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UPDATE ON THE PROPOSED REGULATION OF CANNABIS: HEALTH CANADA RELEASES SUMMARY OF PUBLIC FEEDBACK

On March 19, 2018, Health Canada released a summary report (the "**Summary**") of the comments it received during the 60-day public consultation period to solicit input on its consultation paper on the proposed approach to the regulation of cannabis (the "**Consultation Paper**"). For background on the Consultation Paper, please see our November 2017 and January 2018 articles on the subject.

The Summary outlined the public feedback to Health Canada's regulatory proposals in the following areas: (i) licences, permits and authorizations; (ii) security clearances; (iii) cannabis tracking system; (iv) cannabis products; (v) packaging and labelling; (vi) cannabis for medical purposes; and (vii) health products and cosmetics with cannabis.

1. Licences, Permits and Authorizations

Several topics related to licences, permits and authorizations elicited a high degree of public feedback, including commercial outdoor cultivation, multiple licences at a single site, access to plant genetics and micro-scale licences.

The proposed regulations in the Consultation Paper permitted both outdoor and indoor cultivation of cannabis. A majority of respondents supported commercial outdoor cultivation as an economical and environmentally sustainable way to grow cannabis. Health Canada, in response, is considering measures to balance the benefits of outdoor cultivation against risks such as theft, diversion into the illegal market and management of odour during flowering.

Respondents raised the concern that allowing a single person to hold multiple micro-cultivation or micro-processing licences at a single site could potentially give rise to abuse because such licences could be combined to avoid the stricter requirements proposed for standard-scale licences. Health Canada is considering restricting the number of licences at a single site in response to this concern.

In addition, access to a broader diversity of plant genetics was of importance to a number of respondents, who cited that hundreds, if not thousands, of different cannabis strains are being sold in the illegal market currently. A greater diversity of cannabis strains would enable the legal market to better compete through variation, which many consumers value. The government is considering how the regulations could introduce new seeds, seedlings and cuttings into the existing system to propagate new strains.

The Consultation Paper introduced the concept of micro-scale licences to allow small-scale cultivators and processors to participate in the legal cannabis industry, however micro-cultivation or micro-processing licences have not yet been defined. Based on the feedback received, Health Canada is proposing a maximum of 2,150 square feet of growing space for micro-cultivation, and micro-processing will be restricted to no more than 600 kilograms of dried cannabis (or equivalent) per year, or the entire output of a single micro-cultivation licence.

2. Security Clearances

The Consultation Paper proposed that shareholders owning more than 25% of a licensed producer ("**LP**"), if privately held, should be required to obtain security clearances so as to assist the government in identifying relationships between LPs and organized crime. While respondents agreed with the government's rationale, many expressed concern over the ease with which investments and assets could be structured to avoid the 25% threshold. The government is considering alternative options to reduce the risk of financial and other relationships between LPs and organized crime. These include requiring licence applicants to submit financial information (including information about investors) as part of the licence application process. As well, the regulations could require ongoing reporting of financial information by LPs to help identify any suspicious financial relationships.

A strong majority of respondents stated that individuals with non-violent, lower-risk criminal records should be allowed to participate in the legal cannabis industry, reasoning that such individuals would be likely to continue their activities in the illegal market if they were not allowed to participate.

3. Cannabis Tracking System

The Consultation Paper proposed a cannabis tracking system to monitor cannabis throughout the supply chain to prevent diversion to the illegal market. While the majority of respondents supported the cannabis tracking system, some raised the concern that the proposed system presents challenges with implementing expensive information technology systems, particularly for micro-scale licensees. In response, Health Canada is giving consideration to minimizing the burden of reporting requirements in implementing the proposed cannabis tracking system, particularly for micro-scale licensees and industrial hemp producers.

4. Cannabis Products

A strong majority of respondents agreed with the proposal to not restrict cannabis product classes available to be manufactured and sold (i.e. dried and fresh cannabis, cannabis oil, cannabis plants and seeds).

Many respondents took the opportunity to urge the government to allow for the sale of cannabis edibles immediately upon legalization, as opposed to the proposed lag whereby edibles will not be available for up to one year after the coming into force of the legislation. Respondents cited the need for a wide variety of cannabis products to compete with the illegal market. Notwithstanding this, Health Canada has advised that regulations addressing edibles will be put in place within one year following the coming into force of the proposed legislation.

Most respondents supported the proposed THC limit of 10 milligrams per serving of a cannabis product. This proposal was viewed by these respondents as a safeguard against accidental overconsumption.

5. Packaging and Labelling

The proposed packaging and labelling requirements were generally supported by respondents. It was suggested that additional information be included on the labels, including information on other cannabinoids

and terpenes, growing conditions, whether a product was organic or not, and the origin of the cannabis (i.e. the name of the cultivator).

It is currently proposed that cannabis packaging will have a number of requirements (including display of a standardized cannabis symbol (as illustrated in the title of this article), mandatory health warning messages and information on THC and CBD content) as well as certain restrictions (including the display of only one other brand element in addition to the brand name, the use of single, uniform colours for label and package backgrounds, and the prohibition on any fluorescent or metallic colours).

Industry stakeholders were nearly unanimous in stating that the regulations on packaging and labelling should be finalized as soon as possible so LPs can comply with the proposed rules in time for the coming into force of the legislation. In response, the Summary provides detailed information about the proposed labelling and display requirements, such as label content, display requirements and proposed health warning messages.

6. Medical Cannabis

In general, respondents agreed with the proposals to improve patient access to medical cannabis, such as allowing individuals to transfer their medical document to a different LP. Some respondents raised further issues for consideration, such as whether medical cannabis should become eligible for private health insurance coverage, whether it should be accessible through other distribution means such as pharmacies, and whether it should be exempt from displaying health warning messages.

Many respondents did not support applying an excise duty to medical cannabis, and advocated for medical cannabis to be exempt from the federal Goods and Services Tax (GST). As set out in the 2018 federal budget, the excise duty framework will generally apply to cannabis products that contain THC, however products that contain low amounts of THC will generally not be subject to the excise duty. Pharmaceutical products that are derived from cannabis will also be exempt from the excise duty, provided that such products have Drug Identification Numbers and can only be acquired with a prescription.

7. Health Products and Cosmetics with Cannabis

Many respondents supported the proposed approach to the regulation of health products and cosmetics containing cannabis. Respondents found that any claims about the therapeutic benefits of cannabis must be evidence-based, verified, and independently validated by Health Canada.

As a result of ongoing analysis and feedback, further consultation will be conducted on the proposed approach for any new non-prescription drugs and natural health products containing cannabis. The consultations will focus on the appropriate level of regulatory oversight and evidence requirements to enable the approval of new health products that could be available without the oversight of a physician. Until these consultations and regulations are complete, new applications for health products with cannabis will be limited to prescription drugs, medical devices used for consuming cannabis, natural health products and veterinary health products with no more than 10 ppm of THC.

The authors would like to thank Michaela Chen, a 2017/2018 articling student at the firm, for her assistance with this article. For more information, please contact the Cannabis Law Group at Torkin Manes LLP at cannabis-law.ca.