

Opportunities for law firms ‘virtually limitless’ with cannabis legalization

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Canada’s leading corporate law firms are embracing the opportunities posed by the legalization of recreational cannabis, a change that will affect a wide range of legal areas from tax law to privacy law, from banking to employment.

“It’s a lawyer’s dream,” Eileen McMahon, a regulatory specialist in drug law, said in an interview.

“The reason that this is so interesting to lawyers is that it touches on practically every area of the law,” said Ms. McMahon, who works at Torys, which has offices in Toronto, New York, Calgary, Halifax and Montreal. “Regulatory law. Corporate-commercial law, in terms of financing. Cross-border law, in terms of your export-import implications in the U.S. Real estate law: Where do you set up and why? Tax law: How can we set up our business such that this is a tax-effective structure? IP [intellectual property] law: How do we protect our brand, our patents? Privacy law. Lobbying law.”

The biggest single policy change to affect the legal profession in decades has brought the big corporate firms new clients that include cannabis producers and those directly involved with them, such as banks and insurers.

“If you’re a bank, do you open accounts for cannabis companies that are not yet legal?” asks Adam Dodek, dean of common law at the University of Ottawa, which offers two courses in cannabis law. “How do you lend money to these companies whose assets are cannabis? How do you seize that collateral? It’s not like equipment you can then sell at auction.”

But law firms' clients also include others dealing with legalization – employers such as police forces or transportation companies with concerns about sobriety, or landlords or condominium boards that want to have rules about cannabis smoking, or growing, on site.

“One of the big challenges for employers is should they treat alcohol and cannabis any differently,” Joël Dubois, an employment lawyer who co-teaches one of the University of Ottawa courses, said in an interview.

And much of it is uncharted territory, with Canada in the vanguard.

“Canada has ventured out in a way that no other Western country has,” Bruce MacFarlane, a former federal prosecutor, and most recently Manitoba’s deputy attorney-general, said in an interview. “The opportunities for the legal profession are virtually limitless.” (He said it would be impossible to estimate in dollar figures at this point.)

Legalization also poses a major challenge for law firms, said Mr. MacFarlane, a co-author of a new textbook on cannabis law, and the author of a 1979 text on drug law, now in its fourth edition.

Traditionally, he said, lawyers try to build on precedent, but “we’re now looking at a field that is so broad and has so few precedents it will provide an opportunity for lawyers to be extremely creative, trying to building on basic principles from other fields and come up with solutions that courts will find sound in law, creative and fair. That will be difficult when you’re out there alone with very little in the way of touchstones.”

Corporate law firms have been gearing up for the new era.

“As the clients become larger and more sophisticated, their needs become larger and more sophisticated. So you need to have a bigger, more robust team, much as it would be in any other large-scale industry,” Ranjeev Dhillon, a lawyer at Bennett Jones, said in an interview.

Even so, he said, many firms are not entirely comfortable having a high public profile in cannabis law.

“There’s a fear that if you are involved in the cannabis industry and you cross the border, you could get a lifetime ban for promoting the breaching of a federal law in the U.S. You can imagine, law firms take that stuff very seriously. It’s a big reputational hit.”

But business is booming.

“Everyone and their brother wants to start a cannabis company,” said Cheryl Reicin, a colleague of Ms. McMahon’s at Torys. “You can’t imagine. We have a tsunami of inquiries here. So who’s going to be the winner? We’re trying to provide our companies with not only bread-and-butter documents but with strategic advice.”

Companies are already looking to other markets. For instance, some expect Germany, which allows medical cannabis, to legalize recreational use.

And that raises a host of unknowns, which is where lawyers come in.

“Remember, as lawyers, our job is to reduce risk,” Ms. Reicin said. Canadian firms would have to consider where it would be most cost-effective to grow products for Germany. “As you do this, you have to think about, well, will Germany want imports or will they, like Canada, want to develop their local industry,” she said

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