



Breakfast Seminar Series

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**A HIGH LEVEL DISCUSSION ABOUT
CANNABIS IN THE WORKPLACE**

June 14, 2018

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As a boutique labour and employment law firm, Emond Harnden has represented the interests of management in both official languages for over 30 years.

Originally rooted in the Ottawa community, we have grown to represent employers in all territories and provinces of Canada.

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ABOUT

Lynn is a graduate of Trent University and University of Toronto Law School where he conducted research into the subject matter of today's presentation which was neither peer-reviewed nor publishable but which will inform his presentation.

Nationally recognized within the legal community, Lynn appears in the Canadian Legal Lexpert Directory, a guide to the leading law firms and practitioners in Canada, as a leading lawyer in the area of labour relations, human rights and employment law. Lynn received the "AV Preeminent" rating based on peer surveys by Martindale-Hubbell and was designated by Best Lawyers in Canada as Lawyer of the Year in 2010 and 2016 for Labour and Employment Law in Ottawa.

Lynn participated in the Canadian delegation to Sri Lanka in 2001 lecturing on Canadian approaches to alternative dispute resolution.



J.D. SHARP

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ABOUT

J.D. is a firm believer in management rights and his practice is devoted to supporting employers in effectively managing the human resources side of their organizations. He provides strategic advice, representation and counsel regarding labour, employment, human rights, health & safety and other employment-related areas of the law.

J.D. acts as counsel to both public and private sector clients, including municipalities, hospitals, post-secondary educational institutions and manufacturers.

J.D. practices mainly in the areas of labour and employment law with a particular emphasis on advocacy and litigation. In addition to providing counsel in various rights arbitrations and Labour Relations Board proceedings, he advises and represents employers on matters of labour and employment, WSIB and health and safety matters, human rights and collective bargaining and all matters related to human resources law. He also assists clients with handling strike and lockout situations in addition to injunctions.

J.D. has undertaken some independent research on the topic of cannabis use in an effort to better inform his advice to clients and to make him more tolerable to his spouse.



High History

- Cannabis plant has been utilized by humans for more than 10,000 years
- Referenced in Chinese medicine 4000 years ago
- Around 2737 A.D., Chinese Emperor Shen Neng prescribed cannabis to treat a variety of ailments including gout, rheumatism, malaria and poor memory
- Around 70 A.D., Pedanius Dioscorides, a Greek physician, recorded cannabis in his pharmacopoeia
- Cannabis use spread throughout India, Asia, the Middle East and Africa
- Around mid-1800's, Sir William Brooke O'Shaughnessy, an Irish physician, introduced cannabis to modern western medicine
- Physicians in United States prescribed cannabis in the 1800's to relieve teething pain in nursing babies



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Why Cannabis has Healing Qualities

- Almost all life forms contain neuro-transmitters and receptors
- Contained in brain, organs, connective tissue, glands and immune cells
- Fortuitous coincidence that cannabis plant molecules fit within neuro-transmitters and receptors



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Who is Using Cannabis and Why?

- Cannabis use is on the rise
- **Canadian Tobacco, Alcohol and Drugs Survey**
 - 10% (2.8 million) of Canadians aged 15 years and older reported cannabis use in 2012
 - 11% (3.1 million) in 2013
 - 12% (3.6 million) in 2015
- **National Cannabis Survey, first quarter 2018**
 - 14% (4.2 million) of Canadians aged 15 years and older reported some use of cannabis in the past 3 months

THC vs. CBD

- Cannabis contains hundreds of chemical substances, among which over 100 are known cannabinoids
- The two most well-known cannabinoids are Delta-9-Tetrahydrocannabinol (“THC”) and Cannabidiol (“CBD”)
- Examples – Medical uses of THC
 - Analgesic
 - Antinauseant
 - Sleep aid
 - Anti-anxiety
 - Muscular spasticity
- Examples – Medical uses of CBD
 - Anti-seizure
 - Anti-inflammatory
 - Anticonvulsant
 - Antitumoral
 - Antipsychotic

Cannabis Facts

Δ^9 -THC Max: 18.57 %	Sum of Top Terpenes 22.5 mg/g	Δ^9 -THC Maximum: 16.1 %
Δ^9 -THCA 20.89 %	β -Caryophyllene 7.5 mg/g	Δ^9 -THCA 17.4 %
Δ^9 -THC 0.25 %	Myrcene 3.5 mg/g	Δ^9 -THC 0.82 %
CBD Max: 0.35 %	Limonene 3.2 mg/g	CBD Maximum: 0.25 %
CBDA 0.08 %	α -Humulene 2.8 mg/g	CBDA 0.04 %
CBD 0.27 %	α -Pinene 2.6 mg/g	CBD 0.22 %
CBG Max 1.82 %	β -Pinene 1.5 mg/g	CBN: 0.33 %
Δ^9 -THCVA 0.13 %	Germacrene B (t) 1.5 mg/g	
CBN ND %		



Effects of Cannabis Use

- **Short-term** impairing effects may include:
 - Confusion
 - Sleepiness (fatigue)
 - Impaired ability to remember, concentrate, pay attention or react quickly
 - Anxiety, fear or panic
- **Long-term** impairing effects may include:
 - Harm to memory and concentration
 - Erosion of decision-making and analytical capacity
- Impairment heightened if usage begins in adolescence and if frequent use for lengthy period of time



Inhalation vs. Ingestion

➤ Inhalation

- Effects may be felt within a few minutes of inhaling and will generally peak within 30 minutes
- Acute effects generally last between 2 and 4 hours but may be longer (e.g. 24 hours)
- Timing depends on a number of factors (e.g. levels of THC, tolerance)

➤ Oral Ingestion

- Acute effects may begin to be felt as quickly as 30 minutes and as late as 3 or 4 hours after ingested
- Acute effects generally peak between 3 and 4 hours after ingested and can last up to 8 hours or longer (e.g. 12–24 hours)
- Timing depends on a number of factors (e.g. amount of food in stomach)



Fitness for Duty

- Employers have a duty to provide a safe work environment and take all reasonable precautions to protect the health and safety of employees and others in the workplace
- Fitness for duty is a medical assessment done when an Employer wishes to be sure that an employee can safely perform his/her work duties
- The purpose is to determine if medically the employee can perform the job or task under the working conditions
- This obligation is heightened where a position is safety-sensitive



Culpable vs. Non-Culpable Conduct

- Culpable Use
 - Recreational cannabis use at work or coming to work while impaired
- Non-Culpable Use
 - Employee uses cannabis to treat illness or injury
 - Employee uses cannabis due to medically-supported addiction
- Employer response will depend on whether conduct is culpable or non-culpable conduct and whether safety concerns are triggered

Recognizing Impairment

- Signs of cannabis use may include:
 - Bloodshot eyes
 - Strong odour
 - Fast heart rate
 - Sleepy
 - Lack of coordination
 - Increased appetite
 - Confusion and lack of focus
 - Unusually talkative
 - Unusual anxiety, fear or panic

Responding to Suspected Impairment

- Where a report of suspected impairment, imperative to take action
- Discrete discussion with employee
- Identify that concern is for safety of employee and others in workplace (if applicable)
- Allow employee to respond with denial or explanation
- If impairment is determined, send employee home with pay pending investigation
- Ensure safe transport home
- Instruct employee not to drive; if disregarded, report to Police



Responding to Suspected Impairment

- If investigation confirms employee is using cannabis at work or employee admits:
 - Meet with employee with Union representative (if applicable)
 - Explain rationale for concern
 - Ascertain that no reliance on disability
 - Impose non-disciplinary warning or more severe discipline if safety-sensitive environment and Employer policy has been communicated



Legal Framework

- Human rights legislation requires equal treatment and prohibits discrimination in the workplace on the basis of disability
- Employers must accommodate employees' disabilities to the point of undue hardship
- "Disability" includes:
 - Use of medical cannabis to treat a disability
 - Drug dependence
- "Disability" does not include:
 - Recreational use of drugs (unless individuals are treated adversely because they are perceived to have addictions)



Accommodation Process

- Apply the same human rights/accommodation principles you would for any other disability
- Take an individualized approach
- Work with the employee
- Everyone has a role to play in the accommodation process
 - Employees are obligated to participate and cooperate in the accommodation process
- Accommodation must be reasonable, not necessarily perfect
- Accommodation = Needs, **NOT** preferences
- Seek relevant information



Accommodation Process

- Confirm:
 - Requirement/authorization to use cannabis for medical purposes
 - Amount, form and frequency of use
 - Duration of prescription
 - Level and type of impairment:
 - Confirm that there will be no significant, meaningful impairment of the cognition, judgment, perception, coordination or other ability that is central to the employee performing his/her job safely and effectively
- Consider whether and how to accommodate (unless undue hardship threshold is met)



Additional Considerations

- Nature of the employment – is it safety-sensitive?
- Is avoiding drug use a “*bona fide occupational requirement*”?
 - For example, with respect to safety, cognition, judgment, perception, coordination, etc.



Consider Alternatives

- Request treating physician to confirm whether other treatment options are available that do not impair the employee
- If employee has medically-supported need for cannabis use and is unable to perform his/her regular duties
 - Offer a modified work schedule and/or modified duties
 - Transfer to less safety-sensitive duties
- If employee has medically-supported addiction
 - Offer a leave of absence for treatment or recovery (paid or unpaid)
 - Employee assistance program and/or extended health benefits
- If medical evidence confirms employee requires cannabis use while at work
 - Determine whether cannabis may be ingested vs. smoked (e.g. pill-form, teas, oils, puffer, topical use, etc.)
 - Determine whether CBD vs. THC is an option

Drug Testing Guiding Principles

- Random drug testing is generally not permissible
 - High threshold: generally requires both a safety-sensitive workplace and evidence of enhanced safety risks
- In safety-sensitive workplaces, it is generally accepted that an Employer may require an employee to undergo testing for impairment when:
 - There is "reasonable cause" to believe the employee is under the influence of drugs or alcohol while on duty; or
 - The employee was involved in a workplace accident or incident (including a "near miss")
- Testing can be a legitimate part of an employee's rehabilitation plan

Dialogue for Managing Employee Cannabis Use in Workplace

- Workplace – Hospital
- Mr. Harnden: Immediate supervisor
- Mr. Sharp: Employee (orderly at hospital)
- Mr. Harnden has called a private meeting with Mr. Sharp
- The meeting occurs in the month following the legalization of cannabis



Questions?

**AN INTEGRAL
PART OF
YOUR TEAM**

**PARTIE
INTÉGRANTE
DE VOTRE
ÉQUIPE**



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