to marijuana grow operations (covered by the *Controlled Substances Property Bylaw*) and other bylaws governing licensed narcotics facilities (such as the *Delta Business Licence Bylaw No. 4019, 1986* and, specifically, the *Delta Zoning Bylaw No. 2750, 1977 Amendment (Prohibition of Medical Marihuana Facilities – P13-10) Bylaw No. 7313, 2014* which govern or rather prohibit medical marijuana dispensaries and production outside the Agricultural Land Reserve) may be on a collision course.

The forthcoming legalization of recreational cannabis (and the specific rules on private home growing) aside, the impact of the *Allard v. Canada* decision may have two ramifications for Delta’s bylaws. The first is that the separation of responsibilities for these two local ordinances may not continue as it currently stands. The *CSPB* is oriented towards enforcement, prevention and reimbursing the expenses involved in dealing with marijuana growing operations that are *illegal* (with respect to federal narcotics control legislation) with no mention of or making irrelevant whether or not the grow-op is intended for medicinal purposes or recreational use. However, the fact that they overlap may not necessarily cause them to conflict. The second and most important ramification is that these two bylaws may become legally challengeable as their enforcement (particularly the *Controlled Substances Property Bylaw*) could be in violation of the *Section 7 Charter* rights of medical patients’ which translates to their right to grow their own supply of medicinal cannabis. Hardship arguments for patients residing in Delta could also be made in such a case given that the ability to acquire their medicinal cannabis is hampered by the city’s *Zoning Bylaw*—which blocks the establishment of dispensaries within the municipality.

The effect it will have upon landlords in their ability to challenge the fines imposed by these bylaws (for legally-permissible activities conducted by their tenants) is not as clearly predictable. However, the right of medicinal cannabis patients to grow their own supply—whom are not required to inform their landlords—has already become a source of conflict between patient-tenants and landlords. However, it has been speculated that landlords may have more flexibility in enforcing prohibitionist rules with regards to recreational cannabis. Tenancy agreements would be modified to restrict non-medicinal cannabis in a manner similar to those clauses restricting pets in rental spaces (Woo, 2017).

With regards to the potential ramifications of federal changes to the legal landscape around marijuana and its effects on prohibition-oriented bylaws, Delta's bylaws are challengeable in the courts on their consistency. As mentioned earlier, halfway through its first term in office the Trudeau government put into motion cannabis legalization that was initially come into effect by the 1<sup>st</sup> of July 2018 (later changed to October 17<sup>th</sup>). However, not unlike what we see with alcohol, the provinces will decide how marijuana will be distributed, sold, the price and the minimum age of purchase. Ottawa's minimum age will be 18 years but the provinces will have the discretion to set a higher age if they wish (which may lead to inconsistencies not unlike various drinking ages across the country). Furthermore, Canadians will be limited to four plants per household (Cochrane, 2017).

It may become more legally difficult to fully utilize and enforce the *Controlled Substance Property Bylaw* to impose fines for the closure of marijuana grow-operations if the substance itself is no longer listed in the same way on the federal *Controlled Drugs and Substances Act* that the *CSPB* obtains its definitions from. Municipal regulations could come into conflict with federal ones. To continue to prohibit the legal private possession of cannabis plants might require further changes or amendments to bylaws which may or may not be challengeable in court (constitutional questions would apply here) and possibly difficult to enforce (there could be issues with regards to civil liberties). What this all might entail is not fully certain.

### **Justification and *raison d'être***

Before addressing the informal justifications behind these bylaws, it is important to highlight what the bylaws themselves say are the justifications, if any, behind what they activities they enforce or prohibit. As mentioned earlier in the findings section the bylaw receives its authority from the *Community Charter* and makes the official, overall justification for its existence on the basis of that "property used for the manufacture, trade, use, sharing, sale or barter of controlled substances causes disturbance and inconvenience to the residents of neighbouring properties, creates risks to the health and safety of residents, and reduces the value of neighbouring properties" (*Delta Controlled Substance Property Bylaw No. 6200, 2004*, p. 1).

There is usually a stated reasoning process or justification behind the existence of a law, bylaw, ordinance or other statute. However, it would not be sufficient to look exclusively at what is stated in the bylaw itself, it is also important to look at statements from outside of the bylaw. As such, informal justifications (that is, statements made outside of the text of the bylaw itself) were gathered regarding the bylaw. It is here that

one can articulate potential cultural or ideological influences or perspectives in the process of creating this bylaw.

Prohibitionist/War on Drugs-style rhetoric (such as an emphasis on fear) was present in discussions of anti-marijuana bylaws but not to such an extent as one may believe. Justifications for the bylaws from informal channels were largely of a financial character. The objective of cost recovery and increasing municipal benefits of the proceeds of crime was a consistently dominant justification for the *Controlled Substance Property Bylaw*. Public safety arguments from the bylaw itself did not reflect reasoning processes outside of it. Indeed, former Delta Police Chief Jim Cessford was quoted as saying that, in the process of conducting drug enforcement operations “there are costs” and did not discount the importance of generating revenue to alleviate these costs (*Delta Optimist*, February 11, 2004, p. 3).

This does not mean that the *CSPB* is not oriented towards a Prohibitionist agenda. It merely reflects a role in the War on Drugs more so in its existence rather than in its creation. War on Drugs-style rhetoric was more of a factor with regards to issues of zoning regulations. There is a particular irony because of how proposed permits regarding the *Delta Zoning Bylaw* have more to do with activity that has been *legalized* rather than such rhetoric being directed in support of bylaws such as the *CSPB*. Prohibitionist rhetoric came into play in debates that were unexpected but, overall, reasonable—cannabis, even in a legally authorized, medicinal form is a stigmatized subject.

The *Controlled Substance Property Bylaw* can be considered to be a localized tool acting in concert with the greater War on Drugs in two major ways. This first is that it acts as a prevention/deterrence measure that seeks to thwart unsanctioned narcotics manufacturing from becoming established on properties known to be attractive sites for controlled drug production. This also includes providing information to landlords to assist them in becoming compliant with the city’s bylaws. Examination of this perspective also evokes the problematic, class-based aspects characteristic of the War on Drugs.

Overall, the areas of economy that involve the enforcement of the *Controlled Substance Property Bylaw* are strictly aimed at illegal, residence-based marijuana production activities. Delta’s January 12, 2004 report makes references to studies highlighting that a majority of marijuana growing operations are located on rental properties (Corporation of Delta, 2004, 3). The problem with this specific focus is that it possibly ignores grow-ops that take place in non-rental properties such as larger, high-income homes (the owners whom potentially can afford to mask their activities more effectively and would be under less suspicion). Most notably, commercial or industrial properties such as privately-owned warehouses and farms which are more affordable to a wealthier class of citizen. The impact of this focus would be temporary as narcotics producers would simply adapt their methods of establishing and operating growing operations.

Likewise, the landlord guidelines and advice (the financial costs of bylaw penalties would be the burden of the landlords) that were included as attachments to the *Controlled Substances Property Bylaw* could be seen as affecting only certain

classes of landlord and tenant. The advice to landlords encourages them to be suspicious of tenants identifies certain characteristics associated with marijuana growing operations. Some signs involve material evidence such as certain “skunk” smells, the sounds of motors or machinery, discarded gardening debris among others. Other warning signs involve tenant behaviours such as having few furniture and visitors at unusual hours (*Delta Controlled Substance Property Bylaw No. 6200, 2004*, Attachment B).

As reasonable as some of these warning signs are, they could easily be indicators of innocent, legal activities such as gardening or using motorized appliances such as laundry machines. Smells could very well be attributable to the presence of pest animals such as skunks and the presence of debris on a property could certainly be attributable to having an untidy tenant (which is inconsiderate but not necessarily unlawful). Additionally, tenants may not necessarily have much furniture because they be economically disadvantaged and have few possessions. Furthermore, having a home that does not appear “lived in” or having occasional “visitors” at “unusual hours” may be indicative that tenants may have employment that keeps them away from home and have them work and transit home at a time of day that the landlord, in contrast, does not need to. Indeed, these “visitors” that the guidelines describe may very well be the tenants themselves returning from work.

Furthermore, the financial penalties of the *CSPB* do not account for differences in class with respect to landlords and occupants themselves. The bylaw states that fines liable do not exceed \$5000 per day of continued offense (*Delta Controlled Substance Property Bylaw No. 6200, 2004*, 6). This flat-rate amount does not account for the fact that some landowners may be more able to pay the cost than others and a limit of \$5000 may not be a deterrent for some. It would be more prudent for a bylaw to include provisions for fines to be adjusted according to the income-level of the offender similar to the idea of progressive taxation. This concept of “progressive punishment” is not unprecedented, various jurisdictions in Continental and Nordic Europe utilize income information when issuing financial penalties. Finland, for example, uses this method when issuing speeding tickets to motorists (Arnett, 2015).

This type of bylaw also provides for direct financial support for government operations that are participating in War on Drugs efforts. The difference here is that it financially supports or reinforces—that is, to strengthen or replenish—local or municipal agencies that conduct activities consistent with national or transnational narcotics prohibition. As mentioned previously, the *Controlled Substances Property Bylaw* is intended to recover financial costs associated with counter-narcotics operations and distributing the benefits to municipal police and other city agencies engaged in drug control enforcement. What bylaws such as these effectively do is provide financial incentives to the continuance of the War on Drugs and, indeed, extend the War and provide tools for the fighting on the local/municipal level.

There can be little doubt as to the presence of an ideological justification, specifically on that is prohibitionist/War on Drugs-oriented, with regards to the local level regulation of marijuana activities. Indeed, there is a veiled difference in justification of these ordinances officially versus what is said unofficially. It is not exactly certain how

this bylaw regime will change with regards to coming legalization but it is possible to make some predictions on how it might proceed in the rapidly-changing future.

As mentioned earlier, there is the possibility of conflicts between laws as municipal regulations involving cannabis. Citizens, defendants and other potential litigants could bring legal challenges to Delta and various other local or municipal governments with bylaws or regulations that prohibit land-use activities that relate to recreational or medicinal cannabis. Whether or not these cases are successful in the courts remains to be seen. Additionally, the introduction of legalized recreational cannabis may cause further overlaps in bylaw jurisdictions and perhaps further amendments to accommodate definitions that would include cannabis use recreationally.

This assumes, of course, that opposition to prohibitionist policies do not arise in local electoral politics. Intra-municipal movements that challenge remnant prohibitionist regimes are neither unheard of nor are they non-contemporary. Two referendums on remaining local prohibitionist policies (both in place for more than 100 years) on alcohol were held in two dry towns Saskatchewan and Alberta in 2013 and 2014 respectively. The residents of the originally Mennonite town of Hepburn, Saskatchewan voted in favour of permitting liquor to be sold at the Co-op grocery store (Canadian Press, 2013). A year later, residents of the predominantly Mormon town of Cardston, Alberta rejected permitting alcohol sales in their town (Graveland, 2014). The overwhelming popularity and support that legalized cannabis has in British Columbia (75 percent according just to a Nanos poll conducted in 2016; the highest level of support in Canada) (Leblanc, 2016) makes it likely that attempts to continue prohibitionist policies at the local level of government may face resistance from many residents and potentially affect local political campaigns in the future.

Another likely outcome of this changing legal landscape is the increasing trend of major pharmaceutical retail chains getting involved in the sale, distribution and production of cannabis. Even with regards to just medicinal cannabis, the pharmaceutical chain Shoppers Drug Mart—which is Canada’s largest chain of retail pharmacies and has a large outlet in South Delta—in late 2016 formally applied to Health Canada to become a licensed distributor and dispenser of medicinal cannabis. Reminiscent of the definitions found in the *Delta Zoning Bylaw*, the Health Canada license is called a “producer license”. Despite this name, Shoppers Drug Mart’s spokesperson clarified that they had no intention of actually producing (growing, creating, etc.) medicinal cannabis itself (Evans, 2016). It is not unforeseeable that other pharmacy chains will capitalize on this potential market for medicinal cannabis. What remains to be seen is whether or not pharmacies will opt for the ability to sell recreational cannabis as well. Likewise, it is not certain how or if municipalities like Delta, Surrey, Vancouver, New Westminster or others will respond or challenge established pharmaceutical corporations in the same way that they have challenged smaller-scale marijuana dispensaries.

A final possibility that is, rather, obvious is that although the legal landscape relevant to cannabis is changing, the legal landscape around other controlled or outlawed substances has not. It would still be possible for enforcement of the *Controlled*

*Substances Property Bylaw* to be carried out in relation to illegal production of other narcotic substances. Indeed, methamphetamine labs were also mentioned at the time of the original creation of the *CSPB* (*Delta Optimist*, February 11, 2004, p. 3) and it is not unlikely that clandestine laboratories or storage centres for other substances (particularly opioids) could still be affected by this type of bylaw. Furthermore, the term “grow-op” is still applicable to other plants and flora grown for illegal drug markets: opium poppy growing operations were dismantled by RCMP in British Columbia’s Fraser Valley (TheStar.com, 2010).

There are certainly differences between the officially stated justifications in bylaws such as the *CSPB* versus what is publicly stated by municipal officials. The bylaw as more of an expense-recovery tool (rather than a public safety one) does not discount its overall usefulness as a localized tool in the War on Drugs. However, the *CSPB* is seriously flawed in that its enforcement criteria of potential offenders and punishment schemes ignores factors of class (focusing exclusively on lower-value properties and non-reflexive fines) and stigmatizes activities that may not necessarily indicate illegal activity. The bylaw is also a potentially vulnerable tool in that it may operate in conflict with overall changes in the legal landscape on drugs. Certainly the justifications behind a bylaw like the *CSPB* cannot be fully explained or evaluated simply by looking only at the bylaw’s text.

### **Favourable to Agribusiness**

It can hardly be refuted that a system has emerged as a result of the bylaws that Delta has enacted that is economically-biased in favour of certain sectors. The way the legal ecosystem operates and has operated in Delta appears to be preferential to the interests of large cannabis-centred agribusiness and industrial farming—by means of prohibiting land-use suitable for their competition (that is, small scale retail and production outside of industrial/agricultural lands and residences).

For instance, in 2016, municipal staff recommended amendments to the *Business Licence Bylaw* that would require business licensing for marijuana dispensaries even if they “claim to operate” (clearly prejudicial language) on a charitable basis must have a business licence to operate. Likewise, the language used in these amendment definitions exclude marijuana dispensaries from definitions including: drug stores, pharmacies, polyclinics and, most notably, *methadone dispensaries* (among others). Furthermore, there are increasing financial penalties that can be applied with bylaw infraction tickets and further powers to deny or revoke licenses to applicants (Corporation of Delta, *Council Report*, 2016, 2-4).

This explicit distinction between merits of medicinal cannabis and medicinal methadone dismisses the stringent government regulations already in place, the growing scientific evidence of its pharmacological properties and the learned-judgement and legitimacy of the doctors whom prescribe the drug. Additionally, the tendency to respond by means of increasing penalties is reflective of a rather traditionalist thought-process of punishment.

Despite the upcoming changes in marijuana legality, the Trudeau government has nevertheless launched nationwide police raids against marijuana dispensaries and



have arrested long-time activists Marc and Jodie Emery (Cochrane, 2017). Jodie Emery (just over a week before Trudeau's legalization plans were announced) made the claim that the Liberals were planning for a monopolized marijuana market that excluded smaller dispensaries in favour of larger producers (possibly agribusiness) (Nuttall, 2017). It is not unthinkable that regulatory changes on the federal level might legitimize or encourage municipal bylaws that reproduce conditions favorable to large agribusiness or work in favor of large firms already established thanks to previous bylaws. However, there is the possibility that challenges to these bylaws may be pursued by these corporations seeking to capitalize on the newly-legalized recreational market (so far, only medicinal cannabis is open to production on Delta's Agricultural Land Reserve). As mentioned earlier, major pharmaceutical chains are already making preparations for making medicinal cannabis available for purchase in their stores.

Nevertheless, the municipal regulatory environment that exists as of the writing of this paper is more permissive to large industrial concerns. With the use of specific definitions in the bylaws, the prohibition of cannabis production—which also includes the retail sale and distribution of cannabis—on lands outside of the ALR create a political-economic environment amenable to large agribusiness. Relevant to this are Mayor Lois Jackson's concerns about industrial-scale cannabis production on agricultural land as potentially displacing food production (Browne, 2016). These are crucial and legitimate concerns given the trend of a decreasing amount of agricultural land in the rapidly urbanized development of British Columbia.

Only those companies that can afford the stringent regulations and financial costs of establishing operations in the permitted industrial zones can operate (effectively denying access to this market from smaller start-ups, non-profits, co-operative ventures or other *pétit bourgeois* business). This can produce the foundations for private-sector monopolies not unlike what can be seen with traditional pharmaceuticals or some of the larger liquor businesses. What these sorts of amendments and amendment proposals amount to is a preference towards commercial ventures (that is, corporate and profit-driven) in growing medical marijuana.

The activities that are part of the legal ecosystem in Delta make an imperfect contribution to Canada's national marijuana regulation landscape in how it provides financial support for enforcement operations. The city's bylaws work in coordination with each other as well as with legislation from superior levels of government. However, parts of the structure of this ecosystem inhibits its ability to support a prohibitionist system in full. At times, regulations and decisions by higher levels of government actually work against Delta's efforts. The bylaws and their methods of enforcement are also partially flawed in their ability to fully enforce prohibition—in particular, they neglect certain socio-economic qualities that would have been prudent to consider in the bylaw's drafting. Furthermore, these prohibitionist bylaws have a further (arguably contradictory) effect on Delta's economic environment as they appear to be favourable to large industrial agribusiness of medicinal cannabis production whilst, at the same time, creating an environment hostile to smaller commercial-retail enterprises that provide cannabis to their users. This legal ecosystem is also subject to serious complications given the changing legal landscape of marijuana on the federal level. Not

unlike the threat to Delta due to coming changes in sea levels, the legal ecosystem in Delta is threatened by coming changes in the federal legal landscape on marijuana.

The legal ecosystem in Delta indeed serves a role in support of the overall War on Drugs and the prohibition of marijuana but one that is limited and containing various contradictions. Without the appropriate adaptation, the Delta's bylaws regulating marijuana may be unable to function properly in this role. Likewise, without the appropriate adaptation or even repeal, Delta's bylaws risk being inconsistent with Canada's legal landscape on marijuana and totally out of touch with the standards of its citizens.

## **Conclusion**

This study was meant to be a critical exploration of the current reality of municipalities and their regulation and suppression of narcotics. This is especially important in the context of cannabis legalization on the provincial and national-levels of government and how both existing and prior municipal bylaws (that limit cannabis' availability) continue to impact the effectiveness of legalization—creating situations for many people where cannabis is still *de facto* illegal and may not necessarily discourage illegal market sources.

The study included examining the development, application and overall objectives of municipal bylaws, specifically those involved in the regulation of controlled, narcotic substances such as cannabis/marijuana (both medicinal and non-medicinal). Delta, my hometown and site of multiple cannabis-related bylaw activities, was selected as the municipality for this study and attention was given to any latent or implicit ideological justifications for the need and use of two particular bylaws (one addressing land-use for illegal purposes and another addressing land-use for, otherwise legal, commercial purposes). There was also a focus on any economic or class-based effects that these bylaws would have when enforced.

In hindsight, it might have been a better choice to focus solely on developments relevant to the *Delta Zoning Bylaw*. The reason for this is because of how more relevant and contemporary the subject of medicinal cannabis (and, in future, non-medicinal) is in the public's zeitgeist. Discussion of marijuana "grow-ops" might be considered by the public as a subject that is now passé. Moreover, there is more available data to be collected on the subject and debates over the *Delta Zoning Bylaw* regarding medicinal cannabis. Documents on this subject (aside from being contemporary) also contain more examples of public input—specifically attached emails from constituents and others. The increase in the use of electronic communications and of online news media could be a factor in the differing amount of data available between the early-2000s (when "grow-ops" were a more common topic of discussion) versus the early-2010s (when one is more likely to hear about "dispensaries" and "medicinal marijuana"). But more research is needed to settle this conclusively. Despite this, my research does cover both of these two bylaws and the areas of responsibility that they are involved in.

The findings demonstrated some aspects of a War on Drugs- or prohibitionist-oriented ideology, but it seems that the motivations for the enactment and enforcement of these bylaws were largely financial (as a means to recover budgetary expenditures

for drug enforcement operations). Nevertheless, the very fact that a bylaw recovers costs of enforcement categorizes it as providing financial support for the prohibitionist/War on Drugs system that has led to numerous oppressive and problematic outcomes for both Canadian and international society. These were not the only findings. Themes that could be classified as being “cultural” were discovered in the process. Such themes included how seriously officials appeared to treat the matter of drug grow-ops/property seizures, relations/tensions between regions and governments and the reaction that officials and members of the public had to controversial rezoning application (they would have produced commercial cannabis). It might be worthwhile for future research to explore these themes for subject matter other than marijuana growing operations.

I also discussed how municipal bylaws form a part of a legal ecosystem based upon the interactions between other bylaws and the statutes and/or rulings of higher levels of government. The overall role that prohibitionist ideals played in the existence of relevant bylaws were discussed as well as some (class-based) criticisms in their inherent structure. Indeed, the legal ecosystem occasionally works against efforts in support of a War on Drugs ideology. The legal ecosystem at the same time plays a role in class conflict in that bylaws are developed and enforced in a manner that almost exclusively targets and punishes residents and owners of lower-income rental housing (its criteria does not affect higher-income residences or commercial properties whose owners are more likely to afford means of averting suspicion). Likewise, the punishment framework of municipal bylaws does not account for the income of owners. The fine is not adjusted to the income-level of the offender. Thus more affluent offenders may not be deterred by the bylaw. Critical economic considerations were discussed in how these bylaws created an environment that is favorable to the interests of large, industrial agribusiness and against smaller, retail enterprises. Furthermore, predictions were made as to the future of these bylaws given the changing legal landscape that these mostly prohibitionist bylaws must be able to adapt to.

It will take time to be certain of the future or extinction of marijuana prohibition, its current form is by no means static. This research demonstrates that municipal bylaws as a form of power (and drug regulation) are imperfect. They are in their nature complicated mechanisms that can be hampered or impaired in their effectiveness as often as they can effect progressive change (progressive change which at times may not necessarily be intended). Furthermore, bylaws can have consequences (intended or otherwise) that create imbalances of power that stifle fair economic competition as well as create additional oppressive conditions for socio-economically marginalized classes of people. Future research in drug-related municipal bylaws in a suburban setting will need to take into account the complex nature of bylaws as well as how adequately a municipality maintains and organizes its records. It might be the case that useful data may not exist, is incomplete, lost or inaccessible for a variety of reasons—the less significant the municipality or town is, the more these problems are likely to occur. In addition, it may be necessary to look beyond the scale and hierarchy of governments (such as examining bylaws from a cultural, social ecology or other perspectives).

It is clear that municipal bylaws will continue to play a role in the regulation of marijuana. However, the degree to which it will be able to impose some sort of moral or

social control is likely to become impaired if not increasingly opposed as society's attitudes on the drug continue to change. In the meantime, cities and towns might be well-advised to investigate potential municipalisation (socialized/public ownership; a "localized" Crown corporation or utility, if you will) of a legalised cannabis industry. In this way, citizens might more directly benefit from public ownership than would necessarily be possible if assets were simply controlled federally or provincially (the nation-state). This is not necessarily a call for the radical visions of municipal control such as those of the late Murray Bookchin, but there are certainly a variety of ideas available to municipalities to approach such a potentially profitable resource such as cannabis.

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