

# Medical Marijuana in Schools: Legal Obligations and Issues

## *The M Word: Exploring Perspectives on the Legalization of Marijuana and Safe Schools*

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# Agenda

- **Background**
- **Legislative Update**
- **Case Law Update**
- **Practical Tips: Employee and Student Use of Medical Marijuana**

# Background

- **1999:** Legal access to dried marijuana for medical purposes was first introduced with exemptions to the *Controlled Drugs and Substances Act (CDSA)*.
- **2000:** *R. v. Parker* - Individuals with a medical need had the right to possess marijuana for medical purposes.
- **2001:** Implementation of the *Marihuana Medical Access Regulations (MMAR)*
- **June 2013:** *Marihuana for Medical Purposes Regulations (MMPR)* create conditions for a commercial industry responsible for the production and distribution of marijuana for medical purposes.

# Background Continued

- **June 2015:** *R. v. Smith* - Restricting legal access to only dried marijuana was unconstitutional. Individuals with a medical need have the right to use and make other cannabis products.
- **July 2015:** Minister of Health issues exemptions under the CDSA to allow licensed producers to produce and sell cannabis oil and fresh marijuana buds and leaves in addition to dried marijuana, and to allow authorized users to possess and alter different forms of cannabis.

# Background Continued

- **February 2016:** *Allard v. Canada* - requiring individuals to get their marijuana only from licensed producers violated liberty and security rights protected by section 7 of the Canadian Charter of Rights and Freedoms. Individuals who require marijuana for medical purposes should have "reasonable access".
- **August 24 2016:** *Access to Cannabis for Medical Purposes Regulations (ACMPR)* comes into force

# Overview of *ACMPR*

- Framework for commercial production by licensed producers responsible for the production and distribution of quality-controlled fresh or dried marijuana or cannabis oil in secure and sanitary conditions.
- Provisions for individuals to produce a limited amount of cannabis for their own medical purposes or to designate someone to produce it for them.

# What's Changed?

- Newly Registered Persons may register with producer to obtain starting materials (seeds or plants) for production, and/or an interim supply of fresh or dried marijuana or cannabis oil while their own production is established.
- A registered person who has a designated producer can also participate in all of the activities that the designated person is authorized to conduct.
- Registered persons, as well as designated persons, will have the ability to alter the dried marijuana they harvest into other products, such as oils.

# Other Changes under the *ACMPR*

- New labelling requirements for cannabis oil
- New labelling requirements for fresh and dried marijuana to include the percentage of THC and CBD
- Provisions enabling individuals to receive their 30-day supply of cannabis within each 30-day period beginning on the date of the first sale

# Other Changes under the *ACMPR*

- Modifying that the accuracy of weight and volume of products in packages
- Requiring all analytical testing to be done using validated methods
- Requiring notification to the Minister of Health prior to commencing a recall

# How Individuals Can Obtain Medical Marijuana under the *ACMPR*

1. Access quality-controlled cannabis by registering with licensed producers.
2. Register with Health Canada to produce a limited amount for their own medical purposes.
3. Designate someone else to produce it for them.

\***Possession limit** is the lesser of a 30-day supply or 150 grams of dried marijuana or the equivalent amount if in another form.

# What's Still Illegal?

- **Storefronts** (“Dispensaries” and “compassion clubs”)
- **Any individual registered to produce a limited amount of cannabis for him/herself may not sell, provide or give cannabis to another person.**
- **A designated person may not:**
  - sell, provide or give cannabis to any person, except for the individual for whom he/she is authorized to produce
  - produce cannabis for more than two people registered with Health Canada, including him/herself.

# What's Still Illegal? (Cont'd)

- Registered and designated persons may not produce in excess of the maximum limits outlined in a registration certificate.
- It remains illegal for a company or an individual to advertise cannabis to the general public

# Legislation on Medical Marijuana in Schools

- ***Education Act*** – possession and trafficking of illegal drugs can lead to suspension or expulsion of student
  - “illegal drug” not expressly defined in Act
- ***Smoke-Free Ontario Act (SFOA)***: The *SFOA* bans the smoking or holding of lit tobacco products at school but makes no reference to medical marijuana
- ***Electronic Cigarettes Act (ECA)***: The *ECA*, while not yet fully in force, provides broad exemptions for medical marijuana patients (which would include Student Patients). In its current form, the *ECA* would allow a student to use a vaporizer for medical marijuana consumption on school property.

# Marijuana in the Workplace:

## *French v. Selkin Logging*, 2015 BCHRT 101

- The Tribunal dismissed a complaint brought by Mr. French, a heavy equipment operator for a logging company.
- Mr. French alleged that his employer discriminated against him on the basis of disability by, among other things, not permitting him to smoke marijuana for pain management on the job as per the employer's Zero Tolerance Policy.
- Mr. French asserted that he needed to smoke marijuana to manage his pain related to his cancer diagnosis.
- The Tribunal found that:
  - (1) he did not have a prescription;
  - (2) his doctors had not told him to smoke marijuana and
  - (3) that there was no evidence that any doctor had condoned his smoking at work.

# Marijuana in the Workplace:

## *French v. Selkin Logging*, 2015 BCHRT 101

- **The Tribunal also made it clear that the duty to accommodate is not a stand-alone obligation. The employee has a reciprocal obligation to:**
  - (1) obtain the proper medical and legal authorization;
  - (2) use the marijuana only as medically allowed and authorized; and
  - (3) inform the employer that the employee would be legitimately using marijuana.

# Marijuana in the Workplace:

## *Calgary (City) v. CUPE 37, 2015 CanLII 61756*

- A City of Calgary employee was employed as a heavy equipment operator - a safety-sensitive position.
- In 2009, the employee was prescribed marijuana for medical purposes.
- He informed two of his supervisors that he had been issued a medical marijuana permit.
- In 2011, representatives of management became aware of the employee's medical marijuana use.
- He was immediately removed from his position and placed in a non-safety sensitive position, pending investigation.

# Marijuana in the Workplace

## *Calgary (City) v. CUPE 37, 2015 CanLII 61756*

- After completing its investigation into the matter, the City of Calgary determined that the employee had a marijuana dependency that required treatment.
- He was provided with two options:
  - (1) continue in a non-safety sensitive position; or
  - (2) consult with a doctor for further assessment of his dependency.
- The employee's union filed a grievance demanding that the employee be returned to his previous position.

# Marijuana in the Workplace:

## *Calgary (City) v. CUPE 37, 2015 CanLII 61756*

### **Decision:**

- There was no evidence that the employee's use of marijuana for medical purposes had any impact on his ability to perform his duties
- Employee complied with the employer's policy and reported his marijuana usage to his supervisors
- He worked without incident and there were no reported signs of dependency in the period or throughout his working career.
- Employee was reinstated

## Marijuana in the Workplace:

### *Wilson v. Transparent Glazing Systems (No. 4), 2008 BCHRT 50*

- The employee had a medical marijuana license to smoke marijuana to relieve chronic back pain and migraine headaches.
- The contractor's superintendent informed the employer (a subcontractor) that the employee was taking medication that seemed to impair his ability to perform his duties.
- The employee was terminated two days later.
- The employer relied on the employee's bad temper, which allegedly caused disruptions at work and the fact that none of the other employees wanted to work with him.

## Marijuana in the Workplace:

### *Wilson v. Transparent Glazing Systems (No. 4)*, 2008 BCHRT 50

#### Decision:

- Employee had a disability, and employer knew or should have known, and should have given the employee the opportunity to address the allegations
- The employer discriminated against the employee; however, there were unrelated performance issues that would have resulted in termination anyway, and he was awarded \$500

# Marijuana in Schools: *Dean v. University of Victoria and Another*, 2012 BCHRT 71

- Applicant was an undergraduate student in the Faculty of Fine Arts
- Applicant claimed that he had osteoarthritis in both knees and that he used medical marijuana to manage the pain
- He was enrolled in a mandatory course requirement for the visual arts program, which involved wood and metal work with the use of heavy equipment.
- The university requested medical information from the Applicant confirming that there was no risk of impairment from his medication; he refused

# Marijuana in Schools: *Dean v. University of Victoria and Another*, 2012 BCHRT 71

- The university proposed a plan that would allow the Applicant to meet a set of altered course requirements to complete the course
- The Applicant expressed concerns with the revised plan

## **Decision:**

- An Applicant has an obligation to cooperate with reasonable efforts to accommodate the student
- Application dismissed

# Employee Medical Marijuana Use: Tips for Employers

- Employers need to accommodate the needs of employees who have a legitimate permit to consume marijuana for medicinal purposes, to the point of “undue hardship”
  - What if an employee does not satisfy the legal requirements for possession?
- An employer can impose a general rule prohibiting the consumption of alcohol or drugs in the workplace. However, a policy that relies on strict application of a zero tolerance rule, without considering accommodation, may offend the *Human Rights Code*.

# Employee Medical Marijuana Use: Tips for Employers

- The license for medical marijuana is not a license for impairment in the workplace, but disciplinary responses may not be appropriate
- Employees with a license should be treated like any other employee with a disability and a prescription medication which could affect their ability to carry out their duties of employment
- Reasonable accommodation only - limits may be appropriate if the employee says they need to smoke on the job
- Safety sensitivity is a factor to consider

# Student Medical Marijuana Use: Tips for Schools

- The duty to accommodate applies as usual
- **Threshold Question: Is the student in lawful possession of marijuana and using it for medical purposes under the *Access to Cannabis for Medical Purposes Regulations*?**
  - The student must be in possession of a valid medical document
  - The amount in possession must be under the legal limit
  - The marijuana must be obtained through a licensed producer

# Sample Valid Medical Document



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## Sample Medical Document for the Access to Cannabis for Medical Purposes Regulations

*This document may be completed by the applicant's health care practitioner as defined in the Access to Cannabis for Medical Purposes Regulations (ACMPR). A health care practitioner includes medical practitioners and nurse practitioners. In order to be eligible to provide a medical document, the health care practitioner must have the applicant for the medical document under their professional treatment. Regardless of whether or not this form is used, the medical document must contain all of the required information, (see in particular s. 2 of the ACMPR).*

Patient's Given Name and Surname \_\_\_\_\_

Patient's Date of Birth (DD/MM/YYYY) \_\_\_\_\_

Daily quantity of dried marijuana to be used by the patient: \_\_\_\_\_ g/day

The period of use is \_\_\_\_\_ day(s) \_\_\_\_\_ week(s) \_\_\_\_\_ month(s).

**NOTE: The period of use cannot exceed one year**

Health care practitioner's given name and surname: \_\_\_\_\_

Profession: \_\_\_\_\_

Health care practitioner's business address: \_\_\_\_\_

Full business address of the location at which the patient consulted the health care practitioner (if different than above): \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number (if applicable): \_\_\_\_\_

Email Address (if applicable): \_\_\_\_\_

Province(s) Authorized to Practice In: \_\_\_\_\_

Health Care Practitioner's Licence number: \_\_\_\_\_

**By signing this document, the health care practitioner is attesting that the information contained in this document is correct and complete.**

Health Care Practitioner's Signature: \_\_\_\_\_

Date Signed (DD/MM/YYYY): \_\_\_\_\_



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**NOTE:** The medical document can be submitted from the health care practitioner's office to the licensed producer by secure fax. If you choose to submit the medical document by secure fax, initial the statement below to acknowledge agreement.

I, the health care practitioner, acknowledge that the faxed medical document is now the original medical document and that I have retained a copy of this document for my records only.

**Initial here:** \_\_\_\_\_

Canada

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# Student Medical Marijuana Use: Tips for Schools

- What if the student does not satisfy the legal requirements?
- Consider the student's circumstances within framework of disability accommodation, the *Education Act* and school board policies.
  - Do you know or suspect the student has a disability?
  - What will accommodation look like?
- Is it appropriate to waive application of disciplinary consequences for possession of an illegal drug and/or impairment while on school property?
- Inquire with the student, meet with parents as appropriate, and request proper documentation

# Questions?

**Thank you!**