Proposed Legislation to Address Smoking and Vaping of Medical Marijuana

On March 10, 2016, the government introduced Bill 178, *Smoke-Free Ontario Amendment Act, 2016*. The proposed amendments to the *Smoke-Free Ontario Act* (SFOA), in conjunction to proposed amendments to the SFOA Regulation 48/06, and regulations under the *Electronic Cigarettes Act* (ECA), are designed to strengthen smoking laws, including additional prohibitions regarding the smoking or vaping of medical marijuana, and additional prohibitions on the indoor use of electronic cigarettes (e-cigarettes). Click here to access Bill 178 and click here to access the proposed regulations.

### Proposed Amendments Related to the Smoking of Medical Marijuana

Bill 178 would allow the government to prescribe products and substances in regulations that would be subject to regulation under the SFOA. It is anticipated that the proposed amendments to the SFOA and further amendments to Regulation 48/06 would establish that the current “no smoking” rules that apply to smoking tobacco would also apply to medical marijuana.

If medical marijuana is prescribed by regulation in this manner, it would mean that smoking medical marijuana would be illegal in a number of locations specified in Bill 178. These are locations in which the smoking of tobacco is prohibited under the SFOA, including:

- all enclosed public spaces;
- all enclosed workplaces;
- nine meters from any entrance or exit of a public hospital, private hospital, psychiatric facility, long-term care home, and independent health facility; and
- the outdoor grounds of public hospitals, private hospitals and psychiatric facilities.

Pursuant to the bill and once a product or substance has been designated, employers and proprietors would have explicit obligations to:

- ensure compliance with any prohibitions on the smoking of prescribed products or substances;
- give notice of the prohibition to each person in a place or area as set out in the regulations;
- post any prescribed signs respecting the prohibition, including in washrooms, as set out in the regulations;
- ensure that a person who refuses to comply with the prohibition does not remain in the place or area; and
- ensure compliance with any other obligation as set out in regulations.
Other exemptions in the SFOA for smoking tobacco would not apply to medical marijuana, including controlled smoking areas in residential care facilities (e.g. long-term care homes), and traditional use of tobacco by Aboriginal persons. Also, under the proposal, a specific exemption would permit smoking medical marijuana in scientific research and testing facilities.

The proposed legislation would continue to be enforced by inspectors appointed under the SFOA. These inspectors are employees of local public health units.

**Proposed Amendments Related to E-Cigarettes**

In parallel to the amendments proposed in Bill 178 and proposed regulatory requirements related to the smoking of medical marijuana, the government is also proceeding with general amendments to the ECA relating to the use, sale, distribution, display and promotion of e-cigarettes, including where medical marijuana is the substances being used.

The government is proposing amendments to Regulation 337/15 made under the ECA (not yet in force) such that using an e-cigarette (vaping) would be prohibited in enclosed workplaces, enclosed public places, and other prescribed places. This prohibition would apply regardless of the substance being vaped. This proposal would require a change to the regulation.

This would mean that vaping, including the use of a vaporizer to consume medical marijuana, would be prohibited in a number of locations, including:

- all enclosed public spaces;
- all enclosed workplaces;
- nine meters from any entrance or exit of a public hospital, private hospital, psychiatric facility, long-term care home, and independent health facility; and
- the outdoor grounds of public hospitals, private hospitals and psychiatric facilities.

Under a previous proposal and in the current proposal, specific exemptions for e-cigarettes would permit e-cigarette use/vaping, including the use of a vaporizer to consume medical marijuana, in designated outdoor areas on hospital grounds. **This exemption is to be phased out by January 1, 2018.** As with the SFOA, the legislation would also permit e-cigarette use/vaping, including the use of a vaporizer to consume medical marijuana in scientific research and testing facilities.

As with the SFOA, the legislation would be enforced by inspectors appointed under the ECA. These inspectors are employees of local public health units.

The government is also proposing several other regulatory changes in respect of e-cigarettes:

- Clarification in regulation that the definition of “electronic cigarette” in the ECA includes any substance manufactured or sold for use in an e-cigarette device (e.g. the liquids to be vaporized);
- Permission for parents, guardians and caregivers to supply e-cigarettes to minors for medical marijuana purposes;
• Expansion of the list of places where e-cigarettes are prohibited from sale (list already includes public hospitals, psychiatric facilities, pharmacies and several other types of premises); and
• Establishment of additional rules for the display and promotion of e-cigarettes at places where they are permitted to be sold.

Additional Comments

Bill 178 has currently undergone First Reading in the Legislature. The OHA expects that the bill will receive a number of days of substantive debate in the Legislature and a review by a Legislative Committee prior to the bill being passed.

The government currently has an open regulatory consultation on the proposed legislation. The deadline for comments to the government is April 24, 2016.

For more information or to provide comments, please contact Jeff Bagg, Senior Legislative Advisor at 416-205-1374 or jbagg@oha.com.