

Contributory negligence related to cannabis use in slip and fall claims

By Paul Russell, AdvocateDaily.com Contributor



Cannabis legalization will have a significant impact in slip and fall cases where it is argued that any award should be reduced due to contributory negligence, Toronto personal injury lawyer [Jasmine Daya](#) tells [AdvocateDaily.com](#).

"Since legalization last October, people are now more willing to admit to using it," says Daya, managing principal with [Jasmine Daya & Co.](#) "The difficulty will be to prove that cannabis played a significant role in any slip and fall case."

In s. 3 of the Ontario [Occupier's Liability Act](#) it states: "An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises."

If it is shown that a property was unsafe, due to factors such as a lack of salt or inadequate snow cleaning, Daya says the court would then look at the extent to which the person's actions contributed to the fall.

If it is determined their actions contributed in some way, any court award could be reduced by a percentage, or even eliminated entirely, she says.

Daya gives the example of inappropriate footwear in slippery conditions.

"If a woman wears high heels outside in winter, that is probably not the wisest decision," she says. "The same thing could apply for men wearing dress shoes with no grip."

Another common example of contributory negligence is when a person was drinking before a fall, Daya says.

"The big difference is that alcohol impairment is easier to detect," she says. "People who have been drinking usually smell of alcohol, or perhaps they are stumbling around. We don't have the same detection skills for cannabis."

That problem will be compounded on Oct. 17 this year, when edible marijuana becomes legal in Ontario, Daya says.

"Edible cannabis doesn't give off the same smell as varieties that are smoked," she says. "It will be much harder to determine who is using it."

Daya says edible products are expected to be very popular with a wide range of consumers.

"I know many people who have never tried cannabis, but say they are planning to purchase the edible version once it becomes legally available," she says. "The stigma around cannabis is going away."

Another issue is that there are so many varieties of the drug available, and various strengths, Daya points out. For example, some varieties of cannabis oil contain no THC, the primary psychoactive compound found in marijuana.

"It is not enough to say that someone consumed cannabis, and therefore that contributed to his tripping and falling," she says.

To prove the extent of someone's marijuana usage, Daya says the court will have to rely on sworn testimony, given under oath.

Considering the pace of our judicial system, she says it will be three to five years before cases are heard where cannabis is being considered as a contributing factor in a trip and fall.

"Contributory negligence is a doctrine that will attach itself to cannabis impairment," Daya says. "But it won't be as easy to advance that argument, as it is with alcohol."