



2018 Fall Webinar #2

Cannabis Legislation and Implementation Update

Speakers

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Cannabis Legislation and Implementation Update

Iain Dixon & Sara Dubinsky
PIBC October 31, 2018

Overview

- ▶ Federal, Provincial, Local and Third party/Private Regulatory Authority over Cannabis
- ▶ Distribution scheme in BC: operating rules and requirements
- ▶ Role of Local Governments, Regulatory Options, and What to do to Prepare for/ Respond to Legalization

Federal Regulation- *Cannabis Act, Cannabis Regulations*

- ▶ Determine minimum age (18), possession limits (30 grams in public), criminal offences
- ▶ Regulate production and product (producers, potency, packaging, ingredients, advertising, sponsorship, import/export)
- ▶ Production rules:
 - ▶ No licensed/ commercial production in dwelling houses (4 plants per household for personal use)
 - ▶ Cultivation, propagation and harvesting may occur outdoors
 - ▶ (Most) licence applicants *must* pre-notify “senior official” of local government, fire and police force of application including:
 - ▶ Licence class, activity, site address

Types of Federal Licences

► Cultivation

- Standard: Cultivating, propagating and harvesting cannabis to obtain dried cannabis, fresh cannabis, cannabis plants or cannabis plant seeds
- Micro: same as above, but max 200 square metre growing surface area
- Nursery: Cultivating, propagating and harvesting cannabis to obtain cannabis plants or cannabis plant seeds (no fresh/dried), max 50 square metre growing surface area)

► Sales (with subclass of sale for medical purposes)

► Cannabis Drug Licence

- Produce or sell a drug containing cannabis (including to pharmacists, medical practitioners, hospital employees)
- Obtaining cannabis by cultivation, propagating or harvesting it is not authorized by this licence.

Types of Federal Licences

- ▶ Processing
 - ▶ Standard: Production other than by cultivating, propagating or harvesting
 - ▶ Micro: Production other than by cultivating, propagating, harvesting, or synthesizing, and smaller scale (max 600kg/yr)
- ▶ Analytical Testing
 - ▶ obtaining cannabis by altering its chemical or physical properties by any means
- ▶ Research
 - ▶ Possession, production, and transport of cannabis for the purpose of research
 - ▶ Administering and distributing to a research subject

Provincial Jurisdiction

- ▶ Provincial Governments
 - ▶ Supplement Federal regulations: increase minimum age, lower possession maximums, regulate consumption location
 - ▶ Regulate and licence distribution
- ▶ Retail Distribution in BC
 - ▶ Private and public retail stores are permitted
 - ▶ Liquor Distribution Branch is the sole wholesaler/distributor for recreational cannabis and operates public stores (“BC Cannabis Stores”) and online sales
 - ▶ Liquor Control and Licensing Branch is responsible for licensing retail stores
 - ▶ No licensing of consumption lounges, private online sales, delivery services, sales at festivals/events at this time

Provincial Regulation- *Cannabis Control and Licensing Act, regs*

- ▶ Adults (19 and over) may possess up to 30 grams in a public place
- ▶ Consumption prohibited at/near:
 - ▶ Schools, health care facilities
 - ▶ Outdoor public: skating rinks; sports fields; pools, playgrounds, skate parks; or associated decks, seating areas or viewing areas
 - ▶ Parks of various classifications
 - ▶ Enclosed: public places; workplaces; common areas within apartment buildings, condos or dorms
 - ▶ While operating vehicle or boat or in one being operated
 - ▶ Bus stops, train stations and stops, taxi stand, ferry dock or stop
- ▶ Adults may grow up to 4 cannabis plants per household (subject to stratas and landlords)
- ▶ Plants cannot be visible from public spaces off the property
- ▶ Home cultivation is banned in dwellings used as daycares
- ▶ New drug affected driving offences and penalties

Operating Rules for Retail Stores

- ▶ Sale of federally regulated/ provincially sourced cannabis, oils, seeds and accessories (pipes, bongs, vaporizers)
- ▶ No edibles (Federal Government intends to regulate within 12 months of legalization) or consumption on site
- ▶ No “co-location” - cannot sell alcohol or tobacco (rural stores may be exempt)
- ▶ Minors not permitted to enter (rural stores may be exempt)
- ▶ May operate 9am-11pm **subject to local government restriction**
- ▶ Security requirements, **may be supplemented by local governments**

Additional Provincial Requirement's

- ▶ Compliance program (education, inspection, enforcement)
- ▶ Mandatory registration (including background checks) and training program for retail employees
- ▶ All stores inspected at least annually, and if the subject of complaint
- ▶ Non-compliance will result in contravention notices and can lead to penalties, licence suspension and/or cancellation

Role of Local Governments- Retail Store Establishment

- ▶ **Local governments have significant control**
 - ▶ Mandatory notice of licence application to local government
 - ▶ Local government may comment and make recommendations on the application and if so, must obtain public input via:
 - ▶ Written comments;
 - ▶ Public hearing;
 - ▶ Referendum; or
 - ▶ Another method considered appropriate
 - ▶ Retail store licence applicants must have local government recommendation in support as a prerequisite to licence issuance

Role of Local Governments- Retail Stores cont'd

- ▶ In addition to “veto” power, local governments may:
 - ▶ Regulate the number of retail stores or prohibit them altogether
 - ▶ Regulate the location of retail stores, including distance from other outlets or uses (schools, playgrounds, etc)
- ▶ The Province is not regulating permissible locations or numbers of stores
- ▶ Local governments may also:
 - ▶ Restrict hours of operation, impose security requirements
 - ▶ Regulate public consumption beyond Provincial regulations

Regulatory Role of Local Governments cont'd

- ▶ Bylaw amendments:
 - ▶ Zoning
 - ▶ Public consumption (nuisance, smoking bylaws)
 - ▶ Business licence/regulation (fees, hours, security, proof of successful completion of provincial course and licence as condition of B/L)
 - ▶ Fees and procedures for public consultation on licence applications

Specific Regulatory Options: retail store location

- ▶ Most local governments are allowing retail stores on an ad hoc basis, via rezoning
- ▶ Option 1: Spot rezoning
 - ▶ Pros: maximum control, slow growth, easiest way to implement minimum distances, one public hearing for the rezoning and the provincial “recommendation”, can have a non-binding “rezoning policy” to guide applicants
 - ▶ Cons: time and expense (staff and applicant), disincentive to economic development

Specific Regulatory Options

Cont'd

- ▶ Option 2: Add new permitted use to existing zones
 - ▶ Pros: more attractive to operators, less demanding on staff/Council time
 - ▶ Cons: significant front end work, less control over proliferation and lawful non-conforming use, harder to police minimum distance requirements or caps, choosing between more applicants than permitted uses
- ▶ Option 3: TUP
 - ▶ Pros: same as spot rezoning, plus ability to temporarily test the waters without enabling lawful non-conformity, can impose terms and conditions and require security
 - ▶ Cons: time and expense (staff and applicant), disincentive to economic development, OCP or zoning must designate TUP areas

Case Law Affirming Local Government Jurisdiction

- ▶ ***Abbotsford (City) v. Mary Jane's Glass & Gifts Ltd.*, 2017 BCSC 237:**
 - ▶ Retail marihuana dispensaries engage issues of health, safety, nuisance, youth exposure, land use conflicts, impact on local economy and neighbourhood character: i.e. land use and community planning
 - ▶ These matters are squarely within provincial (municipal) jurisdiction
 - ▶ Abbotsford's zoning provisions are properly classified as the regulation of land and building use, which is a matter of provincial (municipal) jurisdiction

Regulatory “Non-Options”

- ▶ Permit only public (or private) stores
 - ▶ Must regulate the use, not the user
- ▶ Mandatory Sunday closing
 - ▶ Constrains freedom of religion
- ▶ Prohibit designated farm use cannabis production in ALR
 - ▶ Previously: production of marihuana in accordance with MMPRs
 - ▶ As of July 13, 2018: lawful production of cannabis that is
 - ▶ Outdoors or soil based, or
 - ▶ Pre existing/under construction
 - ▶ Otherwise non-farm use approval is required by ALC
- ▶ Allow non farm use cannabis production/buildings in ALR
 - ▶ Prohibited per s. 18 ALC Act

Drafting and Enforcement Tips Post Legalization

- ▶ Business licence bylaw requirements:
 - ▶ Applicants must comply with all applicable regulatory requirements, including provincial and federal ones
 - ▶ licence inspectors may require proof of applicable certifications, approvals
- ▶ These provisions enable B/L refusal for unlicensed cannabis stores
- ▶ Successfully enforced by injunction (pre-legalization):
Abbotsford (City) v. Weeds Glass & Gifts Ltd., 2016
BCSC 135

Drafting and Enforcement Tips Post Legalization cont'd

- ▶ Business licence bylaws should:
 - ▶ broadly define business
 - ▶ require business licence even if a business is operated by a society or on a non-profit basis
 - ▶ Alternative options: fee exemption, or require approved licence exemption
- ▶ Zoning Bylaws should:
 - ▶ carefully define cannabis operations
- ▶ Both Business and Zoning Bylaws should:
 - ▶ require businesses/owners to comply with all applicable bylaws as well as provincial and federal laws
 - ▶ Create offence to breach or allow breach of bylaws

Enforcement Against Property Owners

- ▶ Property owners have a duty to ensure bylaw compliance (*R. v. Morshedian and Janani*, 2015 BCPC 368, *District of West Vancouver v. Morshedian*, 2017 BCSC 408)
- ▶ Principle extends to dispensary landlords and business licence bylaw infractions:
 - ▶ *Yard Investment Inc. v. Langley (Township)*, 2018 BCSC 1658
- ▶ Abbotsford has successfully enforced zoning against landlords:
 - ▶ Tickets /demand letters resulting in voluntary compliance-eviction
 - ▶ Injunction: *City of Abbotsford v. Simba Holdings Ltd and Medicinal Express Society* - September 2017

Tips and Tricks -Enforcement

- ▶ To shut down unlicensed dispensaries:
 - ▶ Reach out to police and “director”
 - ▶ seizure of cannabis in plain view: s. 101
 - ▶ Director may also inspect and seize cannabis, impose fines of twice the retail value, and obtain injunctions: s. 89, 94, 99
 - ▶ Progressive bylaw enforcement (warnings, demand letter, tickets, then injunction)
 - ▶ Adopt significant fines (MTI max: \$1000, BON max: \$500)
 - ▶ Enforce multiple bylaws: sign, controlled substance, nuisance
 - ▶ Pursue landlords (and register judgment on title)

Questions?



Cannabis Production in the Agricultural Land Reserve (ALR)

PIBC Webinar

Wednesday, October 31st

12:00-1:30pm



Presentation Outline

- 1) Cannabis Legislation and Policy Overview
 - Ministry of Agriculture
- 2) Regulatory Interpretation
 - Agricultural Land Commission
- 3) Bylaw Development and Farm Practices
 - Ministry of Agriculture
- 4) Questions and Answers



Background-Federal

- Medical cannabis has been legal since 2002 through a system of federally licensed producers.
- As of October 26th, Health Canada reports that there are 30 licensed cannabis producers operating in BC.
- In April 2017, the federal government proposed legislation, the *Cannabis Act*, to legalize non-medical cannabis.
- When *Cannabis Act* came into force on October 17, 2018, non-medical cannabis became legal and the federal government began issuing licences for medical and non-medical cannabis production.



Background-Provincial

- Federally licensed commercial medical cannabis producers have been permitted in the Agricultural Land Reserve (ALR) since 2014.
- Prior to July 13, 2018, local governments could not prohibit medical cannabis operations on the ALR but could create bylaws for siting and sizing.
- Consultations to develop the cannabis policy included the following stakeholders:
 - Federal government
 - Provincial Cannabis Secretariat
 - UBCM through its Provincial and Local Government Joint Committee on Cannabis Regulation (JCCR)
 - Ministry of Municipal Affairs and Housing
 - Agricultural Land Commission
 - Legal Counsel



Federal and Provincial Roles

Federal Responsibilities	Provincial Responsibilities
<ul style="list-style-type: none">• Issuing licences for: <i>cultivation, processing, analytical testing and research</i>• Establishing industry wide rules and standards including:<ul style="list-style-type: none">• Security• Good production practices (air filtration, standard operating procedures, pest control)• Tracking of cannabis	<ul style="list-style-type: none">• Issuing licences for and overseeing: <i>distribution and retail of cannabis</i>• Establishing policies and guidelines on other issues that fall outside of the Cannabis Act:<ul style="list-style-type: none">• Land use decisions• Farm practices



Cannabis in the ALR – Policy Goals

- Preserve productive capacity of the ALR.
- Acknowledge federal legalization of non-medical cannabis.
- Respect citizen's right to access medical cannabis under the federal charter of rights and freedoms.
- Recognize existing capital investment in cannabis.
- Recognize need for flexibility at the local and First Nations government level.



ALR Regulatory Change

- Cannabis production is now a ‘designated farm use’ that local governments cannot prohibit, if grown lawfully:
 - In an open field
 - In a structure that is entirely soil based
 - In a structure that was either fully constructed or under construction prior to July 13, 2018 for the purpose of growing crops inside it.
- Acknowledges that as of October 17, there is no difference between medical and non-medical cannabis.
- Cannabis here does not include industrial hemp.
- The Agricultural Land Commission (ALC) is the independent administrative body responsible for interpretation of the ALR Regulation.

CANNABIS PRODUCTION IN THE ALR

Lindsay McCoubrey, Policy Analyst
Agricultural Land Commission



Agricultural Land Commission

- Independent Administrative Tribunal
- Mandate (ALCA s. 6):
 - Preserve agricultural land; and
 - Encourage farming in collaboration with other communities of interest;
- Interpret & apply the *ALC Act* and *ALR Use, Subdivision and Procedure Regulation*



Interpretation of Regulatory Change

ALC INFORMATION BULLETIN #4

- Section 2 (2.5) designates the “lawful” production of cannabis a farm use if:
 - Produced out in a field;
 - Inside a structure with a base “entirely of soil”
 - Inside a structure that was:
 - constructed prior to July 13, 2018 for the purpose of “growing of crops”, including lawful cannabis production
 - “under construction” prior to July 13, 2018 for the growing of crops, including lawful cannabis production

Interpretation of Regulatory Change

ALC INFORMATION BULLETIN #4

- Cannabis production that does not meet the description in section 2 (2.5) and non-production related activities associated with lawful cannabis production require an application to the Commission for non-farm use.

Interpretation of Regulatory Change

ALC INFORMATION BULLETIN #4

- Cannabis production is not “lawful” unless it is licensed by the Government of Canada
 - Producers and Local Governments need to be very careful about taking steps relying only on Section 2 of the *ALR Use, Subdivision & Procedure Regulation* without first ensuring that federal preconditions are or will be met before production occurs

Interpretation of Regulatory Change

ALC INFORMATION BULLETIN #4

Placement of Fill

- Fill for cannabis production cannot be placed without a non-farm use application to the Commission
- The exceptions for filling provided for some uses in the *ALR Use, Subdivision & Procedure Regulation* do not apply to cannabis production

Interpretation of Regulatory Change

ALC INFORMATION BULLETIN #4

Production in Soil-based Structure

- Section 2(2.5)(a)
 - The use of the words “**entirely**” and “**soil**” are significant when describing the base of the structure:
 - The use of the word “entirely” means a building consisting partly of a soil does not qualify
 - The use of the word “soil” is not to be confused with “fill”; “fill” is imported and “soil” is material in-situ and native to the site as defined in the *ALC Act*.

Interpretation of Regulatory Change

Production in an Existing Structure

- Section 2 (2.5)(b)(i)
 - The structure must have been constructed for the purpose of “**growing crops**” inside it; Livestock buildings do not qualify;
 - The structure must not have been altered or expanded after July 13, 2018 to increase the size or change the material used as its base

Interpretation of Regulatory Change

ALC INFORMATION BULLETIN #4

Production in a Structure Under Construction

- Section 2 (2.5)(b)(ii)
 - For a structure to be deemed “under construction” ground disturbance associated with excavation (for laying foundation or installing utilities) must have commenced prior to July 13, 2018;
 - Clearing vegetation, making an application, or receiving a permit for construction prior to that date is not sufficient;

Interpretation of Regulatory Change

ALC INFORMATION BULLETIN #4

- The construction, maintenance or operation of a building, structure, driveway, ancillary service or utility that is “not necessary” for the production of cannabis, require a non-farm use application to the Commission

Interpretation of Regulatory Change

ALC INFORMATION BULLETIN #4

- Buildings, structures, driveways, etc. “**necessary**” for the storing, packing, preparing or processing of cannabis can be undertaken without application to the Commission if 50% of the product is produced on the “farm”



Local Government Bylaw Development

- Ministry staff are available to provide feedback and guidance when local governments are amending their bylaws to be consistent with the ALR Regulations.
- Minister's Bylaw Standards provide guidance to local governments in the preparation of bylaws.
- The Ministry is reviewing the Minister's Bylaw Standard with respect to cannabis production in the ALR.
- With Minister's approval, local governments have the option to become 'Right to Farm regulated' under section 553 of the *Local Government Act* providing authority to potentially further restrict or prohibit cannabis production in the ALR.



Farm Practices Protection (Right to Farm) Act

- The Federal Cannabis Regulation only addresses the nuisance of odour in Section 85 Filtration of Air, “The building or part of the building where cannabis is produced, packaged, labelled and stored must be equipped with a system that filters air to prevent the escape of odours”.
- The provincial *Farm Practices Protection (Right to Farm) Act* (FPPA) gives farm operations practicing ‘normal farm practices’ protection from complaints from neighbours and local government nuisance bylaws. This includes cannabis production on the ALR.



Farm Practices Protection (Right to Farm) Act

- The Ministry has a 'Farm Practices in BC Reference Guide' with over 60 Factsheets on B.C. farm practices.
- These include fact sheets on specific commodities, farm activities, and farm nuisances.
- The Ministry is currently reviewing this Reference Guide to determine whether updates are needed to address cannabis.



Farm Practices

- Health Canada has released a Policy on Compliance and Enforcement for federal cannabis licence holders (e.g. cultivation licences, processing licences etc.)
- Ministry Regional Agrologists can provide support to help *informally* resolve farm practices issues.
- The BC Farm Industry Review Board (BCFIRB) is responsible for *formal* complaints arising from agricultural operation practices (e.g. noise, odour, etc.)
- Local governments can play a significant role through land use planning to help minimize potential conflict before it happens.



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UP NEXT – Fall Webinar #3

Community Lifecycle Infrastructure Costing Tool (CLIC Tool):
Case Studies and Best Practices