

The far-reaching impact of legal cannabis

By AdvocateDaily.com Staff



Just because cannabis is now legal doesn't mean consumption in all circumstances is safe, Toronto personal injury lawyer **Jasmine Daya** tells *The Lawyer's Daily*.

Daya, managing principal with **Jasmine Daya & Co.**, says law firms of all stripes have created new departments dedicated to cannabis law because of the anticipated issues that will arise.

"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," she says. "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 someone who has consumed alcohol or drugs then drives and causes an injury to another person, the victim can file a personal injury claim against the driver, Daya explains.

"The prevalence of motor vehicle accidents caused by impaired drivers given the legalization of cannabis will likely increase," she says. "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."

Daya says she's more concerned with the use of cannabis in the context of social and commercial host liability. For example, she says if someone attends a private party, smokes a joint, then drives and causes injury to another person, there may be two-fold liability.

"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," Daya says. "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, she says bars and other establishments — where both cannabis and alcohol can be consumed — will have to gauge patrons' level of impairment more closely as the effects of combining the two could amplify intoxication.

"Although counting drinks is not the only measure Smart-Serve certified individuals monitor, it was still useful," Daya says. "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."

Under the *Liquor Control and Licensing Act*, establishments can be found liable for overserving alcohol in cases where a customer is injured or causes injury to another person after drinking too much, she says.

"This is not new law, but there will be increased difficulty for the establishment to monitor their patrons' level of impairment," Daya says.

Slip and fall incidents involving the use of cannabis are another potential thorny legal issue, she says.

"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," Daya says.

"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."

When it comes to cannabis use in the workplace, she notes that while the Task Force on Cannabis Legalization and Regulation doesn't include occupational health and safety guidelines, employers would be well-advised to create policies to avoid potential liability.

With respect to minors, Daya says there are concerns around poisoning and other injuries that haven't been well thought out.

"Children like to follow their parents and may not realize that cannabis could harm them," she says. "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.”

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