

# Confusion over pot laws has consequence

Ottawa must act quickly to clarify the new marijuana laws. When the legal bright lines get clouded in smoke, risk abounds.



The longer it takes the government to fill in the details of its new pot policy, the longer the gap between law and reality will persist, write Gerald Chan and Benjamin Kates. (BRENNAN LINSLEY / AP)

By **GERALD CHAN AND BENJAMIN KATES**

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With dispensaries outnumbering ice cream shops in some parts of Toronto, a casual observer could be forgiven for thinking that marijuana is legal in Canada. Pot has always fallen in somewhat of a “grey area” – compassion clubs, for instance, have operated since the 1990s – but this is something

altogether different.

Make no mistake: at least for now, these neighbourhood drug stores are prohibited by law (subject to certain constitutional arguments available to those selling to documented medical patients). Owners, employees, and customers face potential criminal charges; owners can also be prosecuted and fined under municipal zoning and licensing bylaws; and health practitioners issuing prescriptions can be disciplined by their professional regulator.

Our political and law enforcement leaders have emphasized the illegality of dispensaries in recent public statements. In June, after police raided Toronto's dispensaries for the second time in a month, Chief of Police Mark Sanders said, "It's illegal to sell marijuana unless you have a licence from Health Canada." (Canada's current regulatory regime, the Marijuana for Medical Purposes Regulations (MMPRs), only allows marijuana to be sold by licensed producers to patients with a prescription by mail order.) Justice Minister Jody Wilson-Raybould has said that marijuana laws should be obeyed and enforced while they remain on the books. Toronto Mayor John Tory has described the city's dispensaries as "bogus" and likened their proliferation to the "Wild West."

And yet, for all the rhetoric, there they are: dozens of dispensaries beside drycleaners, restaurants and shoe stores — all seeking to preemptively corner the market with the federal government's announcement that marijuana will soon be legally available. The longer it takes the government to fill in the details, the longer the gap between law and reality will persist.

At the federal level, we have only a general sense of what the new regime might look like. The government has promised to "legalize, regulate, and restrict" marijuana so that possession is removed from the criminal law but the drug is kept "out of the hands of children." Meanwhile, at the municipal level, Toronto's Licensing and Standards Committee declined to take any steps towards developing a regime for regulating the dispensation of marijuana such as the one adopted by Vancouver's City Council in June 2015. Instead, the committee commissioned a staff report due to be considered in October.

The federal taskforce responsible for hammering out the details of the new regime was struck on June 30, and given less than a year to develop an entire framework from scratch. This is no small feat. Canada has never regulated marijuana for recreational use. The existing regulatory regime, the MMPRs, speaks only to medicinal use. And even that regime is still being perfected: a February ruling of the Federal Court struck down part of the MMPRs as unconstitutional and gave the government until August 24 to put new regulations in place.

It may be a tall order, but the government must act quickly to clarify the new rules going forward. When the legal bright lines get clouded in smoke, risk abounds. At the moment:

- Owners, employees and customers all face potential criminal charges. In the aftermath of its May 26 raids, Toronto police laid 186 charges of possession for the purpose of trafficking and 71 charges of possession of property obtained by crime. Customers who purchase marijuana are in

possession of contraband, and police may obtain evidence of those purchases if they discover membership lists in the course of a raid;

- Dispensary owners operate in a precarious business environment, particularly as new laws may continue to prohibit dispensaries. On top of criminal charges, stores operating in Toronto can face stiff penalties for municipal licensing and zoning violations that carry maximum fines of \$25,000 for individuals and \$50,000 for businesses. Inventory can be seized;
- Medical practitioners who assist patients in accessing marijuana through illegal dispensaries can face regulatory sanction. In May, the B.C. College of Naturopathic Physicians suspended a naturopath for providing medical consultations to dispensary patients.

The gap between law and reality is in no one's interests. It undermines respect for the rule of law and opens the door to selective enforcement. Having uncaged the magic dragon, all levels of government must now act quickly to put a new, coherent structure in place.

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