

Cannabis Legalization in Canada

Implications for public sector insurance programs

August 2017

Introduction

Cannabis, also referred to colloquially as marijuana, pot, or weed, is derived from dried flowers and leaves of the cannabis plant. The principal psychoactive ingredient is tetrahydrocannabinol (THC), a cannabinoid compound that acts on receptors in the brain, causing altered states of perception, mood, or consciousness. The other major active ingredient, cannabidiol (CBD) does not appear to cause a psychoactive response. Cannabis is generally consumed by smoking, vaporization, or ingestion. According to a United Nations report, cannabis is the most prevalent illicit drug across the globe, with estimated users in 2010 ranging between 119 million and 224 million.¹

In Canada, an estimated five-million adults use cannabis at least once a month, and this figure is expected to increase by 19 percent after cannabis is legalized.² The legality of recreational cannabis use varies greatly across the globe. Legalization of recreational use will make Canada one of the world's most progressive nations in this respect. Legalization, however, requires a major shift in public policy. With the federal government proposing that legislation will be effective as early as July 1, 2018, the next year will require all facets of society to clarify their relationship with cannabis, including public sector, industry, and law enforcement.

1. UNODC (June, 2012). *World Drug Report 2012*. United Nations.

2. Cain, Patrick (October 12, 2016). *Canada will see 900,000 new pot smokers under legalization, poll implies*. Global News. <http://globalnews.ca/news/2995390/canada-will-see-900000-new-pot-smokers-under-legalization-poll-implies/>. Retrieved December 4, 2016.

History of Cannabis

Cannabis, which is indigenous to Central and South Asia, dates back to at least 2727 B.C.E.³ It was often used in religious and spiritual rituals in a number of ancient societies. There are also references to cannabis products in North America dating back to the 1800s.⁴ Beginning in the twentieth century, cannabis was criminalized in various countries such as the United States, Jamaica, United Kingdom, and New Zealand.

Cannabis was first restricted in Canada by the government in 1923,⁵ although it remained a relatively unknown substance until a rise in popularity during the 1960's. Between 1946 and 1961, only two percent of drug arrests were related to cannabis.⁶ By 1972, convictions related to cannabis had skyrocketed to 12,000 annually,⁷ the majority of which were against middle-class citizens. As a result, the government formed the Le Dain Commission to investigate the non-medical use of cannabis in Canada.⁸ Their report recommended the decriminalization of cannabis, and although the federal government at the time discussed this course of action, ultimately no steps were taken and criminal penalties remained in force for cannabis offenses.

In 2000, *R v Parker*, a landmark court case from the Ontario Court of Appeal, the court found that the prohibition on possession and cultivation of cannabis was unconstitutional in the absence of an exemption for medical use.⁹ In response, the federal government enacted legislation regarding the production, distribution, and use of medical cannabis. The legislation has evolved in response to multiple legal challenges

and the current form is the *Access to Cannabis for Medical Purposes Regulations (ACMPR)*,¹⁰ enacted in 2016. It contains regulations around the commercial production and sales of medical cannabis, as well as provisions that allow designated individuals to grow cannabis for medical use. In 2016, the federal government created a nine-member task force to advise the Canadian government on how best to move forward with the plan to legalize cannabis.¹¹ The task force released their report in late 2016, providing recommendations on establishing a supply chain, minimizing harm, enforcing safety, and continuing to allow medical access. The Task Force on Cannabis Legalization and Regulation recommend that the ACMPR remain in place after legalization, with some modifications. This will allow the medical and recreational systems to work together to benefit users of cannabis.

3. DEA Museum. Cannabis: History. <https://www.deamuseum.org/ccp/cannabis/history.html>. Retrieved January 22, 2017.

4. John G. Bourke (June 1, 1984). Popular medicine, customs, and superstitions of the Rio Grande. *Journal of American Folklore*. Vol 7, No 25: 119.

5. Canadian House of Commons (April 23, 1923). Narcotic Drugs Act Amendment Bill. House of Commons Debates, 14th Parliament, 2nd Session. 3: 2124; An Act to Prohibit the Improper use of Opium and Other Drugs, SC 1923, c 22.

6. Carstairs, Catherine (2000). 'Hop Heads' and 'Hypes': Drug Use, Regulation and Resistance in Canada, 1920-1961". University of Toronto Ph.D. Dissertation.

7. Colin Kenny and Pierre Claude Nolin (2003). Cannabis: Report of the Senate Special Committee on Illegal Drugs. University of Toronto Press. pp. 59.

8. Robert Rutherford and Magda Fahmi (July 1, 2008). Creating Postwar Canada: Community, Diversity, and Dissent, 1945-75. UBC Press. pp. 318.

9. 2000 CanLII 5762 (ON CA). The Narcotic Control Act and its provision dealing with cultivation had already been repealed, so it was unnecessary for the Court to actually strike this provision.

10. SOR/2016-230

11. Mas, Susana (June 30, 2016). Marijuana task force to be led by former deputy PM Anne McLellan. CBC News. <http://www.cbc.ca/news/politics/liberals-marijuana-task-force-1.3659509>. Retrieved May 17, 2017.

Proposed Legislation in Canada

On April 13, 2017, the federal government introduced legislation for the legalization of cannabis for recreational use. This was based on recommendations made by the Task Force on Cannabis Legalization and Regulation. If Bill C-45 is passed, the government hopes to have the Cannabis Act in force by July 1, 2018. It sets a strict legal framework for production, distribution, and possession of cannabis. Major tenets of the proposed Act include:

- A minimum legal age of 18, although the provinces and territories have the option to increase this age
- It will be a criminal offense to provide cannabis to those under 18, or to use anyone under 18 to commit a cannabis related offense
- Adults will be able to possess up to 30 grams of cannabis, and share this with other adults
- Federally-licensed producers will continue to be able to produce and sell fresh and dried cannabis, as well as cannabis oil, plants and seeds. Each province will be responsible to determine how cannabis will be distributed within the province. Additionally, other products, such as edibles, may be made available for purchase once appropriate rules for their production and sale are developed
- Individuals may make cannabis edibles (food or drink) for personal use as long as no organic solvents are used
- Information-based promotion will be allowed, but significant restrictions on promotion or advertising exist, including restricting promotion considered appealing to youth
- Each household may grow up to four cannabis plants for personal use
- Criminal penalties for illegal distribution or possession range from tickets for small offenses, up to 14 years in jail

The proposed Act would require the cooperation of provinces, territories, and municipalities in order to enact the appropriate public health and safety regulations. Although the Act outlines the federal standards, the provinces and territories would be required to enact legislation containing minimum conditions to ensure public health and safety objectives are addressed across the country.

Provinces and territories will be able to take responsibility for developing, implementing, maintaining, and enforcing systems to oversee the distribution and retail sale of cannabis and cannabis products. They will be able to set zoning restrictions for cannabis-related businesses, make restrictions on public consumption of cannabis, and impose additional requirements on personal cultivation of cannabis. In turn, municipalities will play an important role in enforcing local zoning bylaws, personal cultivation and possession limits, and public nuisance complaints. It is expected that these issues will be handled by municipal bylaw officers, health and safety inspectors, and police.

In addition to the proposed Act outlined above, there will be changes to impaired driving laws to reflect penalties for driving under the influence of cannabis, based on having specified levels of a drug in the blood within two hours of driving. There would be a monetary fine for THC levels above two nanograms but below five nanograms, and a monetary fine and potentially jail time for anything over five nanograms. There would also be monetary fines and/or imprisonment for driving with a certain level of a combination of cannabis and alcohol levels in the blood. Police officers would be allowed to test for the presence of drugs using a roadside oral fluid sample when a reasonable suspicion of drug use exists, and may further be permitted to request a blood sample if reasonable grounds (such as failing the oral fluid screening) to believe an offence has been committed exist. In addition to the changes related to drug screening, police officers will also be allowed to request a mandatory breath sample for alcohol on any driver lawfully stopped, without suspicion of intoxication.

Insurance Implications of Legalization

While the effects of cannabis legalization will take years to fully be realized, there are a number of immediate considerations for the insurance industry. From a property standpoint, commercial and personal cultivation of cannabis will introduce another peril that is currently excluded under personal policies (and some commercial policies). There are currently more than 30,000 people licensed to grow medical cannabis for their personal use,¹² and the number of people growing cannabis for their personal use is expected to increase with legalization. Growing indoors can require additional heat, water, and electricity, which could have a significant impact on large, multi-unit housing complexes. From a mass production standpoint, commercial producers have specialized equipment and strict requirements regarding temperature and other growing conditions. There will be a need for specialized property and equipment breakdown coverage to respond to this exposure, and this need is expected to grow significantly as more producers are licensed. This type of operation can increase susceptibility to water and fire damage if not set up appropriately. Electrical modifications and overloaded circuits can increase the fire hazard, poor irrigation can cause mold, and specialized processes can result in expensive business-interruption losses. Coverage for the cannabis product itself will also require a specialized insurance product, as stock would consist of both living plant material and finished products ready for sale.

As with all high-severity risks, risk management and risk control of commercial enterprises will be an important factor in distinguishing the best-in-class risks, as well as what should be the acceptable standard for risk management in a volatile industry. Appropriate standards for quality control and testing of cannabis THC levels will need to be followed closely for compliance, as producers and distributors of cannabis could be found negligent if the users of the products have a loss or injury. As with the sale and distribution of any product, specifically a controlled substance, the producer and distributors have an increased liability exposure. Improper ventilation can cause illness as well as an olfactory nuisance to the surrounding area, improper labelling or manufacturing of the product can lead to bodily-injury

losses, and poor maintenance at the site could result in damage to third-party property. There is also likely to be a commercial host liability type exposure, similar to what bars and restaurants face with respect to liquor, if jurisdictions choose to allow for the operation of consumption lounges. Additional consideration should be given to ancillary lines such as employer's liability, transit, and products recall.

Governments and related public-service entities are likely to be highly impacted by the proposed legislation. As the local governments will have the option to draft legislation and regulations related to the distribution of cannabis, such legislation may be challenged in court, especially any regulations or zoning regarding the possible restriction of the use of private property to grow legal cannabis. In addition, the use of oral drug tests performed by police, as well as the option to require breath samples from anyone lawfully stopped regardless of suspicion of intoxication will likely result in further court challenges.

12. Marchitelli, Rosa (February 27, 2017). Landlord pays high price for renter's medical marijuana grow-op. CBC News. <http://www.cbc.ca/news/canada/british-columbia/go-public-medical-marijuana-landlord-tenant-insurance-pulled-1.3985875> . Retrieved May 2, 2017.

How Can Aon Help?

Aon is a leading global provider of both risk management and insurance, allowing us to keep up to date on all developments and changes in the marketplace both on a national and global scale. Having dedicated resources in countries and states that have already gone through the legalization process will ensure that we are fully prepared to provide best-in-class information to our clients regarding the legalization of cannabis and resulting changes in the regulatory environment.

Aon's specialized brokerage teams working with our risk management and legal teams will be able to perform:

- Full wording comparisons to ensure our clients are fully protected against any new exposures
- Contract reviews for new agreements resulting from the legalization
- Regulatory updates throughout the legalization process, with analysis and potential exposure changes resulting out of these changes
- Client-specific wording enhancements where necessary
- Additional training through the use of webinars, presentations and departmental training sessions

As a top commercial insurance brokerage, Aon has unparalleled access and leverage with insurance markets around the globe. We will be able provide innovative products, customized insurance solutions, and leading risk management consultation to best prepare our clients for the federal legalization of cannabis.

We would like to acknowledge and thank Brownlee LLP for their guidance on this topic. As one of the leading firms in Canada, Brownlee's significant experience with both the public sector and the cannabis industry was instrumental in the writing of this paper. For more information about Brownlee's services, please visit their website at www.brownleelaw.com or by phone at 1.800.661.9069.

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