

# Cannabis Legal Update Series – Where are we, where are we going, and how do we get there?

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By now, most Canadians are aware that proposals are underway to legalize the recreational adult use of cannabis. However, many details of how this new industry will be controlled, regulated and licensed by various levels of government have remained murky until very recently.

The federal government has previously announced a target date of July 1, 2018 for legalization of adult recreational use of cannabis in Canada; however, they have since softened their language and extended the target date in light of the outstanding steps to implementation. With the earliest date for declaration into force now expected to be in late Q3/early Q4 2018, municipalities, AGLC, currently licensed producers and prospective private retailers are all challenged to work diligently together to have private retail options in place at the outset.

This article provides an overview of the current state of passage of proposed federal, provincial and municipal legislation and regulations in Alberta, including where gaps remain and what can be expected over the coming months.

This is the first in our Cannabis Legal Update Series intended to provide some clarity regarding the proposed new Canadian legal frameworks and how they can be expected to impact producers, retailers and consumers in the Alberta cannabis market as well as health care practitioners, businesses, property owners, employees and individuals across the economy. Please subscribe to receive our latest updates on these and other legal topics of interest to Albertan businesses and individuals.

## **1. Federal Legislation/Regulations**

Cannabis, its preparations and derivatives are currently listed on Schedules II, VII and VIII to the *Controlled Drugs and Substances Act* (“CDSA”). As such, the production, import, export, possession and sale of cannabis is prohibited unless authorized under regulations or exemptions to the CDSA.

During the 2016 federal election campaign, the Liberals’ platform included a promise to “legalize, regulate and restrict access to marijuana.” While a regime for legal access to cannabis for medical purposes has been in place in some forms and for some patients since 2001, the campaign commitment was widely understood to be a promise to introduce a regime for adult recreational use of cannabis.

Shortly after the June 2016 election, the Task Force on Cannabis Legalization and Regulation was

formed. Chaired by former Justice Minister Anne MacLennan, the Task Force issued its [Final Report: A Framework for the Legalization and Regulation of Cannabis in Canada on November 30, 2016](#).

A brief history of medical cannabis access in Canada is available [here](#).

**(a) *Bill C-45, An act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (Cannabis Act)***

On April 12, 2017, Bill C-45 was introduced to the House of Commons on April 12, 2017. The Bill proposes to remove “cannabis, its preparations and derivatives”, from Schedules II, VII and VIII of the CDSA, and enact a new federal *Cannabis Act* governing the production, distribution, import, export, sale and possession of cannabis for both medical and non-medical adult use.

[Bill C-45](#) was passed by the House of Commons on November 27, 2017. It is currently being debated by the Senate at second reading. The Senate has referred the Bill to four Senate Committees, which are to deliver reports by May 1, 2018, with a further and final referral to Committee contemplated thereafter.<sup>[1]</sup> A deadline has been set for holding a final vote on third reading of the Bill by June 7, 2018.

Please [subscribe](#) or [contact us](#) for a summary of highlights of Bill C-45.

**(b) *Federal Cannabis Regulations***

The *Cannabis Act* would establish the legislative framework for the legal possession by adults of cannabis produced by federally licensed producers and either sold directly to consumers (in the case of medical cannabis) or distributed and sold by provincially licensed distributors and retailers (in the case of non-medical cannabis).

The specific rules pertaining to licensed market participants, including qualifications and requirements of licensees, will be contained in Regulations made pursuant to the *Cannabis Act*. This is comparable to the current structure for rules governing the production and sale of cannabis for medical purposes contained in the *Access to Cannabis for Medical Purposes Regulations* (“ACMPR”) to the CDSA, which would become obsolete once “cannabis, its preparations and derivatives”, are removed from Schedules II, VII and VIII to the CDSA.

The federal government has issued two documents containing key insights into the Regulations likely to be adopted following enactment of the *Cannabis Act*:

- [1. Proposed Approach to the Regulation of Cannabis](#) (November 2017);
- [2. Summary of Comments Received during the Public Consultation](#) (March 2018).

They contain many interesting details regarding intended changes to the current framework for licensed producers under the *ACMPR*, and potential new business models for market participants.

Please [subscribe](#) or [contact us](#) for a summary of highlights of these regulatory proposals.

### **(c) Publication of Final Regulations Remains Outstanding**

The actual Regulations to the *Cannabis Act* have not yet been issued, in draft or otherwise. The federal government has indicated that it “intends to publish final regulations in the Canada Gazette, Part II, as soon as possible following Royal Assent of the proposed Cannabis Act, in order to support timely implementation of the new legal framework.”<sup>[2]</sup> The final Regulations will contain the actual legal details for this new framework, which will be important for market participants (and applicants) to adapt their businesses to the new regime.

The [Cabinet Directive on Regulatory Management](#) (the “CDRM”) requires publication of proposed regulations in the Canada Gazette, Part I, to allow for a public comment period, and to then take the comments received into consideration. The CDRM prescribes a standard comment period of 30 days which “can vary based on legislative requirements, international obligations, and other considerations”, and a minimum comment period of 75 days for proposals for “new and changed technical regulations that may affect international trade.” However, Cabinet may exempt proposals from publication in Part I of the Canada Gazette, unless pre-publication is required by statute.

It remains unclear whether Cabinet will exempt publication of the final proposed Regulations from publication in Part I of the Canada Gazette for a further consultation period, perhaps in reliance on the prior release and consultation on the regulatory framework documents.

The federal government has, however, announced that “a minimum period of 8 to 12 weeks is necessary for the orderly movement of cannabis products from federally-licensed producers to provincially- or territorially-authorized distributors and retailers”.

The earliest expected date for the coming into force of the *Cannabis Act* and its Regulations is therefore near the end of Q3 2018 or early Q4 2018, absent further delay in the Senate.

### **(d) Regulatory Impact Analysis Statement**

Also outstanding is a Regulatory Impact Analysis Statement (“RIAS”). The CDRM requires publication of an RIAS in the Canada Gazette along with the final proposed Regulations, including a summary of the government’s consultation efforts, assessment of compliance with Canada’s international obligations and a cost-benefit analysis. Publications of both the [2013 Marijuana for Medical Purposes Regulations](#) and the [2016 ACMPR](#) were accompanied by detailed RIAS. The RIAS that accompanies the eventual publication of Regulations made under the *Cannabis Act* is expected to provide a very interesting insight into several remaining questions regarding the new

cannabis regulatory regime.

**(e) Compliance with International Obligations**

One of the most significant questions that remains outstanding is the federal government's position in regards to its international obligations under three anti-drug trafficking treaties.<sup>[3]</sup> The Task Force, federal government, and observers have identified compliance with international obligations as an outstanding issue, though the federal government has not yet publicly expressed its position on this topic.

The Senate has directed the Standing Senate Committee on Foreign Affairs and International Trade to review the issue of compliance with international obligations, and an analysis can be expected in the Committee's report within the next six weeks.<sup>[4]</sup> The RIAS can also be expected to address Canada's compliance with international obligations.

The manner in which this issue is addressed may influence how other countries approach the regulation of cannabis, and could have a significant impact on Canadian licensed producers' ability to export cannabis produced within the Canadian regulatory system.

Some observers expected Canada to withdraw from these treaties. Wisely, the federal government has not taken steps to do so. These important international treaties establish the framework for international collaboration on efforts to combat illicit trafficking in heroin, cocaine and other drugs (including illicit cannabis), as well as the framework for legal import and export of regulated cannabis for medical or scientific purposes.

One of the most compelling options is a proposal advanced by Fultz et al. for the University of Ottawa's Global Strategy Lab<sup>[5]</sup> to frame the regulated and controlled access by adults to cannabis without a prescribed medical document within the treaties' existing exemptions for medical and scientific research. The significant government investments being made in enforcement, education and monitoring cannabis use patterns are largely consistent with such a proposal.

This represents a unique opportunity for Canada to show global intellectual leadership on the approach to the regulation and restriction of access to cannabis, and could have a significant impact on the ability of Canada's licensed producers to export regulated and restricted cannabis to other countries with similar or comparable regulatory regimes within the current international legal framework.

**(f) Excise Duties**

On November 10, 2017, the federal government announced its [Consultation on the Proposed Excise Duty Framework for Cannabis Products](#), including proposed amendments to the *Excise Act, 2001*, the *Excise Tax Act* and to related regulations.

The proposal includes an excise duty to be imposed on federally licensed producers of the higher of \$1 per gram (or gram equivalent) of cannabis or 10% of a product price. This will apply generally to cannabis products containing THC > 0.3%, whether sold through medical or non-medical distribution channels. Products containing [6] Licensed producers will be required to obtain a separate cannabis license from the Canada Revenue Agency (“CRA”), with specific CRA-related criteria relating to the licensee’s financial resources and delivery of acceptable security.

The federal government has agreed to share the proceeds of this federally administered excise duty with provinces and territories on a 75/25 basis, and subject to a federal cap of \$100 million annually for the first two years after implementation (excess proceeds would be provided to the provinces and territories).

In addition, the generally applicable GST/HST will also apply to sales of both medical and non-medical cannabis, paid by consumers at the point of sale in accordance with the applicable provincial GST/HST rate. While the application of GST/HST to medical cannabis has been the subject of several disputes in the Tax Court of Canada and Federal Court of Appeal, legislative changes are intended to confirm the applicability of GST/HST to both medical and non-medical cannabis products, including edibles if and when they are made available. As always, specific legal and tax advice should be sought if any questions or concerns arise in respect of the potential application of any tax.

## **2. Alberta Legislation/Regulations**

Under the proposed federal *Cannabis Act*, provinces and territories are responsible for managing and licensing the distribution and retail sale of cannabis for non-medical purposes, as well as setting and enforcing rules regarding the use of cannabis.

In Alberta, the legal and regulatory framework for retail non-medical sales is now in place, pending the coming into force of the federal *Cannabis Act* and its regulations. However, municipalities will continue to play a key role in determining where cannabis businesses may be located and where cannabis may be consumed, and the state of their deliberations and enactments varies across the province.

### **(a) Bill 26, An Act to Control and Regulate Cannabis**

Bill 26 was introduced November 16, 2017 and passed November 30, 2017. It amends the *Gaming and Liquor Act*, which is re-named the *Gaming, Liquor and Cannabis Act*.

As administrator of the *Gaming, Cannabis and Liquor Act*, the Alberta Gaming and Liquor Commission (“AGLC”) will be authorized to oversee the distribution and licensing of retail sales of cannabis for non-medical purposes in addition and parallel to its roles in respect of: regulating gaming and regulating and administrating liquor operations under the current *Gaming and Liquor*

Act; investigation and enforcement under the *Tobacco Tax Act*, *Fuel Tax* and *Tourism Levy Act*; and in administration, regulation and enforcement of provincial anti-money laundering activities.

Supporting regulations to amend the *Gaming and Liquor Regulation* (re-named the [Gaming, Liquor and Cannabis Regulation](#)), were declared by Order in Council on February 16, 2018.

The Government of Alberta has consulted extensively on the legislative and regulatory enactments, including a public virtual town hall held on February 22, 2018 to discuss details and answer questions regarding the AGLC licensing process. Applications for a license to operate a non-medical cannabis retail business in Alberta commenced **March 6, 2018** and are now being accepted on an on-going basis.

According to the AGLC, applications are ordinarily expected to take approximately two to four months. However, further delay is expected in the near term while federal legislation and regulations and municipal land use regulations remain outstanding. An initial surge of applications, along with a lack of direct experience on the part of both applicants and the AGCL further add to the likelihood of the potential for delay.

Please [subscribe](#) or [contact us](#) for a summary of highlights of Bill 26, the Gaming, Liquor and Cannabis Regulation and AGLC positions.

### **3. *Municipal Oversight***

Municipalities retain oversight over two key areas necessary for the implementation of the federal and provincial regulatory regimes: (i) land use and zoning by-laws and the issuance of development and business permits to federally licensed production businesses and provincially licensed retail businesses; and (ii) establishing restrictions on where cannabis may be used in accordance with and further to provincial legislation. Municipalities will also serve important roles in the monitoring and enforcement of compliance with both existing and new by-laws.

Some municipalities have already implemented amendments to their existing by-laws to address certain cannabis businesses, and have completed extensive consultation on further proposed amendments. Others are continuing to review and amend their existing by-laws to distinguish cannabis businesses from other forms of use, and conduct consultations regarding proposed amendments to address the location of retail businesses.

At least one business with plans to obtain private retail licenses, Fire and Flower, has identified the City of Edmonton as being [“the most helpful and clear, reactive and proactive in dealing with the Issue” of private retail licensing](#). The City of Edmonton has amended its Zoning By-law to clarify which existing definitions do not include the production, sale or consumption of cannabis, and added definitions and use classes for “Cannabis Production and Distribution”, “Cannabis Retail

Sales” and “Cannabis Lounges” (for future use pending provincial legalization).

Amendments identifying zones in which Cannabis Retail Sales would be permitted or discretionary uses, and proposing minimum separation distances of 200 metres from other Cannabis Retail Sales and 100 metres from Major or Minor Alcohol Sales have been released for consultation. Comments are now closed, and a Council vote is expected in June 2018. The City of Edmonton is not yet accepting applications for cannabis retail stores, or to confirm potential store locations, while these amendments remain outstanding.

The City of Calgary’s Standing Policy Committee on Planning and Urban Development has proposed Land Use Bylaw amendments, which will be considered by City Council on April 5, 2018. The City anticipates accepting applications for Cannabis Stores in late April, with second and third reading of the proposed Land Use Bylaw amendments to allow Cannabis Store use in some land use districts targeted for Q3 2018.

Please [subscribe](#) or [contact us](#) for further information and updates regarding the status of other municipalities’ activities relating to cannabis throughout Alberta.

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[1] Specifically, the Senate has referred Bill C-45 to the Standing Senate Committee on Legal and Constitutional Affairs, the Standing Senate Committee on Aboriginal Peoples, the Standing Senate Committee on Foreign Affairs and International Trade and the Standing Senate Committee on National Security and Defence. If Bill C-45 is read a second time, it will be further referred to the Standing Senate Committee on Social Affairs.

[2] *Summary of Comments Received during the Public Consultation* (March 2018), s. 1: Introduction.

[3] Canada is a party to three United Nations conventions that regulate narcotic and psychotropic substances, including cannabis: the 1961 *Single Convention on Narcotic Drugs*, the 1971 *Convention on Psychotropic Substances* and the 1988 *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. Canada has previously reported its compliance with these conventions by reference to the regulation of cannabis under the CDSA and the *Food and Drugs Act*.

[4] [Senate Motion](#), adopted February 15, 2018.

[5] Fultz M, Page L, Pannu A, Quick M. [Reconciling Canada’s Legalization of Non-Medical Cannabis with the UN Drug Control Treaties](#), Hoffman SJ (eds.) *Global Health Law Clinic*

*Publication Series. Ottawa, Canada: Global Strategy Lab, University of Ottawa; 2017.*

[\[6\] Proposed Excise Duty Framework for Cannabis Products.](#)