

Canadian Cannabis Regulation Part II: Edibles, Extracts, and Topicals

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Legislation Commented On: *Cannabis Regulations*, [SOR/2018-144](#)

In October 2018, the federal government legalized the sale and possession of recreational dried cannabis, cannabis oil, and fresh cannabis, plants, and seeds. Effective October 17, 2019, these legal changes were extended to four additional categories of products: edible cannabis (including food and beverages), cannabis extracts for ingestion (typically in capsule form), cannabis extracts for inhalation, and topical cannabis (products for external use on skin, hair, and nails).

The government had several reasons for delaying the legalization of these new products. They are more complex from a regulatory perspective, often falling into multiple categories of product rules. For example, with topicals, regulators had to consider the applicability of both new cannabis rules along with existing rules governing cosmetics. Similarly, with edibles, the government had to address both the cannabis in these products, along with food-related regulatory concerns like nutritional information, vitamin additives, and food safe packaging.

These new products also raised additional health concerns beyond those available in 2018. For example, extracts can have a much [higher concentration](#) of THC than oils, which were available last October. THC, or *tetrahydrocannabinol*, is the chemical compound in cannabis that is responsible for producing its psychoactive effects. While oils typically have a THC potency of up to 3%, extracts can have a potency of up to 90%. Similarly, while cannabis that is inhaled can produce a psychoactive effect almost immediately, edibles may take up to [four hours](#) to produce those effects as they are absorbed through the digestive tract. This may lead individuals to overconsume edibles or to engage in risky activities such as driving because they do not immediately feel impaired. One [study](#) found that although edible products represented only 0.32% of total cannabis sales in Colorado, they accounted for 10.7% of cannabis-related emergency room visits.

Based on the US experience, Canadian regulators were also concerned that edible products could be appealing to children and wanted additional time to address that issue. Notably, during the first four months of 2019, [17 of the top 20](#) bestselling ingestible products in California, Colorado, and Oregon were gummy candies. These products, which are often colourful, fruit flavoured, and/or shaped like animals, may be especially appealing to children and are particularly difficult to regulate. For example, Washington initially had few restrictions on edibles but later [announced](#) a complete ban on the production of cannabis candy, due to concerns with children accidentally consuming the products. After public outcry, they compromised with regulations that [limited](#) candy to a list of government-approved colours and shapes.

Although there are risks associated with the new categories of cannabis products, they may also have potential public health benefits. For example, ingestible products enable consumers to experience the effects of cannabis without inhaling harmful smoke. Purchasers of topical products can seek relief for conditions such as eczema or arthritis without experiencing any psychoactive effects, given that topicals are applied to the affected area and do not generally pass to the bloodstream.

The new categories of cannabis products are subject to the same regulations as those already on the market (for a discussion of the cannabis rules that came into effect in 2018, see [here](#)). However, amendments to the existing *Cannabis Regulations* specifically address edibles, extracts, and topicals.

Packaging and Labelling

The main goals of the packaging and labelling requirements are to discourage consumption by young people and to provide consumers with accurate product information. In furtherance of these goals, products cannot make any cosmetic or health claims, including dietary claims by ingestible products (sections 104.12-104.14, 132.28-132.3). There are also labelling requirements, including a symbol indicating the product contains THC and the quantity of that substance, a health warning message, and an ingredient list (section 132). Because purchasers can only publicly possess 30 grams of dried cannabis or its equivalent in another form, products must specify their equivalency to dried cannabis (sections 122.4(2), 123(1)(g)).

The packaging for these products must be child-resistant and plain, which strictly limits the use of logos, colours, and branding (sections 112-117). Some working within the cannabis industry believe that [plain packaging](#) makes it difficult to compete with the black market, whose products include colourful packaging, appealing textured elements, and eye-catching logos. Products also cannot be promoted in a manner that associates them with an alcoholic beverage or tobacco product (sections 104.15-104.16, 132.31-132.32). For example, terms related to alcohol such as “beer” or “wine” cannot be used in conjunction with cannabis products, nor can the logos of alcohol manufacturers be used on a cannabis product if consumers could associate the two products.

Product Content

Regulations also restrict what these new categories of products can contain. For example, edible cannabis cannot generally contain added vitamins or minerals and extracts cannot include vitamins as an ingredient, subject to very limited exceptions such as their use to ensure the stability of the product (sections 101.3(3), 102(6)). Edible cannabis cannot contain alcohol, apart from very small quantities that may result from fermented ingredients like vinegar, while extracts may contain small quantities of alcohol (sections 101.6, 102.3). Cannabis products cannot have added caffeine, although small amounts that are naturally occurring in substances like chocolate are permitted (section 102.2).

While cannabis extracts cannot include added sugars, sweeteners, or colours (section 101.3), they may contain flavouring agents. However, extracts cannot be promoted in a manner that could cause a person to believe that the extract has a flavour that would be appealing to young persons, such

as dessert or confectionary flavours (sections 104.11, 132.13(1)). Canada’s approach to extracts differs from some US states. For example, in light of vaping-related deaths in the US and a dramatic increase in vaping, Oregon recently issued an [executive order](#) banning all flavoured nicotine and THC vaping products.

Finally, there are limits on the allowable quantity of THC in each dose or package. Cannabis extracts and topicals cannot contain more than 1000 milligrams of THC per container (section 101.2), while edible products cannot contain more than 10 milligrams of THC per package (section 102.7). These small individual packages have been criticized as being bad for the environment and unduly paternalistic. For example, one [cannabis retailer](#) equates small edible packages with “selling alcohol only in little airline bottles to stop people from getting too drunk.”

Appealing to Young People

The *Cannabis Act*, [SC 2018, c 16, s 31](#), prohibits the sale of cannabis products that have an appearance, shape, or other sensory attribute or function that are appealing to young persons. This legislation also prohibits promotion and the use of brand elements that are likely to appeal to youth (section 17), along with packaging and labelling that are likely to appeal to youth (section 26).

Despite saying they would do so, the government has yet to issue further guidance on this topic, creating uncertainty for manufacturers of these products. However, Health Canada has [said](#) they will determine the level of appeal to children on a product-by-product basis looking at such factors as shape, colour, flavour, name, packaging, and presentation. Whether something is appealing to young people could prove to be a difficult question. For example, while brightly coloured gummy bears are certainly appealing to young people, what about cookies that contain Smarties or drably coloured star-shaped candy? Although policy-makers will certainly err on the side of protecting children, if edibles are too unappealing, adults may reject those products in favour of inhaling more harmful dried cannabis.

Quebec has [proposed](#) a very strict approach to edible products and is the only province thus far to consider such restrictions. According to their draft regulations, edible cannabis will not be permitted in the form of “sweets, confectionary, dessert, chocolate or any other product attractive to minors”. Quebec also mandates that each “distinguishable portion unit” cannot have more than five milligrams of THC. It is unclear whether these regulations will achieve the stated goal of protecting children or will merely drive consumers to the black market to purchase edibles or prompt adults to purchase less safe inhaled products from legal retailers.

What Next?

Although these new categories of products were legalized last week, they will not be in stores for some time. This is because federal license-holders must provide 60 days notice to Health Canada of their intent to sell a new product (*Cannabis Regulations*, section 244). Following federal approval, distributors and retailers will need time to purchase and obtain the new products and make them available for sale.

This post may be cited as: Lorian Hardcastle, “Canadian Cannabis Regulation Part II: Edibles, Extracts, and Topicals” (October 22, 2019), online: ABlawg, http://ablawg.ca/wp-content/uploads/2019/10/Blog_LH_CannabisRegulation.pdf

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