

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2021

LAW 374.001
Municipal Law

Sukhbir Manhas

EXAM PASSWORD: 58L85A
RESUME CODE: B12B6D

TOTAL MARKS: 100

(8:50 AM PDT) **PREPARATION TIME ALLOWED: 10 MINUTES**

(8:50 AM PDT) **WRITING (INCL. READING) TIME ALLOWED: 3 HOURS**

8:50-9:00 AM Preparation Time (Exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

9:00 AM Exam Writing Time – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

This is an open book examination, meaning that you can refer to class notes, casebooks and other class readings. The use of library books is not permitted.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question. Do not email your professor or anyone else about this while the exam is in progress.

ACADEMIC INTEGRITY

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

CONFIDENTIALITY REGULATIONS – READ CAREFULLY

As this exam is being written off-campus and is unsupervised, any communication whatsoever (including, but not limited to in person, telephone, e-mail, text, social media, etc.) concerning the contents of this examination with anyone (other than the Student Services staff of the Allard School of Law) is strictly prohibited.

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Your answer file should be named, and the coversheet of your answers should be titled with:
Your Exam Code, Course Number, Name of Course, and Instructor Name
i.e., **9999 LAW 100.001 Law of Exam Taking - Galileo**

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NOTES: THIS EXAM CONSISTS OF 10 PAGES, INCLUDING THE THREE COVER PAGES. PLEASE CONFIRM THAT YOU HAVE ALL PAGES TO THIS EXAM.

WHILE THIS EXAMINATION CONSISTS OF 3 QUESTIONS, STUDENTS MUST ONLY ANSWER 2 OF THE 3 QUESTIONS. IF A STUDENT ANSWERS ALL 3 QUESTIONS, ONLY THE ANSWERS TO QUESTIONS 1 AND 2 WILL BE MARKED.

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1. The Town of Fraser Landing (the “Town”) has for years been trying to restore its downtown core to the vibrant social hub that it once was. Unfortunately, over the years, the public has become more and more hesitant to visit the downtown core as a result of the unsavoury crowds attracted by the remaining downtown businesses. With the public visiting the downtown core less and less, many business owners have either closed their businesses for good, or moved them to the neighbouring City of Fraser Heights.

Needless to say, the Town’s Council is very concerned about what is happening in the downtown core, and wants to do everything that it can to turn things around. To this end, at its open meeting on January 12, 2021, Council instructed its Chief Administrative Officer (the “CAO”) to bring back a report (the “Report”) identifying a plan for revitalizing the downtown core.

The CAO, being new to the job and having no idea as to where to begin, decided that he needed assistance with preparing the Report and retained the Urban Planning Group (“UPG”) to help him.

As a first step, UPG needed to obtain a better understanding of the problems in the downtown core, and their causes. UPG began its work by meeting with the owners of some of the remaining businesses. Those business owners refused to speak with UPG as they believed that the so-called problems did not exist. The business owners had figured out how to make their businesses thrive in the circumstances, and didn’t believe that anything needed to change in the downtown core.

Its first attempts to learn more about the problems in the downtown core having been unsuccessful, UPG decided that it had to be more clandestine in its research. So, it decided to retain a private investigator (the “PI”) to go to the downtown core over a week-long period and report back on what she observed. After a week, the PI provided a report to UPG advising that the remaining businesses in the downtown core were generally adult drinking and entertainment establishments, which were being frequented by workers from the workcamp at the mine located just outside the Town’s boundaries. To attract the workers, all of the businesses were offering drink

specials and various forms of entertainment, including wet t-shirt contests, nude dancing, and room rentals for private dances. To compete with each other, the businesses were constantly reducing the price of their drink specials, with prices reaching a low of \$3.00 for a pint of beer. As the mine worked shifts, the workers were at the businesses from around noon each day to 2:00 a.m. When the workers left the businesses, they were usually intoxicated and often ended up in fights on the street. Many of them used the back alleys as washrooms.

With the PI's report in hand, UPG began to consider the options available to the Town to address the problems in the downtown core. UPG believed that most of the problems could be resolved by addressing the manner in which the remaining businesses were operating. UPG prepared a report to the CAO, which appended the PI's report, recommending that the Town, in the short term, consider bringing enforcement proceedings against the business owners in relation to their business practices and, in the long term, consider imposing business regulations to address the inappropriate business practices.

As for enforcement proceedings, UPG advised that the Town should rely on the information contained in the PI's report as a basis for suspending or revoking the business licenses for the businesses, referring to the evidence in the report of the over-selling of alcohol, inappropriate interactions between the dancers and customers, and inaction in addressing the inappropriate behaviour of customers outside of their premises.

As for the imposition of business regulations, UPG recommended that the Town adopt regulations that impose a minimum drink price, prohibit drink specials, require dancers to be on a stage and at a distance of at least 5 metres from the customers, and prohibit private dances.

You are the Town's solicitor, and the CAO has contacted you for advice. Specifically, the CAO wants your advice on the following:

1. What is the process for the Town to suspend or revoke the business licenses of the downtown businesses?
2. Does the Town have grounds to suspend or revoke the business licenses of the downtown businesses based on the information in the PI's report? Explain why or why not.
3. What risks are there to the Town in suspending or revoking the business licenses of the downtown businesses?
4. What is the process for the Town to impose the business regulations recommended by UPG?

5. Does the Town have the authority to impose the business regulations recommended by UPG? Explain why or why not.
6. What options does the Town have for enforcing the business license suspensions/revocations and/or business regulations if they are violated by the downtown businesses?

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2. As mentioned above, the CAO, being new to the job and having no idea as to where to begin, needed assistance with preparing the Report.

He discovered UPG, through a quick google search. UPG described itself as experts in land use planning and, in particular, downtown revitalization programs. The CAO immediately contacted UPG and obtained an information package from it for assistance in the preparation of the Report. The retainer agreement set out that the Town was retaining UPG on the terms set out in the agreement, which terms included:

1. The detailed scope of the services to be provided by UPG;
2. That UPG charged for its services on an hourly basis (based on 6-minute increments);
3. That the hourly rate charged for UPG's principal was \$500 per hour;
4. That UPG charged for disbursements at cost plus 25%; and,
5. A blank space (to be filled in upon agreement of UPG and the Town) setting the maximum amount that UPG would charge for the Report.

The CAO reviewed the Town's Delegation of Authority Bylaw, which provided that the CAO had the authority to enter into contracts for the provision of services to the Town having a value of up to \$10,000.00. As the Director of Finance was on vacation, the CAO discussed retaining UPG with the Town's Corporate Officer, who thought it was a great idea. The CAO signed the retainer agreement and returned it to UPG, directing it to begin the preparation of the Report immediately.

When UPG submitted its report to the CAO, it included its invoice for all services rendered. The total amount of the invoice, including the cost of the PI's report was \$14,000.00, plus GST.

When the Town's Mayor found out about the invoice from UPG, she was furious.

The Mayor immediately emailed the four other members of Council, inviting them to her house later that evening to discuss the CAO's actions.

All of Council attended at the Mayor's house that evening, where the Mayor expressed her deep concern that, in her view, the CAO had retained UPG to do the CAO's work for him, and that the Mayor did not believe it to be right that the Town should have to pay the CAO's salary and pay UPG to do the CAO's work. The other members of Council agreed, to varying degrees, with the Mayor's concerns. The Mayor advised the other members of Council that she believed that the CAO should be fired. Two of the other members of Council agreed.

The next day, the Mayor summoned the CAO to the Mayor's office and advised the CAO that Council had decided to terminate the CAO's employment with the Town. The Mayor told the CAO to pack his belongings and get out of the Town offices.

The Mayor has received two letters.

The first letter was from UPG's lawyer, advising that UPG had heard that the CAO's employment had been terminated, and demanding immediate payment of UPG's \$14,000.00, plus GST, invoice.

The second letter was from the CAO's lawyer giving notice that the CAO intended to bring legal proceedings against the Town challenging the termination of his employment.

You are the Town's solicitor, and the Town's Corporate Officer has contacted you, on the direction of the Mayor, for your advice in relation to the two letters. You are to provide the Town with the following:

1. Advice as to the Town's liability, if any, to UPG in relation to the services it provided in preparing and delivering the report to the CAO;
2. Advice as to all grounds on which the CAO could bring legal proceedings against the Town challenging the termination of his employment, and the likelihood of success of each of those grounds; and,
3. The process, if any, the Town can follow to remedy any deficiencies in Council's termination of the CAO's employment.

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3. Two months have passed since the Town took steps to address the problems in its downtown core as suggested by UPG. Those steps were successful in addressing the problem. The problematic businesses in the downtown core have all closed down, and the workers from the mine are now causing havoc in the neighbouring City of Fraser Heights.

Unfortunately, though, now the downtown core resembled a ghost town, and the Council wished to move forward with its redevelopment.

Historically, the downtown core has not had any residential use, and has been designated under the Town's Official Community Plan as Downtown. The Downtown designation provides as follows:

Lands in the Downtown designation are encouraged to be used for retail, entertainment, and office space, with appropriate residential use to support those spaces. Where residential use is being considered, the gross floor area of retail, entertainment, and office space use shall be encouraged to comprise at least 50% of the gross floor area of all use on the parcel.

Over the last two months, a developer (the "Developer") from the City of Vancouver has been slowly buying up properties in the downtown core to develop for mixed-use commercial and residential strata buildings.

The Developer reached out to the Mayor to set up a meeting with Council for the Developer to introduce Council to the Developer's proposed concept, and offered to fly Council to Vancouver on the Developer's private jet to meet with the Developer and its consultants.

The Mayor was ecstatic about the opportunity to meet with the Developer. She saw this proposed development as being just what the downtown core needed.

Council agreed to meeting with the Developer and its consultants in Vancouver, and to flying there on the Developer's private jet. But, insisted that the Town pay the Developer an amount equivalent to the cost of Council flying to Vancouver on a commercial airline, and that the Town pay for all Council's meals and accommodations.

When Council met with the Developer and its consultants, they advised that the proposed development (the “Development”) would consist of 10 buildings, with retail, restaurant, and office space on the first 5 floors of each building and residential space on the top 6 floors of each building.

The next day, the Developer made application (the “Application”) to rezone its properties from Commercial One zone, which allowed retail and entertainment uses, to a proposed new Downtown Zone, to allow the Developer’s proposed retail, restaurant, office, and residential use.

Having received the Application, the Council directed the Town’s Planning Director to prepare the necessary rezoning bylaw, creating the new Downtown Zone, and rezoning the Developer’s properties to that zone, for presentation to Council at the earliest opportunity.

One week later, on March 8, 2021, the Planning Director presented the proposed rezoning bylaw (the “Bylaw”) to Council at its regularly scheduled open meeting. The Bylaw provided that the permitted uses in the new Downtown Zone were retail, entertainment, office and residential use. The Bylaw imposed a maximum height regulation of 11 storeys in the new Downtown Zone, and restricted residential use to no more than 6 of those stories. At that meeting, Council unanimously resolved to give first and second reading to the Bylaw, and to refer it to public hearing.

The Planning Director caused notice of the public hearing (the “Public Hearing”) to be published in the local newspaper. The notice was published in two consecutive issues of the newspaper, on March 10 and 17, 2021, specifying that the hearing would be held on March 22, 2021, at the Town’s offices. The notice stated the purpose of the Bylaw is “to permit the development of the subject properties for 10 buildings, with retail, restaurant, and office space on the first 5 floors of each building and residential space on the top 6 floors of each building”. The notice met all other statutory requirements.

Council held the Public Hearing on March 22, 2021. After hearing from the Developer and its consultants, Council heard from Mary Smith, who was opposed to the Bylaw. She was very concerned about the height of the proposed buildings, amongst other things.

During her submissions at the Public Hearing, Ms. Smith also raised concerns that the Mayor had a conflict of interest as she was a notary public, whose business provided 95% of the notary services in the Town. The Mayor immediately cut Ms. Smith off, forcefully asserting that Ms. Smith limit her submissions to matters contained

in the bylaw. Ms. Smith was visually thrown off by the Mayor's actions and immediately left the Town's offices without saying anything more.

Immediately after the Public Hearing, Council held a special meeting, waived the requirement to give notice, gave third reading to the Bylaw, and adopted it.

You have been retained by Ms. Smith. She has asked you to advise her on all bases on which she could challenge the validity of the Bylaw. She has also asked you to advise her in relation to whether the Mayor had a conflict of interest, and what the repercussions would be for the Mayor if she did.

END OF EXAMINATION