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Re: Exemption for legions

In my view an exemption for legions would leave the by-law subject to legal challenge.

The rationale for this opinion is as follows:

As you are aware legions, although they purport to restrict access to members only, for the most part provide access to the public for a nominal fee or by way of introduction by a member. So from this point of view they could be considered to public places. If a legion was to have very strictly enforced rules with respect to public entry and not let in the public they argue that they are no longer a public place.

However, if the by-law defines an employee as including a volunteer, the legion would be a workplace in any event even if it was not caught under the public place restriction.

In short, in my view, the legion is required to be smoke free either because it is a public place or a workplace.

To grant an exemption in the by-law for legions would create an un-level playing field and would in my view be open to legal challenge as being discriminatory with respect to establishments that are operated as restaurants or bars.

Although many by-laws provide for exemptions in the by-law for certain public places or workplaces, e.g. bingo or bowling, these types of establishments are of an entirely different class and do not act as competition for patrons who wish to eat or drink.

A recent challenge to a similar by-law in Collingwood originally contained an exemption for legions. The by-law was challenged by the bar and restaurant owners in Collingwood as being discriminatory and they launched a lawsuit against the City.

After receiving advice from the City Solicitor and myself the City decided to remake the by-law by removing the exemption. As a result the lawsuit was dropped.