

WEED IN THE WORKPLACE:

The HR Professionals' and Legal Advisors' Guide to Managing Risk under the New Cannabis Regime

Enhance your understanding of the issues Canadian workplaces are just beginning to face in connection with the *Cannabis Act*.

Learn practical strategies for avoiding potential liabilities in key areas, including:

- Occupational Health and Safety duties and regulatory restrictions
- Worker fitness-for-duty and A + D policies in light of recent law
- Deterrents and detection and the limits of testing
- Human rights law and the duty to accommodate after *Elk Valley Coal*
- Towards a safer workplace in a post-legalization Canada

Register today at:

osgoodepd.ca/weed-workplace

Program Chairs

Norm Keith, LL.M.

Fasken Martineau DuMoulin LLP

Jennifer Mathers McHenry

Mathers McHenry & Co.

Date and Time

April 4, 2019

9:00 a.m. – 4:30 p.m. EDT

In Person or Webcast

Online Replay:

April 26, 2019

9:00 a.m. – 4:30 p.m. EDT

Location

Osgoode Professional
Development

1 Dundas St. West, 26th Floor
Toronto, ON

Weed in the Workplace:

The HR Professionals' and Legal Advisors' Guide to Managing Risk under the New Cannabis Regime

Building on the success of OsgoodePD's summer webinar, and offering a deeper dive into this newly-challenging area!

Topics Include

- Implications of antidiscrimination law as it applies to cannabis-using employees
- How far must (and should) employers go to ensure a safe as well as productive workplace?
- What makes for well-drafted, legally-sound policies on worker fitness and progressive discipline?
- What constitutes a 'proactive pre-accident opportunity to get help' for the substance-using employee?
- What facts do physicians wish employers knew about the effects of cannabis and the potential for impairment?

Who Should Attend?

- Human Resources professionals
- Risk managers
- Employment lawyers and in-house counsel



OsgoodePD, in co-operation with the **Human Resources Professionals Association**, offers this essential and practical guide to the new law's impact on your workplace.

Agenda

8:30 a.m.

Registration

9:00 a.m.

Chairs' Welcome and Introductory Remarks

9:15 a.m.

Overview: The New Law on Cannabis and Its Impact on the Workplace Status Quo

Norm Keith, LLM

Fasken Martineau DuMoulin LLP

Evidence from US states where it's been legalized strongly suggests that cannabis has a significant impact on the workplace. Unfortunately, the complex and potentially costly issues arising from legalization are not fully addressed in the Canadian legislation.

In this 'Wild West' environment, workplace stakeholders must become familiar with not only the *Cannabis Act* but with existing caselaw relevant to this new context. Three major areas will be highlighted:

- *The Occupational Health and Safety Act* and Regulations
- Human rights legislation, including the prohibition of discrimination against substance-dependent employees and the duty to accommodate their condition to the point of undue hardship
- Labour relations law, with its tension between the imperative of worker dignity and privacy on the one hand, and the employer's duty to ensure a safe workplace on the other.

This session will provide an invaluable framework for understanding the deeper dive we will take into individual issues over the course of the day.

10:00 a.m.

Workplace Safety and the 3 “Ds” (Deterrence, Detection and Development of Policy)

David Chondon

Crawford Chondon & Partners LLP

Laurie Jessome

Cassels Brock & Blackwell LLP

The safety risk management issues raised by the use of cannabis are daunting and arguably amount to a crisis.

- What are the considerations underlying the formation of policies aimed at deterrence and detection?
- Do the rules adopted by Canada’s Department of Defence furnish useful guidance to civilian employers?
- What can policies accomplish in the areas of worker accountability and progressive discipline?

11:00 a.m.

Refreshment Break

11:15 a.m.

Human Rights and Accommodation Issues and Their Solution

Philip Graham

Koskie Minsky LLP

John Illingworth

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Asha Rampersad

Lawyer & Human Resource Advisor,
Bernardi Human Resource Law LLP

- *Elk Valley Coal* and its implications: employers can decline to consider an employee’s substance dependency under human rights law if the employee has been given a proactive pre-accident opportunity to get help. What opportunity is appropriate?
- While an employer cannot attempt to discourage an employee’s use of medically prescribed cannabis, what kinds and dosages will affect productivity and safety?

- Constructive discussions with employees and prescribing physicians.

12:15 p.m.

Lunch

1:00 p.m.

Medical Marijuana in the Workplace

Dr. Jonathan Davids

Corporate Medical Director/Occupational Health Specialist, DriverCheck Inc.

Krista Siedlak

Turnpenney Milne LLP

A dialogue between a physician specializing in occupational health and an experienced employer’s counsel. What medical and scientific data on the psychoactive effects of cannabis, and the potential for on-the-job impairment, are essential for employers to know? Reference will also be made to drug testing in light of *Amalgamated Transit Workers Local v. Toronto Transit Commission*.

2:00 p.m.

Fitness for Duty: A Positive and Realistic Approach to Designing and Drafting Effective Workplace Policies Under the *Cannabis Act* and Regulations

Norm Keith, LL.M.

Fasken Martineau DuMoulin LLP

Darryl Hiscocks

Torys LLP

Krista Kais-Prial

Israel Foulon LLP

How can a fitness-for-duty policy fully achieve employer objectives within the law while avoiding the counterproductive harshness of older zero-tolerance policies? What are the elements of a successful policy which will withstand legal scrutiny? This session will pull it all together, examining model policies and their elements in such areas as testing, communication and education, engagement of workers, accountability and discipline.

3:30 p.m.

Refreshment Break

3:45 p.m.

Special Considerations for Unionized Workplaces

Katherine Ferreira

Koskie Minsky LLP

Jacqueline Luksha

Hicks Morley Hamilton Stewart Storie LLP

Unions are concerned about the potential for employers to unfairly infringe workers’ privacy and dignity and to in effect regulate employees’ off-duty conduct in relation to cannabis use. Should unions be willing to negotiate fitness-for-duty policies in collective agreements? What is the overlap between OSHA and the Human Rights Code and the collective agreement? How far will the OLRB and arbitrators go in exercising their jurisdiction to deal with human rights and health and safety legislation in relation to cannabis? Our panel will provide you with guidance in this vexing and technical area.

4:30 p.m.

Program Concludes

Register today at:

[osgoodepd.ca/
weed-workplace](https://osgoodepd.ca/weed-workplace)

Chairs

Norm Keith, LL.M.
Fasken Martineau
DuMoulin LLP

Jennifer Mathers McHenry
Mathers McHenry & Co.

Faculty

David Chondon
Crawford Chondon &
Partners LLP

Laurie Jessome
Cassels Brock &
Blackwell LLP

Dr. Jonathan Davids
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Specialist, DriverCheck Inc.

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Stewart Storie LLP

Philip Graham
Koskie Minsky LLP

Asha Rampersad
Lawyer & Human Resource
Advisor, Bernardi Human
Resource Law LLP

Darryl Hiscocks
Torys LLP

Krista Siedlak
Turnpenney Milne LLP

John Illingworth
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.



This program has been approved for 6 continuing professional development (CPD) hours under Section A3 of the CPD log of the Human Resources Professionals Association (HRPA).

Registration Details

Fee per Delegate

\$595 plus HST

Fees include attendance, program materials, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/group-discounts for details. Please inquire about financial assistance.

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

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Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



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