



PERLEY-ROBERTSON,
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CANNABIS LAW FAQ: BUSINESS LAW

The effects of Cannabis on Business Law | What you need to know:

The legislative landscape surrounding cannabis law in Canada is changing, and with it, a new realm of challenges and opportunities are emerging. Our team of experts at Perley-Robertson, Hill & McDougall LLP/s.r.l. have been advising clients in the cannabis industry since the development of the *Marijuana for Medical Purposes Regulations* in 2013, and is uniquely positioned to provide you with practical and professional advice in the face of an ever-evolving regulatory regime.

Whether you are already in the industry, seeking to become a licensed cannabis producer, seeking to expand your existing business, or seeking advice on the implications of medical cannabis or the coming legalization of cannabis for your workplace, Perley-Robertson, Hill & McDougall will be there to support you with our experienced team of cannabis law experts.

Our Cannabis Law Team is committed to assisting you with all matters relating to cannabis law. Please contact one of our dedicated team members to get started.

1. WHO CAN PRODUCE CANNABIS IN CANADA?

The production of cannabis for sale to the public is regulated in Canada and producers must be licensed pursuant to federal law and regulation. The production of cannabis for medical use is regulated pursuant to the *Access to Cannabis for Medical Purposes Regulations* and licenses are issued by Health Canada to qualifying applicants. When the Federal *Cannabis Act* comes into force, the Government of Canada will also establish processes and criteria for those who want to produce cannabis for recreational use for sale to the public.

In addition, the proposed Federal *Cannabis Act* will allow adults over the age of 18 to legally grow up to 4 cannabis plants for personal use without being a licensed cannabis producer, although each province will be able to implement further requirements or restrictions in respect of production for personal use.

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2. HOW DO I GET A LICENSE TO GROW CANNABIS?

To legally produce cannabis for medical use you must apply to Health Canada for a license. Your application will go through a six-step process including; an initial screening, security clearance process, and inspections. The application process is quite strict, can take more than a year to complete, and many applications are returned because they are not completed correctly. Our Cannabis Law Team can help you navigate this complex process.

Until the Federal *Cannabis Act* comes into force, you cannot apply for a license to produce cannabis for sale for recreational use. Once the Federal *Cannabis Act* receives Royal Assent and becomes law, the Government of Canada is expected to publish the final requirements that will apply for those who wish to become producers of recreational cannabis for sale to the public.

3. WHO CAN SELL CANNABIS IN CANADA?

Storefront operations that sell cannabis, known as “dispensaries” are illegal and are not permitted to sell cannabis in Canada for either medical or recreational use. In Canada, medical cannabis may only be sold by producers licensed by Health Canada. The final step in the application process for producing cannabis for medical purposes is the issuance of a license to sell cannabis. Once an applicant has received their license to produce and passes a Health Canada pre-sales inspection, they will be issued a license to sell cannabis in Canada for medical purposes.

The proposed Federal *Cannabis Act* will allow each province to regulate the sale of recreational cannabis to the public; therefore how Canadians access recreational cannabis will vary from province to province. In Ontario, recreational cannabis will only be sold by the Ontario Cannabis Retail Corporation, a subsidiary of the LCBO.

4. DO I NEED TO INCORPORATE MY CANNABIS BUSINESS?

Although you do not need to be incorporated to become a licensed cannabis producer, incorporation carries a number of advantages:

Limitations on Liability. Incorporating creates a legal entity that is separate from the individuals involved with the corporation, which means that incorporating your cannabis business can protect you from substantial personal liability. This is because shareholders (owners) of a corporation are not personally liable for the majority



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of the obligations of the corporation and will not be responsible for commercial debts of a corporation unless they personally guarantee those obligations.

Flexible Structures. Our Cannabis Law Team can assist you in properly structuring your corporation so that you can share ownership of the corporation while still ensuring that control remains in your hands, or that you design effective decision-making procedures among equal shareholders.

Tax Planning. Incorporating your cannabis business has several tax planning benefits including small business deductions and business tax rates. Over time, these savings can be significant.

5. DOES MY CANNABIS BUSINESS NEED A SHAREHOLDERS' AGREEMENT?

While not required by law, we highly recommend a Shareholders' Agreement as it protects you, your business partners, and your business by defining the relationships between parties so that the rights and obligations of everyone involved are clear. A Shareholders' Agreement addresses practical issues such as when and how to hold meetings, how a shareholder can sell their shares in the corporation and the role each shareholder will play in the corporation.

Shareholders' Agreements are not only an effective tool to use in the case of a dispute between shareholders, but they are also a key aspect of planning for many different events that can occur over the course of a business relationship and the operation of a business. For example, drafting a Shareholders' Agreement is a helpful exercise in assisting the shareholders to engage in some important discussions about the "what ifs" of operating a business, including death, disability or financial problems. If a crisis arises in the operation of your cannabis business, it is best to have considered the issues in advance and have a plan in place to address the issue quickly and efficiently – a Shareholders' Agreement is the most effective mechanism for making sure you are protected from unexpected issues.

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Who to contact:

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