

# BrazeauSeller.LLP

*Business People. Business Law.*

June 4, 2014

## **Medical Marijuana in Canada: Weeding Through The Risks And Opportunities**

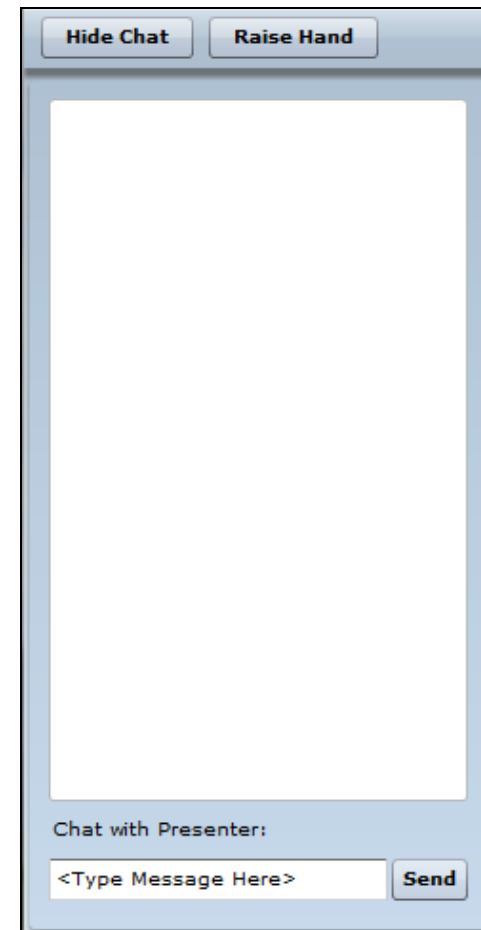
Dial-In Number (US & Canada): +1-866 740-1260

Dial-In Number (International): +1-303 248-0285

Participant Code: 6040090

# Housekeeping Items

- All phones are muted
- Dial \*0 at any time for technical support
- Questions may be submitted to the presenter via the chat feature on the left-hand side of your screen
- Questions will be answered at the end of the presentation



# Medical Marijuana in Canada - Webinar Overview

- 1) History of legislative regime in Canada re: marijuana
- 2) Overview of Marijuana for Medical Purposes Regulations (MMPR's)
- 3) How to become a licensed producer
- 4) Challenges for licensed producers (LP's) / applicants
- 5) Current legal challenges to MMPR's
- 6) Opportunities
- 7) Looking forward

# Medical Marijuana in Canada - Legislation

## Controlled Drugs and Substances Act (CDSA)

- CDSA, s.4(1) – no person shall possess a substance included in Schedule II, except as authorized by regulation – contravention is an indictable offence
- Schedule II includes “Cannabis, its preparations, derivatives and synthetic preparations”
- Also includes certain cannabinoids including Tetrahydrocannabinol (THC) and Cannabidiol (CBD)

# Medical Marijuana in Canada - Legislation

- S.53(2) of Narcotic Control Regulations – no practitioner shall prescribe marijuana except as authorized under the MMPR's

# Medical Marijuana in Canada - Legislation

- Cannabis has been a controlled substance in Canada since 1923, 14 years before the U.S.
- Was added, along with heroin and codeine, to existing list of controlled drugs, including opium, morphine and cocaine
- No parliamentary record of why cannabis was added or any discussion surrounding it

# Medical Marijuana in Canada

## - Introduction of medical marijuana

- Since the Ontario Court of Appeal decision in *R. v. Parker* in 2000 (leave to appeal to SCC dismissed) and until March 31<sup>st</sup>, 2014, access to medical marijuana in Canada was exclusively through a government-run program.
- Marijuana for Medical Purposes Regulations (MMPR's) came into force on April 1<sup>st</sup>, 2014

# Medical Marijuana in Canada

## - *R. v Parker*

- Court of Appeal of Ontario held that a failure to provide a viable medical exemption from the provisions of the CDSA violated the liberty and security of the person guaranteed by s. 7 of the *Charter*, which was inconsistent with the principles of fundamental justice in that it forced certain individuals to choose between their liberty and their health.
- Prohibition on marijuana possession in CDSA struck down
- Ultimately, lead to the establishment of the MMAR's in 2001.



# Medical Marijuana in Canada

## - MMAR's

- Eligible persons had to obtain a declaration from their doctor – must have Category 1 or 2 symptoms and conventional treatment must have been ineffective or inappropriate
- Could then apply to Health Canada for an Authorization to Possess (ATP).

# Medical Marijuana in Canada

## - MMAR's

- The MMAR's provided 3 means of accessing marijuana:
  1. Personal-use Production Licence (PPL);
  2. Designated-person Production Licence (DPL); or
  3. Directly from Health Canada's supply.
- No restriction on location of the production facility but if outdoors, could not be adjacent to a school, playground or other place frequented by minors.
- Production in a dwelling-place was permitted.

# Medical Marijuana in Canada - MMAR's

- MMAR's repealed as of March 31, 2014 and replaced by MMPR's.
- Under MMPR's, dried marijuana must be produced by a Licensed Producer (LP).
- Individuals who require access to medical marijuana must obtain a medical document from a medical practitioner and register that document with a LP of their choice to obtain dried marijuana.

# Medical Marijuana in Canada

Health Canada's position on marijuana for medical purposes:

**“Dried marijuana is not an approved drug or medicine in Canada. The Government of Canada does not endorse the use of marijuana, but the courts have required reasonable access to a legal source of marijuana when authorized by a physician.”**

# Medical Marijuana in Canada - MMPR's

- 858 MMPR applications submitted to Health Canada as of May 20<sup>th</sup>
- Currently 13 licensed producers listed on Health Canada's website (<http://www.hc-sc.gc.ca/dhp-mps/marihuana/info/list-eng.php>)
- One 'suspension' thus far
- Unclear how many have been granted 'ready-to-build' status

# Medical Marijuana in Canada

## - Key Changes from MMAR's to MMPR's

- Health Canada no longer sells or produces medical marijuana.
- Health Canada no longer approves patient's right to access dried marijuana.
- Only legal source of dried marijuana is from a licensed producer.
- Production only permitted by licensees in indoor, non-residential site.
- Expanded class of persons who can prescribe medical marijuana – “medical practitioner”
- No restriction on types of eligible conditions/symptoms

# Medical Marijuana in Canada - MMPR's

- Free market - LPs set prices
- No restriction on number or types of strains
- MMPR's permits the production and sale of dried marijuana only.

# Medical Marijuana in Canada - Becoming a Licensed Producer

- License may permit LP to “possess, produce, sell, provide, ship, deliver, transport and destroy” marijuana
- LP’s may sell to each other
- LP’s may import/export with permit
- Permissible applicants include resident Canadian adults or corporation with head office or branch office in Canada



# Medical Marijuana in Canada - Becoming a Licensed Producer

Key Individuals to be Identified in Application:

- Senior Person in Charge
- Responsible Person in Charge
- Alternate Person(s) in Charge
- Quality Assurance (QA) Person

# Medical Marijuana in Canada - Becoming a Licensed Producer

## Licensed Site:

- Must not be a dwelling place
- All production, packaging, labelling and storage must occur indoors
- Notice must be provided to local government, fire authority and police force
- Municipal approval of licensed site is required but not necessarily sufficient

# Medical Marijuana in Canada - Becoming a Licensed Producer

- Licensed Producers are subject to requirements relating to the following:
  - Security
  - Good production practices
  - Packaging, labelling and shipping
  - Record keeping and reporting
  - Client registration

# Medical Marijuana in Canada - Becoming a Licensed Producer

Health Canada Steps to Process Applications:

- 1) Screening
- 2) Security Clearance
- 3) Review/Validation
- 4) Ready to Build
- 5) Pre-licence Inspection
- 6) Issuance of licence

# Medical Marijuana in Canada

## - Becoming a Licensed Producer

- S.25: Minister “*must*” issue licence if all required documentation has been submitted and security clearances obtained
- But subject to s.26, “*Minister must refuse to issue...a producer’s licence in the following cases...*”
- “*the issuance...of the license would likely create a risk to public health, safety or security, including the risk of cannabis being diverted to an illicit market or use*”
- cure provision in s.26.(2) does not apply if refusal is “*necessary to protect public health, safety or security...*”

# Medical Marijuana in Canada - List of Current Licensed Producers

## Authorised Licensed Producers

Name of licensed producer	Phone number	Email (if applicable)	Website (if applicable)
Bedrocan Canada Inc.	1-855-420-7887	<a href="mailto:info@bedrocan.ca">info@bedrocan.ca</a>	<a href="http://Bedrocan">Bedrocan</a>
Canna Farms Ltd.	1-855-882-0988	<a href="mailto:info@cannafarms.ca">info@cannafarms.ca</a>	<a href="http://Canna Farms">Canna Farms</a>
CanniMed Ltd.	1-855-787-1577	<a href="mailto:info@cannimed.com">info@cannimed.com</a>	<a href="http://CanniMed">CanniMed</a>
Delta 9 Bio-Tech Inc.	1-855-245-1259	<a href="mailto:info@delta9.ca">info@delta9.ca</a>	<a href="http://Delta 9 Bio-Tech Inc.">Delta 9 Bio-Tech Inc.</a>
In The Zone Produce Ltd.	1-800-420-1707	<a href="mailto:info@inthezoneproduce.com">info@inthezoneproduce.com</a>	<a href="http://In The Zone Produce Ltd.">In The Zone Produce Ltd.</a>
Mettrum Ltd.	1-844-638-8786 (METTRUM)	<a href="mailto:info@mettrum.com">info@mettrum.com</a>	<a href="http://Mettrum Ltd.">Mettrum Ltd.</a>
MedReleaf Corp.	1-855-4-Relief (73-5323)	<a href="mailto:askus@medreleaf.com">askus@medreleaf.com</a>	<a href="http://MedReleaf Corp.">MedReleaf Corp.</a>
OrganiGram Inc.	1-855-961-9420	<a href="mailto:info@organigram.ca">info@organigram.ca</a>	<a href="http://OrganiGram Inc.">OrganiGram Inc.</a>
The Peace Naturals Project Inc	1-888-64-PEACE (73223)	<a href="mailto:info@peacenaturals.com">info@peacenaturals.com</a>	<a href="http://The Peace Naturals">The Peace Naturals</a>
ThunderBird Biomedical Inc.	1-778-588-9528	<a href="mailto:info@thunderbirdmedical.ca">info@thunderbirdmedical.ca</a>	<a href="http://ThunderBird Biomedical">ThunderBird Biomedical</a>
Tilray	1-844-TILRAY1 (845-7291)	<a href="mailto:tilray@tilray.ca">tilray@tilray.ca</a>	<a href="http://Tilray">Tilray</a>
Tweed Inc.	1-855-55-TWEED (89333)	<a href="mailto:hi@tweed.com">hi@tweed.com</a>	<a href="http://Tweed">Tweed</a>
Whistler Medical Marijuana Corp.	1-604-962-3440	<a href="mailto:info@whistlermedicalmarijuana.com">info@whistlermedicalmarijuana.com</a>	<a href="http://Whistler Medical Marijuana Corp.">Whistler Medical Marijuana Corp.</a>

# Medical Marijuana in Canada - Becoming a Licensed Producer

- Prior to April 1<sup>st</sup>, LP's were permitted to purchase starting materials from MMAR growers
- Post April 1<sup>st</sup>, starting materials are only available from another LP or by import (with permit)

# Medical Marijuana in Canada - Challenges for LP's

## Advertising:

- no clear guidance to date
- Narcotic Control Regulations, s.70(b) – No person shall publish or furnish any advertisement to the general public respecting a narcotic (includes cannabis, THC, CBD, etc.)
- Apparent contradiction with ability to have a website and be listed on HC website



# Medical Marijuana in Canada - Challenges for Licensed Producers



Photo Source: CTV News

# Medical Marijuana in Canada - Challenges for Licensed Producers

## Municipal Zoning:

- municipalities are passing zoning by-law amendments to regulate LP's
- tension between agricultural and industrial use

# Medical Marijuana in Canada - Challenges for Licensed Producers

## Required working capital:

- many applicants underestimating initial costs for retrofit/construction, security, personnel
- also underestimating time to profitability and working capital required to carry business to that point

# Medical Marijuana in Canada - Challenges for Licensed Producers

## Reluctance of doctors to provide medical documents:

- Strong statements from CMA president discouraging physicians from providing medical documents
- Many doctors fear being the ‘gatekeeper’ of an untested and unapproved medication
- Canadian Medical Protective Association (CMPA), the liability insurer for physicians in Canada, advises compliance with provincial guidelines

# Medical Marijuana in Canada - Challenges for Licensed Producers

## Provincial Restrictions on Physicians:

- 7 of 10 provincial physician colleges (all but Ontario, Nova Scotia and PEI) have introduced guidelines/standards of practice to specifically address the provision of medical documents pursuant to MMPR's
- Vary greatly in approach and restrictiveness

# Medical Marijuana in Canada - Challenges for Licensed Producers

- Securities Regulators
- Push-back from patients re: cost
- Lack of insurance coverage for patients
- Difficulty in actually getting a licence

# Medical Marijuana in Canada - Legal Challenges to MMPR's

## R v. Allard et al.:

- Class action commenced November 29, 2013 in Federal Court of Canada by 4 representative plaintiffs
- Seeking to strike out “dried marijuana” restriction and permit continued personal production
- Injunction granted on March 21<sup>st</sup> preserving certain MMAR rights in specific circumstances.

# Medical Marijuana in Canada - Legal Challenges to MMPR's

## Health Canada's position on injunction:

“As a result of ongoing litigation and uncertainty arising from court decisions, Health Canada will treat the following Authorizations to Possess, Personal-Use Production Licences, and Designated-Person Production Licences as extending beyond March 31, 2014 until a decision in Allard is rendered. As per the Federal Court interim injunction, the following criteria must be met:

- Individuals must have held a valid Authorizations to Possess under the MMAR on March 21, 2014.
- Individuals must have held a valid Personal-Use Production Licence or Designated-Person Production Licence under the MMAR on, or after, September 30, 2013, where there is also an associated valid ATP as of March 21, 2014.

Individuals with a medical need who do not fall within the scope of this court order and who have the support of a licensed healthcare practitioner may register with a licensed producer under the MMPR.”



# Medical Marijuana in Canada - Legal Challenges to MMPR's

- The Crown filed a Notice of Appeal of this Order on March 31, 2014, requesting that the Order be set aside.
- The Applicants filed a Notice of Cross-Appeal on April 17, 2014, requesting that the Order be varied to exempt all medically approved patients.

# Medical Marijuana in Canada - Legal Challenges to MMPR's

- On May 2, 2014, the Federal Court imposed a timeline for the proceeding and ordered that the action proceed by way of simplified action, with the trial to commence in Vancouver on February 23, 2015.
- No timing yet on injunction appeal and cross-appeal

# Medical Marijuana in Canada - Legal Challenges to MMPR's

- As of May 7<sup>th</sup>, 222 individuals had filed actions with the Federal Court of Canada, based upon standardized claim 'kits' prepared by activist John Turmel
- Seeking total repeal of MMPR and legalization of marijuana, or in the alternative a permanent personal exemption
- Plaintiffs also moved for interim exemption as in *Allard*
- Crown brought stay motion based on *Allard*

# Medical Marijuana in Canada - Legal Challenges to MMPR's

- On May 7<sup>th</sup>, Mr. Justice Phelan ordered all actions stayed until decision in Allard, but:
  - 1) Plaintiffs who meet criteria in Allard are entitled to same exemption; and
  - 2) Plaintiffs who do not meet criteria in Allard are still permitted to proceed with motion for interim exemption

# Medical Marijuana in Canada - Opportunities

- Industry predicted to be worth \$1.3 Billion by 2024
- Could be exponentially larger if recreational use is legalized
- MMPR licence would be a valuable foothold into a regulated recreational use market

# Medical Marijuana in Canada - Opportunities

- 'spin-off' businesses – quality assurance, testing, security consultants, web 'hubs', software providers
- clinics may be problematic depending on province and degree of connection with LP

# Medical Marijuana in Canada

## - Opportunities

- New life for junior mining companies and other stagnant public companies through RTO's with an LP/applicant
- Tweed Marijuana Inc. first to go public via RTO of LW Capital Pool Inc., trading on TSX Venture exchange since April 4<sup>th</sup>
- Since then, many press releases announcing further potential RTO's involving MMPR applicants

# Medical Marijuana in Canada - Thoughts Going Forward

- Consolidation (M&A)
- Guidance from Health Canada
- Pronouncement of constitutionality of MMPR's
- Outcome of next federal election
- Comfort level of doctors
- Challenges for employers



# Medical Marijuana in Canada: Weeding Through The Risks And Opportunities

**Trina Fraser**

BrazeauSeller.LLP

(613) 237-4000

[tfraser@brazeauseller.com](mailto:tfraser@brazeauseller.com)

<http://ca.linkedin.com/in/trinafraser/>  
[@trinafraser](#)