

Medical Marihuana: Health Canada Hits Reset Button

By Bill Buholzer

Local governments across the country are having to re-assess their approach to the cultivation of marihuana for medicinal use, as Health Canada prepares to implement a new policy regarding the production of medical marihuana: decentralized, commercial-scale production by private entrepreneurs.

To recap: in response to numerous court decisions acquitting marihuana users on *Charter of Rights and Freedoms* grounds from illegal possession charges under the *Controlled Drugs and Substances Act* , Health Canada in 1999 implemented it existing policy: personal use production licenses, which authorize persons with a prescription for marihuana (usually for the relief of pain or the stimulation of appetite) to grow in their homes a sufficient number of plants (up to about 50) to meet their medical needs. (A refinement of that policy, responding to further court decisions, provided for the issuance of designated person production licences, pursuant to which a person designated by someone with a prescription for marihuana could lawfully grow marihuana for that person.) Ultimately the federal regulations allowed a designated person to cultivate marihuana for four users- or up to about 200 plants. The number of persons licensed to possess marihuana grew from 477 in 2002 to nearly 22,000 in 2012, and was projected by Health Canada to grow to over 50,000 by 2014. Health Canada backstopped the home-remedy approach by producing and supplying a few types of marihuana directly to patients, through Prairie Plant Systems Inc. in Saskatchewan. Health Canada provided no information to local governments on the location of premises in their jurisdiction in which marihuana could lawfully be grown. Some activists and entrepreneurs viewed the apparent elasticity of the law as a sort of invitation, and opened "dispensaries" and "compassion clubs" to provide marihuana products to persons lacking prescriptions recognized by Health Canada.

The consequences of the existing Health Canada policy is familiar to most local government elected officials and staff in British Columbia, which has an ample share of those 22,000 licences: thousands of degraded residential premises that were neither designed nor constructed to be used as greenhouses, and law enforcement muddle as regards residential-scale marihuana grow operations. In response to lobbying by various stakeholders, including local governments, Health Canada announced its new policy in December 2012 in the form of the Marihuana for Medical Purposes Regulation (MMPR) which is to come into force on April 1, 2014.

The MMPR puts the production of marihuana for medical purposes on a common commercial footing, whereby licenses would be issued not to patients or persons they designate to grow marihuana for them, but to persons and corporations that apply to Health Canada for a production and mail-order distribution licence. Applicants will have to advise the local government, police force and fire department of their intention to make an application to Health Canada, and receive a security clearance for Health Canada. Licenses will authorize marihuana production, processing and packaging on the premises, and distribution from the premises by registered mail of bonded courier only, to patients with prescriptions from that licenced producer; walk-in trade will not be allowed. Personal use and designated person production licences would be phased out and the government's Saskatchewan operation would be wound up. Licensed producers would be able to purchase marihuana plants and seeds from holders of personal use and designated person productions licences to start up their operations, or purchase seeds from Health Canada.

The government estimates that the new regime will cost prescription holders about $166 million annually in increased costs for marihuana, but will save about $150 million annually, in the form of reduction in safety and security risks posed by home cultivation, reduced program administration costs (all those licenses for residential premises), and elimination of governmental subsidies for marihuana supplied by Prairie Plant systems. Federal and provincial income tax revenues from the commercial production of marihuana are not included in the cost-benefit analysis that was summarized on the government's regulatory impact statement for the MMPR.

To date, BC municipalities have varied widely in their response to the planned changes. Some municipalities, possibly taking inspiration from certain US cities that have seized on the decriminalization measures as an economic diversification opportunity, have reviewed their zoning regulations to ensure that commercial-scale marihuana production is a permitted use in their agricultural or industrial zones. (We understand that the Agricultural Land Commission has taken the position that this would be a type of farming that is

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