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Cannabis Regulatory Needs

Prepared for the RDCK

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The rollout of cannabis legalization has been a bumpy ride. For small-scale operations, it has been especially fraught with challenges that have made financial viability nearly impossible. The result is that far fewer of the legacy cultivators have been able to make the transition to the legal market than was envisioned or be the ideal. The main barriers are prescriptive regulations, heavy cost of compliance for both structures and operations, long and opaque process for licencing, limited market access.

The tables below capture some of the main issues and options for amending the regulatory regime to better enable the cannabis sector to thrive in the Central Kootenay and throughout British Columbia.

Category	Opportunity	Lead Agency(s)
Oversight	The province to advocate for Cannabis to be moved to Agriculture Canada. Under Ag Canada, the economic and business components would be supported by an agency with internal expertise on production and supports for the agriculture sector that should be extended to cannabis cultivators. Health Canada would still regulate the health and safety standards of product entering the market (as primary or processed product)	Premier; Minister of Agriculture; Minister of Public Safety; Minister of Jobs, Ec Recovery & Innovation
Genetics	The province to advocate for licences that are not restricted to specific genetics and seeds but rather enable cultivators to access diverse strains that support a viable business and allow adaptation to evolving markets. All cultivators need to be able to grow and develop strains as an important business planning and resilience strategy.	Premier; Minister of Agriculture, Food, and Fisheries; Minister of Public Safety; Minister of Jobs, Ec Recovery & Innovation
Categorizing a plant	The heavy burden that “marijuana” carries from decades of prohibition influences how both the general public and government respond to this particular plant. Understanding it as a plant that has many different uses like any other plant, some of which need to be closely regulated, provides the perspective to regulate the	Minister of Agriculture; Minister of Public Safety

	cultivation of cannabis as an agricultural product while ensuring that the necessary protections are in place for its end use based on an accurate assessment of the risks.	
Regulatory Coherence	The cultivation of cannabis as an agricultural activity is widely accepted by many agencies in BC, including local governments and the Agricultural Land Commission. However, there is a lack of coherence across agencies and policy to accepting cannabis as an agricultural sector. For example, within certain restrictions, the ALC allows cannabis cultivation within the ALR; in contrast the BC Assessment explicitly excludes income derived from cannabis cultivation from the calculation of farm income.	Ministry of the Attorney General
Regulatory Inclusion	<p>The <i>Classification of Land as a Farm Regulation</i> under the <i>Assessment Act</i> explicitly excludes the production of cannabis as an agricultural activity (Schedule 1, section 2). This disallows cannabis cultivators from being able to qualify as farms which prevents them from accessing farm tax benefits and programs such as the Environmental Farm Plan.</p> <p>The <i>Food and Agricultural Products Classification Act</i> also implicitly excludes cannabis as a farm product with the narrow definitions of “agricultural product” and of “food” both linked to “consumption” - the former being defined as “not for human consumption” and the latter as “for human consumption”. Since neither consumption nor inhalation is defined in the legislation, it leaves a grey area where inhalation could be interpreted as consumption but likely will not. The result is that cannabis (and other non-food farm-derived products) does not clearly fall into either category, which has an unintended consequence of precluding cannabis from access to BC’s organic certification (should change in Health Canada regulations allow for organic labels).</p>	Ministry of the Attorney General; Ministry of Agriculture, Food & Fisheries
Excise Tax Labels	The province to advocate for a standardized national excise stamp. Currently, each province requires its own excise stamp. This means that each producer has to make their best estimate of the percentage of their packaged product that will be sold in the respective province and then apply a stamp that cannot later be removed and	Premier; Minister of Finance

	replaced with another. Having a standardized national excise stamp would lower costs for producers and help to ensure that the customer is receiving a fresh, high quality product.	
Plant integrity	In order to gain access to markets, cultivators are obligated to meet a 20% THC level in their crop. THC levels are an indicator of the psychoactive compounds in the plant but do not convey the host of other characteristics in the plants that are of interest to the final user. This level is not required in legislation but is being enforced through lab results (which may or may not be reliable) and buyer decisions. The result is that a cultivator's entire crop can be rejected, even though it has market value beyond the THC level, resulting in damage up to and including bankruptcy for the cultivator. Lab standards would help to ensure reliable and consistent test results. An educational campaign that highlights other qualities of the plant that have value in the marketplace will help to provide consistent access and opportunity for cannabis entrepreneurs.	Minister of Agriculture, Food, and Fisheries; Minister of Public Safety; Minister of Jobs, Ec Recovery & Innovation

The following section applies to the development of the options for Farm Gate Sales and Direct Delivery for cannabis producers, to be implemented in British Columbia in 2022. We believe that these programs are absolutely critical for the craft cannabis industry that BC is known for globally to survive the transition to the legal market. Furthermore, we know that shortening supply chains and removing the requirement for centralized distribution will produce a wide range of co-benefits such as:

- reduced costs to compete effectively with black markets
- improved product quality
- improved product diversity
- promotion of agri-tourism, and
- positive contributions to GHG emissions reduction obligations that all levels of government are striving to meet.

Since farm gate sales and direct delivery are critical to the health of an industry which is a significant contributor to BC's economy, we are providing an outline of elements that we believe are key to the successful implementation of these programs. **Direct delivery and farm-gate sales will only be successful if they are implemented in a manner that truly enables small-scale operations to thrive without bottlenecks and with reasonable operational costs.**

Direct delivery and farm-gate are programs that have the potential to resolve some of the largest barriers that hinder the financial viability of current licensed operators and stop unlicensed operators from making the transition to licit production and applying for a license.

We recommend the creation of a pilot project for the Direct Delivery program as soon as possible and are eager to assist in the development of such a project. Such a pilot will provide an opportunity to determine what works and what does not, and allow for program refinement and a quicker rollout for the entire province.

All recommendations below assume cannabis products derived from duly licenced operations. Explanatory notes for some items are included below the Table.

Category	BC Farm Gate (proposed for 2022)	Direct Delivery (proposed for 2022)	Lead Agency
Source	Cultivators and Processors may sell duly packaged products at their farm / production site. (See Note A below.)	Cultivators and Processors may sell duly packaged products directly to retailers without the need for the packaged products to go through BC Liquor Distribution centre.	Ministry of Public Safety & Solicitor General
Choice	Cultivators can sell products from other operators provided that they meet a 50% minimum of their own product.	Cultivators and Processors may negotiate directly with the retailer what products will be carried.	Ministry of Public Safety & Solicitor General, Ministry of Agriculture (farm gate sales only)
Pricing	The cultivator determines pricing for farm gate sales.	Unequal power relationships between retailers and producers poses a risk of downward pressure on prices paid to producers, as is being seen in Ontario with cannabis and in multiple jurisdictions across a wide range of sectors. Ideally a minimum price would be paid to the producer but it is unclear how this could be determined and enforced. Therefore we urge the government to include this in	Ministry of Public Safety & Solicitor General

		the stakeholder consultation.	
Product tracking & reporting (see Note B)	Cultivators and Processors will create their own SKUs or other compliant tracking and report solutions that adhere to a provincial standard and that are integrated into the monthly production and sales reporting.	Processors and Retailers will create their own SKUs or other compliant tracking and report solutions that adhere to a provincial standard and that are integrated into the monthly production and sales reporting.	Ministry of Public Safety & Solicitor General
Delivery	Where the cultivator requires a processor to package their product, it can be transported between venues by any security cleared individual.	Cultivators and Processors can deliver products directly to the retailer by any security cleared individual.	Ministry of Public Safety & Solicitor General; Ministry of the Attorney General
Permit (See Note C)	Receiving a permit for farm-gate sales should be streamlined, low-cost, straightforward, and efficient. A permit to sell farm gate for those already holding a Health Canada licence should be provided drawing on paperwork and data that they have already provided to the federal government.	All licensed processors will be allowed in the program, whether they have a Sales Amendment license or not. Cultivators with a permit for farm-gate sales will also be allowed in the direct delivery program.	Ministry of Public Safety & Solicitor General; Ministry of the Attorney General
Insurance (See Note D)	Insurance requirements need to be commensurate with the annual volume of production.	Insurance requirements need to be commensurate with the annual volume of production.	Ministry of Public Safety & Solicitor General
Restrictions	Farm gate sales are restricted to micro producers, Indigenous producers, and small Standards. It will be important for the consultation to include a process to determine the definition of a small standard producer.	Direct Delivery is restricted to micro producers, Indigenous producers, and small Standards. It will be important for the consultation to include a process to determine the definition of a small standard producer, and to consider the distinctions between indoor and outdoors operations. (See Note E) The consultation	Ministry of Public Safety & Solicitor General

		should also consider processors who solely seek to support craft cannabis cultivators in getting to market.	
Public access	Sales room need not be a dedicated space but can be a multi-purpose and suitable space that does not place an undue financial burden on the cultivator. For example, a portion of a facility that does not require security clearance to enter should be usable for farm-gate sales. (See Note F below)	N / A	Ministry of Public Safety & Solicitor General
Product Interactions	Open jar / packaging is an option for farm gate vendors, enabling the visitor to see and smell the cannabis. Additionally, having the ability to sample cannabis in an outdoor space is critical to the success of farm-gate and canna-tourism. These products will be tracked and part of monthly reporting by the cultivator.	A cultivator or processor should be able to send unpackaged flower to a retailer for open jar marketing purposes for reduced or no cost. The current open jar policies that enable customers to see and smell cannabis at a retailer is insufficient, as the retailer must purchase and open individual packages of cannabis as their source product. This product will be tracked and part of monthly reporting by the cultivator / processor / retailer.	Ministry of Public Safety & Solicitor General
Promotion	Cultivators can participate in farm / food guides, post signage on the road and their property.	A cultivator or processor should be able to send samples of their cannabis products to a retailer. A retailer needs to be informed prior to making a decision on what to carry at their store.	Ministry of Public Safety & Solicitor General
Events	Temporary consumption permits are available for age-restricted events (like beer gardens). Options for permit include multiple days, reoccurring, annual, & seasonal. Consumption that takes the form of smoking will	Retail cannabis buyers need to be able to connect with cultivators and the range of product offerings in order to acquire suitable products for their retail offerings. Cannabis Expos that provide the opportunity for cultivators and	Ministry of Public Safety & Solicitor General

	be restricted to outdoor venues.	processors to promote their products directly to buyers will need temporary consumption permits.	
Agri-tourism	Develop and implement a “Canna-tourism” regime that includes promotion and the ability for visitors to sample products. Stakeholder consultations will be necessary to determine if there will need to be different requirements applied to rural versus urban venues.	N / A	Ministry of Agriculture, Food & Fisheries; Minister of Job, Economic Recovery & Innovation
Security	Security at Health Canada approved facilities is sufficient for a farmgate program. Measures will be put in place to ensure that youth do not enter the premises. Product inventory and sales will be fully monitored and reported. See Note F below for additional details.	N / A	Ministry of Public Safety & Solicitor General

Notes to the Table

Note A:

Prior to legalization, consumers were able to purchase cannabis from bulk containers at retailers. With legalization, packaging requirements have resulted in a high volume of plastic waste relative to product volume. We urge the provincial government to advocate for a reduction in plastic packaging requirements as a contribution to our Paris Climate Agreement obligations. This can include a return to bulk options and reduced packaging at the retail level. Further, we ask that the provincial government advocate for the ability of cultivators to package their own dried flower.

Note B:

The necessity to apply for an SKU from the province for all products, no matter how small the batch, can hold up the ability to sell the product and result in loss of quality as it ages beyond its optimal shelf life. By enabling the seller of the product to create their own SKU, while adhering to a provincial standard for cannabis products, the province will streamline its cannabis oversight and allow for more efficient and timely sales of an agricultural product. This applies to both the cultivator undertaking farm gate sales and to the processor selling products to retailers via direct delivery.

Note C:

We applaud the provincial government's commitment to enabling farm gate sales and direct delivery to retailers. It is vital in the determination of how this will be implemented that the end goal of increasing opportunities for small businesses to thrive is not lost. Where possible farm gate and direct delivery should be permitted with minimum additional requirements, given the exhaustive and costly vetting and approval processes that have been undertaken to obtain a Health Canada licence.

Note D: Insurance fees are an ever-increasing component of most sectors' cost of doing business. However, they must not be so out of proportion as to unfairly burden the enterprise. For example, under no circumstance would a small cultivator ever require a \$10 million limit for product recall. When considering product recall and product liability insurance requirements, we encourage the province to ensure that they are commensurate with both the level of actual risk and the annual volume of cannabis produced. We encourage consideration of a separate insurance standard for both craft cultivators and processors as well as farm to consumer models of distribution.

Note E:

Outdoor cannabis sells for a much lower price and takes less work to grow. Therefore, this needs to be considered in any determination of the limits for the size of a facility to be considered craft/small scale. Any regime needs to reflect and accommodate the substantially different business models and financial realities of outdoor and indoor operations.

Note F:

For example, a licensed cultivator typically has an office and washroom as soon as you enter the building. No cannabis is present here, so the public can enter into this part of the building to purchase cannabis. It would require a security-cleared personnel to be on-site to enter into the second phase of the facility (where cannabis is present) to walk into the secured storage vault to access packaged products designated for retail sales. A key fob door could monitor the access with a specific code for the personnel. A camera within the secured storage could mitigate risks associated with diversion.