

 <p>BRITISH COLUMBIA COMMUNITY SAFETY UNIT</p>	Administrative Monetary Penalty Policy	
	<p>Last Updated: August 2023</p> <p>Replacing the Administrative Hearing Process Policy (August 11, 2021)</p>	<p>Issuing Authority: Director, CSU</p>

1.01 Introduction

Pursuant to section 94 of the *Cannabis Control and Licensing Act* (CCLA), the Director may impose an administrative monetary penalty (AMP) on a person who has contravened section 15 [sale of cannabis] or section 18 [production of cannabis] of the CCLA. The Director can impose the AMP based on information obtained through a Community Safety Unit (CSU) inspection or from any other source.

The AMP is, as determined by the director,

- (a) an amount equal to two times the retail value of the cannabis that the person, in contravention of the CCLA, sold, possessed for the purpose of sale or produced, or
- (b) if the person signs a waiver and admits to the contravention, an amount equal to the retail value of the cannabis that the person, in contravention of the CCLA, sold, possessed for the purpose of sale or produced.

When the Director proposes to impose an AMP, the Director will first give or serve the person with a Notice of Administrative Penalty (NAMP) and give the person the opportunity to either sign a waiver or dispute the AMP through an administrative hearing (AMP Hearing).

Pursuant to section 94(9) of the CCLA, where the Director imposes an AMP on a corporation (Corporate AMP), any officer, director or agent of the corporation who authorized, allowed or acquiesced in the corporation's contravention is also liable for the same Corporate AMP. As decided by the Director, this section 94(9) determination

may be part of the AMP Hearing or a separate hearing.

The purpose of this policy is to set out the practices and procedures to be followed in the conduct of any AMP proceedings.

1.02 Authority

Pursuant to section 23(3) of the *Interpretation Act*, when the CCLA directs or empowers the Director to do something, the Deputy Director has the same powers, which includes the authority to conduct hearings and make decisions.

1.03 Deemed Receipt

Where the Director gives or serves a document to a person, the document is conclusively deemed to be received as follows:

- (a) if the document is left with an individual, on the day it is left,
- (b) if the document is sent by ordinary mail, registered mail or courier, on the fifth day after it is mailed or received by the courier,
- (c) if the document is left in a mailbox or mail slot, on the third day after it is left,
- (d) if the document is attached to a door or other conspicuous place, on the third day after it is attached,
- (e) if the document is sent by email, on the third day after it is sent, and
- (f) if the document is transmitted to a fax number, on the third day after it is transmitted.

[section 41 of the *Cannabis Licensing Regulation*]

For the purpose of deadlines under this policy, if the Director gives or serves a document multiple times, whether by different methods of delivery or the same method of delivery, the document is deemed to have been received on the deemed receipt date that occurs first.

1.04 CSU Forms and Contact Information

The CSU's website includes all of the CSU's forms and policies. The documents can also be requested from the CSU. If a person is unable to submit any of the CSU's forms for

reason of mental or physical disability, the person should contact the CSU.

The CSU can be contacted by email at csu@gov.bc.ca, by fax at 604-591-5611, or by telephone at 604-502-5493 (from within the lower mainland) or 1-855-502-5494 (outside the lower mainland).

All documents delivered to the CSU must be sent either by email to csu@gov.bc.ca, by fax to 604-591-5611, or by mail to:

Community Safety Unit PO Box 9060
Stn Main
Surrey BC V3T 0N4

1.05 Representation

If any person wants to be represented or allow for the disclosure of their personal information to a third party, that person must submit a completed and signed Authorization of Representative form to the CSU.

An organization (e.g. a corporation, partnership, or society) must submit a completed and signed form to the CSU which is signed by a person who has the legal authority to bind the organization.

1.06 Notice of Administrative Monetary Penalty

If the Director proposes to impose an AMP for a contravention of section 15 [sale of cannabis] or section 18 [production of cannabis] of the CCLA, the Director will serve the person with a NAMP. The NAMP will provide the NAMP recipient with the following information as required under section 94(4) of the CCLA:

- (a) the Director's allegation that the person has contravened section 15 or 18;
- (b) the amount of the monetary penalty that the Director proposes to impose on the person; and
- (c) the option to waive the opportunity for a hearing, admit to the contravention, and pay the monetary penalty in an amount specified.

The CSU may copy the NAMP to other potentially impacted persons, such as officers, directors or agents of a corporation, and invite them to participate in the AMP hearing.

1.07 Waiver and Concession Order

Pursuant to section 94(5) of the CCLA, a NAMP recipient may provide the Director with the signed Waiver form in which the person expressly and irrevocably:

- (a) admits to the contravention(s) referred to in the NAMP;
- (b) accepts the amount of the penalty specified in the NAMP; and
- (c) waives the opportunity for an AMP Hearing.

The Director will accept a person's signed form if received within 30 calendar days of the date the person is deemed to have received the NAMP; or where a completed Application for AMP Hearing is accepted by the CSU, the waiver form is received within 45 calendar days from the date the applicant is deemed to have received CSU's disclosure package.

As the Director considers appropriate, the Director may accept a signed form received after the above deadlines. If the Director does not accept the form, the Director will notify the person in writing with reasons.

Where the Director accepts the person's signed form, the Director will issue a Concession Order with the reasons for imposing the AMP, the amount of the AMP, and the date the person must pay the AMP. The amount of the AMP will be an amount equal to the retail value of the cannabis that the person, in contravention of the CCLA, sold, possessed for the purpose of sale, or produced.

Pursuant to section 94(8) of the CCLA, a person must pay the AMP within 30 calendar days after the date on which the person receives a Concession Order, unless the Director has specified a longer period in the Concession Order.

A person may not apply for reconsideration of a Concession Order under section 95 of the CCLA.

1.08 Proceedings that Involve Similar Questions

If two or more AMP proceedings before the Director involve the same, similar or related questions, the Director may do one or more of the following:

- (a) Combine the proceedings or any part of them,

- (b) Decide the proceedings, or any part of the proceedings, at the same time,
- (c) Decide the proceedings one after the other,
- (d) Pause one or more of the proceedings until after the determination of the other related proceeding, or
- (e) Pause any one or more issues arising in any proceeding until after the determination of another issue.

Where the Director has paused one or more proceedings under (d) or one or more issues in a proceeding under (e), and the Director makes a decision that resolves an issue in an ongoing proceeding, the Director may then treat that decision as determinative of the issue in the remaining proceedings.

If the Director decides to take any of the steps described in this section, the Director will notify the affected persons in writing and, as applicable, will set out how any other procedures will be modified accordingly.

1.09 AMP Hearing

If the Director does not receive or accept a signed Waiver form from the NAMP recipient, the Director will conduct an AMP Hearing.

The Director will conduct the AMP Hearing in writing, unless the Director determines that an oral hearing is necessary. Pursuant to section 97 of the CCLA, there is no right to cross examination at an oral hearing.

At the AMP Hearing, the Director will determine:

- (a) whether the person named in the NAMP contravened section 15 and/or section 18 of the CCLA;
- (b) if so, whether to impose an AMP on that person; and
- (c) if so, the amount of the AMP.

The Director does not have jurisdiction over any constitutional question, including but not limited to, a constitutional question that requires notice to be given under section 8 of the *Constitutional Question Act*.

In exercising their discretion as to whether to impose an AMP on a person the Director may consider:

- (a) the purposes of the CCLA, including prioritizing health and safety, protecting children and youth, reducing crime and the illegal cannabis market, and supporting economic development opportunities in BC;
- (b) general and specific deterrence, which may include consideration of continuing contraventions of the CCLA; and
- (c) any other factors that the Director deems relevant.

Pursuant to section 94(2)(a) of the CCLA the AMP's value is an amount equal to 2 times the retail value of the cannabis that the person, in contravention of the Act, sold, possessed for the purpose of sale or produced as determined by the Director. The retail value of the cannabis and the amount of cannabis used to calculate the AMP is determined in a manner and by a procedure that the Director considers adequate and expedient.

Following the AMP Hearing, the Director will provide the participants with written reasons for their determination.

1.10 AMP Hearing Application

If a NAMP recipient would like to participate in the AMP Hearing, they must complete and submit a completed Application for AMP Hearing form to the CSU within 30 calendar days from the date the NAMP is deemed received. At their discretion, the Director may accept a form received after the deadline. If the Director does not accept a submitted form, the Director will provide the person with reasons in writing.

If a completed form is not received by the CSU by the Director's deadline, the Director may proceed with the AMP Hearing based on a written review and may impose an AMP without the person's participation.

A person who is not named in the NAMP but is potentially impacted by the Director's decision, such as an officer, director or agent of a corporation, may request to participate in the AMP Hearing, either on their own initiative or after being invited to participate. If the Director does not accept the person's request, the Director will provide the person with reasons in writing.

1.11 CSU's Disclosure

The CSU will send a disclosure package to the hearing participants. Any person participating in a hearing is a "participant" for the purpose of this policy. The disclosure package is comprised of the information that was before the Director when the Director issued the NAMP and any additional information that the Director considers relevant to the hearing. Any additional information that the CSU receives or gathers after the initial disclosure and that may be relevant to the hearing, will be disclosed to the participants.

The CSU will redact information in the disclosure package(s) in accordance with section 11 of the CCLA and the *Freedom of Information and Protection of Privacy Act*.

1.12 Participant Submissions

The CSU will notify the participant(s) of the deadline for providing their submissions (argument and evidence) to the CSU. If there are multiple participants, the Director may set a submission schedule. The deadline will normally be 30 calendar days from the date that the participant is deemed to have received a disclosure package, unless the Director sets a different submission schedule.

All submissions that the participant wants the Director to consider at the hearing must be received by the Director on or before the deadline. The Director may extend the deadline or accept a participant's submissions after the deadline on a case-by-case basis. A participant is responsible for providing copies of their submissions to any other participant(s).

Submissions must be no longer than 10 pages in length and must include relevant page numbers when referencing case law. The Director may accept more than 10 pages of submissions on a case-by-case basis.

1.13 Adjournment

The Director may, as the Director deems appropriate, adjourn (pause) a hearing on their own initiative or, in exceptional circumstances, on a participant's request. The Director will provide the other participant(s), if applicable, with the opportunity to respond prior to an adjournment of the hearing. If the Director declines to adjourn the hearing or decides to adjourn the hearing, the Director will provide reasons in writing. The Director will inform the participant(s) when the hearing will resume.

1.14 Oral Hearing

The Director must conduct hearings by written submission unless the Director decides that an oral hearing is necessary, either on their own initiative or upon application by the NAMP recipient or a person notified of potential liability under section 94(9) of the CCLA. Such a person may apply for an oral hearing by submitting a completed Application for an Oral Hearing form.

Unless extenuating circumstances apply, the form must be submitted for an AMP Hearing at the same time as the NAMP recipient's Application for AMP Hearing form. For a section 94(9) determination hearing held separately from an AMP Hearing, the form must be submitted by the deadline the Director provides for submissions.

The Director will review the completed form and make a decision as to whether or not to grant an oral hearing. As applicable, the Director may invite submissions from the other participant(s). In considering whether an oral hearing is necessary, the Director may consider:

- (a) whether the applicant's mental or physical disability prevents them from making written submissions;
- (b) whether there is a serious issue of credibility, the resolution of which is integral to the decision to be made and which cannot be adequately determined without an oral hearing;
- (c) whether any other circumstances make an oral hearing necessary in the interests of justice and fairness.

Pursuant to section 97 of the CCLA, there is no right to cross examination at an oral hearing.

If the Director grants the oral hearing, the Director will set the date and time of the oral hearing. The Director will inform the participant(s) of the oral hearing procedures, such as the order of submissions, the deadline to submit evidence, and the time period allotted for oral submissions.

Normally, the oral hearing will be conducted by teleconference. If the applicant or any participant does not attend within 15 minutes, the Director may proceed with the oral hearing in the absence of that participant's oral submissions.

1.14 Personal Liability for Corporate AMP

An officer, director or agent of a corporation may be personally liable under section 94(9) of the CCLA to pay an AMP that the Director imposed on a corporation, if they authorized, allowed or acquiesced in the contravention. The total amount of the AMP is set out in the corporation's compliance or concession order. The Director's determination that the corporation contravened section 15 or 18 of the CCLA is determinative of the Corporation's liability in any subsequent determination under section 94(9).

If the Director intends to consider whether a particular officer, director or agent of the corporation is liable under section 94(9), the Director will provide notice to the officer, director or agent with an opportunity to respond. The notice will include a summary of the CSU's information that indicates that the officer, director or agent authorized, allowed or acquiesced in the corporation's contravention of the CCLA.

If the officer, director, or agent wishes to participate in the hearing, they must inform the CSU by the deadline in the Director's notice. In the hearing, the Director will determine whether the person was an officer, director or agent and if so, whether they authorized, allowed or acquiesced in the contravention. Following the hearing, the Director will provide written reasons for their determination.

1.15 Compliance Order

If the Director imposes an AMP on the person named in the NAMP, or finds a person liable under section 94(9), the Director will serve that person a Compliance Order that sets out:

- (a) the reasons for imposing the AMP;
- (b) the amount of the AMP and the date by which the AMP must be paid; and
- (c) the person's right to a reconsideration under section 95.

The AMP must normally be paid within 30 calendar days after the date on which the person receives the Compliance Order unless the Director has specified a longer period in the Compliance Order.

A person who is required to pay a monetary penalty under a Compliance Order may

apply for reconsideration of that order within 30 calendar days after the date on which the person received the Compliance Order as set out in section 95 of the CCLA. More information on the Reconsideration process can be found in the CSU's Reconsideration Policy.