

## HEALTHCARE RISK MANAGEMENT BULLETIN, VOLUME 5, No. 1 – PRODUCING MARIJUANA<sup>1</sup> FOR MEDICAL PURPOSES – UNDERSTANDING THE RISK

Canada's new regulations on the commercial production of marijuana for medical purposes ("MMP") have created new opportunities for individual(s) or corporations to become licensed producers of marijuana. Buildings that have stood empty (e.g., a former Hershey Canada Inc. building) are now being repurposed to grow marijuana.

This bulletin offers meaningful insight on the new regulations and production risks, and will arm the reader with actionable recommendations to minimize and transfer the risk.

### **Overview of New Canadian Regulations on Marijuana for Medical Purposes Regulations ("MMPR") as of April 1, 2014**

On April 1, 2014 the new *Marihuana for Medical Purposes Regulations* ("MMPR") fully came into force, creating a Canada-wide system for commercial production and distribution of medical marijuana by licensed producers<sup>1</sup> ("LPs").

Canadians have had access to marijuana for medical purposes for 13 years, through a Health Canada-run Marijuana Medical Access Program (the "Old Program") established by the *Marihuana Medical Access Regulations* ("MMAR"). Under the Old Program, patients were required to obtain Health Canada authorization to use medical marijuana; and could grow their own supply under a separate licence, purchase their supply from a licensed producer or buy it from Health Canada. Licensed producers could supply no more than 2 patients with medical marijuana. These restrictions effectively prevented the development of a commercial medical marijuana market.

The MMPR replaces the old regulations and establishes a fundamentally different licensing and supply scheme for medical marijuana users and producers. Under the new program:

- Commercial operators are licensed to produce, package, distribute and export medical marijuana. As of March 31, 2014, authorizations issued under the Old Program are no longer valid and cannot be relied upon to possess, produce or distribute marijuana.
- Individuals who have medical documentation supporting their need for medical marijuana can register with a licensed producer to purchase medical marijuana directly from them. Authorization from Health Canada is no longer required to obtain medical marijuana for personal use.

---

<sup>1</sup> Health Canada, Application to Become a Licensed Producer under the Marijuana for Medical Purposed Regulations, June 19, 2013.



- Licensed producers are subject to strict regulatory requirements, including regarding production, quality control, record-keeping, packaging, labelling, storage, distribution/shipping, product and site security, destruction and reporting. Holders of a production license, directors and officers (where a corporation) and all key personnel must have enhanced security clearance.

As part of the transition, Health Canada has required that dried marijuana produced or obtained under the Old Program be destroyed and that plants, seeds and clippings held under old authorizations and licences also be destroyed or transferred to a LP under the new program. However, due to a number of legal challenges to the MMPR including an interim injunction issued by the Federal Court in *Allard*<sup>2</sup>, certain authorizations to possess and production licenses issued under the Old Program will be considered valid pending the Court's final decision.

In light of the opportunity for expanded commercial operations, a LP will need to consider the expanded legal risks particularly in respect of product liability and regulatory breach.

### **Commercial Producer Risks**

A company wishing to become a LP of MMP must meet Health Canada's requirements. The first step is securing the local community's approval before applying to Health Canada for a commercial licence. Both the local legal enforcement agency and fire department must be notified about the licensing proposal before the application is made.

Like any other controlled substances, MMP must be secured and safeguarded at all times to prevent diversion. A plant that is purpose-built or adapted for growing marijuana must comply with all applicable building and fire codes, and Health Canada's explicit building and production security requirements<sup>3</sup>. A plant must have a security system to track the movement of product, and safeguard that product from unauthorized access externally, and access and/or tampering internally. All areas within a site must be equipped with a system that filters air to prevent the escape of odours and, if present, pollen.

To ensure product quality and safety, Good Production Practices<sup>4</sup> must be followed at all stages of production, packaging, labelling and storage of the marijuana. Analytical testing<sup>5</sup> for contaminants and for the percentages of delta-9-tetrahydrocannabinol and cannabidiol referred to in the MMPR must be conducted using validated methods to ensure dried marijuana is fit for human consumption. A LP must have a designated quality assurance person who is responsible for assuring the quality of the dried marijuana before it is made available for sale. Detailed record keeping of all transactions related to licensed activities must be kept.

---

<sup>2</sup> Allard et. al v. Her Majesty the Queen in Right of Canada, 2014 FC 280.

<sup>3</sup> Health Canada, Building and Production Security Requirements for Marihuana for Medical Purposes, June 19, 2013.

<sup>4</sup> MMPR, Section 4.

<sup>5</sup> Health Canada, Technical Specifications for Testing Dried Marihuana for Medical Purposes, June 19, 2013.



### **Risk Transfer**

The 'new' risk of medical marijuana production and distribution may introduce some insurers to exposures that are not necessarily new (i.e. controlled substances) but rather impute a social stigma resulting in submissions being rejected. There is sufficient capacity to underwrite the casualty risk however it is the property coverage that presents the greatest challenge to brokers e.g. vandalism, theft and business interruption exposures. Markets are available; however, brokers and their clients need to be aware that pricing, while initially at a higher rate than normal commercial risks, will eventually level off as greater comfort from the exposure is appreciated by the general marketplace.

### **For advice on legal implications contact:**

Jesstina McFadden, Associate  
Miller Thomson  
[jmcfadden@millerthomson.com](mailto:jmcfadden@millerthomson.com)  
416 595 2990 – direct

### **For more information on placement opportunities, please contact:**

Jill Lucas-Upshall  
Senior Property Underwriter  
647 872-1306  
[jill@medthreeinsurance.com](mailto:jill@medthreeinsurance.com)