

FACT SHEET: THE *CANNABIS ACT* — PROMOTION PROHIBITIONS

DISCLAIMER

This fact sheet is provided for informational purposes. The reader is encouraged to consult the *Cannabis Act* and the applicable Regulations, available at [<http://laws-lois.justice.gc.ca/eng/acts/C-24.5/>] In the event of any discrepancy between the legislation and this fact sheet, the legislation shall prevail. The reader is also encouraged to consult any other legislation that may apply to them or their activities, such as any applicable provincial or territorial legislation.

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DID YOU KNOW?

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.

As outlined in this fact sheet, the *Cannabis Act* specifies a number of prohibitions related to the promotion of cannabis, cannabis accessories and services related to cannabis, as well as some exceptions for limited promotion. [Sections 16 to 24]

WHAT DOES “PROMOTE” MEAN?

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.

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 cannabis accessories;
- persons who provide cannabis-related services; or
- media organizations.



WHAT PROMOTIONS ARE PROHIBITED?

1. *General prohibitions on the promotion of cannabis*

Unless authorized under the *Cannabis 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. [Subsection 17(1)]

2. *False promotion*

Cannabis cannot be promoted in a manner that is false, misleading or deceptive or that is likely to create an erroneous impression about its characteristics, value, quantity, composition, strength, concentration, potency, purity, quality, merit, safety, health effects or health risks. A cannabis accessory cannot be promoted in a manner that is false, misleading or deceptive or that is likely to create an erroneous impression about its design, construction, performance, intended use, characteristics, value, composition, merit, safety, health effects or health risks. [Subsections 18(1) and (2)]

3. *Use of certain terms, etc.*

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. [Section 19]

4. *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]

5. *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, a service related to cannabis or 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]

6. *Sponsorship*

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 [Section 21]:

- 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.

7. *Name of facility*

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 [Section 22]:

- 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.

8. *Inducements*

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

- 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 is provided or offered to be provided as an inducement for the purchase of cannabis or a cannabis accessory.

WHAT PROMOTIONS ARE PERMITTED?

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.

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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.

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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 prohibitions.

1. *Informational promotion or brand-preference promotion*

The *Cannabis Act* [Subsection 17(2)] provides that, subject to the Regulations, a person that is authorized to produce, sell or distribute cannabis may promote cannabis by means of informational promotion or brand-preference promotion if the promotion is:

- in a 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;
- in a prescribed place; or
- done in a prescribed manner.

The *Cannabis Act* [Subsection 17(3)] provides that, subject to the Regulations, a person may promote a cannabis accessory or a service related to cannabis by means of informational promotion or brand-preference promotion if the promotion is:

- in a 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;
- in a prescribed place; or
- done in a prescribed manner.

2. *Point of sale*

The *Cannabis Act* [Subsection 17(4)] 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.

The *Cannabis Act* [Subsection 17(5)] 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.

3. *Brand element on other things*

The *Cannabis Act* [Subsection 17(6)] 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 thing that is associated with young persons;
- a thing that there are reasonable grounds to believe could be appealing to young persons; or
- a thing that is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

WHEN DO THE PROHIBITIONS NOT APPLY?

Section 16 of the *Cannabis Act* provides that, subject to the Regulations, the provisions of sections 17 to 24 do not apply:

- To a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts cannabis, a cannabis accessory or a service related to cannabis, or a brand element of any of those things, whatever the mode or form of its expression, if no consideration is given, directly or indirectly, for that use or depiction in the work, production or performance;
- To a report, commentary or opinion in respect of cannabis, a cannabis accessory or a service related to cannabis or a brand element of any of those things, if no consideration is given, directly or indirectly, for the reference to the cannabis, cannabis accessory, service or brand element in that report, commentary or opinion; or

- To specific categories of intra-industry promotion, provided that the promotion is not directed, either directly or indirectly, at consumers.

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 related 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) [<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2016-231/>].

The reader should consult any other legislation that may apply to their activities.

HOW CAN YOU ASSESS IF YOUR PROMOTION ACTIVITIES COMPLY WITH THE *CANNABIS ACT*?

Persons intending to engage in promotional activities related to cannabis 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 or territorial legislation 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 will be examined and considered. The purpose, content and context of a communication or message and the intended audience are examples of factors that may be taken into consideration when assessing whether a promotional activity is prohibited.