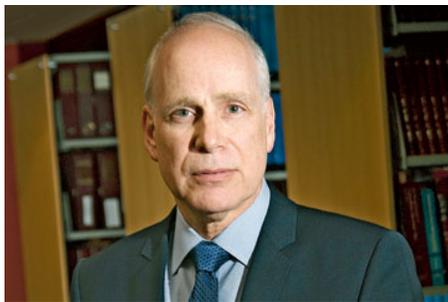


ADR can help with cannabis law

Good method for addressing condo disputes

December 10, 2018 | Written By Meagan Gillmore



Marvin Huberman says he recently founded a centre that will be a 'central hub for dispute resolution in the cannabis space within Canada.'

Alternative dispute resolution methods could help resolve disputes arising from the legalization of recreational cannabis in Canada, say lawyers.

"This whole change in the law is really a game changer for all kinds of expectations and ways that society is going to look at and treat people and corporations and the

government," says Marvin Huberman, a Toronto mediator and lawyer.

For example, Huberman, along with Jonathan Jacobs, a lawyer and alternative dispute resolution specialist in Toronto, recently founded the Canadian Cannabis Dispute Resolution Centre.

The centre aims to be a "central hub for dispute resolution in the cannabis space within Canada," says Huberman. He and Jacobs evaluate clients' problems, suggest solutions, arrange and participate in resolution methods, including arbitrations or mediations, or refer clients to alternative dispute resolution professionals who are also part of the network.



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Since launching in September, they've mainly dealt with disputes relating to commercial property, including those at condominiums, says Huberman.

He says the centre is focused on civil disputes, and he expects to be asked to help resolve conflicts in a wide range of areas, including securities regulations, zoning, concerns related to international travel and employment.

"This whole change in the law does really impact people's lives in all types of things: in their private lives, in their public lives," he says.

Alternative dispute resolution may be especially important for disputes arising at condominiums where residents may complain about cannabis smoke or smells, says Lou Natale, a partner in the commercial real estate group at Dale & Lessmann LLP in Toronto, who practises ADR on behalf of condominium corporations.

Natale has been working in condominium law for more than 20 years, but he says he's noticed an increase in recent years of clients contacting him about complaints related to tobacco smell.

"What I'm finding now is condos are taking advantage of this cannabis rule to also implement tobacco rules," he says. Some corporations who wanted to create rules prohibiting recreational cannabis use in the buildings did not have similar rules prohibiting the use of tobacco, says Natale.

Residents often complain about smells coming from other units, he says, and when there isn't a specific rule banning a substance in a building, he recommends corporations treat the concern like a nuisance complaint.

Often, residents can minimize offensive smells by installing air purifiers or turning fans on, he says.

"We tend to find the informal way is the best way to handle it, but if we have to go beyond that, then we have to go to the next level," Natale says, which is where ADR can become useful.

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“We encourage a lot of interaction before it gets to that legal, formal step of ADR,” he says. Many corporations were rushing to create policies about the use of recreational cannabis use in their buildings before possession and growing of recreational cannabis became legal on Oct. 17, says Michael Campbell, senior associate at Deacon Spears Fedson + Montizambert solicitors in Toronto.

Any disagreements related to these policies need to be sent to mediation, and if necessary, arbitration.

The Condominium Act requires “the corporation and the owners to agree to submit a disagreement between the parties with respect to the declaration, by-laws or rules to mediation and arbitration.”

“If the dispute is under any of the governing documents, then it’s mandatory to submit it to alternative dispute resolution,” says Campbell. “There’s not really a choice.” But these decisions are confidential, so they can’t be used to help settle disputes later in similar situations.

“The corporation has an obligation to keep confidential records that relate to one particular unit or another,” says Campbell.

“If you have a decision in relation to one particular unit, you can’t necessarily take that decision and apply it like you could with a court decision in the context of a dispute with a different unit — even within the same complex. There’s going to be inconsistencies, inevitably from complex to complex and potentially between unit to unit by virtue of the confidentiality of arbitration decisions.”

The confidential aspect of alternative dispute resolution could be useful in other contexts, such as employment, says Darryl Hiscocks, counsel at Torys LLP in Toronto, who advises companies in areas related to human resources, employment and labour law.

Hiscocks says he hasn’t been contacted by many employers with concerns since recreational cannabis became legal in October, but he envisions it could cause conflicts if employees are disciplined for being impaired by recreational cannabis at work or if their employer assumes they are.

“The sky’s the limit really in terms of potential disputes that could emerge around the use of cannabis in the workplace,” he says.

Keeping disputes confidential through alternative resolution methods could benefit both employers and employees, Hiscocks says.

“Although increasingly it seems in Canada that the stigma associated with using cannabis is slowly diminishing, nevertheless, I think it’s fair to say that the stigma still exists, which would lend itself to a more private

recent decision to further cull the number of benchers at Convocation means that several longtime members will lose the rights either to speak or vote in the next few months. Do you agree with this move?

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form of resolution in many different contexts and circumstances as opposed to court," he says.

Employers may not want a workplace dispute about cannabis use to be public knowledge, especially if they work in areas such as health care or financial services or "anywhere employers might be concerned that this could become laundry to be aired in public," Hiscocks says. Public disclosure could also damage an employee's future job prospects.

Jacobs says he expects to see the Canadian Cannabis Dispute Resolution Centre receive more inquiries related to municipal zoning and bylaws in the coming weeks as Ontario's municipal governments, elected shortly after legalization, determine what they will allow within their jurisdictions.

"I think the most interesting areas are yet to be determined because of the recent municipal elections that have happened," he says.

Jacobs says that, at the Canadian Cannabis Dispute Resolution Centre, alternative dispute resolution can include facilitating discussions between disagreeing parties, as well as the more traditional methods of negotiation, arbitration and mediation.

He and Huberman have both taken the time to consider how the "dense" laws about legalized recreational cannabis impact various areas of life — knowledge mediators often don't have time to acquire before a process begins.

While the centre is based in Ontario, the scope of the work is national, says Huberman. They have already spoken with individuals in British Columbia and several Atlantic provinces about joining their roster of professionals, he says.

Huberman says this new centre is not formally affiliated with the ADR Institute of Ontario, of which he is the current president.

"The disputes that are going to arise in this space are numerous. Some of them are complex and others are fairly straightforward," Huberman says, noting the importance of considering how regulations about cannabis vary between provinces and territories and municipalities.

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