

CCI Government Relations Committee – Road Map For Cannabis

	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Newfoundland & Labrador	Nova Scotia	New Brunswick	Yukon	Northwest Territories	Nunavut
1. Corporation Restrictions on Smoking:											
a. Irrespective of federal and/or provincial laws, can a Corporation restrict an owner or a resident from smoking any substance? And more specifically: i. Tobacco ii. Cannabis	Yes – case law (Supreme Court and CRT confirms that a properly worded bylaw restricting both is a valid and enforceable bylaw		Yes in the bylaws. Pending courts telling us differently.	Yes.	Yes for both as long as same is prohibited in the Corporation's declaration and/or rules. The Corporation could also prohibit by way of a bylaw, however, a bylaw specifically created for the purposes of prohibiting smoking in units and on the common elements may be susceptible to challenge as it could be argued that such a prohibition is not the proper subject matter for a bylaw, pursuant to the Condominium Act.	Yes to both if set out in Declaration and/or bylaws	YES	LG LeBlanc: Yes, and they have been amending their bylaws accordingly. In NB one cannot ban cannabis smoking if they allow regular smoking under our Smoke-Free Places Act. So, since a lot of people want to ban cannabis smoking, they are kind of obligated to ban all. Judy Orr: Yes. Some have amended their by-Law to ban smoking in units. Some have also used a grandfather clause. The question is how best to identify those exempted under the grandfather clause.			

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b. Is this true in all cases?	More likely than not but depends on whether the Human Rights Code is invoked.		Yes as long as it is reasonable and does not encroach on human rights.	Yes.	yes	Yes	Medical use would be an exception.	<p>LG Leblanc: No sure of the question but I am aware many have taken the steps to register an amendment to their by-law at least a introducing a ban on the common area. Some have extended the ban inside units but without any legal advice. Not sure if it would stand in our courts system. Has not been tested yet.</p> <p>Il know there are some cases in Ontario and out west where the courts have allowed the ban inside the private property, or the unit, but I have also heard our courts do not seem to accept established precedents from Ontario even if we're both are under Common Law.</p> <p>Judy Orr: It is case by case. I have not seen any governing documents that ban smoking in a unit. Most do have rules for banning smoking in certain areas. They are not all the same, but when a corporation learns about what another condo has, they amend their by-Law to strengthen their rules.</p>			

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c. Can a Corporation enact a no-smoking rule or amend the Declaration or equivalent articles of incorporation to do so?	It can pass a no smoking bylaw if the bylaw amendment obtains a ¾ vote approval		In SK we do not have a declaration, rules would not be sufficient as they are below the bylaws. The bylaws would need to be amended by 2/3 of all owners.	Yes.	Yes. See comment for Item 1a above.	Yes	Corps must amend the declaration to go smoke free.	LG LeBlanc: Yes, our condo Act would allow at least on the common area. A ban inside a unit would normally be against Fee Simple Real Property rights unless a court decision would be based on nuisance. Judy Orr: For amendments relating to common areas, a vote by owners to ban smoking is common. In Fredericton, I know of 3 corporations that have now banned smoking units. And several more are considering it. Several lawyers say the NB Human Rights Act does not protect smoking, even though it protects smokers. So, a person cannot be denied from buying a unit, but they could be denied smoking in their unit.			
d. Can a Corporation prevent cannabis from being used on a Corporation's property (common elements and exclusive use common elements) and/or the individual units or suites?	Yes – bylaws can control use of what happens in a strata lot and common property		Yes with an amendment to the bylaws or stopped as a result of nuisance or infringing on other owners rights.	Yes.	Yes. See comment for Item 1a above.	Yes	Yes to both	LG Leblanc: See answers above Judy Orr: The corporation can ban the smoking cannabis. Not that cannabis is legal, they cannot ban the use, except in the form of smoking.			
2. Human Rights and Medical Marijuana											

	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Newfoundland & Labrador	Nova Scotia	New Brunswick	Yukon	Northwest Territories	Nunavut
a. Is smoking marijuana for medicinal reasons an accommodation under the Human Rights code in your province?	Allowing it to be smoked is an accommodation but prohibiting smoking in a strata lot may still be valid		In some cases	It might be if the person's disability requires smoking of cannabis rather than ingesting edibles.	If an individual has a disability, as defined under the Human Rights Code, for which they have disability related needs that require the consumption of medical cannabis and if the medical component of the medical cannabis cannot otherwise be consumed in another form, smoking medical cannabis would be a form of accommodation (provided that there is a nexus between the smoking of medical cannabis, and the individual's disability related needs).	Not specifically	Not 100% sure but we believe it will become	LG Leblanc: Cannabis Control Act "medical use cannabis" means cannabis used for medical purposes (a) within the meaning of the Access to Cannabis or Medical Purposes Regulation under the Controlled Drugs and Substances Act (Canada), or (b) in accordance with a court order. (Cannabis à des fins médicales) 3(2) (a) This Act does not apply to an activity in respect of medical use cannabis, Judy Orr: I have been told, that medical cannabis does not have to be smoked. A condo owner/resident may be told they have to use another form of cannabis. This has not been tested yet, so it's difficult to say whether or not the smoking of medical cannabis can be banned for someone who has medical reasons.			
b. Can a Corporation ask for supporting documentation if smoking marijuana is asserted to be for medical reasons?	Yes – it is entitled to do so but must keep the documentation confidential		The individual must generally provide the corp with an objective assessment of their medical needs – not full disclosure	Yes. It can require that there person establish that they have a disability that requires smoking of cannabis.	Yes.	Yes we would say so	We believe they can.	LG Leblanc: Unsure Judy Orr: Not sure, but I know some condos feel they can ask or must ask. We need this answered.			
c. If medical use is properly substantiated, can a Corporation prohibit smoking and insist on other forms or methods of ingesting (e.g. edibles, oils, pills, etc.)	Yes, or at least insist that unless the user is housebound, that the user is to go elsewhere to smoke it.		Yes we think so based on other accommodations.	If smoking is the only effective method, then the Corporation would not be able to forbid it. There is evidence that all medicinal benefits can be obtained	Yes, provided that the medical component can be consumed in another form.	This would be part of the negotiations with the party and be an effort towards accommodation.	Unless smoking is medically required, then yes.	LG Leblanc: Unsure Judy Orr: That's what is being suggested in NB. But, is it legal? We need a lawyer from NB to respond.			
3. Cannabis Plants											

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a. Will a resident be permitted to grow medicinal marijuana in their unit?	By default they can unless a bylaw is passed saying they cannot		Yes unless restricted by bylaws.	Manitoba law will prohibit home cultivation generally but it will allow it if federal law is followed	Yes, unless restricted by a Corporation in its declaration, rules and/or bylaws.	Yes unless restricted by the bylaws or declaration	no	<p>LG Leblanc: According to the Cannabis Act the answer is yes as long as it is within private ownership with some restrictions.</p> <p>16(1) No person who is 19 years of age or older shall cultivate, or offer to cultivate, cannabis unless it is cultivated in his or her dwelling house and</p> <p>(a) the person is in lawful possession of the cannabis seeds or cannabis plants,</p> <p>(b) the cannabis plants</p> <p>(i) if cultivated outdoors, are surrounded by a locked enclosure having a height of at least 1.52 m, and</p> <p>(ii) if cultivated indoors, are cultivated in a separate locked space.</p> <p>Judy Orr: It appears so. However, in multi-story condos, there is a concern about the possibility of humidity, how an insurance company will respond, etc.</p> <p>I know several condos that have included a provision in their by-Law to disallow going cannabis plants. And many have included a rule to disallow going cannabis plants in any common areas, including balconies.</p>			
b. Will a resident be permitted to grow recreational cannabis in their unit and/or on their exclusive use common elements?	Yes unless a bylaw is passed prohibiting it and/or the # of plants and size is contrary to federal/provincial legislation		Yes unless restricted in bylaws.	No.	<p>Yes, unless restricted by a Corporation in its declaration, rules and/or bylaws.</p> <p>If a Corporation's governing documents do not contain such a restriction, residents would be permitted to grow plants in their unit and/or on their exclusive use common elements. However, they will only be permitted to do so in a manner that complies with provincial legislation, which prohibits the said plants from</p>	Yes unless restricted by the bylaws or declaration	no	<p>LG Leblanc: Most of the board I dealt with DO NOT WANT to allow growing. Some have added the ban in their amendments and others don't know what to do.</p> <p>Judy Orr: The condos that have made Provisions and Rules did not distinguish between growing for recreational use and medical use.</p>			

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c. Can restrictions be imposed, if so by whom: (a) government authorities (provincial or municipal); (b) the Corporation as for smoking?	Restrictions can be imposed by a strata corporation by way of a bylaw		Government, provincial and/or municipal. B) the Corporation can with a bylaw amendment	The Corporation can impose restrictions.	Restrictions can be imposed by provincial authorities, municipal authorities and a condominium corporation.	I believe all three can impose restrictions	corp	LG Leblanc: Restriction is imposed by public legislation and in the condo community the Corporation should be able to at least on the common areas. People here do have issues. A lot of time the Board wants the ban, not necessarily the owners and vice versa. I guess problems arrive on the use. Like cigarette smoke, chain smokers create more problems or nuisance than someone who smokes once a day. People don't see that in cannabis. Since we do have an older population of condo owners (estimate – 85% of owners) it is a philosophical right or wrong. Judy Orr: a) by amending the Act by amending the Declaration or by-Law			
d. Will growth of cannabis plants in the Corporation affect its liability? Its insurance?	N/A – too early to know		Yes it is a very large concern. It could negate insurance all together.	If cannabis is grown for medical reasons, it should not increase liability.	Potentially.	Possibly. Would have to be determined by the insurance industry or on case by case basis	we believe it could	LG Leblanc: At our last Directors forum here in Moncton last fall the question came up, some directors have indicated they have spoken with their insurance brokers and the reaction was they did not care. Don't know if the answer would be the same if there was a claim... while others who claimed they worked in the insurance industry claimed any kind of growth would be problematic to your policy, so don't know. Judy Orr: That is a question everyone is asking.			
4. Owner Responsibilities											

	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Newfoundland & Labrador	Nova Scotia	New Brunswick	Yukon	Northwest Territories	Nunavut
a. Does a unit owner/resident have an obligation to restrict transference of smoking particulates to common elements and other units?	They have an obligation not to cause a nuisance or do anything that unreasonably interferes with use and enjoyment by other residents		Yes	Unit owners generally have an obligation not to use their units in a way that interferes with use and enjoyment of other units or com. Elem.	Yes, if the transfer of smoke objectively constitutes a nuisance, and the Corporation's governing documents require that the owners take proactive action to prohibit nuisances.	Depends on wording of declaration and bylaws (i.e. if there is a nuisance provisions)	yes, as per the need to prevent nuisance	LG Leblanc: Not aware of any rules on this in NB, but I can say I am aware of lots of complaints. Judy Orr: Yes, this is a very common complaint and what has prompted so many corporations to make Provisions. The concern is the nuisance, but also the effects of second-hand smoke, especially on those with health issues. There is also an opinion that smoke in corridors could impact the sale or the value of units.			
b. If growth or cultivation of cannabis and cannabis products in units leads to disproportionate use of utilities, is the owner responsible for the delta (difference) in utilities?	Perhaps these costs could be downloaded if there is a submeter confirming consumption and a bylaw that identifies the 'type' of strata lot for purpose of the expense		Not by default, only if the bylaws or rules provide that an owner is responsible. The default is that utilities are based on unit factors. Some Corporations are looking at this.	Probably not as it is very difficult to monitor or measure.	Potentially.	Determined on case by case basis.	would require a document change or different meters	LG Leblanc: All utilities in the types of condos here, the majority of the time is individual to all units. We might have a few on a common hot water tank, water usage but it is very minimal. Judy Orr: I have not seen any corporation in NB with any regulations that			
c. If a unit owner/resident grows cannabis and it results in damage to units and common elements, is the owner responsible?	Yes as long as there is a proper chargeback bylaw in place		Yes the lesser of the damage or deductible (if applicable) is the owner responsibility.	Most declarations would make that owner responsible.	Yes, if there is an indemnity provision in the Corporation's governing documents that would provide same.	Only if the owner caused damage through act or omission and then only to limit of corps' deductible	yes	LG Leblanc: Should be. Judy Orr: Insurance is very complex. It seems that every insurance claim involves all parties (corporation + each unit with damage). I know a corporation recently added a provision that any garburator or water cooler that causes a leak will pay for all repair's costs. It hasn't been tested.			
5. Corporate Responsibilities											

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a. Does this create an obligation on the Corporation to create marijuana policies with respect to employees and workers on site, under provincial legislation? If yes which statute?	Worksafe BC and its regulatory requirements would apply to employees and workers on site.		Yes, Occupational Health and Safety and Employment Standards.	Most employees and workers on site would be working in common element areas where smoking is generally banned already.	no	It is up to the Corporation to develop such policies	No statute yet but it is something to be aware of in contracts	<p>LG Leblanc: We have a <i>Smoke-free Places Act</i> C-222 in NB, but it apparently doesn't apply to condo projects, only to public places, apartment buildings, restaurants etc...</p> <p>Managers and employers to ensure no smoking</p> <p>6(1) The manager of a place, area or vehicle where smoking is prohibited under this Act shall ensure that no person smokes in that place, area or vehicle.</p> <p>6(2) An employer shall ensure that no person smokes in a place, area or vehicle over which the employer has control other than in a place, area or vehicle where smoking is not prohibited under this Act.</p> <p>One of the exceptions under this Act are private residences. Would love to see a court interpretation on part (b) of this section. Would that be for condos????</p> <p>5.1 Despite paragraphs 3(d), (k) and (l), smoking is permitted</p> <p>(a) in a private residence, and</p> <p>(b) on the land on which a private residence is situated, unless the private residence is a multiunit residential building.</p> <p>Judy Orr: Can this not be addressed in any contract or job description?</p>			

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b. Can a Corporation implement sub-metering without unit owner approval? If yes, under what legislation? If not, what percentage of unit owner approval is required, if any?	Yes if they are installing a sub-meter onto common property or a common asset – per the SPA as the strata controls and manages common property and common assets		No To install submetering is to change the scheme of apportionment which requires 80% of all owners and no owner disagreeing with same. Also municipal has to approve submetering.	Sub-metering would likely be a change that does not require approval unless a meeting is requisitioned after notice is given. Then it is 50% of votes cast.	Generally, Corporations are required to notify owners as per Section 97 of the Condominium Act; however, owner approval may also be required pursuant to this section depending upon the costs associated implementing the sub-metering.	We have never encountered this issue here.	unsure.	LG Leblanc: Do not understand the question. Judy Orr: I am not sure if you mean sub-metering for just water. Most condo units are sub-metered for hydro. That probably has			
c. Does a Corporation bear risk if there is a transmission of smoke between units which is as toxic as second-hand tobacco smoke?	Perhaps if it affects an owner who has a medical disability and the strata corporation is not able to stop the transmission or stop the perpetrator causing the smoke		Yes.	So long as the Corporation does what is reasonable to mitigate transfer of smoke, it should bear no risk.	Yes, if the transmission is done in violation of the Declaration, rules and/or Bylaws and the Corporation does not enforce same. Is especially true if an occupant were to advise the Corporation that they suffer from a medical condition made worse by the presence of the second-hand smoke and were to provide the Corporation with medical documentation supporting their claim.	Yes, if the transmission is done in violation of the Declaration and Bylaws and the corp does not enforce. Corp could also be sued in nuisance.	not yet	LG Leblanc: Never tested in court here. Judy Orr: Corporation Boards in NB are struggling with this because their governing documents tell them they have to respond to anything an owner claims is interfering with the enjoyment of the own unit. I know of 1 corporation that received a threat of a lawsuit from a resident's lawyer. The Board said they had no provision that banned smoking. Yet the lawyer told them they had to "prevent" the smoke from entering his client's unit. The person had COPD and the smoke worsened her condition.			