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# Legalization of Cannabis: What Employers Need to Know

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## Overview

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- Legal Landscape of Cannabis
- Impact on Employers
- Cannabis vs. Alcohol
- Human Rights Considerations
- Why You Need a Cannabis Policy
- Establishing a Cannabis Policy: Tips for Employers
- Guidance From the Courts

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## Current Landscape

- Recreational Cannabis is currently illegal
- Medical Cannabis permitted under the *Access to Cannabis for Medical Purposes Regulations*
- Stay tuned: regulation of recreational Cannabis coming July 1, 2018

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## Regulation of Recreational Cannabis

- Federal government responsible for establishing minimum standards
- Provinces have the power to regulate licensing and distribution
  - They may set additional requirements above the minimum standards set out by the federal government
- What's happening in Nova Scotia?
  - To be announced!

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## Impact on Employers

- Impending legalization will have at least two major impacts on employers:
  1. The prevention of safety risks from drug impairment in the workplace; and
  2. Continuing to accommodate employees who have been prescribed medical Cannabis

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## Cannabis vs. Alcohol

- Historical treatment of Cannabis as an illicit substance has created stigma surrounding the drug
- From a legal perspective, Cannabis is taking its place beside alcohol as a regulated substance, and should be treated similarly
- Similar to alcohol, an employee cannot be impaired by Cannabis at work

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## **Medical Cannabis and Human Rights**

- Human Rights Legislation prohibits discrimination on the basis of disability
- It also imposes a duty on employers to accommodate disabled employees
- If the employer can prove they have a bona fide occupational requirement, they may not have to accommodate the employee

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## **How Far Does the Duty to Accommodate Extend?**

- Often an area of confusion for employers
- The duty to accommodate does not entitle:
  - an employee to be impaired at work;
  - an employee to smoke Cannabis in the workplace;
  - an employee to compromise the health and safety of the workplace.

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## ***French v Selkin Logging, 2015 BCHRT 101***

- An employee suffering from cancer used Cannabis at work for pain management
- The employee did not have a prescription
- The employer had a zero-tolerance policy for drug use
- The Court upheld the zero-tolerance policy and found that there was no duty to accommodate an employee without a prescription

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## **A Cannabis Policy**

- Cannabis is within an employer's mandate to regulate
- Employers should consider implementing a policy on Cannabis use in the workplace ahead of the legalization of Cannabis

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## **Why Do You Need a Policy?**

- Government regulation imposes minimum standards for regulating Cannabis, it does not address workplace issues
- Workplace regulation is left to individual employers
- Creation of a policy will provide added protection and security for employers once Cannabis is legalized

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## ***Richards v Great Canadian Coaches, 2014 CarswellNat 6433***

- Bus driver who worked for federally regulated transportation company was found to be in possession of Cannabis
- Driver was subsequently terminated based on an alleged breach of the company's drug policies
- Adjudicator found that the company's policies were not clearly defined and that there was no "zero-tolerance" policy as they claimed

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### **Should a Cannabis Policy Differ From an Alcohol Policy?**

- Don't have to start from scratch, a Cannabis policy will be similar to an alcohol policy
- Detecting alcohol impairment vs Cannabis impairment is a major issue
- For safety sensitive environments, consider a prohibition for a set amount of time prior to attending work

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### **Tips for Employers**

- The best form of protection is a clear and comprehensive policy
- What to include:
  - Objectives of the policy
  - Identify restrictions on usage
  - Safety sensitive workplaces
  - Detection of impairment
    - In safety-sensitive workplaces, consider banning employee use of Cannabis for a reasonable period of time prior to work
  - Treat Cannabis like any impairing substance

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## Tips for Employers Con't

- Ensure your policy is clear and unambiguous
- Consider the need to accommodate medical Cannabis users
- Train staff and management on the application of a Cannabis policy
  - Especially as it relates to medical vs recreational Cannabis
- Educate all staff on the policy
- Include consequences of non-compliance

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## Recent Clarification from the Supreme Court

- *Stewart v Elk Valley Coal Corp.* 2017 SCC 30
  - Employee held a safety sensitive position as operator of a loader at a coal mine
  - Employer had a preventative policy on drug and alcohol use requiring disclosure of addiction prior to an accident
  - Employee had accident and attempted to argue he had an addiction following the accident
  - Court upheld the validity of the employer's policy

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**ATU Local 113 v Toronto Transit Commission, 2017 ONSC 2078**

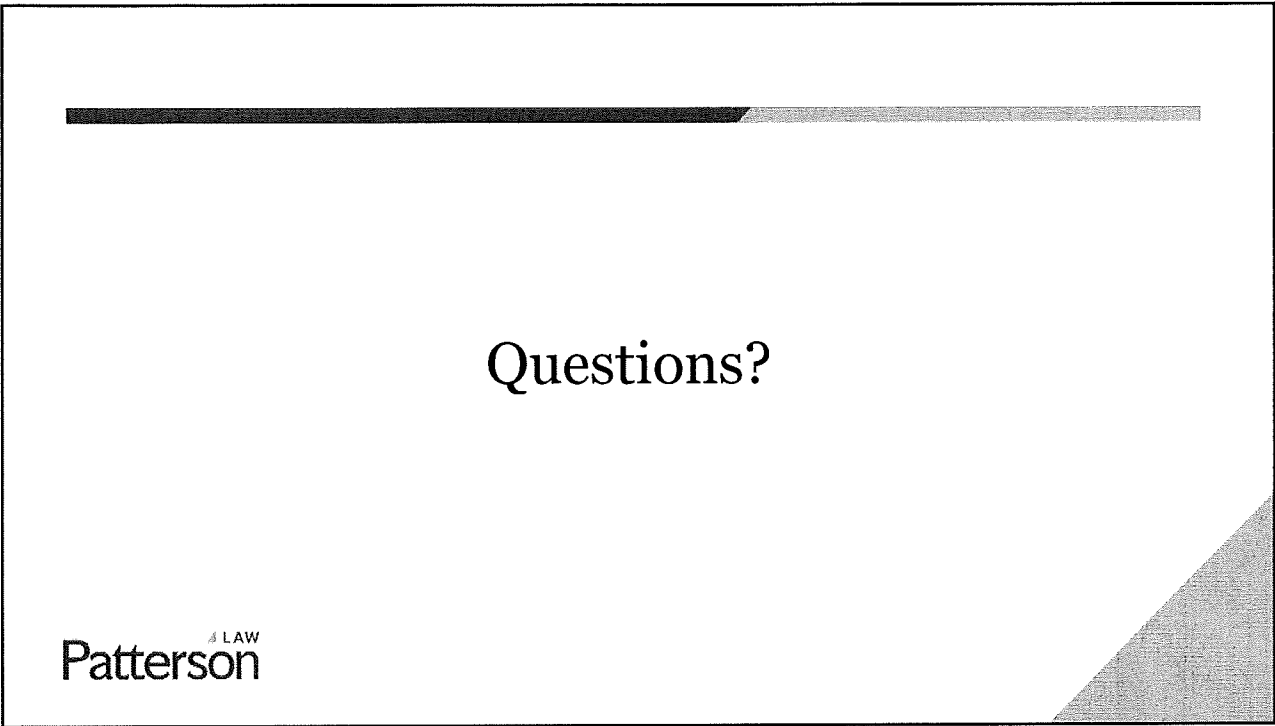
- TTC had a policy of random drug and alcohol testing of employees in safety sensitive positions
- Union applied for an injunction prohibiting continued implementation of the policy
- Court declined to grant an injunction and found in favour of the employer
  - Safety of the workplace was held to be a primary concern

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**University of Windsor v Canadian Union of Public Employees, Local 1001, 2017 CanLII 9594**

- Two custodians were caught smoking Cannabis on the job
- The employer dismissed both custodians
- At arbitration, the arbitrator upheld the dismissal due to the high degree of trust required of unsupervised employees and the unreliable testimony of the employees

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