



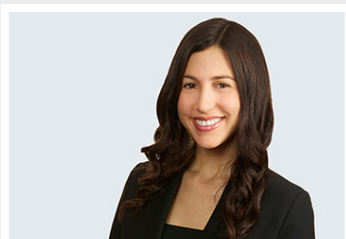
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Health Canada Releases Consultation Paper on the Regulation of Cannabis

On November 21, 2017, Health Canada released a consultation paper entitled “[Proposed Approach to Regulation of Cannabis](#)” (the “**Consultation Paper**”). The Consultation Paper outlines a set of proposals with respect to the regulation of cannabis in Canada and will be used to solicit feedback from the public and interested stakeholders on regulating the Canadian cannabis market. The proposed regulations are for consultation purposes only and are not final.

The Consultation Paper outlines regulatory proposals in the following areas:

- Licenses, permits and authorizations
- Security clearances
- Cannabis tracking system
- Cannabis product standards
- Packaging and labelling
- Cannabis for medical purposes
- Health products and cosmetics containing cannabis
- Miscellaneous issues

In the coming weeks, we will be publishing additional articles considering the regulatory proposals across the above areas. This article specifically considers the proposals with respect to licensing, permits and authorizations and security clearances.

Licenses, Permits and Authorizations

The proposed *Cannabis Act* (the “**Act**”) sets out a general framework whereby the Minister of Health (the “**Minister**”) is authorized to issue licenses and permits to conduct various activities involving cannabis, such as cultivation, processing, sale, testing, import/export and research. The Consultation Paper expands on this framework by proposing several different classes of licenses that are based on the activity and, in some cases, the scale of the activity being undertaken. Each class of license would be subject to different regulatory requirements proportional to the public health and safety risks posed by the type of activity.

The proposed classes and sub-classes of licensed activities are as follows:

- Cultivation: Standard cultivation, micro-cultivation, industrial hemp and nursery
- Processing: Standard processing and micro-processing
- Sale to the public: Sale for medical purposes and sale for non-medical purposes
- Analytical testing
- Import/export
- Research

The proposed regulations distinguish between standard cultivation, which enables the large-scale growing of any variety of cannabis plant, and micro-cultivation, which, as the name suggests, enables the same activities as standard cultivation but on a smaller scale and will be subject to less onerous regulatory requirements. Micro-cultivation does not exist under the current regime of licensing pursuant to the *Access to Cannabis for Medical Purposes Regulations* (“ACMPR”). Both classes also authorize supplemental activities, such as possession, transportation and research and development.

A similar distinction is made between standard processing, which authorizes the large-scale production, packaging and labelling of a range of cannabis products for sale to the public and other licensed producers (“LP”), and micro-processing, which authorizes the same activities as standard processing but on a smaller scale and will again be subject to less onerous regulatory requirements.

The intent of these distinctions is to promote a diverse and competitive legal cannabis industry that is capable of outperforming the illegal industry. Health Canada is seeking input on the threshold of cannabis produced for a LP to qualify as a micro-cultivator or micro-processor.

The Consultation Paper proposes that each licensed activity would be subject to specific regulatory requirements across areas such as notice to local authorities, location, physical security, good production practices and record keeping and reporting. Additionally, the validity period for all licenses issued under the Act will be no more than five years, after which the license holder may apply for renewal of its license. This represents an extension from the current three year maximum period proscribed by the ACMPR.

While some requirements, such as validity period, good production practices, and record keeping and reporting would generally apply consistently across all license types, other requirements vary between standard and micro-cultivators and processors to reflect differences in the risk-level related to the scale of the operations. For example, license classes that authorize a larger amount of high-value cannabis being present on-site, such as standard cultivation or standard processing licenses, would be subject to greater security requirements (i.e. areas where cannabis is present to be visually monitored at all times, recording the identity of every person accessing

these areas) as compared to micro-cultivation and micro-processing licenses that would be subject to more relaxed requirements due to smaller quantities of cannabis allowed to be stored on-site.

With respect to cannabis sales to the public, the Consultation Paper proposes licenses for the sale to the public for medical purposes in a manner similar to the system under the ACMPR. The Consultation Paper also proposes enacting a federal distribution and sale framework of recreational cannabis that may be temporarily imposed in provinces and territories that have not yet enacted their own distribution and sale framework by July 2018. Provinces that have tabled legislation on this issue, such as Ontario, Manitoba, Quebec, Alberta and New Brunswick, will not be subject to the federal regime if they are able to enact their provincial frameworks before July 2018.

Security Clearances

Health Canada’s goal with the security clearance regime has always been to mitigate the infiltration of organized crime into the cannabis industry. The approach to granting security clearances under the Consultation Paper will remain in-line with the existing approach under ACMPR. The proposed regulations would enable the Minister to refuse to grant security clearance to any individual with associations to organized crime, or with past convictions for drug trafficking, corruption or violent offences. The Minister would also have the authority to suspend or cancel

an individual's security clearance at any time if the Minister is of the opinion that the individual poses an unacceptable risk to the integrity of the control over the production and distribution of cannabis under the Act. Reasonable time will be provided to identify and grant security clearance to an alternate person if the suspended or cancelled security clearance affected a key position of a LP or applicant.

Health Canada recognizes that there may be individuals applying for security clearance who have non-violent or lower risk criminal records, and are currently seeking feedback on whether these individuals should be permitted to participate in the cannabis market.

The Consultation Paper advocates for a maximum five year validity period on security clearances, and proposes that individuals who hold a valid security clearance can maintain that clearance when transferring employment from one LP to another – something that was not previously possible.

Under the proposed regulations, application for security clearances are limited to the following individuals: (i) anyone occupying a key position of a LP or applicant; (ii) directors and

officers; (iii) shareholders that own more than 25% of the LP or applicant (if privately held) or more than 25% of a privately held parent company; (iv) anyone in a position to bind the LP or applicant; and (v) individuals the Minister identifies as requiring a security clearance based on the nature of their position and risk level associated with that position. Presently, major shareholders and individuals with the ability to bind a LP are not currently required to obtain security clearances under the ACMPR. By broadening the scope of people who will require security clearance, Health Canada's scrutiny will be enhanced so as to better prevent the infiltration of organized crime into the regime. The proposed regulations would provide that anyone who has been refused security clearance or has had their security clearance cancelled in the preceding five years is ineligible to apply for a security clearance, making it vital for LPs and applicants to verify the individuals with whom they are entering into relationships.

As the Consultation Paper expands upon the current proposed framework, the public and interested stakeholders have been invited to provide comments to Health Canada by January 20, 2018 by way of an online questionnaire or written

submission. More information can be found on the [Government of Canada website](http://www.government.ca).

If Torkin Manes LLP can be of assistance to you in providing your comments to Health Canada, please go to cannabis-law.ca and contact any one of our team members.