

## HIGHLIGHTS OF THE NEW CANNABIS REGULATIONS ENACTED UNDER THE CANNABIS ACT

By Rick Moscone and Russell Sanders

On June 21, 2018, the *Cannabis Act* (the "**Act**") received Royal Assent, marking a historic milestone for Canada in that it became the first G7 nation to legalize cannabis. On June 27, 2018, Health Canada released new sets of regulations (the "**Regulations**"), as summarized below, that support and clarify the Act.

When the Act and its Regulations come into force on October 17, 2018, cannabis will no longer be regulated under the *Controlled Drugs and Substances Act* and will instead be regulated under the Act. As a result, the *Access to Cannabis for Medical Purposes Regulations* (the "**ACMPR**") and the current *Industrial Hemp Regulations* will be repealed.

The Regulations address, among other things, the legal production, packaging, labeling, distribution, sale, importation and exportation of cannabis for medical or scientific purposes. The Regulations also detail physical and personnel security requirements for all federally licensed production sites as well as the licensing requirements applicable to micro-cultivators, micro-producers, industrial hemp ventures, research and analytical testing businesses. Notably, the Regulations permit the continuation of a separate medical cannabis system that existed under the ACMPR, allowing patients to continue purchasing cannabis from licensed producers rather than, for example, provincially-operated retailers, such as the Ontario Cannabis Store.

Below is a summary of the key Regulations introduced by Health Canada.

### Classes of Licenses

The Regulations provide for the following classes of licenses:

- **Cultivation Licenses**
  - Authorizing the production of fresh or dried cannabis or cannabis plants or seeds.
  - Includes standard cultivation, micro-cultivation and nurseries.
  - Holders of a micro-cultivation license are restricted to a plant canopy area of no more than 200 square meters, which equates to a standard North American sized hockey rink.
  - Holders of a license for a nursery that cultivates cannabis for purpose of obtaining cannabis plant seeds are restricted to a surface area that does not exceed 50 square meters in which



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all plants must be contained and must not possess more than 5 kilograms of flowering heads harvested from plants.

- **Processing Licenses**
  - Authorizing the production of cannabis oil or resin.
  - Includes standard processing and micro-processing.
  - Holders of a micro-processing license must not process more than 600 kilograms of dried cannabis annually.
- **Analytical Testing License**
  - Authorizes the obtaining of extracts from samples of cannabis for the analysis of cannabinoids.
- **Sale License**
  - Authorizes the sale of cannabis products for medical purposes.
  - Holders of cultivation, processing and cannabis drug licenses are also authorized to sell cannabis products for recreational consumption pursuant to their respective licenses.
- **Research License**
  - Authorizes the cultivation, gathering or production of cannabis for scientific purposes.
- **Cannabis Drug License**
  - Authorizes the possession, production or sale of a drug containing cannabis.
  - Sales of drugs containing cannabis can be made to pharmacists, hospital employees, practitioners (such as doctors, dentists, veterinarians, laboratory technicians), and holders of research licenses and analytical testing licenses, among other parties.
  - Accordingly, drugs containing cannabis can be administered to both people and animals.

### Physical Security Measures

- Stringent security measures are applicable to the following types of licenses: standard cultivation, standard processing, sale, and cannabis drug licenses if the amount of cannabis sold or distributed to the holder of the license is greater than 600 kilograms of dried cannabis annually.
- The perimeter, operations and storage areas of the site must be monitored at all times by visual recording devices. Only entry and exist points of grow areas must be monitored.
- The perimeter, operations and storage areas must also be secured by an intrusion detection system. This is not required for grow areas.

- The operations and storage areas must be surrounded by a physical barrier to prevent unauthorized access; however, the use of a vault as a storage area as previously required by the ACMPR is no longer mandatory.
- Less onerous security measures are imposed on micro-cultivators, micro-processors, nurseries, researchers, analytical testers and cannabis drug licenses. At minimum, sites must be designed to prevent unauthorized access.

### Packaging and Labeling

- The immediate container in which a cannabis product, other than cannabis plants or seeds, is packaged must:
  - be opaque or translucent;
  - child resistant;
  - prevent contamination of the cannabis;
  - in the case of dried cannabis or a cannabis accessory containing dried cannabis, keep the cannabis dry; and
  - not contain more than the equivalent of 30 grams of dried cannabis.
- Packaging must be a single, uniform colour. It is prohibited to use fluorescent or metallic colours.
- Mandatory health warning messages must appear on every label on a rotating basis. Specific requirements apply to their size, placement and appearance on products.
- Specific information respecting THC and CBD content, expiry dates, packaging dates, and a warning message to keep cannabis out of the reach of children must be displayed on labels.
- Licensees 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 Canada. If the brand element consists of text, the font must be no larger than the health warning message.
- It is prohibited to include any insert in a package.

### Key Investors

- Holders of licenses for cultivation, processing or sale must maintain a record, which must be reported to the Minister annually, containing information respecting each Key Investor, such as:
  - their name and mailing address;
  - how they became a Key Investor;
  - details regarding each instance in which the Key Investor provides, money goods or services to the holder;
  - any benefits the Key Investor receives from the holder;

- details regarding each instance in which money is repaid or goods are returned to a Key Investor; and
- if known, an indication of whether any Key Investor's ownership interest has been assigned, mortgaged or sold to any person.
- A "Key Investor" means, in respect of a holder of a license, a person that exercises direct or indirect control over the holder by virtue of:
  - having provided money, goods or services, directly or indirectly, to the holder; or
  - holding an ownership interest or other right or interest in a business operated by the holder.
- These record keeping and reporting requirements do not apply to a holder that is an organization if their equity securities are listed on a published market.

### **Access to Cannabis For Medical Purposes**

- The Regulations largely incorporate the rules established under the ACMPR, although some changes have been made to ensure consistency with the rules applicable to the recreational use of cannabis, to improve patient access and to reduce the risk of abuse of the system.
- Whereas recreational users are prohibited from possessing cannabis in public, medical users may do so up to certain prescribed limits.
- Young persons are permitted to possess cannabis if they have supporting medical documentation.
- Individuals are eligible to produce cannabis for their own medical purposes, either indoors or outdoors, but only if they are adults.

### **Sale, Display and Promotion to Young Persons**

- Holders of a sale license can sell cannabis accessories, except for accessories that could be reasonably appealing to a young person, to a young person if the holder takes steps to ensure the young person is authorized to possess cannabis.
- Holders of a sale license can also display a cannabis product, or a package or label of a cannabis product, in a manner that may result in the cannabis product, package or label being seen by the young person if the holder takes reasonable steps to ensure the young person is authorized to possess cannabis.

### **Industrial Hemp**

- Industrial hemp refers to cannabis that contains 0.3% THC or less in the flowering heads and leaves.
- Cultivators of industrial hemp must grow hemp from the hemp varieties approved for commercial cultivation.

- The new *Industrial Hemp Regulations* are generally consistent with the current *Industrial Hemp Regulations*, but some changes have been made with the goal of aligning license requirements to the relatively low risk posed by industrial hemp as compared with other varieties of cannabis.
- The sale of hemp flowers to licensed cannabis processors will be permitted, to provide a source of low THC, high CBD cannabis products.
- The Regulations also provide for the importation and exportation of seed or grain.

The Regulations are expected to be published in the *Canada Gazette*, Part II, on July 11, 2018.