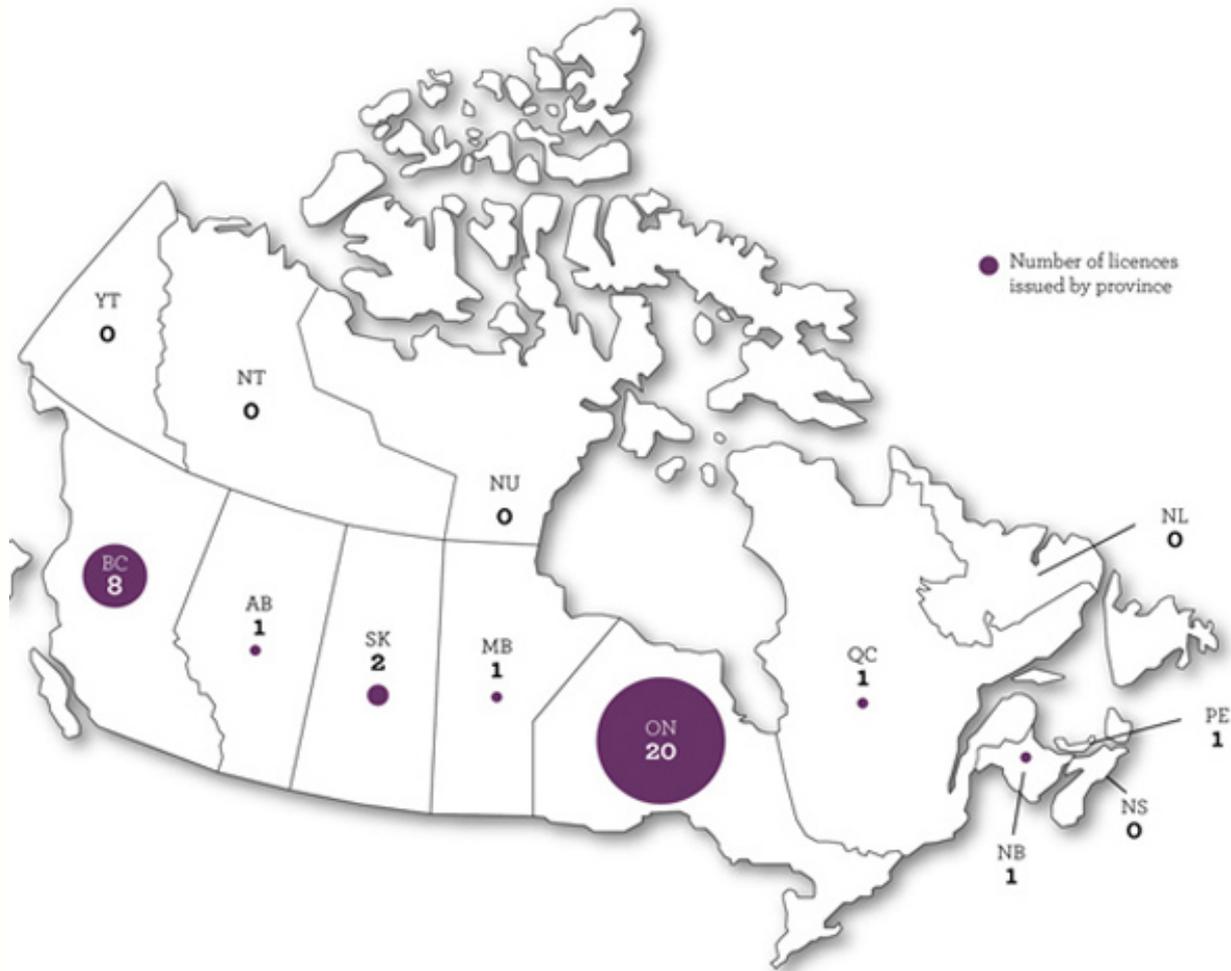# Are We All Going to Pot?: Legal Issues Arising from Cannabis-Industry Growth – The Canadian Perspective

**John A. Myers and Colin B. Findlay**
**SCG Legal**
**Annual General Meeting – September 16, 2016**
**Boston**

**Taylor McCaffrey** LLP
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# Licensed Producer Approval Stats

❖ **As of August 1, 2016**

➢ **1561 applications received**

➢ **35 have been approved**

➢ **253 have been refused**

➢ **419 applications are in progress**

➢ **54 have been withdrawn**

➢ **801 were incomplete and have been returned**

# Licensed Producers by Province



Map of Canada showing number of licences issued by province:
- YT: 0
- NT: 0
- NU: 0
- BC: 8
- AB: 1
- SK: 2
- MB: 1
- ON: 20
- QC: 1
- NL: 0
- PE: 1
- NS: 0
- NB: 1

Number of licences issued by province

# *Access to Cannabis for Medical Purposes Regulations,* SOR/2016-230

- ❖ **Came into force August 24, 2016**

- ❖ **Authorized users may now possess and consume fresh and dried marihuana as well as cannabis oil**

  - ➢ **5 grams of fresh marihuana equivalent to 1 gram of dried marihuana**

- ❖ **Authorized users may now obtain marihuana from a Health Canada licensed producer, a 3rd party designated producer or by producing it themselves**

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# *Access to Cannabis for Medical Purposes Regulations,* SOR/2016-230

❖ **Licensed producers may conduct analytical testing for contaminants, disintegration, solvents, and THC content**

❖ **Healthcare practitioners continue to control who is approved for a medical document indicating the patient's right to possess and use marihuana**

❖ **Possession limit for consumers continues to be lesser of 30 times daily prescribed amount and 150 grams**

# Quality Control in the *ACMPRs*

❖ **s. 67(1) – "Cannabis oil must not exceed a maximum yield quantity of 30 mg of delta-9-tetrahydrocannabinol per millilitre of the oil in the immediate container, taking into account the potential to convert delta-9-tetrahydrocannabinolic acid into delta-9-tetrahydrocannabinol."**

❖ **s. 67(2) – "If cannabis oil is in a capsule or similar dosage form, each capsule or unit of the dosage form must not exceed a maximum yield quantity of 10 mg of delta-9-tetrahydrocannabinol, taking into account the potential to convert delta-9-tetrahydrocannabinolic acid into delta-9-tetrahydrocannabinol."**

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# Quality Control in the *ACMPRs*

❖ **s. 64 – "The microbial and chemical contaminants of fresh or dried marihuana or cannabis oil must be within generally accepted tolerance limits for herbal medicines for human consumption, as established in any publication referred to in Schedule B to the *Food and Drugs Act.*"**

❖ **s. 66 – "Fresh or dried marihuana or marihuana plants or seeds must not be treated with a pest control product unless the product is registered for use on marihuana under the *Pest Control Products Act* or is otherwise authorized for use under that Act."**

❖ **s. 68 – "Cannabis oil must not contain residue of solvents other than Class 3 solvents listed in the *Guidance Document – Impurities: Guideline for Residual Solvents, ICH Topic Q3C(R5),* published by the Department of Health, as amended from time to time.**

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# College of Physicians' Positions

❖ **"Physicians who prescribe dried marihuana <u>must</u> comply with the expectations set out in this policy" – College of Physicians and Surgeons of Ontario Policy Statement #1-15.**

❖ **Although it is legal for physicians to obtain marihuana from a licensed producer and transfer it to the patient under the *ACMPRs*, the College of Physicians and Surgeons have strongly advised their members not to do so (e.g. B.C., Alberta, Newfoundland, Saskatchewan, Manitoba, Quebec, PEI, and Yukon).**

❖ **The College of Physicians and Surgeons of Manitoba requires physicians to remain at arm's length from licensed producers in order to avoid a conflict of interest.**

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# Liberal Government Campaign Platform

❖ **"To ensure that we keep marijuana out of the hands of children, and the profits out of the hands of criminals, we will legalize, regulate, and restrict access to marijuana."**

❖ **"We will remove marijuana consumption and incidental possession from the *Criminal Code."***

❖ **"We will create a federal/provincial/territorial task force, and with input from experts in public health, substance abuse, and law enforcement, will design a new system of strict marijuana sales and distribution, with appropriate federal and provincial excise taxes applied."**

❖ **https://www.liberal.ca/files/2015/10/New-plan-for-a-strong-middle-class.pdf**

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# Task Force on Legalization

❖ **Mandate – To put in place legislation to control the production, distribution and consumption of marijuana**

❖ **Objectives:**

➢ **Restrict youth access to marijuana**

➢ **Keep profits out of hands of organized crime groups**

➢ **Reduce burdens on police and the justice system**

➢ **Prevent Canadians from receiving criminal records for simple possession charges**

➢ **Punish more serious offences such as driving while impaired and selling to youth**

# Task Force on Legalization

- ❖ **Timeline:**
  - ➢ **Report to Liberal Government first week of November 2016**
  - ➢ **Legislation targeted to be introduced in Spring 2017**
- ❖ **Composition of Task Force:**
  - ➢ **Anne McLellan (Chair) – Former Minister of Health, Minister of Justice, Attorney General of Canada, Deputy Prime Minister of Canada, Minister of Health**
  - ➢ **Dr. Mark Ware (Vice Chair) – Associate professor in family medicine and anesthesia**
  - ➢ **Other members: Experts in drug policy and regulation, addiction and mental health, public health, harm reduction, federal and international policing, human and social development**

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# Future of Marijuana Distribution

❖ **Relevant considerations:**

  ➢ **Ability to prevent sales to minors**

  ➢ **Access in remote locations**

  ➢ **Ability to distinguish between quality-controlled, legally produced marijuana and illegally produced marijuana**

  ➢ **Ability to collect taxes**

❖ **Possible distribution methods:**

  ➢ **Mail order (current approach under *ACMPR*s)**

  ➢ **Liquor commissions (or similar government-run stores)**

  ➢ **Independent dispensaries (highly unlikely – difficult to monitor)**

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