

# High on the Hill

## *Recreational Cannabis and Ski Resort Liability*

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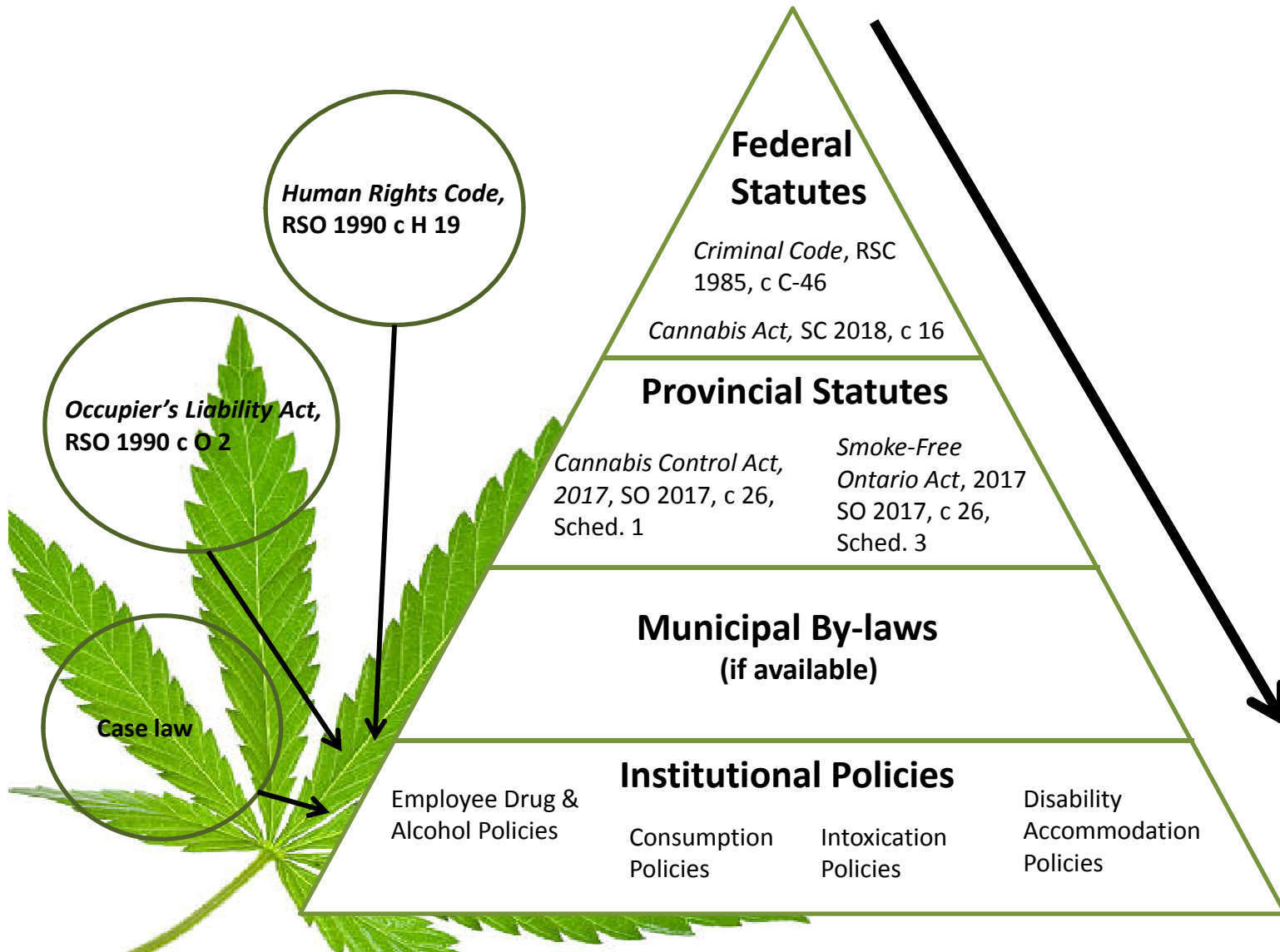
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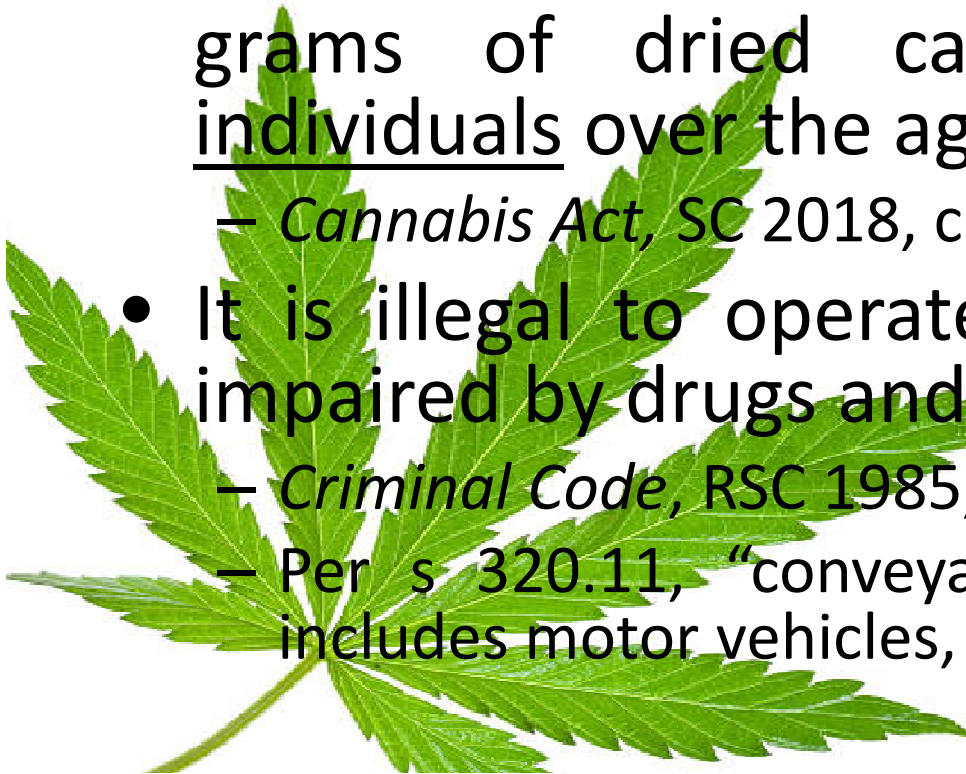
McCague Borlack LLP

# O Cannabis: Legalization of Recreational Cannabis



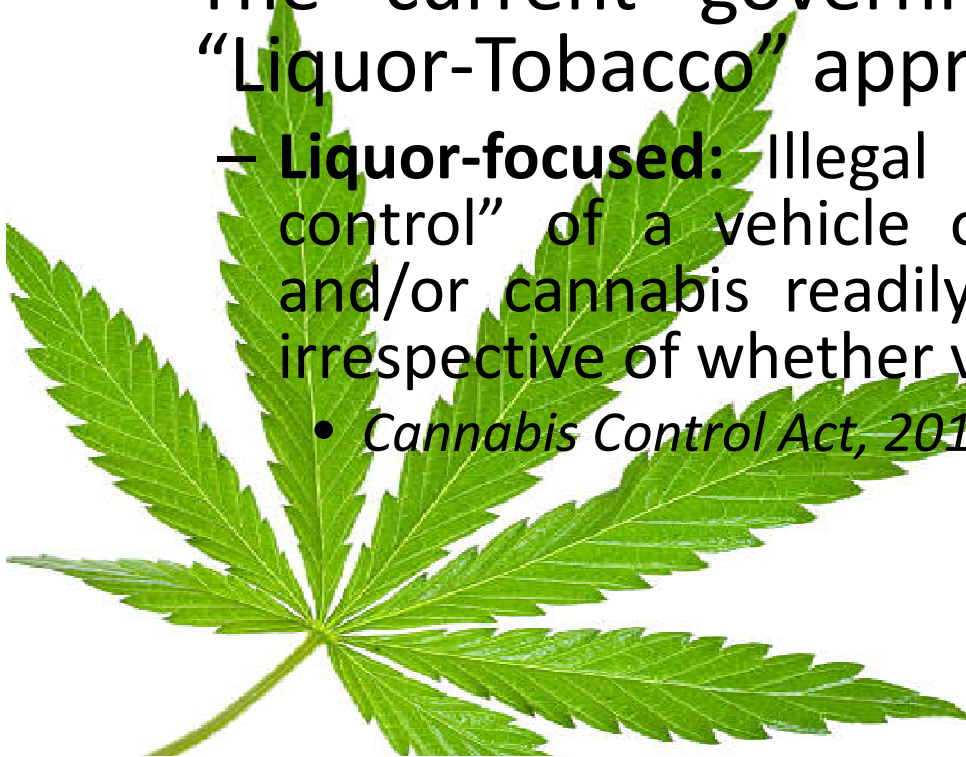
# Federal Restrictions

- The *Cannabis Act* restricts the possession, packaging, promotion, distribution, and sale of recreational cannabis
- Possession of cannabis restricted up to 30 grams of dried cannabis and only for individuals over the age of 18
  - *Cannabis Act*, SC 2018, c 16, s 8(1)
- It is illegal to operate a “conveyance” while impaired by drugs and/or alcohol
  - *Criminal Code*, RSC 1985, c C-46, s 320.14(1)(a)
  - Per s 320.11, “conveyance” is widely defined and includes motor vehicles, planes, boats, and trains



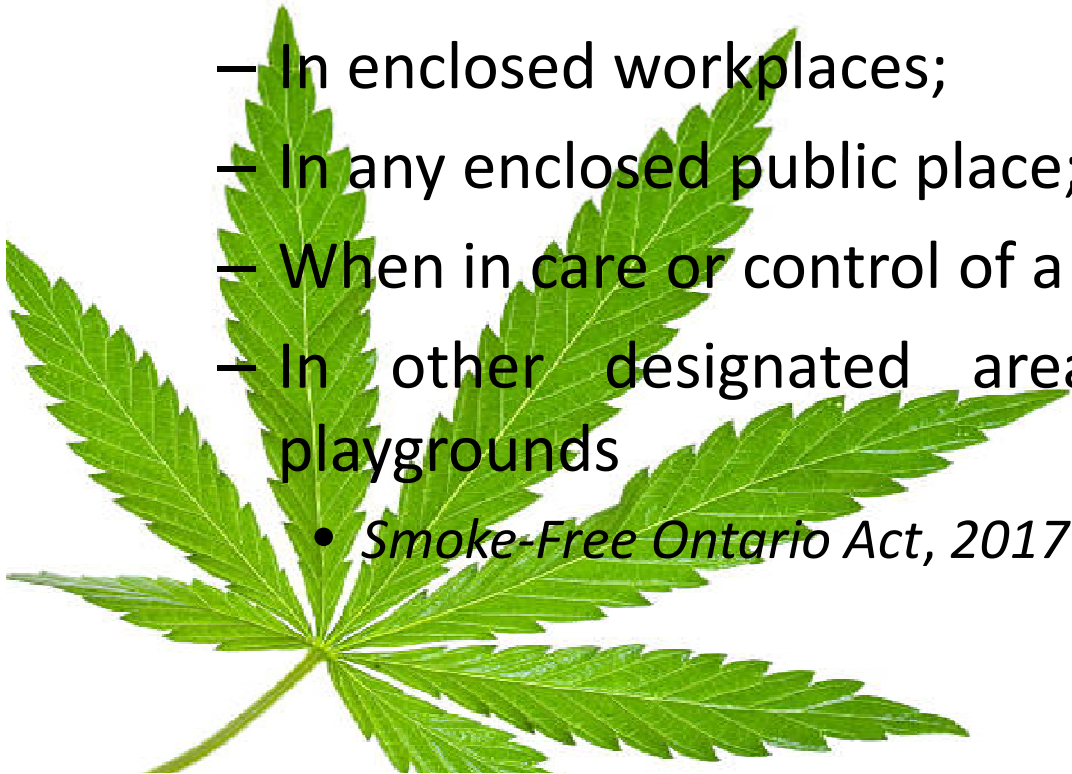
# Provincial Restrictions

- The previous government proposed a “Liquor-focused” approach
  - Consumption to be restricted to private residences (s 11(1), repealed)
- The current government prefers a hybrid “Liquor-Tobacco” approach
  - **Liquor-focused:** Illegal to drive or have “care and control” of a vehicle or boat with open cannabis and/or cannabis readily available to any passenger, irrespective of whether vehicle/boat in motion;
    - *Cannabis Control Act, 2017*, SO 2017, c 26, Sched. 1, s 12



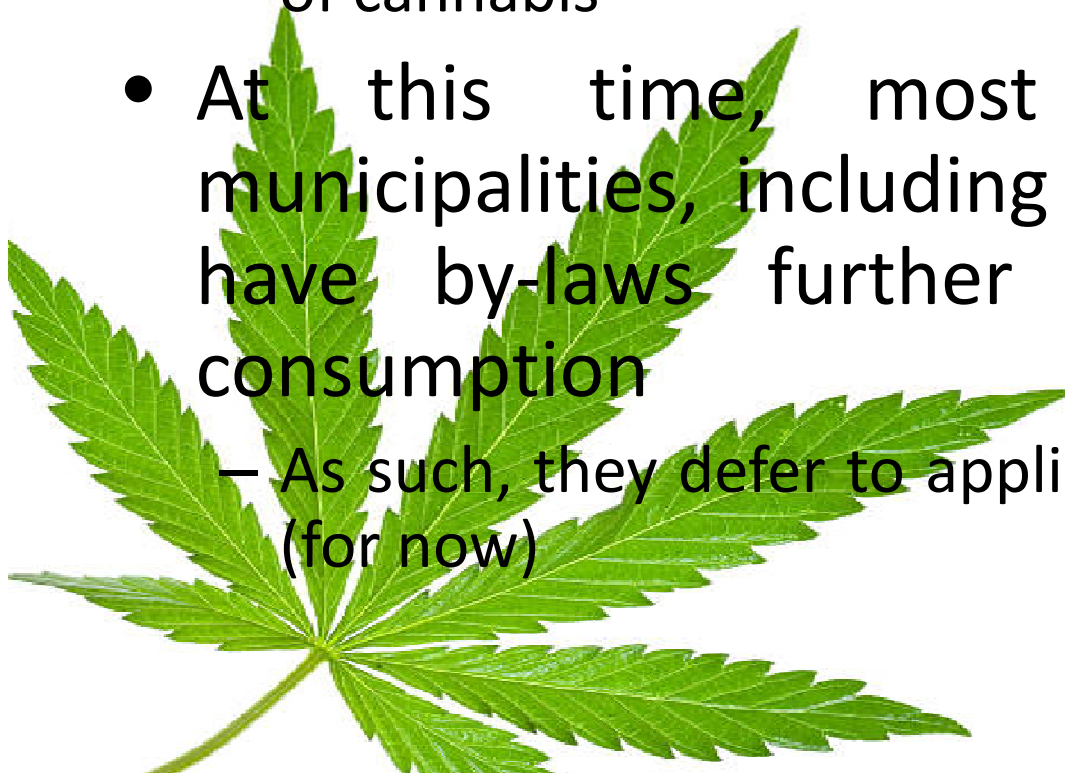
# Provincial Restrictions Cont'd

- **Tobacco-focused:** Consumption restrictions are outlined in the *Smoke-Free Ontario Act*
- Smoking or vaping cannabis prohibited:
  - In enclosed workplaces;
  - In any enclosed public place;
  - When in care or control of a vehicle or boat; and
  - In other designated areas, such as patios and playgrounds
- *Smoke-Free Ontario Act, 2017* SO 2017, c 26, Sched. 3, s 12



# Municipal Restrictions

- Municipalities can and do restrict local cannabis consumption further
  - **Example:** Banff's by-laws prohibit public consumption of cannabis
- At this time, most Southern Ontario municipalities, including Collingwood, do not have by-laws further restricting cannabis consumption
  - As such, they defer to applicable provincial legislation (for now)



# Cannabis Concerns for Businesses

- **1. Sale and Service**

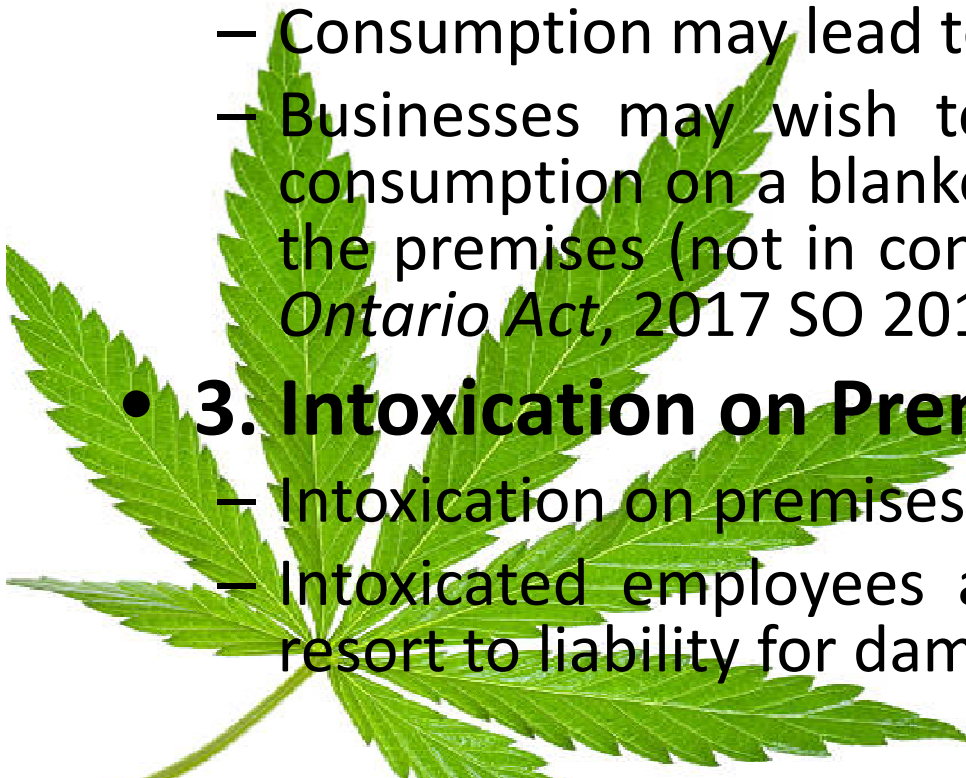
- Retail restricted to licence-holders
- Issue for those in the business of selling cannabis

- **2. Consumption on Premises**

- Consumption may lead to intoxication on premises
- Businesses may wish to enforce policies restricting consumption on a blanket-basis, or to certain areas of the premises (not in contravention of the *Smoke-Free Ontario Act*, 2017 SO 2017, c 26, Sched. 3)

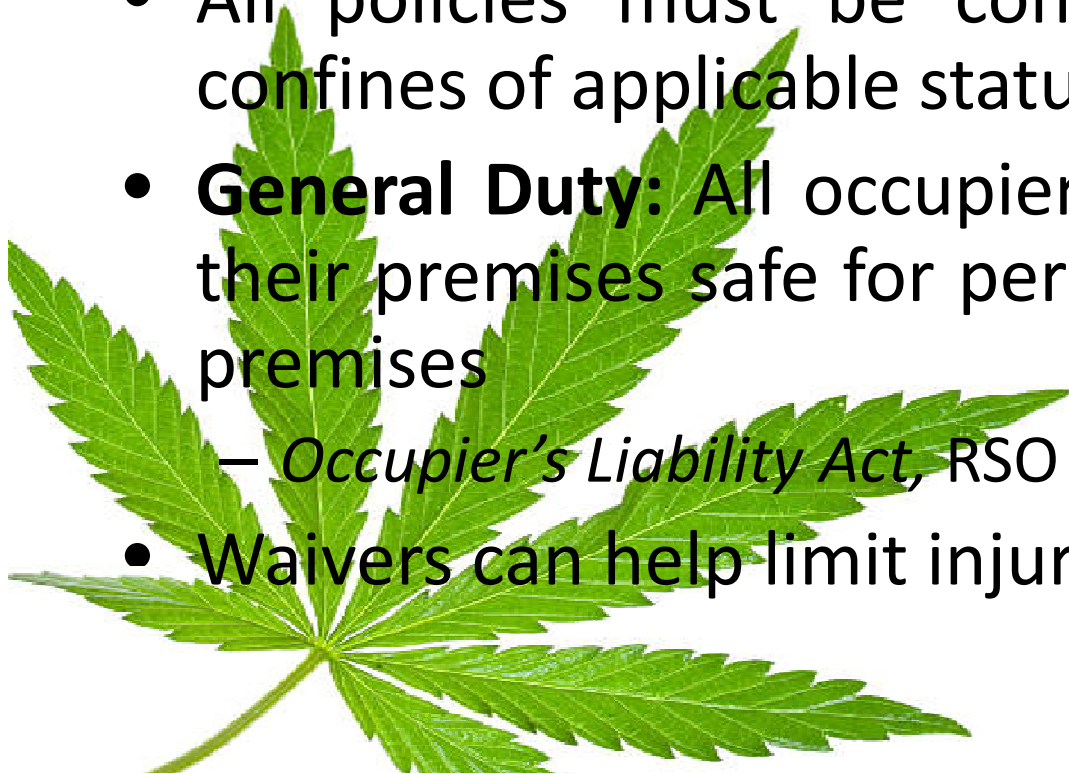
- **3. Intoxication on Premises**

- Intoxication on premises most significant concern
- Intoxicated employees and/patrons may expose the resort to liability for damages to persons or property



# Institutional Policies

- Businesses control risk and minimize exposure by establishing and enforcing policies for employees and patrons
- All policies must be contemplated within the confines of applicable statute and case law
- **General Duty:** All occupiers have a duty to keep their premises safe for persons entering onto the premises
  - *Occupier's Liability Act*, RSO 1990 c O 2, s 3(1).
- Waivers can help limit injury-related liability

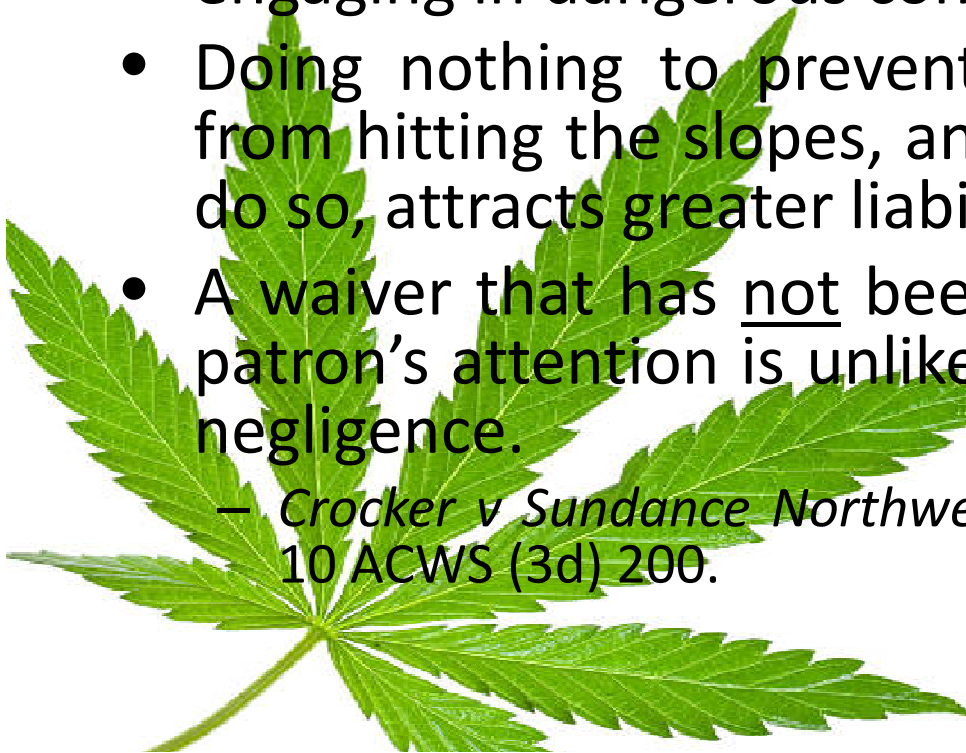




# Lessons from Liquor

- As legalized recreational cannabis is a novel area, lessons for controlling risk can be gleaned from liquor case law
- Occupiers obligated to prevent the intoxicated from engaging in dangerous conduct
- Doing nothing to prevent visibly intoxicated patrons from hitting the slopes, and even encouraging them to do so, attracts greater liability; and
- A waiver that has not been specifically brought to the patron's attention is unlikely to absolve a resort of any negligence.

— *Crocker v Sundance Northwest Resorts Ltd.* [1988] 1 SCR 1186, 10 ACWS (3d) 200.



# Policy Considerations

- Important to consider ‘ripple effect’ of institutional policies
- **Example: Medicinal Cannabis**
  - No longer meaningfully distinguished
  - The use of medicinal cannabis to treat a condition was previously recognized as a disability
    - *Access to Cannabis for Medical Purposes Regulations, SOR/2018-147* was repealed
  - Disability is a protected ground against discrimination
    - *Human Rights Code, RSO 1990 c H 19, s 2(1)*



# Policy Considerations Cont'd

- The relationship between medicinal cannabis and disability is unlikely to be altered by the legalization of recreational cannabis
- A blanket prohibition on consumption may trigger a human rights complaint
- Resorts may wish to consider medicinal marijuana for:
  - anti-discrimination employment policies; and
  - the designation of consumption areas to accommodate medicinal marijuana users

