



STATE^{of} THE REGION ON CANNABIS



Phillips Lytle LLP

John Tebeau recently sat down with Tristan Hujer and Mary-Jane Morley from Phillips Lytle LLP to discuss the latest on the Cannabis industry in New York State.

Both houses of the New York State Legislature approved the Marihuana Regulation and Taxation Act that legalized adult-use of marijuana during its session on March 30, 2021. The bill was signed into law the next day.

The law allows for some marijuana criminal records to be expunged and prohibits New York State employers from testing both prospective and current employees for cannabis use.

The law also heralds a burgeoning economy for New York that is expected to draw new entrepreneurs into the growing, processing and selling of cannabis and others who will offer support services to the industry. They are waiting for the state to issue numerous rules and regulations attached to this law.

In the meantime, those intending on getting into the cannabis business are being advised to get their affairs in order so that they will be ready to launch when Albany sends down its directives.

Two expert lawyers from Phillips Lytle LLP shared their expertise on this evolving industry during the Phillips Lytle State of the Region on Cannabis discussion held recently at Buffalo Business First. They are:

- Tristan Hujer, a seasoned trial attorney and appellate advocate, was one of the first lawyers in the state to represent the cannabis industry. He is co-leader of the law firm's cannabis practice team, representing businesses and individuals operating in New York State's adult-use marijuana and individual hemp industries.
- Mary-Jane Morley is a commercial litigation specialist, handling a variety of contract, financial services and business-related disputes, as well as labor and employment matters. She is an adviser to businesses in licensing, cultivating, processing, distributing and other issues involved in cannabis retailing.

Morley was in law school in Albany while the state Legislature discussed the legalization of marijuana, discussions that continued after her 2019 graduation. She then watched it become law as a new lawyer practicing at Phillips Lytle and recognized the unique opportunity it presented. It was all new territory. No case law to follow. No precedent to apply.

"It doesn't exist here," Morley said. "I do not think I will have the opportunity in my career again to work in an industry that is developing so quickly."

For now, the state is approving many conditional cultivating licenses, which allows the growers to process and distribute for a certain period of time and to ensure the state has the supply that is needed for the anticipated retail opening, Morley said.

Until the control board issues the rules and regulations governing the cannabis industry, advisors such as Hujer and Morley are

focusing their work on basic business preparations. Regardless of the product to be sold, the cannabis industry is just like any industry, Morley said.

"When people hear that we are operating in the cannabis industry, they think it must be very different, and at this point it is not," Morley said. "We know we will be a lot more regulated, different than someone retailing shoes, per se, but right now we are focusing on the basics and looking forward to growing into those areas once we get the regulations."

There are important situations to anticipate, however, such as avoiding potential commercial and business litigation. There are at least three areas that pose risk: state regulation compliance, external contracts and employees, Hujer said.

Having a state license in good standing is the most important concern because the state will not allow the business to operate without one, Hujer said.

After ensuring the business is in good standing with regulators, the area with most risk is dealings with external partners, third parties, vendors and customers.

"My recommendation is to as much as possible avoid handshakes, avoid verbal agreements, and to go with formal written contracts that you have developed over a period of time with a trusted legal adviser," Hujer said.

"Contracts can be voided for illegality, so if you are working with a partner that is not properly licensed and you have not sought an assurance from them in writing that they are licensed in good standing, you could be jeopardizing your own good standing with the state and you could be jeopardizing the business relationship you have with that external partner."

Employees give rise to another area of risk. To avoid problems, be aware of the rights that employees have in the workplace, have good internal policies, procedures and practices, have a solid human resources system and, lastly, be a good boss, Hujer said.

Hujer's interest in the field stemmed from a whispered conversation he had had with his wife's Great Uncle Tony Weiss, patriarch of the



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longtime farming family and owner of Weiss Farms in Eden. Hujer always enjoyed chatting with him during Weiss' regular appearance as a vendor at the Elmwood Village Farmers Market. It was during one of these chats that Weiss lowered his voice and confessed, to his lawyer-relative no less, that he was growing cannabis.

Hujer's immediate reaction was to take a few steps back at the news in expectation of Weiss' imminent arrest and eventual incarceration.

But he soon learned that Weiss was well-studied on the plant, becoming one of the first farmers in the state to receive a research partner agreement that allowed him to grow hemp for cannabinoid use, principally for CBD, the chemical found in marijuana that does not contain the ingredient that produces a high. It is commonly used for pain and inflammation and is being studied for treatment of Parkinson's disease, schizophrenia, diabetes and multiple sclerosis.

"He sparked my interest in the field," Hujer said. "I started to study, to go to industry conferences to build my connections and eventually earn the trust of several clients in the CBD space and have been working with those clients and many others for years now."

Hujer was a partner in another law firm when he started getting interested in cannabis. When he moved to Phillips Lytle in 2019, he assumed the firm would assign him to establish the practice. He soon learned that the firm had lawyers working with a client on medical marijuana licensing years before Hujer started working with cannabis businesses.

"The firm already had the expertise," Hujer said. "The firm was already familiar with the industry, with the regulators, and New York State. Phillips Lytle was already on the leading edge of this."

Hujer, Morley and their colleagues have found much value in the continuing education offered during the many regional and local conferences and trade association events that are popping up to inform individuals and businesses in cannabis issues.

New York State events are important to get the state's perspective as the industry anticipates its launch. The national events, which have been held from New England to Nevada, their keynote addresses and break-out sessions, have their appeal as well. It benefits anyone who wants to apply for a license or seeks to become an ancillary support for licensed businesses to learn from other practices in other states, Hujer said.

"How do dispensaries allow for security in Massachusetts? How do cultivators in Colorado deal with pesticides? It is that kind of knowledge that the trade shows bring, and certainly contacts and connections," Hujer said. "The one thing I have learned is that the cannabis industry generally around the country is very supportive and has an all-boats-rise

mentality. So, you meet someone who is doing something similar to you in another state, and you form a connection or a friendship or maybe a beneficial professional relationship."

The lawyers were praiseful of the New York's taking the time to ensure that equity was carefully woven into the law on its arrival. Other states seemed to put off equity for "later," they said.

Notable in New York's law is that equity applicants have the first shot and a fair shot at getting into the business, Morley said. For example, the Cannabis Control Board recently held two informational events for those who are interested in applying for a conditional dispensary license.

"To be even eligible for that you need to have a marijuana conviction or be related to someone with a marijuana conviction," Morley said. "I am oversimplifying that, but there are other states where you can't even operate in the legal market if you've had a marijuana conviction. In New York they're trying to bring those people into being the very first people who are opening dispensaries."

Also embedded in the law is the expungement and sealing of past records, something that the Phillips Lytle lawyers heartily support.

"We are big fans of the way that they really made sure that those who have been hurt from past cannabis laws are now attempting to have them benefit," Morley said. "There was a lot of thought behind making sure that this act resulted in equity. They're very careful with the different license categories. There is very little overlap because they do not want these big multi-state operators to come in and take over the market. They did a very good job of that."

Hujer, Morley and their fellow lawyers these days are busy helping cannabis entrepreneurs lay the foundation of their business, but what do they envision down the road, six months or a year from now?

Morley said she is hopeful of a cannabis business opening by the end of the year but hesitates to assign a date to the state's actions regarding the rules and regulations. Whatever the timeline, she is encouraged by the supportive environment of the cannabis community.

But in the near term, Hujer had some practical advice:

- Develop a social media plan. Creating awareness about your brand across social media is a must for a cannabis company and will play a big part in a company's success.
- Assemble a solid team of partners, co-shareholders, an accountant, a bookkeeper, and a lawyer you like and trust.

"The value that comes from those professional relationships is worth what they cost," Hujer said. "It really saves you a lot of headaches down the road."