



## 28. Cannabis

When the *Cannabis Act* (Canada) came into force on October 17, 2018, Canada became the second country in the world to legalize the sale, possession and use of cannabis for recreational purposes, following the legalization of medical-use cannabis about twenty years earlier.

### Canadian Legal Framework

The oversight of the cannabis industry is a shared responsibility across federal, provincial and territorial governments, and municipalities.

Federally, the *Cannabis Act* and its supporting regulations provide a licensing and permitting regime for the production, distribution, sale and possession of cannabis in Canada.

The provinces and territories have responsibility for several areas of regulation, including the distribution and retail sale of non-medical cannabis within their jurisdictions. Each province and territory also has the flexibility to set additional restrictions, including limits on possession, personal cultivation, and public use, and increasing the minimum age of use. Municipalities regulate the cannabis industry through the zoning of cannabis retail stores and business licence requirements.

### Federal Laws and Regulations

The *Cannabis Act* was enacted with several policy objectives in mind, including the protection of public health and safety, restricting access of cannabis to youth, and deterring illegal activities by tracking the supply of cannabis, among other means.

Under the *Cannabis Act*, a person is required to obtain a licence issued by Health Canada in order to cultivate or process cannabis, to sell cannabis for medical purposes, to manufacture prescription drugs containing cannabis or to conduct analytical testing or research with cannabis.

The Cannabis Regulations, which also came into force on October 17, 2018, established the rules and regulations that apply to licence holders and other cannabis industry participants with respect to the production, packaging, labelling, import, export, marketing, promotion and medical use of cannabis. Among other things, the Cannabis Regulations provide as follows:

### **(a) Production of Cannabis**

Licence holders must follow certain good production practices and are subject to strict rules and standards with respect to the composition of cannabis products, including limits on tetrahydrocannabinol (THC) and cannabidiol (CBD) amounts, and the use of additives. The Cannabis Regulations also set out strict physical and personnel security requirements to secure sites where licence holders grow, process or conduct other activities with cannabis.

### **(b) Packaging and Labelling**

Plain packaging and labelling is required for all cannabis products, with strict restrictions on logos, colours, and branding. Cannabis products must be in packaged in a child-resistant container and be labelled with the standardized cannabis symbol, the mandatory health warning message, and include specific product information (e.g., brand name of the cannabis product, class of cannabis, THC and CBD information, licence holder information).

### **(c) Import and Export of Cannabis**

The import and export of cannabis is regulated by Health Canada, and is controlled in a manner that is consistent with Canada's obligations under various international drug control conventions to which Canada is a party. In particular, cannabis may only be exported or imported for medical or scientific purposes, and only by federal licence holders. Importing or exporting cannabis for medical or scientific purposes also requires a permit from Health Canada for each shipment, and in some cases authorization from other Canadian agencies as well, such as the Canadian Food Inspection Agency (CFIA). While each permit application is assessed on its merit, Health Canada's general policy is to issue import or export permits only in limited circumstances, such as importing starting materials (e.g. seeds, plants) for a new licence holder; exporting cannabis products to another country that has a legal regime for access to cannabis for medical purposes; or importing or exporting small quantities of cannabis for scientific purposes.

### **(d) Marketing and Promotion**

The *Cannabis Act* and the Cannabis Regulations specify a number of prohibitions that are designed to limit and control the marketing and promotion of cannabis. These prohibitions apply broadly to any individual or organization that engages in the marketing and promotion of cannabis, cannabis accessories or services related to cannabis, including cannabis industry participants as well as media organizations.

### **(e) Medical Cannabis**

Access to cannabis for medical purposes is provided for patients who qualify and are authorized by their health care provider. Medical cannabis patients are able to obtain cannabis for medical purposes by buying directly from a federally licensed seller, registering with Health Canada to produce a limited amount of cannabis for their own medical purposes, or designating someone to produce it for them.

## Cannabis Edibles and Other Classes of Cannabis

On October 17, 2019, amendments to the Cannabis Regulations came into force that allow for the production and sale of three new classes of cannabis: (1) cannabis edibles, which are products containing cannabis that are intended to be consumed in the same manner as food (i.e. eaten or drunk); (2) cannabis extracts, which are products produced from cannabis using extraction processing methods (e.g. vaping liquids, tinctures, wax, hash and cannabis oil); and (3) cannabis topicals, which include creams, lotions, balms, and similar products that are meant to be applied to a person's skin, hair, or nails.

These newly-permitted products are subject to stringent regulations, including limits on the amount of THC, to address their unique public health and safety risks. The amended Cannabis Regulations also place strict rules on:

- The use of certain ingredients. For example, edible cannabis cannot contain any added minerals or vitamins, nicotine, or added alcohol
- Production methods, including a ban on cannabis production in a facility where conventional food is manufactured
- Promotion and marketing, including a prohibition on cross-branding and cross-marketing with alcohol or tobacco-related terms or products
- Packaging, which must be child-resistant and contain mandatory health warning messages and certain standardized symbols

It should be noted that certain provinces do not allow the sale of some of these new classes of cannabis.

## Provincial Laws and Regulations

The provinces and territories are responsible for developing, implementing, maintaining and enforcing systems to oversee the distribution and sale of cannabis within their jurisdictions. They set rules around how cannabis can be sold, where stores may be located, how stores must be operated and who is allowed to sell cannabis.

Each province has taken a different approach to the retail sale of cannabis, with varying levels of government involvement in the supply chain. For example, some provinces allow privately-run retail stores, but online sales are government operated (e.g. Alberta and Ontario), whereas in other provinces, both retail and online sales of cannabis are government run (e.g. Quebec, New Brunswick, Nova Scotia and Prince Edward Island).

Only holders of licences issued under the federal *Cannabis Act* are permitted to sell and distribute cannabis to retailers that have been authorized to do so under applicable provincial or territorial legislation, with the exception of medical cannabis (which can be sold directly from a federally licensed producer to a patient in some circumstances). In turn, such authorized retailers may sell cannabis to adult consumers for recreational use.

Each province and territory also has the flexibility to set additional restrictions, including limits on possession, personal cultivation, and public use, and increasing the minimum age of use.