The Fall of the Green Wall: Legalizing Cannabis in Canada

April 17, 2017

On April 13, 2017, Bill C-45, entitled *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts* (the Act) was published. The Act regulates possession and commercial activity involving cannabis for medical or unqualified adult use. The Government of Canada has set a goal of July 1, 2018 for implementation of the Act. Amendment of the Act and additional provincial or federal bills are widely expected over the coming months.

From the perspective of Canada's 43 federally licensed producers (LPs) under the *Access to Cannabis for Medical Purposes Regulations* (ACMPR), the Act is generally positive. LPs, to be renamed "Authorized Persons", will remain the sole upstream source of cannabis in the commercial supply chain. All licenses, import or export permits and applications under the ACMPR are continued. Import and export permits under the Act will not be restricted by category of cannabis, unlike the corresponding provisions of the ACMPR, but will be available only for medical purposes, scientific purposes or industrial hemp. The Act broadens the potential of the developing Canadian cannabis industry in both medical and unqualified adult use markets by introducing new ways to participate and by providing for greater product diversity. The Act applies to many aspects of the industry. This bulletin focuses on the descheduling of cannabis, the regulation of storefronts and onsite consumption, and product diversity, with a short note regarding impaired driving.

Descheduling Cannabis as a Controlled Substance

All commercial activity regulated under the Act is based on one fundamental change — item 1 of schedule II of the *Controlled Drugs and Substances Act* will be repealed. Cannabis will no longer be a controlled substance that is prohibited by default. Rather, the Act provides for regulation of cannabis production, possession and commerce by a newly-appointed minister. The pejorative term "marihuana" is absent from the Act, which may be seen by some as symbolizing a shift away from ineffective punishment. The medical "dried marihuana" of the ACMPR and predecessor regulations will become "dried cannabis" for medical or unqualified adult use.

Under the Act, possession in a public place of 30 g or less of dried cannabis, or the equivalent in other forms of cannabis, will not be an offence. The Act does not impose

possession limits on private property. Peace officers will have discretion to issue a ticket outside of the *Criminal Code* for possession in a public place of between 30 g and 50 g of dried cannabis or equivalent. Criminal penalties continue to apply to sale to minors and other infractions.

Individuals will be permitted to produce cannabis for personal use without a license, with up to four plants per individual or household. The plants must not exceed 100 cm in height and possession of a flowering plant in a public place is prohibited. A discretionary ticket may be issued for possession of five or six plants, or of a plant of between 100 cm and 150 cm in height. The Act prohibits cultivation based on plants or seeds known to be illicit.

Storefronts and Onsite Consumption

The Act provides for licenses or permits to import, export, produce, test, package, label, transport, sell or dispose of cannabis. Regulation of storefronts, onsite consumption locations and other businesses involved in possession, sale or distribution of cannabis, is split between the federal and provincial governments. Sale without production may require both federal and provincial licenses. Whether and under what circumstances pharmacies, dispensaries or other dedicated storefronts for medical or unqualified adult use (provincially or privately operated), restaurants, coffee shops, spas, outdoor venues or other locations may sell or allow onsite consumption of cannabis will be largely dependent on provincial law.

Delivery from Authorized Persons will remain federally regulated as in the ACMPR. In provinces without legislation permitting storefront or other distribution mechanisms when the Act takes effect, delivery will remain an option. The Act acknowledges that without access to cannabis across Canada through a door-to-door delivery mechanism, the impact on the illicit cannabis trade may be diminished.

Product Variety

The Act defines cannabis as (a) any part of a plant from the genus *Cannabis* other than non-viable seed (grain), stalk, fiber or roots, (b) any substance containing part of the plant, or (c) any phytocannabinoid (e.g., tetrahydrocannabinol, cannabidiol, cannabigerol, cannabichromene, etc.) regardless of whether obtained from a plant, otherwise biosynthesized, or chemically synthesized.

No new products are introduced by the Act. Rather, as made clear during the April 13, 2017 press conference, the Act provides for future expansion of product diversity. The cannabis products that may be sold by Authorized Persons are the same five products currently regulated for sale under the ACMPR: dried cannabis, cannabis oil, fresh cannabis, plants and seeds. The Act includes equivalency factors for classes of cannabis that individuals may prepare for personal use including edibles, infused beverages, topicals other than cannabis oil and concentrates for vaporizing – all popular products that are likely candidates for regulated sales. Without the availability of such products, an obvious opportunity for trade in illicit cannabis would remain.

Notably, nicotine, caffeine and alcohol may not be included in any cannabis products. Prohibition of specific additives suggests that cannabis oil with additives other than

those used to maintain quality and stability may be possible under the Act and future regulations. Prohibition of caffeine and alcohol as additives also points to regulation of edibles and infused beverages.

Impaired Driving

In line with the specific emphasis on impaired driving by the federally-appointed Task Force and other stakeholders, Bill C-46, entitled *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts*, was also published on April 13, 2017. Bill C-46 addresses the complex issue of minimizing the harms of cannabis-impaired driving. Impaired driving presents a significant problem in Canada, whether due to alcohol, cannabis, or other psychoactive substances. Cannabis cannot be practically treated in a completely analogous way to the common reference point — alcohol. A summary of both bills C-45 and C-46 is beyond the scope of this bulletin, other than to suggest that it is consistent with responsible regulation, and focus of legislative and other expertise, to specifically address cannabis impaired driving in a bill specific to that purpose.

What does the Future Hold?

The Act will likely be amended, and additional federal or provincial bills announced, between now and the Act coming into force. Any such additional developments will be relevant to assessment of any opportunity in the Canadian cannabis industry, in both the medical and future adult use markets.

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