



Flying High: The New Cannabis Industry

RINUS J. PAIS AND LOUIS VOULOUKOS



it from any other commercial establishment or outdoor area and cannot be entered from or passed through another commercial establishment. The premises on which the cannabis would be received or stored cannot be accessible to any other establishment or to the public.

Additionally, the Registrar's Standards for Cannabis Retail Stores and Retail Store Pre-Authorization/Opening Inspection ("RSA") outlines specific requirements for retail stores. For example, any leased premises must operate with a secure, high-resolution

surveillance system at all times. The surveillance system must record entrances, exits, and point of sale areas among other requirements.

The RSA further involves a two-step examination process of the leased premises. First, the AGCO will schedule a Pre-Authorization Inspection to confirm that store-specific requirements are met and to initiate the public notice process, wherein a public placard is posted at the premises for 15 calendar days. The AGCO evaluates all resulting comments from external parties. The second step involves evaluation of outdoor and indoor signage to ensure that no information refers to the price or distribution of cannabis, appeals to young persons, or is presented in a way that is false or misleading. It is critical for both landlord and tenant to work together and accept any changes in signage, surveillance, and store design.

The new cannabis industry offers many opportunities but as with any start-up, there are legal pitfalls to be avoided. We encourage anyone contemplating entry into this field to contact us for help in navigating the process. Our strong knowledge of cannabis law combined with our depth of experience in business and real estate law will help you comply and thrive.

When the federal government legalized the sale of cannabis in October 2018, it opened the door to a whole new industry, from growers and processors to marketers and retailers. It also produced a plethora of licensing regulations that differ from province to province.

In Ontario, licensing and authorizing retail cannabis stores is the responsibility of the Alcohol and Gaming Commission of Ontario ("AGCO"). The first 25 licences were distributed by lottery in January 2019; there were approximately 17,000 applications. One of the first cannabis stores to open is situated in Brampton; Lawrences gained significant experience in this new industry representing both applicants for licences and landlords of premises for potential cannabis stores.

The process for entering this new industry is not for the faint of heart. Within five days of the published lottery results, you must submit an application with a non-refundable \$6,000 fee payment. Further, you must provide a \$50,000 Letter of Credit and risk losing some of that if you are not open for business within three months of being selected as a winner. You must also obtain three separate licences from the AGCO at a total cost of \$10,750.

Financing is no easy task, either. The big banks are currently not interested in lending to the retail cannabis sector and current legal restrictions on ownership of a cannabis store make it difficult to obtain private equity financing. As the industry evolves, no doubt this will change.

There are many regulations concerning premises from which cannabis can be sold. A commercial retail space for selling cannabis must be negotiated in accordance with the requirements set out in the Cannabis Licence Act. It cannot be located within 150 metres from the property line of a school. The space must be enclosed by walls separating

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Beware of Joint Accounts with Adult Children

SABRINA GISMONDI

It is common for spouses to have joint bank and investment accounts. Joint accounts between spouses often make estate administration easier and avoid the probate process when the first spouse dies. Clients often inform us that they have added their children as joint account holders for convenience, to simplify the administration of their estates and to avoid probate tax. However, holding accounts jointly with your adult child/children may result in some unintended and undesirable consequences. Consider these five important factors before deciding whether to add adult children as joint account holders:

1. The funds could form part of your estate and be subject to probate taxes, even though you hoped they wouldn't.

Typically, joint accounts held with a spouse pass automatically to the surviving spouse by "right of survivorship" and do not form part of your estate when you die.

In contrast, joint accounts with adult children are presumed to form part of your estate, unless there is clear evidence of your intention to benefit your child. In our experience, many parents do not document their intentions.

- 2. You risk unequal treatment and conflict among your children.** If you have more than one child and you have a joint bank account with one of them, is it your intention that the funds in the joint account pass to that child in addition to what that child will receive in your Will? If this is your intention, your children will not be treated equally. If you intended to set up the account for convenience only and have the funds included in the amount divided among all your children, you may not avoid probate tax unless you carefully document the legal arrangement.

- 3. The funds could be subject to your child's divorce proceedings.** If your child is married and goes through a separation or divorce, the funds in the joint account could be fought over in family law proceedings and be subject to division with your child's now ex-spouse.

- 4. The funds could be exposed to your child's creditors.** The funds may be available to your child's creditors, who may be able to take steps to freeze the joint account. In the worst-case scenario, the funds in the joint account could be seized to satisfy their debts. The same may be true if your child goes into bankruptcy.

- 5. By putting funds in joint names, you may lose control of the funds.** Adding your child as a joint account holder means that you are giving them access to your funds. We have seen instances where the child abuses the arrangement.



Joint accounts with adult children are presumed to form part of your estate, unless there is clear evidence of your intention to benefit your child.

Put it in Writing

Joint accounts can be an effective part of an estate plan, but must be used with caution. If you would like to hold accounts jointly with your adult child/children for convenience and/or for estate planning purposes, we can help you confirm your intentions in your Will or prepare documents to confirm your intentions and expectations, reducing the risk of unintended and undesirable results on your death.



Sabrina Gismondi is an Associate in Lawrences' Wills, Trusts and Estates Group. She advises individuals on a wide range of estate planning matters and prepares Wills, Trusts, and Powers of Attorney for Property and Personal Care and related documentation. She can be reached at (905) 452-6878 or sgismondi@lawrences.com.

Wrongful Dismissal: Why Mediation Works

JOSEPH FIGLIOMENI

When a dispute arises, it usually benefits both sides to resolve the dispute quickly and confidentially. If the circumstances demand legal action, careful thought should be given to which action will resolve the dispute best. Taking a case to court can be time-consuming, expensive, and risky for both sides. In some cases, the risk is justified, but if there is an alternative, it is usually better to explore that first.

Mediation can be a very effective alternative. It is usually faster, less expensive, and more discreet than full-blown litigation. Unlike the formality of a Court proceeding, which can be very intimidating, a mediation is very much like a normal business meeting and therefore less daunting.

In mediation, the parties and their lawyers meet with a trained mediator (usually a senior lawyer or a retired Judge with experience in the relevant area of law). The mediator acts as a neutral third party to facilitate negotiation of an agreement. The mediator does not take sides or make decisions. All discussions between the parties are confidential and cannot be used in court if the case does not settle.

Mediation is particularly effective for resolving employment law issues. The majority of these are “wrongful dismissal” cases, which include situations where an employer and employee disagree on the amount of compensation employees are entitled to when their employment is terminated.

These cases are generally not factually or legally complex. There are usually only two parties, the employer and the employee. There tend to be few contested facts and only a few critical documents, such as a contract of employment, pay stubs or T4s, and a letter of termination. The governing legal principles are well-known to experienced employment lawyers, who are expected to quickly and cooperatively summarize their clients’ respective positions for the mediator, who then suggests reasonable terms for bridging the gap between what an employer is willing to pay and what an employee is willing to accept.

Mediation can be a very effective alternative. It is usually faster, less expensive, and more discreet than full-blown litigation.

For employers, mediation is an opportunity to resolve a potential legal battle quickly and confidentially. This eliminates the risk that a legal proceeding will interrupt their continuing business operations by dragging customers, suppliers, and other employees into the fray. It also avoids the potential of exposing sensitive information about an employer’s business that might otherwise be disclosed during litigation and eventually form part of the public Court record.

Employees benefit from being able to discuss their case in a much more comfortable setting than a Courtroom. Most employees are extremely stressed and vulnerable after a job loss. Mediation is also an



opportunity for employees to negotiate terms that a Court may not be inclined to award, such as a favourable letter of reference or favourable tax treatment of any amounts paid by the employer.

Mediations are usually scheduled for three hours. Knowing the strengths and weaknesses of your case, being prepared, and being willing to make sensible concessions are key to arriving at a satisfactory settlement during mediation.

At Lawrences, our litigation lawyers have significant experience representing employers and employees in mediations. We guide our clients through the process to achieve the best outcome possible.



Joseph Figliomeni is a lawyer in Lawrences’ Litigation Group. His litigation practice encompasses employment, commercial contract, real property, civil fraud and estate disputes. Although Joe thrives in the courtroom, he understands the inherent risks involved in litigation and strives to achieve resolution on terms that accomplish his clients’ objectives. He can be reached at (905) 452-6888 or jfigliomeni@lawrences.com.

Life at Lawrences

Lawrences' lawyers lead active lives in the profession and in the community. Here are some of their latest achievements.



Joseph Figliomeni



Kiran Gill



Angela Kwok

New Edition of *Dispositions Without Trial*

The third edition of *Dispositions without Trial* is now published. The first two editions of this important text were written by Lawrences' late partner, **Robert van Kessel**. Lawrences litigator **Ed Upenieks** took over as author of the third edition, now joined by lawyers **Joseph Figliomeni**, **Kiran Gill**, **Angela Kwok**, and law student Julia Chumak, with assistance from law clerk Laura Desroches. In the foreword to the book, the Honourable Mr. Justice Kenneth G. Hood notes, "The third edition of *Dispositions Without Trial* should be welcomed by those counsel who want to ensure timely and affordable access to justice for their clients."



Junaid Malik

New Arrival

Lawrences Litigation Group welcomes its new associate, **Junaid Malik**, who joins us after articling with a prominent international law firm in downtown Toronto. Junaid is looking forward to working on a wide variety of cases from business and commercial disputes to real estate litigation. Besides English, Junaid is also fluent in Hindi, Punjabi, and Urdu. Welcome to Lawrences, Junaid!



Ed Upenieks

Streamlining Case Management

Lawrences' head of litigation **Ed Upenieks** has been part of a working group to study how to move cases through the legal system more efficiently. The pilot project for One Judge Case Management was begun on February 1, 2019 and on February 25, Ed was part of a webinar panel, hosted by the Ontario Bar Association, about the way the pilot program will streamline the civil justice system. We're proud of Ed's contribution to easing the burden of litigation..

At the Podium

Ed Upenieks and **Junaid Malik** were part of a recent presentation on Small Claims Court Practices and Procedures put on by Osgoode Professional Development. Ed spoke on motion advocacy and preparing witnesses for trial. Junaid assisted with the paper and the advocacy demonstration.



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