

Considerations for Sponsorship Partnerships with Licensed Producers of Cannabis for Medical Purposes

In recent months, several National Sport Organizations (NSOs) have received inquiries from their membership about sport sponsorship opportunities with licensed producers of cannabis for medical purposes who are offering lucrative sponsorship deals. To date, there is no formal policy in place to offer guidance on the matter.

This note is intended to provide an overview of current **considerations**. This note is not intended to promote a position on cannabis sponsorship or use. Sport Canada, Health Canada and the Canadian Centre for Ethics in Sport were consulted in the development of this document, which is intended to summarize current information available to an NSO who is trying to respond to an inquiry from their membership. Further details may become available, and it is recommended that NSOs continue to consult Sport Canada and the CCES as questions arise.

Cannabis (marijuana) remains a Schedule II drug under the Controlled Drug and Substances Act, and, unless otherwise regulated for production and distribution for medical purposes, is subject to offences under that Act. Possessing and selling cannabis for non-medical purposes is still illegal everywhere in Canada.¹

The proposed Cannabis Act would create a strict legal framework for controlling the production, distribution, sale and possession of cannabis across Canada. The Act seeks to:

- restrict youth access to cannabis
- protect young people from promotion or enticements to use cannabis
- deter and reduce criminal activity by imposing serious criminal penalties for those breaking the law, especially those who import, export or provide cannabis to youth
- protect public health through strict product safety and quality requirements
- reduce the burden on the criminal justice system
- provide for the legal production of cannabis to reduce illegal activities
- allow adults to possess and access regulated, quality controlled legal cannabis
- enhance public awareness of the health risks associated with cannabis
- The current program for accessing cannabis for medical purposes would continue under the new Act.

Cannabis will remain illegal as the bill moves through the legislative process. If it is approved by Parliament, the bill could become law with a target date of no later than July 2018.²

¹ Current Cannabis Laws: <http://www.justice.gc.ca/eng/cj-jp/marijuana/law-loi.html>

² Legalizing and strictly regulating cannabis: the facts: <https://www.canada.ca/en/services/health/campaigns/legalizing-strictly-regulating-cannabis-facts.html>

Considerations

Cannabis and marijuana are included on the banned substance list published by the [Canadian Centre for Ethics in Sport](#) (CCES) and the prohibited substance list published by the [World Anti-Doping Agency](#) (WADA). Although the prohibited list will not change once the Cannabis Act will be legislated, Cannabidiol Oil will no longer be a prohibited substance under WADA's Prohibited List as of January 2018.

The CCES facilitates a working group that is considering the implications of cannabis legalization on sport, particularly doping. The working group is coordinating with sport stakeholders to harmonize messaging and align educational efforts around cannabis legalization, expected summer of 2018, with the ultimate goal of preventing inadvertent doping violations.

Bill C-45 is the Cannabis Act: An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts. The objectives of the Act are to prevent young persons from accessing cannabis, to protect public health and public safety by establishing strict product safety and product quality requirements and to deter criminal activity by imposing serious criminal penalties for those operating outside the legal framework. The Act is also intended to reduce the burden on the criminal justice system in relation to cannabis.³

The following sections of Bill C-45 seem relevant to the question of sport sponsorship.

Promotion

17 (1) Unless authorized under this Act, it is prohibited to promote cannabis or a cannabis accessory or any service related to cannabis, including

- (a) by communicating information about its price or distribution;**
- (b) by doing so in a manner that there are reasonable grounds to believe could be appealing to young persons;**
- (c) by means of a testimonial or endorsement, however displayed or communicated;**
- (d) by means of the depiction of a person, character or animal, whether real or fictional; or**
- (e) by presenting it or any of its brand elements in a manner that associates it or the brand element with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.**

Sponsorship

21 It is prohibited to display, refer to or otherwise use any of the following, directly or indirectly in a promotion that is used in the sponsorship of a person, entity, event, activity or facility:

- (a) a brand element of cannabis, of a cannabis accessory or of a service related to cannabis; and**
- (b) the name of a person that**
 - (i) produces, sells or distributes cannabis,**
 - (ii) sells or distributes a cannabis accessory, or**
 - (iii) provides a service related to cannabis.**

Name of facility

22 It is prohibited to display on a facility, as part of the name of the facility or otherwise, if the facility is used for a sports or cultural event or activity,

- (a) a brand element of cannabis, a cannabis accessory or a service related to cannabis; or**
- (b) the name of a person that**
 - (i) produces, sells or distributes cannabis,**
 - (ii) sells or distributes a cannabis accessory, or**
 - (iii) provides a service related to cannabis.**

³ <https://openparliament.ca/bills/42-1/C-45/>

Finally, there is a [Federal Government Policy on Tobacco Sponsorship of National Sport Organizations](#), wherein the federal government takes the position that the sponsorship of amateur sport should not be used as a vehicle for promoting a product with a health risk for Canadian youth and the population in general. Health Canada has stated that it hopes to establish the same sponsorship restrictions that are on tobacco now. According to Health Canada spokesperson Eric Morrissette: "...under the proposed act, everyone, including licensed cannabis producers, would be prohibited from promoting cannabis or cannabis accessories through the sponsorship of festivals or other events".

Conclusion

While there is no policy on licensed producers of cannabis providing sponsorship to teams, athletes or sport organizations several parts of draft and existing legislation point to the fact that 'advertising' will not be permitted once the Cannabis Act is legalized.

Frequently Asked Questions

1. What is the distinction, if any, between medical and recreational (non-medical) uses of cannabis?

In practice, there's no such thing as "medical marijuana". It is cannabis for medical purposes. Medical use is use by an individual with the authorization of a healthcare practitioner (a "medical document"). Dosing and forms of consumption vary widely.

2. The government of Canada issued the "Access to Cannabis for Medical Purposes Regulations" on August 11, 2016 and these regulations came into force on August 26, 2016. Does Bill C-45 cover medical cannabis referred to in the 2016 regulations?

Medical marijuana regulations will be "ported over" under the new enabling legislation. This has not yet been made explicit publicly.

3. What is the government's position on CBD in cannabis?

The Government does not have a position on CBD in cannabis per se – decision to use cannabis for medical purposes, and THC/CBD ratio, is a medical decision that is best made by individuals in consultation with their healthcare practitioner.

4. What is the guidance if a company already licensed by the federal government to cultivate and sell medical cannabis products that only contain CBD approaches a NSO? Can the NSO accept sponsorship dollars from these companies if it relates to CBD only products? Can they promote the company?

There are two types of "medical marijuana companies" – federally licensed, and illegal. Most people don't differentiate. It is important to specify "licensed producers of cannabis for medical purposes" because other "Medical Marijuana companies" are actually illegal.

Licensed producers of cannabis for medical purposes today are subject to the Access to Cannabis for Medical Purposes Regulations (ACMPR). The ACMPR, along with the Food and Drugs Act (FDA) and the Narcotic Control Regulations (NCR), define advertisement to include any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of a drug (in the case of the FDA) or a narcotic (with respect to the NCR). Both the FDA and the NCR contain general prohibitions against the advertising of cannabis that licensed producers are required to comply with, including but not limited to:

- FDA s 3. (1) No person shall advertise any food, drug, cosmetic or device to the general public as a treatment, preventative or cure for any of the diseases, disorders or abnormal physical states

referred to in Schedule A.

- FDA s 9. (1) No person shall label, package, treat, process, sell or advertise any drug in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.
- NCR s 70. No person shall (a) publish or cause to be published or furnish any advertisement respecting a narcotic unless the symbol "N" is clearly and conspicuously displayed in the upper left-hand quarter thereof or, if the advertisement consists of more than one page, on the first page thereof; (b) publish or cause to be published or furnish any advertisement to the general public respecting a narcotic; or (c) advertise in a pharmacy a preparation referred to in section 36.

Please refer to: <https://www.canada.ca/en/health-canada/services/drugs-health-products/medical-use-marijuana/licensed-producers/advertising-prohibitions-cannabis-information-bulletin.html>

It is our understanding that Health Canada will be closing the loophole on sponsorship under the new Act.

5. This document addresses recreational or non-medical Cannabis and does not address the issue of medical cannabis.

If an athlete is using marijuana for a medically justified reason, they can apply for a Therapeutic Use Exemption. If the medication an athlete is required to take is on the World Anti-Doping Agency's Prohibited List, an approved medical exemption will provide the athlete authorization to take the medication. We encourage the athlete to use the CCES' [Medical Exemption Wizard](#) to determine their medical exemption requirements and to download the application form (if need be).

6. Is it true that positive cannabis results obtained from out of competition testing will not be considered a failed test? Positive Cannabis results from in-competition testing would be considered a failed test. This should be confirmed or clarified.

Cannabis products are banned in competition only. This means that a positive test for cannabis will only result from a doping control procedure which took place within the 'in-competition' time frame. Unless provided otherwise in the rules of an International Federation or the ruling body of the Event in question, "In-Competition" means the period commencing twelve hours before a Competition in which the Athlete is scheduled to participate through the end of such Competition and the Sample collection process related to such Competition. That being said, it is important for that athlete to be aware that International Federations or ruling bodies for an Event may establish an "In-Competition" period that is different than the Event Period.

For more information on in competition testing, please refer to the CCES:

http://cces.ca/sites/default/files/content/media/untrackTSC/Marijuana/story_html5.html