

PLAIN JANE POT PACKAGING

By Rick Moscone and Russell Sanders

On March 19, 2018, Health Canada unveiled its proposed regulations under the *Cannabis Act* applicable to the packaging and labelling of recreational cannabis following a 60-day public consultation period. Noticeably, the approach being taken by Health Canada towards cannabis bears a strong resemblance to its approach towards tobacco, a move which is expected to upset licensed producers that are seeking to differentiate themselves from one another in any way they can in a hyper-competitive industry. The general population's message to Health Canada was that its approach needs to prioritize the health and safety of Canadians, and in particular, restrict youth access to cannabis. Health Canada's proposed regulations also address the regulation of micro-cultivators and micro-processors, with the goals of facilitating the participation of small-scale growers and processors in the legal cannabis industry and eliminating the underground black market.

In terms of mandating the inclusion of certain information and images on cannabis packaging, the regulations provide for:

- a standardized cannabis symbol that would need to appear on every label, including specific requirements with respect to its size, placement and appearance;
- mandatory health warning messages that would need to appear on every label on a rotating basis, including specific requirements with respect to their size, placement and appearance. The various health warning messages include risks about the harmful effects of cannabis smoke, consuming cannabis if one is pregnant, driving or operating machinery, mental health, addiction, and the harm to adolescents; and
- requirements with respect to information on THC and CBD content as well as other information required on each label, including expiry dates, packaging dates, and a warning message to keep cannabis out of the reach of children.

In contrast to alcohol packaging, the proposed regulations applicable to cannabis stifle creativity by requiring plain packaging and restricting the use of colours and branding. The proposed regulations state, among other things, that:

- licensed producers are permitted to display only one brand element in addition to a brand name, such as a logo, which cannot be larger than the standardized cannabis symbol prescribed by Health



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Canada; if it consists of text, the font must be no larger than the health warning message;

- label and package backgrounds would need to be a single, uniform colour;
- it would be prohibited to display any other image or graphic;
- it would be prohibited to use any fluorescent or metallic colours; and
- it would be prohibited to include any insert in a package.

To facilitate a transition from the current packaging and labelling requirements under the Access to Canada For Medical Purposes Regulations – which are considerably less restrictive – to the new regulatory requirements, Health Canada has proposed that licensed medical producers of cannabis will have six months to comply with the new packaging and labelling regulations after the *Cannabis Act* comes into force. This transitional period will not apply to cannabis products sold for recreational purposes, which would be required to comply with the new packaging and labelling requirements immediately upon the coming into force of the proposed *Cannabis Act*. It is expected that this will occur in the fall.

Health Canada's proposed regulations applicable to micro-cultivators and micro-producers limit the scale of their participation in an industry currently dominated by a group of large licensed producers. Micro-cultivators will be restricted to a plant canopy area of no more than 200 square meters, which equates to a standard North American sized hockey rink. Micro-producers would not be permitted to process more than 600 kilograms of dried cannabis annually. These limits were established to facilitate the viability of small market participants without making them so small that that the regulations would incentivize them to operate in the black market. While the regulations carve out a role in the market for smaller players, their ability to grow and expand is curtailed.

The proposed regulations are subject to change as the *Cannabis Act* proceeds through Parliament.