

Cannabis legalization: Avoiding the personal injury potholes | Jasmine Daya - The Lawyer's Daily

Cannabis

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By Jasmine Daya



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(October 15, 2018, 9:36 AM EDT) -- Canadians are gearing up for Oct. 17, 2018, a date that will forever be remembered by generations to come. Whether you are a consumer wanting to blaze legally, a firm believer in medical marijuana, a liberal who believes in the freedom of choice or a dealer wanting to earn a buck above board, this movement has brought Canadians together with excitement and anticipation.

Law firms have created entire departments devoted to "cannabis law" because very real issues are arising and that will continue to arise that need to be addressed from a legal perspective. For lawyers, it's rare in one's career to be part of such vastly reaching novel law.

I have seen criminal, commercial and constitutional lawyers all discuss cannabis in an effort to identify legal challenges and create a way to deal with them. However, there has been little discussion from a personal injury perspective and let me tell you, cannabis will most definitely impact my practice area also.

When a person consumes alcohol and/or drugs and drives resulting in an injury, there is an impaired driving charge among other possible criminal charges but a personal injury claim can also arise if that impaired driver causes injury to someone else. The prevalence of motor vehicle accidents caused by impaired drivers given the legalization of cannabis will likely increase. Those that once consumed cannabis behind closed doors may be emboldened to get behind the wheel given that legalization enables them to use the product in public.

My greater concern is with respect to social and commercial host liability. Private parties may have included cannabis prior to legalization but now that it doesn't need to be consumed in private, people may leave the party and get behind the wheel causing injury to another person or to oneself. Either way, not only is the one who consumed cannabis at fault — the liability will extend to the party's host if they served alcohol and/or cannabis. As we know, cannabis does not only come in one form. Edibles and smoking marijuana are favourites at parties. Homemade edibles are akin to free pouring alcohol — it's difficult to know how much you have consumed.

From a commercial host liability perspective, establishments cannot overserve alcohol. They will now need to monitor the level of impairment of their patrons with greater scrutiny as impairment will increase at a greater speed when combining cannabis and alcohol.

Although counting drinks is not the only measure smart serve certified individuals monitor, it was still useful. This will no longer be the case. In addition, with legalization, people can freely exit the establishment to smoke a joint and return to the establishment and then consume alcohol.

There is also nothing stopping individuals from consuming edibles while in the establishment and consuming alcohol at the same time. Again, the level of impairment will increase rapidly. If the individual leaves the establishment and is injured or injures someone else, the establishment could be found liable for overserving alcohol. This is not new law but there will be increased difficulty for the establishment to monitor their patrons' level of impairment.

In terms of slip/trip and fall incidents resulting in injury, if a person has consumed cannabis and as a result is alleged to have been impaired, it is likely that there will be some degree of contributory negligence found on the injured party that will decrease the amount of damages they are entitled to receive. For example, if someone trips and falls due to a pothole on a sidewalk, they may be found contributorily negligent if they had consumed cannabis, in the same way as if they had consumed alcohol.

The Task Force on Cannabis Legalization and Regulation did not include an occupational health and safety perspective which is unfortunate but employers, particularly those that require employees to use heavy machinery, should most certainly create and articulate a workplace policy to avoid potential liability.

In terms of minors, there are concerns about poisoning and burns that perhaps haven't been considered. Children like to follow their parents and may not realize that cannabis could harm them. If a minor were able to obtain cannabis and sustain injury, the individual who enabled the minor to obtain the product would be held liable, even if the product was obtained unbeknownst to the adult. Safely storing cannabis away from minors as if it were prescription medication or a poisonous product is necessary to protect our children.

Although cannabis will be legal in Canada as of Oct. 17, it does not mean that consumption in all circumstances is safe. From a personal injury perspective, that's the key message.

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