

# Newsletter



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Avocats • Lawyers

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## Home-grown cannabis any time soon?

*On September 3, 2019, approximately one year after the legalization of recreational cannabis in Canada, the Quebec Superior Court declared the provisions of the Quebec law governing cannabis that prohibited possession and production of cannabis plants in the province, unconstitutional (Murray Hall c. Procureure générale du Québec, 2019 QCCS 3664). This decision could have serious impact for insurers or landlords, among others.*

Quebec's Cannabis Regulation Act has been in force for several months and we had previously pointed out the contradictions between the federal and Quebec laws. At many RSS-sponsored conferences on the subject, we highlighted this inconsistency, with the federal law allowing the possession and production of up to four cannabis plants while Quebec law prohibits any possession or production of cannabis plants.

However, the Superior Court confirmed that by prohibiting an act that the federal legislature now intended to allow, Quebec's legislature unlawfully interfered with the exclusive jurisdiction of

the federal Parliament in criminal matters. The Court therefore concluded that sections 5 and 10 of Quebec's cannabis law must be declared unenforceable under the doctrine of jurisdictional exclusivity.

In other words, these provisions are inoperative because they are in conflict with the federal law with respect to the possession and production of cannabis plants.

More importantly, the Court also refused to temporarily suspend the prohibition.



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A partner with RSS and a litigator, Benoît has considerable experience of the numerous aspects of civil and professional liability, especially in relation with sports and leisure.

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In sum, the impact of this Superior Court decision is that, for the moment, it is permissible to own and grow up to four cannabis plants in Quebec, in accordance with federal law. It remains to be seen what the Quebec Court of Appeal will decide. However, before the Court of Appeal overrules the Superior Court, or unless Quebec's legislature changes its law, there will certainly be several months of uncertainty, which is not necessarily good news for insurers or landlords: will such culture increase

the risk of fire because of the use of lighting to stimulate growth? Is the risk of damage caused by watering systems increased? Is the risk of breaking and entering increased? Insurers should specifically inquire with their insured whether they intend to cultivate cannabis.

For any question arising from this uncertainty, do not hesitate to call on RSS's team, who are familiar with the cannabis industry and litigation.

