Medical Marijuana:
The State of the Law in Canada

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Introduction

- Roadmap of today's discussion:
  - **Legislation**
  - **Impairment**
  - **Accommodating the use of medically-prescribed cannabis**
  - **Benefits plans and medically-prescribed cannabis**

CANNABIS AND THE WORKPLACE

What legislation applies?

There are now many pieces of legislation relevant to the legalization of cannabis, including:

- ***Cannabis Act (Bill C-45)*** – The Act came into force on October 17, 2018. It puts into place a new, strict framework for controlling the production, distribution, sale and possession of cannabis in Canada.
- ***The Cannabis for Medical Purposes Regulations*** – Since 2001, medicinal cannabis has been available to all Canadians with an authorization from their doctor.
- ***Controlled Drugs and Substances Act*** – As of 2018, cannabis is no longer listed as a Schedule II drug – it is therefore no longer an "illegal drug".
- ***An Act to amend the Criminal Code (Bill C-46)*** – Came into force December 18, 2018. Creates new criminal offences regarding cannabis use, including drug-impaired driving charges, and authorizes new random roadside testing police practices.
- Provincial laws and municipal by-laws regulating the use of cannabis in public places, such as Ontario's ***Bill 174 – Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017*** and Halifax's ***By-Law N-303 Respecting Nuisances***. These forbid smoking cannabis in public spaces, similarly to tobacco.
- ***Provincial Occupational Health and Safety Legislation***, which generally requires employers to take every reasonable precaution for the protection of worker safety. This includes due diligence to provide a safe working environment free from safety risks due to cannabis impairment.

The Cannabis Act

- On October 17, 2018, the *Cannabis Act* came into force.
- It puts in place a new, strict framework for controlling the production, distribution, sale and possession of cannabis in Canada.
- The *Cannabis Act* establishes serious criminal penalties for those who sell or provide cannabis to youth. It also establishes a new offence and strict penalties for those who use youth to commit a cannabis offence.
- The *Cannabis Act* protects public health and safety by:
  - setting rules for adults to access quality-controlled cannabis
  - creating a new, tightly regulated supply chain

- Adults who are 18 years or older (depending on province or territory) are able to:
  - possess up to 30 grams legal cannabis (or equivalent) in public
  - share up to 30 grams with other adults
  - purchase cannabis products from a provincial or territorial retailer
  - grow up to 4 plants per residence for personal use from licensed seeds or seedlings

- Possession, production, distribution, and sale outside of what the law allows remain illegal and subject to criminal penalties, ranging from ticketing up to a maximum penalty of 14 years' imprisonment.

The Cannabis Act

- Each province and territory also has its own rules for cannabis, including:
  - legal minimum age
  - where adults can buy it
  - where adults can use it
  - how much adults can possess

- You must respect the laws of the province, territory or Indigenous community you are in, whether you are a visitor or live there.

- Municipalities may also pass bylaws to regulate the use of cannabis locally.

- **Be aware that all of these legal regimes affect the rights and obligations of employers, employees and unions.**

Human Rights Legislation

- **The requirement that employers accommodate employees who are prescribed medical marijuana comes from Human Rights legislation**
  - Each province and territory also has its own Human Rights legislation that applies to provincially-regulated employees.
  - Federally-regulated employees have their own Human Rights legislation.

- **An employer must accommodate an employee who suffers a disability to the point of undue hardship.**
  - How and to what degree an employer must do to accommodate an employee to the point of undue hardship will depend on the specifics of each case
  - Part, or all, of an employee's treatment may include the use of prescription cannabis

CANNABIS AND THE WORKPLACE

Impairment

Cannabis and Impairment in the Workplace

- As with alcohol and illegal drugs, employers can still generally expect employees to be **free from cannabis impairment** while at work.

- There is **no** reliable definition of "**impairment**" with respect to cannabis.
- While there are THC blood-level limits now in place that apply under the *Criminal Code* to impaired drivers, these per se limits do not extend past driving. **Employees who operate vehicles and heavy equipment must be aware of those limits. Even if you comply with applicable drug/alcohol policies, you may still not be legal to drive a vehicle.**

- With no agreed upon limit by which "impairment" can be defined, measuring or testing for cannabis impairment is challenging.
- Employers must exercise caution when determining on-the-job impairment, or deciding whether or not they can carry out workplace drug testing to detect cannabis impairment or general use.

- **Later in this presentation, we will review some of the most recent case law on cannabis use and safety-sensitive work environments.**

What are the new prohibited blood drug concentrations and how are they set?

- The prohibited blood drug concentrations are set by the *Blood Drug Concentration Regulations*. The *Regulations* came into force on June 26, 2018. For THC, the prohibited levels are:
  - at or over 2 ng (nanograms) but under 5 ng of THC per milliliter (ml) of blood for the straight summary conviction offence
  - at or over 5 ng of THC per ml of blood for the drug-alone hybrid offence
  - at or over 2.5 ng of THC per ml of blood combined with 50 mg of alcohol per 100 ml of blood for the drugs-with-alcohol hybrid offence
- Levels for eight other impairing drugs are set at "any detectable level" for the hybrid offence. These include: Cocaine, LSD, 6-MAM (a metabolite of heroin), Ketamine, Phencyclidine (PCP), Psilocybin, Psilocin (magic mushrooms), and Methamphetamine. The level for Gamma hydroxybutyrate (GHB) is set at 5 mg/L, as the body can naturally produce low levels of this drug.

What are the penalties for these new offences?

- The penalty for the summary conviction offence is a maximum fine of $1,000.
- The penalties for the two hybrid offences are the same as for alcohol-impaired driving. These include mandatory minimum penalties of $1,000 fine for a first offence, 30 days imprisonment for a second offence and 120 days imprisonment for a third offence.

Will the driving prohibitions survive constitutional challenge?

Nova Scotia woman plans constitutional challenge of roadside cannabis test

HALIFAX
THE CANADIAN PRESS
PUBLISHED APRIL 4, 2019
33 COMMENTS

A lawyer for a Nova Scotia motorist whose licence was suspended after her saliva tested positive for cannabis says his firm will use the case to launch a constitutional challenge of Canada's revamped impaired driving laws.

Jack Lloyd says Michelle Gray's case shows the law is too broad and too vague, mainly because she was penalized even though police testing later determined she was not impaired.

"The argument is that you're going to be having people lose their liberty – Michelle was arrested and her personal liberty was taken away from her

Michelle Gray.

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Will the driving prohibitions survive constitutional challenge?

- The cannabis roadside testing regime is facing constitutional scrutiny.
- In the recent Nova Scotia case, a driver was detained, had her license suspended, and her car impounded at her own expense, on the basis of a positive roadside saliva test, even though further testing indicated she was in no way impaired at the time.
- Evidence suggests there is no correlation between current testing levels and impairment. THC can remain in one's system for a week or more.
- Criminal defence lawyers have indicated an intention to challenge the regime on the basis that infringes the *Charter* right to safety and security of the person, which includes freedom from arbitrary detention.
- It remains to be seen how such *Charter* challenges will affect the treatment of medical cannabis use in safety-sensitive workplaces.

Halifax man loses job offer over cannabis use

7K 7K

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A Halifax man had a job offer rescinded from the local water treatment plant because he tested positive for cannabis use in a pre-employment drug test – even though the substance is legal in Canada.

"I don't do any illicit drugs, I'm a hard worker," Patrick Whalen told CTV Atlantic. "I thought 'OK, I'm not a frequent user, I use it once in a while.'"

Whelan had applied for the job in April, had an interview early May and was offered the job the same day. It was then he was told he would have to undergo a drug test as a condition of his employment.

RELATED STORIES

- Medicinal cannabis user evicted from smoke-free N.S. apartment
- Vets lobby to expand medical cannabis laws to include dogs, cats
- Handling the high: Can a genetic test make cannabis consumption safer?

After waiting five days, Whalen submitted his urine. The results came back positive for cannabis and Halifax Water withdrew their job offer.

"I got penalized," Whalen said. "[I] did not receive the position because I smoke legal cannabis."

A spokesperson for the water treatment company said

- Many employers at safety-sensitive workplaces have maintained a zero-tolerance approach, despite the legality of cannabis use.
- It remains to be seen how the coming *Charter* challenges to roadside testing will affect the treatment of cannabis use in safety-sensitive workplaces.

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CANNABIS AND THE WORKPLACE

Physician-Prescribed Cannabis

On dismissal for breach of a drug and alcohol policy

- ***Re Lower Churchill Transmission Construction Employers' Assn. Inc. and IBEW, Local 1620 (Tizzard)***

Newfoundland labour arbitration decision, released **April 30, 2018** (Roil). Important, much-discussed case on cannabis use in the workplace for safety-sensitive positions.

Background

- Grievor was diagnosed with Crohn's disease and osteoarthritis. Conventional medications did not work. Physician issued him a **Medical Authorization** for cannabis. Grievor ingested cannabis in evenings only. **Grievor did not feel any impairment of function during daytime working hours.**
- Grievor subsequently applied for two labourer positions on one of the Lower Churchill Projects. Employer hired him subject to the pre-employment drug and alcohol screening tests. Grievor disclosed his medical cannabis use to the Union before the testing and to the sample collection technician at the time of testing.
- Grievor failed test. After obtaining and reviewing a significant amount of medical information, the employer ultimately refused to hire the Grievor.
- The Union grieved alleging the employer failed to accommodate the Grievor's disability. The employer argued that given the **inability to test for cannabis impairment** and the safety sensitive nature of the positions accommodation of the Grievor would amount to undue hardship.

On dismissal for breach of a drug and alcohol policy

- ***Re Lower Churchill Transmission Construction Employers' Assn. Inc. and IBEW, Local 1620 (Tizzard)***

- The Arbitrator provided a thorough review and analysis and agreed with the Employer:

  - "The Employer did not place the Grievor in employment at the Project because of the Grievor's authorized use of medical cannabis as directed by his physician [evening use of up to 1.5 grams of medical marijuana with THC levels up to 22% ingested by vaporization]. This use created a risk of the Grievor's impairment on the jobsite. **The Employer was unable to readily measure impairment from cannabis, based on currently available technology and resources. Consequently, the inability to measure and manage that risk of harm constitutes undue hardship for the Employer**."

- The Arbitrator upheld the Employer's refusal to hire the Grievor.

Tizzard was upheld by the Newfoundland and Labrador Supreme Court on January 21, 2019

- ***International Brotherhood of Electrical Workers, Local 1620 v. Lower Churchill Transmission Construction Employers' Association Inc*, 2019 NLSC 48**

- The Court found the arbitrator's decision was reasonable.

- In the absence of evidence that the Grievor could perform the work free from impairment, it would be an undue hardship for the Employer to accommodate the Grievor in the safety-sensitive position:

  - "[O]nce the issue of possible impairment had been raised, then the employer was entitled to demand medical information which demonstrated to the employer's reasonable satisfaction that the Grievor could perform the job safely. I do not find that approach unreasonable."

Tizzard

Five key takeaways from these much-discussed decisions:

1. The duty to accommodate disability to the point of undue hardship extends to accommodation of medically-authorized cannabis use.

- All Canadian human rights laws prohibit discrimination based on physical disability. This includes an employer's duty to accommodate medically-authorized marijuana used as a treatment for a disability.
- In his decision, the Arbitrator accepted with little discussion that the Grievor's "disability" included both his medical condition and its treatment by use of medical cannabis.
- The dispute between the parties centered on the employer's ability to accommodate the effects of the chosen treatment (medically-authorized marijuana) for those symptoms.

Tizzard

2. The duty to accommodate applies to safety-sensitive positions, but not every position in a safety-sensitive enterprise is safety-sensitive.

- A safety-sensitive position is one in which the employee has a key and direct role in an operation where performance affected by substance use could result in a significant incident, near miss, or failure to adequately respond to a significant incident and detrimentally affect any of the health, safety or security of the employee, other people, property, the environment or the employer's reputation.

Tizzard

3. Residual cannabis impairment might last for more than 24 hours – and right now, employers can't measure it.

- The Arbitrator accepted the Employer's medical expert evidence on "residual impairment".
- There was conflicting evidence on how long THC impairment might last and how to accurately measure it. On these points, there is still uncertainty in the medical and scientific communities. The Arbitrator concluded:
  - Residual impairment from cannabis use can last more than 24 hours.
  - There is no impairment testing method readily available for employers.
  - Users' self-reports of impairment from cannabis are not reliable.
- The Arbitrator effectively concluded that even if a worker who uses cannabis honestly says they do not feel impaired, they might in fact still be impaired.

Tizzard

4. Employers' inability to measure impairment makes them unable to manage safety risks – and that is undue hardship

- This case was focused on ***safety risks***.
- The Arbitrator accepted the Employer's argument that, if the Employer cannot reliably measure an employee's cannabis impairment in a safety-sensitive position, then the Employer cannot manage the risk of harm arising from that employee's cannabis use.
- The Arbitrator accepted that even with the most current technology and resources, an employer cannot accurately measure impairment from cannabis.
- **The inability to measure impairment created a risk of harm the employer could not readily mitigate.**
- **This unacceptable increased safety risk amounted to undue hardship on the employer.**

Tizzard

5. Complete and specialized medical information is necessary to accommodate medically-authorized cannabis use.

- **Safety-sensitive designation helps define the medical information to which the employer is entitled.** More than a brief Medical Authorization for medical marijuana written on a prescription pad is required to determine whether an employee can perform the jobs for which he applied in a safe manner (the BFOR in this case).

- **Specialized training is required to understand work restrictions due to cannabis impairment.** The Arbitrator expressly concluded that a full understanding of the interaction between marijuana impairment and appropriate work restrictions in a particular case *requires specialized training* – and a general practitioner cannot determine the safety issues in a hazardous workplace based only on examining the patient and a basic understanding of both the nature of their work and the current science.

On dismissal for breach of a drug and alcohol policy

- ***Aitchison v. L & L Painting and Decorating Ltd.*, 2018 HRTO 238**

- Arbitrator Roil's decision in *Tizzard* is consistent with some recent decisions of other tribunals including, e.g., the Human Rights Tribunal of Ontario.

- In this recent decision, the HRTO found an employer did not discriminate against the applicant when it terminated his employment for smoking marijuana while at work, contrary to the employer's "zero tolerance" policy.

- The applicant was employed as a seasonal painter from 2011-2015 for the employer. His duties required him to perform work on a swing stage located 37 floors above the ground.

- Due to chronic pain from a degenerative disc disease, the applicant smoked marijuana for medical purposes while at work, including smoking by himself on the swing stage during his breaks.

On dismissal for breach of a drug and alcohol policy

- ***Aitchison v. L & L Painting and Decorating Ltd.*, 2018 HRTO 238**

- The applicant claimed his supervisor was aware of and condoned his use of medical marijuana in the workplace. However, his supervisor denied having any knowledge of the applicant's marijuana use in the workplace.
- The respondent employer also had a "zero tolerance" policy regarding intoxicating drugs and alcohol, of which the applicant was aware.
- One day, the applicant was observed smoking on the swing stage, untethered and not wearing his hard hat. The supervisor consulted the owner of the company and sent the applicant home.
- As a result of this incident, the owner terminated the applicant's employment due to the company's "zero tolerance" policy. The owner further noted the health and safety concerns of others on his site, as well as public safety concerns should an item fall from a swing stage located 37 floors above the ground. He testified that it would be "reckless" for him to allow the applicant to perform his duties in a "potentially intoxicated state." Moreover, company rules prohibited employees from being on a swing stage alone for safety concerns.

- The HRTO found in favour of the employer. It found as follows:
  - while the applicant had a disability for the purposes of the *Human Rights Code*, his supervisor had never condoned his marijuana use at work;
  - there was no evidence provided that the applicant suffered from an addiction requiring accommodation;
  - there was no evidence that the applicant had ever requested accommodation for his use of medical marijuana;
  - the applicant's assertion that there was an agreement that the applicant could go outside and smoke on the swing stage by himself "flies in the face of the health and safety protocols that were in place";
  - there was no breach of the procedural duty to accommodate; the respondent did not have to consider if the applicant could be reasonably accommodated after "he provided the grounds for his own termination";
  - the applicant did not "have an absolute right to smoke marijuana at work regardless of whether it is used for medicinal purposes."

- The HRTO concluded that the employer's reliance on its "zero tolerance" policy for the termination was not discrimination. No evidence the applicant's disability was a factor in the decision to terminate. The claim was dismissed.

On dismissal for breach of a drug and alcohol policy

- ***Airport Terminal Services Canadian Co. and Unifor, Local 2002 (Sehgal) (2018 Federal Grievance Arb.)***

- The above decisions do NOT mean an employer's drug and alcohol policy can never be challenged. Consider this recent federal grievance arbitration decision from March, 2018.

Background

- During 9 years with ATS and at the time of his discharge, the Grievor was employed as a ramp agent at Pearson Airport with an impeccable disciplinary record. He had a medical prescription for cannabis.
- Ramp agents marshal aircraft into position and ensure that there are no obstructions. They are responsible for visual inspection of aircraft, and reporting any damage or concerns to the pilot.
- One day, after marshalling in an aircraft, the Grievor walked a tow bar towards his co-worker and then "rolled" it towards him. The co-worker missed and, as a result, the tow bar struck the aircraft, damaging one of its lamps. The damage was immediately reported and repaired, but the flight was 45 minutes delayed.
- Employer determined the Grievor and his co-worker did not follow the standard operating procedure and as a result, the Grievor was given a two-day suspension, pending the outcome of a urine analysis.
- Grievor's urine sample tested positive for cannabis metabolites.

On dismissal for breach of a drug and alcohol policy

- ***Airport Terminal Services Canadian Co. and Unifor, Local 2002 (Sehgal) (2018 Federal Grievance Arb.)***

- The Grievor refused to sign a Final Warning or agree to its terms, and he did not explore alternatives to medicinal marijuana as requested. The Grievor was terminated.

- The Arbitrator decided **three key questions**:

- **1. Did the Grievor's use of medically authorized marijuana violate the drug and alcohol policy? NO**

  - Grievor had been prescribed medicinal marijuana for three years.
  - Medical expert testimony was conflicting with respect to the nature and duration of impairment from THC.
  - The Board found the evidence did not prove the Grievor was impaired at the time of the incident on July 7, 2016:
    - "The Grievor was not impaired and as such did not violate the ATS Drug and Alcohol Policy by reporting for work or working while impaired." (p. 57)

- ***Airport Terminal Services Canadian Co. and Unifor, Local 2002 (Sehgal) (2018 Federal Grievance Arb.)***

2. Does an immediate or automatic discharge (subject to mitigating circumstances) following a positive test result violate the Collective Agreement and applicable legislation? - YES

- The Employer's Corporate Drug and Alcohol Policy mandated drug and alcohol testing after any accident or incident, regardless of its significance. This was **overly broad and unreasonable**.
- The policy required post-incident drug and alcohol testing without a review of any of the surrounding circumstances and without concern for balancing of the Grievor's privacy interests.
- Moreover, the Board of Arbitration found the Policy mandating automatic discharge upon a positive test did not comply with the Employer's human rights obligations:

  - "The ATS Drug and Alcohol Policy contemplates the accommodation of an employee suffering from addiction but **does not, in its application, contemplate the Employer's duty to accommodate an individual who suffers from a physical ailment which requires the individual to take pain medication**, which includes an authorization to take medicinal marijuana. For this reason, I find that the ATS Drug and Alcohol Policy does not comply with the CHRA." (p. 52)

- ***Airport Terminal Services Canadian Co. and Unifor, Local 2002 (Sehgal) (2018 Federal Grievance Arb.)***

3. Did the termination violate the Grievor's rights under the *Canadian Human Rights Act*? - YES

- Once informed of the Grievor's medical authorization, ATS had a **duty to accommodate**.
- The Tribunal found the Employer's Medical Review Officer failed to make the necessary inquiries concerning the Grievor's authorization for medical cannabis and breached the procedural duty to accommodate.
- The Grievor's rejection of the Employer's proposal to find or obtain alternate pain medication did not discharge the Employer's duty to accommodate the Grievor.
- The Tribunal held that, once informed that the positive test was the result of legally authorized medication, the Employer was obliged to accommodate the Grievor to the point of undue hardship.
- The Employer was hesitant in accommodating the Grievor in his safety-sensitive position as ramp agent or accommodating the Grievor with conditions. Even though the accommodation process in this case was not simple, that did not justify termination of the Grievor.
  - "The evidence establishes that ATS failed in its duty to attempt to accommodate the Grievor, terminated the Grievor without just cause and in doing so, violated both the CHRA as well as its obligations under the Collective Agreement."

So what's the takeaway on medically-prescribed cannabis use in the workplace?

- The law is not entirely settled and continues to evolve.
- The current case law strongly suggests that the best option for employees in safety sensitive positions is to *abstain*.
- This applies to both medical and recreational cannabis use, both on and off duty.
- While employers have a duty to accommodate medical cannabis use, be aware that the inability to accurately measure impairment may itself constitute undue hardship in a safety-sensitive environment.

CANNABIS AND THE WORKPLACE

Benefits Plan Coverage of Medically-Prescribed Cannabis

On Benefits Plan coverage for medical marijuana

- ***Skinner v. Nova Scotia (Workers' Compensation Appeals Tribunal)*, 2018 NSCA 2**

- Nova Scotia Court of Appeal recently overturned a provincial Human Rights Board of Inquiry decision that held an injured man's **legally prescribed medical marijuana must be covered** by his union's benefits insurance plan.
- A unionized elevator mechanic, who suffered from chronic pain caused by an on-the-job vehicle accident, had argued he faced discrimination when he was denied coverage under the Canadian Elevator Industry Welfare Trust Plan.
- The Board had held that by restricting coverage to prescription drugs approved by Health Canada, he faced adverse effect discrimination because the exclusion of coverage was inconsistent with the purpose of the insurance plan.
- The Court of Appeal concluded that the board applied the wrong test.
- The Court found the plan did not cover medical marijuana simply **because it was not approved by Health Canada**, which the court said was a reasonable limit on benefits.
- "It could not be automatically discriminatory for the trustees (of the plan) to impose reasonable limits on reimbursable benefits."

On Benefits Plan coverage for medical marijuana

- ***Rivard v. Essex (County)*, 2018 HRTO 1535**

- The *Skinner* decision is now being applied by administrative tribunals across Canada, including the Human Rights Tribunal of Ontario in *Rivard v. Essex (County)*.

- In that case, the applicant named Green Shield Canada Inc. as a respondent and alleged that Green Shield breached her rights under Ontario's *Human Rights Code* when it denied her coverage for the cost of medical cannabis that had been prescribed by her health care provider.

- The respondent relied heavily on the decision of the Nova Scotia Court of Appeal in *Skinner*.

- The Tribunal held that the application had no reasonable chance of success.

On Benefits Plan coverage for medical marijuana

- ***Rivard v. Essex (County)*, 2018 HRTO 1535**

- The Adjudicator wrote in her analysis:
  - [28] I accept that the applicant is prescribed medical cannabis and that it has been a very beneficial treatment for her disability. However, the applicant has not described any evidence she has or will have to establish that the decision to deny the coverage is connected to her disability.
  - [29] The applicant does not dispute that the respondent's benefits plan does not cover the costs of medical cannabis because it is not approved by Health Canada and was not designated a DIN. This is not a Code-related decision.
  - [30] She submits that the respondent also denies coverage because it has a bias against cannabis use. Even if I accept that to be true, it would not amount to a breach of her Code rights. The fact that a person who has been prescribed medical cannabis also has a disability does not establish the connection between the decision to deny the coverage and that person's disability. The connection in that instance is between the type of drug and the decision.
  - [31] In addition, the fact that other benefits plans may cover the costs of medical marijuana and the Essex plan does not is unfortunate for the applicant but it does not establish a connection between the applicant's disability and the decision to deny.
  - [32] Decisions on what is included in a benefits plan can be based on a number of factors that are unrelated to a claimant's disability. As the Tribunal stated in El Jamal v. Ontario, 2011 HRTO 1952 at paragraph 19, "**the purpose of the Code is not to define the appropriate scope of a benefit plan without regard to the underlying purpose of the plan or to require that benefits be made available to individuals simply because they identify with a Code-related factor**."

On Benefits Plan coverage for medical marijuana

- Despite these decisions, some private health benefits providers are now including coverage for medical cannabis in their plans.

- ***Sun Life Financial*** *has added a medical marijuana option to group benefits plans. Coverage is available to reimburse medical cannabis expenses for specific conditions and symptoms:*
  - ***Cancer:*** *with severe or refractory pain; or with nausea and/or vomiting associated with cancer treatments;*
  - ***Multiple Sclerosis:*** *with neuropathic pain; or with spasticity;*
  - ***Rheumatoid Arthritis:*** *with pain which failed to respond to standard therapy;*
  - ***HIV/AIDS:*** *with anorexia; or with neuropathic pain;*
  - *For patients requiring* ***palliative care.***

On Benefits Plan coverage for medical marijuana

- Despite these decisions, some private health benefits providers are now including coverage for medical cannabis in their plans.

- ***Manulife*** *has partnered with* ***Shoppers Drug Mart*** *on a medical cannabis program.*
  - *Claims for medical cannabis can be considered under a Health Care Spending Account (not under standard plans).*
  - *Requests for coverage go through a prior authorization process. The insurer verifies whether the member has tried other appropriate treatment options, but hasn't responded well to them.*
  - *Medical marijuana coverage will be approved if a doctor authorizes it for a condition where there is evidence supporting its use, such as: stiffness and involuntary muscle spasms in people suffering from Multiple Sclerosis, nausea and vomiting in people undergoing chemotherapy, and chronic neuropathic pain.*
  - *The list of conditions it can help may change in the future.*

On Benefits Plan coverage for medical marijuana

- ***Markers Insurance*** also *provides a breadth of comprehensive coverage for any medical prescription medical cannabis. All medical cannabis producers licensed by Health Canada are eligible to participate in their program. Claims are paid directly by the insurer.*

- Despite the embrace of medical cannabis by private insurers, employees in safety-sensitive work environments must nevertheless be **extremely cautious** in adopting such treatment, even where it is recommended by their physicians.

- Many safety-sensitive employers are taking a "zero-tolerance approach", and at least for now, this approach is being upheld by arbitrators and courts.

Thank you