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Now that the Smoke has Cleared: Cannabis in Our Condominium Communities Eight Months after Legalization

When the news was first released that recreational cannabis would be made legal in Canada, subject to provincial regulation, it was understandably met with joy, fear, and every emotion in between. For some, this was viewed as long overdue – the legal recognition of something that many people did anyway and that even most police had stopped enforcing against. For others, it was viewed as a matter of grave concern: would "reefer madness" run rampant in the streets?

This range of reactions was also present in our condominium communities, some of which met the news with relief and others with concern. With the clock ticking before legalization on October 17, 2018, condominium corporations were faced with the question of what type of community they saw themselves as on the issue of cannabis. Boards had



to decide whether to maintain a live-and-let-live attitude similar to how most buildings had previously dealt with non-problem tobacco smoking, or if they would instead try to get ahead of legalization by setting pre-emptive expectations about cannabis use via changes to their governing documents.

Today, over eight months since legalization, most would agree that the impact on day-to-day life in Canadian society has been minimal. Those who smoked cannabis anyway likely continue to do so. Indications are, somewhat surprisingly, that it is actually older Canadians, and not children, who have been the largest group of first-time users. Police report only a very minor increase in high driving charges and state that this could be attributable to officers being better trained to spot signs that may have always been there in the past.

Similarly, the majority of condominium corporations have not experienced a significant increase in cannabis-related complaints. Some communities have experienced a slight uptick in incidents, perhaps as the result of formerly secretive smokers who might have gone for a walk prior to legalization now feeling emboldened to smoke within their units and on their balconies. What we haven't seen, however, are previously respectable properties turned into dens of sin and crime. Nor have we seen open war between smokers and non-smokers.

Instead, the unexpected cannabis-related issue emerging in many condominium communities is the interplay between cannabis use and human rights. Medical cannabis use was legal in Canada long before recreational legalization. As a legal form of treatment prescribed to those with a number of medical diagnoses, a medical cannabis user in a condominium community – even a community that has otherwise prohibited cannabis use on the property – will often be permitted to continue to use cannabis on the property on the

basis of this being an accommodation on the basis of disability protected under Ontario's Human Rights Code (the "Code"). The Code takes precedence over the Condominium Act and a corporation's declaration, by-laws, and rules.

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The first wave of challenge to medical cannabis use was on the basis of nuisance. Similar to a person with a disability whose service dog bites other residents or pees in the hallway, medical cannabis use, particularly smoking, cannot be permitted to cause a serious disturbance to other residents. However, the key word is "serious". A mere whiff of

cannabis in the hallway or smoke occasionally wafting from a balcony will likely not be sufficient to override a medical user's rights under the Code.

Contrary to commonly-heard arguments, it is also not correct to tell a medical user that they should simply switch to a different form of cannabis, such as an edible or an oil. Different forms have different effects on people, and many medical users report that smoking provides the fastest and most reliable relief when needed.

Condominium corporations may be called upon to get involved in these situations. One discussion that a board and/or management can spur is about the medical cannabis user's usage pattern. Is the person physically able to take a short walk to smoke? Can they smoke on their balcony? While such dialogues must be conducted with the utmost sensitivity and confidentiality, they can often lead to practical solutions. A condominium corporation may also be asked to conduct testing on the common elements to determine whether a deficiency exists that is permitting smoke migration, or to work with a medical user to determine if additional ventilation systems may mitigate the risk of disturbance to others. It is important for board members and managers to remember that, despite cannabis' historical stigma, the use of medical cannabis is an accommodation



for a disability. Condominium corporations who treat medical users as "trouble-makers" do so at their own peril of legal liability.

The second, more intriguing, challenge to medical cannabis use comes from other individuals in the condominium community who themselves have a disability for which they seek accommodation that is in direct opposition to cannabis use. An extreme example is that of a recent case that made the news of a condominium resident with an actual cannabis allergy. A more common example is someone who suffers from a respiratory condition that is triggered or worsened by the presence of smoke.

Balancing competing human rights claims in a condominium can be difficult. The Ontario Human Rights Commission has recognized this and has issued a "Policy on competing human rights", which boards and managers are encouraged to review in detail; proposes a

three-step framework for analyzing and resolving disputes, as summarized below:

1) Recognizing competing claims

What are the claims about, do they connect to legitimate rights, and is the interference with someone's rights more than minimal?

2) Reconciling competing rights claims

Are there solutions that everyone can live with or that get as close as possible?

3) Making decisions

If an agreed resolution is not possible, a responsible party (such as a condominium board) must make a decision that is consistent with human rights and other laws, as well as court/tribunal decisions and other applicable policies.

This is early days for these issues. As societal views on cannabis evolve, and the products available to medical users expand (such as oil vaporizer pens that create less smell), we may see broadly-accepted solutions that permit cannabis users and non-users alike to peacefully co-exist in our condominium communities.

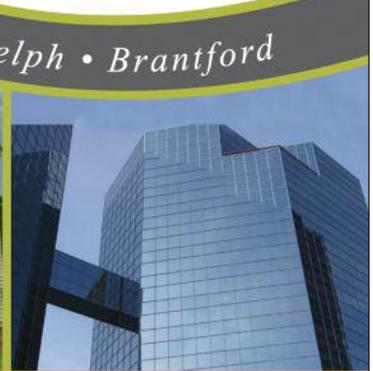
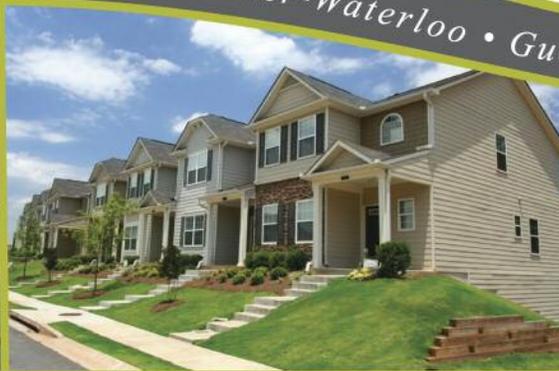
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