

# LIDSTONE & COMPANY

## BARRISTERS AND SOLICITORS

### CLIENT BULLETIN

**TO:** Clients  
**FROM:** Sara Dubinsky  
**DATE:** October 18, 2013  
**RE:** **Medical Marihuana Production Licences and Nonconformity**

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The new Federal *Marihuana for Medical Purposes Regulations* (“MMPR’s”) are currently in force. The old regime, pursuant to the *Medical Marihuana Access Regulations* (“MMAR’s”), is in the process of being phased out.

As of October 1, 2013, Health Canada is no longer accepting new applications for production licences under the MMAR’s or applications to change the location of, or number of plants at, an existing production site under the MMAR’s. Health Canada is currently accepting applications for commercial production licences under the new MMPR’s, and has already issued production licences to two companies.<sup>1</sup>

The Federal Government has indicated that it will respect local government zoning when determining whether to issue production licences.<sup>2</sup> For this reason is it critical that local governments wanting to regulate or prohibit the location of commercial producers within their borders act promptly to enact the requisite zoning. Failure to do so could result in medical marihuana production facilities being grandparented and permitted as a lawful non-conforming use. In the short term, we suggest that Councils and Boards consider adopting a resolution to direct the preparation of the zoning amendment bylaw, in order to give the local government the option of withholding building permits and business licences in the interim, as authorized by s. 929 of the *Local Government Act*.

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<sup>1</sup> Media release: Prairie Plant Systems Inc. & CanniMed Ltd. Awarded First Two Medical Marijuana Licenses by Health Canada. Available online at <http://cannimed.ca/blogs/news/9248759-prairie-plant-systems-inc-cannimed-ltd-awarded-first-two-medical-marijuana-licenses-by-health-canada>

<sup>2</sup> Annex A to the Regulatory Impact Analysis Statement for the MMPR’s, available online at: <http://gazette.gc.ca/rp-pr/p1/2012/2012-12-15/html/reg4-eng.html> states: “rather than specifying zoning requirements for the location of sites where marihuana is to be produced in the MMPR, only municipal by-laws governing location would apply.” In addition, Health Canada’s Frequently Asked Questions, available online at <http://www.hc-sc.gc.ca/dhp-mps/marihuana/info/faq-eng.php> state: “Licensed producers must comply with all federal, provincial/territorial and municipal laws and by-laws, including municipal zoning by-laws.”

A critical element of an application for a licence to produce (or for an amendment to the licence to produce) under the MMPR's is that the applicant must first notify the local police force, fire authority and government of the pending application for a licence, and the notices must include the address of the proposed production facility. The applicant must submit copies of these notices to the federal government as part of the application materials for a licence. If the applicant has not provided the requisite notice to local authorities, the licence (or licence renewal or amendment) must be refused.

The intent of these requirements appears to be to provide local authorities with notice and the opportunity to comment regarding the applicant or application. Comments regarding whether the zoning permits the production facility in the specified location should be provided by the local government to the federal government at this point.

With respect to licensed production premises under the MMAR's that are in the process of being phased out and will expire on April 1, 2014, the federal government has taken the position that the location of these premises is protected from disclosure under the *Privacy Act*. As this will create difficulty in ensuring that production ceases and the premises are properly remediated upon the expiry of the licences, local governments should prevail upon the federal government to amend the regime such that the location of prior licences may be disclosed.

For more information, Health Canada's website is available at:

<http://www.hc-sc.gc.ca/dhp-mps/marihuana/index-eng.php>