MLT AIKINS

WESTERN CANADA'S LAW FIRM

IS YOUR WORKPLACE PREPARED FOR LEGALIZED MARIJUANA?

Michael Tochor

WCB Compensation Institute

March 19, 2018

AGENDA

I. Impairment and Testing
II. The US Experience
III. Bill C-45 and C-46
IV. Medical Marijuana at Work
V. Recreational Marijuana at Work

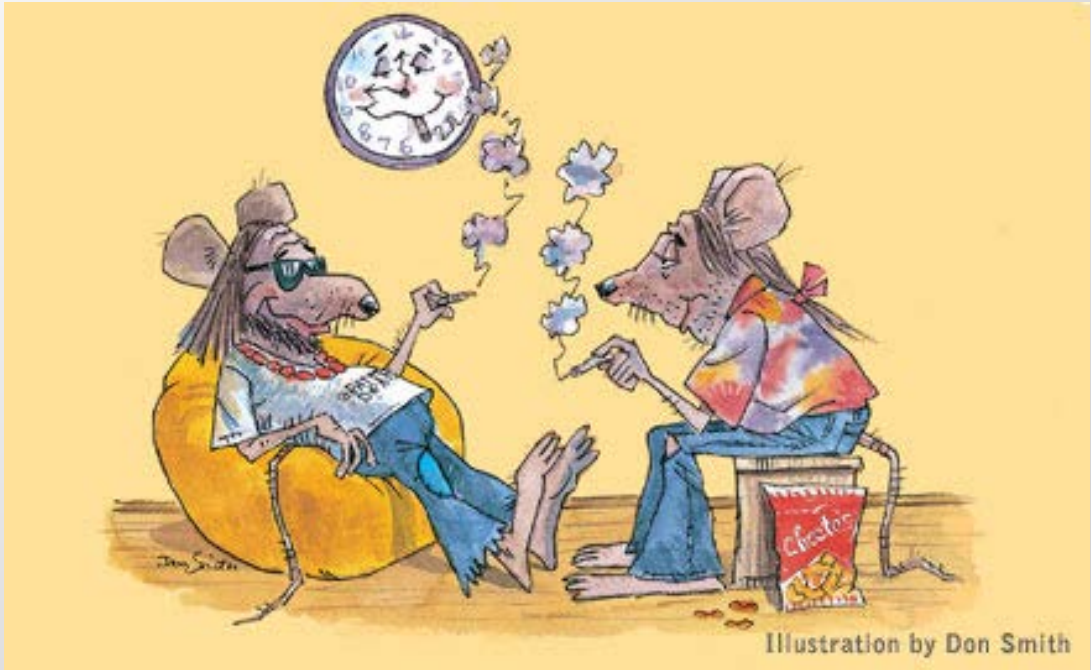
I. IMPAIRMENT, TESTING AND SEARCHES

TBC VERSUS CBD

A recent UBC study may assist in demonstrating the different effects of THC and CBD

SYMPTOMS OF IMPAIRMENT

- Very little research on how humans are affected by high CBD/low THC combinations
- University of British Columbia study

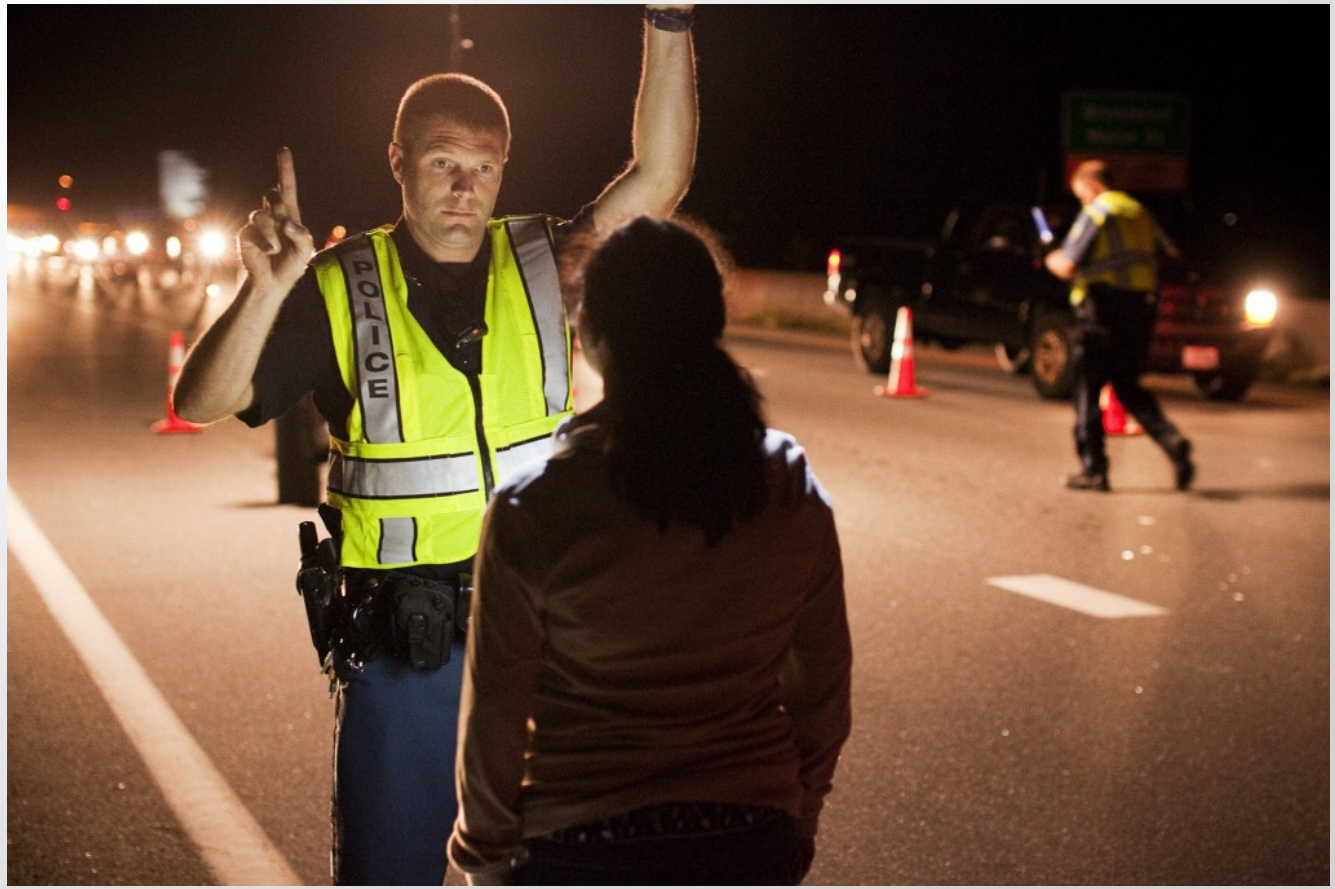


TESTING

- Challenges
  - No reliable testing mechanism for current impairment
  - Level of THC in bodily fluids cannot be used to reliably indicate the degree of current impairment
  - No established metric for cannabis intoxication
  - Recall: THC can remain in the system of a chronic user at significant concentrations with no indication of impairment

TESTING

- 3 general approaches
  - Urinalysis
  - Oral Fluid Analysis
  - Impairment Testing

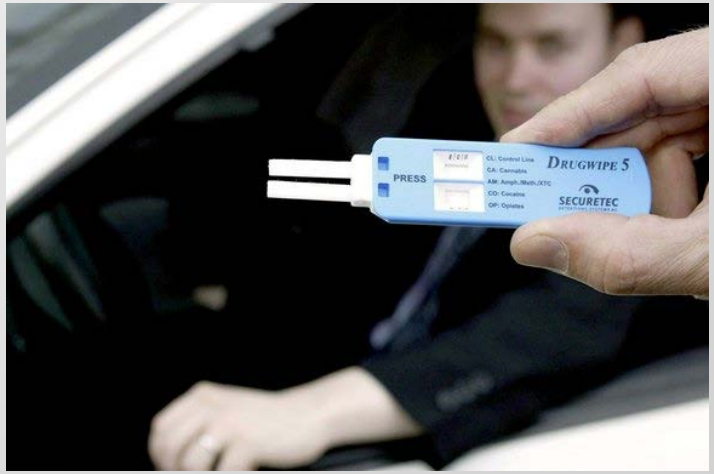


URINALYSIS

- Most common in workplace testing
- Identifies carboxy-THC (the metabolized THC compound)
- Detects use, does not prove current impairment

ORAL FLUID (SALIVA) ANALYSIS

- Commonly used in workplace testing and road side impairment testing
- Detects active THC, not carboxy-THC
- Shorter window than urinalysis, detecting THC 12-24 hours after cannabis consumption
- May not prove current impairment



IMPAIRMENT TESTING

- "Effect-based" approach: Proving through various assessment methods that an individual is presently impaired
  - Used in roadside testing in Canada
  - Drivers demonstrating impaired performance during a standardized field sobriety test (SFST) are then obliged to undergo an additional evaluation by a Drug Recognition Expert (DRE) who is trained and better able to detect impairment of drivers under the influence of cannabis or other drugs.

ROADSIDE TESTING IN CANADA

- Roadside testing, *Present*
  - No *per se* limits for drug use, like for alcohol
  - Drivers suspected of drug use can be ordered to participate in a Standardized Field Sobriety Test, and depending on the results of that test, can be subject to a more extensive evaluation by a Drug Recognition Expert (DRE) at a police station.
  - DREs are trained to an international standard and rely on their observations to determine whether a blood or urine test is warranted

ROADSIDE TESTING IN CANADA

- Roadside testing, *Present*
  - If the DRE "has reasonable grounds to believe" that the person's ability to operate the vehicle is impaired, "the evaluating officer may, by demand made as soon as practicable, require the person to provide" a blood, oral fluid or urine sample" (Section 254(3.4) of the *Criminal Code)*
  - Drug test results can be used as corroboration for the DRE's finding of impairment

ROADSIDE TESTING IN CANADA

- Roadside Testing of Drug Impairment, *Discussion*
  - Metabolization of cannabis and the unique factors contributing to impairment means no *per se* limit for impairment has been agreed upon
  - Task Force Report: *"some heavy, regular users of cannabis, including those who use cannabis for medical purposes, may not show any obvious signs of impairment even with significant THC concentrations in their blood. Conversely, infrequent users with the same or lower THC concentrations may demonstrate more significant impairment."*
  - *Per se* limits around the world vary hugely

ROADSIDE TESTING IN CANADA

- Bill C-46, *An Act to amend the Criminal Code*
  - Following a legal roadside stop, law enforcement would be authorized to demand that a driver provide an oral fluid sample if they reasonable suspect that a driver has drugs in their body.
  - A positive oral fluid analysis would assist in developing reasonable grounds to believe that an offence has been committed. Once the officer has reasonable grounds to believe an offence has been committed, they could demand a drug evaluation by an "evaluating officer", or a blood sample.

ROADSIDE TESTING IN CANADA

- Proposed *per se* limits:
  - **1) 2 -5 ng/mL of THC:** Having at least 2 but less than 5 ng of THC per mL within two hours of driving would be a separate summary conviction criminal offence, punishable only by a fine.
    - This lower level offence is a precautionary approach that takes into account the best available scientific evidence related to cannabis.
    - Punishable by a maximum fine of up to $1,000.

ROADSIDE TESTING IN CANADA

- Proposed *per se* limits:
  - **2) 5 ng or more of THC:** Having 5ng/mL of THC within two hours of driving would be a hybrid offence.
  - **3) Combined THC and Alcohol:** Having a blood alcohol concentration of 50mg per 100mL of blood, combined with a THC level greater than 2.5ng/mL within two hours of driving would be a hybrid offence.
    - Both hybrid offences would be punishable by mandatory penalties of $1,000 for a first offence, and escalating penalties for repeat offenders.

TESTING CASES

RANDOM DRUG TESTING

- ***Communications, Energy and Paperworks Union of Canada, Local 30 v Irving Pulp & Paper Ltd.*, 2013 SCC 34**
  - The SCC held that employers could not justify unilaterally imposing random alcohol testing with disciplinary consequences by simply stating it is a necessary requirement in dangerous workplaces with safety sensitive positions.
  - Employers must demonstrate evidence of enhanced safety risks, such as evidence of a general substance abuse problem in the workplace in order to justify random testing

RANDOM DRUG TESTING

- ***Suncor Energy Inc. v Unifor, Local 707A*, 2017 ABCA 313 (Sept 28, 2017)**

Recall the arbitration decision:

- Suncor implemented random drug and alcohol testing policy as a result of a "pervasive" and "profound" problem with drugs and alcohol in its oil sands operations. The evidence of this problem included:
  - 21 fatalities on the job site, 3 of which involved drugs and alcohol;
  - Regular, positive drug and alcohol tests; and
  - Some positive tests nearly 5000% over the cutoff limits.

RANDOM DRUG TESTING

- ***Suncor Energy Inc. v Unifor, Local 707A*, 2016 ABQB 269**

Recall the arbitration decision:

- Arbitrator applied the test in *Irving* and found that there was insufficient evidence to establish a connection between alcohol and drug abuse and the safety record at Suncor's oil sands operations. Further, Suncor failed to prove that there was an out of control drug culture.
- Suncor brought an application for judicial review of the arbitration decision which overturned the award and ordered new hearing with new board***2016 ABQB 269***
- Court of Appeal upheld lower court – upheld order for new hearing

RANDOM DRUG TESTING

- ***Amalgamated Transit Union, Local 113 v Toronto Transit Commission (TTC)*, 2017 ONSC 2078**
  - Ontario Superior Court of Justice denied a Union's application for an injunction to enjoin an employer's universal random drug and alcohol testing policy.
  - TTC implemented a "Fitness for Duty" Policy in October 2010 which provided for limited drug and alcohol testing. The Union filed a policy grievance on this issue.

RANDOM DRUG TESTING

- ***Amalgamated Transit Union, Local 113 v Toronto Transit Commission (TTC)*, 2017 ONSC 2078**
  - The TTC amended its "Fitness for Duty" Policy to permit random drug and alcohol testing of 20% of the TTC's workforce per year, including senior management.
  - The Union applied by immediately moving for an injunction to prevent the implementation of random drug testing.
  - The Associate Chief Justice Marrocco cited the evidence led by the TTC of substance abuse issues in its workplace as the basis for dismissing the injunction application.

RANDOM DRUG TESTING

- ***Amalgamated Transit Union, Local 113 v Toronto Transit Commission (TTC)*, 2017 ONSC 2078**
  - The evidence led established that:
    - A "culture of drug and alcohol use" exists in the TTC's workplace (based on affidavit evidence);
    - Several TTC employees advised management that they did not want to work with individuals who they believed were impaired;
    - There were 116 positive or refused alcohol or drug tests for employees in violation of the Policy between October 2010 and December 2016;

RANDOM DRUG TESTING

- ***Amalgamated Transit Union, Local 113 v Toronto Transit Commission (TTC),* 2017 ONSC 2078**
    - Approximately 10% of Ontario's population has substance abuse disorders
    - Despite being advised of mandatory pre-employment drug testing, 2.4% of external applicants failed such tests; and
    - Random testing effectively reduced the risk of impaired persons causing an accident
- Given the evidence, it was held that random testing would increase public safety, and that any breach of privacy was compensable by damages.
- Application for injunction dismissed; outcome of policy pending outcome of arbitration.

TESTING TIPS

- The most recent case upholds the rulings in *Irving* and *Suncor* that employers seeking to implement random testing are required to demonstrate that:

    1) They have a dangerous workplace; and

    2) There is a general problem with drug and/or alcohol abuse.

- Pending the appeal in *Suncor,* and the outcome of the arbitration in *TTC,* it remains to be seen if the evidence led in those cases is sufficient to uphold random drug and alcohol testing policies.

THE US EXPERIENCE

STATE LAW

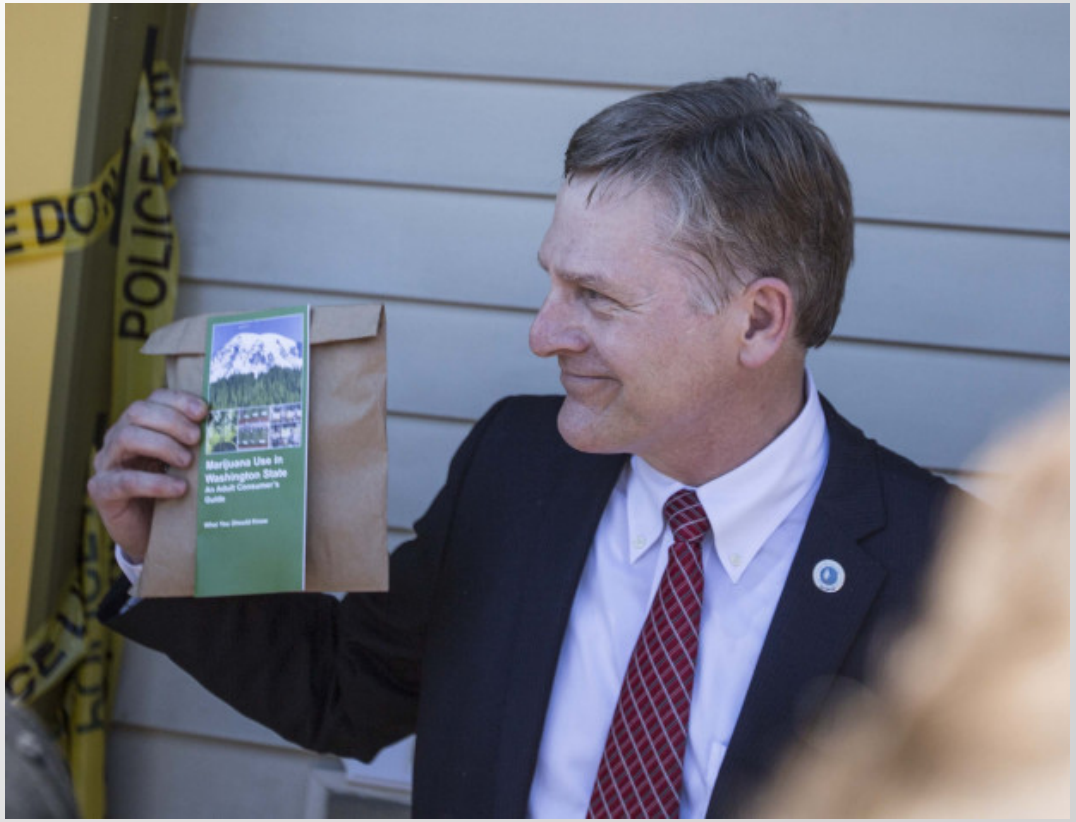
- **Legalized Medical Marijuana**
  - Montana
  - Arizona
  - New Mexico
  - Minnesota
  - Illinois
  - Michigan
  - Ohio
  - Pennsylvania
  - Arkansas
  - North Dakota
  - Florida
  - Maryland
  - Delaware
  - New Jersey
  - Rhode Island
  - New York
  - New Hampshire
  - Vermont
  - Connecticut
  - West Virginia

Legalized Medical & Recreational Marijuana

- Washington
- Oregon
- Colorado
- California
- Alaska
- Nevada
- District of Columbia
- Maine
- Massachusetts

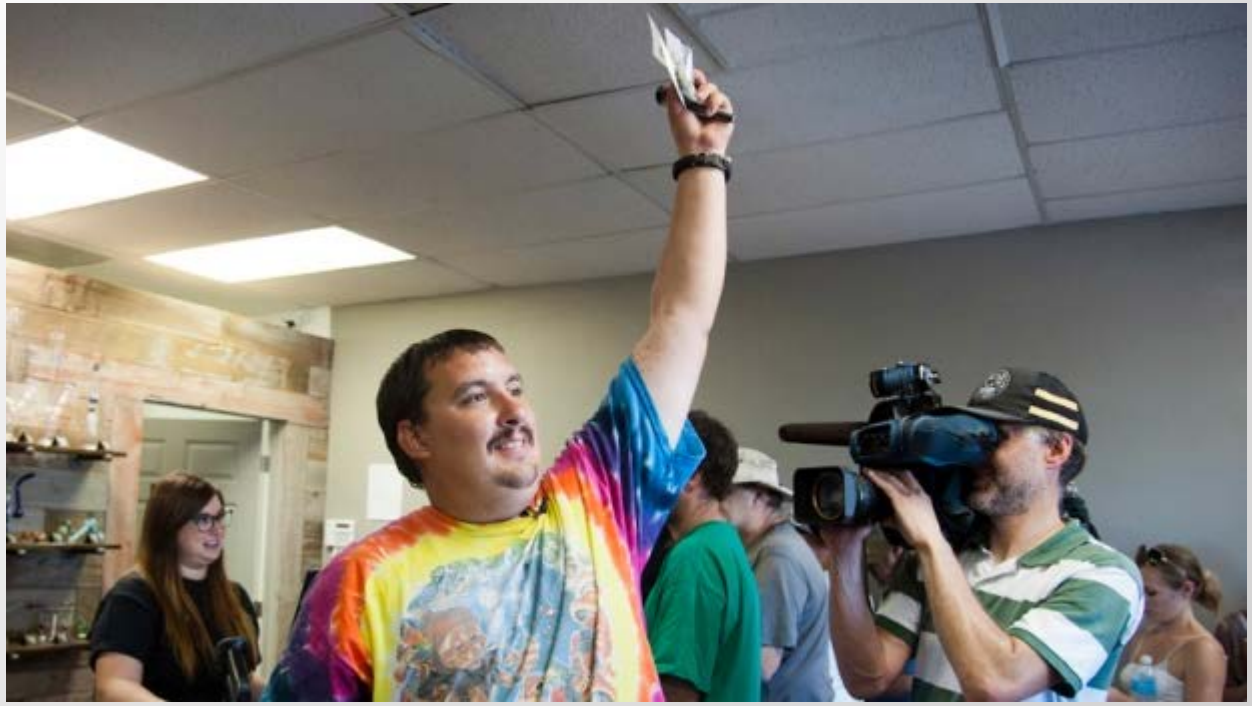
THE US EXPERIENCE

Seattle City Attorney, Peter Holmes, purchases pot on first day of legalization and accidentally brings it to work



THE US EXPERIENCE

Mike Boyer camped out to become the first person to legally purchase marijuana in Washington state.



IMPACT OF LEGALIZATION

- **Colorado**
  - 5% increase in pot usage among adults aged 18-25 since legalization.
  - Use among high school students dropped by 3% since legalization.
  - More Coloradans are calling Poison Control reporting marijuana-related exposure. Pot-related calls went from 44 in 2006 to 227 in 2015.
  - Traffic fatalities in which a driver tested positive for THC increased 44% in the first two years of legalization.
  - Lack of regulation for 'edibles' increased problems

ROAD SIDE TESTING IN THE US

- Approaches to 'drug driving' vary from state to state (and country to country)
- US Examples:
  - Colorado and Washington: 5 ng/mL of THC
  - Ohio and Nevada: 2 ng/mL of THC
  - Arizona, Illinois, and Pennsylvania: Zero-tolerance

MLT AIKINS

WESTERN CANADA'S LAW FIRM

MEDICAL MARIJUANA IN THE WORKPLACE

MEDICAL MARIJUANA LEGISLATION

- The *Controlled Drugs and Substances Act (CDSA)* prohibits the possession, production and distribution of cannabis
- Prior to 2001 the only legal way in which individuals could obtain and possess marijuana was via a special exemption granted by the Federal Minister of Health under section 56 of the *CDSA*

MEDICAL MARIJUANA LEGISLATION

- ***R v Parker and the Marihuana Medical Access Regulations (MMAR)***
  - In *R v Parker* the Court held that the federal government was obligated under Section 7 of the *Charter* to provide reasonable access to a legal source of marijuana for medical purposes.
  - In response to this case, the *Marijuana Medical Access Regulations* were introduced in 2001
  - The *MMAR* created an exemption to the *CDSA* prohibitions and a regulatory framework for people who could demonstrate a medical need to possess and cultivate cannabis
  - *MMAR* allowed licences which permitted the possession and production of medical marihuana in residential dwellings

MEDICAL MARIJUANA LEGISLATION

- **Repeal of *MMAR*, replaced with *Marihuana for Medical Purposes Regulations (MMPR)***
  - The new regime replaced the marihuana production scheme with a system of government-licensed producers
  - Phased out personal and designated production in favour of a government-regulated, privately-delivered commercial medical marihuana industry
  - Limited to dried marihuana

MEDICAL MARIJUANA LEGISLATION

R v Smith, R v Allard **and the repeal of *MMPR***

- ***R v Allard*****, 2016 FCC 236 and 237*****:*** Constitutional challenges to the MMPR because it dispossessed licensees of the ability to control the medical marihuana they consumed. Court held that patients should not be in the position of having to choose between their liberty and health in order to have access to an adequate supply of medicine.
- ***R v Smith*****, 2015 SCC 34*****:*** Unconstitutional to forbid the possession and distribution of edible and topical cannabis for medical purposes under the CDSA. As a result, authorized individuals could possess and produce medical marijuana in cookies, gel capsules, oils, patches and butters.
- *MMPR* invalidated

MEDICAL MARIJUANA LEGISLATION

Access to Cannabis for Medical Purposes Regulations (ACMPR)

- On August 24, 2016 the *Access to Cannabis for Medical Purposes Regulations* came into force with the overarching goal of improving access to medical marijuana
- This is the current state of medical marijuana law in Canada

MEDICAL MARIJUANA LEGISLATION

- The *Access to Cannabis for Medical Purposes Regulations* (*ACMPR*)
  - Individuals can obtain marijuana for medical purposes in one of three ways:
    1. Register with a licensed producer to obtain fresh or dried marijuana in cannabis oil;
    2. Register with Health Canada to be able to produce a limited amount of cannabis themselves; or
    3. Designate someone else to produce it for them.

MEDICAL MARIJUANA LEGISLATION

- Need to obtain from doctor:
  - Signed copy of 'Medical Document Authorizing the use of Cannabis for Medical Purposes under the Access to Cannabis for Medical Purposes Regulations"
    - Includes the daily quantity of dried marijuana to be used by the patient (grams/day)
    - Period of use
  - Period of use cannot exceed one year

MEDICAL MARIJUANA IN THE WORKPLACE

- As medical marijuana can be used to treat a variety of illnesses that may meet the definition of a "disability" under human rights legislation, the use of medical marijuana may engage the issue of accommodation in the workplace
- Marijuana may be covered under group benefit plans – 2 new Canadian cases on this point

WORKPLACE ACCOMMODATIONS

- ***French v Selkin Logging*, 2015 BCHRT 101 (CanLII)**
  - John French was an employee working in a safety-sensitive position for a logging company.
  - During his employment he was diagnosed with cancer. French claimed that his employer had prevented him from taking time off to attend medical appointments, and later terminated him when it should have accommodated his marijuana smoking on the job, thus discriminating against him on the ground of a physical disability contrary to the Human Rights Code.

WORKPLACE ACCOMMODATIONS

- ***French v Selkin Logging*, 2015 BCHRT 101 (CanLII)**
  - Selkin Logging denied discrimination. In addition to Selkin Logging's zero tolerance policy for drugs in the workplace, it claimed that French did not have proper authorization to use medical marijuana
  - The Tribunal upheld the termination and found that the allegations made were false: French did not have medical marijuana authorization (he had been a chronic user for more than 20 years), and his employer had not caused him to miss his medical appointments.

WORKPLACE ACCOMMODATIONS

- ***French v Selkin Logging*, 2015 BCHRT 101 (CanLII)**
  - Although French was able to show *prima facie* discrimination regarding the termination for marijuana use, the zero-tolerance policy for safety reasons constituted a bona fide occupational requirement.
  - Case demonstrates an employee's duties to obtain the necessary legal and medical authorization to obtain and use marijuana for medical purposes and to inform one's employer.

WORKPLACE ACCOMMODATIONS

- ***de Pelham v Rain for Rent Canada ULC*, 2014 HRTO 1689 (CanLII)**
  - Job applicant filed a human rights complaint protesting a pre-employment drug screening test in order to become a company driver.
  - The applicant used marijuana for "therapeutic purposes" but did not possess medical authorization.
  - Applicant did not indicate that a pre-employment drug test or reference check would reveal a disability, nor did he establish that the company perceived him to have a disability.
  - Complaint failed because applicant failed to prove that marijuana use was for medical purposes or constituted an addiction. As such, no violation of the *Code* could be found.

NO DISCLOSURE OF MEDICAL MARIJUANA USE

- ***Lower Churchill Transmission Construction Employer's Association Inc.*, 2016 CanLII 84114 (NL SCTD)**
  - A structural assembler for a transmission line operation acquired a physician's authorization for medical marijuana to manage his chronic back pain and anxiety in 2014.
  - Upon providing the authorization, his physician told him that he could not operate machinery for four hours after taking the drug.
  - When hired to work on the transmission line in 2015, he concealed his use of medical marijuana during the pre-employment process, believing he would not be hired otherwise.

NO DISCLOSURE OF MEDICAL MARIJUANA USE

- ***Lower Churchill Transmission Construction Employer's Association Inc.*, 2016 CanLII 84114 (NL SCTD)**
  - While working at the camp, he hid his stash of marijuana by a roadside ditch outside the camp – smoking it there in the evenings after work.
  - Once confronted by a supervisor who detected the smell of marijuana in his truck, the employee disclosed his usage of medical marijuana.
  - The employer had a zero-tolerance policy for drug use at its remote work camps, and the employee was fired five days later.

NO DISCLOSURE OF MEDICAL MARIJUANA USE

- ***Lower Churchill Transmission Construction Employer's Association Inc.*, 2016 CanLII 84114 (NL SCTD)**
  - The Arbitrator ruled that the employer had not been asked to accommodate the employee, the employer had not refused on prior occasions to accommodate medical marijuana users, the "zero tolerance" rule in such a workplace was justified, and the employee in these circumstances should have disclosed his marijuana use upon being hired.
  - The Supreme Court of Newfoundland and Labrador endorsed most of the arbitrator's findings except for the decision to uphold dismissal, due to the Arbitrator's lack of assessment. The Court ordered the issue of discipline to be returned to the arbitrator.

NO DISCLOSURE OF MEDICAL MARIJUANA USE

- ***Burton v Tugboat Annie's Pub*, 2016 BCHRT 78**
  - A bartender and assistant manager of a restaurant and pub was dismissed after being caught smoking marijuana at work.
  - The Pub had a written policy which stated that the consumption of drugs and alcohol at work was strictly forbidden.
  - The employee filed a human rights complaint, stating that he had been discriminated against because he had a disability – a chronic pain condition arising from a degenerative disc disease – for which he used marijuana for medicinal purposes.

NO DISCLOSURE OF MEDICAL MARIJUANA USE

- ***Burton v Tugboat Annie's Pub*, 2016 BCHRT 78**
  - The Pub maintained that the employee had never informed management of his chronic pain condition, nor that he used marijuana for medical reasons
  - The Tribunal ruled that an employer must be aware of an employee's disability, or ought reasonably to be aware, before the accommodation duty will be triggered.
  - The complaint was dismissed.

FAILURE TO ACCOMMODATE MEDICAL MARIJUANA USE

- ***Calgary (City) v CUPE, Local 37,* 2015 CanLII 61756 (AB GAA).**
  - An equipment operator for the City of Calgary, hired in 1984, developed chronic pain in 2000 after a workplace injury to his neck, causing degenerative disc disease in his cervical spine.
  - In 2009 his physician authorized medical marijuana for his chronic pain. Upon receiving the authorization, he notified two supervisors. He continued to operate heavy equipment without incident. In 2011, management became aware of the employee's medical marijuana use and immediately moved him into a non-safety sensitive position, pending investigation.

FAILURE TO ACCOMMODATE MEDICAL MARIJUANA USE

- ***Calgary (City) v CUPE, Local 37*, 2015 CanLII 61756 (AB GAA).**
  - After completing its investigation, the City's independent medical expert determined that the employee had a "marijuana dependency" that required treatment. The City provided him with two options:
    - 1) Continue in a non-safety sensitive position; or
    - 2) Consult with a doctor for further assessment of his dependency.
  - The Employee's Union filed a grievance demanding that the employee be returned to his previous position.

FAILURE TO ACCOMMODATE MEDICAL MARIJUANA USE

- ***Calgary (City) v CUPE, Local 37,* 2015 CanLII 61756 (AB GAA)**
  - At arbitration, the City of Calgary maintained that the Employee could not be accommodated in a safety-sensitive position because of his marijuana use.
  - The Arbitrator disagreed with the employer's position, and largely upheld the grievance. He found that:
    - City supervisors and personnel had conducted a flawed investigation, wrongly assuming he had developed a dependency;
    - The fact that the employee had worked for over a year while using medical marijuana without any accidents was ignored; and
    - The employee had disclosed his use and been up front with his supervisors.

FAILURE TO ACCOMMODATE MEDICAL MARIJUANA USE

- ***Calgary (City) v CUPE, Local 37*, 2015 CanLII 61756 (AB GAA)**
  - In his ruling, the arbitrator held that the employee had been unjustifiably held out of safety-sensitive positions for almost four years.
  - He ordered the employee to be reinstated into his former position, provided that he maintains his heavy equipment driving licence, he reduce his monthly limit of medical marijuana, he submit to random substance testing, and he participate in a new medical review if the employer's concern about the employee's purported dependency on marijuana remained.
  - Back wages and damages were also awarded.

FAILURE TO ACCOMMODATE MEDICAL MARIJUANA USE

- ***Mobo another v V Gymnastics Club*, 2016 BCHRT 169**
  - A gymnastics instructor suffered from a significant gastric condition, anxiety and depression. Medical marijuana appeared to be the only medication that could provide her with relief.
  - After being hired by a gymnastics club to teach gym classes to young children, the instructor approached her supervisors during her probationary period and informed them that she was using medical marijuana. She explained that her usage (always at home, never at work) did not cause her to be impaired at work, and did not present a safety risk. She successfully passed her probationary period.

FAILURE TO ACCOMMODATE MEDICAL MARIJUANA USE

- ***Mobo another v V Gymnastics Club*, 2016 BCHRT 169**
  - A year into her employment, the operations manager told her that "other people" had suggested that the instructor was coming to work "high" and "stoned". She denied these allegations.
  - Nonetheless she was placed on involuntary medical leave.
  - In its preliminary ruling, the Tribunal stated that the facts supported the instructor's claim that she had informed her employer about her use of medical marijuana early on. Tribunal declined to dismiss on preliminary basis – evidence of impairment and/or undue hardship would be required

MLT AIKINS

WESTERN CANADA'S LAW FIRM

RECREATIONAL MARIJUANA IN THE WORKPLACE

RECREATIONAL MARIJUANA IN THE WORKPLACE

- Bill C-45, *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts* and Bill C-46, *An Act to amend the Criminal Code* will reform the legal regime governing the use of recreational cannabis. Highlights include:
  - Individuals can possess up to 30 grams of cannabis on hand at a time;
  - Individuals can grow up to four plants in their own home;
  - Harsh penalties for illegally supplying pot to minors (up to 14 years in jail);
  - Roadside saliva tests if impairment is suspected; can lead to a demand for mandatory evaluation by a drug impairment expert or a blood sample; and
  - Age of use can align with provincial drinking ages.

RECREATIONAL MARIJUANA CASE LAW

POSSESSION IN THE WORKPLACE

- ***Communications, Energy and Paperworkers Union (UNIFOR, Local 2121) v TerraNova Employers' Organization,* 2016 NLTD 194.**
  - The grievor, Michael Noseworthy, was employed by Magna Services Limited. Magna was a member of the employer organization represented by the Respondent. His employment was on a casual or call-in basis. The grievor had made approximately 40 trips to offshore installations upon which Magna worked.
  - As the offshore sites are extremely hazardous, a zero-tolerance drug and alcohol policy was enforced.

POSSESSION IN THE WORKPLACE

- ***Communications, Energy and Paperworkers Union (UNIFOR, Local 2121) v TerraNova Employers' Organization,* 2016 NLTD 194.**
  - In January 2014, after receiving a call to report to work, the employee, arrived at the helicopter facility to be transported to the offshore site.
  - While passing through a security scanner, "a small piece of tinfoil, smaller than a pencil eraser, with a piece of lint attached to it" was identified in his jean pocket.
  - Security determined that the foil contained a small quantity of marijuana. Employee denied knowing that it was in there.

POSSESSION IN THE WORKPLACE

- ***Communications, Energy and Paperworkers Union (UNIFOR, Local 2121) v TerraNova Employers' Organization,* 2016 NLTD 194.**
  - A urine sample, although negative, was found to contain a detectable amount of marijuana.
  - In March 2014 Magna terminated employee on the grounds that he was in possession of an illegal drug, contrary to the zero-tolerance policy. The Union filed a grievance.
  - The Arbitrator believed the grievor's testimony that he did not know the marijuana was in his pocket. However, he found the grievor to be in possession of an illegal substance in violation of the policy and upheld the termination.

POSSESSION IN THE WORKPLACE

- ***Communications, Energy and Paperworkers Union (UNIFOR, Local 2121) v TerraNova Employers' Organization,* 2016 NLTD 194.**
  - The Union brought an application for judicial review, which was granted.
  - The conclusion that the grievor did not know the marijuana was in his pocket (and thus did not have the requisite *mens rea* for possession in violation of the policy) could only have led to one result, that the policy had not been violated.
  - Arbitrator's decision not reasonable as he had confused 'simple possession' with possession in violation of the policy.

POSSESSION IN THE WORKPLACE

- ***Richards and Great Canadian Coaches Inc.*, 2014 CarswellNat 6433 (Can. Adj.)**
  - Richards, a driver for a federally regulated transportation company, was found to be in possession of a small packet of marijuana. He claimed he discovered it while cleaning the bus, and had intended to dispose of it but forgot to.
  - The transport company terminated him for breaching drug company policy.
  - The employee argued that the employer had not provided its drivers with guidance regarding the presence of alcohol or drugs on a bus, nor was there a "zero tolerance" policy communicated to the drivers.

POSSESSION IN THE WORKPLACE

- ***Richards and Great Canadian Coaches Inc.*, 2014 CarswellNat 6433 (Can. Adj.)**
  - Despite finding the employee's testimony to be unreliable, the adjudicator ruled that termination was too harsh a penalty given that there was no proven use of marijuana at work, and no actual "zero tolerance" policy.
  - Appropriate discipline was suspension of two weeks to one month. Richards was awarded minimum compensation under the *Canada Labour Code.*

DISMISSAL FOR USE IN THE WORKPLACE

- ***University of Windsor v Canadian Union of Public Employees, Local 1001,* 2017 CanLII 9594 (ON LA)**
  - Two university custodians were caught smoking marijuana by a security guard in a car at a university parking lot after they had punched in for their shift.
  - Following their dismissal, both sought professional help for their use of marijuana, although neither presented any evidence that they had an addiction.
  - At their arbitration hearing, the University argued that dismissal was the appropriate discipline because they both worked largely unsupervised in a safety-sensitive environment.
  - The Arbitrator upheld the dismissal of both employees.

DISMISSAL FOR USE AT WORKPLACE

- ***Vale Canada Ltd. v United Steelworkers, Local 6166,* 2013 CarswellMan 764 (MB LA)**
  - An employee whose job including nickel plating was discovered to be smoking marijuana at work. Nickel plating was deemed to be safety-sensitive work, and Vale had a well-known policy prohibiting the use of drugs and alcohol at work.
  - He was terminated. Arbitrator upheld the firing, stating "absent a proven addiction, this becomes a very difficult case for the union."

THANK YOU FOR ATTENDING!