COMPLEXITY CASE STUDY | Legalizing and Regulating Cannabis in Canada: Incremental or Radical Change?

Alberta: Radically Incremental?

Key Policy Challenge

- What is actually new here? How do we keep the scope of this manageable?
  - Cannabis legalization as a lightning rod for countless pre-existing policy issues (workplace impairment, smoking rules, landlord/tenant relationships etc)
- Had to work very hard to keep the scope of the policy questions on the table limited to those that were specific to cannabis legalization, or very closely tied.
  - Policy analysis for the questions that were before elected officials was the full walk – ALL options were on the table, and all were fully analyzed, considered and costed
  - Polarizing nature of the topic meant that often, recommendations were based on a 51/49 split in popular opinion
  - Constant interplay between stated policy objectives required careful thought and education of elected officials. Obvious answer rarely the "right" answer

Legislative Strategy

- While the potential for radical change was always there, the actual policy decisions made were incremental and measured

- Took an integrative approach – what existing legislation could we rely on? What did we actually need to legislate from scratch?

- Given the approach taken to the policy decisions, drafting approach was "reduce, reuse, recycle"
    - Drafting challenge included ensuring new provincial provisions fit harmoniously both with federal Act and existing provincial Acts being amended
    - Allowed federal legislation to "do the work" wherever possible (eg. definitions, "Subject to the federal Act")
    - Relied on existing impaired driving, workplace and smoking legislation where possible. Either amend, or incorporate by reference

- Constant focus on enforceability of what was being proposed

Challenges – What Was the Same?

- Many challenges were similar to those encountered on a majority of complex legislative projects
    - Drafting without key policy decisions – strategy employed: drafted to most complex potential outcomes, with "undrafting" instructions for alternate decisions.
    - Compressed timelines – strategy employed: didn't follow process, didn't follow rules. Were only successful because we had direct access to decision makers when we needed it.
    - Legislative consistency vs "good drafting" – challenging to provide new legislative scheme within the context of a somewhat dated piece of legislation.
        - The verbs!
        - Moving items between the Act and the Regulation
    - Communications considerations driving legislative process/timing.

Challenges – What Was Unique?

- Regulating in some new areas – introduced pieces that may be moot in a few years (eg. license maximum). Drafted provisions to be flexible, and delegated details to Board policy.

- Stepping into areas more traditionally left to municipal governments – worked more closely with our municipal partners than usual.
    - The TSRA conundrum
    - The MGA conundrum

- No parent legislation – drafting into the void! Coming into force strategy particularly challenging.

- Regulation making authorities challenge – difficult to get them right when you don't know what you are doing yet!

- Significant number of policy decisions (and therefore much drafting) required.

- Certainty of missing elements/changes to federal legislation – strategy employed: pre-booking both Fall and Spring session cabinet dates.

Future Proofing

- Amendments done to the *Gaming, Liquor and Cannabis Act* contemplate future policy decisions (eg. cafes)

- This was done to address two issues:

    - Paucity of cabinet time. Goal was not to have to go into the Act again if we didn't have to, enable the regulations to deal with as much as possible.

    - Strategy – meant less "undrafting" if policy decision went differently on the retail model

Legacy – Treating Policy as a Project

- Alberta took a "secretariat" approach, which is most often used to manage crisis/disasters or short-term projects

- In this case, policy development was treated as a crisis/project
  - Pros – got a ridiculous amount of work done in a short period of time, exceptional resources, no requirement to follow rules
  - Cons – legacy still to be worked out – team is already disbanded, none of the in-depth policy development knowledge persists, challenge for the receiving team to "pick up the file"