

Cannabis Laws in Canada

Legal history of Cannabis in Canada

Police and prosecution services in all Canadian jurisdictions are capable of pursuing criminal charges for cannabis (legal term marijuana) possession. Despite this, there is a lack of consensus on the legal status of cannabis in Canada. Superior and appellate courts in Ontario have repeatedly declared Canada's cannabis laws to be of no force and/or effect if a prescription is obtained. However, challenges to "marijuana" laws at the federal level have not resulted in the deletion of the appropriate sections from the Controlled Drugs and Substances Act.

Cannabis as a drug is legal to possess, consume, or grow for medicinal purposes under conditions outlined in the Marihuana for Medical Purposes Regulations issued by Health Canada. In June 2015, the City of Vancouver regulated the sale of medical cannabis from municipally licensed dispensaries. The cultivation of the hemp plant of the genus Cannabis (family Cannabaceae) is currently legal in Canada for seed, grain and fibre production only under licenses issued by Health Canada.

Since 1997, public opinion polls have found an increasing majority of Canadians agree with the statement, "Smoking marijuana should not be a criminal offence". A 2015 poll conducted by Forum Research showed that 68% of Canadians are in favour of relaxing cannabis regulations.

History of drug prohibition in Canada

Early drug prohibition.

Drug prohibition in Canada began with the Opium Act of 1908,[which was introduced based on a report by then-Deputy Minister of Labour, Mackenzie King. Following the Asiatic Exclusion League riot of 1907, King went to Vancouver to investigate causes of the riots and claims for compensation. Some of the claims came from opium manufacturers seeking compensation for damage done to their production facilities by the mob that attacked Chinatown and Japantown. While in Vancouver, King interviewed members of a Chinese anti-opium league and came away in favour of suppressing the drug because "opium smoking was making headway, not only among white men and boys, but also among women and girls." In his report, King summarized the progress of the anti-opium movement in China, the United States, Britain, and Japan to make the point that Canada was lagging behind in this international movement.

King's recommendations were the basis for the 1908 Opium Act, which prohibited the sale, manufacture, and importation of opium for other than medicinal use. This was followed by the Opium and Drug Act of 1911, which outlawed the sale or possession of morphine, opium, or cocaine. Smoking opium became a separate offence, punishable by a maximum penalty of \$50 and one month in jail. King introduced the new legislation based on recommendations from the chief constable of the Vancouver police and to bring Canada's drug laws in line with resolutions passed at an American-led international anti-opium conference in Shanghai. The name of the 1911 Act is significant because it separates opium, associated with Chinese users, from "white drugs," so labelled because of the colour of both the drugs themselves and the race of those presumed to be consuming them.

The next wave of legislation began with the Opium and Narcotic Drug Act of 1920, which was amended in 1921 and again in 1922 before being consolidated in 1923. Penalties became stiffer in the 1920s, with far more prison terms being handed out compared with the earlier period when fines were typically given. Maximum prison sentences also increased from one to seven years and in 1922, possession and trafficking became a deportable offence.

The catalyst for these laws also differed from the earlier ones in that they were largely the result of the agitation of moral reformers, particularly those in Vancouver who had stirred up a full-blown moral panic over the drug issue in the early 1920s. Race remained a persistent theme, and the drug prohibition movement was closely related to the move to totally exclude Chinese immigrants from Canada, which led to the 1923 Chinese Exclusion Act.

Cannabis prohibition

Cannabis was added to the Confidential Restricted List in 1923 under the Narcotics Drug Act Amendment Bill after a vague reference to a "new drug" during a late night session of the House of Commons on April 23, 1923.

Historians usually point to the 1922 publication of Emily Murphy's *The Black Candle* as the inspiration for the addition. Murphy was a suffragist and police magistrate who wrote a series of articles in *Macleans*' magazine under the pen-name "Janey Canuck," which formed the basis of her book. She uses numerous anecdotes culled mostly from anti-drug reformers and police to make her arguments, which make strong links between drugs and race and the threat this poses to white women. One chapter is entitled "Marijuana – A New

Menace", and makes the claim that the only ways out of cannabis addiction are insanity, death, or abandonment.

Although her anti-drug screeds were widely read and helped spread the drug panic across the country, historian Catharine Carstairs disputes that the short chapter in Murphy's book on cannabis inspired the drug's inclusion on Canada's restricted substance list. Specifically, Murphy was not respected by the Division of Narcotic Control because of the creative liberties she took in presenting research they had assisted her with.

More likely, cannabis was added to the list because of Canadian involvement in international conferences where it was discussed. According to one government official, cannabis was outlawed after the Director of the Federal Division of Narcotic Control returned from League of Nations meetings where the international control of the drug was broached.

Cannabis did not begin to attract official attention in Canada until the latter 1930s, and even then it was minimal.

The first seizure of cannabis by Canadian police was not until 1937.

Between 1946 and 1961, cannabis accounted for only 2% of all drug arrests in Canada.

Early 21st century developments

Medical cannabis legislation.

The regulation on access to cannabis for medical purposes, established by Health Canada in July 2001, defines two categories of

patients eligible for access to medical cannabis. BC College of Physicians and Surgeons' recommendation, as well as the CMPA position, is that physicians may prescribe cannabis if they feel comfortable with it. The MMPR (Marijuana for Medical Purposes Regulations) forms are a confidential document between Health Canada, the physician and the patient.

The information is not shared with the College or with the RCMP. No doctor has ever gone to court or faced prosecution for filling out a form or for prescribing medical cannabis.[citation needed] Category 1 covers any symptoms treated within the context of providing compassionate end-of-life care or at least one of the symptoms associated with medical conditions listed below:

Severe pain and/or persistent muscle spasms from multiple sclerosis, from a spinal cord injury, from spinal cord disease

Severe pain, cachexia, anorexia, weight loss, and/or severe nausea from cancer or HIV/AIDS infection

Severe pain from severe forms of arthritis

Seizures from epilepsy

Category 2 is for applicants who have debilitating symptom(s) of medical condition(s), other than those described in Category 1.

The application of eligible patients must be supported by a medical practitioner. Health Canada permits cannabis for approved patients who can demonstrate a medical need for compassionate end-of-life care or debilitating symptoms.

Chris Buors, a cannabis activist, was sentenced to six months in jail in November 2004 after pleading guilty to cannabis distribution and

marketing charges arising from his operation of the Manitoba Compassion Club which served patients suffering from a variety of illnesses.

In a survey conducted by the United Nations in 2011 it was revealed that 12.6% of the population, roughly 4.39 million adults, have used cannabis at least once in the past year, while the estimate for those aged between 15 and 24 was 26.3%. Considering the massive size of the cannabis market, it is clear that prohibition has harmed the Canadian government greatly, like others worldwide, from an expansive additional source of revenue at a time when cuts in benefits and investments are being used to balance the budget and come out of debt.

However, the loss of tax revenues is not the only problem associated with the current cannabis use policies: prohibition has kept the drug industry illegal and, subsequently, deregulated. This makes for risk-premiums that create a monopolized market with high barriers to entry, which in turn, leads to increases in violence, organized crime and the diversion of limited government resources to prosecuting drug users (i.e. non-violent crimes).

In April 2014, the Medical Marijuana Access Program was replaced by the Marijuana for Medical Purposes Regulations (or MMPR) by Health Canada.

Under the MMPR, legal medical cannabis production is authorized to licensed producers whom Health Canada maintains a public database of.

Patients wishing to fulfill a medical cannabis prescription must register

with and order from a licensed producer of their choice. To receive prescription for medical cannabis, a patient must obtain a medical document from a healthcare practitioner and obtain Authorization to Possess from Health Canada.

Individuals with an Authorization to Possess valid on March 21, 2014 fall under a grandfather clause and may hold a maximum quantity of dried herbal cannabis as specified by their Authorization to Possess or 150 grams, whichever is less.

In June 2015, the Supreme Court of Canada expanded the definition of medical cannabis to include any form of the drug, including but not limited to brownies, teas, or oils.

Cannabis refugees in Canada

There are cases of users of medical cannabis in the United States who, on being persecuted in their own country, have fled across the border to Canada, where they have sought asylum under the United Nations refugee convention.

This began occurring in the early part of the 2000s when the U.S. Attorney General, John Ashcroft, ordered a clampdown on the use of medical cannabis in the United States. Some of those who have fled are wanted by the U.S. federal government on charges related to their use of cannabis.

Failed decriminalization bills

On May 27, 2003, the Liberal government of Jean Chrétien introduced a bill that would have decriminalized the possession for personal use of

small amounts of cannabis. Possession of 15 grams or less would have been punishable only with a fine, and those possessing between 15 and 30 grams would be either ticketed or arrested for criminal charges at the officer's discretion. Personal cultivation of up to seven plants would have also become a summary offence, while the punishment for cultivation in larger amounts would have been more severe. The bill looked likely to pass into law, but it died when Parliament prorogued. The bill's death was largely due to pressure from the American government's Drug Enforcement Administration, which had threatened to slow down border-crossings along the Canadian-American border with increased searches for cannabis.

An identical bill was introduced in November 2004 by the minority Liberal government of Paul Martin, but it too died, when Martin's government was defeated in a confidence vote. After the Conservative victory in the 2006 election, the new government did not resurrect this bill.

The Vancouver plan

This is a draft by the city authorities in Vancouver called Preventing Harm from Psychoactive Drug Use dated November 2005, that aims to regulate the sale of cannabis. The principle is "when A Framework for Action: A Four Pillar Approach to Drug Problems in Vancouver was adopted by City Council in 2001, Vancouver committed to developing a comprehensive strategy based on the best evidence available to address harmful drug use in the city. In public meetings across the city, citizens called for a more focused, coordinated and sustained approach to addressing drug related issues. Since that time, our understanding of the issue has grown. This plan highlights both the complexity and centrality of prevention in any discussion of a comprehensive Four

Pillar approach to harmful drug use." A Four Pillar Approach to Drug Problems that was founded by Donald Macpherson consists of the equal involvement of facilities that deal with Prevention, Treatment, Enforcement and Harm Reduction strategies in a commonly shared goal to manage the negative impacts of severe drug use and dependence on the community and the individual.

Marc Emery extradition and trial

Marc Emery, a cannabis activist and former cannabis seed distributor from Vancouver, was extradited to the United States, where he was sentenced to 5 years in prison for "distribution of marijuana" seeds. Though accused of laundering seed money from 1998 until his arrest in 2005, Emery paid provincial and federal taxes as a "marijuana seed vendor" totaling nearly \$600,000.

Anti-drug strategy

In October 2007, while in his first term in office, Prime Minister Stephen Harper announced a new national anti-drug strategy. Following the Conservative victory in the 2008 election, the government re-announced the policy in February 2009. The proposed legislation would have dealers facing one-year mandatory prison sentences if they are operating for organized crime purposes, or if violence is involved. Dealers would also face a two-year mandatory jail sentence if they are selling to youth, or dealing drugs near a school or an area normally frequented by youth. Additionally, people in Canada who run a large cannabis grow operation of at least 500 plants would risk facing a mandatory two-year jail term. Maximum penalties for producing cannabis would increase from 7 to 14 years.

Bill C-15/S-10: mandatory minimums for cannabis (2009)

Legislation submitted by the Conservative minority government moved in a new direction on cannabis towards increasing penalties on cannabis trafficking by introducing mandatory minimum sentencing. The legislation passed the House of Commons with the support of the Liberal Party of Canada, while both the NDP and Bloc Québécois opposed the legislation.

The Senate sent the bill back to the house. Parliament was prorogued at the end of 2009 so the bill died, but it was reintroduced as Bill S-10. Bill S-10 died in March 2011 as parliament was dissolved after a non-confidence vote.

The road to legalization of cannabis (2015)

After the Liberal party formed a majority government after the election of October 2015, Prime Minister Justin Trudeau announced that a federal-provincial-territorial process was being created to discuss a jointly suitable process for the legalization of cannabis possession for recreational purposes. The plan is to remove cannabis consumption and incidental possession from the Criminal Code; however, new laws will be enacted for greater punishment of those convicted of supplying pot to minors and impairment while driving a motor vehicle.

In late November 2015, Justice Minister Jody Wilson-Raybould said that she and the ministers of Health and Public Safety were working on specifics as to the legislation.

Since that time, some people with minor convictions for cannabis

possession are asking whether the Government of Canada plans to give them pardons that would allow them to travel to the United States and to get employment in certain fields. Wilson-Raybould said that conversations with various levels of government will be required before making a decision on this issue.

The Toronto Police executed Project Claudia in 2016, laying 186 charges, and seizing 279 kg of marijuana. This targeted dispensaries in Toronto, whether they were serving only medical patients or anyone who wanted it. The raids cost \$2.5 million. “Project Claudia is not an attack on the lawful distribution or purchasing of marijuana for medical purposes,” said Police Chief Mark Saunders. Medical Marijuana patients complained their access was interrupted, and a protest happened the day after the raids at TPS HQ. Many of the charges included unlicensed selling of food.

Key court decisions

All of these decisions have invalidated the prohibition of cannabis based on the insufficiency of the exemptions provided for legitimate medical users of the drug. However, the laws have been and will probably continue to be modified in order to adapt them to constitutional requirements. As such, there is the possibility that a judge will uphold as valid a newer revision of the law. This also does not stop prosecutors from pursuing charges against cannabis users. Therefore, cannabis users cannot be assured that they will not be prosecuted for their use of the drug.

2000: R. v. Parker (Ontario Court of Appeal)

R. v. Parker was the landmark decision that first invalidated the

cannabis prohibition. However the declaration of invalidity was suspended for one year. It concerned the case of an epileptic who could only alleviate his suffering by recourse to cannabis. The Court found that the prohibition on cannabis was unconstitutional as it did not contain any exemption for medical use.

2003: R. v. J.P. (Ontario Court of Appeal)

On May 16, 2003, the Ontario Superior Court found the accused party, "J.P.", not guilty. The appellate court ruled that the Medical Marihuana program's rules do not form a basis for the prosecution of J.P., as they do not themselves contain any effective prohibitions.

The Crown appealed the decision of the Ontario Superior Court to the Ontario Court of Appeals. But in October 2003, the Court of Appeals upheld the invalidity of section four of the Controlled Drugs and Substances Act as it applies to cannabis, on the same grounds as those given by the lower court. The court stated in its ruling:

“As we have held, the MMAR [Medical Marihuana Access Regulations] did not create a constitutionally acceptable medical exemption. In Parker, this court made it clear that the criminal prohibition against possession of marihuana, absent a constitutionally acceptable medical exemption, was of no force and effect. As of April 12, 2002, there was no constitutionally acceptable medical exemption. It follows that as of that date the offence of possession of marihuana in s. 4 of the CDSA was of no force and effect. The respondent could not be prosecuted.”

2007: R. v. Long (Ontario Court of Justice)

The Ontario Court of Justice held in R. v. Long that the prohibition in

the Controlled Drugs and Substance Act against the possession of cannabis were unconstitutional in the absence of an accompanying constitutionally acceptable exemption for medical cannabis. The current exemption depended on the government supplying cannabis, which it was only doing as a result of the policy.

However, the policy did not impose a legal obligation upon the government to supply cannabis to those who needed it for medical purposes. The court held that without such an obligation, the exemption was constitutionally unacceptable, as access to marijuana depended on the implementation of a policy rather than the application of a law. If the government wanted to control the supply of cannabis, it had to impose an obligation upon itself to supply marijuana to eligible persons. The court held that if the government was obliged by law to supply cannabis in accordance with the policy, the exemption would be constitutionally acceptable.

A notice of appeal was filed by the Crown on 23 August 2007

At the time, there was only a single licensed dealer in Canada, which grew in Manitoba and processed in Saskatchewan, making it difficult to access. A multitude of users requested a single designate, of which all applications were denied except for one. This regulatory structure was, they argued, a violation of the Section 7 of the Canadian Charter of Rights and Freedoms, because it forced sufferers to go through illicit channels to obtain medical cannabis, to which they were legally entitled. Thus, they were being forced to break the law in order to ensure their constitutionally-protected right to "security of the person."

The court agreed with this reasoning and struck down subsection 41(b.1)[

as being of no force or effect.

This, however, does not concern the non-medical use of cannabis.

2011: R. v. Mernagh (Ontario Superior Court)

On April 12, 2011, Justice Donald Taliano found that Canada's Marijuana Medical Access Regulations (MMAR) and "the prohibitions against the possession and production of cannabis contained in sections 4 and 7 respectively of the Controlled Drugs and Substances Act" are "constitutionally invalid and of no force and effect". The government was given 90 days (until 11 July) to fill the void in those sections, or the possession and cultivation of cannabis would become legal in all of Ontario. This includes the non-medical use of the drug.

The mid-July deadline was extended when federal government lawyers argued that current cannabis laws and regulations should stay in place until Ontario's highest court could hear the appeal, which took place over the 7th & 8 May 2012. In granting the deadline extension, the Court of Appeal noted that "The practical effect of the decision if the suspension were permitted to expire on 14 July would be to legalize cannabis production in Ontario, if not across Canada."

The decision released February 1, 2013 states that the Ontario's Appeals Court has upheld current cannabis laws in Canada, overturning the decision made by the lower court judge in 2011.

in the decision, the appeals court ruled that the lower court judge had made several errors in striking down Canada's cannabis laws, citing an absence of a constitutional right to use medical cannabis. The court also stated that Mernagh failed to provide evidence from a doctor that

he met the criteria for the use of medical marijuana. The decision was met with criticism and disappointment from many in Canada, including the Canadian HIV/AIDS Legal Network. After the ruling, they restated Mernagh's (and many other medical marijuana users in Canada) issue with the current cannabis rules: "Allowing the current regulations to stand unchanged will leave many people with serious health conditions without effective access to legal authorization to use cannabis as medicine."

2015: "R v. Smith (Supreme Court of Canada)"

The Supreme Court ruled in this case that the restriction to dried marijuana under the MMAR and the MMPR were unconstitutional.

2016: "Allard et al v. Regina"

Injunctive relief granted by Judge Manson to those previously licensed under MMAR within certain dates. MMPR declared unconstitutional by BC Superior Court, declaration suspended for 6 months to allow government time to respond to ruling and reincorporate personal production

2016 Cannabis Growers Victory in Canada

A Federal Court judge has struck down federal regulations restricting the rights of medical marijuana patients to grow their own cannabis and given the Liberal government six months to come up with new rules.

Judge Michael Phelan ruled Wednesday in Vancouver that the Marijuana for Medical Purposes Regulations were an infringement on charter rights and declared they have no force and effect.

But the judge also suspended his declaration for six months to give the federal government time to come up with new rules.

The judge was careful to point out that the ruling does not change other laws that make it illegal for Canadians to use marijuana recreationally.

The judge also ordered that an earlier injunction remains in effect, allowing thousands of Canadians with prior authorization to use medical marijuana to continue to grow it at home.

'Some fell through the cracks'

Lawyer John Conroy, who co-represented the plaintiffs in the case, noted the ruling did not automatically include all medical marijuana users.

He said the ruling applied only to about 28,000 Canadians who had the proper licences in place at the time of the injunction.

And he noted there remain thousands of other medical users not covered by the original injunction, who will still have to wait six months to legally grow their own medical marijuana themselves.

"We will be heading back to court to fine-tune that injunction," said Conroy on Wednesday afternoon in Vancouver.

In addition, many people who had to change the address of their production site no longer have valid licences registered with Health Canada, and that issue needs to be addressed, he said.

He also cautioned users who have possession licences to make sure they are updated.

"Hopefully within six months we'll have a reasonably regulated system in place that solves the problems for everyone," he said.

Conroy noted that if Prime Minister Justin Trudeau wanted to move quickly on the issue, cabinet could simply issue an order-in-council that would remove marijuana from Schedule 2 of the Controlled Drugs and Substances Act.

"The next fight is making sure the dispensaries are legal," he said.

'It was a complete victory'

Lawyer Kirk Tousaw, the co-counsel for Neil Allard, who launched the court challenge, was clearly pleased with the decision.

"Basically we won, and it was a complete victory," said Tousaw, shortly after reading the decision. "[The Marijuana for Medical Purposes Regulations] were declared to be unconstitutional and violate the charter rights of medical cannabis patients."

Tousaw said it will now be up to the Liberal government to come up with new rules.

"The ball is in the federal government's court. Mr. Trudeau and the justice minister have six months to respond to the court's ruling and come up with a system of medical cannabis regulation in this country that doesn't impact and negatively take away the charter rights of medical cannabis patients and their providers."

He believes the ruling will have implications for those who wish to grow their own pot for recreational use.

"We proved that growing medical cannabis can be perfectly safe, and can be done completely in compliance with the law and people ought to have a right to do that without fear of being arrested and locked in cages for that activity."

"The lessons I think are pretty obvious. If you can grow cannabis for yourself for medical purposes safely and with no risk for the public, surely, you can grow cannabis for yourself for non-medical purposes safely and with no risk to the public," Tousaw said.

The federal Liberal government has committed to regulating and legalizing recreational marijuana but has yet to introduce any legislation.

'Most egregious example'

In his decision, the judge noted that "many 'expert' witnesses were so imbued with a belief for or against marijuana — almost a religious fervour — that the court had to approach such evidence with a significant degree of caution and skepticism."

In particular, he called one RCMP witness for the Crown, Cpl. Shane Homequist, "the most egregious example of the so-called expert."

"He possessed none of the qualifications of usual expert witnesses. His assumptions and analysis were shown to be flawed. His methodologies were not shown to be accepted by those working in his field. The

factual basis of his various options was uncovered as inaccurate," he wrote.

"I can give this evidence little or no weight," the judge concluded.

Phelan also dismissed many of the federal government's arguments concerning the risks home grow-ops could pose to homes, noting mould, fire, break-ins and insurance concerns can be addressed within existing laws and regulations.

He found the rules which "limited a patient to a single government-approved contractor and eliminated the ability to grow one's own marijuana or choose one's own supplier" were an untenable restriction on the plaintiffs' liberties.

Homegrown supply banned in 2013

The Marijuana for Medical Purposes Regulations were introduced by the Conservative government in 2013 and required patients to buy cannabis from licensed producers instead of growing their own.

The constitutional challenge was launched by Nanaimo, B.C., resident Neil Allard and three other British Columbia residents who argued that legislation introduced by the previous Conservative government violated their charter rights.

Judge Phelan heard the case between February and May 2015 in Vancouver. During the hearings, federal government lawyers argued that the regulations ensured patients have a supply of safe medical marijuana while protecting the public from the potential ills of grow-operations in patients' homes.

The lead counsel for the plaintiffs, John Conroy, told court that the legislation has robbed patients of affordable access to medicine. Some people were left with no choice but to break the law, he argued, either by continuing to grow their own or by purchasing on the black market.

How Canada's Medical Marijuana Ruling Will Affect You

The headline that says Canadians can grow their own medical marijuana might inadvertently give the impression that Canada is moving towards a model of uncontrolled growing.

With that in mind some people and some investors have sold the current crop of Licensed Producers (LP) short when in fact the added focus will quickly expose the overgrowing and diversion of marijuana that is currently flooding dispensaries.

It's counter intuitive to say but I believe that time will show that implementing the Court's ruling (assuming for the moment that the Government will not appeal the decision) will actually bring more control and order to the Canadian marijuana marketplace.

The elephant in the room in Canada these days is the so called "compassion clubs" and "dispensaries" that are in business of retailing pot even though there is absolutely no legal supply of marijuana for them to be selling. Don't let the cloud of pot smoke or the curious efforts at dispensary regulation undertaken by the City of Vancouver fool you, these dispensaries and compassion clubs are illegal and I think that the most positive outcome of today's Court Ruling will be to clarify their status.

And by clarify I mean provide clear direction to the police that the law in Canada does not condone the sale of marijuana through dispensaries and retail settings that are popping up in neighbourhoods and selling product of questionable legal origin and with no assurance that the product has been safely grown.

The sad truth is that for years now a whole bunch of people have been buying pot from dispensaries, under the guise that that they are medicinal purchasers even though no Medical Professional has signed a form or a prescription to that effect. Want to know how the surplus bud is created?

Mrs. Jones received approval under the old MMAR model to have 6 plants to address her medicinal needs. Because Mrs. Jones' days of gardening are behind her due to her prevalent arthritis she opts to have a Designated Grower tend her plants for her.

The Designated Grower in turn takes the 6 plants approval from Mrs. Jones and turns those 6 plants into mini trees that produce far more weed than Mrs. Jones could ever require. The surplus from those 6 plants, somewhat legitimized due to Mrs. Jones' paperwork, is now sold into the black market, dispensaries or compassion clubs with no traceability. Staff at those establishments can even pretend the weed is legitimate because after all there was a permit for those six plants.

What there isn't however is an exemption that allows the surplus production from Mrs. Jones' six plants to be marketed at all, much less provided to people who have not even met the test of having received a recommendation from a designated Medical Professional.

About 70,000 or 80,000 Canadians are legally entitled to consume marijuana for medical purposes and about half of those have had no choice but to get their product via courier from Licensed Producers. So where is all the pot that feeds dispensaries coming from?

Tightening the seepage of this quasi-legitimate pot will be a huge step forward as the government contemplates the means of implementing legalization.

The impact on Licensed Producers from the Court ruling should be net positive as more people who have become accustomed to getting their supply from dispensaries may be forced to legitimize their consumption by obtaining a Prescription from a Medical Professional.

That those same people will have the right to grow their own is not that great a threat considering that Medicinal Marijuana product is quickly evolving from joints to extracts and oils which is not that easy unless you are looking for a new hobby.

At the same time, even without the impact of legalization, Health Canada predicts a 10-fold increase in the number of medicinal marijuana patients.

No matter how you cut it, the market for Licensed Producers in Canada will continue to grow even as some patients choose to be green thumbs.

The real economic threat posed by the Court ruling is to those who have been operating outside of the intent and the spirit of the law(s) and who are likely now to be fully exposed.

VANCOUVER, British Columbia — The Cannabis Culture Lounge has everything a pothead might need to feel right at home: \$3 marijuana buds, bongs for rent, bags of Skittles and Doritos for sale, and black leather couches where customers can recline in zoned-out contemplation in a pungent haze. Never mind that it is all technically prohibited by Canadian law.

Still, some enthusiasts have higher hopes for the business, which opened more than a decade ago as a kind of speakeasy for marijuana smoking — long tolerated by the city’s authorities. The lounge began selling marijuana after Justin Trudeau was elected prime minister.

“This is what recreational marijuana legalization in Canada looks like,” said Jodie Emery, an activist and the co-owner of the lounge and several medical marijuana dispensaries across Canada.

Mr. Trudeau has promised to make recreational marijuana legal in Canada as soon as next year, bypassing the nation’s strict medical marijuana regulations. Under the latest rules for medical use, announced last week, patients must be registered, have a prescription and obtain their supplies only by mail from a government-licensed producer or by growing a limited amount privately.

Impatient to test the shifting political boundaries, entrepreneurs have opened hundreds of illicit dispensaries across Canada, selling products like organic marijuana buds and potent cannabis concentrates, while local governments and the police have tended to look the other way.

The marijuana boom they hope for has yet to materialize, though the Canadian government is now doing preliminary work on a measure to govern recreational use.

Even so, the authorities in some cities have begun to crack down, raiding scores of the illegal dispensaries and arresting dozens of owners and workers.

And a lobbying battle is raging between the new entrepreneurs and the licensed medical marijuana producers, who were the only ones allowed to grow and provide the plant under the old regulations. One side complains about being shut out by a politically connected cartel, while the other complains about unfair and damaging competition from those who are breaking the law.

The collision of money, politics and policing has made recreational marijuana a major test for Mr. Trudeau. How he solves it will be watched closely in Canada and the United States, where federal law bans marijuana but state laws are inconsistent.

“Canada is looking to hit a home run, rather than singles and doubles,” said Allen St. Pierre, the executive director of the National Organization for the Reform of Marijuana Laws, based in the United States. “What Mr. Trudeau is trying to do is something we can only dream about here.”

But it will not come quickly. A task force will take a few months to gather comments from local officials and the public before the Canadian Parliament starts to draft a measure. “It’s a long process, and we’re hard at it,” said Bill Blair, a Liberal Party lawmaker and former Toronto police chief whom Mr. Trudeau has put in charge of the marijuana effort.

Mr. Blair said in an interview that the government’s top priorities were to

keep marijuana away from minors and the profits out of the hands of organized crime. That may point to a system similar to the way liquor is sold in some Canadian provinces and American states: strictly through government-owned or licensed stores.

Some cities in British Columbia are unwilling to wait for Ottawa, though, and are introducing their own marijuana policies in defiance of federal law. The province has been a center of marijuana growing and culture for decades, and it borders Washington State, where recreational marijuana is legal — and extremely profitable.

In Victoria, the provincial capital, where more than 30 dispensaries have opened in recent years, city leaders proposed new regulations in late July that would allow such businesses to operate if they abide by certain restrictions.

Victoria is following Vancouver, which has begun issuing licenses to some of the 120 or so marijuana shops in the city, provided they comply with rules, like being at least 1,000 feet away from the nearest school. Two licenses were granted in the spring, and at least 11 more are in the pipeline, officials said.

Dispensaries that do not obtain a license will be shut down, according to Kerry Jang, a Vancouver city councilor. Mr. Jang dismissed complaints that the regulations and fees — up to 30,000 Canadian dollars, or about \$23,000, for a license, and 250-a-day fines for violations — were too onerous. “They got used to making money hand over fist with very little oversight,” he said.

Krystian Wetulani, 32, who owns three shops, said he felt he was stuck in red tape. Only one of his shops has been approved, and he is

appealing a denial for another. Fines are mounting while he seeks locations that will conform to regulations. “It’s impossible,” Mr. Wetulani said. “Landlords hear the word ‘weed’ and just say no.”

In the Downtown Eastside, a gritty Vancouver neighborhood, a crowd of people were smoking crack and shooting heroin on the sidewalk outside Farm, a dispensary with a self-avowed social-justice mission. It employs only women, many of them immigrants, former prostitutes or victims of sexual assault, and its proceeds help finance neighborhood programs like needle collection and a community garden.

The city tolerates open use of illegal drugs in the neighborhood and a local safe-injection site for heroin users, but Farm still fell afoul of the distance restrictions in the new marijuana regulations, and had to win an appeal to stay open.

Wang Jingzhi, 83, an immigrant who lives in the nearby Chinatown neighborhood, said she frequently bought marijuana from Farm to soothe the aches and pains of old age. “Whenever I smoke it, my whole body feels better,” she said in Chinese.

Like many in the local marijuana business, Cait Hurley, 28, the dispensary’s manager, said she was worried that new government regulations would favor corporate interests and exclude women and the working class. “There’s a lot of fear this will all be taken away from us,” she said.

Under Mr. Trudeau’s conservative predecessor, Stephen Harper, the government stripped patients of the right to grow their own medical marijuana in 2013, and centralized production and distribution through a few licensed companies. But in February, a federal court reinstated

patients' growing rights; the new rules announced on Aug. 11 put that ruling into effect.

Facing greater competition, the 34 government-licensed producers are calling for everyone to be held to the same rules they must follow, said Colette Rivet, the executive director of a producers' trade association, Cannabis Canada. "We would be shut down if we tried to sell to dispensaries," Ms. Rivet said.

Some critics of Mr. Trudeau's legalization efforts see a conflict of interest in the close ties between political insiders shaping marijuana policy and the licensed producers. The head of the task force, A. Anne McLellan, is a former cabinet minister who advises a law firm that represents clients in the industry, and Chuck Rifici, a founder of one of the licensed producers, was the volunteer treasurer of Mr. Trudeau's Liberal Party until June.

Mr. Rifici said he had no personal or political connection to the government's legalization process, but he acknowledged that the licensed companies "typically pull in people who know how to navigate government."

While lawmakers design new legalization policies, law-abiding entrepreneurs like Ivan Miliovski say they feel caught in the middle. Mr. Miliovski said his company, Vodis Pharmaceuticals, had spent years and millions of dollars seeking a license to produce medical marijuana under the existing regulations. His entire business plan is now in doubt.

"We don't know what's going to happen," Mr. Miliovski said. "The fear is that it won't help all the people who have struggled and advocated and pushed to make this industry legitimate."

Canada is moving to legalize pot in 2017, but don't expect it to become a new Amsterdam for Americans hoping to get a legal high just across the northern border.

Canada's Liberal Party government will introduce a law next spring to legalize recreational marijuana, Health Minister Jane Philpott disclosed last week at the United Nations. She did not detail who would be allowed to grow or distribute cannabis products.

“Canada has a lot of options here,” said RAND Drug Policy Research Center co-director Beau Kilmer. “You have to pay attention to what's going to happen with the regulation and the taxes. That could really shape what happens in terms of people coming in from other countries. You have to decide whether you want to allow that.”

Since most major Canadian cities are within 100 miles of the U.S. border, Canada's legalization could spur border states to enact their own legislation to prevent the exodus of tourism dollars to the north.

Colorado and Washington, which legalized marijuana in 2013, have seen an uptick in tourism since then.

Those states may also act as models for the new legislation.

“It's nice that those experiments are there for us to see what's worked,” said Zach Walsh, a professor at the University of British Columbia in Kelowna, who studies cannabis. “We'll learn from those and I think, because we're looking at doing it federally and in a more organized way and maybe with a bit more prep time, I think we'll take what's worked from those models and make our own.”

While Canada is the USA's largest trading partner, marijuana is unlikely to become the latest product traded by two countries.

Legal marijuana sales forecast to hit \$23B in 4 years

“I don't see the government legalizing the export of cannabis,” said Eugene Oscapella, an Ottawa lawyer who specializes in Canadian social policy. “Right now, it's a criminal offense punishable by life imprisonment. They don't need to change that part of the law in order to set up a legal regulatory regime in Canada.”

Cannabis is still illegal under U.S. law.

Legalizing marijuana was a major campaign plank for Justin Trudeau, who became prime minister after his Liberal Party won last fall's election. Although polls show a majority of Canadians support legalization, Trudeau's predecessor, Stephen Harper, opposed changing marijuana laws, calling the drug worse than cigarettes.

Canada's new governing party promises to legalize, regulate marijuana sales

In 2003, Canada's outgoing prime minister, Jean Chretien, publicly questioned whether marijuana should be decriminalized. The U.S. response was swift: John Walters, director of the White House Office of National Drug Control Policy, said such a move would hurt Canadian-U.S. trade relations.

Times have changed, as public opinion in both countries has become more accepting of legal marijuana.

In addition to Colorado and Washington, Alaska and Oregon have legalized pot, and some cities, such as Portland, Maine, and Washington, D.C., have enacted laws that legalize recreational use of marijuana. Vermont and California have indicated they may legalize the drug in the next few years.

Canada faces no current U.S. pressure to stop legalization, but that could change depending on the outcome of the presidential election. Republican front-runner Donald Trump has vowed to build a wall on the Mexican border to deter the flow of drugs into the United States. While Mexico is the major supplier of marijuana to the USA, that hasn't stopped politicians such as Wisconsin Gov. Scott Walker from floating the idea of building a wall along the northern border.

Walker, during his now-defunct Republican presidential campaign, said on Meet the Press in August that a wall on the Canadian border is "a legitimate issue to look at."

Trump has dismissed the possibility of a wall along the Canadian border.

Colorado and Washington may have jumped ahead in the race to become North America's marijuana kings, but Canada is now positioned to take a lead in the booming multibillion-dollar industry.

Canadian leaders could legalize recreational marijuana use as soon as next year, potentially opening the door for pot to be sold at pharmacies and province-run liquor stores. Medical cannabis has been legal in the country since 2001.

Under the new legislation, marijuana growers and distributors in Canada would also find themselves free of the trip wires that make the pot business in the U.S. risky – such as being barred from opening bank accounts or doing business with big-money investors.

“There is a lot of excitement and optimism from marijuana businesses and entrepreneurs in the U.S., who have their fingers crossed that Canada is going to pull this off,” says Chris Walsh, editorial director of Marijuana Business Daily, published in Rhode Island.

Canada’s expected move to legalize recreational pot won’t lead to instant world domination. But the plan represents a huge market for U.S. businesses and investors who have already identified an opportunity north of the border, Walsh says.

Two years ago, Seattle-based Privateer Holdings Inc. became the first American-owned company to open a commercial medicinal cannabis production facility in Canada. Derek Ogden, chief executive of of the Ottawa-based National Access Cannabis network of education clinics, says he believes Canadian pot producers could one day export their product to the U.S. and, conversely, import weed from the U.S., though he acknowledges that would happen only under a reciprocal trade agreement, and only if the U.S. legalizes marijuana at the federal level.

Canadian Health Minister Jane Philpott told a United Nations General Assembly in April that the country would introduce legislation next spring to legalize and regulate recreational marijuana.

It would be the law of the land, unlike the state-by-state checkerboard

of laws in the U.S. Although a state may legalize marijuana use, the federal government still classifies pot as a Schedule 1 drug, along with heroin and LSD.

Marijuana is a \$4.3-billion industry in the U.S. But in Canada, where there are now fewer than 30 government-licensed companies, it generates no more than \$150 million in sales.

Former Toronto police Chief Bill Blair, now a liberal member of Parliament, was appointed Canada's marijuana czar by Prime Minister Justin Trudeau and asked to figure out where and how pot should be sold. A federal task force is expected to forward recommendations to Trudeau by November.

Ogden, who spent more than 25 years as an officer with the Royal Canadian Mounted Police, is among those eager to see the results of Blair's game plan.

Canadian Health Minister Jane Philpott addresses the United Nations special session on global drug policy in April.

Currently, only licensed producers are allowed to distribute medical marijuana by mail to people authorized to use it by a doctor, although that's expected to change by August following a Federal Court ruling this year that ordered Health Canada to allow patients to grow their own therapeutic pot.

Storefront dispensaries are banned in Canada, a point illustrated when police recently raided 43 unlicensed operations in Toronto and seized 595 pounds of pot. Criminal charges were filed against 90 dispensary owners and employees.

But on the West Coast, Vancouver has flouted the law and recently issued its first business license to a medical marijuana dispensary under regulations the city established last June. Victoria, the capital city of British Columbia, is planning similar regulations.

Canadian pharmacies have expressed interest in selling medical cannabis, while province-run liquor stores want a piece of the recreational marijuana market – an idea that both Trudeau and Blair support.

Ogden says, “It’s a matter of time before medical cannabis is legal in the U.S.”

“On the recreational side,” he added, “governments like Canada’s look at it as a revenue source and feel that it makes no sense to exclude all of this potential money from their coffers when people are going to continue to consume cannabis, and preventing them from doing so legally is just going to drive them to the black market.”

Current Issues in Canada Cannabis Laws:

The Controlled Drugs and Substances Act (CDSA), which is Canada’s main drug-control legislation, criminally prohibits the possession, cultivation, production, importing, and exporting of certain scheduled substances, including cannabis, cocaine, heroin, amphetamines, LSD, and other narcotics. The use of cannabis (marijuana) for recreational purposes is currently illegal and prohibited. In the early 2000s, bills aiming to decriminalize minor offenses related to marijuana had been introduced but were never passed. The current Liberal government of Canada plans on introducing legislation legalizing and regulating

recreational marijuana at the federal level in the spring of 2017.

I. Introduction

Presently, the Controlled Drugs and Substances Act (CDSA) is Canada's main drug-control legislation, with criminal offenses involving possession, cultivation, production, importing, and exporting of certain scheduled substances, including cannabis, cocaine, heroin, amphetamines, LSD, and other narcotics.[1] Certain other drug-related regulations and offenses can be found in the Food and Drugs Act[2] and the Criminal Code.[3]

During the 2015 federal elections, the Liberal Party, which subsequently won the election, pledged that it would legalize, regulate, and restrict access to marijuana.[4] The possession, production, and trafficking of other narcotics will remain illegal. On April 20, 2016, federal Health Minister Philpott announced at a United Nations General Assembly special session on drugs that Canada would introduce legislation on the legalization of the recreational use of cannabis in the spring of 2017.[5]

Currently, regardless of the quantity, possession of cannabis is a criminal offense that results in a criminal record and is punishable by imprisonment and/or a fine.[6] Possession of up to 30 grams of marijuana or up to 1 gram of cannabis resin (hashish) is punishable on summary conviction with up to six months' imprisonment or up to a Can \$1,000 (about US\$771[7]) fine, or both.[8] Otherwise the possession of cannabis or hashish and other cannabis-related derivatives found under Schedule II of the Act are punishable on summary conviction with up to six months' imprisonment or up to a Can\$1,000 fine, or both, for the first offense, and up to one year of imprisonment or up to a Can \$2,000 fine (about US\$1540), or both, for a subsequent offense.[9] If

found guilty on an indictable offense, the person “is liable to imprisonment for a term not exceeding five years less a day.”[10] The production of cannabis plants is also prohibited; punishments and minimum punishments depend on the number of plants and whether production is for the purpose of trafficking or if certain factors apply.[11]

Despite these criminal penalties, Canada’s youth still have the highest rate of cannabis use among developed countries.[12]

II. Past Proposals

Various bills aiming to lessen the consequences of minor offenses related to marijuana were introduced in the early 2000s. In 2003 and 2004, the Canadian government introduced multiple versions of a bill to amend the Contraventions Act and the Controlled Drugs and Substances Act.[13] In 2003, the Liberal government of Jean Chretien introduced Bill C-38, which sought to decriminalize “simple possession of marijuana.”[14] The bill treated the possession of minor and intermediate amounts of marijuana as contraventions under the Contraventions Act rather than criminal offenses under the CDSA.[15] Under the proposal, “[v]iolation tickets would be issued, and existing provincial and territorial systems would be used to process the tickets”; [16] an adult possessing less than 1 gram of cannabis resin would be subject to a Can\$300 fine (about US\$231) while a young person under the age of eighteen would be fined Can\$200 (about US\$154);[17] and the possession of less than 15 grams of marijuana would only be punishable with a fine of Can\$150 (about US\$116) for an adult and Can\$100 (about US\$77) for a person under eighteen.[18]

The proposed legislation would require larger fines if certain aggravating circumstances were present, such as “operating a motor

vehicle, committing an indictable offence, and being in, or near, a school.”[19] Under those circumstances, adults would be fined Can \$400 (about US\$309) and youth Can\$250 (about US\$193).[20] Also according to the bill, the possession of more than 15 but not more than 30 grams of marijuana could either be treated as a contravention liable to a fine of Can\$300 (about US\$231) or, in the case of a young person, Can\$200, or as a criminal offense at the discretion of a police officer. [21] The proposed legislation would also make producing up to three plants punishable by a fine of only Can\$500 (about US\$386) for adults and Can\$250 for young persons.[22]

In February 2004 an identical bill was introduced as Bill C-10 but, like its predecessor, it also died on the order paper without a vote in May 2004, due to the federal election.[23] Another identical bill was introduced in November 2004 as Bill C-17[24] by the minority Liberal government of Paul Martin, but it too died on the order paper.[25] In 2006, the Conservative Party won the election and these bills were not revisited. Therefore, none of these bills have been adopted.

III. Current Proposal

In his 2015 election campaign, current Prime Minister Justin Trudeau pledged to legalize, regulate, and restrict access to marijuana at the federal level in order to “keep marijuana out of the hands of children, and the profits out of the hands of criminals.”[26] He promised to “remove marijuana consumption and incidental possession from the Criminal Code, and create new, stronger laws to punish more severely those who provide it to minors, those who operate a motor vehicle while under its influence and those who sell it outside of the new regulatory framework.”[27] He also aimed to “create a federal/provincial/territorial task force, and with input from experts in public health, substance abuse, and law enforcement . . . design a new system of strict

marijuana sales and distribution, with appropriate federal and provincial excise taxes applied.”[28]

Although legislation concerning the legalization and the regulation of marijuana will not be introduced until the spring of 2017, Trudeau reiterated in June 2016 that such legislation will focus on the dual purpose of restricting underage access to cannabis and diminishing the profits of organized crime earned through the illicit marijuana market. [29] The Canadian government has launched a nine-member task force to advise the government on the regulation and legalization of marijuana. In the upcoming months, the task force will consult provincial, territorial, and indigenous governments as well as “youth and experts in relevant fields like healthcare, criminal justice, economics, industry and law enforcement.”[30] Companies with expertise in the sale, production, and distribution of marijuana will also be consulted.[31]

The New Democratic Party of Canada had introduced a motion for the immediate decriminalization of recreational marijuana. However, this motion was rejected by the government. Prime Minister Trudeau argues that without regulations in place, the decriminalization of marijuana will result in giving a “legal stream of income to criminal organizations.”[32] Until the new law is in place, recreational marijuana will remain illegal.

Plans to legalize marijuana are being complicated by Canada’s international treaty obligations.[33] Because the legalization of marijuana may violate such treaties, Canada will have to demonstrate how it plans to conform to its treaty obligations. In some cases, Canada may either have to renegotiate the treaties or formally withdraw from them.[34]

A Detailed Look at Current Cannabis Laws in Canada:

Introduction

The way individuals access cannabis for medical purposes is changing. As of August 24, 2016, the Access to Cannabis for Medical Purposes Regulations (ACMPR) will replace the Marihuana for Medical Purposes Regulations (MMPR).

Legal access to dried marijuana for medical purposes was first provided in 1999 using unique section 56 exemptions under the Controlled Drugs and Substances Act (CDSA). The decision in *R. v. Parker* in 2000 held that individuals with a medical need had the right to possess marijuana for medical purposes. This led to the implementation of the Marihuana Medical Access Regulations (MMAR) in 2001. The MMAR enabled individuals with the authorization of their health care practitioner to access dried marijuana for medical purposes by producing their own marijuana plants, designating someone to produce for them or purchasing Health Canada supply.

Over time, court decisions resulted in a number of changes to the MMAR. In June 2013, the Government of Canada implemented the Marihuana for Medical Purposes Regulations (MMPR). The MMPR created conditions for a commercial industry responsible for the production and distribution of marijuana for medical purposes. Under the MMPR, individuals with a medical need could access quality-controlled dried marijuana produced under secure and sanitary conditions.

In June 2015, the Supreme Court of Canada, in *R. v. Smith*, decided that restricting legal access to only dried marijuana was

unconstitutional. The Court decided that individuals with a medical need have the right to use and make other cannabis products. To eliminate uncertainty around a legal source of supply of cannabis, the Minister of Health issued section 56 class exemptions under the CDSA in July 2015, to allow, among other things, licensed producers to produce and sell cannabis oil and fresh marijuana buds and leaves in addition to dried marijuana, and to allow authorized users to possess and alter different forms of cannabis.

The ACMPR is Canada's response to the Federal Court of Canada's February 2016 decision in *Allard v. Canada*. This decision found that requiring individuals to get their marijuana only from licensed producers violated liberty and security rights protected by section 7 of the Canadian Charter of Rights and Freedoms. The Court found that individuals who require marijuana for medical purposes did not have "reasonable access".

The ACMPR are designed to provide an immediate solution required to address the Court judgement. Moving forward, Health Canada will evaluate how a system of medical access to cannabis should function alongside the Government's commitment to legalize, strictly regulate and restrict access to marijuana.

Overall, the ACMPR contain four parts.

Part 1 is similar to the framework under the MMPR. It sets out a framework for commercial production by licensed producers responsible for the production and distribution of quality-controlled fresh or dried marijuana or cannabis oil or starting materials (i.e., marijuana seeds and plants) in secure and sanitary conditions.

Part 2 is similar to the former MMAR regime. It sets out provisions for individuals to produce a limited amount of cannabis for their own medical purposes or to designate someone to produce it for them.

Parts 3 and 4 include:

Transitional provisions, which mainly relate to the continuation of MMPR activities by licensed producers

Consequential amendments to other regulations that referenced the MMPR (i.e., Narcotic Control Regulations, New Classes of Practitioners Regulations) to update definitions and broaden the scope of products beyond dried marijuana

Provisions repealing the MMPR and setting out the coming into force of the ACMPR on August 24, 2016

As of August 24, 2016, Health Canada will accept applications from individuals who wish to register to produce a limited amount of cannabis for their own medical purposes or to designate someone to produce cannabis for them.

Under the ACMPR, Health Canada will continue to accept and process applications to become a licensed producer that were submitted under the former MMPR. Further, all licences and security clearances granted under the MMPR will continue under the ACMPR, which means that licensed producers can continue to register and supply clients with cannabis for medical purposes. New applicants can continue to apply for licences to produce under the ACMPR.

Health Canada's role

In administering the ACMPR, Health Canada has two main roles:

Licensing and overseeing the commercial industry; and, registering individuals to produce a limited amount of cannabis for their own medical purposes (or to have another individual produce it for them).

With respect to the licensed producers, Health Canada officials will continue to conduct a thorough review of the information on applications to ensure compliance with the regulations and associated Directives (i.e., the Security Directive). Health Canada will also continue to work closely with producers once they are licensed as a means of monitoring and ensuring compliance with the regulations and the CDSA, including through inspections.

As of August 24, 2016, Health Canada will begin to review applications from individuals who have the authorization of their health care practitioner and who wish to register to produce a limited amount of cannabis for their own medical purposes. This will involve reviewing the information submitted to ensure it complies with the regulations, and responding to requests from law enforcement to confirm the validity of a registration certificate.

In administering the regulations, Health Canada officials will work closely with a range of groups, including law enforcement, municipalities, provincial and territorial medical licensing authorities, and health care professionals, as well as Canadians who are interested in using the program.

What it means for health care practitioners

The role of health care practitioners is unchanged by the introduction of the ACMPR. As with the previous regulations, an individual who

requires cannabis for medical purposes must first get a medical document from an authorized health care practitioner. Like under the MMPR, the medical document contains similar information to a prescription, including:

the authorized health care practitioner's licence information

the patient's name and date of birth

a period of use of up to one (1) year

a daily quantity of dried marijuana expressed in grams

In a hospital setting, the person in charge of the hospital can allow fresh or dried marijuana or cannabis oil to be administered to a patient or, sold or provided to a patient or an individual responsible for the patient.

Please refer to the guidance available on the Health Canada website for more information about the authorization of cannabis for medical purposes, including the Daily Amount Fact Sheet (Dosage).

What it means for licensed producers

Part 1 of the ACMPR covers the permitted activities and general responsibilities of licensed producers, including:

requirements to obtain and maintain a licence

establishment and personnel security measures

authorized activities, including good production practices, packaging, shipping, labeling, import and export requirements, and record-keeping requirements

client registration and ordering requirements

Part 1 includes the requirements of the MMPR and the relevant section 56 CDSA exemptions that responded to the decision in R. v. Smith,

enabling the production and sale of fresh marijuana and cannabis oil in addition to dried marijuana.

Newly-permitted activities under the ACMPR include the production and sale of starting materials (i.e., marijuana seeds and plants) to those individuals who have registered under Part 2 to produce a limited amount of cannabis for their own medical purposes or to have it produced by a designated person, and the ability to sell an interim supply of fresh or dried marijuana or cannabis oil to registered persons while they wait for their plants to grow.

Licences and licence applications under the ACMPR consolidate the MMPR licence requirements for the production and sale of dried marijuana, the requirements for supplemental licences under the section 56 exemption, and the new requirements for the sale of marijuana seeds and plants.

Other notable changes from the MMPR include:

New labelling requirements for cannabis oil to include the carrier oil used and for cannabis oil in dosage form to include the number of capsules or units in the container, the net weight, and the volume of each capsule or unit

New labelling requirements for fresh and dried marijuana to include the percentage of THC and CBD that could be yielded, taking into the account the potential to convert THC-Acid and CBD-Acid into THC and CBD

Provisions enabling individuals to receive their 30-day supply of cannabis within each 30-day period beginning on the date of the first sale

Modifying that the accuracy of weight and volume of products in

packages must now be between 95% and 105%, as opposed to between 95% and 101%

Requiring all analytical testing to be done using validated methods (e.g., contaminants, disintegration, and solvent residue testing) and requiring disintegration testing for cannabis oil in capsules or similar dosage forms

Requiring notification to the Minister of Health prior to commencing a recall

What it means for individuals who require access to cannabis for medical purposes

Individuals with a medical need, and who have the authorization of their health care practitioner, will now be able to access cannabis in three ways: they can continue to access quality-controlled cannabis by registering with licensed producers, they can register with Health Canada to produce a limited amount for their own medical purposes, or they can designate someone else to produce it for them.

Under the ACMPR, those who are currently registered to purchase from a licensed producer may continue to do so without any interruptions to their supply.

Individuals who do not currently have access to cannabis for medical purposes need to discuss their options with their health care practitioner. The practitioner may complete a medical document if it is decided that cannabis is a good treatment option.

Individuals can then use their medical document to either register with a licensed producer to obtain fresh or dried marijuana or cannabis oil, or with Health Canada to be able to produce a limited amount of

cannabis themselves or designate someone else to produce it for them. As of August 2016, there are 34 licensed producers.

No matter how individuals obtain cannabis (i.e., under Part 1 or 2 of the ACMPR), their possession limit is the lesser of a 30-day supply or 150 grams of dried marijuana or the equivalent amount if in another form.

If an individual wants to produce a limited amount of cannabis for his/her own medical purposes, he/she must submit an application to register with Health Canada. An original medical document from the health care practitioner must be provided and the application must include information such as the location of where cannabis will be produced and stored.

Once successfully registered, the individual will receive a registration certificate from Health Canada. The certificate will include information required for the individual to show his/her legal authority to possess and produce cannabis. It will also include the location and maximum limits of the production and storage activities, as well as the individual's possession limit.

If an individual chooses to designate another individual to produce a limited amount of cannabis for him/her, he/she must submit an application to register with Health Canada (similar to if the individual was to produce it him/herself, but with information from the designated person). An original medical document from the health care practitioner and a declaration by the designated person, including information such as the location of where cannabis will be produced and stored, must be provided. The designated person must include a document issued by a Canadian police force proving the individual has not been convicted or received a sentence for a designated drug offence within the 10

previous years. A designated person can only produce for a maximum of two individuals including him/herself.

Once successfully registered, the registered person will receive a registration certificate from Health Canada. The designated person will also receive a document from Health Canada containing information outlining what activities are permitted. The certificate and the document could be used by either the registered person or the designated person, respectively, to demonstrate the legal authority to possess and produce cannabis.

Under the former MMAR, the only option to acquire starting materials was seeds obtained from Health Canada. In addition, individuals who were authorized to possess marijuana for their own medical purposes could only purchase an interim supply of dried marijuana from Health Canada while waiting for their production to be ready. The ACMPR permit newly registered persons to register with any of the producers licensed by Health Canada using a copy of their Health Canada registration certificate to obtain starting materials (seeds or plants) for production, and/or an interim supply of fresh or dried marijuana or cannabis oil while their own production is established.

The ACMPR outline in more detail the requirements for registered and designated persons upon successful registration, such as production, storage, transportation, and shipping.

The ACMPR also have formulas that indicate how many plants can be grown and how much cannabis can be stored, based on the daily quantity of dried marijuana authorized in the registered person's medical document.

In general, every one (1) gram of dried marijuana authorized will result in the production of five (5) plants indoors or two (2) plants outdoors. Individuals must indicate in their application whether they intend to produce marijuana plants indoors, outdoors, or partial indoors/partial outdoors. Individuals seeking to produce outdoors must confirm that the production site is not adjacent to a school, public playground, daycare or other public place mainly frequented by children.

Registered and designated persons are required to maintain any measures they think are necessary to protect the security of their cannabis. This could include, for example, installing a home alarm system or securing cannabis in locked cabinets. Health Canada has prepared an information bulletin that highlights the safety and security rules that must be adhered to under the regulations. This document further outlines a number of simple precautions that individuals can take to reduce risks to their health and safety.

If an adult, a registered person who has a designated producer can also participate in all of the activities that the designated person is authorized to conduct. This is a significant change from the former MMAR, which limited the ability of the registered person to take part in production by the designated person.

Another notable change from the former MMAR is that registered persons, as well as designated persons, will have the ability to alter the dried marijuana they harvest into other products, such as oils. In doing so, individuals are prohibited from using organic solvents (e.g., butane), given the health and safety risks posed by use of these products.

The inclusion of provisions enabling the production of products reflects the June 2015 decision in *R. v. Smith*. It should also be noted that

registered clients of licensed producers also have this same ability to alter dried or fresh marijuana or cannabis oil into other products.

It is the responsibility of individuals to ensure that, in performing any alteration, they stay within the possession limit outlined on the registration certificate. Because the possession limit is articulated in grams of dried marijuana, individuals must manage their limit by taking into account the equivalency of their product to dried marijuana as is outlined in the regulations.

Part 2 of the ACMPR also describes other general measures, such as: how to cancel a registration; cannabis destruction requirements once production has stopped; and, instances in which Health Canada can share information with police or provincial/territorial health care licensing authorities.

What it means for law enforcement

Broadly speaking, the role for law enforcement has not changed. Law enforcement officials have a central role in enforcing the CDSA, including whether individuals who possess, produce, sell or provide and transport, deliver or ship cannabis are operating outside of the ACMPR framework.

Law enforcement officers can contact Health Canada to verify that a licensed producer is in fact licensed or that an individual is a registered person or designated person at any time and on a 24 hour basis.

Similarly, a law enforcement officer may contact a licensed producer to verify whether a person is a client of the producer or a person responsible for the client.

When requested, a police officer must be provided with proof that the possession or production of cannabis is legal. Depending on the situation, this could be a:

Health Canada-issued producer's licence

Health Canada-issued registration certificate

Health Canada-issued designated person document

Licensed producer-issued client label

Licensed producer-issued "separate document" with the same information as a client label

What remains illegal

With the introduction of additional options, the ACMPR provide for reasonable access to individuals who require cannabis for medical purposes.

However, activities with cannabis conducted outside of the ACMPR, the NCR or an exemption pursuant to section 56 of the CDSA could be illegal.

Access to cannabis for medical purposes is only permitted under the terms and conditions set out in the regulations. Storefronts selling marijuana, commonly known as "dispensaries" and "compassion clubs," are not authorized to sell cannabis for medical or any other purposes. These operations are illegally supplied, and provide products that are unregulated and may be unsafe. Illegal storefront distribution and sale of cannabis in Canada are subject to law enforcement action.

Any individual registered to produce a limited amount of cannabis for him/herself may not sell, provide or give cannabis to another person.

A designated person may not:

sell, provide or give cannabis to any person, except for the individual for whom he/she is authorized to produce in a registration; and, produce cannabis for more than two people registered with Health Canada, including him/herself, for whom he/she is authorized to produce in a registration.

Registered and designated persons may not produce in excess of the maximum limits outlined in a registration certificate.

It remains illegal for a company or an individual to advertise cannabis to the general public.

Citing:

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[6] Controlled Drugs and Substances Act § 4(1).

[7] Exchange rate as of June 3, 2016: Can\$1.00 = US\$0.77, <http://www.bankofcanada.ca/rates/exchange/daily-converter>.

[8] Controlled Drugs and Substances Act § 4(5).

[9] *Id.* § 4(4)(b).

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