

Canada's Access to Cannabis for Medical Purposes Program

Todd Cain

Director General, Licensing and Medical Access

Controlled Substances and Cannabis Branch, Health Canada

January 19, 2020



Purpose of Today's Presentation

- Provide some background and context for Canada's medical purposes program
- Discuss the current medical access regime in a legalization context
- Talk about what's ahead for the program

Background – A Constitutionally Protected Right

- Canada’s access to cannabis for medical purposes program was established and modified in response to court decisions determining that Canadians have a constitutionally protected right to “reasonable access” to cannabis for medical purposes.
- Over the years, the regulatory framework for the program has evolved:
 - 2001: Program **created** in the *Marihuana Medical Access Regulations* (MMAR)
 - 2013: Program **eliminated** in the *Marihuana for Medical Purposes Regulations* (MMPR)
 - 2016: Program **reintroduced** in the *Access to Cannabis for Medical Purposes Regulations* (ACMPR) following federal court decision that individual’s have a right to “reasonable access”
 - 2018: Program **maintained and improved** in the *Cannabis Regulations*

Background - Legal Context

- The right of individuals with a medical need to possess cannabis for medical purposes was first recognized in *R. v. Parker* in 2000. The court found that legislation prohibiting cannabis possession infringed the rights of persons who have a recognized medical need for it.
- Since its inception, every iteration of the federal regime regulating cannabis for medical purposes has been challenged in court, generally related to section 7 of the Charter:
 - The early MMAR were challenged in *Hitzig*, and was amended to allow legal access a supply of seeds or dried cannabis.
 - The amended MMAR were further challenged in *Sfetkopoulous*, and the number of production licenses that a designated person could hold was increased from one to two.
 - The regime was challenged again in *Beren*, and the number of individuals permitted to grow in common was increased from three to four.
 - The legal challenges continued in *Smith*, where the restriction on dried cannabis was struck down by the court and the federal regime was consequently expanded to allow access to dried cannabis, fresh cannabis, and oil and permitted authorized individuals to create cannabis derivatives.
 - In *Allard v. Canada*, the Federal Court issued an injunction in 2014 allowing persons previously authorized under the repealed MMAR to continue to possess and to produce cannabis. The Court later ruled that the MMPR were unconstitutional. Canada presented extensive evidence on the risks of home production. The court did not find this evidence compelling.
- The program continues to be subject to high levels of litigation.

Medical Access Post-Legalization

- With the coming into force of the *Cannabis Act* and associated regulations on October 17, 2018, cannabis became legal for adult use in Canada (medical and non-medical use)
- Under this framework, a distinct medical access regime and program have been maintained – the goal is to ensure that individuals who require cannabis for medical purposes continue to have reasonable access to legal and quality-controlled products

Medical Access: Program Overview

- Under the current framework, patients authorized by their health care practitioner can access cannabis for medical purposes by:
 1. buying directly from a federally licensed seller
 2. registering with Health Canada to produce a limited amount of cannabis for their own medical purposes or designating someone to produce it for them (the personal and designated production program)
 3. patients can also choose to access cannabis through provincially authorized retailers, as all other adult Canadians

Registrations Issued by Federally Licensed Sellers

- To be eligible as a client of a federally licensed seller, the patient must be an individual who ordinarily resides in Canada
- Previous convictions would not prevent an individual from registering with a licensed seller
- Patients purchasing their cannabis supply directly from a licensed seller are not permitted to sell their cannabis to others
- As of the end of September 2019, **369,614** medical clients were registered with federally licensed sellers

Personal and Designated Production

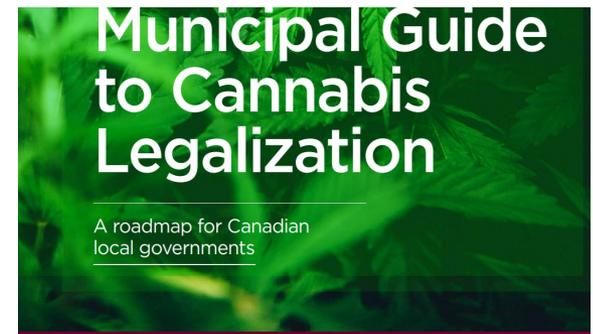
- A personal production registration authorizes the production of a limited amount of cannabis for an individual's own medical use, while designated production authorizes the holder to designate someone to produce cannabis for the exclusive use of the Registered Person
- A production site may have up to four registrations associated with it, with plant counts established by the daily amount authorized by their health care practitioner
- The number of plants that can be grown is calculated based on the amount of cannabis authorized:
 - An authorization of 1 g/day equals approximately 5 plants (for indoor growth)
- There are no set limits on how many grams per day a Health Care Practitioner can authorize
- As of September 2019, **29,193** individuals were registered with Health Canada for personal and designated cultivation of cannabis for their own medical purposes

Issue: Personal and Designated Production Sites

- Health Canada recognizes the possibility that some personal registration sites could pose a public health or public safety risk, including the risk of diversion to the illicit market
- To address these risks, Health Canada:
 - has established a team to analyze information about sites that are considered to be high risk;
 - has created a new power in the *Cannabis Regulations* to refuse or revoke a registration if a site is likely to create a risk to public health or public safety, including the risk of diversion to the illicit market;
 - has put in place a new online complaint form that allows anyone to submit a complaint related to a cannabis production site (<http://health.canada.ca/en/health-canada/services/drugs-medication/cannabis/recalls-adverse-reactions-reporting/reporting-form.html>);
 - is looking to gather high-level information from law enforcement, provinces and municipalities on issues they are experiencing in their jurisdiction.

What Municipalities Can Do

- A registration with Health Canada is an authorization to produce and possess cannabis for one's own medical purposes; it does not supersede other federal or provincial legislation or municipal bylaws
- Municipalities are encouraged to enact and enforce bylaws to help mitigate challenges they may be facing
- The Federation of Canadian Municipalities (FCM) has produced a helpful guide to assist municipalities, laying out considerations and possible policy and regulations that may mitigate challenges for municipalities



Looking Ahead

- Three year legislative review and five year program review
 - The Government will be undertaking a legislative review of the *Cannabis Act* three years following coming into force. Although much broader than the medical regime, the sections of the *Act* and the regulations pertaining to cannabis for medical purposes will also be considered
 - Further to the Task Force recommendation, we will undertake a review of the medical program within five years of coming into force in order to evaluate the use of the program within a legalization context. To prepare, we will be working to establish indicators, develop evaluation criteria and will begin to gather and analyze information

Increased Collaboration

- Health Canada is seeking to increase engagement and collaboration with municipalities
- The Office of Medical Access is available to speak with individual municipalities on a case by case basis and also with groups to explain the program and to gather information and data
- In the coming months, Health Canada will work to develop a systematic approach to gathering and analyzing information from municipalities who identify personal production sites as a challenge. This will help us shape our approach to the program as we go forward.

For more information

Todd Cain

Director General

Licensing and Medical Access

Controlled Substances and Cannabis Branch

Health Canada

todd.cain@canada.ca

Cynthia Grant

Office of Medical Access

Controlled Substances and Cannabis Branch

Health Canada

cynthia.grant2@canada.ca

Visit: www.canada.ca/cannabis