

Legalizing Marijuana: Anticipated Challenges

Speakers:

Michael Blinick, McCague Borlack LLP, Partner

Michael Corbett, Forensic Toxicologist

Jillian Swainson and Angela Kos, Brownlee LLP

Jeremy Swift, Treece Alfrey Musat P.C.

Sean Valentine, McCague Borlack LLP, Associate



**McCague
Borlack**_{LLP}
Barristers & Solicitors

Brief History since 2000

- *R v Parker* (2000) – Ontario Court of Appeal
 - *CDSA* was unconstitutional because it did not have an exemption for medical use
- 2001 - Creation of Marijuana Medical Access Regulation by Federal Government
- Decriminalization Bills in 2003 and 2004 but Conservative minority government in 2006 stopped all attempts at legalizaiton

Brief History Continued

- *R v Long* (2007) – O CJ
 - Policy did not impose a legal obligation on the government to supply cannabis
 - Without that obligation, the exemption under the *CDSA* remains unconstitutional
- *R v Bodnar/Hall/Spasic* (2007) – O CJ
 - Upheld the *Long* decision
 - Prohibition against possession in the *CDSA* is of no force and effect

Brief History Continued

- *Sfetkopoulos v. Canada* (2008) – FCA
 - Restriction limiting designated producers to supply to one consumer is unconstitutional
- *R v Mernagh* (2011) – OSC
 - MMAR and *CDSA* were unconstitutional as it was improper for doctors to be responsible for access to marijuana without more assistance from the government

Brief History Continued

- April 2014 – MMAR replaced with MMRP
 - Created conditions for a commercial industry
 - Production only by licensed producers
- *R v Smith (2015)* – SCC
 - Expanded definition of medical cannabis to include all forms
 - *i.e.* Dried and fresh bud, leaves oils, edibles, oils,

Trudeau's Election Promise

- Liberal government (2015):
 - “We will legalize, regulate, and restrict access to marijuana”
 - **For medical and personal use
- New laws will punish those who...
 1. Provide to minors
 2. Operate a motor vehicle under the influence
 3. Sell outside the regulatory framework



Stepping Toward Legalization

- *Allard et al v Regina* (2015) – Federal Court
 - MMRP is unconstitutional because it does not allow for personal production
 - Federal government has 6 months to revise
- Access to Cannabis for Medical Purposes Regulations (ACMRP) (2016)
 - Direct result of *Allard*
 - Replaces the MMRP

McLellan Report (2016)

- Includes 80+ recommendations for legalized **recreational** consumption and sales
 - Minimum age of 18
 - Advertising/promotional restrictions
 - Packaging requirements
 - Allows separate storefronts and mail orders
 - Seed-to-sale tracking system



A FRAMEWORK FOR THE LEGALIZATION AND REGULATION OF CANNABIS IN CANADA

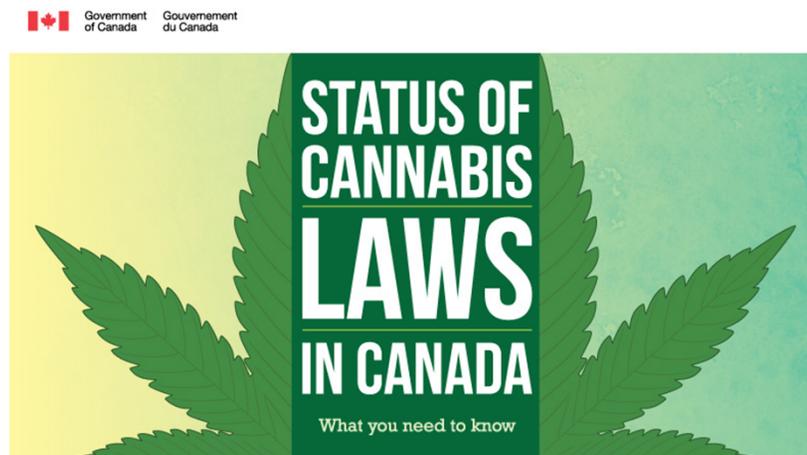
THE FINAL REPORT OF THE TASK FORCE ON
CANNABIS LEGALIZATION AND REGULATION



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Current state of the law

- Unless/until the laws change:
 - Cannabis is a Schedule II drug under the *CDSA*
 - Non-medical possession, production, and distribution is illegal
 - Unlicensed dispensaries are illegal



Proposed Legislation: Bill C-45

- Bill C-45 makes three proposals:
 1. Enact a *Cannabis Act*;
 2. Amend the *CDSA*; and
 3. Amend the *Criminal Code*
- Stated purpose of the *Cannabis Act*:
 - “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...”
- Major public concern relates to impact of legislation on actions of motorists

Concerns relating to Impaired Motorists

2016 study by CAA revealed the following:

- Marijuana is drug most frequently found in motorists involved in accidents (Alcohol#1)
- 20% of motorists admit to driving high
- 63% of Canadians believe roads will be less safe following legalization
- 27% of Canadians between 18 – 34 believe that a driver is as safe or safer after having consumed marijuana.

Recommendations for Governments

Traffic Injury Research Foundation study revealed:

- Police Forces need to hire Drug Recognition Expert officers and more training opportunities for Police to Administer Standard Field Sobriety Test;
- Development of roadside devices and test analysis;
- More research on the relation between THC levels in your blood and impairment;
- Public education is required on the effects of consumption of marijuana is required

Liability: Issues associated with smoking

Challenges with Smoking:

- Quantity consumed
- Timing of consumption
- Potency/Quality of Marijuana
- Historical frequency of consumption

Liability: Issues associated with Edibles

- Challenges with edibles:
 - THC is absorbed differently
 - Duration of high
 - Edibles are more difficult to dose
 - Disparities in advertised potency



Liability: Driving a Motor Vehicle

- Driving under the influence of Marijuana
 - Affects spatial and depth perception
 - Reduces reaction time
 - Impairs judgment
- Bill C-46
 - Amend the *Criminal Code*
 - Changes to impaired driving regime



Bill C-46 – Proposed Changes

Proposed changes to Criminal Code:

- New “legal limit” drug offences
- New tools to better detect drug-impaired drivers
- Police now authorized to demand breathalyzer without requiring suspicion to determine whether alcohol has been consumed
- Make the law easier to enforce, as well as simpler, more coherent and efficient

Managing Risk – What are Insurers to do?

Strategies to be implemented:

- Determine whether insured was impaired
 - Consumption does not equal impairment
- Determine whether insured was properly informed of risks of consumption and the quantity of THC consumed
 - Third Party Claims against producer or supplier
- Challenge criminal charges

Legalizing Marijuana - Managing Risk

QUESTIONS?

Contact Michael Blinick

416.860.5322

mblinick@mccagueborlack.com