

## Condos tougher than feds on licensed grow ops

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The first call that condo boards and managers usually make after discovering a marijuana grow op in their complex is to police. But when a grow op holds one of 21,500 federal licenses to produce medicinal marijuana, there is little or nothing that police can do, as residents of a Brampton neighbourhood recently discovered.

Though police may lack the power to shut down a licensed grow op, condo corporations have a number of tools to deal effectively with grow ops inside units that cause damage to the common elements or neighbouring units or create a nuisance to nearby occupants.

Before we kill anyone's buzz, however, we recognize that using medicinal marijuana to relieve pain and suffering has become accepted in our society. It also makes sense that someone must supply and distribute the product. The problem arises when people grow marijuana in a condo unit (be it a residential, commercial or industrial unit) in a way that:

- causes damage to the unit, common elements or other units;
- creates a health risk from airborne compounds;
- increases the risk of fire, water escape or creates a dangerous condition;

- overloads the electrical service;
- uses disproportionately more electricity, water or gas (if not sub-metered);
- discharges poisonous chemicals or waste into the sanitary sewers;
- attracts crime and criminality to the vicinity;
- emits noxious fumes or odours that disturb nearby occupants; or
- violates some other provision of the declaration, by-laws or rules.

What blows us away is that some licensed growers figure that their federal permit gives them permission to run roughshod over the condo documents or the rights of their neighbours. Stranger still is that some condo directors seem to accept that proposition and will ignore the increased risk of damage to the complex and nuisance to surrounding occupants. Our advice is to "just say no."

The tides are now turning. After reviewing its licensing regime, Health Canada recently announced that personal production of marijuana for medicinal purposes in private residences will no longer be allowed as of March 31, 2014. This will eliminate any remaining justifications for producing marijuana in residential units and outlaw it entirely. Though it is not

clear if police will begin responding to reports of small grow ops in dwelling units after April 2014, this change paves the way for condominium corporations to deal with marijuana cultivation in residential units as criminal activity.

As for marijuana producers operating in commercial or industrial condo units, where production might be lawfully permitted, there may still be some value in calling police. In fact, the police may be best-qualified to determine whether a producer is properly licensed and is abiding by the terms of the license. Some aren't. In June 2013, Toronto police seized \$2-million worth of marijuana at an industrial location duly licensed by Health Canada. The license holder was allegedly found to be cultivating 2,000 plants when its license specified a maximum of 300 plants.

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Editor:  
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Even if police find no criminal activity or licensing violations, commercial or industrial condo occupants operating a grow op that poses any of the hazards or nuisances cited above must still answer to the local municipality's building and by-law enforcement departments. Chances are that a problematic grow op is violating one or more local by-laws, such as the building standards or zoning by-laws. When it comes to zoning, marijuana cultivation might properly be considered as agricultural use which may be authorized in specific parts of the city and prohibited in others.

If a by-law enforcement officer is contacted and visits the property, condo boards should be prepared to undertake any work that the city inspector might require to be performed immediately. And also note that it is quite possible that the city officials might detect and issue citations for anything else they observe to be contrary to local codes, even items that the board has no problem with or that relate to other units or the common elements.

Even if police and local by-law enforcement departments offer no help, condo corporations still have the power to enforce the Condo Act and their declaration and rules. Most condo declarations contain general restrictions against using units in a way that will increase the risk of fire or other perils or increase insurance premiums. Further, declarations and rules usually contain prohibitions on noise, nuisance and odour transmission from one unit to another. Finally, many declarations describe the permitted occupancy and use of units (i.e., "for purposes permitted in municipal by-laws, zoning by-laws and provincial codes," or restrictions on commercial uses). These provisions have been successfully applied in preventing uses such as short term rentals and might therefore be similarly applied in "legal" grow op situations.

A board may also rely on sections 19, 98 and 117 of the Condo Act to gain access to a unit and inspect it to determine whether any common elements have been affected in the construction and operation of a grow op and ensure that no dangerous activity or condition exists as a result that may damage the property or cause injury to an individual. If any unauthorized alterations or dangerous activities are detected, the board can demand and enforce compliance with the Act and the condo's governing documents and either have the grow op removed or reconstructed in a safe and compliant manner.

While we don't favour allowing grow ops in condo complexes, we don't suggest that condo boards and managers "narc out" owners or occupants without compelling reasons, evidence and due diligence. However, boards have a duty to manage the condominium in the best interests of the owners and to reasonably enforce their declaration, rules and the Act. One or a combination of the above strategies can help manage and control a licensed grow op in a unit without letting the situation go to pot.

**WELCOME!**

**HOWIE SHAPIRO**  
B.Comm, JD/JD



Howie is GMA's articling student for 2013-2014. He is expecting his call to the Bar in June 2014. He recently graduated from the University of Windsor Faculty of Law, in the Dual Degree Program. Howie earned both a Canadian and American law degree. He spent time working with Community Legal Aid and Pro-Bono Students Canada during his time at Windsor.

Howie has a keen interest in Condominium Law and is gaining valuable experience in the areas of Civil Litigation, Real Estate and Corporate Law. Howie is recently a member of the Ontario Bar Association, Toronto Lawyers Association and the Canadian Condominium Institute.

**SEE YOU IN NOVEMBER!**

Join us at the 17th Annual Condominium Conference, November 15 and 16, 2013 at the Toronto Congress Centre!

The theme of the conference is "The Future is Now" and look for the following GMA speakers:

- |                   |   |
|-------------------|---|
| Bob Gardiner      | Session 2B, November 15, 2013, 11:15-12:30<br>Human Rights and Wrongs   |
| Warren Ragoonanan | Session 4B, November 16, 2013, 10:15-11:00<br>Avoiding Icebergs & Mutinies: Keys to Successful Navigation by Your Condominium Board |
| Chris Jaglowitz   | Closing Session, November 16, 2013, 1:15-2:45<br>Living Under a New Condominium Act   |



## introducing our **new** partner

### Christopher J. Jaglowitz

Bob Gardiner, Gerry Miller and Mark Arnold are pleased to announce that Chris Jaglowitz has joined the GMA partnership.

Chris has practiced condo law and litigation at GMA since 2003. He founded and has published the Ontario Condo Law Blog since 2008. He was named an Associate of the Canadian Condominium Institute in 2008, joined the Condominium Management Standards Council in 2009 and became its chair in 2011. Chris received the ACMO President's Award in 2011 and chaired the Ontario Bar Association's civil litigation section in 2012/2013.

This year, on the government working groups and expert panel, Chris advocated for meaningful Condo Act reform and manager regulation. He will continue serving condominium corporations, managers and unit owners.



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