Ontario Government Introduces Cannabis Legislation

November 08, 2017

The Ontario government announced that it would introduce legislation to govern the lawful use and retail sale of “recreational cannabis.”

On November 1, 2017, the Ontario government introduced Bill 174, the *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017* ("Bill 174"). Bill 174 contains the *Cannabis Act, 2017*, new legislation that will govern the lawful use and retail of "recreational cannabis" in Ontario. As reported in the Summer 2017 edition of the Education Law Newsletter, the federal government's *Cannabis Act*, introduced on April 13, 2017, would provide Canadians with legal access to cannabis by July 1, 2018. However, provincial governments would have to make corresponding legislative and policy changes with respect to cannabis use and retail sales to give real effect to the *Cannabis Act*. Bill 174 is Ontario's response to the legal access regime being put into place by the federal government under the *Cannabis Act*.

Current Status of Recreational Cannabis Use and Sale

Currently, the *Controlled Drugs and Substances Act* makes it a criminal offence to produce, buy, sell, possess or traffic in cannabis, except where access to cannabis is permitted for medical purposes. Bill C-45, the *Cannabis Act*, would create new rules for the production, distribution, sale and possession of cannabis in Canada. Bill C-45, if passed, will come into force no later than July 1, 2018. The *Cannabis Act* passed 2nd Reading in Parliament on June 8, 2017 and was referred to the Standing Committee on Health. The Committee reported to the House of Commons with some proposed minor amendments to the *Cannabis Act* on October 5, 2017.

Also introduced on April 13, 2017 was Bill C-46, an Act that would amend the *Criminal Code* to include new provisions that address drug-impaired driving. Bill C-46 passed 3rd Reading on October 31, 2017 and is presently being considered by the Senate at the 1st Reading stage. Until Bill C-45 and Bill C-46 are passed and come into force, all laws respecting cannabis remain in effect.

Ontario's Proposed Cannabis Legislation

The Ontario government intends to regulate cannabis use and sale through provincial legislation, first and foremost of which is the *Cannabis Act, 2017* introduced on November 1, 2017. The *Cannabis Act, 2017*, if passed, will establish the following rules in Ontario:1

1. In Ontario, the minimum age to use, buy, possess and cultivate cannabis will be 19.
2. Cannabis use will be prohibited in public places, workplaces and motor vehicles. This prohibition would include schools.
3. The Liquor Control Board of Ontario will oversee the retail sales of cannabis in Ontario by establishing the Ontario Cannabis Retail Corporation. There will be at least 150 stand-alone retail stores by 2020, and online retail sales from July 2018 onward. All cannabis sold in Ontario will be obtained from the federally licensed commercial cannabis producers who are authorized to sell cannabis to individuals with a legal prescription under the federal *Access to Cannabis for Medical Purposes Regulations*.
4. The illegal cannabis "dispensaries" and "clubs" will not be considered legal retailers and will be subject to new provincial offences and strict penalties.
5. Regulate smoking and vaping through a new *Smoke-Free Ontario Act, 2017*.

Youth Possession

The *Cannabis Act* specifically provides that youth under age 18 would not face criminal prosecution for possessing or distributing up to 5 grams of dried cannabis or its equivalent.2 However, the federal government has effectively decriminalized minor possession by youth, while leaving it open to the provincial governments to regulate youth possession through ticketing and/or confiscation.

Indeed, the Ontario government has indicated that it intends to regulate youth possession.3 If the *Cannabis Act, 2017* is passed, Ontario youth under age 19 would be prohibited from possessing, consuming, attempting to purchase, purchasing or distributing cannabis. Further, no one under age 19 would be permitted to cultivate, propagate or harvest cannabis (or offer to do any of those activities for others). Police would be permitted to confiscate cannabis in connection with an offence, including any cannabis that is found in the possession of youth under age 19.

Police will also have the authority to refer a potential young offender to an "approved youth education or prevention program". Prosecutors will have a similar authority when exercising their power to stay a provincial offences proceeding or in withdrawing a charge. The *Cannabis Act, 2017* authorizes the Attorney General to approve education or prevention programs and will list such programs on a publicly available website.

What's Next for Schools

The Ontario government has stated that it will be consulting with municipalities to determine appropriate locations for new retail cannabis outlets. There is no indication that they will be consulting specifically with school boards or independent schools.

We confirm that the changes resulting from the *Cannabis Act*, and the new Ontario *Cannabis Act, 2017*, do not give students a right to bring cannabis to school, however small the amount. Both levels of government have signalled the intention not to

charge youth with criminal offences, but rather to confiscate cannabis and spend money on public education campaigns about harm from cannabis use. We expect further details on the content and providers of any approved youth education or prevention programs.

Schools may continue to have policies that prohibit students and others from possessing, using, sharing or selling cannabis at school.

After the federal and Ontario governments pass their respective legislation and any related regulations, school boards and independent schools will need to revise existing policies and procedures to ensure consistency.

1Ontario Government News Release, November 1, 2017.

2 Bill C-45, *Cannabis Act*, 1st Sess, 42nd Parl, 2017, s. 8(1)(c) and s. 9(1)(b)(i).

3 Ontario Government Backgrounder "Ontario's Plan to Regulate Legalized Cannabis," September 8, 2017.

By

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