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Québec Court Rules Restriction on Growing Cannabis at Home Is Unconstitutional

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As a result of a recent decision of the Québec Superior Court (QSC) in *Murray Hall c. Procureure générale du Québec*¹, residents in Québec are no longer prohibited from growing or possessing cannabis plants at home for personal purposes.

Under the *Cannabis Regulation Act*², possessing cannabis plants and cultivating cannabis for personal purposes were both expressly prohibited, and anyone found violating those provisions would be subject to a fine. This stood in stark contrast to the federal *Cannabis Act* that specifically authorizes the possession and cultivation of up to four plants per household.

Mr. Hall instituted an action before the QSC, seeking a declaration that the restrictions on home growing were invalid on the grounds that the enactment of these restrictions was outside the Province of Québec's constitutional power. Justice Manon Lavoie granted Mr. Hall's action.

The judge concluded that the impugned sections were *ultra vires* the Québec Parliament's legislative powers and that they fell under the federal Parliament's exclusive authority on criminal law. The QSC's ruling is effective immediately.

The effect of the ruling means that residents of Québec are permitted to possess and cultivate cannabis plants at home, subject to the maximum of four per dwelling, as stipulated by the federal legislation.

Although Québec's ban against home growth was the first time the province had taken a more restrictive approach to cannabis regulation than the federal government, it was not the last. The federal regime has authorized the sale of new categories of cannabis-based products, including edibles, which come into effect on October 17, 2019. The Québec government reacted by publishing a draft regulation severely restricting the types of edible products that could be sold.

Will these new restrictions on edibles be the next legislation to be challenged before a Québec court? Only time will tell, but we will be watching with interest in the wake of the *Hall* decision.

¹ 2019 QCCS 3664.

² S. 5 and 10, RLRQ, c. C-5.3.

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