

HIGH TIME TO ENTER THE CANNABIS INDUSTRY: CANADIAN FEDERAL GOVERNMENT INTRODUCES LEGISLATION TO LEGALIZE RECREATIONAL CANNABIS

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On April 13, 2017, the federal government introduced the highly anticipated **Bill C-45**, *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts* (the "**Act**"). The proposed Act creates a strict legal framework for controlling the production, distribution, sale and possession of recreational cannabis in Canada. The policy rationale behind this proposed legislation is to set national standards that will more effectively protect youth and reduce the role of the illegal market and organized crime.

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The proposed Act lifts the ban on the recreational use of cannabis in Canada dating back to 1923. However, until the Act receives Royal Assent, current laws apply and recreational cannabis remains illegal unless expressly authorized. Following Royal Assent, the federal government intends to bring the Act into force no later than July, 2018. Until then, Canada's medical cannabis framework, the *Access to Cannabis for Medical Purposes Regulations* ("**ACMPR**"), will remain in force.

The principal features of the Act are set out below.

1. Products, Personal Use and Cultivation

The Act permits the sale of five cannabis products: dried cannabis, cannabis oils, fresh cannabis, plants and seeds. The Act restricts including nicotine, caffeine or alcohol in any of these cannabis products. Notably, the Act prohibits the sale of edibles or beverages. However, the federal government has stated that it intends on authorizing the sale of these products once stronger production regulations and controls are developed.

The Act restricts the sale of cannabis to adults 18 years of age and over ("**Adults**"). However, the provinces and territories will have discretion to set access at a higher age. The Act also allows Adults to possess up to 30 grams of legal dried cannabis or its equivalent in other cannabis products in public. Furthermore, the Act allows Adults to legally produce cannabis products without a licence for personal use at home (including edibles). However, Adults are only permitted to

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grow up to four plants per household at a maximum height of 100 centimetres.

2. Provinces, Territories and Municipalities

The federal government has granted the provinces and territories substantial discretionary power over implementing and regulating the proposed legislation. The Act provides that the provinces and territories in collaboration with municipalities may develop, implement, maintain and enforce systems to oversee the distribution and retail sale of cannabis. Specifically, provinces and territories will have the authority to:

- lower the possession limit;
- impose additional requirements on personal cultivation;
- increase the minimum age for cannabis consumption;
- set additional restrictions and local requirements related to cannabis, such as setting zoning restrictions for cannabis-related businesses and restricting where cannabis can be consumed in public; and
- develop, implement, maintain and enforce systems to oversee the distribution and retail sale of cannabis.

3. Licensing, Production, Distribution and Promotion

All producers of recreational cannabis under the Act will need to be federally licensed to operate. Once the Act comes into force, the federal government will establish an application process and criteria for individuals or corporations applying to become federally licensed cannabis producers. However, the existing 43 federally licensed producers under the ACMPR will continue to hold their licences and will be deemed to be licensed under the Act. As a result, once the Act comes into force, current licensed producers will sit in an advantageous position as they will likely be the federal government's preferred option for providing the initial commercial supply of recreational cannabis.

As mentioned earlier, the Act also gives the provinces and territories authority for developing, implementing, maintaining and enforcing systems to oversee the distribution and retail sale of cannabis. As a result, individuals and corporations interested in breaking into these industries will need to comply with provincial or territorial criteria in addition to the Act. In jurisdictions without a regulated retail framework, Adults will be able to purchase cannabis online from a federally licensed producer through the mail or by courier.

The Act takes major steps to protect Canadian youth. The Act creates a new offence for involving a minor to commit an offence relating to the distribution, sale, import, export, or production of cannabis. In addition, there is a prohibition on the selling, packaging,

and labelling of cannabis products that are considered appealing to youth and also a prohibition on the sale of cannabis through a self-service display or vending machine.

The Act also places hefty restrictions on how a producer may advertise its products and promote its brand. Specifically, the Act prohibits promoting cannabis or any of its brand elements in a way that "evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring." These advertising restrictions might cause headaches for current licensed producers that have already signed or are planning to sign promotional agreements with individuals to endorse their brand. Unlike advertising in the alcohol industry, licensed producers will not be able to glamorize the lifestyle associated with consuming cannabis products.

4. International Obligations

Under the proposed Act, the importation and exportation of cannabis and cannabis products remains illegal except under specific circumstances. Licences and permits will be authorized for the importation or exportation of cannabis only in respect of cannabis for medical or scientific purposes or in respect of industrial hemp.

5. Bill C-46

In addition to the Act, which regulates the production, distribution, sale and possession of recreational cannabis, the federal government has also introduced legislation that regulates drug-impaired driving by amending and introducing new offences and procedures to the *Criminal Code*. **Bill C-46**, *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts*, authorizes peace officers who suspect a driver has a drug in their body to demand that the driver provide a sample of a bodily substance for analysis by drug screening equipment that is approved by the Attorney General of Canada. Critics of the proposed legislation suggest that this may breach one's constitutional right to be secure against unreasonable search or seizure. However, the constitutional effects of the proposed legislation remain to be seen.

What to Expect in the Future

Despite the federal government's comprehensive regulatory framework, there still remains a number of unaddressed issues. For instance, there are still questions surrounding pricing, taxation, packaging and marketing, a regulated retail framework and how the licensing regime will be administered. As a result, we can expect the federal government to continue consultations over the course of the next few months and can expect additional rules and regulations to be released in the near future.