

Cannabis Legalization in Canada – Nuisance or Business Opportunity?

The legal use and regulation of cannabis (marijuana) for recreational purposes in Canada is fast approaching. Surveys have demonstrated that about two-thirds of Canadians support the legalization of cannabis. The reality is that this change in the law will present a host of new challenges and opportunities for individuals and businesses. While political watchers are predicting that the summer of 2018 is the earliest that cannabis may be available for public consumption, we want to explore with you what impact legalized cannabis use may have on your business, whether as a workplace health and safety issue, or as a potential “goldmine” investment opportunity.

Introduction

Currently, only the use of cannabis for medicinal purposes is legal in Canada; the possession and selling of cannabis is otherwise unlawful as a Schedule II drug under the *Controlled Drugs and Substances Act*. Storefront operations which sell cannabis (commonly called “dispensaries”) are not licensed by Health Canada and are currently illegal. In April 2017, as part of the Liberal Party’s expressed intention to legalize cannabis use for recreational purposes, the federal government introduced legislation under the proposed *Cannabis Act* to legalize and strictly regulate the production, distribution, sale and possession of cannabis across Canada.

The *Cannabis Act* aims to propose rules related to: the production (i.e. growing cannabis), sale, and distribution of cannabis; the promotion, packaging and advertising of cannabis; licensing and tracking systems; possession and personal cultivation limits; and protecting youth from accessing cannabis. The proposed legislation also sets out penalties (ranging from fines to imprisonment) for those acting outside the legal framework.

The oversight of cannabis legislation is intended to be multi-jurisdictional, a shared responsibility between all levels of government – federal, provincial and municipal. For example, the federal government will determine what constitutes criminality for the illegal possession or use of cannabis and impaired driving laws (under the *Criminal Code*), while provinces may set regulations related to the sale and distribution of cannabis (i.e. increasing minimum age limits; lowering personal possession limits; and restricting use in public places), while municipalities would have control over business licences, and zoning parameters (such as restricting the sale of cannabis within a certain distance

of any school zone). In Ontario, it is expected that recreational cannabis will be exclusively sold by the provincial government at retail storefronts and online, and that consumption will be limited to private residences.

Cannabis in the Workplace

Employers should already be aware of their accommodation responsibilities under human rights legislation for disabled employees who use medical marijuana. While marijuana can be prescribed for medicinal purposes, it is also used recreationally as a mind-altering substance and therefore impacts workplace health and safety. While employers cannot generally regulate employee activities outside of the workplace, they can and should restrict the use and possession of marijuana in the workplace, and prohibit employees from attending work while impaired.

There is concern that legalized cannabis will lead to an increase in impaired driving incidents. Unlike a breathalyser test for alcohol, however, there is currently no equivalent testing available to immediately, accurately and reliably quantify impairment due to the use of cannabis (or THC, the active ingredient in cannabis). Employers may, therefore, have significant challenges assessing whether employees are under the influence of cannabis while at work.

Employers are required to take every reasonable precaution to ensure the safety of their workplace. Those employers with employees in safety-sensitive positions, such as those who work with hazardous materials, operate heavy machinery or engage in extensive driving, need to consider whether they can update or revisit zero-tolerance restrictions and/or drug and alcohol testing policies. We encourage employers to review their current

employee policies with their employment lawyer and consider whether any modifications or additions, as well as employee training, may be necessary in light of the legalization of cannabis.

A Public Nuisance – Cannabis Use in High Density Areas

In a 2016 study, it was found that the ambient smell from cannabis cigarettes measures 5,000 odour units per cubic meter, meaning it is 5,000 times stronger than required for an average human nose to detect. By contrast, the odour of an espresso machine measures 400 odour units while brewing. This is particularly concerning for occupants of high-density buildings, such as office buildings, and condominium residents. Recreational consumers of cannabis may seek to establish their right to smoke, with no regard to the pungent odour that carries into residential units through shared ventilation, through open windows, into children's playgrounds, or clinging to a co-worker's skin and clothing in the next cubicle.

The *Cannabis Act* permits individuals to grow cannabis at home. Cannabis plants require warmth and excessive water, which can lead to mould accumulations and structural decay. Condominium corporations may soon have to manage the damage growing cannabis plants can cause to units and common elements by way of moisture, potentially creating mould and spores in walls.

The right of individuals to complain about or stop the legal act of using or growing cannabis appears to be limited, as do the powers of condominium owners to implement controls or limitations. Once the legalization of cannabis takes effect, we expect to see a sharp rise in conflicts between residents in high-density areas, with landlords and condominium corporations attempting to implement controls over growing cannabis and the use of cannabis. Feel free to reach out to us to discuss potential solutions, such as amending your condominium corporation's by-laws to prohibit or restrict cannabis use, or implementing a complaints process to deal with cannabis use.

Market Growth – An Unprecedented Investment Opportunity

Once implemented, Canada will be the only G7 country to have legalized cannabis use. Many investors are viewing the legalization as an incredible opportunity for users, growers and businesses that cater to both. In fact, on the introduction of the proposed legislation in spring 2017, the shares of existing medical marijuana companies in Canada increased as high as 9%. Other reports indicate that the Canadian legalized marijuana market value ranges from \$5-8 billion, with a potential market size of \$23 billion.

Potential areas of investment include production, distribution, pharmaceutical research with cannabis, importation of cannabis, and edible cannabis products. However, with the opportunity to get in early and potentially be a market leader, comes a fair amount of risk and volatility until the legislation is passed, regulations are finalized, and operations are underway. We are happy to discuss potential growth and investment opportunities that may be available to your business in the legalized cannabis space.

Concluding Thoughts

Clearly, the proposed legalization of cannabis presents businesses and individuals with many challenges and opportunities. We wait to see how the federal, provincial, and municipal governments further regulate cannabis use, particularly regarding public health and safety issues, the distribution, selling and possession of cannabis, and the anticipated emerging market. As changes develop, corporations, employers and employees, landlords, homeowners and tenants, condo corporations and residents will all need clarity when issues involving cannabis use are involved. If you or your corporation are located in the Region of Peel or in the GTA, feel free to contact us to further explore the business considerations of Canada's proposed cannabis laws.

Pallett Valo Employment & Labour Practice

Our Employment & Labour lawyers have the legal expertise to provide creative and pragmatic solutions for a wide variety of employment-related issues that arise in today's workplace. Our approach is to provide advice that will minimize the time, costs and disruption associated with labour and other employment disputes. We represent our clients before various provincial quasi-judicial tribunals and in court, and frequently attend at conciliation, mediation and other settlement proceedings.

Contact Members of our Employment & Labour Practice:

Andy Balaura

abalaura@pallettvalo.com • (905) 273.3022 ext. 225

Monty Dhaliwal

mdhaliwal@pallettvalo.com • (905) 273.3022 ext. 228

Manpreet Brar

mbrar@pallettvalo.com • (905) 273.3022 ext. 214

Jeffrey S. Percival

jpercival@pallettvalo.com • (905) 273.3022 ext. 254

PALLETT VALO LLP
Lawyers & Trade-Mark Agents

This article provides information of a general nature only and should not be relied upon as professional advice in any particular context. For more information about Employment & Labour, contact a member of our **Employment & Labour Practice** at 905.273.3300.

If you are receiving this bulletin by mail and you would prefer to receive future bulletins by email, visit www.pallettvalo.com/signup or send an email to marketing@pallettvalo.com.

Pallett Valo LLP will, upon request, provide this information in an accessible format.

77 City Centre Drive, West Tower, Suite 300, Mississauga, Ontario L5B 1M5 • 1.800.323.3781