

# On the road to legalization: Highlights of Canada's proposed Cannabis Act

MAY 2, 2017 7 MIN READ

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## In this Update

- The Government of Canada has recently introduced draft legislation (the Cannabis Act) that aims to create a legal framework for the production, distribution, sale and possession of cannabis in Canada.
- Current licence holders under the existing medical marihuana regulatory regime will be automatically licensed to continue those activities with respect to non-medical (i.e., recreational) cannabis under the Cannabis Act.
- Corporate directors and officers should be aware that they face broadened potential liability for offences under the Cannabis Act.
- Until the Cannabis Act becomes law, the production, distribution and sale of cannabis (outside the existing regulatory regime for medical marihuana) remain illegal.

On April 13, 2017, the Government of Canada introduced Bill C-45, *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts* (the Cannabis Act). Consistent with the Liberal Party of Canada's 2015 election promise, the Government of Canada believes that the Cannabis Act will "create a strict legal framework for controlling the production, distribution, sale and possession of [cannabis in Canada](#)."<sup>[1]</sup>

The Cannabis Act follows the November 2016 report "A Framework for the Legalization and Regulation of Cannabis in Canada" (the Report) of the Task Force on Cannabis Legalization and Regulation.<sup>[2]</sup> The Cannabis Act reflects many of the recommendations made in the Report, and its stated objectives mirror the Report's aims: to prevent young persons from accessing cannabis; to protect public health and public safety by establishing strict product safety and product quality requirements; to deter criminal activity by imposing serious criminal penalties for those operating outside the legal framework; and to reduce the burden on the criminal justice system in relation to cannabis.<sup>[3]</sup>

The Cannabis Act remains subject to parliamentary approval and royal assent; until then, the production, distribution and sale of cannabis (outside of the existing regulatory regime for medical marihuana) remain illegal. The federal government has stated that it intends to provide regulated and restricted access to cannabis "no later than July 2018."<sup>[4]</sup> We have set out below a summary of the highlights of the Cannabis Act.

## 1. Licensing regime

The Cannabis Act will establish a licensing regime for the importation, exportation, production, testing, packaging, labelling, sending, delivery, transportation, sale, possession and disposal of cannabis.<sup>[5]</sup> Individuals and corporations will be able to apply for such licences once the Cannabis Act becomes law.

Current holders of licences relating to medical cannabis under the *Access to Cannabis for Medical Purposes Regulations* (ACMPR) made under the *Controlled Drugs and Substances Act* will be automatically licensed under the Cannabis Act for those activities. In other words, it appears that if the Cannabis Act is made law, licence holders under the ACMPR will be able to conduct the activities authorized by their licence with respect to both medical and non-medical (i.e., recreational) cannabis.

As of March 31, 2017, Health Canada had received 1,630 applications for licences under the ACMPR. Health Canada's review process is stringent: of these 1,630 applications, 265 have been refused, 414 are in progress, 69 have been withdrawn, 841 were incomplete and have been returned,<sup>[6]</sup> and 43 have been issued.<sup>[7]</sup> Health Canada's capacity to review applications made under the ACMPR is finite (although Health Canada may hire more staff to assist with such reviews) and the entire application process can take more than a year to complete.<sup>[8]</sup> As such, current licence holders under the ACMPR and those with applications currently in Health Canada's queue may have an appreciable timing advantage with respect to becoming licensed under the Cannabis Act.

The Cannabis Act also provides that licences or permits authorizing the importation or exportation of cannabis will only be issued in respect of cannabis for medical or scientific purposes or in respect of industrial hemp.<sup>[9]</sup> Recreational cannabis therefore appears to be a "grown in Canada" proposition.

## 2. Criminal offences, administrative penalties and seizure powers

If enacted, the Cannabis Act will

- decriminalize the possession of fewer than 30 grams of cannabis (or its equivalent)
- prohibit persons between the ages of 12 and 18 years from possessing or distributing more than five grams of cannabis (or its equivalent)
- prohibit the unlawful sale or distribution of cannabis (including its sale or distribution to persons under the age of 18)
- prohibit the unlawful possession, production, importation and exportation of cannabis
- provide for broad inspection and seizure powers (including the power to enter any place where activity that may be regulated under the Cannabis Act is reasonably believed to be being conducted<sup>[10]</sup> and to seize and detain cannabis or any other thing reasonably believed to be related to a contravention of the Cannabis Act<sup>[11]</sup>)
- establish administrative monetary penalties (up to \$1,000,000) and a national cannabis

tracking system

On April 13, 2017, the federal government also tabled Bill C-46, *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts*. Bill C-46 amends the provisions of the *Criminal Code* that deal with offences and procedures relating to drug-impaired driving.

### 3. Director and officer liability

The Cannabis Act broadens the potential liability faced by corporate directors and officers. If a person other than an individual (e.g., a corporation) commits an offence under section 44<sup>[12]</sup>, the person's directors, officers, agents or mandataries who directed, authorized, assented to, acquiesced or participated in the commission of the offence can be held liable for the offence, even if the person is not prosecuted for the offence.<sup>[13]</sup> Although the Cannabis Act states that common law principles providing justification or excuse for offences under the Cannabis Act will apply, the Cannabis Act also expressly states that a person named in a notice of violation will not have access to a due diligence defence.<sup>[14]</sup>

### 4. Provincial discretion

Although criminal law lies within the jurisdiction of the federal government pursuant to the division of powers set out in the *Constitution Act*, other matters (such as property and civil rights) are within the jurisdiction of the provincial governments.

The Cannabis Act accordingly leaves much discretion to the provinces. The provincial governments will license and oversee the distribution and sale of cannabis, subject to minimum conditions as set by the federal government. For example, it will be up to the provinces to determine the minimum age requirement for the purchase and possession of cannabis (subject to the 18 years of age minimum set by the federal government) and how cannabis will be sold in the province (e.g., by mail and/or through brick-and-mortar stores).

### 5. Packaging, labelling and promotion

The Cannabis Act proposes a range of restrictions on the promotion, packaging, labelling and display of cannabis, subject to regulations that have not yet been tabled. Informational promotion (i.e., factual information about cannabis or its characteristics) is permitted under certain circumstances (e.g., only where persons under the age of 18 are not permitted by law). Facilities used for sports or cultural events will be prohibited from displaying, as part of their name or otherwise, a brand element of cannabis or the name of a person that produces, sells or distributes cannabis.<sup>[15]</sup> Subject to exemptions made by regulation, cannabis will be prohibited from being promoted in a manner appealing to persons under the age of 18.<sup>[16]</sup>

### 6. Pricing and taxation

Notably, the Cannabis Act does not provide any indication of how cannabis will be priced or taxed. The Report had recommended that cannabis be priced and taxed in a manner that will "balance health protection with the goal of reducing the illicit market."<sup>[17]</sup>

Until the regulations under the Cannabis Act are drafted and tabled, much important detail regarding recreational or “licit” cannabis remains unknown. We will be closely following the Cannabis Act as it proceeds through the legislative review and approval process.

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[1] Health Canada, “Canada takes action to legalize and strictly regulate cannabis” (April 13, 2017), online: [Government of Canada](#).

[2] Task Force on Cannabis Legalization and Regulation, “A Framework for the Legalization of Cannabis in Canada” (November 30, 2016), online: [Government of Canada](#).

[3] Cannabis Act, s. 7.

[4] *Supra* note 1.

[5] Cannabis Act, s. 62.

[6] Health Canada, “[Application Process – Becoming a Licensed Producer](#)”.

[7] Health Canada, “[Authorized Licensed Producers for Medical Purposes](#)”.

[8] *Supra* note 6.

[9] Cannabis Act, ss. 62 (2).

[10] Cannabis Act, ss. 86 (1) (a).

[11] Cannabis Act, ss. 87 (2) (j).

[12] Section 44 of the Cannabis Act provides that it is an indictable offence for a person to contravene a provision of the Cannabis Act for which no punishment is otherwise provided or to contravene a provision of a regulation, an order made under any of sections 73 to 76 (provision of information to the Minister; tests and studies; measures ordered by the Minister; and recalls), an order amended under section 79 (request for review of an order made under sections 73 to 76) or an order made under section 82 (Minister’s requiring information in regards to the cannabis tracking system).

[13] Cannabis Act, s. 46.

[14] Cannabis Act, s. 119.

[15] Cannabis Act, s. 22.

[16] Cannabis Act, ss. 17 (1) (b).

[17] *Supra* note 2 at page 26.