

Promotion Prohibitions under the *Cannabis Act* and *Cannabis Regulations*

Health Canada
Controlled Substances and Cannabis Branch

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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 federal, provincial or territorial legislation. Health Canada reserves the right to modify the information provided in this webinar as appropriate and without notice.

Prohibitions included in this document pertaining to Part 6.1 of the *Cannabis Regulations* came into effect on October 17, 2019. Other prohibitions referenced came into force on October 17, 2018.

Outline

Promotions Prohibitions under the *Cannabis Act* and the *Cannabis Regulations*

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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* and *Cannabis Regulations* include 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 cannabis or cannabis accessories with attributes, functions, labels or packages that could be appealing to young people. To support its public health and public safety approach, the Government of Canada has allocated more than \$100 million over six years in public education initiatives.
- Since the *Cannabis Act* came into force on October 17, 2018, Health Canada has been and continues to promote awareness and understanding of the prohibitions relating to promotion.

Overview

The prohibitions relating to promotion contained in Subdivision A of Division 2 of Part 1 of the *Cannabis Act* (sections 16 to 24) and Part 6.1 of the *Cannabis Regulations* are intended to protect public health and public safety, including by protecting:

- The health of young persons by restricting their access to cannabis;
- 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 promotion prohibitions, including:

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

To Whom do the Promotions Prohibitions Apply?

The prohibitions in sections 16 to 24 of the *Cannabis Act* can potentially apply to any person (individual or organization) engaging in relevant activities, such as the promotion of cannabis, cannabis accessories and services related to cannabis, including:

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

What Promotions are Prohibited?

Subsection 17(1) of the *Cannabis Act* (the 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: Publication and Foreign Media

Publication, etc. of Prohibited Promotions

- 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 of the *Cannabis Act*. This prohibition does not apply in specific circumstances. (Section 23 of the *Cannabis Act*)

Promotion Using Foreign Media

- It is prohibited to promote, in a 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 of the *Cannabis Act*)

Other Prohibitions: Sponsorship

According to section 21 of the *Cannabis Act*, 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 of the *Cannabis Act*, 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

Subsection 24(1) provides that, unless authorized under the *Cannabis Act*, 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;
- 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
- Any service if it is provided or offered to be provided as an inducement for the purchase of cannabis or a cannabis accessory.
- This prohibition does not apply in the circumstances described in subsections 24(2) and (3).

What Promotions Are Permitted?

The *Cannabis Act* permits limited promotion of cannabis and cannabis accessories and services related to cannabis in specific circumstances, subject to the applicable prohibitions listed above and any other applicable prohibitions and restrictions.

Subsections 17(2) to (6) of the *Cannabis Act* contain limited authorizations 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 authorizations remain subject to the applicable prohibitions and restrictions of the *Cannabis Act* and its regulations.

Exception: Informational Promotion and Brand-Preference Promotion

Under subsections 17(2) and (3) of the *Cannabis Act*, specific persons may be authorized to undertake Informational Promotion and Brand-Preference Promotion in specific circumstances, subject to the regulations and the applicable prohibitions.

- ***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)

Under subsections 17(2) and (3) of the *Cannabis Act*, specific persons may promote cannabis by means of 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;
- In a prescribed place; or,
- Done in a prescribed manner.

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

The *Cannabis Regulations* contain the following prohibition that applies with respect to Paragraphs 17(2)(b) and (3)(b) of the *Cannabis Act*:

Place where young persons are not permitted

- It is prohibited to promote cannabis, a cannabis accessory or a service related to cannabis under paragraphs 17(2)(b) and (3)(b) of the Act in such a manner that the promotion may be audible or visible from outside a place where young persons are not permitted by law (section 104.17 of the *Cannabis Regulations*).

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.

Prohibition: Brand Element on Other Things

Subsection 104.18 of the *Cannabis Regulations* provides that it is prohibited to promote cannabis, a cannabis accessory or a service related to cannabis under subsection 17(6) of the *Cannabis Act* in a manner that results:

- In the same brand element being displayed more than once on a thing referred to in that subsection; or
- In more than one brand element being displayed on the thing.

Subsection 104.19 of the *Cannabis Regulations* provides that it is prohibited to promote cannabis, a cannabis accessory or a service related under subsection 17(6) of the *Cannabis Act* by displaying a brand element of cannabis, of a cannabis accessory or of a service related to cannabis:

- On any thing that is in a school, a public playground, a daycare facility or any other public place frequented mainly by young persons or that is visible from such a place.

Prohibition: Brand Element on Other Things (cont'd)

Subsection 104.2 of the *Cannabis Regulations* provides that a brand element referred to in subsection 17(6) of the *Cannabis Act* must meet the following requirements:

- The surface area must be smaller than or equal to 300 cm²; and
- The height of any letter, character or number must be smaller than or equal to 4 cm.

Prohibition: Flavours

Part 6.1 of the *Cannabis Regulations* contains the following prohibition that applies with respect to subsections 17(2) to (6) of the *Cannabis Act*:

- It is prohibited to promote a cannabis extract – or a cannabis accessory that contains a cannabis extract – under subsections 17(2) to (6) of the *Cannabis Act* in a manner that could cause a person to believe that the cannabis extract or the cannabis accessory has a flavour set out in column 1 of Schedule 3 of the *Tobacco and Vaping Products Act*, other than the flavour of cannabis (Section 104.11 of the *Cannabis Regulations*).

Prohibition: Health and Cosmetic Benefits

Part 6.1 of the *Cannabis Regulations* contains the following prohibition that applies with respect to subsections 17(2) to (6) of the *Cannabis Act*:

- It is prohibited to promote cannabis, a cannabis accessory or a service related to cannabis under subsections 17(2) to (6) of the *Cannabis Act* if there are reasonable grounds to believe that the promotion could create the impression that health or cosmetic benefits may be derived from the service or the use of the cannabis or the cannabis accessory (Subsection 104.12(1) of the *Cannabis Regulations*).
- Subsection (1) does not apply with respect to a medical device in respect of which a licence has been issued under subsection 36(1) of the *Medical Devices Regulations*.

Prohibition: Energy Value and Amount of Nutrient

Part 6.1 of the *Cannabis Regulations* contains the following prohibition that applies with respect to subsections 17(2) to (6) of the *Cannabis Act*:

- Subsection 104.13(1) of the *Cannabis Regulations* provides that it is prohibited to promote edible cannabis – or a cannabis accessory that contains edible cannabis – under subsections 17(2) to (6) of the *Cannabis Act* by communicating information about the energy value referred to in item 2 of the table to section 132.22 of the *Cannabis Regulations* or the amount of any nutrient referred to in items 3 to 15 of that table or in items 5 to 37 of the table to section B.01.402 of the *Food and Drug Regulations*.

Prohibition: Energy Value and Amount of Nutrient (cont'd)

Exception - Nutrient facts table

- Subsection 104.13(2) of the *Cannabis Regulations* provides that, despite subsection 104.13(1), edible cannabis or a cannabis accessory that contains edible cannabis may be promoted by reproducing the nutrition facts table that is required to be included on the label of any container in which edible cannabis is packaged in accordance with these regulations using smaller, larger or identical dimensions and spacing.

Prohibition: Dietary Requirements

Part 6.1 of the *Cannabis Regulations* contains the following prohibition that applies with respect to subsections 17(2) to (6) of the *Cannabis Act*:

- It is prohibited to promote edible cannabis – or a cannabis accessory that contains edible cannabis – under subsections 17(2) to (6) of the Act if there are reasonable grounds to believe that the promotion could create the impression that the edible cannabis or cannabis accessory is intended:
 - To meet the particular dietary requirements of an individual
 - who has a physical or physiological condition as a result of a disease, disorder or injury, or
 - for whom a particular effect, including weight loss, is to be obtained by a controlled intake of food; or
 - To meet the dietary requirements of young persons. (Section 104.14 of the *Cannabis Regulations*)

Prohibition: Alcoholic Beverages

Part 6.1 of the *Cannabis Regulations* contains the following prohibition that applies with respect to subsections 17(2) to (6) of the *Cannabis Act*:

- It is prohibited to promote cannabis, a cannabis accessory or a service related to cannabis under subsections 17(2) to (6) of the *Cannabis Act* if there are reasonable grounds to believe that the promotion could associate the cannabis, the cannabis accessory or the service with an alcoholic beverage. (Subsection 104.15 of the *Cannabis Regulations*)

Prohibition: Tobacco and Vaping Products

Part 6.1 of the *Cannabis Regulations* contains the following prohibition that applies with respect to subsections 17(2) to (6) of the *Cannabis Act*:

- It is prohibited to promote cannabis, a cannabis accessory or any service related to cannabis under subsection 17(2) to (6) of the *Cannabis Act* if there are reasonable grounds to believe that the promotion could associate the cannabis, the cannabis accessory or the service with a tobacco product, as defined in section 2 of the *Tobacco and Vaping Products Act*, or a vaping product to which that Act applies. (Section 104.16 of the *Cannabis Regulations*)

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.

In addition, section 104.1 of the *Cannabis Regulations* provides that sections 104.11 to 104.16 of the *Cannabis Regulations* do not apply to a prescription drug or a combination product.

Do Any Other Acts and Regulations 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 activities related to promotion of cannabis, cannabis accessories or services related to cannabis should consult any other legislation that may apply to their activities.

Compliance and Enforcement Policy for the *Cannabis Act*

Health Canada's Compliance and Enforcement Policy for the *Cannabis Act* identifies five principles that guide the department's compliance and enforcement activities:

- Accountability
- Fairness, consistency and impartiality
- Transparency
- Targeted and outcomes focused
- Evidence based

Compliance and Enforcement Policy for the *Cannabis Act*

Health Canada employs a risk-based enforcement approach, where factors such as the public health and public safety risk, behaviour of the regulated party, and compliance history can be considered to determine which tool is best suited to address a specific situation.

Health Canada can undertake a variety of compliance and enforcement activities, including:

- Compliance promotion;
- Compliance monitoring;
- Enforcement actions including: voluntary compliance measures initiated by the regulated party; measures initiated by Health Canada.

How Can You Assess if Your Promotional Activities Comply with the *Cannabis Act*?

Persons intending to engage in activities related to the promotion of cannabis, cannabis accessories or services related to cannabis are encouraged to carefully consider the prohibitions in sections 17 to 24 of the *Cannabis Act* and Part 6.1 of the *Cannabis Regulations*, as well as all other applicable provisions of the *Cannabis Act* and its regulations and other federal, provincial or territorial legislation to assess whether the activities are permitted.

Health Canada will assess compliance with the provisions of the *Cannabis Act* and its regulations 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 an activity is prohibited.

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

If you have concerns regarding cannabis, please complete the Cannabis Reporting Form, which is available at the following address:

<https://health.canada.ca/en/health-canada/services/drugs-medications/cannabis/recalls-adverse-reactions-reporting/reporting-form.html>