



PERLEY-ROBERTSON,
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CANNABIS LAW FAQ: REAL PROPERTY

The effects of Cannabis on Real Estate Law | What you need to know:

The legislative landscape surrounding cannabis law in Canada is changing, and with it, a new realm of challenges and opportunities are emerging. Our team of experts at Perley-Robertson, Hill & McDougall LLP/s.r.l. have been advising clients in the cannabis industry since the development of the *Marijuana for Medical Purposes Regulations* in 2013, and is uniquely positioned to provide you with practical and professional advice in the face of an ever-evolving regulatory regime.

Whether you are already in the industry, seeking to become a licensed cannabis producer, seeking to expand your existing business, or seeking advice on the implications of medical cannabis or the coming legalization of cannabis for your workplace, Perley-Robertson, Hill & McDougall will be there to support you with our experienced team of cannabis law experts.

Our Cannabis Law Team is committed to assisting you with all matters relating to cannabis law. Please contact one of our dedicated team members to get started.

1. AS A LANDLORD, WHAT WILL HAPPEN IF I CONTINUE TO RENT TO PRIVATELY-HELD CANNABIS DISPENSARIES?

If you continue to rent to privately-held "cannabis dispensaries", you will face harsh penalties. In Ontario, only the Ontario Cannabis Retail Corporation can sell cannabis. The "wild west" of illegal and unregulated dispensaries that we currently see in Ontario will come to an end as a result of the significant penalties created in the *Ontario Cannabis Act, 2017*. Under this Act, landlords face significant fines and penalties, including possible jail time, for renting property to be used as a cannabis dispensary that is not run by the Ontario Cannabis Store (OCS). Commercial landlords face steep fines of up to 1 million dollars. In addition, if you allow private retail sales of cannabis on your property, the Ontario legislation allows courts to issue a closing order that will prohibit you, the landlord, from using the property for any purpose for up to two years. Ontario has created this disincentive to stop landlords from leasing to private cannabis vendors.

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The legislative landscape will vary from province to province as the distribution mechanisms are finalized. Speak to a member of our Cannabis Law Team who can assist you in being certain that you are following the new laws.

2. AS A PROPERTY MANAGER, HOW WILL I REGULATE THE CONSUMPTION OF CANNABIS ON MY COMMERCIAL PROPERTIES?

Within Ontario, the *Ontario Cannabis Act, 2017* restricts consumption of cannabis (in any form) in any “public place”, in a workplace, in a motorized vehicle, and other areas that will be prescribed.

Much like the evolution of anti-smoking legislation, you will be able to impose strict rules on the consumption of cannabis on the properties you manage. “Public place” is not defined in the Ontario legislation, but the courts will likely define it very broadly. However, keep in mind that these strict rules will apply in relation to the consumption of recreational cannabis. There is an exception in the Act for “medical cannabis use” so long as the consumption is not in contravention of the *Smoke-Free Ontario Act, 2017*. The use of edibles or oils by a tenant, employee, guest of a tenant, or by a person who meets the definition of a “medical cannabis user” in the legislation will be permitted.

We strongly encourage you to begin establishing new policies for your properties as soon as possible. Contact a member of our Cannabis Law Team to help you establish rules and regulations for tenants regarding the use of cannabis on your property. We can also help you understand the laws in provinces other than Ontario.

3. I OWN OR MANAGE A MULTI-UNIT RESIDENTIAL PROPERTY. CAN I RESTRICT THE USE AND GROWTH OF CANNABIS IN THE INDIVIDUAL UNITS?

Just as landlords can establish smoke-free rental apartments, the new legislation will likely allow landlords to create rules prohibiting the smoking of cannabis products in apartments. The legal community is currently studying the use of edibles or other products (other than smoking) by residential tenants and, whether “medical cannabis users” have rights to consume cannabis in their residential units regardless of rules and regulations by the landlord. Preliminary analysis suggests that it is only the smoking of cannabis that can be regulated by residential landlords and

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not consumption of other products. Enforcement would be difficult in any event.

Each province will have its own rules on whether cannabis can be grown by an individual. In Quebec it appears personal growing will not be permitted. In Ontario, the legislation directs that only 4 plants can be grown by an individual for personal use. This does not mean it can be in one's residence. Landlords with concerns over high water consumption and humidity issues are starting to draft rules in their leases that prohibit growing of plants in their rented units. There are also concerns that the insurance industry has not caught up to the new laws and insurance policies may be impacted by growing plants in rented residential units.

4. ARE THERE SPECIAL CONSIDERATIONS FOR RESIDENTIAL CONDOMINIUM CORPORATIONS?

Yes. Condominium Corporations should immediately consider the implications of both consumption and cultivation of cannabis. If Condominium Corporations take action now to regulate the consumption and cultivation of recreational cannabis before it is legalized, unit owners who consume or grow cannabis for recreational purposes will not be able to claim that they are "grandfathered" because they commenced consuming or growing cannabis before the condominium changed the rules. As part of such regulations, special consideration should be given to the consumption and cultivation of cannabis for medical purposes.

These introductory questions only scratch the surface of all the issues facing real property landlords, managers and condominiums that are arising from the new federal, provincial and municipal legislation on cannabis. Contact a member of the Cannabis Law Team for legal advice on how best to navigate this new area of regulation impacting commercial and residential property portfolios.

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Who to contact:

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This document is available for download at:

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