

## Labour & Employment

# Cannabis dispensary workers unionize, but legal questions remain

By Tom Venetis

(May 25, 2017, 9:52 AM EDT) -- Employees at the Toronto-based Canna Clinic marijuana dispensary have formed a union, raising questions of how employees working for a company involved in what is currently an illegal business can unionize.

The 40 employees at the Canna Clinic on Broadview Avenue approached Unifor, Canada's largest private sector union, to organize a vote among the employees to formally unionize. Canna Clinic operates seven locations in Toronto and six in British Columbia. On its website, Canna Clinic describes itself as "Canada's leading provider of medical cannabis products and accessories."

Businesses such as Canna Clinic operate at an unusual time right now in Canada as it is technically not permitted to offer medical marijuana to clients.

Health Canada has licensed only 38 marijuana producers in Canada. These producers can distribute medical marijuana by mail to authorized users. Storefront marijuana sales for medical purposes is currently not permitted.

On April 13, the federal government introduced legislation that would establish a legal framework for the production, sale, distribution and possession of marijuana. The provinces, territories and municipalities would be permitted to set their own licensing, distribution and retail sales rules and even to establish provincial zoning rules for cannabis businesses.

Katha Fortier, Unifor's assistant to the national president Jerry Dias, said Unifor is waiting for the Ontario Labour Relations Board to send an official certification letter for the union. Once that letter arrives, Unifor can begin helping establish a bargaining unit that will then elect a bargaining committee. That committee will negotiate a contract between Canna Clinic and its employees.

"As with any workplace that joins a union, the employees want to have a voice in the workplace," said Fortier. "They want to exercise their right to a collective agreement, to negotiate for wages and benefits with the employer."

Fortier said while there may be legal issues around the business, the Labour Relations Board sees the people working for the clinic as employees with all the rights and protections that come from being employees.

"They work for an employer and are paid a paycheque by this employer," added Fortier. "For all intents and purposes, the Labour Relations Board agreed they are a legal employer."



David Doorey, York University and Osgoode Hall Law School

"The Labour Relations Board does not normally concern itself with whether an employer is or is not engaged in selling unlawful products," said David Doorey, associate professor of labour and employment law with York University and a director at Osgoode Hall Law School. "Its job is to apply the *Labour Relations Act*, not to interpret and enforce the *Criminal Code*. Canna Clinic agreed that it is the employer of the employees, and no one involved in the application suggested otherwise. Employment protection statutes do not cease to apply to Walmart employees if Walmart sells illegal products. Similarly, if Canna is engaged in unlawful activities, then its employees work for a law-breaking employer."

Doorey said that it is an interesting question whether a court would enforce an employment contract between Canna Clinic and its employees if one of the parties disputed the legality of the contract in a lawsuit to enforce the contract.

"In essence, Canna is hiring employees to sell illegal drugs," he continued. "A court could feasibly refuse to enforce such a contract on the grounds of illegality contrary to public policy. It is also an implied term of employment contracts that an employer will not order an employee to perform illegal acts. The Canna Clinic employment contract appears to conflict with some well-known common law contract principles."

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