



Legal Education
Society of Alberta

62104.00

Pot Topics: Legalization of Cannabis

Edmonton, Alberta

Calgary, Alberta

Chair

Alexis Moulton

McLennan Ross LLP
Calgary, Alberta

Faculty

Shannon Belvedere

City of Calgary, Law Department
Calgary, Alberta

Dave Berry

Alberta Gaming, Liquor, and Cannabis
Commission
Edmonton, Alberta

Heidi Besuijen

Reynolds Mirth Richards & Farmer LLP
Edmonton, Alberta

Dan Bokenfohr

McLennan Ross LLP
Edmonton, Alberta

Marta Caufield

City of St. Albert
St. Albert, Alberta

Maurice Dransfeld

McLennan Ross LLP
Edmonton, Alberta

Dr. Brent T. Friesen

Alberta Health Services
Calgary, Alberta

Dr. Chris Sikora

Alberta Health Services
Edmonton, Alberta

LEGAL EDUCATION SOCIETY OF ALBERTA

These materials are produced by the Legal Education Society of Alberta (LESA) as part of its mandate in the field of continuing education. The information in the materials is provided for educational or informational purposes only. The information is not intended to provide legal advice and should not be relied upon in that respect. The material presented may be incorporated into the working knowledge of the reader but its use is predicated upon the professional judgment of the user that the material is correct and is appropriate in the circumstances of a particular use.

The information in these materials is believed to be reliable; however, LESA does not guarantee the quality, accuracy, or completeness of the information provided. These materials are provided as a reference point only and should not be relied upon as being inclusive of the law. LESA is not responsible for any direct, indirect, special, incidental or consequential damage or any other damages whatsoever and howsoever caused, arising out of or in connection with the reliance upon the information provided in these materials.

This publication may contain reproductions of the Statutes of Alberta and Alberta Regulations, which are reproduced in this publication under license from the Province of Alberta.

© Alberta Queen's Printer, 2018, in the Statutes of Alberta and Alberta Regulations.

The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

© 2018. Legal Education Society of Alberta. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior permission of the Legal Education Society of Alberta.

ISBN-10: 1-55093-705-7
ISBN-13: 978-1-55093-705-3

Cannabis: Challenges in Multi-Unit Housing

Pot Topics: Legalization of Cannabis

LESA LIBRARY

Prepared by:

Heidi Besuijen

Reynolds Mirth Richards & Farmer LLP

Edmonton, Alberta

For presentation in:

Calgary, Alberta – November 16, 2018

Edmonton, Alberta – November 22, 2018



Legal Education
Society of Alberta

CANNABIS: CHALLENGES IN MULTI-UNIT HOUSING

Introduction 2

Residential Tenancies 2

 Legal Underpinnings to Residential Tenancies in Alberta..... 2

 Implementing a Prohibition of Cannabis in Residential Tenancies..... 5

 Enforcing a Prohibition of Cannabis in Residential Tenancies 6

Condominiums 7

 Legal Underpinnings to Condominium Property in Alberta 7

 Implementing a Prohibition on Cannabis..... 8

 Enforcing a Prohibition on Cannabis in Condominiums..... 9

INTRODUCTION

Many people in Alberta reside in communal living arrangements which offer a different array of benefits and burdens than those incidental to property rights in fee simple. Tenants in rental units and unit owners in condominium corporations can each be limited in how they live their lives in their homes. With the federal government's move to legalize cannabis in Canada, the question of whether landlords or condominium corporations must permit residents to engage in cannabis consumption or production has arisen. This paper covers how cannabis can be addressed in these circumstances, the limits on executing a prohibition and the difficulties that might be encountered in enforcing one.

RESIDENTIAL TENANCIES

Legal Underpinnings to Residential Tenancies in Alberta

As a starting point, it is important to recognize that a residential tenancy is a contract which is overlaid by statute that governs the arrangements within that contract. Alberta residential tenancies are governed by the *Residential Tenancies Act*, SA 2004, c R-17.1 ("*RTA*").¹ The *RTA* affords certain rights and protections to tenants in Alberta and it is not possible to contract out of those rights and protections (see *RTA* section 3).

The *RTA* defines the landlord's covenants which are fundamental to the landlord's performance of the lease:

16 The following covenants of the landlord form part of every residential tenancy agreement:

- (a) That the premises will be available for occupation by the tenant at the beginning of the tenancy;
- (b) That, subject to section 23, neither the landlord nor a person having a claim to the premises under the landlord will in any significant manner disturb the tenant's possession or peaceful enjoyment of the premises;
- (c) That the premises will meet at least the minimum standards prescribed for housing premises under the *Public Health Act* and regulations.

For the purposes of this discussion, the landlord's covenant not to significant disturb (or allow another to so disturb) a tenant's possession or peaceful enjoyment is the most important.

¹ It is important to confirm that a particular rental arrangement is one to which the *RTA* applies. Section 2 of the *RTA* sets out a series of living arrangements which are exempted from it including arrangements wherein a room is rented in a premise where the landlord also resides and dorm style accommodations at educational institutions (as two examples).