

Ontario Human Rights Tribunal rules on medical marijuana at licensed establishments

On September 19, 2011, the Ontario Human Rights Tribunal released its decision on the use of medical marijuana in licensed establishments. This results from a complaint brought by a licensed medical marijuana user against the Ontario government challenging Section 45(2) of Regulation 719 of the *Liquor Licence Act*, which states:

“The licence holder shall not permit a person to hold, offer for sale, sell, distribute or consume a controlled substance as defined in the *Controlled Drugs and Substances Act* (Canada) on the premises or in the adjacent washrooms, liquor and food preparation areas and storage areas under the exclusive control of the licence holder.”

The Tribunal found that while licensed medical marijuana users may keep marijuana in their possession at a liquor sales licensed establishment, they are not entitled to smoke marijuana anywhere at the establishment (including a patio, whether covered or uncovered) because of the potential effects of sidestream marijuana smoke on other persons.

The result of this decision is that a liquor sales licensee must not permit any patron to smoke marijuana at his/her establishment, regardless of whether or not the patron possesses

a medical marijuana licence, and permitting marijuana use is likely to lead to an administrative sanction against the licence.

The result of this decision means the following for liquor sales licensees:

1. The prohibitions against permitting illegal drugs in a licensed establishment continue to apply, and liquor sales licensees must not permit illegal drugs to be used or to be possessed.
2. A liquor sales licensee must not permit any person to consume marijuana anywhere at his/her establishment (including washrooms, patios, etc.), regardless of whether or not the person possesses a medical marijuana licence from Health Canada.
3. A liquor sales licensee must not permit any person to possess marijuana at his/her establishment. The only exception where a person may possess marijuana in a licensed establishment is when that person can produce a medical marijuana licence issued by Health Canada. Liquor sales licensees must ask to see the medical marijuana licence, and if it is not produced and/or the liquor sales licensee is not satisfied that it is valid for that person, the person cannot stay on the premises. ■