



Canadian  
Federation of  
Apartment  
Associations

Fédération  
canadienne des  
associations  
de propriétaires  
immobiliers

## **MARIJUANA LEGALIZATION AND REGULATION**

**CFAA SUBMISSION TO**

**HEALTH CANADA,**

**THE DEPARTMENT OF PUBLIC SAFETY AND**

**THE ATTORNEY GENERAL OF CANADA**

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Contact information:

John Dickie President, CFAA president@cfaa-fcapi.org 613-235-0101	David Hutniak Chair, CFAA, and CEO, LandlordBC davidh@landlordbc.ca 604.733.9440 ext. 202
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## **EXECUTIVE SUMMARY**

Multi-unit dwellings are a living environment which is different from detached homes, and it is critical that the new marijuana laws take that fact into account. In a detached home, what an owner-occupant does largely affects only themselves, whereas in multi-unit dwellings, an occupant's actions in one unit can very often have significant effects on the occupants of other units.

### **Marijuana smoking**

It used to be that second hand smoke fell in the category of an interference which needed to be tolerated, and that still usually applies to some occasional second hand tobacco smoke. However, now in most places in Canada, a steady flow of second hand tobacco smoke is considered to be a substantial interference with the reasonable enjoyment of other tenants if at least one tenant complains.

Marijuana smoke has a unique smell, which some people find pleasant enough, but others find unpleasant. Once smoking marijuana for recreational purposes is legalized, it will almost certainly be dealt with like smoking tobacco. In many jurisdictions, it is treated that way now. As the Task Force recommended, **smoking marijuana should be banned anywhere that smoking tobacco is banned.**

### **Growing marijuana**

Growing marijuana in multi-unit dwellings, or rented dwellings, is more problematic than marijuana smoking. Concerns include:

- Safety hazards
- Interference with other tenants
- Potential damage to the building
- Potential liability for the landlord and risk to tenants and the mortgage holder
- Potential cancellation of building insurance or the calling of a mortgage, with financially disastrous results for building owners.

CFAA submits that it is not practical to permit limited home growing in multi-unit dwellings or rented dwellings. Enforcement of the limits on growing would be extremely difficult, both for landlords and for the police.

Due to all of those problems, **CFAA urges the government to prohibit all marijuana growing in multi-unit dwellings, and in rented dwellings of any size.**

CFAA agrees with the Task Force that **the government should prohibit the processing of marijuana in all dwellings.**

## **MAIN SUBMISSION**

The Canadian Federation of Apartment Associations (“CFAA”) represents the owners and managers of close to one million residential rental suites in Canada, through 11 associations across Canada and direct landlord memberships. The private rental housing sector provides close to four million rental homes for nine million Canadians of all ages, incomes and situations. The rental homes range from 850,000 apartments in high-rise buildings, through 1,800,000 apartments in buildings under five storeys to some 525,000 rented single family homes.

Multi-unit dwellings are a living environment which is different from single family homes, and it is critical that the new marijuana laws take that fact into account. This submission begins with some background on apartment living and the current laws on tobacco smoking. (Later in the submission we address factors that apply also to rented single family homes.)

### **The realities of apartment living**

In a single family home, what an owner-occupant does largely affects only themselves, whereas in multi-unit dwellings, an occupant’s actions in one unit can very often have significant effect on the occupants of other units. Provincial landlord and tenant laws recognize that fact. Those laws draw a line between interference which must be tolerated, and interference which is a substantial interference with the reasonable enjoyment of other tenants, which landlords are responsible for stopping or preventing.

When landlords impose rules about tenant activities in their apartments, the purpose of most of the rules is to protect the rights and interests of other tenants. For example, leases commonly prohibit the playing of musical instruments after 11:00 pm or before 8:00 am. That is because most people sleep between those times and have a basic right not to be unduly disturbed during those times.

As another example, people can talk in their homes. If people speak loudly and the walls are thin, a neighbour may hear the speaking, but generally the neighbour has to tolerate that noise. However, loud partying or playing loud music often reaches the level of substantial interference with the right to quiet enjoyment of other tenants, especially if done late at night.

It used to be that second hand smoke fell in the category of an interference which needed to be tolerated, and that still usually applies to some occasional second hand tobacco smoke. However, now in most places in Canada, a steady flow of second hand tobacco smoke is considered to be a substantial interference with the reasonable enjoyment of other tenants if at least one tenant complains.

### **Current laws on tobacco smoking**

With some restrictions as to grandfathering, landlords in most or all provinces can ban smoking in rental buildings. Non-smokers rights groups want landlords to ban smoking in all apartment buildings. Health Canada is considering whether to advocate for provincial bans on smoking in multi-unit dwellings, even though those apartments are people's homes. Most provinces currently ban smoking in common areas of multi-unit dwellings.

### **Marijuana consumption**

Marijuana smoke has a unique smell, which some people find pleasant enough, but others find unpleasant. Once smoking marijuana for recreational purposes is legalized, it will almost certainly be dealt with like smoking tobacco. In many jurisdictions, it is treated that way now.

The public needs to be educated that the legalization of marijuana does not mean that it can be smoked anywhere at any time. Playing a radio or the piano and smoking tobacco are legal, but in rental apartments the permitted times and volumes are limited.

As the Task Force recommended, smoking marijuana should be banned anywhere that smoking tobacco is banned. Federal law should make that clear, or clearly permit that.

In addition, landlords should be able to ban the smoking of tobacco or the smoking of marijuana. Different segments of the population have different views of what is acceptable regarding tobacco smoking or marijuana smoking, and landlords should be able to provide their customers what they want, which should provide choice in the rental market.

In the limited situations where marijuana is legitimately prescribed for medical use, ingested marijuana may offer all of the benefits without any of the negative impact on other tenants. In situations where smoking is the optimal way for the disabled person to consume the marijuana, then the provincial Human Rights Codes may well require landlords (and other tenants) to accommodate the medical user, even in a building where smoking tobacco or marijuana is banned. Alternately, a landlord may be able to accommodate a medical user by allowing them to terminate their tenancy early or by allowing them to transfer to another building where smoking is permitted.

### **Growing marijuana**

Growing marijuana in multi-unit or rented dwellings is more problematic than marijuana smoking. Concerns include:

- Safety hazards
- Interference with other tenants
- Potential damage to the building
- Potential liability for the landlord and risk to the tenants and mortgage holder
- Potential cancellation of building insurance or the calling of a mortgage with financially disastrous results for an innocent building owner.

The Task Force recommended that up to four plants of up to one meter in height be allowed in all dwellings, which implicitly included rented dwellings and dwellings in multi-unit buildings, whether rentals or condominiums. We suggest that recommendation is problematic for the reasons which follow. CFAA urges the government to prohibit all marijuana growing in multi-unit dwellings, and in rented dwellings of any size.

#### *Ideal marijuana growing conditions*

Unless otherwise noted, the information below has been obtained from the website <http://www.ilovegrowingmarijuana.com> and in particular the section [/create-best-climate-marijuana-grow-room/](http://www.ilovegrowingmarijuana.com/learn/creating-the-best-climate-for-marijuana-growth/). The website provides recommendations for those who want to grow marijuana. The site also sells seeds, plants and equipment. It is a “pro-marijuana” website.

The *optimal grow temperature* is at or above 20 to 25°C, which is higher than most apartments are kept, except during the summer. A higher temperature accommodates more moisture in the air.

The *optimal humidity* for growing marijuana plants is 40% to 70%, whereas the humidity which is healthy for buildings and for people is 35% in the winter and 50% in the summer. Besides growers’ elevating humidity to maximize output, marijuana plants themselves produce much more moisture than other houseplants as per the evidence accepted by the BC Supreme Court in *Allard v. Canada*. Higher humidity can lead to mould and condensation which can damage window frames and walls, and create health hazards for people. Source: Federal-Provincial Advisory Committee on Environmental and Occupational Health.

Indoor marijuana plants need *ample light* to facilitate growth. That light is best supplied by high-pressure sodium (HPS) lights. For ideal yields, a grower may use a 600W or above HPS light, which is significant power usage. Using such high wattage lamps can easily create a fire hazard.

*Marijuana plants require CO<sub>2</sub>* to grow. In indoor operations, it is sometimes necessary to supplement CO<sub>2</sub> supply, as atmospheric CO<sub>2</sub> can be used up quickly without free flow of outside air. This can create unbreathable air.

*A substantial amount of marijuana can be harvested from a single plant of less than one meter in height.* Modern best practices use the “screen of green” technique (SCROG) in which a grower directs heads on the plant laterally, which results in the plant growing more marijuana, more efficiently, while the plant’s height remains below 1 meter. Under the care of an expert grower, a single plant can yield up to a pound or more (up to 500g) of dried marijuana. Depending on whether a grower starts with a clone or a seed, it takes 2 to 3 months for a plant to be ready for harvest. The Task Force recommendation is to allow households to have four plants under 1 meter in height at any given time. That would allow an expert grower to grow 16 to 24lbs of marijuana per year, which is vastly more than any household would need for personal consumption.

Growing marijuana *requires a good airflow system*. Good airflow is key to regulating temperature and humidity, as well as CO<sub>2</sub>. There are two components: moving air around the grow area, and exchanging air from the outside. Ideal regulation systems will control temperature, humidity and smell. The site suggests a marijuana grower purchase an after-market ventilation system. Like the heating lamps, such an after-market ventilation system could easily place an unacceptable power draw on the building wiring, raising the risk of electrical shorts or fire.

Apartment building heating and ventilation systems are not designed to create the necessary humidity and air flow for growing marijuana. Instead they are designed to keep people healthy and comfortable. Tenant adaptations to favour marijuana growing will inevitably interfere with keeping people healthy and comfortable.

Apartment building heating and ventilation systems are not designed to work with many or any after-market ventilation systems, and to require landlords to adapt their building heating and ventilation systems would be highly unfair to landlords, who are renting residential accommodation, not a mixed use apartment and greenhouse.

A common technique for drying marijuana quickly is to dry it in the oven for an extended period of time. That would also add to extra power draw and add to the risk of fire.

Another concern is that marijuana plants give off a skunky smell which can be very intense, especially during the flowering and drying stages. While this smell is enjoyed by some, there are those who will be offended by the smell, especially those that are sensitive to smells.

CFAA submits that it is not practical to permit limited home growing in multi-unit dwelling or rental units. Enforcement of the limits on growing would be extremely difficult, both for landlords and for the police, as the Canadian Association of Chiefs of Police has said. What could be enforced is a ban on all growing in dwellings other than single family homes, or a ban on inside home growing entirely.

#### *Concerns re municipal bylaws and insurance and mortgage practices*

In addition to the concerns listed above, there are other concerns we are aware of through our members' dealings with municipalities and insurance companies.

Marijuana growing on any scale is often done with significant amounts of fertilizer and pesticides, and sometimes with substantial amounts of water. As well, large or penny-pinching growers often bypass electricity meters to avoid high electricity costs and the danger of being caught through the high electricity consumption. (Even tenants in high-rise apartment buildings have been known to do that.) It is because of the dangers of chemical residues, of mould and of dangerous modifications of electrical wiring that many municipalities have enacted marijuana grow-up remediation by-laws. The by-laws assume that any marijuana growing will do damage to the building, and require remediation. That is not unfair if the grower is the owner of the building, but when the

grower is a tenant, the landlord is left with the onerous and often prohibitively expensive obligation, and that is unfair.

When any marijuana is grown, the remediation requirements include engineering reports, and invasive inspections to check the back of drywall for mould. We are aware of a landlord in Ottawa whose tenant grew a small number of plants in a grow tent. There appeared to be no damage. However, the mortgage company and the city required her to obtain an engineer's report and air testing and soil testing at a cost of over \$10,000 in order to prove that there was no problem. With a grow-op of size, the remediation costs can run up to \$200,000 to gut and restore a single family home, or an apartment.

In addition, insurance companies currently tend to cancel insurance policies when they learn any marijuana has been grown. That leaves a landlord with no liability insurance (putting both the landlord and the tenants at risk). That also leaves the landlord and the mortgage holder with no coverage if the building is destroyed or damaged by fire, even if the fire is unrelated to the marijuana.

Mortgages cannot be renewed without insurance, and mortgage companies tend to demand payment as soon as they learn any quantity of marijuana has been grown in the building or the apartment. That is a costly problem, which can result in a devastating financial loss for an innocent owner. Vandalism is a crime, but growing marijuana in a rental unit can easily cause a much more costly loss to an owner than almost any act of vandalism.

### *Summary of the concerns*

To re-cap, marijuana growing in apartments, or rented dwellings, raises the following serious issues:

- Safety hazards
  - Due to excess electricity usage, on wiring not designed for the power draws
  - Due to increased humidity, bringing the risk of mould
  - Due to unbreathable air due to CO<sub>2</sub> being used up
- Interference with other tenants
  - Due to the skunky smell
  - Due to the safety concerns
- Due to the potential for excess growing, which could draw criminal activity to the building, despite legalization
- Potential damage to the building
  - Due to the excess power draw
  - Due to the excess humidity, bringing the risk of mould and damage to window frames and walls
- Due to the incentive to add ventilation incompatible with the existing heating and ventilation systems

- Potential liability for the landlord and risk to tenants and the mortgage holder
  - Due to the facts of marijuana growing, combined with
    - municipal remediation bylaws, and
    - insurance company practices
- Potential cancellation of building insurance or the calling of a mortgage with financially disastrous results for building owners.

Due to all of those problems, CFAA urges the government to prohibit all marijuana growing in multi-unit dwellings, and in rented dwellings of any size.

CFAA agrees with the Task Force that the government should prohibit the processing of marijuana in multi-unit dwellings, and in rented dwellings of any size.

### **Summary of recommendations**

*The following are CFAA's recommendations which go contrary to the Task Force, or vary or add to the recommendations of the Task Force:*

1. Educate the public that the legalization of marijuana does not mean that it can be smoked anywhere at any time.
2. Ban smoking marijuana anywhere that smoking tobacco is banned. (The Task Force recommended the provinces and municipalities bring marijuana smoking under the rules which apply to smoking tobacco.)
3. Allow landlords to ban the smoking of tobacco or the smoking of marijuana.

#### **4. Prohibit marijuana growing in multi-unit dwellings, and in rented dwellings of any size.**

*The following are recommendations of the Task Force, with which CFAA agrees:*

#### **5. Prohibit the processing of marijuana in multi-unit dwellings, and in rented dwellings of any size.**

6. Measures to enhance public education about the harms and risks of marijuana consumption.
7. Measures to limit access to marijuana by persons under 18, subject to provincial legislation increasing the age limit to 19 to parallel the legal drinking age in provinces where that is 19.
8. Establishment of a strict system for the production and distribution of marijuana, thereby addressing concerns about the quality, safety and potency of marijuana legally available.
9. Continued enforcement of laws and sanctions against possession, production, and distribution of marijuana outside the regulated legal framework.