

# The Legalization of Cannabis



## Issues for the Workplace: Where There's Smoke, There's Fired?

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# Canada's Cannabis Law

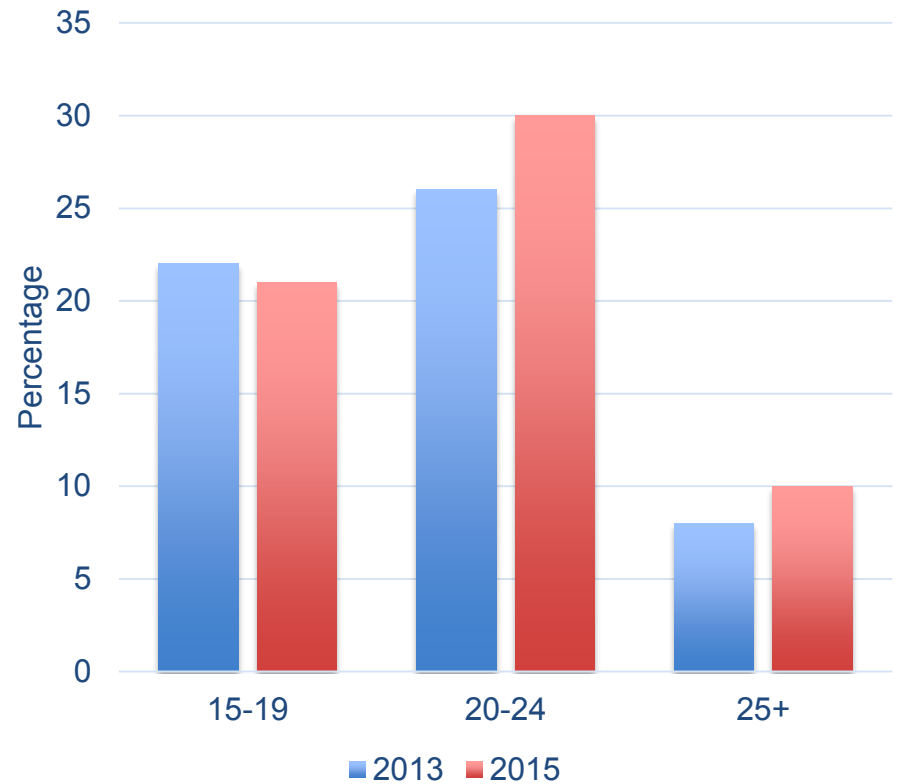
What you need to know  
as an employer in Ontario

# Background

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Cannabis was the most used illicit substance in Canada...

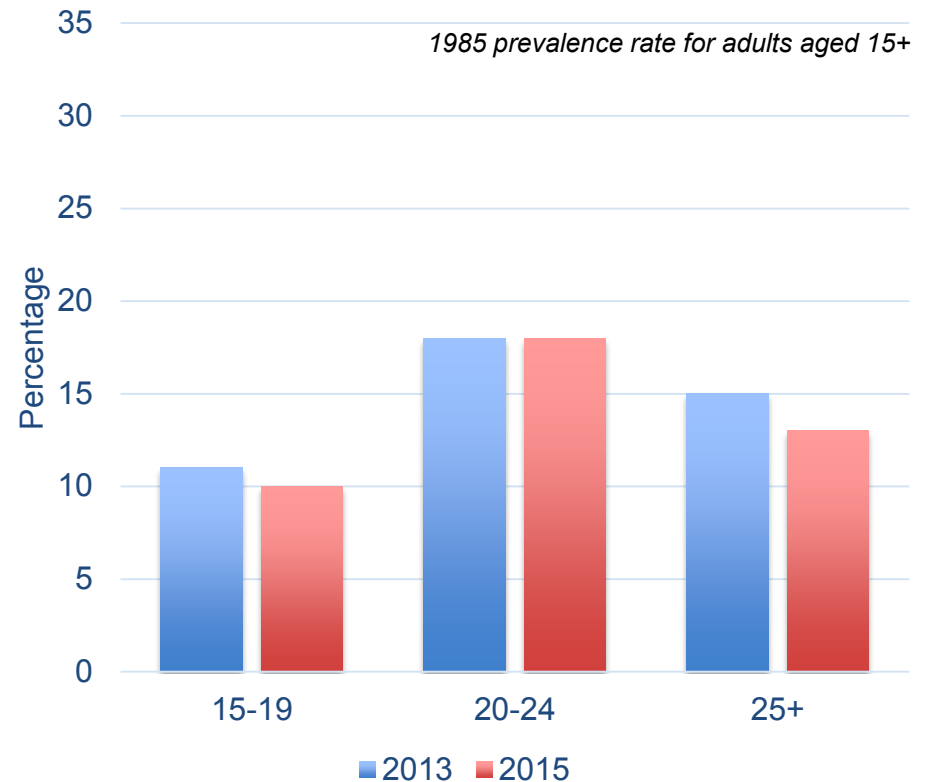
Cannabis use, by age group,  
2013-2015



## Background (cont.)

... and cannabis use  
outpaces tobacco use among  
young adults

Cigarette Smoking Prevalence\*, by age group,  
2013-2015



# Government of Canada Objectives

A new control framework for cannabis that will:

- restrict youth access to cannabis
- protect young people from enticements to use cannabis
- provide for a legal cannabis market capable of displacing the illegal market
- deter criminal activity by imposing serious criminal penalties for those breaking the law

## Government of Canada Objectives (cont.)

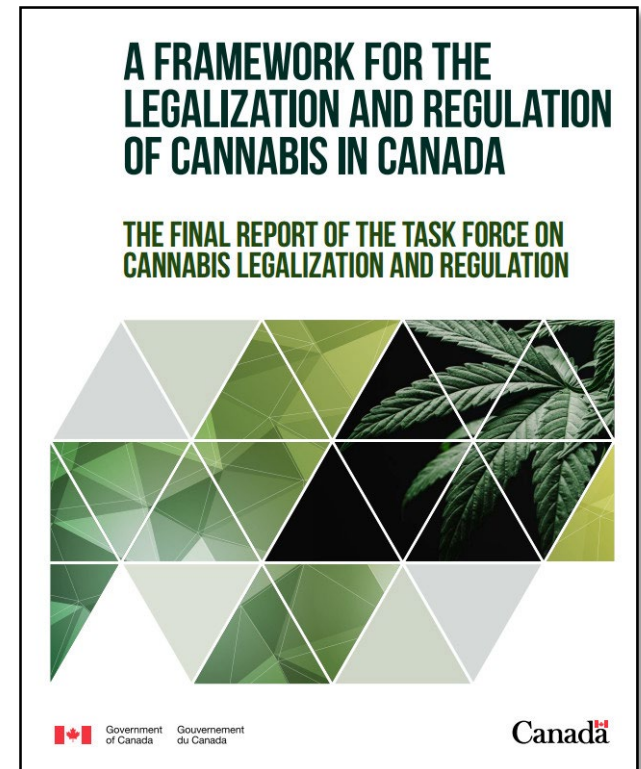
A new control framework for cannabis that will:

- protect public health through strict product safety and quality requirements
- reduce the burden on the criminal justice system
- allow adults to possess and access regulated, quality controlled cannabis

# A Framework for the Legalization and Regulation of Cannabis in Canada

Final report to the government on December 13, 2016, has more than **80 recommendations** on how to better promote and protect public health and safety, grouped into **five themes**:

1. Minimizing harms of use
2. Establishing a safe and responsible supply chain
3. Enforcing public safety and protection
4. Medical access
5. Implementation





# Law Implementation – Medicinal Cannabis

No change in the existing law for medicinal cannabis

- Since 2001, cannabis used for medicinal purposes has been legal, if used in a manner that complies with the applicable laws.
- Must be prescribed by a medical, nurse or health care practitioner
- Purchased from a federally licensed producer online by written order or phone, delivered by secure mail

# Medicinal cannabis treatment

- Chronic Pain, Insomnia, Migraines, PTSD,
- Depression, Anxiety, Seizures, Muscle Spasms,
- Glaucoma, Cancer, Spinal Cord Injury, ADD/ADHD,
- Brain Injury, Alzheimer's, Nausea, Crohn's Disease,
- HIV/AIDS, Colitis

# Medicinal cannabis does not necessarily cause impairment

Some medicinal cannabis products contain less than 1% of THC - psychoactive which causes the 'high' or impairment

# Law Implementation – Recreational Cannabis

Provinces implement the sale and licensing of recreational cannabis

- In Ontario, recreational marijuana is sold on-line and in government licensed stores
- Minimum age 19
- Able to purchase up to 30 grams (about one ounce) of dried recreational cannabis for personal use at one time

## Law Implementation – Recreational Cannabis

- Usage restricted to private residence including outdoor space - porch or back yard
- Multi-unit buildings - apartment condos, balconies - depends on building's rules or lease agreement (2nd hand smoke determining issue)

**Recreational cannabis  
is a legal substance that  
causes impairment**

# Issues for the Workplace

## Issues for the Workplace

Think of it as an evolution of the existing framework you should already have

- Legal status of medicinal cannabis has not been altered with the new law, so current workplace policies do not need to be altered if you have them in place
- Recreational marijuana comes under restrictions similar to alcohol: a legal substance which causes impairment



# Medicinal Cannabis - Issues for the Workplace

Medicinal cannabis prescription same as prescription for any legal medication

- Develop policies for medicinal cannabis usage
- Require employees to report any prescription or non-prescription medications that MAY impair ability to work safely
- Accommodate cannabis usage to the point of undue hardship by working with medical professionals
  - » NOTE: Some medicinal cannabis products contain less than 1% of THC - psychoactive which causes the 'high' or impairment
  - » Employee may not be impaired
- Address disciplinary consequences for policy breaches

## Recreational Cannabis - Issues for the Workplace

- Recreational cannabis can only be consumed in a private residence. It is illegal to consume it in the workplace
- Driving: Zero tolerance for cannabis in your system for: young, 21 or under; novice and commercial drivers
- 25 nanograms blood level threshold as detected by a federally approved oral fluid screening device

# Recreational Cannabis - Issues for the Workplace

## Occupational Health and Safety Act (OHSA)

- Employers cannot restrict employees' off-duty conduct
- BUT Employers have duty to ensure health and safety of employees in workplace
- If suspected to be under influence of cannabis, follow drug and alcohol policies for testing protocols (e.g. reasonable grounds testing)
  - » Assessing impairment remains the challenge
  - » Consider use of zero tolerance policies for safety sensitive workplaces
- Policies should state that breaches constitute grounds for discipline up to and including termination
- If employee has a disability or dependency on recreational cannabis, accommodation up to the point of undue hardship is required.

# Best Practices for the Workplace

- Simply posting an amended policy in the workplace may not be sufficient
- Employers should ensure there is:
  - record of employee acknowledgement
  - record of training
  - record of employee signoff to ensure there is no question employees are aware of the new or revised policy.

# Summary

- All cannabis - medicinal and recreational - has been decriminalized by Federal law
- Provincial law covers sale, location of usage and workplace:
  - Occupational Health and Safety, Human Rights
- Medical cannabis status and regulations are unchanged
- Illegal to use recreational cannabis in the workplace
- Illegal to have cannabis in your system while in operation of a commercial vehicle; if under 21 and if a novice driver.

# Summary

- Employers cannot regulate off duty activity
- But have an obligation to:
  - maintain a safe workplace
  - Have a written policy regarding being impaired in the workplace
  - make sure employees are aware of and understand the policy and the discipline for breaches of policy
  - accommodate the needs of a worker with a disability or addiction, up to the point of undue hardship

# Acknowledgements

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Member of





# Case Law

- [\*Aitchison v L & L Painting and Decorating Ltd\*, 2018 HRTO 238:](#)  
February, 2018
- The employee was fired for smoking medical marijuana on a 37<sup>th</sup> floor swing stage and filed a complaint with the HRTO.
- The Human Rights Tribunal dismissed the application on the basis that it was a safety sensitive situation.

# Case Law

*Airport Terminal Service Canadian Co. and Unifor, Local 2002 (Sehgal)  
Re, 2018 CarswellNat 991(Can. Arb.)*

- The grievor, a ramp agent, was terminated as per the employer's zero tolerance safety sensitive policy after he tested positive for marijuana after a minor work place accident. The grievor disclosed that he had been using medical marijuana for 3 years for a health problem
- The arbitrator ordered reinstatement and the employer was required to accommodate the employee

# Case Law

- *IBEW Local 1620 v. Lower Churchill and Vallard Construction*, 2016 NLTD(G)192
- The employee was terminated for failing to disclose his prescribed medical marijuana as required under the employer's zero tolerance safety sensitive policy
- The reviewing judge upheld the termination agreeing that the zero tolerance drug policy was reasonable for the safety sensitive work place