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Ontario Establishes New Cannabis Laws

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In anticipation of the federal legalization of recreational cannabis by the end of 2018, Ontario has passed new laws to regulate the drug's growth, consumption, and distribution.

The Ontario Cannabis Act, 2017 ("the Act") will join the Ontario Cannabis Retail Corporation Act, 2017 to govern the use of cannabis in the province. The legislation regulates, among other things:

- How and where cannabis may be consumed or accessed, and by whom;
- How cannabis can be transported, and
- Penalties for illegal possession and cultivation.

The Ontario government's retail cannabis operation, run by the Liquor Control Board of Ontario, will be called the Ontario Cannabis Store (OCS). The OCS will be the sole legal retailer of recreational cannabis in the province and will follow strict rules relating to its sale.

The Act provides that the minimum age to buy, use, possess, or grow recreational cannabis will be 19[1], and legal persons may:

- Possess up to 30 grams of recreational cannabis;
- Share up to 30 grams of recreational cannabis with other adults;
- Purchase up to 30 grams of recreational cannabis or cannabis oil from the OCS;
- Make cannabis products (that do not use organic solvents) at home, and
- Grow up to four cannabis plants per residence for personal use from seeds purchased from the OCS.

Recreational cannabis may be consumed only in private residences, including private outdoor areas such as balconies and porches. Additional restrictions may be put in place by an apartment or rental facility, at the discretion of the landlord or of the condominium corporation.

Recreational cannabis may not be consumed in any public area, workplace, vehicle or boat. As such, consuming recreational cannabis in the workplace will continue to be illegal after

legalization. Public use of cannabis will be subject to fines ranging from $1,000 for a first offense to $5,000 for subsequent offences.

Youth Protection

Restricting cannabis smoking areas is intended to reduce youth exposure. In order to further protect youth, no person under the age of 19 will be permitted to buy or sell cannabis. To ensure restricted access to those who are under age, the Act will provide for the following criminal offences[2]:

- Giving or selling cannabis to youth, and
- Using a youth to commit a cannabis-related offence.

In an effort to prevent youth from using cannabis, the Act will also prohibit[3]:

- Products that target youth;
- Packaging or labelling that targets or is appealing to youth;
- Selling cannabis through self-service displays or vending machines, and
- Promoting cannabis (with limited exceptions).

Impaired Driving

Drug-impaired driving will continue to be illegal under the Highway Traffic Act. It is currently expected that the Ontario government will provide police forces with sobriety field test training to detect impaired drivers. Oral testing will be authorized for roadside use until a federally-approved device is developed to help police forces enforce drug-impaired driving laws.

Drug-impaired driving could give rise to the following penalties:

- Immediate licence suspension and/or vehicle impoundment;
- Tickets and fines, and
- Criminal record and/or jail time.

It is illegal for any quantity of cannabis to be detected in the systems of:

- Youth under the age of 21;
- Inexperienced drivers (G1, G2, M1, M2) (regardless of age), and
- Commercial drivers while operating a commercial or construction vehicle.

For those drivers who do not fall within the above categories, the Ontario government has set two nanograms of tetrahydrocannabinol (THC) per millilitre as an indication of impaired driving. THC is the chemical responsible for most of the psychological effects of cannabis. THC can be detected in a user's system for weeks following ingestion, and there is no consistency in the processing of THC from one person to the next.

Criminal Penalties

The Act targets individuals and organizations acting in contravention of the legislation. Penalties will be proportional to the seriousness of the offence, ranging from warnings and tickets to imprisonment.

Offenses and their penalties proposed by the Act are as follows:

Offence	Penalties
Illegal distribution or sale	• Fines for small amounts • Up to 14 years in jail
Possession over the limit	• Fines for small amounts • Up to five years in jail
Production of cannabis beyond personal cultivation limits or with combustible solvents	• Fines for small amounts • Up to 14 years in jail
Taking cannabis across Canada's borders	• Up to 14 years in jail

Medical Cannabis

Medical cannabis is not subject to the same set of rules that applies to recreational cannabis. Medical cannabis is exclusively produced, sold, and regulated by the Government of Canada.

Those who have been authorized to use medical cannabis prior to the legalization of recreational cannabis will maintain their access to a federally-licensed producer. Medical cannabis purchases are made free of HST and are delivered using safe and protected measures. Health Canada may issue licenses to grow medical cannabis at home.

The Ontario government has legalized smoking medical cannabis in some public places, such as vape lounges, for medical cannabis users, but prohibits smoking medical cannabis in any "enclosed workplace" or "enclosed public place". The Smoke-Free Ontario Act, 2017 governs the use of medical cannabis in Ontario.

Employers and employees are required to understand the rules for medical cannabis use in the workplace and any associated potential workplace hazards, according to Ontario's Occupational Health and Safety Act. The Smoke-Free Ontario Act, 2017 will also require employers to:

- Ensure compliance with the obligations on smoking or holding lighted medical cannabis in enclosed spaces;
- Provide notice to employees regarding the restrictions;
- Post signs throughout the workplace; and<
- Ensure that employees or persons who do not comply with the above requirements are removed from the workplace.

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If you are uncertain of provincial and federal cannabis laws and require additional information or assistance, you are encouraged to consult with a Blaney McMurtry LLP lawyer for further guidance.

Dan Giantsopoulos is a partner in Blaney McMurtry's corporate/commercial and international trade and business practice groups. His practice focuses on advising a wide variety of businesses corporations (including a wealth of professional corporations), partnerships or joint ventures and their owners/operators in corporate and commercial law, estate planning and administration, and domestic tax. He is frequently called upon to draft or review Share/Asset Purchase and Sales Agreements, Shareholders' Agreements, Consulting and Distribution Agreements; to structure tax-driven corporate reorganizations, and to advise on shareholder disputes. He also advises and represents various American public and private companies with respect to establishing and growing their Canadian business operations. Dan can be reached at (416) 593-2984 and dgiantsopoulos@blaney.com.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.

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[1] The Ontario government has raised the minimum age set by the federal government to 19 from 18.

[2] Maximum penalties of 14 years in jail.

[3] There will be a fine of up to $5 million and a penalty of up to three years in jail for violating these prohibitions.