THE CANNABIS ACT AND CANNABIS REGULATIONS — PROMOTION PROHIBITIONS

DISCLAIMER

This document 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/ and http://www.gazette.gc.ca/rp-pr/p2/2019/2019-06-26/html/sor-dors206-eng.html]. In the event of any discrepancy between the legislation and this document, 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 federal, provincial or territorial legislation.

Health Canada reserves the right to modify this document 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.

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 document, the Cannabis Act and the Cannabis Regulations specify a number of prohibitions related to the promotion of cannabis, cannabis accessories and services related to cannabis, as well as limited authorizations to engage in specific types of promotion.

This document focuses on the prohibitions and authorizations found in sections 16 to 24 of the Cannabis Act and Part 6.1 of the Cannabis Regulations. Persons intending to engage in activities relating to the promotion of cannabis, cannabis accessories or services related to cannabis are encouraged to review the Cannabis Act and its regulations in their entirety, as other provisions could apply to their activities depending on the circumstances.

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.
TO WHOM DO THE PROMOTIONS PROHIBITIONS APPLY?

The prohibitions in sections 17 to 23 of the Cannabis Act and Part 6.1 of the Cannabis Regulations 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 who sell cannabis accessories;
- persons who provide cannabis-related services; or
- media organizations.

The prohibition in section 24 of the Cannabis Act can potentially apply to any person (individual or organization) that sells cannabis or a cannabis accessory and engages in relevant activities.

WHAT PROMOTIONS ARE PROHIBITED?

Sections 17 to 24 of the Cannabis Act contain a number of provisions relating to the prohibition on the promotion of cannabis, cannabis accessories and services related to cannabis.

1. General prohibitions on the promotion of cannabis

   The Cannabis Act provides that, 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.  

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.

Other relevant prohibitions are found in the *Cannabis Act* and its regulations.

**WHAT PROMOTION CAN BE PERMITTED?**

The *Cannabis Act* contains exceptions that provide limited authorizations for the promotion of cannabis and cannabis accessories and services related to cannabis by certain persons in specific circumstances, subject to the applicable prohibitions listed above and any other applicable prohibitions, including those set out in Part 6.1 of the *Cannabis Regulations*.

1. **Informational promotion or brand-preference promotion**

   **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.

   Subsection 17(2) of the *Cannabis Act* 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;
communication 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.

Subsection 17(3) of the Cannabis Act 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.

The Cannabis Regulations contain the following prohibition applicable with respect to paragraphs 17(2)(b) and (3)(b):

• 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 Cannabis 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)

2. 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.

3. 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 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.

Part 6.1 of the Cannabis Regulations contains the following prohibitions applicable with respect to subsection 17(6) of the Cannabis Act:

- **Number of brand elements**
  - 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. (section 104.18 of the Cannabis Regulations)

- **Public place frequented mainly by young persons**
  - It is prohibited to promote cannabis, a cannabis accessory or a service related to cannabis 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. (section 104.19 of the Cannabis Regulations)

- **Dimensions of brand element**
  - 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 cm\(^2\); and
    - the height of any letter, character or number must be smaller than or equal to 4 cm. (section 104.2 of the Cannabis Regulations)

Part 6.1 of the Cannabis Regulations contains the following prohibitions that are applicable with respect to subsections 17(2) to (6) of the Cannabis Act:

1. **Flavours**

   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 [https://laws-lois.justice.gc.ca/eng/acts/T-11.5/section-sched450071.html?txthl=schedule+3], other than the flavour of cannabis. (section 104.11 of the Cannabis Regulations)

2. *Health and cosmetic benefits*

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.

3. *Energy value and amount of nutrient*

Subsection 104.13(1) of the Cannabis Regulations provides that 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, 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 [https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._870/page-16.html#h-568914].

However, 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.

4. *Dietary requirements*

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 if there are reasonable grounds to believe that the promotion could create the impression that the edible cannabis or 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)

5. *Alcoholic beverages*

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. (section 104.15 of the Cannabis Regulations)

6. Tobacco products and vaping products

It is prohibited to promote cannabis, a cannabis accessory or any 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 a tobacco product, as defined in section 2 of the Tobacco and Vaping Products Act [https://laws-lois.justice.gc.ca/eng/acts/t-11.5/], or a vaping product to which that Act applies. (section 104.16 of the Cannabis Regulations)

WHEN ARE THE PROMOTION PROHIBITIONS NOT APPLICABLE?

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.

Furthermore, 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 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 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/].

In addition to the Cannabis Act and its regulations, the reader should consult any other legislation that may apply to their activities.
HOW CAN YOU ASSESS IF YOUR PROMOTIONAL 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 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 and 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 a promotional activity is prohibited.