

Rolling Out NEW CANNABIS CONSUMPTION RULES in ONTARIO & The POWERFUL ROLE OF MUNICIPALITIES

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The Federal Cannabis Act (the “Act”) came into force on October 17, 2018 and officially marked the legalization of recreational cannabis in Canada. While the Act dictates much of the scheme for legal cannabis across Canada, it left key aspects of regulation to the provinces and territories. One such aspect is the regulation of permitted/prohibited public areas for the consumption of cannabis.

In response to this position, Ontario’s Progressive Conservative government, elected on June 7, 2018, released a plan and accompanying legislation to

change the previous Liberal government’s plan. On October 17, 2018, Ontario’s Bill 36: the Cannabis Statute Law Amendment Act, 2018 received Royal Assent and changed previously established regulations on the consumption of cannabis.

Bill 36 amended and renamed the former Cannabis Act, 2017 to the Cannabis Control Act, 2017, the Ontario Cannabis Retail Corporation Act, 2017, the Liquor Control Act, and created the new Cannabis Licence Act, 2018, which outlines licensing for private retail cannabis stores in Ontario.



On the same date, the new Smoke Free Ontario Act, 2017 (the "SFA, 2017") was also proclaimed into force.

The legislation which previously set the stage in Ontario would limit cannabis consumption to private residences. Now, under the SFA, 2017, the scope for consumption has been significantly widened.

Ontarians may now, under the SFA, 2017, smoke and/or vape (i.e. use an electronic cigarette or inhalant-type device) cannabis in any location where smoking tobacco is permitted.

This will, in effect, mean that in Ontario will allow cannabis consumption in many outdoor public places, including sidewalks and parks.

The new SFA, 2017, dictates that smoking or holding lighted cannabis or using an electronic cigarette (vaporizer) is prohibited in:

- An enclosed public place;
- An enclosed workplace;
- A school within the meaning of the *Education Act*¹;
- A building or the grounds surrounding the building of a private school within the meaning of the *Education Act*², where the private school is the only occupant of the premises, or the grounds annexed to a private school, where the private school is not the only occupant of the premises;
- Any indoor common area in a condominium, apartment building or university or college residence, including, without being limited to, elevators, hallways, parking garages, party or entertainment rooms, laundry facilities, lobbies and exercise areas;
- A child care centre within the meaning of the *Child Care and Early Years Act, 2014*³;
- A place where home child care is provided within the meaning of the *Child Care and Early Years Act, 2014*⁴, whether or not children are present;
- A place where an early years program or service is provided within the meaning of the *Child Care and Early Years Act, 2014*⁵;
- The reserved seating area of a sports arena or entertainment venue;
- A prescribed place or area, or a place or area that belongs to a prescribed class.

There are some exceptions to these rules. Namely, situations exist where private residences also function as enclosed workplaces. This includes:

long-term care homes, retirement homes, supportive housing residences, psychiatric facilities, and facilities for veterans. In these spaces, residents will be able to consume cannabis so long as (1) there is a room designated as a controlled area for smoking/vaping cannabis; (2) the resident who desires to use the room may do so safely without the assistance of an employee; (3) the room is limited to residents of the residence; and (4) the room is an enclosed space that is properly ventilated, controlled (with appropriate signage to this effect), and meets any additional requirements set by the regulations.

Exceptions also apply to certain criteria for consumption in hotels, motels, and inns. Cannabis may be consumed in certain circumstances where: (1) the person is a registered guest of the hotel, motel, or inn, or the invited guest of a registered guest; (2) the guest room is designed


¹Under the *Education Act*, "school" is defined as: (a) the body of elementary school pupils or secondary school pupils that is organized as a unit for educational purposes under the jurisdiction of the appropriate board, or (b) the body of pupils enrolled in any of the elementary or secondary school courses of study in an educational institution operated by the Government of Ontario, and includes the pupils who are enrolled in extended day programs in the unit or institution, the teachers, designated early childhood educators and other staff members associated with the unit or institution, and the lands and premises used in connection with the unit or institution.

²Under the *Education Act*, "private school" is defined as: an institution at which instruction is provided at any time between the hours of 9 a.m. and 4 p.m. on any school day for five or more pupils who are of or over compulsory school age in any of the subjects of the elementary or secondary school courses of study and that is not a school as defined in this section.

³Under the *Child Care and Early Years Act, 2014*, "child care centre" means a premises operated by a person licensed under that Act to operate a child care centre at the premises;

⁴Under the *Child Care and Early Years Act, 2014*, "home child care" means child care that is provided: A. by one child care provider for no more than six children at any one time or, if a lesser number is prescribed in accordance with subsection (6), no more than the prescribed number of children at any one time, or B. if the regulations so provide, by two child care providers for no more than twice the number of children that applies for the purposes of sub-subparagraph A or, if a lesser number is prescribed, no more than the prescribed number of children. ii. There is an agreement between a home child care agency and the child care provider that provides for the agency's oversight of the provision of care. iii. The home child care agency has been advised of all of the children at the premises. iv. The group of children does not include, A. in the circumstances described in sub-subparagraph i A, more than two children who are younger than two years old, B. in the circumstances described in sub-subparagraph i B, more than four children who are younger than two years old or, if a lesser number is prescribed, more than the prescribed number, or C. if the director authorizes under section 27 the provision of child care for more children who are younger than two years old than the number that applies for the purposes of sub-subparagraph A or B, more than the number specified by the director.

⁵Under the *Child Care and Early Years Act, 2014*, "early years programs and services" means programs and services for children or parents that are specified or meet the description set out in the regulations, which, (a) involve or relate to the learning, development, health and well-being of children; (b) do not provide child care and are not extended day programs; and (c) are funded wholly or partly by the Ministry.



primarily as a sleeping accommodation; (3) the guest room has been designated as one that accommodates the use of cannabis by management; (4) the guest room is fully enclosed by floor-to-ceiling walls, and ceiling and doors that separate it physically from any adjacent area in which consumption is prohibited; and/or (5) any other requirements.

The change by the PC Government has made waves among many city councillors and municipalities across the Province. The Province has allowed municipalities the ability to enact their own by-laws to set rules beyond the minimums set out in the SFA, 2017.

Some municipalities have responded immediately and jumped on the opportunity. In at least two cases – Markham and Richmond Hill – city councillors have passed by-laws banning the consumption of cannabis in public spaces, including parks and sidewalks.

In many ways, the power has shifted to municipalities, who will shape the landscape for many of Ontario's communities. It is municipalities, not the provincial nor the federal government, which will have the final say over the location of cannabis consumption. It will be important for residents to learn not only the by-laws in their municipality but the by-laws of neighbouring municipalities, to avoid any inadvertent violations.

In addition to municipalities' power, landlords will similarly be entitled to create restrictions on the consumption of cannabis in rental accommodations, the way that they often do with tobacco products.

Similarly, employers will be able to limit as well. The Ontario Cannabis Act prohibits the consumption of cannabis in a "workplace" as it is defined in the Occupational Health and Safety Act ("OHSA"). The OHSA defines "workplace" as "any land, premises, location or thing at, upon, in or near which a worker works." An exemption exists when a workplace also functions as "primarily a private dwelling, which may include private self-contained living quarters in a multi-unit building or facility," as described previously.

Employers in Ontario are busily working to update existing drug policies to adjust for the use of cannabis over and above the prohibition in the Ontario Cannabis Act.

For all policies created (either landlord, or workplace) drafters will need to be mindful of patients under the Access to Cannabis for Medical Purposes Regulations, so as to not run afoul of human rights legislation and considerations.



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