

Promotion Prohibitions under the *Cannabis Act*

Health Canada,
Cannabis Legalization and Regulation Branch

September 2018



Introduction

- As set out in the purpose section of the *Cannabis Act*, the legislation aims to protect public health and public safety, including protecting the health of young persons by restricting their access to cannabis, protecting young persons and others from inducements to use cannabis and enhancing public awareness of the health risks associated with cannabis use.
- Taking a public health and public safety approach to cannabis recognizes that there are risks and harms associated with cannabis use and that these should be mitigated through legislative and other concrete measures, including sustained public education activities.
- The *Cannabis Act* includes a number of prohibitions relating to the promotion of cannabis, cannabis accessories and services related to cannabis, as well as prohibitions relating to the sale of products with attributes, functions, labels, packages that could be appealing to young people. The Government of Canada is also investing more than \$100 million over six years in public education about the health and safety facts of cannabis use.
- In preparation for coming into force of the new legislation on October 17, 2018, Health Canada is promoting awareness and understanding of the prohibitions on promotion.

Disclaimer

The content of this presentation is provided for informational purposes. Participants are encouraged to consult the *Cannabis Act* and the applicable Regulations. In the event of any discrepancy between the legislation and the content of this webinar, the legislation shall prevail. Participants are also encouraged to consult any other legislation that may apply to them or their activities, such as any applicable provincial or territorial legislation. Health Canada reserves the right to modify the information provided in this webinar as appropriate and without notice.

Outline

Promotions Prohibitions under the *Cannabis Act*

- Overview
- Scope
- Prohibitions
- Non-Application
- Exceptions and Applicable Restrictions
- Other Legislation

Overview

The prohibitions regarding promotion contained in Subdivision A of Division 2 of Part 1 of the *Cannabis Act* (sections 16 to 24) are intended to protect public health and public safety, including:

- Protecting the health of young persons by restricting their access to cannabis;
- Protecting young persons and others from inducements to use cannabis.

Definitions

The *Cannabis Act* defines “Promote” as :

In respect of a thing or service, means to make, for the purpose of selling the thing or service, a representation — other than a representation on a package or label — about the thing or service by any means, whether directly or indirectly, that is likely to influence and shape attitudes, beliefs and behaviours about the thing or service.

Scope

Promotion includes representation made by any means. All forms of communications are subject to the prohibitions regarding promotion, for example:

- Printed publications
- Online content
- Mail
- Signage
- Broadcasts

Who Do the Promotions Provisions Apply to?

The prohibitions in Sections 17 to 23 of the *Cannabis Act* can potentially apply to anyone who may be involved in promoting cannabis, cannabis accessories and services related to cannabis, including:

- Persons who produce, sell or distribute cannabis;
- Persons who sell of cannabis accessories;
- Persons who provide services related to cannabis; and
- Media organizations.

What Promotions are Prohibited?

Subsection 17(1) of the *Cannabis Act* provides that, unless authorized under the Act, it is prohibited to promote cannabis or a cannabis accessory, or any service related to cannabis, including:

- By communicating information about its price or distribution;
- By doing so in a manner that there are reasonable grounds to believe could be appealing to young persons;
- By means of a testimonial or endorsement, however displayed or communicated;
- By means of the depiction of a person, character or animal, whether real or fictional; or
- By presenting it or any of its brand elements in a manner that associates it or the brand element with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

Prohibition: False Promotion

Subsections 18 (1) and (2) of the *Cannabis Act* prohibit promoting cannabis or a cannabis accessory in a manner that is false, misleading or deceptive or that is likely to create an erroneous impression about:

- In the case of cannabis, its characteristics, value, quantity, composition, strength, concentration, potency, purity, quality, merit, safety, health effects or health risks;
- In the case of a cannabis accessory, its design, construction, performance, intended use, characteristics, value, composition, merit, safety, health effects or health risks.

Use of Certain Terms, etc.

Section 19 of the *Cannabis Act* provides that it is prohibited to use any term, expression, logo, symbol or illustration specified in regulations made under paragraph 139(1)(z.1) in the promotion of cannabis, a cannabis accessory or a service related to cannabis.

Other Prohibitions

In addition, the *Cannabis Act* contains other prohibitions relating to promotion, including prohibitions relating to the following issues outlined in Sections 20 to 24:

- Publication, broadcast or other dissemination of prohibited promotions;
- Promotion using foreign media;
- Sponsorship;
- Brand elements or names displayed on a facility used for a sports or cultural event or activity;
- Inducements.

Other Prohibitions: Publication and Foreign Media

Publication, etc. of Prohibited Promotion

- It is prohibited to publish, broadcast or otherwise disseminate, on behalf of another person, with or without consideration, any promotion that is prohibited by any of Sections 17 to 22. This prohibition does not apply in the circumstances described in Subsection 23(2). [Section 23]

Promotion Using Foreign Media

- It is prohibited to promote in any way that is prohibited by Part 1 of the *Cannabis Act*, cannabis, a cannabis accessory or a service related to cannabis of a brand element of any of those things in a publication that is published outside Canada, a broadcast that originates outside Canada or any other communication that originates outside Canada [Section 20].

Other Prohibitions: Sponsorship

According to Section 21, it is prohibited to display, refer to or otherwise use any of the following, directly or indirectly in a promotion that is used in the sponsorship of a person, entity, event, activity or facility:

- A brand element of cannabis, of a cannabis accessory or of a service related to cannabis; and
- The name of a person that:
 - Produces, sells or distributes cannabis,
 - Sells or distributes a cannabis accessory, or
 - Provides a service related to cannabis.

Other Prohibitions: Name of Facility

According to Section 22, it is prohibited to display on a facility, as part of the name of the facility or otherwise, if the facility is used for a sports or cultural event or activity:

- A brand element of cannabis, a cannabis accessory or a service related to cannabis; or
- The name of a person that:
 - Produces, sells or distributes cannabis,
 - Sells or distributes a cannabis accessory, or
 - Provides a service related to cannabis.

Other Prohibitions: Inducements

Unless authorized under the *Cannabis Act*, Subsection 24(1) provides that it is prohibited for a person that sells cannabis or a cannabis accessory:

- To provide or offer to provide cannabis or a cannabis accessory if it is provided or offered to be provided without monetary consideration or in consideration of the purchase of any thing or service or the provision of any service;
- To provide or offer to provide any thing that is not cannabis or a cannabis accessory, including a right to participate in a game, draw, lottery or contest, if it is provided or offered to be provided as an inducement for the purchase of cannabis or a cannabis accessory; or
- To provide or offer to provide any service if it provided or offered to be provided as an inducement for the purchase of cannabis or a cannabis accessory.

What promotions are Permitted?

Limited promotion of cannabis and cannabis accessories and services related to cannabis can be permitted under the *Cannabis Act* in specific circumstances, subject to the applicable prohibitions listed above and any other applicable prohibition.

Subsections 17(2) to (6) of the *Cannabis Act* contain limited exceptions relating to informational promotion and brand-preference promotion, promotion at the point of sale, and brand elements on things that are not cannabis or a cannabis accessory.

These exceptions are subject to the applicable prohibitions of the *Cannabis Act*, for example, those set out in subsection 17(1) and in section 18, and any other applicable prohibitions.

Exception: Informational Promotion and Brand-Preference Promotion

Under Subsections 17(2) and (3), Informational Promotion and Brand-Preference Promotion may be undertaken in specific circumstances by specific persons, subject to the regulations.

- ***Informational Promotion*** means a promotion by which factual information is provided to the consumer about:
 - a) cannabis or its characteristics;
 - b) a cannabis accessory or its characteristics;
 - c) a service related to cannabis; or
 - d) the availability or price of cannabis, a cannabis accessory or a service related to cannabis.
- ***Brand-preference Promotion***, means promotion of cannabis by means of its brand characteristics, promotion of a cannabis accessory by means of its brand characteristics or promotion of a service related to cannabis by means of the brand characteristics of the service.

Exception: Informational Promotion and Brand-Preference Promotion (cont'd)

Informational Promotion and Brand-Preference Promotion may only be:

- In communication that is addressed and sent to an individual who is 18 years of age or older and, is identified by name;
- In a place where young persons are not permitted by law;
- Communicated by means of a telecommunication, where the person responsible for the content of the promotion has taken reasonable steps to ensure that the promotion cannot be accessed by a young person; or
- In a prescribed place or done in a prescribed manner.

Exception: Point of Sale

- Subsection 17(4) of the *Cannabis Act* provides that, subject to the regulations, a person that is authorized to sell cannabis may promote it at the point of sale if the promotion indicates only its availability, its price or its availability and price.
- Subsection 17(5) of the *Cannabis Act* provides that, subject to the regulations, a person that sells a cannabis accessory or provides a service related to cannabis may promote it at the point of sale if the promotion indicates only its availability, its price or its availability and price.

Exception: Brand Element on Other Things

Subsection 17(6) of the *Cannabis Act* provides that, subject to the regulations, a person may promote cannabis, a cannabis accessory or a service related to cannabis by displaying a brand element of cannabis, of a cannabis accessory or of a service related to cannabis on a thing that is not cannabis or a cannabis accessory, other than:

- a) A thing that is associated with young persons;
- b) A thing that there are reasonable grounds to believe could be appealing to young persons; or
- c) A thing that is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

Non-Application

Subject to the regulations and if specific conditions are met, Subdivision A of Division 2 of Part 1 of the *Cannabis Act* (sections 16 to 24) does not apply to:

- Certain literary, dramatic, musical, cinematographic, scientific, educational or artistic works, productions or performances;
- Certain reports, commentaries or opinions;
- Certain intra-industry promotion.

Section 16 of the *Cannabis Act* defines the specific circumstances in which that would be the case.

Are there Other Acts and Regulations that Apply to the Promotion of Cannabis?

In addition to the *Cannabis Act* and its regulations, other legislation – for example, other federal and provincial legislation – contain provisions relating to the promotion of cannabis, cannabis accessories or services related to cannabis.

One example is the *Food and Drugs Act* and its regulations, which could apply to cannabis in certain circumstances (see the Cannabis Exemption (*Food and Drugs Act*) Regulations).

Anyone intending to engage in promotion activities should consult any other legislation that may apply to their activities.

How can one assess if promotion activities comply with the *Cannabis Act*?

Persons intending to engage in promotional activities are encouraged to carefully consider the prohibitions in sections 17 to 24 of the *Cannabis Act*, all other applicable provisions of the *Cannabis Act* and its Regulations and other federal and provincial and territorial legislation in order to assess whether the activities are permitted.

Health Canada will assess compliance with the provisions of the *Cannabis Act* relating to promotion on a case-by-case basis.

The particular facts of each circumstance presented will be examined and considered.

The purpose, content and context of a communication or message and the intended audience are examples of factors that could be taken into consideration by Health Canada in assessing whether there is prohibited promotion.

Thank you for your participation

Questions?

If you have additional questions, please do not hesitate to send them to us by email at cannabis@canada.ca