



You're Not Ganja Believe This, Health Canada, But the Edible Cannabis Regulations Are a Buzz Kill

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YOU'RE NOT GANJA BELIEVE THIS, HEALTH CANADA, BUT THE EDIBLE CANNABIS REGULATIONS ARE A BUZZ KILL

Written by [Wendy Hulton](#), [Chantal Cipriano](#) and [Carly Walter](#) – 10/17/19

Protecting the health and safety of Canadians is a top priority for the Government of Canada. This overarching objective has, of course, made its way into laws restricting the marketing, product development, and ingredients of edible cannabis products, which will soon be marketed and sold to Canadians. The new regulations (the "Regulations") to the Cannabis Act that govern the legal production and sale of edibles will come into force on October 17, 2019 and it will likely be mid-December at the earliest that the limited selection of products will be available for purchase. According to Health Canada, the goals of the Regulations are, amongst other things, to restrict access, keep edibles out of the hands of youth, and keep the profits out of the pockets of criminals and criminal organizations.

Despite the best intentions of Health Canada, the likely effect of the Regulations will restrict consumer access to legal edible cannabis products and create unnecessary red tape for business owners in the edibles industry. Below are our thoughts on the aspects of the Regulations that miss the mark:

Packaging

The Regulations will maintain the core plain packaging and labelling requirements that currently apply to all cannabis products: the standardized cannabis symbol, health warning messages, displays of tetrahydrocannabinol ("THC") and Cannabidiol ("CBD") quantity or concentration, and child-resistant packaging are some of the requirements.

As for the measures implemented to fulfill its goal of child-resistance, Health Canada appears to have the misguided belief that youth are only attracted to products with colourful metallic-hued packaging, and that plain packaging will somehow deter youth. Aren't youth typically attracted to what is trendy? If edibles are trendy, whether in a plain package or in a colourful package, it's logical to assume that youth will want access.

At first look, the strict child-resistant packaging requirement makes sense when it comes to the health risks of a child's accidental consumption of cannabis until you compare the impact on a child ingesting 10 milligrams of THC with the impact on a child ingesting alcoholic beverages. Suffice to say, many alcoholic beverages do not have child-resistant packaging and can be just as harmful to a child. This is a pretty radical idea, but perhaps Health Canada should consider leaving it up to parents to protect their children from ingesting unsafe items.

We see similarities between child-resistant packaging and age-gating on cannabis websites – a method used to attempt to deter children from accessing cannabis content. In practice,

age-gating on cannabis websites does not work as a child with technology skills considered basic for youth today can easily achieve their purchase goals. Here too, we think child-resistant packaging will achieve the same objective as age-gating websites – useful in theory, but not effective in practice.

THC

For edible cannabis, there will be a limit of 10 milligrams of THC per unit and for containers with multi-packs. The dosage of THC pales in comparison to what is offered on the black market, with online dispensaries selling edibles that have as much as 80 milligrams per piece. It's not a stretch to conclude that the black market will continue to thrive so long as a wider range of these products are not permitted.

The Ontario Chamber of Commerce ("OCC") came out in support of relaxing this dosage restriction and urging for an increase up to a maximum of 100 milligrams of THC per package – this limit would be on par with the restriction imposed by California. In California, edibles are required to have doses marked in 10-milligram increments, and are limited to 100 milligrams of THC total per package. The OCC encourages Health Canada to focus on their objective of ensuring that servings are clearly marked and loosening up the unnecessarily strict restriction on quantity of THC. Allowing adults to self-regulate by providing dosage information accomplishes Health Canada's goals.

The black market will continue to be an attractive business model due to low overhead. For example, the black market can

produce cannabis products in the same facility as conventional food products, unlike edibles legalized by the Regulations. Ultimately, this means that the black market can continue to offer its products to consumers at a much lower price point.

Vitamins/Minerals

Prohibiting the addition of vitamins or minerals to edibles makes much less sense when you consider some of the wild and wooly natural health products and non-prescription drugs that Health Canada has approved. Unlike natural health products, no claims of health benefits are permitted on the packaging for edible products. A drug approved by Health Canada that has been marketed specifically to teenagers as “anxiety-reducing” has recently come under scrutiny and is just one example among many “regulated” products that have come under fire for their dangerously misleading claims.

Caffeine

Adding caffeine to edibles is prohibited, but up to 30 milligrams of naturally occurring caffeine is permitted. The distinction seems impractical as adding caffeine only requires sourcing from a different ingredient. It is difficult to understand the rationale and value in permitting one variety of caffeine, but not another. Consumers that are interested in an edible cannabis product with a caffeine kick will be forced to turn to the black market.

Takeaway

The status quo Regulations will impede the development of the edibles industry in Canada, and make it less attractive to consumers, producers, and vendors alike. Come mid-December, the earliest date that edible products hit the shelves after federal license holders have provided the requisite 60-days' notice to Health Canada of their intention to sell edible products, edible offerings might appear lackluster. Health Canada: there must be a better way to weed out the bad, otherwise, the intended benefits of legalization of edibles will go up in smoke.

What are your questions and concerns arising from these regulations with regard to the edibles industry? We welcome your feedback and questions on this topic. Please post your comments on our LinkedIn page at: Dickinson Wright Canada, on Twitter at @DWrightCanada or on our LinkedIn pages [linkedin.com/in/wendyhulton](https://www.linkedin.com/in/wendyhulton) and [linkedin.com/in/chantalcipriano](https://www.linkedin.com/in/chantalcipriano).



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