

# Where There's Smoke There's Fire

Risk Management and Cannabis

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## Status of the Legalization of Cannabis in Ontario

- ▶ The Federal Government has yet to set a date for when cannabis will be legal. Present estimates are Summer 2018
- ▶ Minimum age for purchase, use, possession and growth for personal use will be 19 years of age
- ▶ Use will only be permitted in private residences including any outdoor space of a home/ unit within a multi-unit building
- ▶ Use will not be permitted in any public places, workplaces or motorized vehicles

## Current state of the law

- ▶ **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



## 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**

▶ **Bill C-45 is sponsored by the Minister of Justice and passed its second reading in the Senate in March of 2018.**

## Concerns relating to Impaired Motorists

- ▶ 2016 study by CAA revealed the following:
  - Cannabis 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 cannabis.

## 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 cannabis is required



## Liability: Issues associated with smoking

### ► Challenges with Smoking:

- Quantity consumed
- Timing of consumption
- Potency/Quality of cannabis
- 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 Cannabis**
  - Affects spatial and depth perception
  - Reduces reaction time
  - Impairs judgment
  - **Bill C-46**
    - Amend the *Criminal Code*
    - Changes to impaired driving regime
- ▶ Bill has passed second reading in the Senate

## 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

## Social Host Liability - Alcohol Context

- ▶ A casual or social host is subject to the least stringent responsibilities.
- ▶ Historically, Canadian courts adopted American position that social hosts may be held liable if they knew that the individual was intoxicated.

## Social Host Liability- Alcohol Context

### ► *Childs v. Desormeaux*

- The social host held a “BYOB” New Year’s Eve Party.
- Desormeaux drank at least 12 beers in 2 ½ hours.
- One host walked him to his vehicle
- MVA, Desormeaux hits plaintiff, one fatality
- The Plaintiff sued the social hosts.
- Not reasonably foreseeable that the Plaintiff would be injured if the hosts failed to prevent Desormeaux from driving.

## Social Host Liability in Cannabis Context

- ▶ • “Foreseeability” principle will likely govern.
  - Liability may be found: Host knowingly observed the guest’s impairment.
  - Liability may be found: Adult host knowingly creates high-risk environment in which a minor is involved.
  - Liability may be found: Outside the contexts of a “House Party” situation
  - Liability may not be found: Parents/guardians of an actual social host if they were not actively involved.
  - Liability may not be found: No reasonable foreseeability between the Defendant’s actions as host and the incident that followed.

## 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

Thank you!

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