



Cannabis in Canada

THE IMPLICATIONS OF LEGALIZATION ON PROPERTY MANAGEMENT

By Robert Buckler, Joel Berkovitz and Derek Brovold

Canada became the largest country in the world to legalize recreational cannabis on October 17, 2018. Mike Farnsworth, British Columbia's minister of public safety, called the development "the largest public policy shift this country has experienced in the past five decades." Legalization will have wide-ranging effects on many aspects of Canadian society, including property management and the way Canadians live.

While cannabis use in living spaces is by no means a new phenomenon, many are concerned that with legalization, residents may now feel they are entitled to smoke or grow cannabis in their units, and this could have an adverse impact on neighbors.

As the policy goes into effect, property managers will play an important role in balancing individual rights with the regulations that help maintain community.

NEED FOR NEW POLICIES

According to an IREM Member in Manitoba, the largest takeaway from legalization is that "it's causing quite a bit of work."

Management has had to develop and implement new rules governing living arrangements and then help enforce them. "We're ensuring that we have tenant educational forums," the member said. "Lots of signage in the building. Lots of tenant

meetings. We currently have additional staff to work on a one-on-one basis with tenants to try and ensure ongoing successful tenancy and a continued safe tenancy in the building, and to create a safe work place for staff."

The key question for condominium and strata corporations is whether they have appropriate provisions in place in their governing documents to deal with cannabis. In the lead-up to legalization, many condominium corporations in Ontario took the opportunity to address both tobacco and cannabis smoking, with many moving to make their buildings entirely smoke-free. Most have also chosen to ban cannabis growing. Others have taken a more hands-off approach and have passed rules only with respect to issues such as smoking cannabis in common areas and growing more plants than are permitted by law.

Even for those corporations which have not updated their governing documents, most already have an "anti-nuisance" provision that can be enforced in the event a resident's cannabis use causes a problem for neighbors. Condominium lawyers prefer buildings with more specific rules so that residents have a clear understanding of their legal obligations, though in many cases the existing anti-nuisance provisions are sufficient.

COMPLICATIONS

Because cannabis laws vary by province, property managers will have to pay close attention to local regulations. For example, most provinces are allowing Canadians to grow four plants, but Manitoba prohibits growing cannabis entirely. Saskatchewan has a zero-tolerance policy for driving while high, and public smoking is strictly prohibited in New Brunswick.

In Ontario, condominium corporations are not landlords and can pass rules completely banning all smoking in their buildings. Many tenants who rent in these condominiums, however, misunderstand this point and believe that, because a landlord cannot prohibit smoking if it was not previously agreed to in their lease, the condominium's rules do not apply. This sometimes leads tenants into legal jeopardy.

Social housing, on the other hand, has had to rely on provincial law. Many provinces have allowed landlords to amend leases to address cannabis, but the Ontario government has no immediate plans to change landlord/tenant laws to allow for a ban.

The majority of tenants in social housing typically rent long-term, with apartments rarely turning over (sometimes as low as 1 to 2 percent of a building), which raises the concern that it could take many years to ensure all units have the new cannabis prohibitions in place. This could also be true in older buildings where many leases were signed decades ago.

In addition, there may be cases where provincial human rights codes, which is quasi-constitutional legislation, may override a condominium's governing documents. As a result, if a

resident has a disability which requires the use of cannabis for medical reasons, residences that restrict usage will have a duty to accommodate that person.

However, protection against discrimination only applies when the use of cannabis is required for a medicinal purpose. In other words, smoking recreational cannabis in your condo is not a right protected by the government.

CANNABIS IN THE WORKPLACE

It’s also important to recognize that multifamily residences are places of employment for many people. Many questions arise: What if allergies to cannabis exist? How do I ensure that building staff are “fit for work?” How can maintenance staff enter an apartment where cannabis is being used?

Although it should be common sense not to enter the workplace under the influence, some building staff may be under the false impression that the legalization of cannabis allows them a “free pass” to consume it anywhere, at any time, and even grow cannabis plants within apartments provided by landlords or boards of directors. Properties with an employee conduct policy will now be forced to update their drug and alcohol policies.

Safety concerns still exist when cannabis is prescribed. Property managers will be faced with critical decisions defining what

job requirements staff will be allowed to complete if using medical marijuana.

SEEKING BALANCE

By legalizing cannabis, Canada has introduced new burdens to society at large and in particular to the property management industry, which is positioned at critical points where people’s lives overlap. It is evident at this early stage that it will take time for the “smoke to clear” to understand the day-to-day impacts of legalization on Canadians, and the impacts will depend on the jurisdiction. Managers throughout the country will have to be proactive to avoid negative consequences, yet at the same time balance the protection of individual rights with reasonable and enforceable rules. ■

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