

1.

WHAT IS A CANNABIS SOCIAL CLUB:

1.1 A cannabis social club is:

- An association of likeminded adults,
- Who are exercising their constitutional rights to association¹ and privacy²,
- In order to possess, cultivate, consume and share their cannabis in a private space;
- Which private space is created by the club, physically and through its constitution and rules;

2

IS IT ILLEGAL?

2.1 This question is difficult to answer as Cannabis possession, consumption, cultivation and distributing had to date only been decriminalized and the South African Government is in the process to assent laws which will govern same.

2.2 Therefore currently there exists no precedent's in our law in terms of cannabis social clubs and as such we are on the forefront in terms of the industry and its self-regulatory compliance, to standards set by those willing who operates within the industry.

2.3 We are of the view that we are operating within the confines and prescripts of the legislation, however we cannot give any guarantees that our interpretation and applications of the laws are correct, nor that no other interpretation exists.

¹ Section 18 of Chapter 2: Bill of Rights;

² Section 14 of Chapter 2: Bill of Rights;

2.4 It is our view that currently cannabis cultivation and consumption has been decriminalized by the constitutional judgment:

Minister of Justice and Constitutional Development and Others v Prince (Clarke and Others Intervening); National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton (CCT108/17) [2018] ZACC 30; 2018 (10) BCLR 1220 (CC); 2018 (6) SA 393 (CC); 2019 (1) SACR 14 (CC) (18 September 2018)

2.5 The most relevant portion of the judgment reads as follows:

"

6. *The cross-appeal is upheld in part to the extent that the reference in the order of the High Court to "in a private dwelling" or "in private dwellings" is replaced with "in private" or in the case of cultivation, "in a private place".*

[own emphasis]

7. *The order of the Western Cape Division of the High Court is confirmed only to the extent reflected in this order and is not confirmed in so far as it is not reflected in this order.*

8. *To the extent that the order of the Western Cape Division of the High Court purported to declare as constitutionally invalid provisions of sections referred to in that order that prohibit the purchase of cannabis, that part of the order is not confirmed.*

9. *To the extent that the order of the Western Cape Division of the High Court excluded from the ambit of its order of the declaration of invalidity provisions of the sections referred to in that order that*

prohibit the use or possession of cannabis in private in a place other than a private dwelling by an adult for his or her own personal consumption in private, that part of the order is not confirmed.

10. *It is declared that, with effect from the date of the handing down of this judgment, the provisions of sections 4(b) of the Drugs and Drug Trafficking Act 140 of 1992 read with Part III of Schedule 2 of that Act and the provisions of section 22A(9)(a)(i) of the Medicines and Related Substances Control Act 101 of 1965 read with Schedule 7 of GN R509 of 2003 published in terms of section 22A(2) of that Act are inconsistent with right to privacy entrenched in section 14 of the Constitution and, therefore, invalid to the extent that:*

they make the use or possession of cannabis in private by an adult person for his or her own consumption in private a criminal offence.

[own emphasis]

11. *It is declared that, with effect from the date of the handing down of this judgment, the provisions of section 5(b) of the Drugs and Drug Trafficking Act 140 of 1992 read with Part III of Schedule 2 of that Act and with the definition of the phrase “deal in” in section 1 of the Drugs and Drug Trafficking Act 140 of 1992 are inconsistent with the right to privacy entrenched in section 14 of the Constitution and, are, therefore, constitutionally invalid to the extent that:*

they prohibit the cultivation of cannabis by an adult in a private place for his or her personal consumption in private.

[own emphasis]

12. *The operation of the orders in 10 and 11 above is hereby suspended for a period of 24 months from the date of the handing down of this judgment to enable Parliament to rectify the constitutional defects.*

13. *During the period of the suspension of the operation of the order of invalidity:*

(a) *section 4(b) of the Drugs and Drug Trafficking Act 140 of 1992 shall be read as if it has sub-paragraph (vii) which reads as follows:*

“(vii) , in the case of an adult, the substance is cannabis and he or she uses it or is in possession thereof in private for his or her personal consumption in private.”

(b) *the definition of the phrase “deal in” in section 1 of the Drugs and Drug Trafficking Act 140 of 1992 shall be read as if the words “other than the cultivation of cannabis by an adult in a private place for his or her personal consumption in private” appear after the word “cultivation” but before the comma.*

(c) *the following words and commas are to be read into the provisions of section 22A(9)(a)(i) of the Medicines and Related Substances Control Act 101 of 1965 after the word “unless”:*

“; in the case of cannabis, he or she, being an adult, uses it or is in possession thereof in private for his or her personal consumption in private or, in any other case,”

14. *The above reading-in will fall away upon the coming into operation of the correction by Parliament of the constitutional defects in the statutory provisions identified in this judgment.*

15. *Should Parliament fail to cure the constitutional defects within 24 months from the date of the handing down of this judgment or within an extended period of suspension, the reading-in in this order will become final.*

2.6 In light of the aforementioned, it is our interpretation of the reading in to the legislation, that an adult South African citizen is allowed to:

- cultivate and possess cannabis;
- for personal use;
- In private;

3.

HOW DOES THE CLUB WORK?

3.1 A social cannabis club is a members' only club.

3.2 Therefore, the general public at large does not have access to the club as a right³.

³ Definition of “private space” in Section 1 of the Cannabis for Private Purposes Bill;

- 3.3 The members of the club are all adults who knowingly applies for membership of the club after a thorough induction and vetting process, initiated by the club.
- 3.4 The club committee or dedicated members registrar officer makes the final decision in terms of a prospective members application.
- 3.5 Once a membership status has been confirmed, the member has access to the club premises and enjoys the rights associated with membership as set out in the club's constitution.
- 3.6 The members area being accessible to members only, in our view qualifies as a private space in terms of the Privacy Judgment ⁴as referred to above and thus our members are allowed to consume cannabis within the dedicated consumption areas, within our club's members area.
- 3.7 Our clubs strictly advocate for and enforce its internal rules of responsible use. In example:
- The clubs do not allow members to drive whilst under the influence of cannabis⁵;
 - We educate our members to conceal their cannabis whilst in a public space⁶;
 - We limit the quantities of cannabis that a member is allowed to have within the club premises⁷; and
 - We educate our members in terms of quantities allowed in terms of cultivation⁸.
- 3.8 Therefore, we are of the view that in terms of prayer 10 of the order of the Constitutional Court Privacy Judgment ⁹, the private club conforms to the reading into the relevant acts and thus the use or possession of cannabis by

⁴ *Minister of Justice and Constitutional Development and Others v Prince....*

⁵ Section 5(6) of the Cannabis for Private Purposes Bill;

⁶ Section 4(7) of the Cannabis for Private Purposes Bill;

⁷ Section 4(2)(a) of the Cannabis for Private Purposes Bill;

⁸ Section 2 of the Cannabis for Private Purposes Bill;

⁹ *Minister of Justice and Constitutional Development and Others v Prince....*

the members, are in private and it is possessed by adult persons for their own consumption in private.

4.

HOW DOES THE GROWING WORK?

- 4.1 Should a member not be able to cultivate his or her own cannabis, other able and willing members of the club is then appointed to do so by the members.
- 4.2 The member will receive free of charge either a clone, seed or an equal portion in a clone or a seed by members who have adequate seeds or mother plants.
- 4.3 This is normally, but not always, the cultivating members.
- 4.4 This donation is recorded by way of a deed of donation and it is the first document that forms part of the record of the now “owner member’s” cultivation process.
- 4.5 The owner member(s) then employs a cultivating member, by way of a limited duration contract of employment¹⁰, for the period of time it will take to grow the member’s cannabis, harvest same and cure same.
- 4.5 The cultivating member receives a salary in terms of the cultivation services rendered, he or she pays PAYE ¹¹ Tax, and UIF¹².
- 4.6 The cultivating member would normally not have the time nor the financial resources to travel to each owner member’s premises to do the required work in terms of the cultivation, nor would the owner members always have the required space to cultivate cannabis plants.
- 4.7 Therefore, the cultivating members divides their available grow space into portions available for lease.

¹⁰ Section 198B of the Labour relations Act 66 of 1995, as amended;

¹¹ Pay as you earn – employee tax;

¹² Unemployment Insurance Fund;

- 4.8 These portions are properly demarcated, and a base map is drawn up in regard to these portions.
- 4.9 The cultivating member leases out the relevant portion(s) of grow space to the owner member, for the duration of the life cycle and curing cycle of the plant and the harvested cannabis. A lease agreement is entered into between the parties for the lease of the specific property. Once the lease is signed, the property on our view constitutes the owner's member's private space¹³;
- 4.10 Once the member's cannabis has been grown, harvested and cured to some extent, it is then packaged, labeled and delivered to the owner member's social club.
- 4.11 The owner member now has access to his or her cannabis and he/she can chose to make same available for sharing with other members.

5.

HOW DOES THE MEMBER SHARING WORK AND HOW IS IT CONTROLLED?

- 5.1 The club through its elected and voted for constitution, has standing instruction from its members to share willing member's cannabis with other members of the club, in a responsible and strictly controlled manner.
- 5.2 The club has set limits of sharing between members.
- 5.3 These limits are based on the proposed Cannabis for Private Purposes Bill however; the limits are set lower than the proposed allowed quantities.

¹³ *Minister of Justice and Constitutional Development and Others v Prince....*

5.5 The club has adopted a culture of sharing in terms of the voted constitution and thus have elected that the members may share their cannabis.

5.6 Members are encouraged to share their cultivated cannabis harvests with other members of the club, without the exchange of remuneration, under the strict conditions that:

- No member is allowed to share more than 90(ninety) grams of their harvest with another member, per harvest;
- No member shall obtain from another member a quantity of cannabis in excess of 90 (ninety) grams of the members harvest, per harvest;
- No member shall share with or obtain from another member cannabis for any purpose other than for personal use;

5.7 Members who chose to share their harvest with other *bona fide* and paid up members of the club may do so only without the exchange of remuneration, which entails that:

- The sharing member may not receive compensation;
- The sharing member may not receive a reward;
- The sharing member may not receive a favour;
- The sharing member may not derive a benefit;
- The sharing member may not receive a gift;
- The sharing member may not derive an advantageous position;
- The sharing member may not profit from:

5.8 The sharing of his/her cannabis harvest with other members of the club.

5.9 The sharing member shall only be entitled to be reimbursed by the obtaining member, for the sharing member's expenses in regard to:

- Cultivation services;
- Contracts management services;
- Storage, curing and sharing station services;

5.10 A reimbursement of cultivation, curing, storage and sharing station related expenditure occurs when:

- a sharing member has incurred and paid for cultivation, curing, storage and sharing station related expenses, and
- An obtaining member wishes to share in the harvest of that member, and
- subsequently the obtaining member reimburse the sharing member for the exact and precise expenditure by the sharing member;
- for the portion that is shared with the receiving member,
- after having proved and accounted for the expenditure in regard to the portion shared.

5.11 Should a member elect the option to share his / her cannabis harvest with other members of the club, the member may not differentiate or discriminate against any members of the club and thus all *bona fide* and paid-up members:

- Shall be entitled to share in the sharing members harvest;
- All members shall pay the precise expenditure of the sharing member and no waiver of the expenditure or portion thereof shall be allowed.

6.

WHAT ARE THE LIMITS ON SHARING AND WHY DO THEY MATTER?

6.1 The club has adopted the following limits in terms of sharing between members:

- One plant per member;
- 10 seeds or seedlings per member;
- 90 Grams of cannabis per member;

6.2 The reason behind the limits on sharing is due to the fact that the club advocates for the responsible use of cannabis by adults in private;

6.3 The club's wants to ensure that all of their members use cannabis appropriately and for the correct reasons.

6.4 By setting the limits in terms of sharing, the clubs attempt to avoid an oversupply of cannabis to its members. In so doing it:

6.4.1 Reduces the possibility that cannabis is used for any other purpose than for personal use.

6.4.2 Reduces the possibility that the cannabis enters the black market;

6.4.3 Allows the club to formulate and track sharing patterns of its individual members and thus it would allow the club to intervene where the club is of the view that a member's sharing patterns are a

concern. The club can then assist in obtaining counselling for the member or referring the member to a Rehabilitation Centre.

- 6.5 Furthermore the limits are set below the allowed limits in terms of the Cannabis for Private Purposes Bill and thus it is set in order to ensure that none of the club's members contravene the proposed legislation.

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