

# Waiting in the Weeds... Marijuana in Condos

June 14, 2018



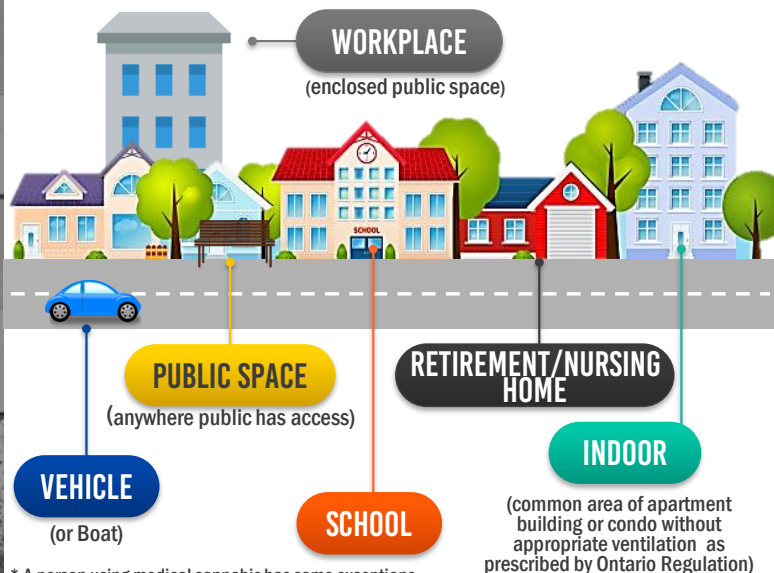
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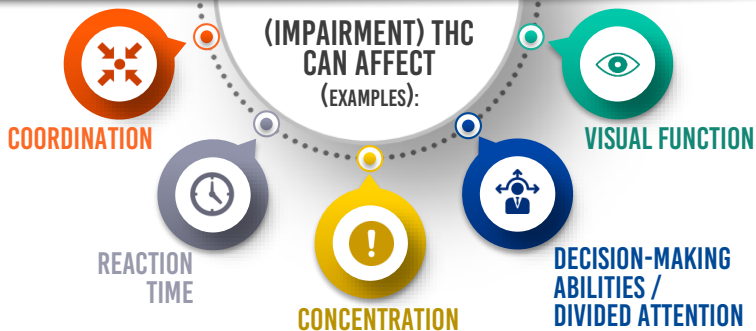
# CANNABIS LEGALIZATION

TONY MELARAGNI  
DETECTIVE SERGEANT

Upon legalization, unlawful to smoke cannabis or use a vape in:



\* A person using medical cannabis has some exceptions



RECOGNIZING DRUG-IMPAIRED DRIVING



DRUG RECOGNITION EXPERT (D.R.E.)



HEALTH CANADA RESEARCHING  
APPROPRIATE DEVICE FOR TESTING THC  
LEVELS

Community Safety Together

*CANNABIS ACT*  
*Federal Bill C-45*  
*Provincial Bill 174*



- This presentation is to provide a basic understanding of the proposed legislation.
- The majority of the content is tailored toward simple possession of cannabis and its derivatives.

# SUMMARY

- The purpose of the act is to provide legal access to cannabis and 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.

## SUMMARY: PROVINCIAL

- The Bill enacts the *Cannabis Act, 2017* (Schedule 1) and the Ontario Cannabis Retail Corporation Act, 2017 (Schedule 2). It also repeals the Smoke-Free Ontario Act and the Electronic Cigarettes Act 2015 and replaces them with the Smoke Free Ontario Act 2017 (Schedule 3), and makes amendments to the Highway Traffic Act regarding driving with alcohol or drugs present in the body and other matters (Schedule 4).
- In short the title of this Act is the Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017

## SUMMARY:

- In short, cannabis consumption can be thought of as an expansion on the rules regarding consumption of alcohol in the *Liquor Licence Act*. Also, think of cannabis consumption as an expansion upon the smoking of cigarettes in the *Smoke Free Ontario Act*.
- Many of the rules that apply to the consumption or possession of alcohol, now apply to the consumption or possession of cannabis.
- Many of the rules that apply to the smoking of cigarettes, now apply to the smoking of cannabis.

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# CRIMINAL ACTIVITIES AND PROVINCIAL OFFENCES





# CRIMINAL ACTIVITIES

- Possession
- Distribution
- Selling
- Importing and Exporting
- Production
- Illicit Cannabis
- Use of a Young Person

# CONSUMPTION: PLACES (PROVINCIAL)

- **Places Of Consumption: Provincial Section 11**
- 11(1) No person shall consume cannabis in
  - a) a public place
  - b) a workplace within the meaning of the Occupational Health and Safety Act
  - c) a vehicle or a boat
  - d) any prescribed place
- **EXCEPT:**
- 11(2) A medical cannabis user may consume cannabis for medical purposes in these places, subject to the Smoke-Free Ontario Act, 2017

# CONSUMPTION (PROVINCIAL)

- **Prohibitions: Provincial Section 12**

- 12(2) Prohibited places include:

1. an enclosed public place
2. an enclosed work place
3. a school
4. a building or the grounds surrounding the building of a private school.
5. Any indoor common area of a condominium, apartment building, or university or college residence including, without being limited to, elevators, hallways, parking garages, party rooms, laundry rooms, lobbies and gyms.



# CONSUMPTION (PROVINCIAL)

6. A child care centre
7. A place where home child care is provided, whether or not children are present
8. A place where an early years program is provided
9. Reserved seating of a sports arena or entertainment venue
10. A prescribed place or area, or a place or area that belongs to a prescribed class.

# CONSUMPTION (PROVINCIAL)

- Again, think of consumption of cannabis as similar to consumption of liquor, or smoking of tobacco.
- If you observed an individual consuming liquor in the hallway of an apartment building, a PON can be issued. It is the same circumstances with cannabis.
- If you observed an individual smoking a cigarette in a restaurant, a PON can be issued. It is the same circumstances with cannabis.
- Be aware that the exception is medical cannabis. However, for the exception to be valid, medical cannabis must be consumed in designated areas in these locations.



# Marijuana Cultivation in Residential Condominiums- Ontario Real Estate Association

## Denise Lash



With the upcoming legalization of marijuana in Canada, many condominium corporations are taking steps to implement rules to control the smoking of marijuana in condominium buildings and prohibiting the cultivation of marijuana within condominium units.

The Ontario Real Estate Association (“OREA”) has expressed concerns about the cultivation of marijuana in residential properties (condominium buildings included). As we reported in a prior blog post, it will soon be legal for individuals to grow up to four marijuana plants per household for personal use whether it is a 400 square ft. unit or a 1200 square ft. unit.

OREA as well as condominium managers, directors and lawyers fear that there will be no way for the government to enforce these limits. Furthermore, those with a licence to grow medical marijuana will be able to grow more than four plants, depending on how many grams of marijuana they have been prescribed. Based on information obtained from Health Canada, there are approximately 130,000 people in Canada with medical marijuana prescriptions and approximately 29,000 of those users have a licence to grow their own plants. OREA estimates that some medical marijuana users will be able to grow 20 plants.

OREA is concerned that even small-scale marijuana cultivation poses health and safety risks, such as mould and fungi, structural damage and the release of dangerous chemicals. Currently there is no way to protect consumers from unwittingly buying a residential property that was previously used as a grow-op. In conducting its research, OREA also looked at the experience of other jurisdictions that have legalized marijuana. OREA anticipates that the legalization of marijuana will not eliminate the illegal marijuana market and the participation of organized crime.

OREA has created a dedicated website, [www.protectontariohomes.ca](http://www.protectontariohomes.ca) that sets out the potential problems with the cultivation of marijuana in residential properties, together with an action plan to address its concerns. There are five recommendations:

- designate homes formerly used as illegal grow-ops, as unsafe under the Ontario Building Code;
- once a former illegal grow-op has been designated as unsafe, require that it be inspected by a municipal building official to determine what actions are needed to make the property safe according to mandatory minimum remediation standards;
- require municipalities to register remediation work orders on the title of a former grow-ops;
- require all licensed home inspectors to receive training on how to spot the signs of a former marijuana grow-op;
- restrict the number of plants per household in units consisting of less than 1,000 square feet to one plant.

OREA is encouraging consumers who agree with OREA’s concerns and recommendations to contact their Member of Parliament.

Now is the time for condominium corporations to pass rules restricting marijuana use and the cultivation of marijuana in condominium units and to lend their support to OREA’s efforts.

## Waiting in the Weeds.....Marijuana In Condos

From the desk of Shawn Pulver, Partner *Macdonald Sager Manis LLP*

The proposed Cannabis Act has been a frequent source of discussion amongst condominium corporations, owners, property managers and lawyers. Everyone is eager to understand what impact (if any) the legislation will have on those living in condominium communities.

While there are differing opinions, my view is that condominium corporations have the right to pass Rules preventing any form of smoking (tobacco or marijuana) in their units and the common elements. This is subject to defined medical exemptions. The Rules can also prohibit the cultivation of marijuana plants in the units and or the common elements.

The fact that there will be legislation that permits marijuana usage to some extent does not mean that condominium corporations are obligated to allow owners and residents to use cannabis in their units. An item may be legalized, but there are still restrictions as to where and when the product can be consumed. Tobacco may be legal to purchase if you are over 19 years old, but it doesn't mean that you can smoke in a public library. The same type of logic should apply here. Condominium corporations have the right to legislate their own buildings, in the interests of protecting the safety and security of its residents.

### ***About Shawn Pulver***

*Shawn is a partner at Macdonald Sager Manis LLP. Shawn is the head of the firm's condominium practice, and is an experienced commercial litigator focusing on condominium and real estate disputes.*

# First Toronto Smoke-Less Condo

## Denise Lash



Options for Homes, a not-for-profit developer, recently announced that it will be building a new condominium, The Humber, where smoking of tobacco and cannabis will **NOT** be an option anywhere on the condominium property, **including the units**. However, vaping will still be permitted within the units. This is the first condominium in Toronto where a prohibition on smoking is contained in the condominium documents from the outset of the creation of the condominium.

Currently, under the Smoke-Free Ontario Act, smoking is prohibited “*in any common area in a condominium*” including foyers, elevators, stairwells, exercise rooms, party rooms, parking garages and corridors among others. But as this legislation does not apply to the units or the outdoor common elements, it is up to each individual condominium corporation to prohibit smoking in the units, the outdoor common elements and any exclusive-use common elements. As we noted in a previous blog post, many condominium corporations are implementing rules to prohibit the smoking and cultivation of recreational cannabis in units before it becomes legal in Canada.

The Humber’s prohibition addresses some concern about the upcoming legalization of cannabis. The cultivation of cannabis in the units and balconies will also be prohibited at the Humber.

The Humber is being marketed as a family-friendly, as it will feature primarily two and three-bedroom units. The smoking prohibition is seen as consistent with the family-friendly focus. It will help address some of the negative effects of smoke permeating from a unit to the common elements and to other units. It will also eliminate cigarette butts being tossed over balconies and balcony fires resulting from improper disposal of lit cigarette butts.

Before making the decision to develop a smoke-less condominium, Options for Homes conducted a survey which indicated that 75% of the survey participants would be more likely to purchase a unit in a smoke-free condominium and for 13% of the respondents, it would make no difference to them.

Options for Homes is a not-for profit developer that makes home ownership more affordable. As long as purchasers have a 5% down payment, Options for Homes offers loans for an additional 10% to 15% down payment (for purchases only in Options for Homes developments) that are not repayable until the home is sold or rented. There is currently a wait-list of prospective purchasers.

It will be interesting to see if more new condominiums will be developed with a complete smoke prohibition. While many purchasers may be more inclined to buy a unit in a smoke-free or smoke-less condominium, the pool of potential buyers will be somewhat smaller with the exclusion of those smokers who want the freedom to smoke in their units.



