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Legalization of Marijuana *Municipal and Planning Perspectives*

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LEGALIZATION OF MARIJUANA: MUNICIPAL AND PLANNING PERSPECTIVES

INTRODUCTION

One of the most provocative legislative changes to be introduced this year is the enactment of legislation permitting the recreational use of cannabis across Canada. As a result of the federally-proposed changes in Bill C-45, the provinces have started the process of creating a new regime for adapting legislation within their respective jurisdictions. In Ontario, the recently enacted *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017* creates a framework for the new Ontario Cannabis Retail Corporation (“**OCRC**”) with the responsibility for the sale of recreational cannabis in the Province, while at the same time setting the rules and prohibitions on the consumption of cannabis products. This results in a considerable downloading of matters such as those pertaining to implementation and enforcement. This paper explores some of the foreseeable issues in two parts: by first providing an overview of the legislative landscape to date and secondly discussing some of the challenges municipalities and other entities may face while implementing the new regime.

PART I – LEGISLATIVE OVERVIEW

1. The Federal Framework

The legalization of cannabis for recreational use has been a topic of heated national debate for several years and is only now coming close to fruition. In 2013 Justin Trudeau, then Leader of the Liberal Party of Canada, announced that the legalization of cannabis would be included in the Party’s 2015 election platform.¹ Accordingly, on June 30, 2016, the newly elected federal Liberal government launched a 9-member task force to consult with experts, various stakeholders, and the general public to provide advice about how to design a regime for legalized cannabis for recreational use (the “**Task Force**”). The Task Force made recommendations on the legal age for consumption, the supply chain, the modes of sale, and cannabis-impaired driving, among many other matters. Subsequently, the federal government introduced Bill C-45 *An Act respecting cannabis and to amend the Controlled Drugs and*

¹ “Justin Trudeau wants to legalize marijuana in order to ‘keep it out of the hands of our kids’”, *The National Post* (24 July 2013) online: <http://nationalpost.com/news/politics/justin-trudeau-wants-to-legalize-marijuana-in-order-to-keep-it-out-of-the-hands-of-our-kids>.

Substances Act, the Criminal Code and other Acts on April 13, 2017. Bill C-45 is scheduled to be debated in the Senate when the parliamentary session resumes in 2018. It is expected to come into force in July 2018, however political posturing in the Senate may delay Royal Assent and Bill C-45 remains subject to change.

Bill C-45 outlines that the federal government's main role will be to oversee the licensing, regulation and compliance of cannabis producers. Licenses to produce cannabis will be issued by Health Canada, similar to the current regime for the production of cannabis for medicinal use. Health Canada will be allowed to implement a national cannabis seed-to-sale tracking system to ensure that licensed product does not filter into the illegal market. Bill C-45 sets the national rule that adults over the age of 18 years old may possess a maximum of 30 grams of dried cannabis (or its equivalent) in public, subject to further restrictions set by provincial and local governments. Bill C-45 further outlines the new scheme of ticketable offenses in the *Criminal Code* for simple possession over the abovementioned limit and new criminal offences for other violations, as well as restrictions on advertising and product labelling. The sale of edible cannabis products has been postponed and is expected to be regulated for sale one year after Bill C-45 comes into force.

Distribution, mode of sales and some enforcement powers will fall under the jurisdiction of provincial and local governments. Provinces may also determine the rules within their respective jurisdiction pertaining to the legal age for consumption, possession limits, places of permitted sale and consumption, and personal cultivation. Notably, the provinces are adopting a wide range of retail models, from public retailers run by Crown corporations in Ontario and Quebec, to licensing private retailers in Alberta and Saskatchewan, and mixed models in British Columbia and Newfoundland.²

2. The Ontario Framework

Bill 174, the *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017* received Royal Assent on December 12, 2017 (“**Bill 174**”). Although Bill 174 comes into force as an Act upon Royal Assent, the implementing schedules will come into force upon proclamation.

² “How the provinces are planning for pot legalization”, *CBC News* (16 November 2017) online: <http://www.cbc.ca/news/canada/province-pot-marijuana-legal-1.4405084>.

Bill 174 contains four schedules: Schedule 1 provides for the enactment of the *Cannabis Act, 2017*, Schedule 2 contains the new *Ontario Cannabis Retail Corporation Act, 2017*, Schedule 3 would repeal the current *Smoke-Free Ontario Act* and replace it, and Schedule 4 contains amendments to the *Highway Traffic Act*.

Cannabis Act, 2017

The *Cannabis Act, 2017* (the “***Cannabis Act***”) is being enacted to establish prohibitions related to the sale, distribution, purchase, possession, cultivation, propagation and harvesting of cannabis to protect youth, public health and safety, and to ensure that cannabis is sold only in accordance with the *Ontario Cannabis Retail Corporation Act, 2017*.³ Under the *Cannabis Act*, “cannabis” is defined as being any part of a cannabis plant, regardless of whether it had been processed or not, any substance or mixture of substances that contains any such part of the plant, and any substance that is identical to any phytocannabinoid. Not captured by the definition of “cannabis” are the non-viable seeds of the cannabis plant, the mature stalk without any leaf, flower, seed or branch and fibre derived from the stalk or a root of the plant.⁴ The *Cannabis Act* also provides for an exception when cannabis is to be used for medicinal purposes under applicable federal law, research or education, and for prescribed activities undertaken by prescribed persons under applicable federal law or in connection with the *Ontario Cannabis Retail Corporation Act, 2017*.⁵ The *Cannabis Act* sets out a number of prohibitions respecting cannabis including that:

1. No one can sell cannabis, other than the Ontario cannabis retailer (s. 6(1));
2. No one can distribute cannabis intended to be sold by someone other than the Ontario cannabis retailer (s. 6(2));
3. No one can sell or distribute to someone under 19 years of age (s. 7(1));
4. No one can sell or deliver to someone who appears to be under 25 unless identification is provided (s. 7(2));
5. No one can knowingly sell or distribute to an intoxicated person (s. 8);
6. No one can purchase cannabis except from the Ontario cannabis retailer (s. 9);

³ See section 1 of the *Cannabis Act, 2017* which sets out the purposes of the Act.

⁴ Subsections 2(2) and (3) of the *Cannabis Act, 2017*.

⁵ See section 5 of the *Cannabis Act, 2017*.

7. No one under 19 can possess, consume, attempt to purchase, purchase or distribute, cultivate, propagate or harvest cannabis (s. 10);
8. No one can drive or have care or control of a vehicle while any cannabis is contained in it unless it is in a fastened closed package or is not readily available to any person in the vehicle, and meets any prescribed requirements. (s. 12); and
9. A landlord cannot knowingly permit their premises to be used for the sale or distribution of cannabis (other than the Ontario cannabis retailer) (s. 13).

Where can someone consume a cannabis product? Under the *Cannabis Act*, consumption cannot occur in a public place, meaning anywhere the public has access as of right or by invitation, express or implied, whether or not a fee is charged.⁶

The *Cannabis Act* contains various offences and penalty provisions, providing that a person who contravenes the Act is guilty of an offence, and a director or officer of a corporation who causes, authorizes, permits, or participates in the offence by the corporation is also guilty of an offence.⁷ The penalties vary based on the section that is contravened, with fines or imprisonment terms potentially being imposed.⁸ The new provisions also provide powers interim closure of premises, barring of entry, and removing people where there is reasonable belief that there have been contraventions of the *Cannabis Act* or its regulations.⁹

Ontario Cannabis Retail Corporation Act, 2017

In implementing the proposed federal changes, the Province has chosen to only allow sales through a single retailer. Schedule 2 of Bill 174 enacts the *Ontario Cannabis Retail Corporation Act, 2017*, which establishes by incorporation the OCRC as a Crown corporation subsidiary to the Liquor Control Board of Ontario (the “**LCBO**”). The OCRC is mandated to be the only wholesale buyer and retail seller of cannabis and related products in Ontario, to determine the types of products for sale and set prices, and to promote social responsibility.¹⁰

⁶ Section 11 of the *Cannabis Act, 2017*.

⁷ See section 22 of the *Cannabis Act, 2017*.

⁸ See section 23 of the *Cannabis Act, 2017*.

⁹ See sections 17-18 of the *Cannabis Act, 2017*.

¹⁰ See section 4 of the *Ontario Cannabis Retail Corporation Act, 2017*.

The enabling legislation is clear that the OCRC will have the exclusive right to sell cannabis in Ontario.¹¹

The LCBO will utilize guidelines to identify specific store locations with the objective of ensuring that youth are protected and stifling the illegal market. This includes ensuring stores are not located in close proximity to schools. Once a prospective store site has been identified by the LCBO, a notice will be posted online and at the location to let the public know that a space has been selected for a proposed storefront. Before any decisions are made, there will be an opportunity for the public to ask questions and provide feedback on the proposed location.¹²

Smoke-free Ontario Act, 2017

Schedule 3 of Bill 174 repeals the current *Smoke-free Ontario Act* and replaces it with a similar statute which applies to medicinal cannabis, tobacco, vapour and prescribed products.¹³ Although the Act has been updated from the past version to include medicinal cannabis in its provisions related to where and how one can smoke or hold tobacco, medicinal cannabis, or vapour products,¹⁴ as mentioned earlier, the recreational use of cannabis is provided for under the *Cannabis Act* which creates a further limitation on where the product could be consumed.¹⁵

Amendments to the Highway Traffic Act

Schedule 4 of Bill 174 amends the *Highway Traffic Act* with respect to driving with alcohol or drugs in the body.

The Proposed Provincial Regulations

In January 2018, the Province posted proposed regulations for consultation pertaining to the OCRC and permitted public areas for consumption. The OCRC-related regulation outlines

¹¹ See section 2 of the *Ontario Cannabis Retail Corporation Act, 2017*. Given section 9 of the *Cannabis Act, 2017* which makes it unlawful to purchase cannabis except from the OCRC, and in light of this section which gives the OCRC the exclusive right to sell in the Province, the pending case before the Supreme Court of Canada *Her Majesty the Queen v. Gerard Comeau* regarding interprovincial trade and section 121 of the *Constitution Act, 1867* may be an interesting decision to monitor.

¹² Ministry of Finance, News Release, “Ontario Taking Next Steps to Identify Cannabis Store Locations (27 October 2017) online: <https://news.ontario.ca/mof/en/2017/10/ontario-taking-next-steps-to-identify-cannabis-store-locations.html>.

¹³ See section 2 of *Smoke-free Ontario Act, 2017*.

¹⁴ See sections 12-17 of *Smoke-free Ontario Act, 2017*.

¹⁵ Section 11 of the *Cannabis Act, 2017*.

that the stores will operate similarly to the LCBO model, including the LCBO's online sale and delivery channel. The consumption-related regulation reiterates that consumption of recreational cannabis in public places, workplaces, motor vehicles and boats is prohibited. The regulation also strictly prohibits consumption of recreational cannabis in a school or childcare centre. The regulation carves out some exceptions, such as for workplaces that are also private residences, or vehicles and boats that act as a permanent or temporary residence and that are parked. Consumption of cannabis products will be allowed in hotel rooms, but smoking or vaping cannabis will only be allowed in designated smoking rooms.

One point that is stirring contentious debate is the restriction of smoking or vaping in any indoor or outdoor common area in a condominium, apartment building or college residence. Landlords and property managers are arguing that there should be an immediate and outright cannabis smoking and vaping ban in multi-unit buildings, citing concerns over odors, maintenance, and second-hand smoke.¹⁶ This concern engages a debate over whether a tenant's ability to consume cannabis in their residence is currently protected under the *Residential Tenancies Act*, and calls into question where recreational users will be allowed to consume cannabis if consumption is restricted in both public and private places. The proposed regulations touch on the possibility of licensing and regulating cannabis "lounges" and permitting designated outdoor zones in apartment buildings; however, the proposed regulations indicate that these two suggestions would require additional consultation so they are unlikely to be adopted as part of these regulations.

3. Developing Municipal Context

Medicinal Use Regime

The regime for the medicinal use of cannabis has gone through several regulatory overhauls since its inception in the 1990s. Analyzing the medicinal regime is important to this discussion for two main reasons. First, the medicinal regime has been instrumental in informing the debate over the recreational regime because all tiers of government have already garnered experience in this domain, particularly in terms of licensing producers, personal cultivation, and

¹⁶ The Canadian Press, "Ontario landlords push for right to ban cannabis smoking by renters despite tenant laws", *CBC News* (23 January 2018) online: <http://www.cbc.ca/news/canada/toronto/ontario-landlords-push-for-right-to-ban-cannabis-smoking-by-renters-despite-tenant-laws-1.4499579>.

mail-in distribution. Secondly, the medicinal regime will remain separate from the non-medicinal regime. It will continue to be fully federally regulated in order to maintain the standards that have been entrenched due to years of litigation over constitutional protections of medicinal use. In 2000, the Ontario Court of Appeal decided in *R v. Parker*¹⁷ that the prohibition against growing and consuming cannabis for medicinal purposes breached section 7 of the *Canadian Charter of Rights and Freedoms* because users were forced to choose between the risk of imprisonment or medicinal treatment. This decision propelled the course for a legal and regulated medicinal cannabis regime.

Under the current federal *Access to Cannabis for Medical Purposes Regulations* (“**ACMPR**”), valid medicinal cannabis users may purchase permitted cannabis products from licensed producers, health care practitioners, hospitals, and otherwise through a designated producer.¹⁸ Medicinal cannabis users may also apply to Health Canada for permission to cultivate their own cannabis for personal use. The ACMPR replaced the *Marihuana for Medical Purposes Regulations* (“**MMPR**”) enacted in 2013, which took away the right of a medicinal users to grow cannabis themselves or through a designated producer and instead left users with the sole option to purchase cannabis from licensed producers. In 2016 the Federal Court ruled in *Allard v. Canada*¹⁹ that the MMPR were arbitrary and overbroad, and declared the MMPR invalid. In response to the *Allard* decision, the ACMPR reinstated medicinal users’ right to cultivate cannabis, either indoors or outdoors, or otherwise through a designated person who is registered with Health Canada. Provinces that ban personal production in residential dwellings may face court challenges in the future, although the security of the person argument likely holds less weight in the recreational context.

Changes within the Municipal Context

Initially, the federal government proposed 50/50 tax revenue split with the provinces, but after much negotiation, the federal government indicated that it will concede 75% of the tax

¹⁷ 2000 CarswellOnt 2627, [2000] O.J. No. 2787, 135 O.A.C. 1, 146 C.C.C. (3d) 193, 188 D.L.R. (4th) 385, 37 C.R. (5th) 97, 47 W.C.B. (2d) 116, 49 O.R. (3d) 481, 75 C.R.R. (2d) 233 [*Parker*].

¹⁸ Under the ACMPR, when a valid medicinal cannabis user applies to Health Canada to register to produce their own supply of cannabis, they may designate another person to cultivate the cannabis for them. The designated producer must live in Canada, be 18 years of age or older, and can only be authorized to produce cannabis for a maximum of 2 people (including themselves). The registration certificate will delineate how much cannabis can be grown and stored by the registrants.

¹⁹ 2016 FC 236 [*Allard*]

revenue from the excise tax on cannabis on the condition that municipalities share in the provinces' tax revenues.

Almost 30 municipalities have been identified to have future OCRC locations in Ontario. As with the licensing process for medicinal cannabis, municipalities will not have control over which producers will receive licenses; however, municipalities will direct the production of cannabis through zoning by-laws.

Under the ACMPR, commercial medicinal cannabis facilities must be indoor facilities and may be subject to various types of municipal zoning restrictions. Many Ontario municipalities have enacted zoning by-laws regulating medicinal cannabis production. Generally one of three approaches has been taken. The first approach is the most onerous and entails by-laws that define the use, specify the zone in which the use is to be located within and require a site specific zoning by-law amendment to be made to permit the use. The second is the approach where the municipality has enacted a zoning by-law defining the Medical Marijuana Production Facilities (“**MMPF**”) use and permitting the use in specified zones. The cities of Toronto, Hamilton, and Barrie have taken this approach, described in more detail below. The third approach is where municipalities have determined that the MMPF use fits within existing definitions such as in industrial and manufacturing use, as seen in several municipalities in the County of Simcoe.

1) The City of Toronto

The City of Toronto by-law²⁰ defines MMPFs as a premises used for the purposes of growing, producing, testing, destroying, storing, or distribution of medicinal marijuana or cannabis authorized by a licence issued by the federal Minister of Health, pursuant to section 12 of the MMPR, under the *Controlled Drugs and Substances Act*,²¹ as amended. In Toronto, MMPFs are currently only permitted in Employment Industrial Zones. A MMPF must be in a wholly enclosed building; open storage is not permitted and loading spaces for a MMPF must also be in a wholly enclosed building. A building or structure used for security purposes for a MMPF may be in the front yard, and is exempt from required minimum front yard, side yard and rear yard setbacks.

²⁰ City of Toronto, by-law, No 405-2014, *To amend former Borough of East York Zoning By-law No. 1916, as amended, to include permission for a Medical Marijuana Production Facility* (3 April 2014).

²¹ S.C. 1996, c. 19.

A lot with a MMPF must be at least 70 metres from a lot in the following zones:

- Residential;
- Commercial Residential;
- Mixed Use Residential Commercial;
- Conservation;
- Open Space;
- Special Residential High Density;
- Residential Second Density; and
- Special Purpose Commercial.

A lot with a MMPF must be at least 70 metres from a lot on which the following is located:

- School;
- Private School;
- Place of Worship; and
- Day Nursery.

2) The City of Hamilton

The City of Hamilton defined a Medicinal Marihuana Growing and Harvesting Facility (“**MMGHF**”) to mean a wholly enclosed building or structure used for growing, harvesting, testing, destroying, packaging and shipping of marihuana used for medicinal purposes as permitted under the MMPR, made under the *Controlled Substances Act*.

The Urban Hamilton Official Plan Amendment No. 23 limited agricultural uses including MMGHF to lands designated “Employment Area – Industrial Land”. Hamilton’s Zoning By-law No. 6593 includes MMGHF under the industrial and farming uses permitted in districts B – being suburban agriculture and residential, etc., J – being light and limited heavy industry, and K – being heavy industry. Further, a MMGHF requires a minimum distance of 20 metres from any sensitive land use from any portion of a property lot line abutting a property lot line within a sensitive land use within the Neighbourhoods, Institutional or Commercial Mixed Use designations.

3) Town of Ajax

The production of cannabis is not referenced in the official plan and is considered an Agriculture Operation use in the Town's zoning by-law, permitted in zones where this use is allowed. In a July 2015 discussion paper pertaining to the Comprehensive Zoning By-law Review, staff noted that a new definition for Medical Marijuana Production Facility was necessary in the Zoning By-law.

4) Township of Brock

The production of cannabis is not addressed in either the official plan or the zoning by-law. However, on October 17, 2017, Council approved a facility that would cultivate and process medical cannabis on Cannington's main street, with conditions, via a temporary rezoning. On November 27, 2017, the Planning Committee carried a motion which stated that the cultivation and/or production of cannabis is an industrial use under the Zoning By-law which shall only be permitted in industrial zone categories permitting manufacturing, processing, assembling and/or a fabrication plant.

5) The City of Barrie

The City of Barrie uses the same definition for MMPFs as the City of Toronto, however MMPFs in Barrie are only permitted under General Industrial Zones.²² Further, MMPFs in Barrie are not subject to any specific setbacks as they are in Toronto and Hamilton. Barrie is likely to break ground on a 65,000 sq. ft. facility in its industrial park this year, pending the prospective producer's license approval from Health Canada.²³ Less densely populated municipalities and rural areas in Ontario are commonly taking a less restrictive approach to zoning production facilities.

6) The County of Simcoe

For at least the last year, Simcoe County has generally experienced an increased interest from prospective medical cannabis producers as a place to build their facilities, due to lower costs, a skilled workforce with agricultural experience, and its proximity to Toronto. Therefore,

²² City of Barrie, by-law, No 2009-141, *Consolidated Comprehensive Zoning By-law* (31 December 2016).

²³ Rob Cooper, "Medical Marijuana Facility could bring Dozens of Jobs to Barrie", CTV News, (12 September 2017) online: <https://barrie.ctvnews.ca/medical-marijuana-facility-could-bring-dozens-of-jobs-to-barrie-1.3586686>.

parts of Simcoe County have been leaning towards the third municipal zoning approach by incorporating MMPFs with existing uses as a way to attract investments in medical marijuana production and to increase employment. For example, the City of Orillia includes medical cannabis production facilities in “Industry, Light” zones.²⁴ On the other hand, the Towns of Collingwood and Bradford do not have any zoning by-laws that address cannabis production, yet both towns approved large-scale production facilities to be built in their respective industrial zones. The facility to be located in Collingwood is expected to be 120,000 sq. ft. once completed,²⁵ and the facility in Bradford will repurpose an auto-parts manufacturing plant to become a 200,000 sq. ft. facility hiring 300 future employees.²⁶

Municipalities will need to determine whether and how to update their respective official plans and zoning by-laws to deal with the non-medicinal nature of cannabis. Few have taken many steps in dealing with the upcoming changes. City of Toronto staff is considering the revisions required to the City’s zoning by-law and City Council proactively requested that the Government of Ontario consult with the City when developing regulations related to places of consumption for cannabis. The Executive Director of Municipal and Licensing Standards identified areas of concern in the City of Toronto Recommendations for Cannabis Legalization (the “**Toronto Report**”), including separation distances between retail locations and sensitive uses, limits on hours of sale, and restrictions on sales on university and college campuses.²⁷ On November 8, 2017, City of Hamilton Council refused a motion to prevent any deviations from the zoning by-law regarding MMGHFs.

PART II – CHALLENGES CREATED BY THE LEGISLATIVE CHANGES

Many challenges arise on the municipal level pertaining to matters of production, retail sales, and consumption of cannabis. Although there are many other interesting challenges, this section will not cover other issues in detail such as impaired driving, employment related matters and penalties.

²⁴ City of Orillia, by-law, No 2014-44, *Consolidated Zoning By-law* (1 September 2017).

²⁵ John Edwards, “Owners of Collingwood Marijuana Plant Eye 2017 Opening”, *Simcoe.com* (1 December 2016) online: <https://www.simcoe.com/news-story/6995288-owners-of-collingwood-marijuana-plant-eye-2017-opening/>.

²⁶ CTV News Barrie, “Medical Marijuana Facility to Bring 300 New Jobs”, *CTV News* (21 April 2017) online: <https://barrie.ctvnews.ca/new-medical-marijuana-facility-to-bring-300-new-jobs-1.3379805>.

²⁷ Executive Director, Municipal Licensing & Standards, “City of Toronto Recommendations for Cannabis Legalization”, *Report for Action to the Licensing and Standards Committee*, (13 September 2017) online: <https://www.toronto.ca/legdocs/mmis/2017/ls/bgrd/backgroundfile-106876.pdf>

1. Production

The federal government's rationale for licensing approved producers rather than monopolizing crop cultivation is that it wanted to use a tried and tested supply model under the medicinal regime. Additionally, this approach seeks to promote diverse market participants, including small-scale or craft producers, to ensure a variety of streams and to maintain competition in the market thereby keeping prices low. One concern is that the supply of cannabis for recreational use will not be ready by the time the legislative frameworks are expected to come into force in July 2018. Moreover, experience derived from other jurisdictions that have legalized cannabis show that an initial spike in demand occurs when cannabis is a legalized product, mainly resulting from curiosity of the mainstream public and associated sale.

Ongoing planning issues pertaining to cannabis for manufacturing are significantly rooted in proximity and the question of where to locate the use; would agricultural areas be more appropriate versus industrial or manufacturing areas? Other concerns include the current requirements for fortification, security, air quality, etc. There is also the issue of the high demands the manufacturing of cannabis has on utilities such as hydro and water. The Task Force recommended that outdoor production be promoted over indoor production due to environmental concerns.²⁸ Some issues with outdoor production include potential illegal pesticide use, unpredictable weather events, and not being able to produce all year. However, the major advantage of outdoor cultivation is that natural conditions preclude the need for artificial lighting and inefficient irrigation that can consume a substantial amount of electricity and water, which might also drive up prices. The benefits of indoor production is that it can be more organic, decreasing health risks and the supply is easier to control, and it is more consistent and available year-round.

With either production method, municipalities are concerned with a facility's proximity to communities, particularly near schools, parks or other sensitive land uses and may wish to amend their official plans and zoning by-laws accordingly. Indoor production may provide an opportunity to repurpose vacant industrial spaces or refurbish them into greenhouses, as exemplified in the Bradford example mentioned above. However, property owners are likely to

²⁸ Canada, Task Force on Cannabis Legalization and Regulation, *A Framework for the Legalization and Regulation of Cannabis in Canada* (Ottawa: Health Canada, December 2016) at 32.

be reluctant to lease buildings for cannabis production because it can result in potentially significant damage from mold, dampness and odour, as well as security threats.

Under the ACMPR, licensed producers are required to follow strict fortification requirements for the production facility. This includes visual monitoring of the premises by video surveillance, intrusion detection systems, strict inventory controls and physical barriers preventing unauthorized access where cannabis is present. The recreational regime would follow the same general rules; however, the federal government has proposed some minor changes based on experience from the ACMPR, such as saving video surveillance footage for one year instead of two years and no longer requiring visual monitoring of the area where cannabis is grown.²⁹

2. Personal Cultivation

Under the federal framework, up to four cannabis plants can be grown in each “dwelling-house”, no matter how many individuals reside in the house. Bill C-45 defines a dwelling-house as a place where an individual ordinarily resides and includes the building and “any land that is subjacent to it and the immediately contiguous land that is attributable to it, including a yard, garden or any similar land”.³⁰ Personal production of cannabis for medical purposes may be indoors or outdoors under the ACMPR. Provincial and municipal governments may impose local restrictions. Personal production may be an important factor in maintaining adequate supply of cannabis on a wide-scale. Nevertheless, municipalities have some leeway to further restrict how many plants can be grown, how tall they can be, and whether or not they can be grown outdoors. For example, the Province of Quebec is proposing to ban personal recreational cannabis production entirely in residential dwellings. It will be particularly interesting to monitor how the approach may vary for rental apartment buildings versus condominiums.

3. OCRCs

There are vast concerns regarding the future locations for OCRCs. A number of municipalities were initially proposed to host the first 14 OCRC locations, and a second round of

²⁹ Canada, Health Canada, *A Proposed Approach to the Regulation of Cannabis* (Ottawa: Health Canada, November 2017) at 22, online: <https://www.canada.ca/en/health-canada/programs/consultation-proposed-approach-regulation-cannabis/proposed-approach-regulation-cannabis.html#a234>.

³⁰ Section 12(8)(a) of Bill C-45.

15 municipalities were recently identified as hosts. The Province’s goal is to open approximately 40 standalone stores when the federal legislation comes into force, and to open 150 standalone stores across the province by the end of 2020. The LCBO, currently responsible for the identification and creation of the initial OCRC site, has been clear that its objectives in site selection are to provide access to cannabis for the community, address the illegal market, and protect youth. Nevertheless, these objectives result a wide range of potential locations and the LCBO has been engaged with consulting with the public and future host municipalities to obtain feedback regarding possible sites.

Some municipalities have responded positively to potentially hosting an OCRC; however, there has been criticism regarding the initial number of retail locations and whether the number would be sufficient to meet demand and fulfil the objective of thwarting the illegal market. Moreover, there are concerns with the initial overcrowding and security needs at the OCRC locations. Even though the number of initial locations has since increased, this concern remains. While some municipalities have been clear that they will not be welcome hosts for an OCRC location, others seek to have the Province permit non-OCRC locations.³¹ At this time, it is not clear what power a municipality might have to oppose or entice locations in their communities.

4. Consumption

Significant strides have been made in banning tobacco from public buildings, bars and restaurants, and sidewalks through legislative changes, including the previous *Smoke-free Ontario Act*. The Province remains open to exploring the feasibility of allowing designated smoking establishments, i.e. smoking lounges. Public concerns over smoking lounges cut two ways: on one hand, smoking lounges have the potential of taking cannabis smokers off the sidewalks and into safe spaces where their secondhand smoke will not affect unwilling bystanders. On the other hand, there may be a fear that smoking lounges will become the “new cool” and indirectly promote cannabis consumption, and may require specific zoning amendments to limit proximity to public buildings and residential areas.

³¹ Meagan Fitzpatrick, “Global marijuana company in Smith Falls, Ont., seeks a retail pot store”, *CBC News* (8 January 2018) online: <http://www.cbc.ca/news/canada/toronto/smiths-falls-marijuana-pot-canopy-growth-corp-1.4474580>.

Again, it will be particularly interesting to watch how consumption rules will vary in rental apartment buildings and condominium buildings. Landlords, property managers, condominium owners, and multi-unit neighbours generally will be concerned with the perception of decreasing property values, building maintenance costs, and health risks, among others. Will landlords seek legal mechanisms to evict recreational cannabis users? How will condominium boards handle competing private interests between owners who are concerned about their property versus owners' rights to smoke cannabis in their private dwelling? Will building codes be updated to accommodate these conflicts and perhaps change the standards for ventilation in multi-unit buildings?

5. Downloading

There is no doubt that the legalization of recreational cannabis use results in a downloading of policing responsibilities to municipalities. Many of the downloading examples have been referred to throughout the paper. Private sector interests and entities are also affected. The legislation presents new challenges and roles to the landlord tenant relationship now that landlords may be held responsible if tenants are selling cannabis and having to address the question of where cannabis can be consumed. Bill 174 prohibits landlords from knowingly permitting the illicit sale of cannabis (i.e. not by the cannabis OCRC) on their premises.³² Further, if a charge is laid in relation to the above, a police officer may immediately and temporarily close the premises and remove any persons.³³ Even banks and mortgage lenders have additional and evolving roles where lending to facilities that may potentially be used to manufacture cannabis, and even when lending on residential properties.

6. Enforcement

One of the greatest concerns to municipalities is enforcement. Enforcement has already been a problem for many municipalities as cannabis dispensaries have been repeatedly popping up throughout local communities. Given how many unknowns remain with the coming changes, there remain questions about how municipalities will handle existing medical cannabis dispensaries, how to handle issues that will arise with the new rules such as nuisance or personal

³² See section 13 of the *Cannabis Act, 2017*.

³³ See subsection 18(2) of the *Cannabis Act, 2017*.

growing, and of course how to finance these new enforcement responsibilities. The Toronto Report recommended that City Council request the federal and provincial governments to ensure that the City's enforcement costs associated with the new rules and training under the legal regime and shutting down illegal dispensaries is recovered.

CONCLUSION

Now only several months away from the expected implementation of the recreational cannabis regime, there is still a considerable amount work to be done in terms of the inter-government cooperation and co-ordination needed to regulate the industry, train stakeholders, and inform the public of the impending regime. Municipalities bear a significant responsibility in the success or failure of the recreational cannabis industry: from zoning production facilities to ensuring a stable supply of cannabis products, to determining appropriate sites for OCRCs, to ensuring that cannabis users comply with local consumption rules and regulations. Undoubtedly, the challenges posited in this paper will be the topic of public discourse and will evolve from one community to another through the foreseeable future.