

INSURE UPDATES

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Cannabis is Legal – Now What?

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On October 17, 2018, recreational cannabis will be legal and available in Canada, marking the end of a nearly century-old ban in the country.

The federal *Cannabis Act* will operate separately from the medical cannabis legislation (the *Access to Cannabis for Medical Purposes Regulations*). The *Cannabis Act* establishes the following¹:

- **Age:** 18 years or older.
- **Production:** the federal government will regulate production by requiring all producers to be federally licensed.
- **Retail/distribution:** the provinces will regulate retail and distribution.
- **Permitted types:** fresh and dried cannabis, cannabis oils and cannabis seeds and plants.
- **Possession:** 30 grams or less of dried cannabis or its equivalent.
- **Home cultivation:** 4 plants or less, subject to provincial restrictions.
- **Security clearances:** licensing will require security clearances.

¹ Bill C-45 <<http://www.parl.ca/DocumentViewer/en/42-1/bill/C-45/royal-assent>>; Cannabis Act (<http://laws-lois.justice.gc.ca/eng/acts/C-24.5/>); CBA: Budding New Law: The Cannabis Potential, July 2018.

- **Packing and promotion:** labelling will be generally restricted to informational and warning purposes, with restrictions on promotion particularly to youth.

Each province has its own legislation overlapping with the *Cannabis Act*. With certain differences, the provinces have established the following:²

- **Retail:** except for New Brunswick, PEI, Nova Scotia and Quebec, the provinces will implement private store-front retail operations, coupled with government online retail in some provinces.
- **Age:** except for Alberta and Quebec, all provinces have increased the minimum age to 19.
- **Home cultivation:** except for Quebec and Manitoba (and Newfoundland to be determined), the provinces will permit home cultivation of 4 or more plants.
- **Co-sale:** except for the Northwest Territories, Nova Scotia and Nunavut, no co-sale of alcohol and cannabis will be

² Cannabis (<https://www2.gov.bc.ca/gov/content/safety/public-safety/cannabis>); Bill 30 (<http://www.bclaws.ca/civix/document/id/bills/billscurrent/3rd41st:gov30-1#section4>); Cannabis Licensing <https://justice.gov.bc.ca/cannabislicensing/policy-document/eligibility>; Cannabis Licensing <https://justice.gov.bc.ca/cannabislicensing/policy-document/employee-registration-training>; Alberta Cannabis Framework and legislation <https://www.alberta.ca/cannabis-framework.aspx>; Cannabis legalization <https://www.ontario.ca/page/cannabis-legalization>; Cannabis Use in Saskatchewan <http://www.saskatchewan.ca/government/cannabis-in-saskatchewan/cannabis-use-in-saskatchewan>; Cannabis Legalization & Regulation <http://www.gov.mb.ca/cannabis/cannabisuseinmb.html>; The legislation on cannabis in brief <https://encadrementcannabis.gouv.qc.ca/en/loi/>; Legislative framework concerning cannabis introduced http://www2.gnb.ca/content/gnb/en/news/news_release.2017.11.1445.html; Provincial Government Releases First Details on Cannabis Legalization in Newfoundland and Labrador <http://www.releases.gov.nl.ca/releases/2017/exec/1123n01.aspx>; Legalizing Recreational Cannabis in the Northwest Territories https://www.eia.gov.nt.ca/sites/eia/files/cannabis_legislative_summary-180228.pdf; Nova Scotia's cannabis laws <https://novascotia.ca/cannabis/laws/>; Cannabis <https://www.gov.nu.ca/finance/information/cannabis>; Cannabis <https://www.princeedwardisland.ca/en/topic/cannabis>; Find out what the government is doing about cannabis <https://yukon.ca/cannabis>.

permitted. BC will permit common vestibules between two separate establishments.

- **Education and training requirements:** individuals working in a cannabis business will have to, or eventually have to, undergo education/training requirements.
- **Public use:** subject to complete bans on public use, public use of cannabis will generally be restricted to areas where tobacco use is permitted and away from the general public.
- **Impaired driving:** on top of the federal restrictions, certain provinces will impose a zero-tolerance policy on any driving under the influence of cannabis.
- **Supply:** all retailers, private or public, will obtain their supply from regulated government suppliers.

With the increased access to cannabis, there will be expanded criminal restrictions. Bill C-46, the companion legislation to the *Cannabis Act*, will deal with impaired driving in a new landscape, where individuals have ready access to alcohol and cannabis.

On top of federal changes, the provinces are also implementing offences directed at legalization. In BC, the *Cannabis Control and Licensing Act* creates a number of provincial cannabis-specific offences with penalties ranging from \$2,000 to \$100,000, imprisonment of three to twelve months, or both.³ BC will also amend existing legislation such as the *Motor Vehicle Act* to toughen provincial regulations on impaired driving.

A new consumer market means new business for insurers. Indeed, new businesses entering the recreational cannabis market will look to insurers to provide coverage for their operations - insofar as product liability, business interruption, and/or Directors & Officer's liability coverage.

Of-course, new cannabis businesses also bring new exposures for insurers. Any prospective business will have to be vetted by insurers for compliance at all applicable levels, in accordance with the federal, provincial and local legislation and regulations. Manufacturers, distributors and retailers all dealing in a product

³ Cannabis <<https://www2.gov.bc.ca/gov/content/safety/public-safety/cannabis>>

designed for human consumption would be exposed to risks concerning product liability and associated litigation.

Another new risk that emerges with cannabis businesses is bodily injury and how insurers will deal with the health risks associated with cannabis use? Insurers must consider that their clients' products are, in many respects, similar to that of the tobacco industry, which eventually led to monumental claims relating against that industry. Insurers must consider if they will cover the potential claims for bodily injury that may not arise until years later when further research on cannabis is conducted. Insurers may consider limiting their coverage to exclude such claims, considering the still early state of scientific research behind cannabis.

The liquor industry is poised for consolidation with the recreational cannabis industry. This is evidenced by the rapid and aggressive entry of the world's largest alcohol companies into the cannabis space (i.e. in August 2018, Constellation Brands Inc. invested \$5 billion into Canopy Growth Corporation, effectively acquiring a majority of the company).⁴

While the duty of care of commercial hosts will not change, the projected increase in recreational cannabis users will create a greater potential risk for would-be patrons attending alcohol establishments, who arrive already impaired. As such, it is reasonable to expect a new wave of cannabis-alcohol commercial host litigation.

Commercial hosts would be wise to pay greater attention to cannabis-specific signs of intoxication. This is especially the case, considering science which indicates the co-use of alcohol and cannabis can produce a more "intensified" intoxication compared to either one alone.⁵

Commercial hosts can adapt to the new cannabis landscape. This will involve revising house policies and procedures, and training staff more specifically with respect to cannabis-impairment.

⁴ CBC <https://www.cbc.ca/news/canada/ottawa/constellation-brands-canopy-growth-1.4785786>

⁵ Cannabis impairment and safety risk < <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/health-effects/impairment-safety-risk.html>>

Take Away

While it is still early to make firm conclusions, the legalization of recreational cannabis in Canada is expected to bring significant changes to individuals and businesses. Insurers should see an increase in cannabis related claims and should prepare to handle those claims.

On the other hand, the legalization of recreational cannabis also provides further opportunities for insurers as an entire new market is opening up.

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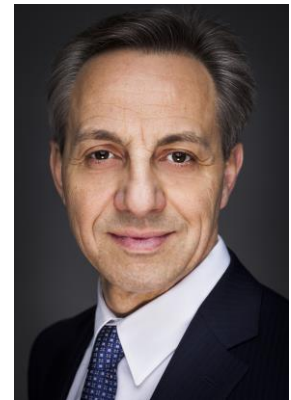
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