Access to Cannabis for Medical Purposes Regulations, pursuant to the Controlled Drugs and Substances Act, in force August 24, 2016 analysis by John W. Conroy QC

The ACMPR in their entirety can be found at the following link http://gazette.gc.ca/rp-pr/p2/2016/2016-08-24/html/sor-dors230-eng.php

I have now had an opportunity to review the new regulations 'ACMPR' that came into force a few days ago, namely August 24, 2016, and in my opinion they are, with respect to personal production or designated grower production, essentially the same as the old MMAR provisions in relation thereto.

Those medically approved patients covered by the Allard injunction of March 21, 2014 and continued February 24th, 2016. "Until further order of the court" that to do not need to make any changes can either continue under that status or apply under the ACMPR. It might be wise to do the latter to avoid the uncertainty of the former, unless there are particular individual benefits to continuing under the injunction status.

New patients and those medically approved patients who were not covered by the injunction, and we were told that there are approximately 10,000 of you out of the total of 38,000 registered MMAR patients as of March 31, 2014, and those of you who need to make any changes to their MMAR documents, even though otherwise grandfathered by the injunction, such as changing the address of your site or sites, can now do so by applying under the ACMPR and it is recommended that you do this as soon as possible.

The government has stated that this is an interim measure, and things may well change further depending upon the outcome of the ongoing consultations by the Task Force on Legalization that is due to report in November recommending how to legalize that the government said it will commence in the spring of 2017.

Given that the government is saying that they will be making more changes in that these are interim measures it is my opinion that those of you still covered by the injunction and being subject to "further order of the court" may be in a more precarious position that those who have applied and been approved under the a ACMPR when the time for further changes come.

The ACMPR regulations are divided as follows:

A General section (Reg.1 to 17)providing for interpretation containing basic definitions and some basic provisions with respect to, possession generally, healthcare practitioners and some other general provisions detailed below.

Part 1 Commercial Production (Regulations 17 through 171) appears to essentially be a reenactment of the Marihuana for Medical Purposes Regulations (MMPR), with some modifications regulating the LP's substantially similarly to the old MMPR.

Part 2 Production for Medical Purposes in Production by a Designated Person (Regulation 172 through 203 – with 204-2253 being reserved) appears to essentially be a reenactment of the Marihuana Medical Access Regulations (MMAR), with some modifications.

Part 3 Transitional Provisions (Regulation 254 through 260) appear to deal primarily with transitional provisions from the **MMPR** to the **ACMPR**.

Part 4 Consequential Amendments, Repeal, Application and Coming into force (Regulations 261-283) deal with matters as the title suggests, primarily affecting the Narcotic Control Regulations and repealing the MMPR and sets out that these regulations (ACMPR) came into force on August 24, 2016. The s. 53 Narcotic Control Regulation "prescription" provision remains essentially the same, except importantly, the source of the fresh or dried marihuana or cannabis oil prescribed must come from a licensed producer under old MMPR that has transitioned to the ACMPR or a new LP under the ACMPR.

This update focuses on and is essentially limited to an analysis of the opening **general provisions** and **Part 2** involving **Personal Production (PPL)** for oneself as the patient or by a **Designated Producer (DGL)** for the patient and anything relevant arising out of **Parts 3 and 4.**

Essentially an adult (18+) person who is ordinarily resident in Canada is eligible to produce cannabis (this includes all forms but limits methods of extraction) for their own medical purposes as a registered person under these regulations. If you

meet the requirements of the regulations to register then the Minister **must** issue a license – it is not a discretionary matter. The amount that you can produce, possess and store is once again determined initially by you and your doctor determining your dosage per day and that is plugged into what appears to be the same old MMAR formula to determine the result. 3 grams a day gets you roughly 13 to 15 plants. You can only register once at a time but it appears that one can hold a maximum of 2 licenses and no more than 4 licenses are permitted at any particular site.

The general opening sections deal with basic definitions, destruction, drying, equivalency in dried marihuana and substances obtained from a licensed producer and other derived products. Section 2 (3) relates specifically to marihuana produced under Part 2 and other products, and specifies the quantity of any marihuana that is produced under Part 2 or the quantity of any products originating from that marihuana that is equivalent to a given quantity of dried marihuana must be calculated by (a) considering 5 g of fresh marihuana is equivalent to 1 g of dried marihuana; and (b) in the case of products that originated from the marihuana, taking into account the weight of the fresh or dried marihuana that was used to make them.

These opening sections deal with general possession rules and limits, healthcare practitioners, the new "medical document" (s.8) content, the application of Narcotic Control Regulations, police enforcement and the duty to demonstrate to the police on demand that you are lawfully licensed .

These sections also deal with possession, obtaining the substance, fresh or dried marihuana or cannabis oil, who can possess cannabis and who may alter the chemical and physical properties of such substance and contains the general prohibition against the use of organic solvents such as butane, among others. While there is provision that one can obtain one's first seed, etc. from a licensed producer I do not see any obligation to do so if you have been producing for yourself or had a DG do so for you.

Because your permit essentially exempts you from the provisions of the Controlled Drugs and Substances Act (CDSA), so you are required to be able to

prove that you are so exempted to a police officer upon demand (Reg.15), just as you have to produce a driver's license to show that you are authorized to drive.

The limitation with respect to **prior record** within the last 10 years, in relation to a **PPL** is not as broad a prohibition as it is for one who wishes to be a **DGL** and pertains only to those who, committed a designated Cannabis offense or designated marihuana offense **while they were authorized to produce cannabis** under the Act, **other than under the former MMAR**, or such an offense committed **while they were authorized to produce marihuana** under the Act, **other than these Regulations or by virtue of an injunction order issued by a court.** You cannot be a **DGL** however, if you have been convicted within the preceding 10 years of essentially committing any designated cannabis or marihuana offense, including when you were a youth.

You have to apply to the Minister to be a PPL or DGL, and the application must include the new "medical document" together with other documents and information required as set out in the Regulations. A person who is "responsible for an applicant" can apply on the patient's behalf. The details required are set out in regulation 177 (3) and (4) and includes basic tombstone data as well as the name and type of establishment where it is proposed to produce if it is not a private residence. You or the person responsible for you will have to attest that you or that person will comply with the possession limits set out in s. 6 that appears once again to allow for possession of an equivalency of up to a 30 day supply or 150 g of dried marihuana, whichever is less.

If these basic requirements are met, the Minister **must** register the applicant. s 178 sets out the detail that must be included in the registration, and includes setting out the maximum quantity of dried marihuana, in grams, that the registered person may possess under the registration, which is the lesser of 30 times the daily quantity of dried marihuana and 150 g of dried marihuana, as well as the maximum number of marihuana plants that may be underproduction at the site and if the production is partly indoors and party outdoors then the maximum number of plants for each production period.

If the proposed site for production is not the ordinary place of residence of the applicant or DG and is not owned by either of them, then the signed consent and personal details of the owner are required.

To renew a registration one simply reapplies with all of the required information and including the previous registration number. Provision is made for cancellation of registrations and notices to those affected and to apply to make amendments. Grounds for refusal of a registration are set out in regulation 183.

Grounds for refusal of registration to produce for one's own medical purposes or to renew or amend such as set out in section 184, and it appears that a person can be authorized to produce under 2 registrations and a production site can contain up to 4 registrations, no more.

Provision is made for **changes in sites for production** of marihuana plants **or** the **authorized site for the storage** of cannabis and the Minister may specify a period within which you may transport cannabis from the old site to the new.

Once you are authorized to produce for yourself, Reg.187 sets out what you can or cannot do in terms of transportation between production sites and storage sites and quantities permitted to be so transported and Reg. 189 sets out those provisions for a DG.

A patient who has a designated grower DG may, if they are an adult, participate in the activities that the DG is doing for them (reg. 188).

Regulation 190 – 191 set out the **formula** with respect to the maximum number of plants allowed to be produced, and the maximum quantity of dried marihuana or cannabis allowed to be stored. The formulas appear to be identical to those in the former MMAR.

It appears that one might be allowed to produce a quantity of "cannabis, other than marihuana plants" at a different site to the production or storage site as long as the quantity does not exceed the maximum permitted to be possessed.

Once again, there is a prohibition against the cultivation, harvesting, are propagating of marihuana **partly indoors and party outdoors** simultaneously. I do not understand this provision as certainly in parts of southern BC one would want

to start the plants indoors and move them outdoors, perhaps first through a greenhouse, but then finish them indoors to avoid a mold problem arising from heavy dew by mid-August.

Provision is made once again for **inspection**, allowing an inspector to enter any place where he believes on reasonable grounds cannabis is being produced or stored and a warrant is not required, but the inspector cannot enter a "dwelling place," without the consent of the "occupant".

The balance of the regulations appear to do with security, reporting loss or theft, canceling registrations, the effect and notice requirements and provision for destruction.

The Minister is once again authorized to provide certain information to the police upon request in relation to an investigation and that information can only be used for the purposes of that investigation or for the proper administration, or enforcement of the Act and regulations. The Minister has similar powers to provide information to healthcare practitioner licensing authorities.

John W. Conroy QC

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