

Transitioning Canada's Cannabis Industry

Submission of the Canadian Association of Medical Cannabis Dispensaries
to the Standing Committee on Health, August 2017

Attention:

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Since 2010, the Canadian Association of Medical Cannabis Dispensaries (CAMCD) has provided information and consultation to government related to the reform of cannabis laws. Current priorities for the organization include the transition of dispensaries into a regulated framework, and continuity of safe, affordable access for patients. We also believe that steps should be taken to incorporate the existing supply chain into the legal system, and to respect the product diversity that patients and consumers rely upon.

Facilitating the transition of existing locally-approved and compliant cannabis dispensaries into the regulated market is essential for the creation of a well-functioning cannabis market. Effective cannabis policy reform requires government licensed businesses to displace illicit actors during the initial years of the program's development. By permitting existing locally-supported storefront dispensaries to become city and provincially licensed, Canada will allow dispensary customers a seamless transition to purchasing compliant and taxed cannabis. Local governments that have already begun the process of regulation and zoning enforcement will be able to reward businesses that have followed existing guidance while preventing non-compliant actors from continuing unlawful operations.

Failing to allow a transition of existing dispensaries would leave many thousands of people with medical conditions in a serious health crisis, and be a discredit to the medical cannabis advocates who have risked their liberty to help people in need. Further to this, a lack of inclusivity would be an unfair policy, as it will cause those operators to lose significant financial investments and eliminate a large number of jobs.

While Canada is poised to become the first G20 nation to regulate the production and sale of cannabis for all adults, the United States provides a valuable resource from which to gain perspective on successful and unsuccessful cannabis regulatory models. Over the past two decades, starting in 1996 with Proposition 215 in California, 29 U.S. states have legalized cannabis for medical purposes. In 2014, Colorado was the first state to legalize cannabis: since then, 8 states have regulated adult use cannabis. Almost 200 million Americans live in states with legal medical cannabis, and more than 63 million Americans reside in states with legal adult-use cannabis.¹

Alaska, Colorado, Nevada, Oregon, and Washington all currently permit adult-use cannabis sales (California, Massachusetts, and Maine are in the process of developing regulations and licensure). Of these states, only one,

¹ <http://www.medicalmarijuanainc.com/nearly-60-percent-u-s-population-now-lives-states-marijuana-legalization/>

Washington, did not facilitate a process for existing dispensaries to transition into the adult-use market.² Notably, Washington also had the most trouble implementing its law, faced lawsuits and product shortages, and took the longest to begin legal sales. These factors, combined with Washington’s unusually high cannabis tax, has resulted in a cannabis black-market that continues to thrive in Washington state today³.

It should be noted that Washington regulators took approximately 20 months to permit adult-use sales from the time that law first passed. By comparison it took Colorado 14 months, Oregon 11 months, and Nevada only eight months to begin commercial sales. This shortened timeline was only possible because of existing dispensary transition.

The following section highlights two case examples of U.S. states that facilitated locally-approved medical dispensary transition to full adult-use legalization. The legislative language enabling this transition is included in the appendix

Examples of States That Facilitated an Inclusive Transition

California

California has historically been a state with a market inclusive of small home-grown cannabis businesses. Although Proposition 215, which legalized marijuana for specific medicinal purposes, passed in 1996, the state did not pass legislation creating a statewide business and regulatory structure (Medical Cannabis Regulation and Safety Act “MCRSA”) until September of 2015. During the almost twenty years in California prior to the passage of MCRSA, California medical patients either cultivated their own cannabis or obtained it through collectives and cooperatives. Some local governments created licensing schemes for storefront dispensaries, but by and large these establishments operated without a clear legal regulatory framework.

The text of MCRSA permitted a business operating in compliance with local zoning and other state and local requirements prior to January 2018 to continue operating until its application for licensure is approved or denied. This window of opportunity allows existing locally-approved businesses to solidify and professionalize their operations while awaiting an official state license. Rather than shutting businesses and then allowing them to reopen, California allows dispensaries to continue in compliance with local laws until California fully licenses or deny them. Furthermore, California’s “Adult Use of Marijuana Act” (“AUMA”) legalization law directs local governments to identify locally compliant businesses for the state licensing authority to prioritize. These two sections have paved a path in California for existing and compliant businesses to transition into the state-legal and fully-regulated market.

Colorado

Colorado was one of the first jurisdictions to create statewide regulations for medical cannabis businesses with the passage of House Bill 1284 in 2010. When crafting the original legislation, Colorado explicitly permitted locally-approved businesses to continue operating as long as they paid their taxes and applied to the state for a license. Like MCRSA in California, this new law directed local governments to provide the state with a list of all locally-licensed cannabis businesses so the state could differentiate between lawful and unlawful operations.

When full legalization (Amendment 64) passed in November of 2016, existing medical cannabis businesses were given priority in licensing. This finalized a multi-year long path of transition for dispensary businesses. The unlicensed medical cannabis businesses that originally appeared in 2008 and 2009 and then successfully secured local permits could continue operating until they obtained state licensure. As long as these businesses continued

² Alaska’s medical cannabis system did not allow for dispensaries so there were no existing businesses to transition.

³ <http://www.seattleweekly.com/news/four-years-after-legal-weed-seattles-black-market-still-thrives/>

operating in compliance with the state law – and if the locality in which they were operating elected to allow adult-use facilities – they were given a path to transition to adult-use once the new legalization market opened in January of 2014.

Of particular note is that when Colorado dispensaries were given state licenses, they were allowed to purchase products only from licensed producers, none of which were yet in existence. To facilitate this, dispensary owners were given a mandate to consolidate producer partners from within their existing supply chain, thereby creating legal production, distribution and retail from an existing industry in one stroke.

This inclusive approach created a very successful regulatory system. It allowed a significant reduction in the burden on police, produced a large number of compliant and productive businesses, and a steady stream of tax revenue. Studies have shown no statistically significant change in crime or youth cannabis use.

Opportunities for Canada

The Canadian process of adult-use legalization is a measured approach that appropriately prioritizes the public health and safety of communities. However, the Canadian medical model has not permitted storefront operations, a core component of patient and customer access and the norm for almost all other consumer products. For this level of distribution and regulation, governments should look toward successful models of localized regulations. In fact, the Federation of Canadian Municipalities in its submission to the federal Task Force noted, “...the use of a standalone, privately-owned retailer system such as that of Vancouver or Denver is effective in generating reliable tax-revenue, rigid adherence to age restrictions and a source of revenue for municipalities”.

Providing a pathway for dispensary transition – and including cities and towns in the process by requiring local governments to submit a list of priority applicants based on each business’s prior operation and compliance with local directives – will be essential to a smooth evolution and eventual adult-use sales. Storefront dispensaries may not be appropriate for or desired in all jurisdictions. But in the localities that have already embraced them and engaged in the process of regulation, compliant actors should be provided with a path to full licensure and legitimacy.

Providing a pathway for producer transition, as in Colorado, by allowing existing dispensaries to bring their supply chain into a regulated environment, would ensure successful consumer buy in with a seamless transition of products and services, and would also create an environment in which the illicit market is effectively undermined. There are many existing producers seeking a regulated environment to work from, and would be receptive to the opportunity.

A transition of production, distribution, and retail would also protect regional economies: studies have shown that the contribution of cannabis to British Columbia’s economy outweighs other key sectors, including forestry, mining, fishing, and natural gas. In BC, an estimated 60-100,000 jobs and \$2 to \$7 billion in annual revenues hang in the balance, dependent on inclusive regulations for existing cannabis businesses.

Recommendations

The following recommendations are made to facilitate a functional and successful regulatory regime for cannabis in Canada.

1. Encourage and facilitate the transition of existing locally-approved and compliant cannabis dispensaries into the adult-use cannabis market through legal and regulatory design that prioritizes the elimination of non-compliant illicit market actors.

2. Encourage provinces and cities to create regulatory and license structures for retailers that include existing cannabis businesses, and allow these businesses to bring in producers from their supply chain.
3. Strike from the Cannabis Act Part 3, Section 62 Point 7 c) and d), which list as grounds for license refusal: c) contravention of the CDSA in the past 10 years, and d) suspicion of contravening the CDSA in the past 10 years.
4. In the Cannabis Act Part 3, Section 61, include provisions for a license class to capture existing small producers, processors, and distributors.
5. For small producers, create a set of regulations with success benchmarked to the quality of finished product, rather than prescriptive and onerous ACMPR regulations, which add prohibitive cost and complexity to access the regulated market.
6. Product diversity should be expanded to include products currently available in dispensaries, i.e. edibles, concentrates, topical ointments and other products. Excluding these would leave many patients without the products they've come to depend on, and would ensure there remains a steady stream of consumers to the illicit market.

Appendix

Example Statutes from U.S. States for Existing Dispensary Transition

California

Cal. Bus. & Prof. Code § 19321 (repealed by subsequent laws implementing AUMA)

(b) Notwithstanding subdivision (b) of Section 19320, the premises or person that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter only if (1) a completed application and all required documentation and approvals for licensure are submitted to the licensing authority no later than the deadline established by the licensing authority and (2) the applicant continues to operate in compliance with all local and state requirements, except possession of a state license pursuant to this chapter. In issuing licenses, the licensing authority shall prioritize any premises or person that can demonstrate to the authority's satisfaction that the premises or person was in operation and in good standing with the local jurisdiction by January 1, 2016.

Cal. Bus. & Prof. Code § 26054.2

(a) A licensing authority shall give priority in issuing licenses under this division to applicants that can demonstrate to the authority's satisfaction that the applicant operated in compliance with the Compassionate Use Act of 1996 (Section 11362.5 of the Health and Safety Code) and its implementing laws before September 1, 2016.

(b) The licensing authorities shall request that local jurisdictions identify for the licensing authorities potential applicants for licensure based on the applicants' prior operation in the local jurisdiction in compliance with state law, including the Compassionate Use Act of 1996 (Section 11362.5 of the Health and Safety Code) and its implementing laws, and any applicable local laws.

(c) In addition to or in lieu of the information described in subdivision (b), an applicant may furnish other evidence as deemed appropriate by the licensing authority to demonstrate operation in compliance with the Compassionate Use Act of 1996 (Section 11362.5 of the Health and Safety Code). The licensing authorities may accept such evidence to demonstrate eligibility for the priority provided for in subdivision (a).

(d) This section shall cease to be operative on December 31, 2019, unless otherwise provided by law.

Colorado

House Bill 10-1284 (C.R.S. 12-43.3-103.)

(1) (a) On July 1, 2010, a person who is operating an established, locally approved business for the purpose of cultivation, manufacture, or sale of medical marijuana or medical marijuana-infused products or a person who has applied to a local government to operate a locally approved business for the purpose of cultivation, manufacture, or sale of medical marijuana

or medical marijuana-infused products which is subsequently granted may continue to operate that business in accordance with any applicable state or local laws. "Established", as used in this paragraph (a), shall mean owning or leasing a space with a storefront and remitting sales taxes in a timely manner on retail sales of the business as required pursuant to 39-26-105, C.R.S., as well as any applicable local sales taxes.

(b) To continue operating a business or operation as described in paragraph (a) of this subsection (1), the owner shall, on or before August 1, 2010, complete forms as provided by the Department of Revenue and shall pay a fee, which shall be credited to the medical marijuana license cash fund established pursuant to section 12-43.3-501. The purpose of the fee shall be to pay for the direct and indirect costs of the state licensing authority and the development of application procedures and rules necessary to implement this article. Payment of the fee and completion of the form shall not create a local or state license or a present or future entitlement to receive a license. An owner issued a local license after August 1, 2010, shall complete the forms and pay the fee pursuant to this paragraph (b) within thirty days of issuance of the local license. In addition to any criminal penalties for selling without a license, it shall be unlawful to continue operating a business or operation without filing the forms and paying the fee as described in this subsection (b), and any violation of this section shall be prima-facie evidence of unsatisfactory character, record, and reputation for any future application for license under this article.

(c) A county, city and county, or municipality shall provide to the state licensing authority, upon request, a list that includes the name and location of each local center or operation licensed in said county, city and county, or municipality so that the state licensing authority can identify any center or operation operating unlawfully.

Amendment 64 (Colo. Const. art. XVIII, § 16)

(b) In order to ensure the most secure, reliable, and accountable system for the production and distribution of marijuana and marijuana products in accordance with this subsection, in any competitive application process the Department shall have as a primary consideration whether an applicant:

- (i) has prior experience producing or distributing marijuana or marijuana products pursuant to section 14 of this article and the Colorado medical marijuana code in the locality in which the applicant seeks to operate a marijuana establishment; and
- (ii) has, during the experience described in subparagraph (i), complied consistently with section 14 of this article, the provisions of the Colorado medical marijuana code and conforming regulations.

House Bill 13-1317 (C.R.S. 12-43.4-104.)

(1) (a) (i) On or after October 1, 2013, a person, who is operating in good standing a licensed medical marijuana center, an optional premises cultivation license, or a licensed medical marijuana-infused products business or a person who had a pending application with the state licensing authority prior to December 10, 2012, has paid all applicable licensing fees, and has not yet had that application approved, may apply for a retail marijuana establishment license under this article.

(b) (i) (a) after January 1, 2014, persons who did not meet requirements of subsection (i) of paragraph (a) of this subsection (1) may submit notice of intent to apply for licensure pursuant to this article. The state licensing authority shall establish a form for the notice and may collect a notice fee that shall be applied to the amount of the application fee. The state licensing authority shall forward to the local jurisdiction the notice of intent to apply and one-half of the notice fee unless the local jurisdiction has prohibited the operation of retail marijuana establishments pursuant to section 16 (5) (f) of article xviii of the state constitution.

About CAMCD

The Canadian Association of Medical Cannabis Dispensaries (CAMCD) was established in 2010 to promote a regulated approach to medical cannabis access. CAMCD is dedicated to facilitating the transition of medical cannabis dispensaries into a legal framework, and to ensure continuity of access for patients.

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