

Preparing for Cannabis Legalization: Federal and Atlantic Canadian Regulations

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The legalization of cannabis has been set for October 17, 2018. This transformation will have a significant impact on employers as well as the general public, and yet for many, the impending legalization is shrouded in uncertainty.

The following provides a summary regarding cannabis consumption, possession, storage, distribution and enforcement. Please note that this information does not apply to medical cannabis unless otherwise specified.¹

Consumption

In all Atlantic Provinces, the legal age to possess, consume or cultivate cannabis is the same as the age to consume alcohol: **19 years of age**. Unlike liquor stores, those under 19 years will not be allowed to enter a standalone cannabis retail outlet and, in the case of outlets selling both alcohol and cannabis, individuals under 19 will not be permitted to enter the cannabis section of the outlet.²

Restrictions on where cannabis can be smoked, whether for medical or recreational purposes, will be equal to or greater than those placed on cigarette smoking. While there are certain differences amongst provincial regulations and even municipal by-laws, in general, smoking cannabis will be prohibited in most public spaces.³ Further, use of marijuana in any vehicle is, at this point, outright prohibited for both drivers and passengers.⁴

Possession

It is **illegal to possess more than 30g** of dried cannabis in a public place.⁵ While there is no provincial limit for possession of cannabis on private property, providing more than 30g of dried cannabis to another person is prohibited.⁶ The following table outlines the maximum amount of cannabis one can possess in public or share based on class of cannabis.

This table is based on federal legislation, and therefore is the same for all Atlantic Provinces.

Class of Cannabis	1g dried cannabis is equivalent to:	Maximum amount to possess in public
Dried cannabis	1g	30g
Fresh cannabis	5g	150g
Solids containing cannabis	15g	450g
Non-solids containing cannabis	70g	2,100g
Cannabis solid concentrates	0.25g	7.5g
Cannabis non-solid concentrates	0.25g	7.5g
Cannabis plant seeds	1 seed	30 seeds ⁷

Edibles will not be available for purchase on the upcoming legalization date. Parliament has a deadline of one year from legalization (October 17, 2019 at the latest) to implement rules regulating edibles.⁸ People can still make their own edibles at home.

While a person is allowed to possess up to four cannabis plants,⁹ it is illegal to possess any cannabis plants that are budding or flowering in public.¹⁰ Further, there is a maximum of four cannabis plants allowed to be cultivated, propagated or harvested per private “dwelling-house”.¹¹ This is not a per-person maximum, but a per-residence cap.¹²

Storage

Cannabis must be stored in a **secure space** in a private residence that is inaccessible to anyone under the age of 19.

New Brunswick’s legislation specifically requires that cannabis plants be locked in an enclosure if it is grown outdoors and, if grown indoors, plants must be stored in a separate locked space, out of access from those under 19.¹³ While other Atlantic Provinces have not imposed these specific requirements, these measures should likely be followed in order to comply with the general obligation to keep cannabis out of the hands of young persons.

Distribution

In all cases, cannabis at retail outlets will be kept behind glass or counters such that the cannabis can only be retrieved by store clerks. Like alcohol, it is prohibited to give cannabis to someone who appears to be intoxicated.¹⁴

In addition, federal regulations place strict limits on advertisements or promotions of cannabis in all provinces. For example, advertisements and promotions cannot appeal to young persons and cannot depict persons, characters or animals.¹⁵ With that said, provincial distributors have announced certain in-store marketing which, in some cases, has attracted criticism.¹⁶

Below is a table which outlines the distribution model for each province:

New Brunswick
<ul style="list-style-type: none">• The distribution, sale and consumption of cannabis is regulated by Cannabis NB, a subsidiary of NB Liquor.• Twenty stores are anticipated to open throughout the province, with two in Fredericton, two in Saint John, three in Greater Moncton, and the remaining thirteen in various other locations.
Newfoundland & Labrador
<ul style="list-style-type: none">• The legislation governing the Newfoundland Liquor Corporation (NLC) has been amended to allow the NLC, through a newly established division, Cannabis NL to:<ul style="list-style-type: none">◦ Buy, import and sell cannabis;◦ Control the possession, sale and delivery of cannabis;◦ Establish, maintain and operate cannabis stores;◦ Issue licences for the possession, sale and delivery of cannabis;◦ Determine the forms, manner and fee associated with licences for cannabis; and◦ Set prices of cannabis.¹⁷• As of May 8, 2018, 24 retailers, located throughout NL have been approved to advance to phase two of the application for licence process.
Nova Scotia
<ul style="list-style-type: none">• Distribution and sale of cannabis is directly entrusted to the Nova Scotia Liquor Commission.• Initially twelve outlets will be opened in twelve different population hubs of the province, including Truro, Sydney, Halifax and Dartmouth.• Other than one standalone cannabis store in Halifax, all other locations will be built as distinct areas within existing NSLC liquor stores.
Prince Edward Island
<ul style="list-style-type: none">• The distribution and sale of cannabis will be supervised by the Prince Edward Island Cannabis Management Corporation.• Four stores have been announced to open across the province. The stores will be located in Charlottetown, Summerside, Montague and O'Leary.

Enforcement

Under provincial legislation, law enforcement officials are provided powers to enforce cannabis laws, including the right to enter and inspect any place or vehicle (other than a private dwelling, which requires a warrant) and make any examinations, inquiries or tests.¹⁸ While most jurisdictions will primarily rely upon police to enforce these rules, New Brunswick will task specific “Inspectors” with enforcing the provincial cannabis laws.

Under federal law, law enforcement will also use saliva tests and other roadside testing methods to measure the level of THC impairment in drivers.¹⁹ Starting in December, police can require random roadside non-saliva breath tests from any driver without the need for reasonable suspicion. Saliva tests will require reasonable suspicion.

In order to prepare for these changes, police agencies have been training officers. Currently in New Brunswick, eighteen police officers have received or are receiving training to detect cannabis impairment.²⁰ In Nova Scotia, police are aiming to increase the number of drug recognition experts across the province from 65 to 90 this year.²¹ In Newfoundland and Labrador, the specific details are unknown, except that the police forces have been training DRE officers. In Prince Edward Island significant training of officers has occurred. For example in the City of Charlottetown Police Service 85% of officers have completed Standardized Field Sobriety Test (SFST) training (the national standard for front line training is 35%). Three officers are qualified SFST instructors, 4 officers have completed the Drug Recognition Experts (DRE) training and one officer is qualified as an instructor.

New impaired driving regulations set out the following penalties (based on nanograms per millilitre of blood within two hours of driving):

- THC levels between 2ng/ml and 5ng/ml are low-level offences with a maximum fine of \$1,000.
- THC levels above 5ng/ml are equivalent to the penalties for alcohol-impaired driving (80mg/100ml or above):
 - mandatory minimum penalty of \$1,000 on first offence,
 - mandatory minimum 30 days imprisonment on second offence, and
 - mandatory minimum 120 days imprisonment on third offence.²²

The penalties for breaking any provincial or federal cannabis regulations on consumption, possession, storage, distribution or promotion can range from tickets or fines to up to fourteen years in prison.²³

What This Means for Employers

Employers should establish or update an alcohol and drug policy that meets its occupational health and safety as well as human rights obligations and is adapted to address legal cannabis. The policy can allow pre-employment, reasonable cause, post-incident, or near miss testing. Random testing will likely only be upheld for safety sensitive positions, transportation across borders, drug addictions, or when a company has an extensive overall drug problem. However, in the absence of effective testing for “real time” cannabis impairment, employers should also take steps to appropriately train management in identifying and investigating suspected on-the-job cannabis use and impairment.

On May 16, 2018, members of our Regional Employment & Labour group broadcasted a webinar on Navigating Medical and Recreational Cannabis in the Workplace, featuring Dr. Andrea Burry, a leading physician and workplace cannabis consultant. Click the link below to listen to the complete webinar and access the materials.

[Getting Down in the Weeds - Navigating Medical and Recreational Cannabis in the Workplace](#)

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Please see the next page for endnote references.

¹ *Cannabis Control Act*, SNB 2018, c 2, s 3(2)(a) [**NB**]; *Cannabis Control Act*, SNL 2018, c C-4.1, s.4(1)(a) [**NL**]; *Cannabis Control Act*, SNS 2018, c 3, s. 5(1) [**NS**]; *Cannabis Control Act*, SPEI 2018, c 20, s. 2(1)(a) [**PEI**]; *Cannabis Act*, SC 2018, c 16, s. 62(2) [Federal]. These Acts have yet to be fully proclaimed.

² NB s.11, s.17(3), s.16(1), s.6(2); NL s.66(1)(e); Nova Scotia: NSLC policy based on “Health Canada Regulation”, likely based in subdivisions C and D of the Cannabis Act and other provisions designed to protect “young persons”; PEI s.7, s.13(3), s.12(2), s.17(2); Cannabis Management Corporation Act, SPEI 2018, c 20, s.20(b).

³ NB, s.17(1)(a) and (b); NL, s.75(1)(a) and (b), s.75(5); NS, s.66 – 70; PEI, s. 13(1)(a) and (b)

⁴ NB, s.18(2), 17(2); NL, s.75(1)(c); NS, s.22; PEI, s.14, s.15 Federal,

⁵ s.8(1)(a)

⁶ Federal, s.9(1)(a)(i) Federal,

⁷ Schedule 3 Federal, s.193(1),

⁸ s.226(2)

⁹ Federal, s. 8(1)(e)

¹⁰ Federal, s. 8(1)(d)

¹¹ Federal, s. 12(4)(b)

¹² Federal, section 12(5)

¹³ NB, s.12, s.16(1)(b)

¹⁴ NB, s.20; NL, s.69(3)(b); NS, s.21; PEI, s.17

¹⁵ Federal, s.31, s.17(1)(d)

¹⁶ “New Cannabis NB stores to market weed for different ‘occasions’,” *CBC News*, published June 13, 2018; “Nova Scotia breaking federal rules on cannabis marketing, critic says”, *CBC News*, published August 7, 2018

¹⁷ NL Government Media Release, November 23, 2017 NB,

¹⁸ s.23(4); NL, s.48; NS, s.24; PEI, s.21

¹⁹ *Criminal Code of Canada* (amendments from Bill C-46), s.320(27)

²⁰ “N.B. government outlines regulations ahead of cannabis legalization,” *CBC News*, published November 7, 2017

²¹ “More Nova Scotia officers to be trained as drug recognition experts: RCMP,” *Global News*, published June 29, 2018 *Regulations*

²² *Amending the Blood Drug Concentration Regulations*, SOR 2018-149

²³ Federal, s.51, s.9(5)(a)(i)