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Strong Roots in Stormy Weather: Federal Government Affirms Commitment to Legalize Cannabis by July 2018 in Light of Premier Uncertainty

On July 19, 2017, the majority of Canada's Premiers met to discuss, among other things, their concerns with the legalization and regulation of cannabis in connection with the federal government's targeted legalization and regulation date of July 1, 2018 (the "Implementation Date"). The Premiers, concerned that federal government's proposed Implementation Date may be unrealistic due to issues that still need to be addressed by the provinces and territories, established a Provincial-Territorial Working Group on Cannabis Legalization (the "Working Group"). The Working Group is expected to submit a report to the Premiers on or before November 1, 2017 identifying common considerations and best practices to cannabis legalization and regulation, guided by the objectives of reducing harm, protecting public safety, and reducing illicit activity.

However, despite this uncertainty, the federal government remains committed to Prime Minister Trudeau's goal of legalizing and regulating cannabis in Canada by July 1, 2018. In response to the formation of the Working Group and the issues raised by the Premiers, a Health Canada spokesperson reported to James Munro, Co-Chair of McMillan LLP's Cannabis Practice Group:

“The Government of Canada is committed to providing regulated and restricted access to cannabis no later than July 2018, and will continue to collaborate with the provinces and territories as it delivers on this commitment. In addition to working with the provinces and territories to establish a secure supply chain, the Government of Canada will work with them to raise public awareness and educate Canadians about the risks associated with cannabis use and monitor the impacts of providing strictly controlled access to cannabis.”

While Health Canada’s response firmly reiterates that the federal government will not be postponing the Implementation Date, there are still a number of issues that need to be addressed at the provincial and territorial levels.

Concerns and Strategic Initiatives

Alberta Premier Rachel Notley has been reported as stating that the federal government needs to provide more detailed answers on issues concerning road safety and enforcement, preparation and training on distribution, taxation, public education, and supply and demand and how that might affect the black market.¹ Similarly, Manitoba Premier Brian Pallister has insisted that there are still unanswered questions on issues such as public safety, the health impacts of cannabis use, and the appropriate age of majority for cannabis purchasers.² As a result of these concerns, Premier Pallister has been quoted as stating that delaying the Implementation Date would be beneficial.³

However, Premier Pallister’s skepticism is not representative of the views held by most of the Premiers. For the most part, the provinces and territories have signaled that they are focused on the Implementation Date and that they intend to be ready. As such, each province and territory has developed their own strategic initiatives to

¹ “Premiers seek pot law clarity or delay from Ottawa”, *The National Post* (19 July 2017).

² Kathleen Harris, “Buzz Kill? Brian Pallister pushes premiers to delay legalization of pot by 1 year”, *CBC News* (18 July 2017).

³ *Ibid.*

help meet the July 2018 deadline. While the regulatory framework for each province and territory may be at varying stages of the development process, they all ultimately share the same three main policy goals, which includes keeping cannabis away from children, keeping profits away from criminals, and ensuring public safety with an emphasis on road protection.

Soliciting Public Feedback

One of the primary tools that the provinces and territories have used for determining how cannabis legislation should be implemented is gathering feedback and opinions from the public. In Alberta, Ontario, New Brunswick, Newfoundland and Labrador, Prince Edward Island, and the Northwest Territories, the governments have launched, or are in the process of launching, online surveys that allow members of the public to provide feedback on the regulation of cannabis. Furthermore, most provincial and territorial governments have already conducted or intend to conduct public consultation meetings. This will allow members of the public to express their concerns and opinions regarding how they believe the legalization of cannabis should be regulated. Common topics that the governments have asked the public to comment on as part of these surveys and consultations include: legal age of majority, road safety, sale and distribution, and the use of cannabis in public spaces.

Expert Consultations

In addition to public consultations, some provinces and territories have begun or have planned to consult with experts, priority groups, and specific sectors to discuss questions regarding legalization. Ontario for example has plans to consult with a number of groups, including public health experts, youth advocacy groups, indigenous communities, and licensed cannabis growers. Similarly, Quebec Public Health Minister Lucie Charlebois has stated the province will consult with indigenous groups and meet with national and

international experts prior to conducting any public hearings across the province.⁴

Working Groups and Committees

Internally, each province or territory has established some form of working group or committee tasked with examining the implications of cannabis regulations at the provincial and territorial level. For example, British Columbia has established a cross-ministry group that has been working on cannabis legalization issues. New Brunswick, which is widely recognized as the most cannabis-friendly province, has established a working group that has already reported on a number of questions concerning legalization. Additionally, New Brunswick has created a multi-departmental committee that is scheduled to report in September about cannabis-related issues such as distribution and retail sales.

Cooperation with Neighbouring Provinces

A number of provinces and territories have expressed a desire to enact similar cannabis-related legislation with their neighbouring provinces in an effort to ensure consistency. For example, Alberta Justice Minister Kathleen Ganley has stated that she has had multiple discussions with Saskatchewan politicians and that both governments are willing to look at each other's models and share information.⁵ Similar discussions have occurred between government officials in Ontario and Quebec wherein the provinces have come to an agreement to work together, recognizing that while the approaches will not be identical, the frameworks between neighbouring provinces should be similar in order to avoid negative impacts on public safety.⁶

⁴ "Quebec to table marijuana bill in fall, following province wide public hearings", *CBC News* (5 June 2017).

⁵ Dave Dormer, "Province wants feedback on marijuana legalization in Alberta", *CBC News* (2 June 2017).

⁶ Rob Ferguson, "Ontario on track to setting 19 as minimum legal age for recreational pot", *The Toronto Star* (20 July 2017).

The Maritime provinces,⁷ as well as the three territories,⁸ have each made similar statements in recognizing both a desire, and to an extent, a need to work together on unified rules regarding age, pricing, and distribution.

Back Up Plan: Mail Order Program

For provinces and territories that do not resolve the issues discussed above, the federal government has a backup plan to ensure that cannabis is available by the Implementation Date. The backup plan – which mirrors the distribution mechanism used under the current Access to Cannabis for Medical Purposes Regulations (“**ACMPR**”) regime – involves a mail order program that will allow for the federal regulation, distribution, and taxation of cannabis. Through the mail order program, consumers are expected to be able to purchase both medical and non-medical cannabis directly from federally licensed producers and receive home delivery. In practice, the mail order program will grant the provinces and territories additional time to establish regulatory regimes for the sale of cannabis at the retail level.

While the federal government’s backup plan will be able to build upon the existing mail order system’s regulatory framework, it will also create its own unique set of issues. Notably, the proposed mail order program will create a system in which non-medical cannabis will be permitted to enter provinces or territories that have not yet set up the proper mechanisms to deal with possible ill-effects. That is, the mail order program may solve the supply problem, but the unresolved safety concerns and lack of procedural guidelines will remain. This disconnect between the federal government and the provinces, particularly in relation to various public safety issues such as drugged driving, demands attention.

⁷ Marieke Walsh, “Nova Scotia will be ready to start selling marijuana within federal timeline: McNeil”, *Global News* (13 April 2017).

⁸ “Yukon gov’t. endorses marijuana legalization”, *The Whitehorse Star* (17 April 2017).

Moreover, the mail order program will further complicate the calculation of how cannabis-related tax revenues will be shared between the provinces and the federal government. Given the financial and administrative burden placed on the provinces and territories in establishing regulatory regimes for the legalization and regulation of cannabis, it follows that they will expect a share of the tax revenues that reflects their contributions. At the same time, it seems likely that provinces and territories that are not ready in time for the Implementation Date – and thus forced to rely on the federally-regulated mail order program – would then see their share of the tax revenue decrease. Ultimately, it is clear that many aspects of the mail order program still require legislative attention.

Conclusion

The complex nature of legalizing, regulating, and taxing non-medical cannabis suggests that accomplishing this task will require extensive coordination between the federal government, provinces, and territories. Despite the recent uncertainty expressed by Canada's Premiers, the federal government remains committed to the Implementation Date. For provinces and territories that are unable to address the issues discussed above before July 1, 2018, the federal government has devised a mail order program to help carry Canada's cannabis sales through the transition period. However, it is clear that many more steps must be taken in order to ensure the formation of a regulatory system that is beneficial for all Canadians.

As July 2018 draws closer, the pressure on the provinces and territories will continue to rise, as they are quickly running out of time to get cannabis regulation right. McMillan's Cannabis Practice Group will continue issuing bulletins on this matter as developments occur.

About McMillan's Cannabis Practice Group

McMillan's leading Cannabis Practice Group provides innovative and practical solutions to clients in the cannabis industry.

McMillan's Cannabis Practice Group is made up of lawyers who understand the laws, regulations, and business landscape in Canada. Our professionals provide valuable legal solutions for financing, accessing public markets, mergers and acquisitions, licensing and regulation, employment law, workplace issues, and intellectual property, to help businesses succeed in this new and evolving industry.

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a cautionary note

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