

ALL ABOUT CANNABIDIOL (CBD)

Information about CBD in cannabis and hemp products under the new *Cannabis Act*

WHAT IS CBD?

The cannabis plant contains hundreds of different chemical constituents, such as cannabinoids, terpenes and flavonoids. Currently, over 100 chemical substances collectively known as cannabinoids have been identified. Cannabinoids that are derived from cannabis plants are sometimes referred to as phytocannabinoids. Cannabidiol (CBD) is one of these cannabinoids. Unlike tetrahydrocannabinol (THC) - the most well-known cannabinoid in cannabis, responsible for the high or intoxication of consuming cannabis - CBD does not produce a high or intoxicating effect. However, there is some evidence that CBD may influence some of the effects that THC has on the brain. CBD is also being studied for its possible therapeutic uses; it has received market approval in the United States for two severe forms of epilepsy.

CBD can be found in varieties of the cannabis plant, including hemp plants. All phytocannabinoids, whether derived from a cannabis plant or produced by synthesis, including both THC and CBD, are regulated under the new *Cannabis Act* and its regulations, which came into force on October 17, 2018.

HOW IS CBD REGULATED IN CANADA?

Under the *Cannabis Act*, many activities with phytocannabinoids, CBD included, remain prohibited, except for the specific cases authorized by the Act and its regulations, which include strict controls on possession, production, sale, and distribution. While Health Canada oversees the production of cannabis products, the provinces and territories oversee the distribution and retail aspects of the cannabis supply chain. Health Canada remains responsible for overseeing the distribution and sale of cannabis and any CBD-containing cannabis products for medical purposes.

WHO CAN GROW CANNABIS PLANTS CONTAINING CBD?

A federal licence issued under the *Cannabis Act* is required to cultivate any cannabis plants commercially. This licence could be a cultivation licence under the *Cannabis Regulations*, which would authorize the growing of a variety of different cannabis plants with varying amounts of THC and CBD, or this could be an industrial hemp licence under the *Industrial Hemp Regulations*, which would authorize the cultivation of a specific variety of cannabis called industrial hemp. Industrial hemp has a THC content of no more than 0.3% in the flowering heads, branches, and leaves (see “*What is industrial hemp*” below).



HOW AND WHERE CAN CBD PRODUCTS BE SOLD?

As of the coming into force of the *Cannabis Act* on October 17, 2018, CBD and products containing CBD (including cannabis or hemp oil containing CBD) became subject to all of the rules and requirements that apply to cannabis under the *Cannabis Act* and its regulations.

This means that:

- A processing licence under the *Cannabis Regulations* is needed to manufacture products containing CBD, regardless of the source of the CBD.
- CBD and products containing CBD, such as cannabis oil, can only be sold to adults (individuals over the age of 18 or older, depending upon the minimum age established by the province or territory) by a provincially or territorially-authorized cannabis retailer, or by a federally-licensed seller of cannabis for medical purposes.

CAN CBD PRODUCTS BE IMPORTED AND EXPORTED?

The movement of cannabis and cannabis products between countries is covered by three United Nations drug conventions, including the *Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol*. CBD is currently a controlled substance under the Single Convention, and as a result, the international movement of goods containing CBD is limited to medical and scientific purposes and is subject to strict controls, including the requirement for export and import permits.

Therefore, the import and export of CBD products may only be done under very specific conditions, and is covered by the *Cannabis Act* and its regulations, where any import or export must meet all of the following criteria:

- Can only be done by a holder of a licence issued under the *Cannabis Regulations*;
- Can only be done under an import or export permit issued to the licence holder by Health Canada for that shipment; and
- Could only be done for a legitimate scientific or medical purpose, as per international agreements.

WHAT IS INDUSTRIAL HEMP?

Industrial hemp refers to specific strains or varieties of the cannabis plant that consistently have no more than 0.3% THC in the flowering heads, branches and leaves, and that are on the List of Approved Cultivars (<https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/producing-selling-hemp/commercial-licence/list-approved-cultivars-cannabis-sativa.html>). Industrial hemp is regulated under the *Industrial Hemp Regulations*, which is a set of regulations made under the *Cannabis Act*. While it cannot contain more than 0.3% THC, there is no limit to the amount of CBD that may be contained in industrial hemp plants.

The *Industrial Hemp Regulations* establish a general control framework for most activities with industrial hemp, such as the cultivation, production, and sale of hemp, and establish a licensing scheme.

Of note, the *Cannabis Act* and its regulations make no distinction between CBD derived from industrial hemp and CBD derived from cannabis with greater than 0.3% THC.

WHAT CAN AN INDUSTRIAL HEMP LICENCE HOLDER DO?

An industrial hemp licence holder may cultivate hemp to produce a number of different products. They may cultivate hemp and then sell non-viable seeds, or hemp seed derivatives, for use in food, cosmetics, etc. Non-viable hemp seeds and hemp seed derivatives (like hemp seed oil) that contain no more than 10 ug/g THC after testing (also sometimes expressed as no more than 10 parts per million, or 10 ppm) are exempt from the *Cannabis Act*.

A hemp producer is also able to cultivate hemp for the flowering heads, branches, and leaves, which may contain CBD. They can sell those flowering heads, branches and leaves to a cannabis processor licensed under the *Cannabis Regulations*, who may then extract the CBD. CBD is still a regulated substance under the *Cannabis Act* and its regulations; hemp producers may not extract the CBD themselves, unless they also have a cannabis processing licence.

WHAT ABOUT IMPORTATION AND EXPORTATION OF INDUSTRIAL HEMP?

The new *Industrial Hemp Regulations* authorize the importation and exportation of industrial hemp seed or grain, but not the flowering heads, leaves, or branches. The flowering heads, branches and leaves can only be imported or exported by a licence holder under the *Cannabis Regulations*, with a permit issued under those regulations, and only for legitimate medical and scientific purposes. The importation or exportation of industrial hemp seeds or grain may only be done by a hemp licence holder, under the authority of an import or export permit issued by Health Canada under the *Industrial Hemp Regulations*.

WHAT IS THE DIFFERENCE BETWEEN CANNABIS OIL AND HEMP-SEED OIL? DOES HEMP-SEED OIL CONTAIN CBD?

It is important to note that “cannabis oil” is a product that consists of cannabis (usually in the form of a THC and/or CBD-rich extract derived from the leaves and flowering tops of the cannabis plant, which can include plants classified as industrial hemp) and a vegetable-based or plant-based oil (such as canola, olive, grape seed, or hemp-seed oil). Cannabis oil is one of the 5 classes of cannabis (i.e. fresh cannabis, dried cannabis, cannabis oil, cannabis plants and cannabis seeds) that can be legally sold by provincially and territorially-authorized retailers as of October 17, 2018.

Hemp-seed oil is distinct from cannabis oil. Hemp-seed oil refers to oil derived from pressing the grain or seed of hemp plants (processed similar to other oil seeds, like canola) and contains very little THC (no more than 10 ug/g of THC) and negligible amounts of CBD. For hemp-seed oil to be exempted from the *Cannabis Act*, neither THC nor CBD could be added, or concentrated via processing, and any trace presence of THC or CBD would be the incidental result of the harvesting and processing steps. Hemp seeds are required to be handled in such a way to limit THC and CBD contamination. Hemp-seed oil is marketed in Canada in food, cosmetics, and natural and veterinary health products.

CAN I MARKET A NATURAL HEALTH PRODUCT, VETERINARY HEALTH PRODUCT OR A COSMETIC CONTAINING CBD?

No. Only limited parts of cannabis or hemp plants may be used as a medicinal ingredient in a natural health product (NHPs) under the *Natural Health Product Regulations*. The same is true for veterinary health products (VHPs) under the *Food and Drug Regulations*. NHPs and VHPs can only contain parts of the cannabis and hemp plants that are not considered cannabis under the *Cannabis Act*, such as hemp-seed derivatives and non-viable seeds. Mature stalks that do not include any leaves, flowers, seeds or branches, and fibre from such stalks are also excluded from the *Cannabis Act*, but may not be used in veterinary health products. Trace levels of phytocannabinoids (e.g. no more than 10 parts per million THC) may be present in such products as a result of the isolation process. However, the deliberate addition of phytocannabinoids to such products is not permitted. These same restrictions also apply to cosmetics, which can only incorporate hemp seed derivatives or other excluded parts of the cannabis or hemp plants.

As all phytocannabinoids are subject to the Prescription Drug List, any health product wishing to contain CBD, and make a health claim, would require approval as a prescription drug under the *Food and Drugs Act*. CBD products that do not make any health claims may be sold lawfully under the *Cannabis Act* — either through the provincially or territorially-authorized retail system, or through the federal access to cannabis for medical purposes system — provided they follow all requirements of that Act and regulations.

CAN I MAKE AND MARKET HUMAN FOOD OR PET FOOD CONTAINING CBD?

No. Under the *Cannabis Act*, only five classes of cannabis are initially permitted for sale: fresh cannabis, dried cannabis, cannabis oil, cannabis plants and cannabis seed. Edible cannabis products will not be permitted for sale until new regulations are in place within a year of the coming into force of the *Cannabis Act*. The regulations addressing the production and sale of edibles will focus on providing adults with access to quality-controlled cannabis products of known potency while establishing controls to reduce the appeal of cannabis to youth and to reduce the risk of accidental ingestion by youth. This means that cannabis edibles will only be available for human consumption.