Ten Things To Know Now That Recreational Cannabis Will Be Legal In Canada

July 04, 2018

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This article provides a brief overview of the recent developments around this hot topic, including: the status of the legalization of cannabis, associated regulations, connection to Bill C-46,[1] and some of the key issues emerging from legalization.

1. Recreational use of cannabis will be legal in Canada on October 17, 2018.

The Liberal government looks set to achieve their stated goal of legalizing cannabis by 2018, although it will be slightly later than initially forecast. Bill C-45, the *Cannabis Act* (the Act), to legalize and regulate the recreational consumption of cannabis received Royal Assent on June 21, 2018. On June 19, 2018, senators passed Bill C-45 by a 52-29 vote, with two abstentions. The Act is scheduled to come into force, making recreational cannabis use officially legal on October 17, 2018. The delay to the fall is to allow the provinces time to prepare for legalization, including procurement of cannabis stock to sell from storefronts.

The societal context for Bill C-45 has been characterized as follows by Parliament:[2]

"*This enactment enacts the Cannabis Act to provide legal access to cannabis and to control and regulate its production, distribution and sale.*

The objectives of the Act are to prevent young persons from accessing cannabis, to protect public health and public safety by establishing strict product safety and product quality requirements and to deter criminal activity by imposing serious criminal penalties for those operating outside the legal framework. The Act is also intended to reduce the burden on the criminal justice system in relation to cannabis."

2. Cannabis is to be regulated through a model of co-operative federalism.

In November 2017, Health Canada published a consultation paper, "Proposed Approach to the Regulation of Cannabis", which aimed to elicit feedback from stakeholders on the proposed regulations ancillary to the *Cannabis Act.* The consultation period closed on January 20, 2018. A summary of the feedback received during the public consultation was subsequently published by Health Canada.

The regulation of cannabis is to occur through a division of responsibility between the federal and provincial/territorial levels. The Standing Senate Committee on Legal and Constitutional Affairs said in its May 1, 2018 report, following its consideration of Bill C-45, that "while the Cannabis Act would provide a national framework addressing the criminal and health-related aspects of these matters, the provinces, territories, municipalities and Indigenous communities are expected to further regulate the possession, use, sale, and distribution of cannabis."[3]

The regulations address the following themes:[4]

- Licences, Permits, and Authorizations;
- Security Clearances;
- Cannabis Tracking System;
- Cannabis Products;
- Packaging and Labelling;
- Cannabis for Medical Purposes;
- Health Products and Cosmetics Containing Cannabis; and
- Miscellaneous Issues.

The Government announced that its cannabis regulations are to be published on July 11 and to come into force in October along with Bill C-45. The regulations are summarized in some detail here.

3. Provinces are moving in the same direction, but not taking a uniform approach.

In anticipation of the *Cannabis Act*- coming into force, provinces and territories have been creating their own cannabis frameworks.

Legal age: Most provinces and territories have set the minimum age for possession of cannabis at 19. The governments of Québec and Alberta plan to set legal age restrictions for cannabis at 18.

Retail sales: British Columbia and Nunavut will allow sales from both private and public cannabis retailers. Alberta, Saskatchewan, Manitoba, and Newfoundland and Labrador will permit sales from private cannabis retailers. Ontario, Québec, Prince Edward Island, Nova Scotia, Northwest Territories, and New Brunswick will only allow sales from provincially operated cannabis retailers. Only Saskatchewan and Manitoba have expressed an interest in implementing a private retailer system for online sales. In Ontario, cannabis will be available through Ontario Cannabis Stores, which are operated by the LCBO.

Home-growing: Under the *Cannabis Act,* an individual may grow up to four plants in a single dwelling.

However, Manitoba and Québec have decided to prohibit home cultivation of cannabis. Other provinces and territories have implemented their own restrictions on the quantity and location of homegrown cannabis.

Retail location: Some provinces and territories have imposed, or plan to impose, restrictions on where retail cannabis stores may be located. In New Brunswick, cannabis stores must be at least 300 metres away from a school. Other provinces such as Alberta and British Columbia have implemented restrictions providing that cannabis stores may only sell cannabis and cannabis accessories.

Number of retail locations: The number of retail cannabis stores will also be provincially regulated. The numbers vary by province, with Yukon having the fewest at one, and Alberta having the most, at 250.

Recreational consumption: Consuming recreational cannabis in public will be prohibited in Saskatchewan, Ontario, and Newfoundland and Labrador. Other provinces, such as British Columbia and Alberta, have prohibited cannabis consumption wherever smoking tobacco is prohibited.

4. There is ongoing debate about how to address drug-impaired driving. This is covered in Bill C-46, a separate piece of legislation, which also received Royal Assent on June 21, 2018.

Legislative changes have been enacted to address drug-impaired driving in light of the legalization of cannabis. Bill C-46, which also received Royal Assent on June 21, 2018, amends the *Criminal Code* to strengthen the legislative provisions relating to driving while impaired by drugs, including cannabis.

One of the issues that has been debated during consideration of Bill C-46 in the Senate is how to reliably detect current impairment at the roadside, including oral fluid testing and/or blood testing. The mechanism of testing (equipment) is not settled. For now, Bill C-46 appears to permit roadside alcohol and drug screening through collection of a "bodily substance", which could include blood. Bill C-46 has set limits for offences linked to cannabis consumption in the following terms: [5]

- Two nanograms (ng) but less than five ng of tetrahydrocannabinol (THC) per millilitre (mL) of blood: an offence punishable on summary conviction with a maximum fine of $1,000;
- Five ng or more of TH per mL of blood: a hybrid offence liable to the punishments currently set out in sectio 255(1) of the Code; and
- More than 2.5 ng of THC per mL of blood combined with a blood alcohol concentration (BAC) of 50 milligrams (mg) of alcohol per 100 mL of blood (0.05): a hybrid offence liable to the punishments currently set out in section 255(1) of the Code.

5. The legalization of cannabis will raise some interesting issues for the workplace.

There has been interesting analysis on the anticipated impact the legalization of cannabis will have on the workplace. In particular, how the respective rights of employers (to ensure a safe working environment) and of employees (to privacy, and, in some cases, to use cannabis for medical purposes) should be balanced. In *Aitchison v. L & L Painting and Decorating Ltd.*, the Human Rights Tribunal of Ontario denied a discrimination claim in a case involving a high-rise painter found smoking cannabis at work, which he attributed to a medical need. There are other recent decisions reaching similar conclusions on the appropriate balance to be struck between these competing interests, including the recent Court of Appeal of Nova Scotia decision overturning a ruling that denying coverage for medical cannabis was discriminatory.[6]

As the law stands, termination of an employee may be defensible in circumstances where they attend work under the influence of drugs or alcohol, bring drugs or alcohol to the workplace, or consume drugs or alcohol in the workplace. Granted, that determination will need to be fact-specific, and consideration will need to be given to any human rights issues at play, including alleged disability connected to drug use. There is, however, no absolute right to use medical cannabis at work, and the legalization of recreational cannabis use is unrelated to, and not expected to impact, that position.

On a separate note, there were calls during Senate debates for Bill C-46 to include “a regulatory alcohol and drug testing framework to monitor and address employee fitness for duty in safety-sensitive industries, particularly in the transportation industry".[7]

6. There will be (at least initially) little impact on access to cannabis for medical purposes.

The impact on cannabis for medical purposes is expected to be negligible.[8]- With the exception of approval for a wider class of health professionals to prescribe cannabis, it is expected that access to cannabis for medical purposes will remain unaffected by the *Cannabis Act*. As things stand, those accessing cannabis for medical purposes need a medical document to do so, which they can obtain from physicians and nurse practitioners (the latter only in provinces and territories where supporting access to cannabis for medical purposes is included under their scope of practice or in legislation).

One area that may see some change is the personal injury field where it is anticipated that there will be an increase in the number of plaintiffs seeking funding for medical cannabis as an alternative to traditional forms of pain relief. The Ontario Workplace Safety and Insurance Appeals Tribunal has outlined principles to be considered in extending funding for medical cannabis in Ontario.

7. A cannabis tracking system will be implemented.

As mentioned in point two above, the cannabis tracking system will operate like an online portal to track cannabis through the supply chain from seedling, to sale, to the ultimate consumer. This is intended to operate as a means to prevent the diversion of legitimate cannabis into the black market, or from the black market into legitimate distribution. The tracking system will also ensure quality control, facilitate recalls, and

provide other related services for consumers. How this will work exactly remains to be seen.

8. Cannabis packaging, labelling and advertising will be prescribed by the government.

Again, see point two above. Packaging and labelling will be strictly prescribed for consistency of information and to address the government's stated goal of protecting the public. Proposed images showing how the packaging may look were released by Health Canada on March 19, 2018. Those images can be accessed through the second link in section two of this article.

What about advertising and media? The *Cannabis Act* restricts marketing similarly to tobacco. It bans promotion that appeals to youth, contains false or misleading statements, or depicts people, celebrities, characters, or animals. How this will be enforced, especially with regards to the internet, remains to be seen.

9. Some groups believe Bill C-45 does not do enough.

Concerns have been expressed about the potentially significant collateral impact that the maximum penalty provisions will have on non-citizens as a consequence of the deportation provisions of the *Immigration and Refugee Protection Act*.

There has also been a call for the federal government to grant pardons to people convicted of possessing 30 grams or less of cannabis.[9] One perspective is that the legacy of systemic failures leading to the overrepresentation of visible minorities in arrests and convictions connected with cannabis will remain after the legalization, particularly if there are no pardons for minor cannabis infractions that predate the passing of Bill C-45.[10]

There is to be a mandatory review of the *Cannabis Act* after three years. The Criminal Justice Section of the Canadian Bar Association made the proposal through their April 17, 2018 letter to the Chair of the Senate Committee on Legal and Constitutional Affairs, [11] that the review should be conducted in conjunction with a review of Bill C-46.

10. Other issues will need to be ironed out.

Given the speed at which Bill C-45 was passed through the legislature, we can expect some teething problems. As is discussed in the January 2018 CBA submission regarding the Consultation on Federal Cannabis Regulation, a regime for the Minister of Health to make administrative decisions for issuing and placing conditions on licences, permits and authorizations is being contemplated. The minister is to issue licences for standard and micro-cultivation, standard and micro-processing, industrial hemp, nurseries, sale for medical and non-medical purposes. The minister is to give notice in writing with reasons of a refusal to issue, renew or amend a licence or permit. There are no provisions for recourse. Among other things, there needs to be a mechanism for decisions to be reconsidered, appealed or reviewed, so that requirements of procedural fairness are met. [12]

Finally, there are those who believe that the *Cannabis Act* will face many years of constitutional challenges, including from parties seeking to resist or enforce the stance taken by Manitoba and Québec to ban home cultivation. There's also the perspective that Indigenous communities were not adequately consulted about legalization, residual concerns over the impact on their communities and a potential lack of clarity over taxation on reserves. Time will tell how it all plays out.

[1] Bill C-46 amends provisions of the *Criminal Code* that deal with offences and procedures relating to drug-impaired driving.

[2] https://openparliament.ca/bills/42-1/C-45/

[3] https://sencanada.ca/content/sen/committee/421/LCJC/Reports/LCJC_FinalReport_BillC-45_e.pdf

[4] https://www.canada.ca/en/health-canada/services/publications/drugs-health-products/summary-comments-public-consultation-regulation-cannabis.html

[5] Section 1.1, Legislative Summary of Bill C-46, Parliament of Canada.

[6] *Canadian Elevator Industry Welfare Trust Fund v. Skinner*, 2018 NSCA 31.

[7] https://sencanada.ca/en/Content/SEN/Committee/421/lcjc/54017-e

[8] Some minor administrative changes are being proposed as to how to access cannabis — see section 7.2.1 of https://www.canada.ca/en/health-canada/programs/consultation-proposed-approach-regulation-cannabis/proposed-approach-regulation-cannabis.html

[9] https://www.cbc.ca/news/canada/toronto/new-campaign-calls-for-marijuana-possession-convictions-to-go-up-in-smoke-1.4649325

[10] https://policyoptions.irpp.org/magazines/january-2018/where-are-black-canadians-in-the-cannabis-debate/

[11] https://www.cba.org/CMSPages/GetFile.aspx?guid=baad6d72-b1dc-4bc5-9531-1571326a1aa4

[12] https://www.cba.org/CMSPages/GetFile.aspx?guid=3481b573-0ad5-4d45-82e5-d25740357a52

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