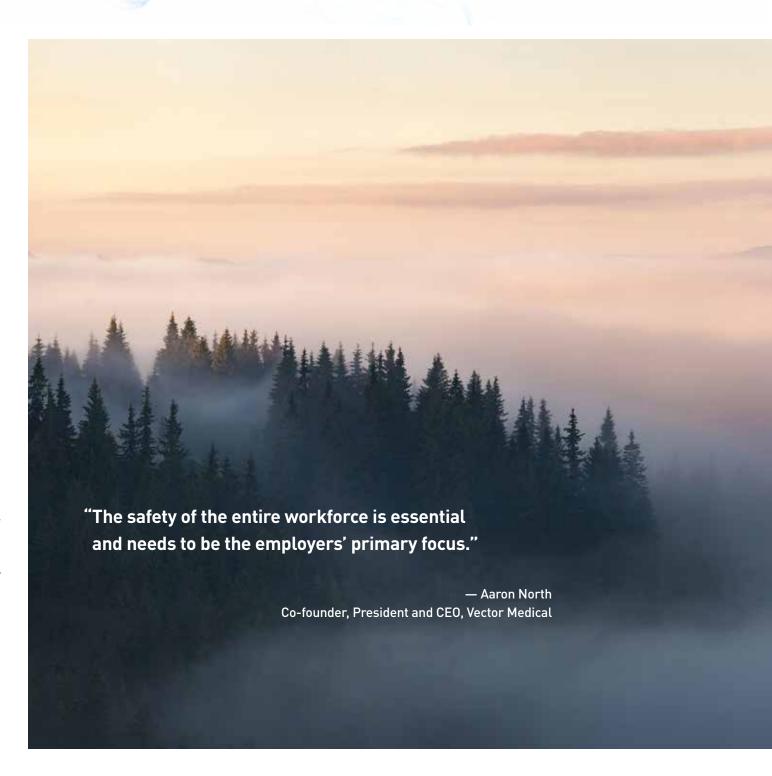


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■ AN EXECUTIVE WHITE PAPER BY: CEO Health + Safety Leadership Network



Introduction

How do you fulfill your duty to accommodate while protecting your rights as an employer and those of your employees and customers? How does one define impairment and fit for work? What types of tasks are safety-sensitive?

These were just a few of the questions that were discussed in October 2017 when leaders came together at the CEO Health + Safety Leadership Network Roundtable to discuss the impact of the legalization of recreational marijuana in the workplace.

The federal *Cannabis Act*¹ was introduced on April 13, 2017. Ontario led province-wide consultations before introducing its *Cannabis Act* on November 1, 2017. It is expected that in July 2018, cannabis will be legalized across Canada.

The requirement to accommodate an employee who has been prescribed medicinal marijuana is not new. Medical cannabis has actually been legal since 1999. However, with the increased accessibility to recreational marijuana, employers are understandably concerned about how this will affect their workplaces.

Even employers with established safety cultures are recognizing the need to review their policies and procedures to ensure that they are prepared. Participants attended the Roundtable to find out what questions or insights their peers and subject matter experts had to share on the topic.

The discussion illuminated the fact that there are many unanswered questions and that there is a significant burden on employers to navigate new waters. However, another theme that emerged was that, while employers have a duty to accommodate employees who are prescribed any impairing medication, they also have a right to ask for medical information and can put controls in place to protect their businesses, employees and customers.

In this white paper, we share highlights of the discussion at the event, as well as further insights provided by participants in interviews afterward. In addition, this paper features an interview with the Toronto Transit Commission (TTC) about the design and implementation of their random drug testing program.

The Panel



Aaron North
MODERATOR
Co-founder
President and CEO
Vector Medical



Asha Rampersad Lawyer and HR Advisor Bernardi Human Resources Law



Roy Slack
President
Cementation Canada Inc.
Mine and facilities contracting/
engineering company



Ted Moroz CEO, The Beer Store Established 1927 Owned by 30 Ontariobased brewers

Presentation Highlights

Moderator Aaron North, co-founder, President and CEO of Vector Medical and an expert in the design and implementation of national employee health and wellness programs, outlined that the purpose of the discussion was to look at the different considerations of cannabis use in the workplace—both from a legal and medical perspective, and discuss cannabis within the context of safety, drug and alcohol policies.

He talked about types and the various means of accessing cannabis in Canada. Right now, there are four primary channels:

- 1. Illegal growers and dealers
- 2. Licensed producers for medical grade marijuana
- 3. Home-grown (legally for licensed individuals and illegally)
- 4. Dispensaries, which are retail storefronts for illegal growers

He also highlighted information about onset and impairment that are important from a safety perspective. As employers consider use of medicinal cannabis in their workplaces, they need to understand how the person is using it, the type of product they are using, how it will impact them and for how long.



Before introducing the panelists, North shared some general statistics and information², including:

- Cannabis is the most prevalently used illicit drug in Canada
- It is more prevalent among youth aged 15 to 19 (21% or 426,000) and young adults aged 20 to 24 (30% or 715,000) than among adults aged 25 or older (10% or 2.5 million).
- In 2013, only **7%** of females used cannabis, compared to **10%** in 2015.
- More than one-quarter of past-year users (28% or 999,000) reported using a vaporizer.
- 72% (or 2.6 million) past-year cannabis users reported using in the past three months and many reported consuming cannabis on a daily or almost daily basis (33% or 840,000).
- Among past-year cannabis users, 24% (or 831,000) reported using it for medical purposes.
- Health Canada has maintained records of registered users and, in June 2017, the number of legally registered users was actually 201,398.

The Discussion

Q: How will the legalization of recreational marijuana affect workplaces?

Recreational marijuana has always been an issue in the mining industry. Roy Slack explained, "Our people have money. If they want it, they buy it. Cementation is prepared for the reality that medical cannabis is going to be less expensive than recreational marijuana. People are creative. They will get it by the cheapest route instead of going to a liquor or beer store for recreational marijuana, and will end up with prescriptions when they aren't needed. This will be pervasive because it's about money and people figuring out how to get it cheaper."

Ted Moroz agreed and highlighted that with greater accessibility, this issue will definitely tip over into all workplaces. "This is where we have zero tolerance for impairment. We have had this for alcohol for a long time. You must have well documented, very tight policies."

"Our people have money. If they want it, they buy it."

Roy Slack, President
 Cementation Canada Inc.

Q: What makes an effective workplace drug and alcohol program and what has been your experience in terms of some of the issues that have come up with respect to implementation?

Safety Culture, Accommodation and Disclosure

Both Cementation and The Beer Store believe in putting employees first and rely on their strong safety cultures to navigate issues such as this. That said, they also have clear policies in place to address situations when employees are not disclosing information that could put themselves, co-workers, the organization, or the public at risk.

Slack talked about their culture of reporting. "Fit for work is not just about substance—it's sleep, family issues and mental health. Our culture is getting people to talk about it. Crews talk without supervisors there so they can raise issues and talk about someone else on the crew without the supervisor there to take notes or discipline. And, if an employee does say they are addicted, we automatically have a duty to accommodate. However, we've had employees say they are not addicted who were fired because they violated the policy."

He also pointed out that it is not a black and white issue and, while the legislation in Ontario stipulates that if you have an impairing prescription you are required to tell your employer, no one does it. "It's just not something people do yet, even though it's in the legislation. It becomes a very complicated issue. It all comes back to whether usage is due to an addiction."

Asha Rampersad agreed noting that, in the case of substance abuse, the person is often in denial. "If you're talking about self-reporting, there might be people who don't believe they have a condition. It's the nature of the disability and addiction—causing denial. And there are some who abuse addiction as an excuse. Some employers use last chance agreements stating that the employee can't return to work unless going through treatment. Duty to accommodate also includes duty to inquire."

Like Cementation, The Beer Store is committed to accommodating employees; however, both employers emphasized that safety must come first. Moroz explained, "If someone presents they have a substance dependency, we accommodate them. A dependency is considered a disability. However, that doesn't excuse someone who isn't forward with you. If they cause an incident or someone is hurt, we still have progressive discipline—not for substance dependency but for behaviour that led to the incident (as with any other incident). We have people operating trucks, power equipment, tow motors, stackers, lift assist devices. We want them to tell us if they need accommodation. If we think there is an opportunity for impairment, we don't want them in a safety-sensitive position."



Rampersad also pointed out that employers need to be prepared for the possibility that the employee may insist on taking the medical marijuana prescription.

Duty to Accommodate is a Three-way Street

Rampersad stressed that accommodation should be a three-way street in the case of a unionized workforce—involving the employer, employee and union, and that the employee's part is cooperating and talking about treatment plans and providing medical information. Similarly, in non-unionized workforces, accommodation involves both the employee and employer actively engaging and participating in the accommodation process.

She underscored the importance of employers asking questions to ensure they have the information they need to understand the situation. "When you get a vague medical note about an employee suffering from anxiety who needs to smoke marijuana outside, you should be pushing back for more medical information. What's the duration? Is this a temporary or permanent condition? What are the limitations and restrictions? Just because you get a note doesn't mean you automatically have a duty to accommodate."





Using the example of employees who must smoke marijuana to treat a condition, Rampersad reinforced the importance of assessing each individual case and workplace to determine the best way to accommodate. "Ideally, you want to take these things into account and loop in the JHSC to find a location removed from other employees. If the employee is objecting when reasonable requests for medical documentation are made, it may be grounds for discipline. If you don't have appropriate medical info and the employee is refusing to provide it, you may be able to refuse to provide that accommodation."

At The Beer Store, if the employee signs a waiver and is open to it, they will involve the health and safety representative. If the prescription is legitimate, they ask how long the employee will be taking it, and they work together to get the employee back to regular duties as soon as possible.

Rampersad also pointed out that employers need to be prepared for the possibility that the employee may insist on taking the medical marijuana prescription even when an alternative will work. "I have had situations where employers have asked employees whether they have tried other medications and they say yes, but I want to take this because I prefer medicinal marijuana for a variety of reasons (e.g., anti-depressant affects sex life). The employer is not a medical doctor, but if there are any gaps or questions, and you're not satisfied with the level of information from the doctor, and/or the doctor is refusing reasonable requests for information, you may want to pay for the employee to see a specialist. If the employee objects to providing such information, they may not be fulfilling their role in the accommodation process."

Drug Testing

One of the topics that came up repeatedly in the conversation was the use of drug testing to manage this issue. Neither Cementation nor The Beer Store conduct random tests, but Cementation does use testing. It is not a primary focus of their program and is primarily used to ensure employees stay on track with treatment programs. "We realized early that there is a general misconception that drug and alcohol testing is core to a program. It's standard in our industry. We were one of the last to do it. We consider it to be a small part of our program. The bigger emphasis is on training," says Slack.

Moroz shared that The Beer Store might consider testing in the same context that it is currently being used at Cementation but would want to ensure that the union is onside. "If you accommodate someone with a substance dependency, you want to make sure they're not using while they're going through the program. We need to do our due diligence with legal counsel and the union before we do testing."

Training

For Cementation, greater emphasis is placed on training. Slack said, in particular, they feel it is critical to assist supervisors and employees with fit for work conversations. "How does a supervisor talk to someone they drink with after a shift if that person is drinking too much or they go somewhere else after drinking instead of home to their family? And how do you report a fit for work incident? It's not about equipment; it's about a person—maybe a friend."

Similarly, The Beer Store provides reasonable suspicion training for supervisors and employees. Moroz noted that the program they currently use to detect intoxication from alcohol is strong and will allow for dealing with cannabis and other drugs as well.



After the Roundtable

In follow-up interviews, we spoke to the employer panelists about how their workplace discussions and planning had progressed since the event, and we dove a little deeper with Asha Rampersad and Aaron North about some of the misconceptions out there and what employers should be mindful of as they prepare to address this issue in their workplaces.

Participant Spotlight

Roy Slack and Ted Moroz

Q: What was your biggest takeaway from the session?

For Moroz, there were three significant takeaways: The Beer Store is on the right track in terms of addressing this issue, there is a lot of information and it's not necessarily consistent, so they need to consult with more experts and sharpen their policies, and there is still a lot to learn.

He also touched on the topic of drug testing. "We're not in a situation where we can do random testing, and so it won't be part of our policy yet. Having said that, we still want to work on initiatives that would help us be proactive in helping our employees. We've written forms that employees can take to their doctors when they are prescribed medical marijuana. We will not impede any sort of privacy, we just want to understand the issues so we can keep the person at work and fully employed."

Slack says at Cementation they've spent some time subsequent to the session thinking about the impact on people in their office. "We'd focused on safety-sensitive positions, but it's going to impact the whole company. We really hadn't looked at what policies are in place and what potential issues will arise from illegal use of marijuana in the office. So we've begun that discussion, and we're trying to educate ourselves on the wider implications."





Understanding the Realities of Residual Impairment

In a 1999 study, nine airplane pilots were given one low-level marijuana joint before participating in flight simulation session, during which their performance was observed as having been diminished. Twenty-four hours later, the pilots performed for a second time in the flight simulator: seven of the nine were still impaired. Only one of the seven had the insight to realize this.³

Q: Have you defined impairment at your workplace?

One of the topics of discussion at the Roundtable was the need for and difficulty of defining impairment.

Both employers have working definitions in place. In the case of Cementation, the definition currently applies to safety-sensitive positions, and they are working on one that can be applied to all employees. "The legislation and our policy state that you can't use drugs or alcohol at work and can't be under the influence. We've defined not fit for work as being under the influence. And, in safety-sensitive positions, that definition is accepted. Like the Ontario legislation, our policy states that if you are taking a prescription, you are required to inform your supervisor before you go on a mine site. How that translates to the office is another matter and that's something we have to look at," Slack explains.

The Beer Store has defined impairment in their policy based on the description provided by the Canadian Human Rights Commission⁴:

Impairment can be described as a diminished ability to fulfill or remain focused on a task. The Canadian Human Rights Commission describes the appearance of impairment at work as:

- The odour of alcohol at work
- Glassy or red eyes
- Unsteady gait, slurring, poor coordination

It is important to note that their policy also acknowledges that impairment may result from a number of factors that are temporary or short-term, besides substance use, such as family or relationship problems, fatigue, physical or traumatic shock or medical conditions and treatments.

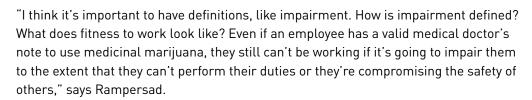


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Participant Spotlight

Aaron North and Asha Rampersad

Q: What should employers think about as they are reviewing policies and procedures and what questions should they be asking of employees and physicians?



"From a policy perspective, you want to have those clear definitions and the duty to report the usage of the medication. If an employee doesn't do that, they could be subject to discipline and an employer isn't doing their due diligence if they don't have this duty to report in their policy. What are the steps to accommodate? It isn't that in every instance an employer is going to say, 'I'm going to let you smoke medicinal marijuana or vape it or eat it.' It may be, if it's a temporary thing, that the employer permits the employee to take a leave of absence while they undergo treatment."

North says that when it comes to safety concerns of the workplace, the legalization of cannabis makes no difference. "The safety of the entire workforce is essential and needs to be the employer's primary focus. Safety should always come before concerns about a human rights complaint."









Rampersad advises that in follow-up conversations with physicians and employees, employers may want to ask questions such as:

- What is the nature of the work the employee is doing? Is it safety-sensitive, such as driving a vehicle or bus, or does it involve a position that requires a high degree of cognitive and mental alertness, such as senior positions in accounting or a CEO? Providing a physician with a job description and asking them to comment on whether the employee is able to perform the requirements of their position without impairment is recommended.
- What is the duration of use?
- Have all other forms of conventional medication been explored before prescribing this?
- Is there anything else that would be as or more effective that wouldn't be as harmful to other employees? (second-hand perspective)
- What is the dosage?
- Will the employee be using medicinal marijuana before, during or after work, and will the dosage prescribed impair their ability to perform their job duties effectively?
- If the dosage of medicinal marijuana will not impair the employee's ability to do their job, will the employer be providing a space in which the employee can use medicinal marijuana, without the risk of other employees being exposed to secondhand smoke?

And, with respect to dosage, they may want to get a second medical opinion to confirm that the individual would be able to perform their job adequately without impairment at the prescribed level of dosage (providing job description and dosage information).

Q: What are the most common misperceptions that you've noticed?

Rampersad says many people think duty to accommodate is new, but that's not the case. She explains that if there is a need to use medical marijuana, then there is an obligation to accommodate to the extent that it is possible. "There used to be zero tolerance policies that would stipulate that you're not allowed to smoke on the premises or anything like that, but these policies will need to be revised to say that there is a duty to report and disclose any types of drugs or prescription medications that an employee is using, including medicinal marijuana."

North has noticed that there are two prevailing misconceptions—first that employers have no right to investigate marijuana use outside of working hours, and second that they have no right to implement any kind of alcohol or drug testing program.

"A lot of studies conclude that cannabis use, particularly the use of THC products, can cause residual impairment for 24 to 48 hours. The whole idea that an employer has no right to determine what an employee does in their spare time conflicts with the reality that what people do in their spare time may well affect their ability to work safely the next day," he says.

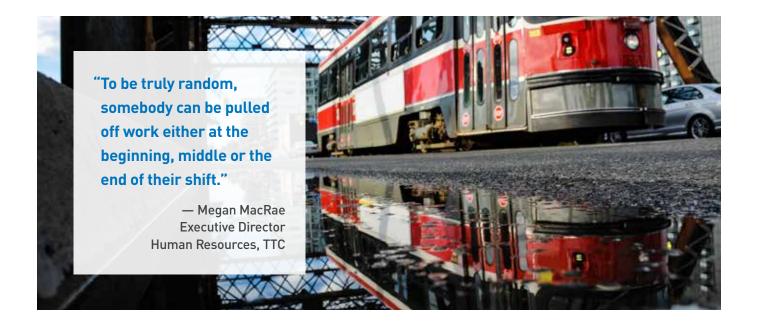


Protecting the Health and Safety of Ontarians

On its website, the government of Ontario has published tips for protecting the health and safety of people in Ontario and outlines restrictions as to where marijuana can be used. Under the new rules, medical cannabis will be subject to the same rules as tobacco smoking and electronic cigarette use. People will only be permitted to use recreational cannabis in a private residence.⁵

"They make it clear that you can't smoke marijuana in an enclosed workplace, so the duty to accommodate will require employers to consider if they have a space where they can permit employees to smoke or vape or take products, without causing second hand issues to other employees."

Asha Rampersad, Lawyer and HR Advisor
 Bernardi Human Resources Law



The Rigour of Introducing Random Testing at the TTC

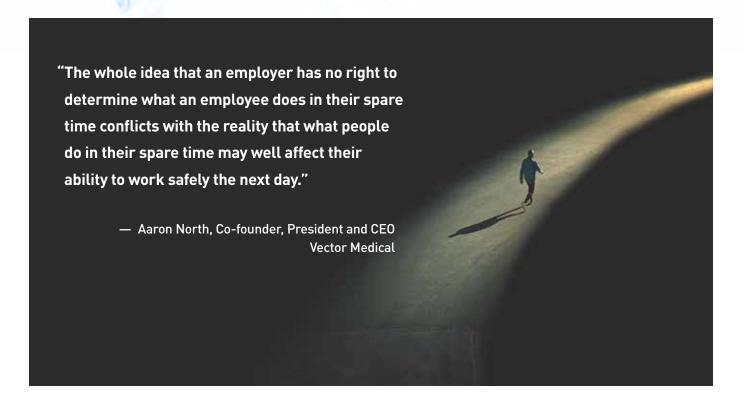
In this article, Megan MacRae, Executive Director of Human Resources at the TTC, shares information about the introduction and implementation of the TTC's drug and alcohol testing program.

In 2010, the Toronto Transit Commission (TTC) introduced post-incident, reasonable cause and pre-employment testing, and in 2011, the Board approved random testing. The program was subsequently launched in May 2017.

The TTC is a complex organization with effectively three businesses in one—transportation, maintenance and construction. In addition to considering the many needs and logistical implications of implementing testing across the business, they had to be mindful of the impact on commuters and taxpayers' dollars.

MacRae says that meeting with all of the department heads to understand their business needs and operations was imperative. "Our primary business is moving people so we needed to try to find a way to marry the absolute true random nature of testing with ensuring continuity of service, balanced with a program that would achieve its safety goals."

"To be truly random, somebody can be pulled off work either at the beginning, middle or the end of their shift. That is particularly arduous for our track workers because there is a very slim window of time at night to do track maintenance. That time is coveted by the management team and is critical to the City of Toronto."



The team worked with a third-party provider, as well as department heads and individual employees to examine random draw scenarios and manage employee pools. They have also relied on experts to provide the information needed to feel confident with their definition of impairment, including a toxicologist, forensic psychologist, addiction specialists, chief medical experts and their lab partner.

She stresses that testing is only one part of an overall comprehensive system to enforce safety in the workplace. The TTC combines rigorous training with easy tools, such as checklists, that people can use as guides to spot behaviours that may be cause for concern.

"The goal is to make the workplace as safe as possible and part of that is to recognize that there is a legitimate portion of our population who suffer from disabilities and can put safe work at jeopardy. We need to make sure that we, as a company, make them feel as comfortable as possible to come forward—ensuring confidentiality as though it's the Holy Grail. I can't overemphasize this."

Conclusion

Overall, the discussion revealed that the moderator and panelists were in agreement that safety should always come first, and, while it is important to protect employees' rights, employers have rights, too.

For employers figuring out how to protect their employees, customers and businesses, North suggests they keep tabs on what's happening with organizations that are leading the way. In addition to the TTC, he noted that Suncorp, the Railway Association of Canada and Canadian Nuclear Safety Commission are organizations to watch. The precedents they set will inform employers and help them figure out what to do.

From the conversation in the room and the interviews subsequent to the event, there are some clear suggestions for employers: Write policies in a way that leaves room for dialogue, consider the entire organization's needs—not just safety-sensitive positions—consult with stakeholders and experts and watch what other organizations that are leading the way are doing. This is new territory and it will take time and experience to truly understand all of the nuances of this issue.

"I respect the mission of the Ontario Human Rights Commission and I'm a firm believer in human rights and equal opportunities, but I'm also a firm believer in a safe workplace and protecting health and safety at work. And in our case, health and safety at work extends to the roads of the busiest city in Canada. When I look at the Ontario human rights policy, there is a lot of great information for employers, but in some respects, unless you are fluent in this matter or have experience in it, the policy could arguably be misleading or intimidate some folks from understanding the extent of their rights from an employer perspective."

— Megan MacRae, Executive Director Human Resources, TTC

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About the CEO Health + Safety Leadership Network

The CEO Health + Safety Leadership Network is a distinguished group of leaders who share a commitment to building sustainable businesses and communities. They come together twice a year to exchange knowledge and ideas in the pursuit of excellence and optimize their own organizational health and safety performance.



Join Us for the Next Roundtable Event

The next CEO Health + Safety Leadership Network Roundtable is taking place October 2018.

Watch for more information coming soon.

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Ready to Take the Next Step? Three Ways WSPS can Help

- 1. WSPS consultants can help build or adapt programs and policies to encompass the demands and implications of the new legislation and help identify prevention opportunities to mitigate risk.
- 2. Legislative Briefings and Workshops help employers understand the legislation and implications to health and safety; in particular, managing challenges in safety sensitive industries.
- 3. WSPS Mental Health First Aid (MHFA) instructors address a number of issues, including cannabis under the substance-related disorders section of the MHFA course. Public and on-site sessions are available.

Contact us today to find out more about these services at 905-614-1400, 1-877-494-9777 or email customercare@wsps.ca.

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Appendix A: References

- 1. House of Commons, Bill C-45, parl.ca.
- 2. Canadian Tobacco Alcohol and Drugs (CTADS), 2015 Supplementary Tables (Correction posted March 2017)
- 3. Leirer, V.O., Yesavage, JA., Morrow, DG., Marijuana Carry-Over Effects on Aircraft Pilot Performance. Aviat Space Environ Med. 1991, https://www.ncbi.nlm.nih.gov/pubmed/1849400
- 4. Canadian Human Rights Commission, Impaired at Work A Guide to Accommodating Substance Dependence, https://www.chrc-ccdp.gc.ca/sites/default/files/impaired_at_work.pdf
- Ministry of Attorney General, Proposed Rules and Consultation Results, Cannabis Legalization, Ontario.ca/page/cannabis-legalization

Appendix B: Additional Resources

Legal Advice	
Bernardi Human Resource Law LLP Gowling WLG Mathews Dinsdale Sherrard Kuzz, LLP	hrlawyers.ca gowlingwlg.com mathewsdinsdale.com sherrardkuzz.com
Drug Testing Services	
CANNAMM - Occupational Testing Services	cannamm.com

Vector Medical vectormedical.ca
- Occupational Medicine Experts

Workplace Medical Corp. workplacemedical.com
- Medical support and services

Services and Support

Canadian Centre on Substance Use and Addiction ccdus.ca

Centre for Addiction and Mental Health

Mental Health Commission of Canada

Morneau Sheppell

Ontario Drug & Alcohol Helpline

camh.ca

mentalhealthcommission.ca

morneaushepell.com

drugandalcoholhelpline.ca

Ontario Di ug & Acconot recptine uruganidat conotite
Ontario Human Rights Commission ohrc.on.ca
Workplace Safety & Prevention Services wsps.ca

Additional Reading

Canadian Centre for Occupational Health & Safety

- "Workplace Strategies: Risk of Impairment from Cannabis"

Global News

- "Just Months Away, Here's How Pot Legalization is Shaping Up in Canada", 2017

Human Resources Professionals Association (HRPA)
- "Clearing the Haze: The Impacts of Marijuana in the Workplace", 2017

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MacLean's

- "How Should Canadian Employers Prepare for Legal Marijuana?", 2017

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Office of the Parliamentary Budget Office

- Legalized Cannabis: Fiscal Considerations, 2016

- "Weed at Work", 2017

The Globe and Mail
- "Five Tips for Employers Creating a Marijuana Policy at Work", 2017

Toronto Star

OHS Magazine

- "Are Employers Ready to Deal with Pot in the Workplace?", 2018

ccohs.ca/products/publications/cannabis/

globalnews.ca

hrpa.ca

macleans.ca

ontario.ca/page/cannabis-legalization

www.pbo-dpb.gc.ca

ohscanada.com/features/weed-at-work/

theglobeandmail.com

thestar.com

Appendix C: Roundtable Participants

The following organizations participated in the October 2017 CEO Health + Safety Leadership Network Roundtable:

All Canadian Self Storage

Bernardi Human Resources Law LLP

Bruce Power

Carswell Media, Division of Thomson Reuters

Cementation Canada Inc.

Centre for Research Expertise in Occupational Disease

Centre for Research in Occupational Safety and Health

Chemistry Industry Association of Canada

Compass Group Canada

CSA Group

Fresh Communications

HASCO Health & Safety Canada

Levitt-Safety Limited

Longos

Minerva Canada Safety Management Education Inc.

MIRARCO Mining Innovation

Radiation Safety Institute of Canada

Responsible Distribution Canada

Rogers Communications

Service and Hospitality Safety Association

Smashblock

Sturm Consulting Inc.

The Beer Store

The New Zealand and Australian Lamb Company Ltd.

THINK'n Corp.

Threads of Life

Vector Medical Corporation

Workplace Safety & Insurance Board

Workplace Safety & Prevention Services

"Being open-minded, accommodating, honest and forthcoming with employees makes it easier for them. We all respect that there are privacy rules, but employees are clearly your best asset and being able to accommodate them through any sorts of issues, including this one, is what more employers need to be thinking of." — Ted Moroz CEO, The Beer Store



Let's Shape the Future of Health and Safety Together

CEOHSNetwork@WSPS.ca

Workplace Safety & Prevention Services™ is the largest health and safety association in Ontario, responsible for more than 165,000 member firms across the agricultural, industrial/manufacturing and service sectors.

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