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Cannabis Legalization and Regulation Secretariat  
Health Canada  
Via email: [cannabis@canada.ca](mailto:cannabis@canada.ca)

To Whom It May Concern:

Thank you for the opportunity to make submissions on the Proposed Approach to the Regulation of Cannabis.

By way of background, I have practiced law in Canada since 2005. The focus of my practice is cannabis related issues including representing those charged with CDSA offences and, more recently, regulatory compliance inside and outside the ACMPR. I act for more than 100 storefront dispensary locations across Canada, a large number of medical cannabis producers (personal and designated) and persons and companies making various forms of cannabis derivative products. I have appeared before courts at all levels, including successfully before the Supreme Court of Canada.

I congratulate the Government of Canada on moving toward legalization and have previously provided my comments on Bill C45. I believe the Proposed Approach moves Canada considerably in the right direction and look forward to a day when no Canadian faces the prospect of arrest or incarceration solely for cannabis-related activity.

I wish to underscore that the primary reason to end cannabis prohibition is that in a free and democratic society it is unconscionable to impose criminal sanction on persons who wish to grow and possess cannabis. Cannabis is a relatively harmless, and often beneficial, plant that has been used by humans for millennia with minimal negative effect. The recent 100-year failed experiment of cannabis prohibition has, unfortunately, created a great deal of unjustified stigma; this stigma negatively affects all facets of the social, legal and political discussions about cannabis and cannabis policy. Unfortunately, Bill C45 and some aspects of the Proposed

Approach continue to treat cannabis through the lens of criminal law, with profound effect on the regulatory approach. As our approach to cannabis evolves it will be critical to continue to challenge the incorrect assumptions about cannabis – and human behavior – so that our policies evolve away from their grounding in prohibition.

A secondary reason is to end cannabis prohibition is to provide an easy transition for persons who have been pioneering the cannabis industry and providing Canadians with reasonable and dignified access to cannabis. An easy pathway to legality and licensing will have the effect of reducing the already small influence of organized crime on the cannabis industry and, more importantly, will legitimize those Canadians who currently grow and sell cannabis to adult consumers. Further, a sensible regulatory approach will allow the existing cannabis industry to continue to grow, providing jobs and careers for many Canadians.

Cannabis is a wonderful and beneficial plant and, freed from the shackles of prohibition, the already incredibly vibrant cannabis industry will provide significant economic and social benefits to all Canadians. Below I provide a series of general comments, divided by subject, and I conclude the submission with responses to the specific questions posed in Annex 1 of the consultation document.

## **Cultivation**

Conceptually, dividing the licensing into categories is a welcome step. Tying regulatory burdens to the size of the activity makes sense and I applaud the introduction of the micro-cultivation and micro-processing licenses. My view is that the overall scheme would benefit from addition of a third category of mid-range cultivation. As proposed, the differentiation between the regulatory burdens on micro-cultivators and standard cultivators is too narrow and, in the case of true micro-producers, those burdens would remain too high.

Micro-cultivators, which I suggest should be determined based on canopy size, should have extremely low barriers to licensing. In effect, the only relevant criteria should be local zoning/licensing approval and ability to meet the quality control standards for sale. Applications should require minimal information and should be processed in under 90 days – this type of licensing application should look, for example, like the current ACMPR designated production licensing. The maximum canopy size should be commensurate with this minimal burden, perhaps a maximum of 500 square feet. This would allow for very small producers to still have access

to the market and would likely encourage many current personal/designated producers to participate.

The current proposal for micro-cultivators would then apply to mid-range cultivation. The canopy size for this level of licensing should range from 500 square feet to 10,000 square feet. This would capture many medium sized producers while recognizing the reality that any business of greater size is likely to voluntarily implement the increased security and other requirements applicable to standard cultivation. I urge strong consideration of not just a reduction in the various criteria, but also a significant reduction in any paperwork burden on these micro-producers.

### **Processing**

With respect to the processing categories, I suggest that the metric used to differentiate be gross revenues. This appropriately differentiates between small business which may not be able to meet enhanced criteria and larger operations which should have the financial wherewithal to do so. In order to facilitate the participation of small business, the micro-processing category should err on the side of over-inclusiveness.

### **Security Clearances**

No person should be prevented from participating the lawful cannabis industry because of past cannabis-related criminality. This includes persons with convictions for any cannabis-related offences. In order to transition the illicit market into the new legal arena, it is absolutely critical to be inclusive and to not hold past cannabis-related activity against anyone. This includes growers, extractors and retailers whether or not those individuals have been charged with offences.

### **Packaging/Labelling**

Cannabis packaging and labelling should not be any more restrictive than that for alcohol products. It is appropriate and necessary to have labels that accurately identify the product and active ingredient(s). Some health-related messaging, if empirically accurate, might also be appropriate. Any further restrictions are unnecessary. In particular, no restrictions on colours, fonts, brand elements and the like are appropriate. Cannabis is a much safer product than alcohol and Canadian public health would be dramatically improved if more people used cannabis and less alcohol. In order for brands to differentiate themselves and to compete with alcohol (and with illicit cannabis products) the restrictions on cannabis packaging and labeling must be minimal.

## **Cannabis for Medical Purposes**

It is critical to maintain a distinct system. That system requires improvement. Processing times for personal and designated production licensing are currently far too long; sometimes many months pass between physician approval and licenses being issued. I am aware that a personal firearm license can be renewed online; surely a medical cannabis authorization should also be as easy.

In addition, and with physician support, licensing for medical purposes should be extended beyond the one year maximum. Most patients that use medical cannabis suffer from chronic conditions; an annual renewal is an unnecessary burden. Further, the 150-gram possession limit should be removed and a 30-day limit replaced.

The classes of health care practitioners permitted to sign medical documents should be expanded to include naturopathic doctors and doctors of traditional Chinese medicine. In effect, any provincially-regulated health care practitioner should be permitted to sign medical declarations. Allopathic physicians, and in particular the various provincial Colleges, have shown a disturbing and anti-empirical antipathy to medical cannabis.

## **Genetics**

It is imperative that the current genetic bottleneck be addressed. An easy method would be to allow anyone lawfully in possession of cannabis plants or seeds to transfer those plants/seeds (or other genetic material) to any licensed cultivator. There should be no time limit on this process (unlike at the inception of the MMPR) because there is no sound reason why someone legally in possession of cannabis genetics should be prevented from having those genetics enter the commercial space.

## **Breeding and Sampling**

Further, it is important to allow cultivators to sample the cannabis they are growing and breeding. Currently, my understanding is that a new genetic would need to go through all the steps necessary to allow commercial sale before anyone could sample it. This may have some validity in the current medical-only climate but represents an unnecessary burden in a legalized model. Room needs to exist for breeders to grow several expressions of a particular cultivar, sample them all and make a choice as to which, if any, go into commercial production for eventual sale to the public. Plants grown for this type of selection should be exempted

from regulations requiring lab testing, storage of samples for lengthy periods and the like.

## **Derivative Products and Resin**

I understand that sale of derivatives including extracts/resin/hashish and pre-made edibles will not initially be permitted and that regulations governing these products will be forthcoming. I urge that this occur quickly as these products are highly desired and are currently being produced in very sophisticated ways.

## **Responses to suggested questions**

1. What do you think about the different types of proposed licenses (i.e., cultivation, processing, etc.)?

As noted above, the different type of licenses are a positive reform. Further specific comments appear above.

Will they achieve the objective of enabling a diverse, competitive legal industry that is comprised of both large and small players in regions across the country?

More important than the differentiation in license types will be reducing the administrative burden on applicants, speeding up processing times and making the security clearance reforms suggested above.

2. What do you think would be an appropriate threshold to distinguish between a micro-cultivator and a standard cultivator, taking into account the reduced physical security requirements for a micro-cultivator? Should the threshold be based on the number of plants, size of growing area, total production, gross revenue, or some other criteria? What should the threshold be?

A third category should be established (which would use the criteria now suggested for micro-cultivation. The smallest category should have extremely minimal requirement. The easiest threshold to implement is canopy size. Further specific suggestions are above.

3. What do you think would be an appropriate threshold to distinguish between a micro-processor and a standard processor, taking into account the reduced physical security requirements for a micro-processor? Should the threshold be based on total production, on-site

inventory, gross revenue, or some other criteria? What should the threshold be?

Gross revenue is the most appropriate metric. All of the other possible metrics pose difficult considerations, particularly when applied to cannabis derivative products. Tying increased burdens to the applicant's financial ability to meet those burdens is the fairest approach.

4. What do you think of the proposed rules and requirements (i.e., physical security, good production practices, etc.) for the different categories of authorized activity? Do you think that the requirements are proportional to the public health and safety risks posed by each category of activity?

Conceptually, most of the requirements are grounded in a prohibition-based mentality. Cannabis is safe, easy to grow and poses little risk to individual or societal health. Hundreds of millions of pounds of untested, unlawful cannabis have been consumed by humans, for millennia, with minimal negative consequences. Cannabis is also no more likely to be stolen than any other product and less so than most due to bulk and difficult disposing of it.

My view is that all of the physical security requirements are empirically unnecessary and disproportionate to the actual risks. Most businesses of any size will take commercially adequate security measures as a matter of course and those that don't should bear their own risks, as with most industries.

Good production practices are an important component of building public comfort and providing transparency to consumers. While the purported risks of untested cannabis are regularly overstated, consumers want and deserve quality controlled products when intended for human consumption. Accordingly, I agree with most of the GPP requirements set out in the Proposed Approach.

5. What do you think about the proposed requirements for certain individuals associated with a licensed organization to hold a security clearance issued by the Minister of Health? Do you think the proposal appropriately addresses positions of greatest risk?

The requirement for Ministerial security clearances is unnecessary and disproportionate to any actual risks posed by cannabis. Other comparable industries do not require such measures. The CEO or brewmaster at a brewery, the shareholders and vintner at a vineyard do not require security clearances from the federal government to participate in their

industries. Putting such requirements on participants in the cannabis industry fosters the stigma associated with cannabis and prolongs the prohibition-based approach.

6. What do you think of the proposed criteria for determining whether or not an individual is eligible to hold a security clearance? Do you think that the proposed approach should permit individuals with a history of non-violent, lower-risk activity (such as simple possession or small-scale cultivation of cannabis plants) to obtain a security clearance and participate in the legal cannabis industry?

As noted above, no person should be denied a security clearance as a result of any past cannabis-related activity. It is much more relevant and justifiable to examine applicants for past fraudulent actions, or past activity that posed public safety risks, than anything cannabis related.

7. What do you think about the proposal not to restrict the types of product forms that industry will be able to manufacture and sell (for example, pre-rolled dried cannabis, or cannabis oil capsules and oral sprays)? Are there any specific product forms that you think should be prohibited?

No product forms should be prohibited. Canada should move quickly to broaden the range of permissible products to include all cannabis derivative products.

8. What do you think about the proposed THC limits based how a product is represented to be consumed (i.e., by inhalation or by ingestion)? What do you think about the proposed limits on a unit or serving basis?

There should be no THC limits. The government's role should be confined to requiring accurate labeling and disclosure of ingredients and potency.

9. What do you think about the proposed rules for the packaging and labelling of cannabis products? Do you think additional information should be provided on the label?

As noted above, the labelling requirements must not be onerous and should be no more restrictive than current rules for alcohol.

10. What do you think about the proposed approach to providing cannabis for medical purposes? Do you think there should be any specific additional changes?

Specific comments appear above.

11. What do you think about the proposed restrictions on the sale of health products containing cannabis authorized by Health Canada? Do they strike an appropriate balance between facilitating access to safe, effective and high quality health products, and deterring illegal activities and youth access?

Cannabis is a natural health product. The reduced burdens on non-THC cannabinoids in NHPs are welcome changes, as is the ability to continue to make products available for veterinary use.

12. What do you think about the overall regulatory proposal? Is there any additional feedback that you would like to share on the proposed approach to the regulation of cannabis?

The Proposed Approach is a positive early step in the evolution of our approach to cannabis. The transition to a legal system of cannabis production and distribution is a wonderful opportunity for Canadian small business and entrepreneurs. It will be critical to monitor implementation and revisit the regulations on a periodic basis with an eye to continuing to lessen regulatory burdens.

Thank you.



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