

Recreational Cannabis Federal Framework, the Federal *Cannabis Act* and related Cannabis Regulations

Summary of Key Provisions:

***Cannabis Act* (Canada):**

On June 21st, 2018, the Government of Canada's *Cannabis Act* received Royal Assent. At that time, recreational cannabis ceased to be regulated under the *Controlled Drugs and Substances Act*, and became regulated under the *Cannabis Act*.

As a result, since October 17th, it is lawful for individuals of legal age to access and consume recreational cannabis. In Ontario, this means that individuals 19 years or older can legally:

- buy and possess up to 30 grams of cannabis for recreational purposes, provided they buy from the Province's authorized seller, and
- grow and harvest, from legally sourced seeds or seedlings, a total of 4 cannabis plants per dwelling, for recreational use.

Under the *Cannabis Act*, only authorized entities may sell cannabis. It remains illegal for unauthorized individuals or entities to sell cannabis to anyone, including to persons under 18 years of age. Penalties related to the illegal possession, production, distribution and sale of cannabis have been established under the *Cannabis Act* and range from tickets with fines up to a maximum penalty of 14 years imprisonment. In addition, new offences are in place for driving with a blood drug concentration over the prescribed limits within two hours of driving.

The *Cannabis Act* and the Cannabis Regulations, noted below, also set out strict controls regarding how recreational cannabis can be produced, marketed, packaged and displayed, including specific prohibitions against any promotion of cannabis that could reasonably be appealing to youth, including requirements for plain packaging and that any cannabis sales displays cannot be visible to youth.

The *Cannabis Regulations* impose plain packaging requirements for recreational cannabis, and specifically control how branding elements can be used and displayed on cannabis products, including where they can appear on the product packaging, their size, colour, and other factors of their appearance. Health warnings and symbols must be present on packaging.

Information from the Government of Canada (Statistics Canada) reveals that in 2017, almost 48,000 cannabis-related drug offences were reported to police. The majority of these (80%) were possession offences. The Government of Canada further reports that a criminal record resulting from a cannabis offence, even a minor possession charge, can have serious and lifelong implications for the person charged. As a result, the Federal position is that by allowing the production and possession of legal cannabis for adults, the Act helps keep Canadians who consume cannabis out of the criminal justice system, reducing the burden on the courts.

Distribution and Sharing:

Under the Federal framework, provinces are responsible for establishing wholesale and distribution systems for recreational cannabis. Federally authorized producers of recreational cannabis may only sell to designated provincial distributors. In Ontario, the authorized distributor is the Ontario Cannabis Retail Corporation, which is responsible for distributing wholesale cannabis to the online retailer (the Ontario Cannabis Store) as of October 17th, and to provincially licensed private retail stores beginning on April 1, 2019.

Under the *Cannabis Act*, distributing or sharing cannabis to youth remains illegal, as is distributing or sharing more than 30 grams of cannabis to anyone. In addition, organizations such as corporations, public bodies, partnerships, municipalities, and unions cannot distribute or share cannabis (unless specifically authorized).

Selling:

Under s. 10 of the *Cannabis Act*, no one but a provincially authorized seller may sell cannabis to anyone, and it is a separate offence to sell cannabis to a person under the age of 18 years. No one can sell cannabis to an organization, corporation, public body, partnership, municipality or union unless specifically authorized.

Production – Requirements:

The Cannabis Regulations passed under the *Cannabis Act* provide that only federally licenced entities may produce cannabis. Licence categories have been established by for cultivation (micro-cultivation, standard cultivation and nurseries), processing (micro and standard processing), analytical testing, sale for medical purposes, and research. The licences are subject to requirements and conditions specific to the particular category. Prescribed positons holders within each licenced category will be required to hold valid security clearances issued by the Federal Minister of Health, including individual licence holders, directors and officers of the licence holder corporation, and others depending on the particular activity within the licenced entity and the associated risks to public health and safety.

Security of Facilities:

The Cannabis Regulations also provide security directives to establish minimum standards for the licensee's facilities and processes, including those relating to storage, security systems and other factors to be considered by Federally-licensed producers and other licensees. These standards will vary depending on the nature of the licensee and its varying operations, and apply to elements including but not limited to the licensee's:

- building materials used in the licenced facilities to ensure physical security;
- interior storage elements for cannabis, such as cages, safes, and vaults;
- locking systems, alarm systems and minimum electrical detection requirements, and
- ventilation, lighting and communications systems, among other elements;
- minimum requirements for security system designs and risk analysis.

The Cannabis Regulations also impose standards of production and handling to ensure that good production, storage and other practices are used by producers. The Regulations address issues such as the maximum level of certain compounds, such as tetrahydrocannabinol ("THC") per unit of cannabis. The Regulations also prohibit the use of certain dangerous products in the production of recreational cannabis.

The National Cannabis Tracking and Licensing System:

Pursuant to Section 81 of the *Cannabis Act*, the National Cannabis Tracking and Licensing system will be administered by Health Canada and will allow authorities to track the movement of legally produced cannabis through the regulated supply chain. The System will also be used as a resource to prevent cannabis from being diverted to the illegal market, and to prevent illegally-obtained cannabis from being incorporated into the legal, regulated cannabis market.

Federal licence holders, noted below, as well as provincially authorized wholesalers and retailers will be required to regularly report online to Health Canada on cannabis that is produced, obtained, purchased, sent, sold, destroyed, lost or stolen throughout the different phases of the supply chain. These entities must keep relevant records for a prescribed amount of time in order to permit auditing and verification to take place by authorities.

Promotion, Packaging and Labelling, Display:

The *Cannabis Act* and the Cannabis Regulations passed under it impose strict rules for the promotion, packaging, labelling and display of recreational cannabis as follows:

Promotion of cannabis can only occur in very limited circumstances, such as directly to a buyer of legal age (e.g. at the authorized point of sale/at an authorized store), or in places where young persons are not permitted. Section 17 of the Act specifically prohibits any promotion of cannabis that could reasonably be appealing to youth, or by

means of testimonials or endorsements, or by using depictions of persons, characters or animals. .

The Act further prohibits the use or display as part of a promotion for an event, facility or activity, or on a facility itself, of any brand of cannabis or cannabis accessory, or the name of a person that produces, sells or distributes cannabis (Section 21 & 22, *Cannabis Act*).

The appropriate provincial or territorial government must authorize recreational cannabis retailers. Packaging itself for cannabis products must be plain and cannot include elements that are appealing to youth, that contain testimonials or endorsements, that depict individuals, characters, or animals, or that depict or evoke a glamorous, daring or similar lifestyle (Section 26, *Cannabis Act*). The Cannabis Regulations also impose security features for packaging, requiring that it be tamper proof and child resistant, and that it prevent contamination. All packaging for legal cannabis products must use a standardized prescribed excise stamp as well as a cannabis symbol. In addition, the Cannabis Regulations require that prescribed health warning messages be included on cannabis products, and these vary depending on the type of cannabis product and its particular drug concentrations.

The Cannabis Regulations specifically control how branding elements can be used and displayed on cannabis products, including where branding elements can appear on the product packaging, their size, colour, and other factors of their appearance.

Authorized sellers of cannabis are also prohibited from displaying cannabis packages in a manner that is visible to youth (Section 29, *Cannabis Act*).

Impaired Driving:

As part of its legalization framework, the Government of Canada addressed drug-impaired driving through amendments to the *Criminal Code* in June 2018 (through former Bill C-46, an *Act to amend the Criminal Code and to make consequential amendments to other Acts*).

In particular, these amendments included new offences related to driving with a blood drug concentration over the prescribed limits within 2 hours of driving. Three new offences were created to address prohibited concentrations of drugs in the blood stream. The offences have varying penalties including minimum fines of \$1000, and possible imprisonment for serious offences such as having drug and alcohol blood concentrations over prescribed limits.

The amendments also authorize law enforcement officers who suspect a driver of having a drug in their body to require a saliva sample for analysis at the roadside using approved drug screening equipment, under certain circumstances. Other processes to

determine impairment in the field have also been developed and implemented in certain areas such as Ottawa.