

Legalization of Pot will make Construction Less Safe

There has been much talk and speculation over the oncoming legalization of marijuana and what its impact on our society will be. This discussion and the consultations taking place are welcomed, but we have noticed that they fail to include any mention of the serious impact on health and safety in the workplace. Problems already exist due to legalized drugs, including legal medical marijuana, in the workplace.

The Ontario Government consultation, in fact, does not even mention the impact that this will have on Health and Safety in the workplace. This is, in our opinion, a glaring omission.

The major scandal in the United States and Canada over over-prescribed narcotics for pain has spread to the courts and mirrors the lawsuits that were launched against the Tobacco producers.

In Ontario, the WSIB has been concerned for some time over the use of pain medication and its impact on injured workers.

Recently, there have been some very high profile examples of the attitude being taken towards drugs in the workplace: on one site, workers were upset due to another worker's use of medical marijuana anywhere he liked. This led to conflict, and the contractor who did his best to accommodate him, had no choice but to remove the offending worker, as the others were refusing to work with him. Of course, the contractor is being sued.

On another high profile case, the Elk Valley Coal decision of the Supreme Court upheld the employer's right to dismiss an employee who was under the influence of drugs when they had an accident. (Readers can access this case on the OGCA website as we had status along with others on this case.)

Closer to home, the TTC has obtained the right to administer random alcohol and drug testing despite strong resistance from the union representation, and once implemented, delivered immediate results.

The AAA reports that fatal motor vehicle crashes have more than doubled in states that have legalized the recreational use of marijuana.

[\(https://newsroom.aaa.com/2016/05/fatal-road-crashes-involving-marijuana-double-state-legalize-drug/\)](https://newsroom.aaa.com/2016/05/fatal-road-crashes-involving-marijuana-double-state-legalize-drug/)

The challenge in the construction industry is very clear; the employer has the responsibility to employ only workers who are fit for duty. However, they also have the responsibility to accommodate medicine used for medical or other conditions. How do you confirm the fitness for duty of a person using drugs or with a prescription that impairs their judgment or ability to operate machinery or complete the tasks necessary on a construction site?

The OGCA has been raising these questions for over a year, and so far, the answer provided by the government is a non-answer.

It appears that, up until now, the old adage that the rights of the many will not outweigh the rights of the few has governed how the courts and others have dealt with this issue of workplace drug use. Time and again, the request for testing has been rejected by the legal system. Often two things are cited: a person's right to privacy and the potential danger to the public.

With the coming legalization of marijuana, what will be the rules?

Why should the so-called rights of the few for privacy override the rights of the public and the thousands of workers in construction to be protected from a serious threat? Where we know that a person has a problem, we are required to assist them and we do, but once legalized, what stops workers from stepping off site to have a joint with lunch? That's assuming that, as with tobacco, our sites will be smoke free. As stated, we have had issue with workers smoking on site who have medical clearance for marijuana.

As with the Elk Valley case, if a worker does not disclose his addiction or that they are under the influence, how are we to determine if they are fit for work? How do we provide a safe work environment for the other workers?

The TTC was able to obtain the right to conduct random testing. A key part of the argument was "public safety." That makes sense with buses, subways, and street cars on the roads, interacting daily with the general public. One can see the logic of such a point.

Yet those thousands of men and women who work on construction sites everyday should not be afforded the same level of protection. Why?

Are the lives of construction workers any less valuable than those of the public? Will our families not grieve just as hard when we suffer losses? Why is there a distinction? Is it assumed that just because a site or work area has barriers or fencing around it, that the public is safe so no need to worry about what happens within those confines?

Think again. Look at the massive infrastructure works underway across the Province, many being carried out in tight confines within cities: tunneling, cranes, heavy equipment of all kinds. Our sites are dangerous and we work damn hard to make them as safe as we can. But now, the powers that be feel that we don't count somehow when it comes to protecting our people from the impact of unknown or recreational drug use. The rights of the many mean nothing!

Is it unreasonable to assume that an operator could be under the influence as in Elk Valley and no one knows? Could they crash a piece of machinery, drop a load off a crane or some other incident that would not only injure or kill other workers but spill outside that tidy wall around the site and put the public at risk?

Think of a school where we are often renovating or building additions while the school is in operation!

The answer is obviously yes. Yet we still refuse to face reality to take this seriously. We still see massive efforts to stop any form of testing or protective measures. Why? Are not the lives of every worker valuable? Do they not deserve the same protection as the “general public” and does not the General Public risk exist and therefore need to be protected?

Coroner’s juries in Ontario and other studies have found that about 35 - 40 percent of fatal workplace accidents that they have investigated have impairing substances in their body. Once these changes come into place, one has to fear these numbers will go up. (R. v. Metron Construction Corp., [2013] O.J. No.3909 (C of A))

It is unbelievable that, even with that number, we have not taken steps to ensure it stops and to make our sites safe for all workers.

Legalization of cannabis is coming, so now is the time for a serious discussion on how to deal with the problem, and it is time that the rights of the many, in this case, supersede the rights of the few.

Construction sites must be a no go place for any kind of impairment due to drugs or other intoxicants and the tools to ensure that must be given to the industry.

At present, there are no roadside detection devices that can effectively measure marijuana impairment, and no legal marijuana impairment threshold. The same problem will exist on our construction sites unless other tools are made available.

The well-being of our workers is paramount. Failure to address this makes a mockery of all the efforts put forward to ensure our sites are safe and healthy places to work.

The OGCA will be submitting a paper to the Provincial Consultation but stronger leadership is needed here before the usual suspects try to derail any reasonable measures needed to protect workers.