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The ten things you need to know about the new cannabis legislation

On June 21, 2018, the government of Canada assented to the *Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*, thereby creating the *Cannabis Act*¹ (the “**Law of Canada**”). Essentially, the purpose of this law is to legalize access to cannabis and to control and regulate its production, distribution and sale. For its own part, the government of Quebec enacted the *Act to constitute the Société québécoise du cannabis, to enact the Cannabis Regulation Act and to amend various highway safety-related provisions*, which was assented to on June 12, 2018, thereby creating the *Cannabis Regulation Act*² (the “**Law of Quebec**”). The Law of Canada as well as the majority of the provisions of the Law of Quebec came into force on October 17, 2018. As a result, Canada became the second country in the world to decriminalize and legalize cannabis, after Uruguay, which officially legalized this substance in December 2013. In light of the legalization of cannabis, it is relevant to analyze the impact of the Law of Canada and the Law of Quebec.

Green Thumbs

While the Law of Canada allows for the cultivation of up to four cannabis plants per household, the Law of Quebec explicitly prohibits cultivating or even owning a cannabis plant in a household³. In this sense, there is a conflict between these two laws which will eventually be settled by

the courts. Similarly to the *Tobacco Control Act*⁴, the Law of Quebec prohibits the smoking of cannabis namely in bus shelters, health and university facilities, terraces, outdoor play areas, as well as within a nine meter radius of any of these locations⁵. Several municipalities have already begun to implement regulations prohibiting or limiting the use of cannabis.

Zero Tolerance Behind the Wheel

As part of the enactment of the Law of Quebec, new provisions were also added to the *Highway Safety Code*⁶ prohibiting “any person to drive or have the care or control of a road vehicle if cannabis or any other drug is present in the person’s body [...]”⁷, and requiring the immediate suspension of such offender’s driver’s license for a period of ninety days. While the Law of Quebec provides for a zero-tolerance rule for drivers, the Law of Canada stipulates that an individual driving a vehicle with a concentration of five nanograms per milliliter of blood of tetrahydrocannabinol (commonly known as “THC”, the psychoactive substance contained in cannabis) within two hours after having stopped the vehicle may be charged with a criminal offense⁸.

Maximum Authorized Quantities

The Law of Canada states that an individual who is eighteen years of age or more may have in his or her possession in a public place a maximum amount of thirty grams of dried cannabis. The Law of Quebec allows for an individual of eighteen years of age or more to possess a maximum amount of one hundred and fifty grams of dried cannabis in a place other than a public place⁹.

Sale of Cannabis in Quebec

In Quebec, similar to the sale of alcohol by the *Société des alcools du Québec* (or the SAQ), a government-owned corporation, only the newly established *Société québécoise du cannabis* (the “**S.Q.D.C.**”), a provincial crown-corporation, is allowed to sell fresh cannabis, dried cannabis and cannabis oil, either online or at one of its branch stores.

As for cannabis producers, they are allowed to sell cannabis exclusively to the S.Q.D.C., unless the producer is shipping the cannabis outside of Quebec. Moreover, a cannabis producer wishing to conclude an agreement with the S.Q.D.C. for the sale of cannabis is required to obtain an authorization to contract from the Autorité des marchés publics¹⁰.

Contrary to the province of Quebec, several other provinces, such as Alberta and British Columbia, have opted to allow the sale of cannabis by private corporations or through a hybrid public-private model.

Required Licenses

Pursuant to the Law of Canada, entities wishing to grow, sell, distribute or transform cannabis or to conduct research on cannabis may need to obtain two licenses, one license issued by Health Canada, and eventually a second license issued by the Canada Revenue Agency.

A license from Health Canada is required in order to grow cannabis for commercial purposes, to sell or produce cannabis for commercial purposes, to sell cannabis for medical purposes, or to conduct tests or research on cannabis. Entities who are in the business of growing, producing or packaging cannabis products must also obtain a license from the Canada Revenue Agency¹¹.

Under the Law of Canada, a license is not required for growing up to four cannabis plants at home, although in Quebec, the cultivation of cannabis plants for personal purposes is prohibited.

Attention Employers

In Quebec, the *Act respecting occupational health and safety* (the “ARHS”)¹² was also modified to include certain provisions relating to the consumption of cannabis. For example, the new Section 51.2 of the ARHS imposes an obligation on employers to ensure that its employees do not perform their duties in a condition that may pose a risk to their own health and safety as well as the health and safety of others.

However, according to case law from the Supreme Court of Canada, an employer may not use this obligation as a pretext for conducting random screening tests for cannabis as this would infringe upon employees’ fundamental rights to privacy. For example, in a landmark decision rendered by the Supreme Court where the workplace was considered dangerous, the Court held that such testing may only be permitted in certain circumstances where (i) there are reasonable grounds to believe that the employee was impaired while on duty, (ii) the employee was directly involved in a workplace accident or significant incident, or (iii) the employee returns to work after treatment for substance abuse¹³.

Employers will need to consider adopting certain internal policies prohibiting the consumption, use and possession of cannabis or cannabis products on the premises of the workplace, such as a “zero tolerance” policy. Additionally, we strongly advise employers to review their internal policies to ensure that they contain explicit prohibitions against consuming or possessing cannabis, given that, as of October 17, 2018, this substance is no longer an “illegal substance”.

A Word of Caution to Residential Landlords

Under the Law of Quebec, a lessor may modify the terms of an existing residential lease by adding a prohibition against smoking cannabis within ninety days of October 17, 2018¹⁴. If such a notice is sent within the ninety-day period, tenants may only refuse such a modification for medical reasons by informing the landlord of their refusal within thirty days after receiving the landlord’s notice. If tenants fail to send the notice of refusal within the prescribed delay, the prohibition shall be deemed to form part of the lease.

If the modification notice is given after the expiry of the ninety-day period, tenants may oppose the enforcement of this new prohibition for any reason whatsoever and any dispute between the parties to the lease in relation to this matter will have to be submitted to the *Régie du logement*. Any new lease, however, may contain such a prohibition.

Consensus of Co-owners

In matters of divided co-ownership, the declaration of co-ownership of an immovable may limit the peaceable enjoyment of the co-owners, provided however that any restriction on the rights of the co-owners is justified by the destination, characteristics or location of the immovable¹⁵. Consequently, a declaration of co-ownership may restrict any use or possession of cannabis, including prohibiting the smoking of cannabis, in the common areas of the building and even in the private fractions of the co-owners.

It is possible that any prohibition on the use, possession and/or smoking of cannabis within the private fractions of co-owners will require the approval of each co-owner, considering that such prohibition may be considered as a change in the use of the private fractions¹⁶.

The differences between the Law of Canada and Law of Quebec in respect of the cultivation of cannabis in a household may become the subject of constitutional debate before the courts. Although the Law of Quebec currently prohibits the cultivation of cannabis for personal purposes, such a debate could result in the nullification of the prohibition provided for in the Law of Quebec. As such, landlords and co-owners wishing to prohibit all use and possession of cannabis, should implement not only a ban on smoking, but also a ban on growing cannabis.

Limited Advertisement and Promotion

Pursuant to the provisions of the Law of Canada and the Law of Quebec, the promotion as well as the offering, free of charge, of cannabis, or of any accessory or service related to such substance are prohibited, particularly by way of endorsements, testimonials, representations through fictional characters or animals or by association to a particular lifestyle¹⁷. For example, it will be impossible to offer cannabis for tasting or as a gift with the purchase of other products, or to retain the services of a celebrity to endorse the purchase of cannabis or to testify to its quality.

The ultimate goal of these provisions is to minimize the appeal of cannabis and cannabis products to youth, to protect the public from excessive or accidental consumption, and to provide sufficient information to potential consumers so that they may make an informed decision prior to consuming cannabis.

International Perspective

The exportation of cannabis outside of Canada and its importation into Canada are prohibited except for its exportation or importation for medical or scientific purposes or in relation to industrial hemp, which has been legal in Canada since 2001.

Although the use of cannabis for recreational purposes has become legal in Canada, the same cannot be said for all other countries. If you decide to travel with cannabis or cannabis products, be sure to verify the applicable legislation governing these substances in your country of destination. In fact, certain Canadians working in the cannabis industry have been denied entry into the United States as a result of their association with cannabis, which substance is still illegal under the federal law of the United States.

Conclusion

The coming into force of these new laws on cannabis constitutes a pivotal moment in our society as well as for the international community, which will be monitoring the implementation of these laws with great interest. Interestingly, the Law of Canada provides for the review of its provisions three years following its coming into force, including a review of the repercussions of the Law of Canada on public health¹⁸.

7. Section 202.2.1.3 of the *Highway Safety Code*.
8. Section 253(3)a of the *Criminal Code*.
9. Section 8(1) a) of the Law of Canada; Section 7 of the Law of Quebec.
10. Sections 25 to 27 of the Law of Quebec.
11. Sections 11(1)b), 11(1)d), 17, 11(5), 28 of the *Cannabis Regulations* (SOR/2018-144); Section 69 (1) of Bill C-74, part 3, Amendments to the Excise Act, 2001 (Cannabis Taxation), the Excise Tax Act and Other Related Texts.
12. C.Q.L.R. c. S-2.1.
13. *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, [2013] 2 SCR 458, 2013 SCC 34 (CanLII).
14. Section 107 of the Law of Quebec.
15. Section 1056 of the *Civil Code of Quebec*.
16. Section 1102 of the *Civil Code of Quebec*.
17. Sections 17 and 24 of the Law of Canada; Sections 48 and 53 of the Law of Quebec.
18. Section 151.1 (1) of the Law of Canada.

The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.

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1. S.C. 2018, c. 16.
2. C.Q.L.R., c. 19.
3. Section 8(1)e) of the Law of Canada; Section 10 of the Law of Quebec.
4. Sections 2 and 2.1 of the *Tobacco Control Act*, C.Q.L.R., c. L-6.2.
5. Sections 11 and 16 of the Law of Quebec.
6. C.Q.L.R., c. C-24.2.