

*MEDICAL / LEGAL
Cannabis?!*

Don't let your Policies and
Procedures go "up in
smoke"



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Introduction

Medical Marijuana / Cannabis

- Duty to accommodate
- Recent case law
- Practical considerations

Upcoming Legalization / Recreational Use

- Key elements of proposed legislation
- What does this mean for School Divisions

- Cannabis is used in the treatment of a variety of conditions, including pain, post-traumatic stress disorder, and epilepsy
- Cannabis has two main components which are of medical interest: *delta-9-tetrahydrocannabinol* (THC) and *cannabidiol* (CBD). These chemicals exist in varying concentrations, depending on the particular plant or strain



- The *Access to Cannabis for Medical Purposes Regulations* (ACMPR) came into force on August 24, 2016, replacing the *Marihuana for Medical Purposes Regulations* as a result of the Federal Court's ruling in *Allard v. Canada*
- The ACMPR allow for reasonable access to cannabis for medical purposes for Canadians who have been authorized to use cannabis by their health care practitioner



- Reasonable access under the ACMPR includes purchasing cannabis from a licensed producer, producing a limited amount of cannabis for personal medical purposes, or designating someone to produce it for the patient
- To obtain medical cannabis, the ACMPR requires the patient to provide a “medical document”, rather than a prescription

The “Medical Document” requires

*(s. 8, Access to Cannabis for Medical
Purposes Regulation)*

Completion by a health
care practitioner with
whom a treatment
relationship exists

daily quantity of dried
cannabis

the period of use (not to
exceed 1 year)

the details and contact
information of the
health practitioner

- Review and consider your prescription medication management policy; your existing policy addressing student prescriptions may be appropriate and applicable to medical cannabis
- The School Division is entitled to the prescribed dosing and frequency for students to determine if treatment is necessary during the school day

- When receiving and storing medical cannabis in connection with a student's prescription, know that the label on the container must include:
 - Patient's name
 - Name of prescribing healthcare practitioner
 - Name of licensed producer
 - Daily equivalent quantity of dried cannabis in grams prescribed
 - Expiry date of the patient's registration

- Mental and physical disabilities are prohibited grounds of discrimination under the *Alberta Human Rights Act*
- Human rights protection will also extend to the treatment indicated and prescribed for a disability, including medical marijuana
- While addiction is protected, recreational use is not

- The employee has an obligation to cooperate in the accommodation process
- In the accommodation process, it will be the employee's responsibility to:
 - Identify the need for accommodation;
 - Provide medical information substantiating the accommodation request, if required;
 - Cooperate with treatment recommendations; and
 - Accept reasonable accommodation



- In the context of a request to accommodate medical cannabis, this will involve:
 - Disclosing medical restrictions and treatment regimen if it is relevant to current job duties or otherwise has a workplace impact;
 - Providing medical information supporting and outlining the treatment regimen, including support for workplace use, if required; and
 - Negotiating terms of use in the workplace to minimize workplace impact

- The duty to accommodate requires employers to accommodate an employee's disability **to the point of undue hardship**
- Examples of hardship include financial cost, effect on employee morale, and safety risks
- A failure to accommodate is grounds for a human rights complaint

The duty to accommodate does not require the employer to permit:

**an employee to work while impaired
to a degree that the workplace is
impacted, and/or**

the employee's culpable misconduct

Recent case law examples:



- *French v. Selkin Logging*
- *Re Calgary (City) and CUPE, Local 37 (Hanmore)*
- *IBEW Local Union 1620 v. Lower Churchill Transmission Construction Employers' Association Inc. and Valard Construction LP*
- *Stewart v. Elk Valley Coal Corp. (SCC, June 2017)*
- *Suncor v. Unifor (ABCA, Sept 28, 2017)*

Pre-employment and Random Testing

- Current case law is conflicting, evolving, and uncertain
- Likely at a minimum, the employer must establish: very safety-sensitive position; proof of the existence of drug and alcohol issues in the workplace; and that the testing program is likely to significantly mitigate the risk

Post-Incident Testing

- Automatic drug and alcohol testing post-incident without any line of inquiry or reasonable cause analysis has generally been held to be inappropriate and unenforceable
- While the threshold may be low, there must at least be some analysis of the incident and the potential for it to be related to drugs or alcohol before post-incident testing will typically be justified and valid

Reasonable Cause Testing

- Where an employer has reasonable grounds to believe the employee is impaired by alcohol or drugs, drug and alcohol testing is typically upheld
- However, even reasonable cause testing, as with the other forms of testing, should be encapsulated in a comprehensive drug and alcohol policy

- Medical cannabis is no different than any other prescribed medication
- The duty to accommodate analysis applies to an employee's medical condition and extends to the treatment prescribed
- Employers will not be required to simply accept workplace impairment, where position is safety sensitive
- A properly drafted policy which applies to prescribed medication, and the use of both legal and illegal impairing substances will be critical

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- Don't panic; in most respects, rules respecting recreational use for your workplace and student conduct will be similar to existing rules for alcohol
- While addiction is protected under human rights law, recreational use will not be protected
- Alberta's Cannabis Framework will prohibit use on school property, and intoxication and possession can be addressed by school policy

- A discriminatory policy is grounds for a human rights complaint
- Any testing an employer undertakes should be addressed by a policy which identifies and addresses recreational drug and alcohol use, prescription drug use and misuse, and accommodation
- Risks of an improper policy and/or testing conducted improperly include human rights complaints, wrongful dismissal litigation and punitive damages

- **Key components of your policy:**
 - Define “under the influence”, “impaired”, or “intoxicated”
 - Prohibit use of any intoxicant, including illegal drugs, improperly used prescription or non-prescription medication, legal drugs or alcohol while at work or during the work day, or any time when it could affect job performance
 - Ensure policy does not contain a blanket prohibition on cannabis

- Recognize prescription drugs, including medical cannabis, as a potentially impairing substance, require disclosure of prescribed drug use which has workplace impact
- Identify the employer's duty to accommodate, and employees' ability to access accommodation and assistance
- Consider testing protocols founded in policy where reasonable suspicion of impairment exists
- Include disciplinary measures for violating policy, including failure to disclose



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QUESTIONS?

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