



CANNABIS GENETICS IN THE LEGAL MARKET: HOW THE REGULATIONS WILL LEAD TO MORE STRAIN VARIETY

By: Whitney Abrams

On June 27, 2018, Health Canada announced its regulations to support the coming into force of the Cannabis Act. The regulations follow the Act received Royal Assent on June 21, 2018. The regulations will be published in the Canada Gazette, Part II, on July 11, 2018 and the pre-published version was made available by Health Canada upon request.

The regulations are the culmination of almost a year long process. First, in November, 2017, Health Canada released its consultation paper, the “Proposed Approach to the Regulation of Cannabis”. From November to January, Health Canada heard from many key stakeholders as well as the general public. In mid-March, Health Canada released a Summary document of comments it received during the public consultation.

Tucked away in its Proposed Approach was a hint that Health Canada understood a need for new varieties of cannabis genetics in the legal market. Initially, it was suggested that there may be an opportunity for the commercialization of research and development of new plant genetics.

Then, in its summary document in March, Health Canada highlighted “starting material and access to plant genetics” as one of the four topics that garnered the most feedback from respondents to its consultation. There, Health Canada indicated that the feedback from respondents was that “access to a broad diversity of cannabis plant genetics used to propagate cannabis (such as seeds, seedlings or cuttings) was necessary to enable the legal market to successfully compete with the current illegal market.”¹ After being advised of the “hundreds, if not thousands, of different strains of cannabis sold on the illegal market” Health Canada recognized the need for more diversity of legal strains. In

the event that Health Canada were to implement regulations that allowed for this, those regulations “would need to aim to ensure that organized crime would not benefit from past or ongoing criminal activity with cannabis, and that all cannabis grown by the legal industry, regardless of source, would be subject to the same strict regulatory controls, including pesticide testing and other controls.”²

As a result, many expected some type of regulation to be introduced with respect to genetics, but it was unclear how it would be done to ensure that criminal activity would not be encouraged. This was a very exciting prospect as many licensed producers in Canada recognize the lack of variety of legal sources available. The status quo today, of course, is that licensed producers have had to acquire starting materials either from an existing licensed producer or from importing starting material. Both of these methods can be difficult in their own unique ways.



¹ Health Canada, “Proposed Approach to the Regulation of Cannabis: Summary of Comments Received During the Public Consultation”, s. 2.2 Health Canada <https://www.canada.ca/en/health-canada/services/publications/drugs-health-products/summary-comments-public-consultation-regulation-cannabis.html>

² Ibid.

The outcome is that the regulations include the following as an exception to the rule that cannabis **must** be obtained in accordance with the former *Access to Cannabis for Medical Purposes Regulations*:

“A holder of a license for cultivation is authorized to possess cannabis plants and cannabis plant seeds that were **not** obtained in accordance with [the above] if the holder had submitted to the Minister, with the license application, a declaration, signed and dated by the individual who signed and dated the application, indicating the quantity of such cannabis plants and cannabis plant seeds that they will have in their possession on the effective date of the license.”

In other words, new licensed producer applicants under the Cannabis Act will be permitted to possess illicit cannabis plants and seeds so long as (1) a declaration is submitted to the Minister alongside the application that identifies the quantity of plants and seeds that they will have on the date the license is granted; **and** (2) that the quantity of plants and seeds declared to the Minister are actually in the applicant’s possession on the date their license is granted.

The regulations limit this ability to new applicants. It seems that this is by design, in order to encourage illicit cannabis cultivators to transition to the legal market. This system seems to have been developed in order for Health Canada to move toward its stated goal (detailed above) to ensure that organized crime would not benefit from ongoing criminal activity with cannabis.

Licensed producers with existing cultivation licenses will not have this opportunity under the regulations. It is quite likely that existing licensed producers, in order to take advantage of the introduction of these new varieties of black market genetics, will take an interest in acquiring new applicants who intend to bring new varieties to the table. Certainly, as new licenses are granted, the diversity of strains available to the public will increase far beyond what would have otherwise been available.





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