Recent Changes To Path To Cannabis Legalization

September 20, 2018

There have been significant changes over the past several months to the path for legalizing recreational cannabis in Canada. The federal government's hallmark legislation, the Cannabis Act, will decriminalize recreational cannabis use by Canadian adults and implement new measures for detection of drug-impaired drivers and drug trafficking that falls outside the lawful retail models set by each province.

Although the Cannabis Act was passed by the House of Commons on November 27, 2017, it was not passed by the Senate until June 19, 2018 following lengthy policy debates. As a result, the Cannabis Act was finally given Royal Assent on June 21, 2018. The prime minister announced in question period on June 20, 2018 that the Cannabis Act will come into force on October 17, 2018.

In the meantime, the Ontario government has been preparing for the legalization of cannabis. On December 12, 2017, the previous government passed legislation which will give effect to the federal Cannabis Act. The Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017 was passed by the previous Ontario government and was intended to implement a significant number of changes to the use, sale and regulation of cannabis in Ontario.

While the new provincial government proclaimed most of the Cannabis Act, 2017 into force effective October 17, 2018, they have also announced two major shifts to Ontario's cannabis framework:

1. Private retail sales model for cannabis

The previous government had planned to implement a retail model similar to the Liquor Control Board of Ontario called the Ontario Cannabis Stores (the OCS). However, on August 13, 2018, the new government announced that it would introduce a model for the sale of cannabis that includes an online retail channel by the OCS as of October 17, 2018, and a private retail sales model for licensed retailers by April 1, 2019.

The government has indicated that it will immediately begin consultations before launching its private retail sales model by the April 1, 2019 target date. The consultation process will apparently include consultations with municipalities, Indigenous communities, police and the cannabis industry association, as well as "other key stakeholders". School boards have not been specifically identified as parties to be consulted, and the extent to which they will be asked to participate is unknown.

It has also been announced that municipalities will be given a short period of time to opt out of cannabis retailers within their boundaries. More information on opting out has yet to be provided. What also remains unclear is whether cannabis retailers will be restricted in their proximity to schools.

2. Smoke-Free Ontario Act, 2017 has been paused

The Smoke-Free Ontario Act, 2017 was set to come into force on July 1, 2018. On June 29, 2018, the new government revoked the proclamation and effectively hit “pause” on the new legislation. As a result, the new rules that would restrict vaping and provide clarity on consumption of medical cannabis have not come into force. The previous legislation, the Smoke-Free Ontario Act, 2006 and the Electronic Cigarettes Act remain in effect.

Medical Cannabis Users Remain Regulated

The current medical access regime will remain in place for medical cannabis users. The federal Access to Cannabis for Medical Purposes Regulations (ACMPR) allows possession of cannabis for medical purposes if obtained:

1. from a licensed producer;
2. from a health care practitioner in the course of treatment for a medical condition; or
3. from a hospital.

Individuals who claim to be medical cannabis users must show supporting documents to police on demand. It is also reasonable for schools to request such documents in connection with the duty to accommodate a student or staff disability.

Impairment Still Not Acceptable at School or Work

Educators and employers can continue to take the position that impairment at school or in the workplace is not acceptable. The legal access regime described above does not provide anyone in Ontario with a legal right to consume or possess cannabis on school premises, or to be impaired at school without any recourse to the school or employer. If a student or an employee is a medical cannabis user, the matter will be treated like any other accommodation of a disability. Smoking and vaping will be subject to applicable legislation.

The Ontario government has advised school boards in a memo from the deputy minister of education dated May 8, 2018 that it will provide funding allocations and resources to support training and education about cannabis. In this memo, and earlier communications from the Ministry of Education, the government has been clear that non-medical cannabis use by students on school grounds and during school-related activities could lead to suspension. The Education Act and provincial Code of Conduct will be amended effective October 17, 2018 to reflect the consequences for non-medical cannabis use and other cannabis related infractions such as sharing cannabis with other youth under age 19.

Although the Cannabis Act, 2017 permits ticketing of youth and confiscation of cannabis, there has been little information from from the province on whether they intend to act on these new powers. Accordingly, school boards should continue to liaise with local authorities to determine the scope of police involvement in an investigation related to unlawful youth consumption and possession of cannabis.

We will continue to monitor the federal and provincial governments' evolving efforts to provide adults with legal access to cannabis and the impact on school boards.

By

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