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Countdown to Cannabis

Cannabis Legalization: Canna-101 for Condos

While Cannabis May Become Legal, Users Will Still Not be Able to Light Up Wherever and Whenever They Want



Unless you have been living under a rock for the past few years, you are aware that the Government of Canada has plans to legalize the consumption of cannabis in 2018.

This news initially sent ripples across the country. Some opined that the sky was falling; others speculated that investor frenzy would cause the cannabis industry to collapse. Not to panic, Chicken Little, while there may eventually be more clouds in the sky, things are not as ominous as they may appear. The sun still set on April 13, 2017, the date that Bill C-45, an Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (the “Cannabis Act”), was introduced to Parliament, and it has continued to rise each morning since.

So what is happening? Everything is happening...and nothing is happening at the same time. Plans for the legalization of cannabis across Canada are still rolling along at the speed to be expected for the introduction of such type of legislation.

While things initially looked to be on track for the July 1, 2018 date set for legalization, legislators are now predicting that it will take an additional two to three months before cannabis will be available for purchase in order to provide provincial and territorial governments with time to prepare for retail sales.

With just months left before Canada becomes the first country in the G7 to fully legalize cannabis, members of the federal government have also indicated their intention to take things one step further and decriminalize the possession and consumption of all illicit drugs in Canada. The notion behind the trend towards decriminalization may not be quite what you think – the government is proposing to adopt a model proven to be successful in other countries in treating drug abuse as a health issue in order to significantly reduce overdose deaths, decrease illicit drug use, and reduce associated social costs. Similarly, the legalization of cannabis is predicted to help address quality concerns

about street drugs that include harmful and/or unknown ingredients. While some change is inevitable, it appears that only the legalization of cannabis remains a certain reality for now.

Chances are, anyone who has wanted to try cannabis already has. Unwilling to wait around for the promised legislative changes, dozens of storefront dispensaries have popped up throughout the city, making cannabis more accessible to the population than ever before. Because of the number of Canadians already using cannabis for years regardless of its legality, the impact of the legalization is likely to have only a limited effect.

Still, stigmas prevail, and consumption of the plant as a drug is still viewed as less than acceptable by many members of society. It should not come as a shock to anyone that, while cannabis may become legal, users will still not be able to light up wherever and whenever they want. This is especially true in condo corporations, where the close

ILLUSTRATION BY ROSS MACDONALD

proximity of residents means that consumption of cannabis is more likely to have an impact on neighboring units.

While unlikely that the legalization of cannabis is going to turn your condo corporation into a communal hotbox, it is conceivable that anyone already illegally using cannabis may initially gain a sense of entitlement to continue doing so without fear of consequences. Accordingly, it is possible that condos will see an increase both in the nuisance factor associated with cannabis, as well as in complaints from affected residents.

As a result, many law firms have been inundated with questions from condo corporations asking how to prepare for this (in) significant event ... enter "Canna 101":

What is Cannabis?

Cannabis is a plant that has what are called "psychoactive chemicals" which affect the inner-workings of the brain. There are over 400 chemicals present in cannabis, but only 80 of them (called cannabinoids) are unique to the cannabis plant, with tetrahydrocannabinol or "THC" being the most pharmacologically active in most forms.

Smoking is only one method of consuming cannabis (although arguably the most popular). Similar to the varieties of alternative tobacco products, there are several other methods used for the consumption of cannabis, including: vaping, edibles, oils, tinctures, topicals, pills, and dabbing, which are less conspicuous than smoking and are thus more likely to be undetectable.

As mainstream culture becomes a little more herb-friendly, the terminology used by the industry is coming to center stage. Although cannabis has many different (and much more creative) street names, don't go calling it marijuana. When first criminalized almost a century ago, the term marijuana was specifically used to campaign against the use of cannabis as a dangerous drug, and was portrayed as a cultural vice of immigrants who had brought their immoral smoking habit with them.

What Will Be Allowed Under the Cannabis Act?

The proposed Cannabis Act will make it legal for Canadians 18 years of age and older

to carry and use as much as 30 grams of cannabis. Cannabis in Ontario will only be sold by the Ontario Cannabis Retail Corporation, a subsidiary of the Liquor Control Board of Ontario, and all illegal dispensaries will be forced to close.

Condo owners will legally be permitted to grow and keep up to four (4) cannabis plants in their residences. "Grow-ops" or any similar large-scale productions of cannabis are not permitted.

Health Canada recently published a 40-page report on how cannabis could be legally packaged, marketed and sold in Canada after it becomes legalized. However, don't expect to be sharing cannabis infused brownies with your fellow residents any time soon. Although a popular option for those wishing to ingest cannabis without smoking, edibles will not be regulated in this year's legalization. The government has promised that edibles will be available at dispensaries within a year of enacting the Cannabis Act, assuming it is passed by Parliament.

What Will be Prohibited?

The government is proposing to restrict the use of recreational cannabis in a similar way to alcohol. As it currently stands, it is likely that cannabis users will be prohibited from growing or using any form of the drug in public places, workplaces, or inside a motor vehicle.

However, Ontario has committed to closely monitoring the public health and safety outcomes of cannabis legalization to inform future consideration of potential adjustments to the provincial framework, if warranted. This includes exploring alternative locations where people can consume cannabis without significantly increasing exposure to second-hand smoke and vapour.

Currently, the Ministry is considering the following approaches:

- 1) permitting licensed and regulated cannabis consumption lounges and venues; and
- 2) permitting owners or operators of multi-unit dwellings such as condo corporations to designate outdoor areas for the consumption of recreational cannabis.

Should Condos Ban Cannabis?

At first instance, it is important for condo corporations to take a value-neutral approach to this issue. Once the Cannabis Act comes into effect, cannabis will be just as legal as alcohol, tobacco, and wearing white after Labour Day. All may be considered dangerous – but all are legal.

While it will soon be legal to consume cannabis within a condo unit, users must still adhere to existing rules and will not be permitted to disturb their fellow residents with their use of the drug, no matter their choice of method of consumption. It is old news that smoke is known to permeate walls and can escape into neighbouring units. It is safe to say that if your neighbour wants to try cannabis, they will not want their first experience to come by way of second hand smoke.

The cultivation of cannabis can also affect utility usage (think specialized lighting, fans, etc.) which has the potential to place an unfair cost burden on other owners. However, it is important to remember that in condo corporations where there is no restriction on the number of house plants residents can keep, four cannabis plants is hardly a burden on utilities. While it will thus be difficult to differentiate between the growing of cannabis and regular plants, cannabis plants do have the potential to produce an odor that other residents may (depending on their sense of smell) find annoying.

It is likely that the existing nuisance and harm provisions in your condo's governing documents and the Condominium Act, 1998 already equip your condo with some tools to address the potential challenges that will accompany the legalization of cannabis. While these provisions can already be used to enforce against nuisance-causing residents, it does not hurt to formally enshrine the prohibition of cannabis in a rule to ensure all residents know what they can expect in terms of the norm in their particular condo community.

If your condo plans to ban the smoking of cannabis, but currently permits the smoking of tobacco, then it should consider banning both substances simultaneously. As residents are likely to find the smoke from both substances equally disturbing, it follows that it is likely to be considered unrea-

sonable if one is banned without the other. Even where a condo corporation already has a blanket ban on smoking that does not specify a substance, it is still a good idea to update rules to clarify that the smoking of cannabis is included in this restriction. While it may seem redundant to have a rule preventing the consumption of a substance that is currently illegal, it is better to implement rules on a preemptory basis to ensure for a smooth transition.

Condos planning to implement a ban on the smoking of cannabis and tobacco should also incorporate a “grand-parenting” provision to permit residents who are tobacco smokers to continue to smoke until they move out of their unit, when the unit will transition into a non-smoking one. As the smoking of cannabis in condos is currently illegal, any grand-parenting provision implemented prior to legalization would not need to incorporate cannabis users.

The bottom line is that rules passed by condo corporations must be “reasonable” and are open to challenge on this basis. While there are many different ways to draft rules to fit the needs of a particular

condo community, any rule purporting to ban cannabis (in one or all forms) should have a logical, reasoned, and rational basis in order to withstand a challenge.

Do condos have a Duty to Accommodate? Regulated medical cannabis became legal in 2001. Anyone seeking to access cannabis for medical purposes must have a prescription from an authorized healthcare practitioner which stipulates the daily grams of dried cannabis authorized for use, as well as the period of use, which cannot exceed one year from the date the prescription is signed by the healthcare practitioner. Once this has been obtained, individuals can register as a client with a licensed producer of their choice, who will then send cannabis to them directly through the mail. The sale of cannabis for medical purposes is not permitted through a storefront.

If a resident provides their condo corporation with medical documentation establishing that they have a disability, as defined in the Human Rights Code, and that they require the use of medicinal cannabis as part of their treatment, the condo may be required to accommodate the resident up

to the point of undue hardship. This may require the condo to permit the resident to smoke the medicinal cannabis in their unit or on any exclusive use common elements to which the resident has access if less invasive forms of consumption cannot be used as an alternative.

It is important to note that there is a tension between the right of accommodation and the right to a smoke-free residence. It could be foreseeable that, in accommodating one resident’s disability by permitting them to smoke in their unit, a condo corporation could be inadvertently exacerbating another resident’s respiratory issues that would also qualify as a disability under the Code. In such a circumstance, the Corporation will need to balance these rights and come to a conclusion that best accommodates as many residents as possible as a whole.

Unless used for medical purposes, it is important to remember that until we approach the junction of approved cannabis freedom, the production and possession of cannabis are still illegal in Canada, and police will continue to enforce the current laws until new legislation is in place. **CV**

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