Episode 3: Cannabis Legalization with Megan Wallace and Joël Dubois

In this episode, Megan Wallace and Joël Dubois from Perley-Robertson, Hill & McDougall discuss the highs and lows of cannabis legalization in Canada for citizens, industries, employers, employees and more!

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Guest Speakers: Megan Wallace and Joël Dubois
Interviewers: Eman Jeddy and Joseph Lo Presti, Senior Editors

TRANSCRIPT

Eman Jeddy: 00:00:01 Hello everyone and welcome to the Ottawa Law Review’s first podcast for Fall 2018. Our names Eman Jeddy and Joseph Lo Presti and today we are discussing the legalization of cannabis. We are joined today by Megan Wallace and Joël Dubois, who will be the professors of the January term course on cannabis law within the University of Ottawa’s Common Law faculty. We’d like to turn it over to Megan and Joël to give a brief introduction of yourselves.

Megan Wallace: 00:00:34 Thank you for having me. I’m Megan Wallace. I’m a lawyer at Perley-Robertson, Hill & McDougall in the corporate department. I have been working with new cannabis producers and people who have been in the industry for awhile in terms of giving them advice on this legislative change and these new rules that are coming in.

Joël Dubois: 00:00:55 I’m Joël Dubois. I am a partner here at the firm. I’m a graduate from the French Common Law section at Ottawa U, a few years ago. I’m a partner in the litigation department. I do a wide variety of litigation. Some of the issues that I deal with are employment and labor — HR issues — and that’s the focus of what I have been dealing with in my practice: giving advice to clients in preparation for legalization and now getting ready for our course in the January term.

Eman Jeddy: 00:01:30 We want to thank you both for being with us here today. It’s a pretty timely topic. It’s something that people are interested in, but may not have a complete idea of what legalization means and what it means for our day to day lives and practices. Hopefully those are some of the things that we’re going to unpack today.
Before we get started, we'd like to acknowledge that the University of Ottawa is located on traditional unceded Algonquin territory. With that being said, let's get started. I'm going to turn it over to my colleague, Joe, who's going to give us a brief timeline on how we got to this point — how cannabis became legalized.

Joe: Joseph LoPresti: 00:02:10

Thanks, Eman. Let's go back to the beginning, so to speak. Cannabis was first added to the schedule of banned substances list in 1923, and from that day forward the possession, production and sale of cannabis in Canada was criminally prohibited. Believe it or not, this blanket prohibition remained until 1997, with the decision of R v Parker from the Ontario Court of Appeal. In that case, Terrance Parker was arrested for cannabis possession, cultivation, and trafficking after he was caught growing cannabis to control his epileptic seizures. The Ontario Court of Appeal determined that the blanket prohibition violated the right to life, liberty and security of the person under section 7 of the Charter in a manner not in accordance with the principles of fundamental justice. Since then, the federal government has attempted to fashion a system of access to cannabis for medical use and there was the Medical Marijuana Access Regulations and then the Marijuana For Medical Purposes Regulations. But ultimately this process was just a fair share revisions to the regulations, court challenges. It was pretty messy overall. The most important court challenge came in 2015, with the R v Smith case from the Supreme Court of Canada. Here, the Supreme Court ruled that the restrictions limiting authorized patients to medical cannabis under those regulations were unconstitutional. Fast forward to today, 2018, after extensive consultation with Canadian citizens, provincial and territorial governments and Indigenous communities by the Task Force on Cannabis Legalization and Regulation, out came Bill C-45 (the Cannabis Act) which passed by the Senate in June 2018, and then came into force on October 17th, 2018. Now it is November 7th, and so currently on this day it is legal for adults who are 18 or 19 years or older (depending on province or territory) to legally purchase, grow, and use limited quantities of cannabis in Canada.

Eman: Eman Jeddy: 00:04:21

Thank you, Joe. Great introduction to the background and where we are now. We want to go further into the Cannabis Act and what legalization means. In our opinion, legalization takes on a number of different
directions and three of the elements to consider are buying and selling, possession, and consumption. Megan and Joël, can you explain to us, along those terms, what is and what isn’t exactly legal?

Megan Wallace: 00:04:52 Basically, as of October 18th in Ontario, adults that are 19 years or over can buy up to 30 grams of dry cannabis through the Ontario Cannabis Store and possess up to 30 grams in public. You can also share your own cannabis with your friends — and presumably acquaintances with whom you would like to make friends. But you can only sell in Ontario through the government retailer, which is right now the Ontario Cannabis Store online. April is when we're looking forward to perhaps having these storefronts ready to go, so people can just walk down the street to their local pot shop and buy their cannabis. In terms of consumption, it's actually I think broader than a lot of people were expecting in Ontario, which I personally found very interesting. Obviously, in private residences — most private residences, obviously if you're in an apartment or a condo or an old age home — there are different rules. What surprised a lot of people was the outdoor public places. What Ontario did was use the Smoke Free Workplaces Act and those provisions. I was expecting perhaps that there would be restrictions on outdoor use because of stigma and moral panic, and thinking of the children and their exposure to cannabis. That, I thought, was a real surprise. Beyond that, there are smaller pieces. What I discovered yesterday was that if you have a houseboat, as long as it's docked and has a bedroom, you can smoke or vape cannabis on that houseboat, but not on your small boat. If it doesn't have a bedroom you cannot consume your recreational cannabis there, which I found very interesting.

Eman Jeddy: 00:06:48 I think the small boat owners might have a Charter challenge lined up some point in the future.

Megan Wallace: 00:06:55 These are the rules about smoking and vaping. In terms of what's going to happen with edibles and things like that, it's awfully hard to regulate. No one has put the rules out about where you can eat your edible because it's being framed within the context of smoking due to the link with that legislation. We'll have to see whether or not there are any prohibitions when edibles are permitted.
Eman Jddy: 00:07:22 Along those lines, do you think it's the idea of
government to find balance where they try to be ahead
of as many situations as they can be, but also not over
regulate and wait and see? Because there are so many
things, as you mentioned, with edibles and packaging,
that they don't even know where to begin. Is it trying
to find the balance between getting ahead of the
situation but also seeing how it plays out?

Megan Wallace: 00:07:53 It's an interesting and difficult situation for anyone
who's trying to regulate something brand new because
there's some things that you wouldn't even necessarily
think about having to regulate. One of the other things
that you are allowed to do with your own cannabis is
cook and create your own cannabis food products in
your home with oils and edibles. But again, the
consumption of those is not regulated. You're permitted
to do that, but they haven't taken the next step, which I
think is something that perhaps shouldn't be regulated
— so it's good to not regulate. We will have to see how
the first few months roll out before we can see what's
going to happen with the next stage of regulation and
whether this will change to reflect perhaps problematic
behavior or public complaints.

Joseph LoPresti: 00:08:51 Why don't we unpack the regulatory regime a little
more. Joël, what does the federal government have
jurisdiction over? The provinces? The municipalities?
Is there any role for those little guys to play?

Joël Dubois: 00:09:06 We're going to nerd out here and go through some
legislation. I actually always make this joke with the
patchwork of regulatory schemes — provincial,
municipal, and federal. Somebody is going to have to
come out with an app to actually tell you physically
where you are, will you be able to consume, light up any
forms of cannabis. At the beginning, Joe mentioned that
since approximately early 2000, cannabis has been for
medical purposes — we've had regulations for that. The
current version of that regulatory scheme is the
Cannabis for Medical Purposes Regulations. That is, as
you mentioned, after R v Parker and R v Smith and
many other cases. That's the regime we have and that
regime stays in place. If we move to the legalization of
cannabis for recreational purposes — you had
previously mentioned Bill C-45 — and basically what
the federal Cannabis Act does is set national standards
but then carves out exceptions that the provinces can
actually make the rules stricter. We'll look at Ontario in a second. Basically, what does the federal Cannabis Act do? It regulates possession: 30 grams of legal cannabis, dried or equivalent in non-dried forms; you can share up to 30 grams. For those who have green thumbs, you can grow up to four cannabis plants per residence for personal use. With the issues of edibles, it does provide that you can make your cannabis products — food and drinks at home — but organic solvents cannot be used.

Megan Wallace: 00:11:14

I try not to eat those in general. I don't have a green thumb and I'm not sure why you would want to use organic solvents in anything you're making at home. Apparently, according to the Government of Canada, edibles will be phase two in about a year from now and there will be new regulations. Other than making them at home, when you legally purchase your cannabis or your seeds and you have your green thumb and you grow them at home, that's the only way you can lawfully purchase or lawfully have, bake and make, your edibles. What else does the federal act do before we move on to the provinces? It regulates producers who grow and manufacturer cannabis; regulates types of cannabis products available for sale—packaging and labeling; standardizes serving sizes and potency, tracking requirements and restrictions on promotional activities. There is a lot in that federal act. On the enforcement side, the federal Cannabis Act creates a variety of criminal offences relating to possession over the limits, illegal distribution or sale, producing cannabis beyond personal cultivation limits or with combustible solvents, and taking cannabis across borders. There are a variety of different offences. A few more I forgot: giving or selling cannabis to persons under 18, and using youth to commit a cannabis related offence. All of these things are governed by the federal act. As I previously mentioned, the federal act allows and directs provinces to deal with how cannabis can be sold, where stores may be located, how stores must be operated. And the federal act does allow provinces to lower the possession limit, to increase the minimum age (the minimum age under the federal act is 18), restricting where cannabis may be used in public, and adding requirements for personal cultivation. We've seen certain provinces — Quebec and Manitoba — prohibit the green thumbs. No growing of cannabis at home in those provinces. Megan has mentioned a few things about the Ontario regime. One of the interesting things that makes this topic interesting and a bit of a
moving target is that in Ontario there was a certain regime before cannabis became legal in October. There was the first version of the Cannabis Act which had been passed under the Liberal Wynne government and which was much more restrictive than the amendments that came in once the Conservative Ford government came into place. And what was actually interesting is that on the morning of October 17th, the Liberal version of the provincial act applied. And at some point in time in the day when the amendments received royal assent, then you had a new regime in Ontario. To me, that's just indicative of the patchwork that we have in Canada. The same thing, apparently, is happening in the province of Quebec. There is a current regime, but they've had a provincial election, and, as I understand, some of the promises and campaigns for the new government of the province is to drastically change and make it much more stricter in that province. And then on that you add the municipalities so you add another level. Basically, in Ontario, the Ford government has, with the amendments that came into force, are allowing municipalities to prohibit the sale of cannabis in brick and mortar stores. The various municipalities have until January to decide whether or not they will allow retail stores in their jurisdiction. So in a nutshell that is the regulatory scheme. I still plug that I think there's a good idea about having an app where we will be able to decide with GPS whether or not you can lawfully consume in specific locations.

Joseph LoPresti: 00:16:11 That's a million dollar idea, right? Anyone listening, jump on that. It's a freebie.

Joël Dubois: 00:16:16 But remember where you heard the idea.

Megan Wallace: 00:16:17 And if you need legal advice about structuring your app, you know who to call.

Eman Jedy: 00:16:21 There you go. Absolutely. That would tell you where you are, and how far are you from a school and how far are you from a retirement home, etc.

Joseph LoPresti: 00:16:32 You heard it first here, guys.

Eman Jedy: 00:16:34 Million dollar ideas. Make it and call us.

Joseph LoPresti: 00:16:43 Let's go into why this change happened. Do you know, is it purely a political move? You know, Prime Minister
Trudeau said profits out of the hands of criminals, protection for our kids. Is that the primary reason? Is there kind of a myriad of factors? What you guys think?

Eman Jeddy: 00:16:57 Yeah. Essentially we kind of want to know why this legislation occurred under this government in this moment of time.

Megan Wallace: 00:17:04 I think, like with any political decision that isn't required, it's popular. It's something that's been in the works around the world, increasingly, depending on your jurisdiction. I think: one, it takes a lot of tax dollars and puts it in the hand of the government. For high-end potheads, the tax rules are really interesting. The higher the THC, the higher the tax. I didn't realize that until recently. I find that fascinating. The government is going to be collecting tons of money to do all sorts of fun things with. But, fundamentally, this is something that's popular. For the people with whom it's not popular, it's not a voting issue. So why not do something that is going to make people all the more cheerful at the end of the day. The three official goals of the Act: keep cannabis out of the hands of youth, keep profits out of the pockets of criminals and protect public health and safety by allowing adults access to legal cannabis. I think all of those things make sense. Undercutting the black market and the criminal involvement in the black market is a smart choice. But I think, fundamentally, it's popularity and taxes.

Eman Jeddy: 00:18:25 Absolutely. Let's into the nitty gritty a little bit.

Joseph LoPresti: 00:18:31 Yeah. Cannabis impacts virtually every area of the law, right? I don't think there's anything that it doesn't touch. Tax, employment, labor. Let's go into employment to start off with. Joël, have employers prepared already for cannabis legalization? Is anybody redrafting their work conduct and HR policies? And are any fears unfounded because people have been using cannabis for a long time? It's not like the substance just appeared out of nowhere.

Joël Dubois: 00:19:02 I've been talking about this with clients in preparation for legalization. Some people think it's all blown out of proportion. Others think it's a reality that there will be more and more cannabis use. From a legal perspective, and in giving advice to clients, I'm always for the position that it's not a bad idea to take into
consideration new changing issues and turning your minds. Currently, most employers have substance abuse policies pre-legalization. Basically, these policies dealt with use of an illegal product. The existing policies were not prepared or drafted in any regime where you would have the legal use of cannabis. In my view, employers should be turning their minds to these issues. But it will really depend on each and every workplace, especially if you have a workplace or position that is safety sensitive. In a law firm, for example, Megan and I sit at desks most of the day. It's not a very safety sensitive workplace. But if we had a warehouse with somebody driving a forklift and moving boxes around, that position would likely be considered safety sensitive. Employers should be looking at their workplaces, and especially when you do have a safety sensitive position, cannabis and any impairing substances need to be taken into consideration. That's the "why" and the "who." The question that I get from clients, is the "why," which is the issue of impairment. The challenges that employers have—and we can see this already in some of the policies that we have in various sectors—is that there is a lack of science in terms of measuring impairment when it comes to cannabis. I'm not an expert. I'm not a doctor nor a scientist. But, from what I understand, in my readings and discussions with those that know about these things more than I do, is that there's no correlation between the THC level in your body and your level of impairment. It's not like alcohol where there is a more direct correlation between blood alcohol content and level of impairment. So that's the biggest challenge. You can have a workplace, where, because of The Occupational Health and Safety Act for employers and Criminal Code provisions, that we have to have safe workplaces. For employers and for all workers, the main goal is that you have requirements to have safe workplaces. Make sure that those that work in your spaces are safe and that they don't come to work impaired. But because of the challenges around measuring impairment, how do you test for impairment? There are some challenges around that and we can talk about drug testing in a few seconds. But that's really what the employers have been struggling with. I'll give you an example: police forces. I do quite a bit of work with police forces. If you look at that sector in particular, you will see that police officers—and it doesn't matter if they're the OPP, the RCMP, or a municipal police service in Ontario or in
Alberta—are men and women who carry guns and keep us safe. They all kind of do the same job, but we see that they have adopted very different policies when it comes to regulating cannabis. One of the issues, especially when you have a safety sensitive workplace, is the question of whether you will regulate cannabis before work. There's always the issue of regulating cannabis during working hours. But in a safety sensitive position, the question remains because of the issues of impairment and of residual impairment. If we go back to the science, THC gets stored in your fatty cells, including in your brain. There is some science that says you can have residual impairment for up to 28 days. For those who are regular consumers of cannabis, you can have a similar residual impairment—to a certain degree—of up to 28 days. That's why some police forces, including the Toronto police services, have banned the use of cannabis 28 days before your shift.

Megan Wallace: 00:24:28 And so effectively banned.

Joël Dubois: 00:24:31 That's right. Effectively banned. The Canadian military was the first one to come out with its policy. It has an eight hours pre work use for everyone; a 24 hour ban for anybody that drives anything or carries something that will shoot or kill someone; and then a 28 day for those who do special forces work such as jumping out of planes or working on submarines. When you put all that together, you have some police forces that have decided not to impose any specific rules. The traditional rule has been that you have to show up "fit for duty." Same thing for alcohol. Same thing if you take some allergy medication. We've all been there—where you take some allergy medication and then you figure out you shouldn't have come to work. That's just one example. I use that sector as a good example as to the confusion around how to regulate, should we be regulating, or should you be regulating if you're in a safety sensitive position or workforce before work. And then there's everyday regular issues: will an employer allow people to have a cannabis at work? The Ontario act simply says that you cannot smoke or vape in the workplace. It does not say that you cannot use recreational cannabis in the workplace. So if employers want to prohibit the possession in their workplace and prohibit the use of cannabis during the working hours, they would have to do that by way of policies. If you're in a unionized environment with collective agreements, all of those rules of the game have to be taken
consideration. But if there are no policies around that, there's nothing that stops an employee, theoretically, from consuming during his or her lunch hour and coming back to work as long as he or she is not impaired. Those are the issues that employers are dealing with. We haven't even talked about cannabis for medical purposes. When an individual uses cannabis for medical purposes, this is is protected under the Canadian and the Ontario human rights codes. It is a disability, so an employer has an obligation to accommodate an employee up to the point of undue hardship. There have been a lot of cases around that. When do you hit the point of undue hardship? It's unclear. If you're in a safety sensitive position, there are some cases that say the lack of science and the lack of certainty around residual impairment mean that you may be able to hit the point of undue hardship. Those are all of the things that employers are struggling with. In my view, employers should be turning their minds to these things. They should be putting stuff down on a policy and be taking all of these things into consideration. These are just some of the fun issues that we'll be chatting about to our clients and some of the issues that we'll be discussing during our January course.

Joseph LoPresti: 00:28:03 I imagine that some of this uncertainty will become resolved once more research comes out and we can look at what impairment looks like from a scientific perspective.

Eman Jeddy: 00:28:12 Adding to Joe's point, I imagine that for a lot of these employers, and lawyers who are advising them, this is a process that's going to be refined. You're going to have a court challenges and it's those cases that will set the borders for what an ideal policy looks like. What's over the line, or what's permissible. Maybe we'll even get a test for this kind of situation if we already don't have one. Do you kind of see this as something that's going to be ongoing and going to be refined as more cases come up and as the provincial legislation steps in and sets those parameters for how we regulate and refine those HR and employment policies?

Joël Dubois: 00:29:05 For sure. There's going to be a lot of litigation and a lot of grievances—already there are. In the week or in the days after legalization, I'm already involved in one grievance for one of our police clients where they've
taken a strict approach on cannabis use. There will be grievances. There will be court challenges. Lawyers will be busy.

Megan Wallace: 00:29:37 Future lawyers will be busy!

Joël Dubois: 00:29:41 Exactly. I'm actually of the view that with legalization the stigma around cannabis for medical purposes will go away. Others have mentioned that we're expecting that more and more people will be turning to cannabis for medical purposes for various reasons. I think there's a stigma issue around that. Those that would have been weirded out and didn't necessarily want to go down that path because it was an illegal substance may turn to cannabis for medical purposes. The science is getting better. Industry is getting better. The variety of products are getting better as I understand. Doctors are getting more comfortable with the product. You hit the nail on the head. As time goes by some of these things will get refined. There will be a lot of court cases like everything else, when we have a major legislative change. Things will streamline and we'll obviously have some guidance from the courts on some of these issues. Especially for the purposes of workplace rules, that stuff is already starting.

Eman Jeddy: 00:30:57 Absolutely. So just to round off this topic, are there two or three things that you would recommend to employers in general, who may not know about this or kind of what they should be thinking about and what they should be turning their heads to?

Joël Dubois: 00:31:13 Yeah! I think if they want to be proactive as opposed to reactive - and that's fine too, right? Some employers have decided to say, "Let's just wait and see. We've dealt with alcohol all these years. Why would we necessarily care about cannabis?" But for those that want to be proactive, if you're in a unionized work environment, you always have to take into consideration collective agreements. If you're in a non unionized work environment, basically if an employer decides that they don't want to have cannabis on their premises, there's nothing that stops them from doing that. Now it may be hard to retain and recruit staff depending on where you work. Employers should be turning their mind to these issues. You look at the policy. The one big thing—as well for clients—is to make sure that they're educated in terms of human rights
obligations when it comes to cannabis for medical purposes. You do not have a human right to smoke cannabis for recreational use, but you do, as an employer, have an obligation to accommodate an employee who does have an authorization to use cannabis for medical purposes. Turn your mind to these things and make sure that you're balancing your obligations as an employer to have a safe workplace and your obligations to your employees and to your workforce to be fair to them and obviously respect other human rights.

Eman Jeddy: 00:32:48 Well, thank you very much. That was a really fascinating discussion. Megan, I'd like to turn it over to you. You mentioned that you have a corporate commercial practice that has benefited from cannabis legalization. Can you talk us through the supply chain of the industry, in particular who is coming to see you, what are they requesting and how different is what they're requesting different from your kind of other portfolio and as you see the practice evolving and the industry evolving and eventually maturing, what kind of new issues do foresee coming up? I would love to get your thoughts on that.

Megan Wallace: 00:33:32 Absolutely. Because there have been producers who are producing for medical purposes, a lot of folks that do corporate and commercial law have already had existing clients who work in the industry. From the perspective of a company that's growing—that's producing and that's cultivating—although you can now cultivate for recreational purposes, a lot of those rules are very similar. With a corporate file, when you have someone come in, a lot of different businesses have regulatory requirements or licensing requirements. The people that are coming in right now and over the past number of months have been the folks who want to get into the game now that recreational is coming and happening. It's been getting their licensing in place and getting everything lined up for October 17th. From the perspective of the work that I would do as a practicing lawyer, it doesn't actually look that different. There's a different licensing scheme obviously and different rules of what you have to be cognizant, but people are looking to incorporate a company, they need shareholders' agreements, they need contracts between them, they need contracts with other producers in terms of doing different projects together. It's very similar to other aspects of my practice. It's just you're
dealing with a producer that is either licensed or wants to be licensed. There's been a lot in the past number of months coming up to legalization of people who are really excited to get in the game. We've been kind of waiting eagerly for the different licensing requirements to trickle down, because they didn't come out long in the past. We've really been seeing what was gonna happen, and, as expected, there are similar requirements when you're dealing with your licensing. In terms of the practice evolving as the industry grows and matures, I think probably you're going to be seeing over the next number of years a lot of mergers and acquisitions in the industry. There are a lot of people who are getting their businesses started up with the hope of being acquired in a couple of years. I think there are more even medium producers and small producers who are just starting up and they're waiting to be acquired. I think there is a lot of that going on because the big companies right now, the big growers, may want increased capacity. One of the key issues I gather in terms of the industry now, is qualified staff and qualified staff that can pass the security clearance that is required to be a high level employee because a lot of people who are experts in the field would have been very active in the illegal industry. There are times when that's going to preclude involvement and there are times when it's going to be okay and you can pass a security clearance. My understanding is that's actually an issue with which a lot of producers are struggling - the acquisition of the high level staff that are going to be named on the license that have the qualifications and that can get the clearance. Particularly things like a master grower. To be a master grower you need to be able to get a security clearance. And people who have been illegally growing cannabis such that they're experts in the field may not have access to that.

Eman Jeddy: 00:36:52 It's almost the more qualified you are, the more likely that you've come into trouble with the law or been penalized for that expertise. And now that's precluded you from . . .

Joseph LoPresti: 00:37:02 It's come back to bite you.

Eman Jeddy: 00:37:03 Yeah. It's come back to bite you when the legalization has actually taken place.
Megan Wallace: 00:37:07 Obviously there's a distinction between someone who would have been doing a high level offense and someone who was charged with simple possession, which it looks like we're going to be writing those off. But that is certainly an issue. And also it's a growing field of employment. People are in a position to say, "No, no, no, I want to work for this company," and write their own ticket and a little bit of a way which is interesting to see.

Eman Jeddy: 00:37:34 Can you talk a little bit about that? You mentioned that having someone, the person's name on the license, can you talk about what that license looks like? What it entitles you to do, what it doesn't entitle you to do, and the process for acquiring one.

Megan Wallace: 00:37:48 That in and of itself is probably a three hour conversation. I'll hit the high points. The licenses to cultivate, to grow, are under the federal scheme. The Feds are keeping control of that. A corporation can be licensed or an individual can be licensed, but in either event, the key people involved with the production, the company, need to have certain qualifications and be able to pass a security clearance. Directors and officers, if you're a corporate licensee, a key investors - anyone with decision making authority because it's been an illegal product. As we're moving forward they want it very tightly regulated. They want to know that people who are going be operating in this field are going to be doing so legally.

Eman Jeddy: 00:38:39 Touching upon the comment you made about more mergers and acquisitions taking place as the industry matures - one of the issues that I can foresee, and we've talked about the kind of patchwork of regulations, is that different provinces have different rules. A cross-provincial merger might be something of an issue - how these kind of rules applied differently in and which provinces have more stricter licenses more or regulations. Is that something you also kind of foresee if you have a producer in Ontario who wants to merge with the producer in Quebec or some other province and kind of seeing what just how drastically different this is across the different provinces?

Megan Wallace: 00:39:27 In terms of production it's not. That's the distinction because all the production licenses are federal. In that context you will actually have similar, if not identical
requirements. Merging two companies would just be the same as merging any two cross border companies. You need to move one into the other jurisdiction probably. It's in terms of the sale where the rubber hits the road on that because different provinces have storefronts and they're run by different organizations or by the province themselves. That's where, if you had someone who was licensed to sell . . . An example that comes to mind is there's a company called Weeds and I think it's out of BC and they have had storefronts across the country. In that context, if you're going to have legal storefronts across the country each of those is going to be subject to a different set of regulation. That would be a heck of a merger to do. It would be a heck of a fun one. If you're a nerd for regulation, like I'm a nerd for regulation, you can really dive in and make sure everything matches up. But in terms of the production piece, that's not such an issue.

Joseph LoPresti: 00:40:35 How about we circle back to some of these businesses that were operating before legalization came into place. They were sort of operating in a black market. What's at stake for these guys now? Are they all going to be shut down? Do they have to start from scratch or is there any way for them to obtain a license now?

Eman Jedd: 00:40:54 A path to being licensed and being a legal storefront.

Megan Wallace: 00:40:58 To use the example of Ontario and Ottawa, because this is a particularly interesting one. I believe it was the day before legalization, all of these storefront dispensaries that were operating in Ottawa, all of which, for clarity, were completely illegal. A lot of them have a faux doctor signs and they make you sign up and check: "I have anxiety and migraines, can I have all of the cannabis". This is still not legal, just flat out, not legal. They all got a letter, I think the day before saying, "if you close today, if you don't open tomorrow, you will be eligible for a license." Because the last round of revisions that the Ford government included that if you were selling illegally, pre-legalization, it was not necessarily going to preclude you from selling post-legalization. But what this letter said is, if you are operating illegally after the 17th, you are not going to be able to get a license and I think many, many, many of them shut their doors. And I actually just saw an article from the CBC this morning that the Ottawa police raided the last two in Ottawa yesterday. According to
the CBC, there were no more illegal dispensaries operating in Ottawa as of yesterday afternoon. They are like mushrooms, they just pop up. But I think anyone who wants to be a player and actually get a legal license, which the requirements are not out yet, but theoretically they might be able to do, they shut their doors because they wanted to be able to jump back on the bandwagon.

Joël Dubois: 00:42:24 I actually think they're like bad weeds.

Megan Wallace: 00:42:27 Absolutely! Or like good weeds! It's all about perspective.

Eman Jedy: 00:42:32 Right, it depends on who is asking and coming to that store.

Joël Dubois: 00:42:36 They're illegal weeds. We'll go with that.

Joseph LoPresti: 00:42:40 Did you have any of these businesses coming to you?

Megan Wallace: 00:42:43 Generally speaking, people who are comfortable operating outside the law are not really concerned with the legal advice piece. I have not dealt with any of them in my professional capacity, people coming and saying: "Are we really operating illegally? Yes, totally outside the law. Totally bad, do not do that." The piece that's been surprising to me is just how little enforcement there has been. I was walking down Preston street a couple of months ago and I think there were three illegal dispensaries operating within four or five blocks and the fact that it is so completely illegal and just right out there with a sign on the lawn that says cannabis, I found that really surprising. It is interesting to me that now they have chosen to enforce, post-legalization. I think that is a sign of things to come that they really are going to be cracking down and not allowing this to go on.

Eman Jedy: 00:43:40 You mentioned that the regulations for becoming licensed has yet to come out. For many of these stores that did close down, is it a question of a waiting game for them because they are not making any revenues. They are forgoing their profits in the hope that they can come back and be legalized. Can you foresee that the longer this drags out, since most producers can not wait that long, they are going to have to reopen and
have issues with the police? Can you foresee this waiting game to become an issue?

Megan Wallace: 00:44:29

I suspect, given the nature of a lot of the storefronts, that they are not going to be in a position to get licensed. I do not know what the requirements will be, but I think it is going to be more than "1) has jars, 2) can pay rent", which was the current system. There are requirements as to where you can purchase. You have to purchase it in the supply chain, you have to do certain kinds of reporting. There is going to be, I am confident, some kind of security clearance. They want to know about your corporate structure. They want to know that you are capable of doing this within the requirements of the law. I would suspect a lot of those folks that were selling illegally before are not going to even want to apply for a license. That being said, what is appearing to me is that we are going to be enforcing against folks that are selling illegally. In my view, it is an enforcement issue. If it is not going to be enforced, they are going to pop up again and it will continue. If it is going to be enforced, they will be driven out of business. I think it will probably go from municipality to municipality. There are going to be some places not trying to throw anyone under the bus. I am thinking British Columbia where there is not going to be the enforcement, whereas it appears in Ottawa, at this point, there is.

Joël Dubois: 00:45:49

And one of the interesting things is, you know, I know I'm not a business lawyer, but I do just happen to have a call from a client yesterday who owns commercial real estate and was talking to me about this issue and they were actually, in the city of Ottawa, recently approached by a prospective tenant who is reserving space in advance and it is a large corporation. Going back on the smaller dispensaries, I think I agree with Megan. I think it'll be the larger players, the larger corporations that already have storefronts in some of the other provinces, that had their act together probably a little bit more than the province of Ontario in terms of knowing exactly what the regime would be come day one. This client was telling me that the offer on the table is that we don't know if we are going to have a license, but we basically will pay the rent from now to then to reserve the space because we hope to have a license and we hope to have the location that we want right now. Some of those larger corporations will corner that market and then it will be interesting to see
if you have the smaller, older versions of the dispensaries trying to pop up at the same time.

Megan Wallace: 00:47:03 It might be like Starbucks and mom-and-pop coffee shops kind of feel.

Eman Jeddy: 00:47:07 Yes, you have a major player that is just taking every third block on the neighborhood. That was leading to one of our other questions that is: is there really a hope for many of these small businesses considering the amount of regulations, the security clearances and the requirements for how your corporate records will be? Is the game stacked against the small business owner who wants to maybe get into this game? Is the regulation maybe too much of a hill to overcome?

Megan Wallace: 00:47:50 Well, we haven't seen the provincial regulations yet, right? Theoretically, it is possible that it will be a game in which everybody can play. One never knows. It is hard to say because the tone of the legislation coming out of the Ford government so far on this issue is, in my view, surprisingly permissive. Given that, I think there is a possibility. Generally speaking, it is like any other business. You open a restaurant, you open a store, you open a hair salon, you have to have some capital behind you, you have to be able to get your random plates, you have to be able to pay your staff. You have to have the basic sophistication to get your GST number, remit your taxes, higher your account. I think for a lot of these smaller shops, they have been operating and they have had to do none of that. Whether or not there is actually an interest in doing that because, that is a lot of boring paperwork. Frankly, we love paperwork, we are lawyers, but not everybody does. I love paperwork but I think for a lot of folks, they will not have access either due to regulations or financial barriers. And the other piece is, we all shop brand names. I am sitting here with a Starbucks cup, so there will probably be some producers of the storefronts that will be the Starbucks and you will be able to go in saying "I know I want my english breakfast tea, a grande and a venti cup with soy milk" and there will probably be the pot equivalent at the brand named dispensary. It may actually shuffle over a bit like that, which would be quite interesting.

Eman Jeddy: 00:49:28 Absolutely. We are going to move on to another area which is civil litigation and, Joël, I would love to get your expertise on this. Do you expect a certain uptick of
civil claims being brought? The one that comes to mind for me is, either public or private nuisance and the civil litigation mirroring what you see around alcohol and public intoxication. Are there certain things that maybe you see, either by people who have opposed this legalization from day one or just people in general, a claims being brought in general?

Joël Dubois: 00:50:09 In terms of civil litigation, I have not been involved or seen, if you will, any civil claims that have come up in relation to legalization. You mentioned some nuisance issues. As you know, when we have neighbors, we have fights and the people have been fighting about trees and fences and landslides and I don't know what for many, many generations. I suspect that there will be issues surrounding nuisance and then pot smoke going over the neighbor's fence. uh, so some of those issues, I am sure, will come up at some point in time. For the larger issues, I think, Joseph, you mentioned earlier that cannabis is going to affect all areas of the law. That is actually one of the ways that we are going to set up the course. It is to make sure that we talk about all the areas. Some of the litigation areas that I see, there will be for sure a criminal law litigation. I know you asked me about civil but just consider the whole impaired driving. There will be a litigation for all, when it comes to just the regulatory schemes and enforcement.

Megan Wallace: 00:51:42 The denial of licenses is going to be one too. It is administrative law stuff.

Joël Dubois: 00:51:44 Just in administrative law, with the Ford government, we will see the licenses and there will be issues on that. We have already talked employment, labor, but there are cross border issues. We also have our friends to the south and we have issues with crossing the border. I suspect that people being denied and it will lead to some litigation issues. I'm sure, although I don't practice in family law, cannabis, I suspect will come up in family law issues. Privacy, right? Privacy considerations. So one of the major issues where people are, at least in the province of Ontario, because you can only lawfully purchase your cannabis from the Ontario Cannabis Store online, at the moment. Though, there's a postal strike, so you may not get it, as I understand....but I mean, that's some of the concerns, right? Because, I believe, I have seen...I won't name the company, but one of the large company that deals with online sales has, its
terms of conditions (for the point of sale) that "we can basically share your private information with any country or a government entity."

Megan Wallace: 00:53:02 In the Ontario Cannabis Store isn't collecting your information. You're always checking out as a guest. They keep your credit card information, and I think that's partially why. So an American...when they share information across the border and you're collecting information like the Homeland Security stuff. Excuse my concise legal analysis on that, but I think part of that is so people won't be concerned that their information is being shared.

Joël Dubois: 00:53:30 But I think that's one of the issues is the whole credit card information, right? And so I think that's why, I know some very successful individuals who will not purchase it online...because they don't want a trail. They travel to the [United] States [and] they don't want to have that risk. So cash will be king, but for the moment cash sales online are a tad difficult.

Megan Wallace: 00:53:55 Right? Not a thing. If I had to bet on what would be the first cannabis issue to go to the Supreme Court, I think it's going to be impairment. I hadn't heard what you said earlier Joël, about the fatty tissues, so being a woman, [I have] more fatty tissues and the rest of you in the room. So, how does that even play out? Right? I did a paper in law school on the collection of chemicals in breast tissue and for breast milk, and so a lot of chemicals gather in women more, so if there is residual (perhaps) impairment from fatty tissues, does that impact me more as a woman? There's are all these issues and there's so little science behind what constitutes impairment. So I think, for perhaps employment and criminal [law], that's going to be the first thing that goes up the chain, if you will.

Joseph LoPresti: 00:54:41 So just a waiting game at this point. Mainly we need the research to come out which can inform every other aspect.

Eman Jeddy: 00:54:46 And one of the things up, just listening to this conversation, one of the things that also came to mind is, because there's so little science about how this affects different people, it's quality control...what sort of duty of care, I know it's sold through the government at the moment, but different people consuming this have
different side effects and how we can...the sort of litigation issues around that will be sort of interesting to see how they develop...Someone saying that I've had this adverse reaction or that sort of thing. So [it'll be] interesting to see how that would play out.

Megan Wallace: 00:55:18 Interestingly, the warning on cannabis sold from the Ontario Cannabis Store doesn't actually have a warning about smoking. It says "may cause psychosis or schizophrenia". That's the warning. But no warning about the consumption and the effect on the lungs, which is the warning we commonly see on cigarette packages. And again, I think some people are of the view that smoking cannabis as opposed to tobacco is less harmful, but I don't think there's any science there. So I found that really, really interesting that they are choosing to warn about psychosis and schizophrenia, but not that I am potentially inhaling combustible material into my lungs, which as an act has been shown to be problematic with other things you inhale into your lungs. That's an interesting choice.

Eman Jeddy: 00:56:01 Absolutely and we're going to see, I think the evolution of these warning labels come into play and the likelihood is that they are probably going to be changed based on court cases or challenges and sort of "learning the hard way" if you will. So Joe, you want to, with the final topic, take it away on that...

Joseph LoPresti: 00:56:23 What underlies all of this is the stigma behind cannabis, right? I mean, [the] traditional association is [that] cannabis is associated with criminals... Will this stigma go away? With time, research comes out and is there really a difference between having a small square of chocolate, which is an edible or a glass of wine while you're cooking dinner?

Megan Wallace: 00:56:44 I think, this fascinates me. I find this topic fascinating because I think it has a lot to do with socioeconomic status culture where you grew up. I grew up in the Glebe in Ottawa, which when I was growing up, it's kind of a bastion of old hippies raising their children. So if I would go to a party in that neighbourhood, is there likely, in the last 20 years, that there would have been some recreational cannabis at that party? Quite possibly, other people who live in different times, places, countries grew up in a different place wouldn't have had that experience. So I think it's the concept of stigma is
very much where you are located at that moment. And I think Joël and I have different experiences on that just given growing up in different, different towns. As Joël said, I think that there will likely possibly be a reduction in stigma around medicinal use now that people are more open. And what I'm actually finding fascinating is that people, the conversations about recreational cannabis, people are actually almost more comfortable admitting that they might have consumed recreational cannabis. Whereas before, and I think people are still reticent, but before you might not have said in the workplace, "oh yes, you know, in my day I have consumed some recreational cannabis", but I think when you're doing work in the area and you're discussing these legal issues, it raises the conversation more so I think there might be a reduction in stigma just because people are talking about it and realizing how common it is. I also find that the stigma a little bit amusing, because we widely accept the use of alcohol to excess in our culture and alcohol, if you want to talk about social harm, alcohol has incredible social and physical harm. So people who will drink a bottle of wine, in one evening, will say "oh, well consuming recreational cannabis, that's, there's something...the people who do that" and the response is, but you just drank a bottle of wine. So I expect that that might diminish over time, but I'm not sure it's going to diminish as fast as we might think. There's some pretty strongly held views on this.

**Eman Jeddy:** 00:58:55

I think a lot of that is tied to the demographics, and where people grew up and what kind of time and culture in which they grew around. Joe and I are in our mid twenties. But even with my parents while growing up, the sort of conversation that I'd hear was the "slippery slope," and "gateway drug." That was the stuff that I also heard in school while growing up. Only now are those things being unpacked or just flatly defeated. But I think in a lot of people's minds—especially if it's served you well—you've never done this and if you've stayed away from it, you are your own living proof that it works. But I think it's going to take some time for those sort of things to erode and be unpacked.

**Megan Wallace:** 00:59:49

I had a lively discussion with my Father over Sunday dinner a couple of weeks ago where he was saying that legalization is a bad idea because marijuana is a gateway drug. I said "Okay, let's talk a little bit about this..."
concept. So you're saying that if you use marijuana, you're more likely to use heroin or these heavier drugs." And he said, well, if you look at the numbers, with people who've used heroin, it's extremely unlikely they haven't used marijuana. I said, "Yeah, Dad, it's also extremely unlikely they've never had a beer. Or never gotten drunk." So I think there's those assumptions. I try to turn it back to alcohol when I'm having these conversations because I think there's nothing wrong with having a conversation about the social harm or the physical harm of a substance. But we need to be aware of what we allow and what we don't allow and why.

Eman Jaddy: 01:00:32 Absolutely. So I think we're going to round this podcast off by giving you both a chance plug your January class. For those listening, I believe the course code is CML 454E.

Joseph LoPresti: 01:00:50 That sounds about right.

Eman Jaddy: 01:00:53 Can you guys describe briefly the curriculum of the course and what it is about and what it isn't about?

Joseph LoPresti: 01:01:01 Yeah, and who do you think should take it? Like, should it be students who are really into cannabis or just have a mild curiosity?

Joël Dubois: 01:01:08 Sure. Great question. Thank you for giving us an opportunity to plug our course. Proudly sponsored by the firm, Perley- Robertson Hill & McDougall. The firm is actually quite proud of sponsoring the first cannabis law course at the Faculty of Law in English. There is a French version of the course being taught now, as I understand, in the current session. Megan and I have the privilege of being the official professors. Basically what we have decided to do is that this will be a survey course. We have invited a whole bunch of different lawyers, primarily from our firm, to come in and speak to the students about various issues. We've mentioned this earlier, that basically cannabis is going to affect all areas of law, some obviously more than others. So we thought who best to talk about cannabis and condos than somebody who practices in that area. Or cannabis and immigration and somebody who practices in that area, because there's just so much that Megan and I can say about condos and immigration. So that's how it's going to be set up. We'll have a variety of speakers. We'll review the regulatory scheme, and
employment, labor issues—I will be dealing with that—property and condo issues, immigration. We're going to have a fun panel on criminal law. We'll have some speakers, a police officer who is a drug recognition expert, a criminal defense counsel and a Crown lawyer to have a discussion around those issues. And last but not least, we are having a field trip. We will be attending a canopy growth operation to see an actual production facility. Who should we be taking the class? Well, if you're not already registered you're out of luck because there's only 25 spots in this course. As I understand it, because Megan and I are very popular, there's a long waiting list, but, in my view, anybody who is interested in a new fun area of law. I think it's an interesting area for Megan and I in terms of practicing. When, at least in, in our generation, has there been a major shift in something that has been illegal becoming legal that has the effect of having an impact on all levels of society? Megan and I have chatted about this. The Charter, to a certain degree, is one area—not to compare the importance of cannabis to the Charter—but these things don't happen very often, where you have a new legal issue that permeates all areas of the law. So that is our course. We're looking forward to it in the January session and it should be fun.

Joseph LoPresti: 01:04:08 Do you think we could grab some spots in the class? Could you scoot us in?

Eman Jeddy: 01:04:14 When you guys were researching and preparing for this course, what are the things that you learned and are excited about—that maybe you didn't know and are looking forward to coverage in the class.

Joseph LoPresti: 01:04:25 Yeah, what's the thing you guys are most excited about?

Megan Wallace: 01:04:28 I'm not going to lie, I'm stupidly excited for the field trip. I think that's going to be great. In terms of putting the course together. We're learning everything because everything is new. It's actually a lot of fun for us to be figuring out what this looks like and debating amongst ourselves. What is this going to do? What's that gonna look like? What's that change going to be? That's been really enjoyable. I think it's, I think if you...as many of us who are law students or lawyers are, we're curious and we were interested in the law and how it works. And so I think that's going to be one of the fun parts of
this class is talking about 1) what this looks like a nail and 2) what do we think it might look like in five years, right? How is this going to evolve? What's going to the Supreme Court? What are the issues that are going to be litigated and taken through admin law processes and things like that.

Joël Dubois: 01:05:17 And I think that the course will probably will change over time. A few months after legalization there's not that much case law currently from a legalization perspective. As the first course we thought that a survey of the various areas would be interesting. Megan and I mentioned how excited we are, and the firm is excited about sponsoring this. But one of the things that surprised me is actually the general interest from what I'll call the larger community. We're getting approached by people who work for the military. They want to come and talk to the people and the students.

Joseph LoPresti: 01:06:01 Students from the Ottawa Law Review...

Joël Dubois: 01:06:04 Yeah! People reaching out and saying "Hey. I heard you're doing this. This sounds like a lot of fun. Do you need help? Can I come and talk about my thing that I do on a regular basis?" So that's been actually kind of surprising and shocking and great because it makes our lives a little bit easier in putting this course together. But people generally are interested in this new area. It'll be fun to see how it all plays out. We'll have to report on it at some other point in time.

Joseph LoPresti: 01:06:39 Thank you so much for speaking with us.

Eman Jeddy: 01:06:42 This was a fantastic discussion. I think we really covered a lot. We look forward to hearing about the class going forward and how it takes shape and what the first responses are to it. We hope to keep in touch. Thank you guys very much for your time today.

Megan & Joel: 01:06:57 Our pleasure. Thank you for having us.

Joseph LoPresti: 01:06:57 This has been to the highs and lows of cannabis legalization in Canada. Thank you guys for listening.