

# Cannabis and the Workplace

By Karen Stokke  
Learning Manager



---

---

---

---

---

---

---

---

## Stereotypes



---

---

---

---

---

---

---

---

## Things are changing...



"It's ridiculous that we continue to incarcerate anyone for using a substance that actually causes far less damage than alcohol. No one goes out looking for fights on marijuana. No one dies from marijuana intoxication. And **no one should be jailed for possessing marijuana.**"  
— Susan Sarandon  
MarijuanaPolicy.org

---

---

---

---

---

---

---

---

### Question

**What has been your experience with cannabis to date?**

- Stereotypes
- Assumptions
- Personal story
- Workplace

---

---

---

---

---

---

---

---

### Presentation Plan

- History & Regulations
- Science & Patient Demographics
- Drug & Alcohol Testing
- Accommodation
- Case Law (Medical)
- Recreational Use
- Drug Policy & Procedure

---

---

---

---

---

---

---

---

### History & background

---

---

---

---

---

---

---

---

## History Lesson

- 1923 – Marijuana is criminalized in Canada
- Today, without a prescription, possession of cannabis is illegal under the Controlled Drugs and Substances Act (CDSA)
- Schedule 2 narcotic
- Currently, cannabis is not an approved drug or medicine in Canada

---

---

---

---

---

---

---

---

## How Did We Get Here?

### MEDICAL

- R. v. Parker
- R. v. Smith
- Allard et al v. Canada

**Access to Cannabis for Medical Purposes Regulations (ACMPR)**

---

---

---

---

---

---

---

---

## R. v. Parker

In 2000, Ontario's Court of Appeal ruled that a total prohibition on marijuana possession infringed on individuals' Charter rights.

---

---

---

---

---

---

---

---

### MMAR & MMPR

- **2001, Marihuana Medical Access Regulations (MMAR)**
  - Limited conditions and symptoms
  - Grow at home
- **2013, Marihuana for Medical Purposes Regulations (MMPR)**
  - Any condition
  - No growing
  - Licensed Producers, dry bud

---

---

---

---

---

---

---

---

### R. v. Smith

- 2015 SCC decision
- LPs can produce and sell cannabis oil and derivatives in addition to dried marijuana
- More ingestion options for patients
- Ingestion affects onset and duration on the effects of cannabis

---

---

---

---

---

---

---

---

### Allard et al v. Canada

- Right to grow own cannabis
- Arose from the changes from the MMAR to the MMPR
- Feb 24, 2016 Federal Court decision was in favour of Allard

---

---

---

---

---

---

---

---

## ACMPR

- **August 24, 2016, Access to Cannabis for Medical Purposes (ACMPR)**
  - Evolution of the MMPR
  - Patients can apply to Health Canada and grow their own cannabis

---

---

---

---

---

---

---

---

## Accessing Cannabis

ACMPR is the framework for how an individual can access medical cannabis.

- Prescription needed
- Register with a LP
- Purchase from a LP
- Dispensaries are not legal

---

---

---

---

---

---

---

---

## Licensed Producers



Complete listing on the Health Canada website.

---

---

---

---

---

---

---

---

## How Did We Get Here?

### RECREATIONAL

Task Force on Legalization released report in Dec 2016

- Provincially regulated distribution
- Access to a variety of cannabis products
- Concerns about driving

Legislation introduced on April 13, 2017

- Passed second reading in the Senate
- Will go through final reading on June 6, 2018
- Implementation in 2018

---

---

---

---

---

---

---

---

## Science & Patient Demographics

---

---

---

---

---

---

---

---

## Science lesson

---

---

---

---

---

---

---

---

### What's in Weed?

- 480 natural components; 85 are cannabinoids
  - THC (tetrahydrocannabinol)
  - CBD (cannabidiol)
- Humans have an “endocannabinoid system”
  - We naturally produce cannabinoids
  - Cannabinoid receptors in brain, organs, tissue, etc.
  - Goal is homeostasis (internal stable environment)

---

---

---

---

---

---

---

---

### Popular Cannabinoids

THC	CBD
<ul style="list-style-type: none"> <li>• Psychoactive element in cannabis</li> </ul>	<ul style="list-style-type: none"> <li>• Non-psychoactive</li> </ul>
<ul style="list-style-type: none"> <li>• In Canada, all cannabis from a Licensed Producer is labeled with THC and CBD levels</li> <li>• Traditional drug testing detects THC</li> <li>• There are an increasing number of strains with high CBD and low (or no) THC</li> </ul>	

---

---

---

---

---

---

---

---

### Strains & Effects

Indica	Sativa
<p><b>Effects:</b> tend to be relaxing and sedating with full body effects</p> <p><b>Symptom relief:</b> anxiety, insomnia, pain, muscle spasms, loss of appetite</p> <p>Best suited for night use</p>	<p><b>Effects:</b> to be uplifting and creative with cerebrally-focused effects</p> <p><b>Symptom relief:</b> depression, ADD, fatigue, mood disorders</p> <p>Best suited for day use</p>

---

---

---

---

---

---

---

---

### Consumption Methods

- Smoking
- Vaporizing
- Ingestible Oils
- Edibles
- Tinctures
- Capsules
- Topicals

---

---

---

---

---

---

---

---

### Inhalation v Ingestion

Inhalation	Ingestion
<ul style="list-style-type: none"><li>• Smoking or vaporizing</li><li>• Vaporizing is the most common as it is a healthier alternative to smoking</li><li>• Onset is immediate</li><li>• Effects dissipate over 1-2 hours</li></ul>	<ul style="list-style-type: none"><li>• Ingesting oil or other forms of edibles</li><li>• Concentrations in edibles can vary within same product</li><li>• Onset is delayed, 30 minutes to 2 hours</li><li>• Effects last longer, sometimes several hours</li></ul>

---

---

---

---

---

---

---

---

### Patient Demographics & Consumption Trends

---

---

---

---

---

---

---

---

The following information provided by Tilray, one of Canada's Licensed Producers.

Tilray is a member of the Canadian Medical Cannabis Council.



---

---

---

---

---

---

---

---

### Demographics

Gender  
Male 73% Female 27%

First Medical Use  
Mean: 34 Median: 31

Age (Ages ranged from 20-77 yrs old)  
Mean: 40 Median: 37



---

---

---

---

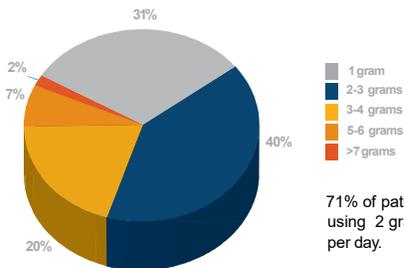
---

---

---

---

### Daily Medical Cannabis Use



71% of patients report using 2 grams or less per day.



---

---

---

---

---

---

---

---

## Preferred Consumption Method

1. Vaporizer
2. Oral (edibles such as oils, baked goods, butter, tincture)
3. Smoke (joint, pipe)

This survey shows vaporization as the "primary" (37%) and "preferred" (44%) method of use.




---

---

---

---

---

---

---

---

---

---

## Primary Illness & Symptoms

Primary Illness	Primary Symptom
36% Chronic Pain	73% Chronic pain
12% Arthritis	60% Stress
7% Psychiatric Disorder	57% Insomnia
7% PTSD	47% Depression
7% Insomnia	32% Headache
6% GI Disorder	29% Appetite Loss
5% Headache	29% Nausea
4% Crohn's Disease	27% Spasm
4% MS	5% Memory Loss
3% Cancer/leukemia	4% Seizures
2% Brain Injury	3% Intraocular Eye Pressure

---

---

---

---

---

---

---

---

---

---

## Substitution Effect

Cannabis as a substitution for other substances:

Substance	Percentage of Respondents
Prescription Drugs	63%
Alcohol	25%
Cigarettes/Tobacco	12%

Opiates are the pharmaceuticals most cited by patients who report substituting for prescription drugs, making up over 30% of the total drugs reported.




---

---

---

---

---

---

---

---

---

---

**Impairment is situational**

---

---

---

---

---

---

---

---

**Impairment by Cannabis**

Issue:  
No test for active impairment today = Limitations on drug testing.



---

---

---

---

---

---

---

---

**Impairment Factors**

Dosing:

- Strain (high or low THC or CBD)
- Frequency
- Quantity
- Tolerance
- Consumption Method
- Time of Day



---

---

---

---

---

---

---

---

**Drug testing**

---

---

---

---

---

---

---

---

**Drug Testing**

- Liability and risk in a safety sensitive job
- Employee failing a drug test subject to the consequences in the company's Drug and Alcohol policy.

---

---

---

---

---

---

---

---

**Cut Off Levels**

- THC or THC-A levels above the cut off level will trigger a positive test.
- Based on the notion that THC or THC-A beyond cut off levels could cause impairment and jeopardize safety.
- Controversial - do not measure active impairment.

---

---

---

---

---

---

---

---

## Urinalysis

- Common test administered for workplace drug testing
  - identifies THC-A
  - THC-A is not an indicator of active THC
  - Doesn't detect impairment.
- The courts have been clear on this limitation.

---

---

---

---

---

---

---

---

## Oral Swab/Saliva

- Shorter window of detection than urine tests
- Detects THC 12-24 hours after consumption.
- Detects active THC, not THC-A.
- More accurate assessment of recent use.
- Falls short of confirming impairment.

---

---

---

---

---

---

---

---

## Implications of Drug Testing

- Testing for THC has obvious limitations.
- Not a reasonable measure of impairment.
- Will remain until the technology is available to test active impairment

---

---

---

---

---

---

---

---

**Duty to accommodate & Maintain Safe Workplace**

---

---

---

---

---

---

---

---

**Duty to Accommodate**

- Human Rights Legislation
- Protected Grounds
- Reasonable Accommodation
- Undue hardship

---

---

---

---

---

---

---

---

**Duty to Accommodate**

- Employees (and unions if present) must participate in the accommodation process.
- Accommodation doesn't have to be perfect or 'preferred.'

---

---

---

---

---

---

---

---

### Duty to Accommodate

- An employee can not be disciplined for behavior connected to their physical or mental disability.
- An employer must take proactive steps to determine whether misconduct is related to a disability.

---

---

---

---

---

---

---

---

### Duty to Maintain Safe Workplace

- Occupational Health & Safety
  - employers have the duty to ensure the health and safety of workers
  - employees have the duty to protect the safety of the worker and other workers
- Employees do not have the right to be impaired at work.

---

---

---

---

---

---

---

---

### Considerations

- Length of disability
- Frequency
- Time of day
- Consumption method
- Safety
- Valid prescription
- Product from a LP

---

---

---

---

---

---

---

---

### Medical Information

- Workplace restrictions
- Safety sensitive, confirm ability to work unimpaired
- Onus is on the employer to do medical due diligence

---

---

---

---

---

---

---

---

### How to Accommodate

Here are some examples of how an employee's cannabis use could be accommodated:

- Reassignment
- Shift in responsibilities
- Breaks
- Flexible work schedule
- Training or re-training
- Tools

---

---

---

---

---

---

---

---

### Undue Hardship

The determination of whether the undue hardship threshold has been met includes a consideration of the following factors:

- Financial cost
- Interchangeability of workforce and facilities
- Worker and workplace safety
- Size of the employer's operation
- Whether the accommodation required relates to the essential duties of the employee's job
- Possible disruption of a collective agreement

---

---

---

---

---

---

---

---

**Workplace Case law (Medical)**

---

---

---

---

---

---

---

---

**French v. Selkin Logging**

- Equipment operator
- Used cannabis to treat pain from cancer.
- Did not have a valid medical cannabis prescription.
- Zero tolerance drug policy.

---

---

---

---

---

---

---

---

**French v. Selkin Logging**

- Drug policy enacted on the appropriate grounds
- Tribunal cautioned against zero tolerance drug policies

---

---

---

---

---

---

---

---

### French v. Selkin Logging

- Termination was discriminatory
- In the end, the termination was upheld because French did not hold a valid medical cannabis prescription.

---

---

---

---

---

---

---

---

### Lesson

- Must have a valid prescription to be accommodated.
- Cannabis purchased from 'grey market' dispensaries not legal.
- Employers who have a zero tolerance drug policy may find it offends human rights legislation.

---

---

---

---

---

---

---

---

### Wilson v. Transparent Glazing Systems

- Glazier
- Held a medical cannabis prescription.
- Suspected impairment at work by the medication he was taking.
- Mr Wilson was terminated

---

---

---

---

---

---

---

---

### Wilson v. Transparent Glazing Systems

- Employer claimed termination was because temper, lack of productivity and generally poor attitude in the workplace.
- Complaint about discriminatory termination.
- Termination was considered discriminatory.
- Termination was upheld

---

---

---

---

---

---

---

---

### Lesson

- Duty to accommodate on the basis of disability and the treatment that follows.
- Duty to investigate and determine if the medication taken for the disability caused the performance issues.
- The employer must do the proper medical due diligence.

---

---

---

---

---

---

---

---

### Old v. Ridge County Contracting

- Heavy equipment operator.
- Life-long illness that involved seizures.
- Had a medical cannabis prescription.

---

---

---

---

---

---

---

---

### Old v. Ridge County Contracting

- Disclosed cannabis
- Submitted dr's note that he should remain seizure free if he complied with the consumption of his medication.
- Unsatisfied with the doctors note, employment terminated for safety concerns.

---

---

---

---

---

---

---

---

### Old v. Ridge County Contracting

- Employer believed actions were justifiable.
- The Tribunal rejected employers claim..
- Employer did not engage in a mutual process of accommodation.

---

---

---

---

---

---

---

---

### Lesson

- Duty to engage in mutual process of accommodation.
- The onus is on the employer to seek appropriate medical information.

---

---

---

---

---

---

---

---

IBEW Local 1620 v Lower Churchill Transmission  
Construction Employers Association

- Held a medical cannabis prescription.
- Applied for a safety sensitive role at a camp.
- Was drug tested and passed the test
- Did not disclose his cannabis prescription.

---

---

---

---

---

---

---

---

IBEW Local 1620 v Lower Churchill Transmission  
Construction Employers Association

- Brought his cannabis to the camp and hid it outside of the premises in a ditch.
- The company had a workplace policy that restricted drug use in the camp unless a valid prescription was held and disclosed.

---

---

---

---

---

---

---

---

IBEW Local 1620 v Lower Churchill Transmission  
Construction Employers Association

- Uprichard was caught and terminated.
- Lack of disclosure of his cannabis prescription.
- Company had a policy requiring disclosure
- Termination was upheld at arbitration.

---

---

---

---

---

---

---

---

### Lesson

- Employers should be explicit in their policies on impairment causing prescription drugs, including medical cannabis.
- Employers should require disclosure of prescription drugs for employees holding safety sensitive positions and clearly outline consequences of failure to disclose.
- Employees should be aware of their employer's drug policies and disclosure requirements.
- Employees should be aware that breach of a drug policy may result in termination and such terminations have been upheld in the courts.

---

---

---

---

---

---

---

---

### Calgary (City) v. CUPE

- Mr Hanmore was a heavy equipment operator.
- Prescribed medical cannabis in 2009. for medical purposes.
- Disclosed to two of his supervisors.
- Representatives of management became aware of his medical marijuana use in 2011.
- Removed from safety sensitive work.

---

---

---

---

---

---

---

---

### Calgary (City) v. CUPE

- Grievance was filed.
- City's policy was followed
- Worked without incident or signs of addiction for almost two years.

---

---

---

---

---

---

---

---

**Calgary (City) v. CUPE**

- A physician was consulted on Hanmore’s cannabis use and dosing regiment.
- Employee was reinstated to his safety sensitive position.

---

---

---

---

---

---

---

---

**Lesson**

- Employers should not ignore disclosure of medical cannabis use and need to have an internal process.
- Simply possessing a medical cannabis prescription doesn’t automatically prevent you from holding a position with potential safety risks.

---

---

---

---

---

---

---

---

**Skinner v. BTCEIWTF**

- Skinner was an elevator mechanic.
- Suffered from chronic pain and depression following a work related accident.
- He applied for coverage for his prescribed medical cannabis through his benefits plan.

---

---

---

---

---

---

---

---

### Skinner v. BTCEIWTF

- Coverage was denied Skinner.
- Stated that medical cannabis has not been approved by Health Canada and does not have a Drug Identification Number.
- Ruled as discriminatory.

---

---

---

---

---

---

---

---

### Lesson

- Differential treatment to an individual or class of individuals in a benefit plan can be grounds for a human rights complaint.
- The argument that cannabis isn't a real drug to be insufficient, saying "reliance on Health Canada's non-approval of medical marijuana under the Food and Drugs Act is not a sufficient justification in the face of numerous appellate decisions that have found, based on anecdotal and expert evidence, a significant benefit to some patients from using medical marijuana."

---

---

---

---

---

---

---

---

### Pieces of the Puzzle

- Medical information
- Assess dosing regime
- Fitness for Work by Occupational Specialist
- Prognosis and work restrictions
- Maintain safe work environment
- Accommodation or undue hardship?

---

---

---

---

---

---

---

---

Recreational Use

---

---

---

---

---

---

---

---

What Does Cannabis Legalization Mean in Saskatchewan?

- Private retail store fronts
- Legal age of 19
- Consumption
- Grow 4 plants per household
- Possession of 30 grams
- Already have rules in place to govern the workplace; will review OH&S Act

---

---

---

---

---

---

---

---

What Does Cannabis Legalization Mean?

Can possess and use cannabis in your personal time, in a recreational capacity.

But...

- You must be over the legal age
- Must abide by smoking bylaws
- Must abide by impaired driving laws
- Must abide by public intoxication laws
- Workplace implications, to be discussed...

Legal in one sense, but still restricted.

---

---

---

---

---

---

---

---

### Cannabis Conduct: 1

- Legalization isn't a license to be impaired at work.
- Employees can not come to work impaired.

---

---

---

---

---

---

---

---

### Cannabis Conduct: 2

- Employees can't bring cannabis or cannabis products to work.
- Employees can't exchange or sell cannabis or cannabis products with/to colleagues.

---

---

---

---

---

---

---

---

### Cannabis Conduct: 3

- Employees can't consume cannabis or cannabis products while on work property or while on work time (i.e. lunch, coffee break).
- Employees can't consume cannabis or cannabis products while representing the company in any way.

---

---

---

---

---

---

---

---

### Bottom Line for Rec Use

(For now...)

- An employee cannot necessarily use cannabis on personal time and expect to pass a drug test at work.
- The technology will become available in the future to detect active impairment, which may change workplace drug testing practices.

---

---

---

---

---

---

---

---

### Employee benefits & Insurance

---

---

---

---

---

---

---

---

### Not an Approved Drug

- Health Canada regulates medical cannabis.
- No DIN
- Canadian Medical Association does not support prescribing medical cannabis.
- Observational and clinical trials underway.

---

---

---

---

---

---

---

---

## Employee Benefits

- Medical cannabis is an approved medical expense under by the Canadian Revenue Agency.
- Can be claimed under Health Care Spending Accounts.
- Sun Life first to stop classifying marijuana consumers as 'smokers'.

---

---

---

---

---

---

---

---

## Cannabis Benefits in the Future

- Starting to see more benefit companies providing coverage.
- The Licensed Producers, lobbying to develop a direct billing option between the Licensed Producers and insurance companies.

---

---

---

---

---

---

---

---

## Training

- Online Training
  1. Managing Medical Marijuana in the Workplace
  2. Medical Cannabis: Employee Rights & Responsibilities
  3. Recreational Cannabis: Awareness for Employees
  4. Managing Workplace Impairment for Supervisors
  5. Impairment Awareness for Employees
- Professional Resources
- Calgary Conference – May 1 & 2, 2018  
[www.cannabisatwork.com](http://www.cannabisatwork.com)

---

---

---

---

---

---

---

---

Questions?  
Thank You.



---

---

---

---

---

---

---

---