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CLIENT BULLETIN

A HAZY ROAD AHEAD: THE PROPOSED CANNABIS ACT AND LOCAL GOVERNMENTS

A new legal landscape for the recreational use of cannabis in Canada has been proposed in the House of Commons. For local governments, the highly-anticipated [Cannabis Act](#) has significant implications for local zoning and density bylaws, building standards, as well as matters related to personal cultivation, smoking restrictions, public nuisance complaints, as well as the minimum age of purchase and personal possession limits. The bills will be subject to heavy scrutiny as the different levels of government sort out jurisdictional issues in the coming months. This bulletin highlights five key issues that local governments should be aware of as the federal government moves toward the legalization of recreational cannabis.

1. Individual Possession and Cultivation is Allowed

Adults (18 or older) may possess up to 30 g of dried cannabis (or equivalent) in a public place. Adults may grow up to four one-metre tall cannabis plants per residence, anywhere on their property. Regulations regarding access to medical marijuana and cannabis remain in place. Local governments may be able to implement further regulations on personal cultivation to address municipal concerns.

2. Commercial Licensing and Industry Standards will be Federally Regulated

The federal government will oversee commercial production licences and ensure cannabis products are safe for consumption. Industry-wide requirements and standards will be federally regulated, including the types of cannabis products allowed for sale; product packaging and labelling requirements; and restrictions on promotional activities. Commercial possession, production and distribution outside the legal system would remain illegal, as would imports or exports without a federal permit.

3. Cannabis Retail may be Provincially Regulated

The provinces may legislate how cannabis is distributed and sold, subject to minimum federal conditions. The proposed *Cannabis Act* does not prescribe what the retail environment must look like. For example, provinces may choose to regulate the sale of cannabis through provincial liquor stores, or implement a framework that permits private cannabis retail stores similar to dispensaries. Where a province chooses to not have provincial legislation to regulate cannabis retail, adults may purchase cannabis by mail or courier from a federally licenced producer.

The proposed bills indicate that a provincial authority may also establish province-specific standards relating to the minimum age requirement for purchasing cannabis; the provincial personal possession limit; locations where adults may consume cannabis; and additional regulations for growing cannabis at home.

4. Local Governments Will Face Enforcement Challenges

Municipalities are to be '[key partners](#)' in enforcing local zoning and density bylaws, building standards, and matters related to the minimum age of purchase, personal cultivation, personal possession limits, smoking restrictions, and public nuisance complaints. The federal government expects that such standards and regulations will be enforced through municipal by-law inspectors and police. However, the bill is silent on whether the federal government will provide any additional financial support for local governments in addressing new challenges from the legalization of cannabis.

5. A Test for THC Blood Levels May Be Used to Determine Impairment

A blood-testing mechanism to determine impairment from THC has been proposed. A driver found with a blood content of 2 to 5 nanograms/ml of THC may face a maximum penalty of \$1,000, as well as a driving ban. The penalties are increased if the driver is also impaired by alcohol. This is relevant to local governments as employers, as the impairment threshold for driving is often used as a reference for determining impairment thresholds in the workplace.

This blood content limit is likely to draw scrutiny as even the [Report from the federal Task Force on Cannabis Legalization and Regulation](#) acknowledged that such a limit for THC blood levels is not currently a reliable metric for establishing impairment. According to that Report, further research is required to determine a more effective method of determining impairment.

The proposed bills are not yet the law, and the final legislation may still look quite different from what is before the House of Commons today. What is clear is that provinces will be playing a critical role in regulating cannabis retail sales, and local governments will need to adapt their local bylaws and enforcement mechanisms to accommodate the new approach to cannabis in Canada. The federal government aims to have the bill approved by the summer 2018. Until that time, the current [Access to Cannabis for Medical Purposes Regulations](#) remain the regulatory authority for local governments.

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