

 <p>BRITISH COLUMBIA COMMUNITY SAFETY UNIT</p>	<b>Application for the Return of Seized Cannabis Policy</b>	
	Last Updated:  August 11, 2021	Issuing Authority: <b>Director, CSU</b>

### 1.01 Introduction

Pursuant to section 105(4) of the *Cannabis Control and Licensing Act* (CCLA), a person, who is not a licensee may, within 30 calendar days after the date that the Director of the Community Safety Unit (the CSU) or a peace officer has seized cannabis that was in their possession, apply in writing to the Director for the return of the cannabis or for compensation because the cannabis seized was not possessed by the person in contravention of the CCLA or its regulations.

### 1.02 Authority

Pursuant to section 23(3) of the *Interpretation Act*, when the CCLA empowers the Director to do something, the Deputy Director has the same powers, including the authority to make decisions on applications for the return of seized cannabis under section 105(4) of the CCLA. The Director also has the authority under section 8 of the CCLA to delegate one or more of their powers and duties under the CCLA.

### 1.03 Deemed Receipt

Under section 41 of the *Cannabis Licensing Regulation* (CLR), a document given or served by the CSU on a person is conclusively deemed to be received,

- (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.

For the purpose of deadlines under this policy, if the CSU 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 Application for the Return of Seized Cannabis under Section 105(4)**

A person who wants to apply to the Director for the return of seized cannabis, or for compensation, because the cannabis seized was not possessed by the person in contravention of the CCLA or its regulations, must submit a completed Application for the Return of Seized Cannabis. The application should state the basis upon which the applicant asserts that the cannabis seized from the applicant was not possessed in contravention of the CCLA and include any evidence in support of that assertion.

The Director will only accept applications for the return of seized cannabis on the application form provided by the CSU. The Application for the Return of Seized Cannabis is available on the CSU website and may be emailed, faxed, or mailed to an applicant on request.

The CSU will not accept unsigned or incomplete applications. If the application is incomplete, the CSU will contact the applicant to provide the applicant with an opportunity to complete the application by a specified date. If the applicant does not provide a complete application by the specified date, the CSU will deem the application to have been abandoned and will advise the applicant accordingly.

The CSU will provide notice of the date that the review of the application is scheduled to begin.

If the applicant submits an Application for the Return of Seized Cannabis, and the seized cannabis is also the subject of a Notice of Administrative Monetary Penalty, the decision maker may or may not be the same person for the two proceedings.

### **1.05 Authorization of Representative**

If the applicant would like to be represented during the application process or allow for the disclosure of their personal information to a third party, the applicant must sign and submit an Authorization of Representative form to the CSU. If the Authorization of Representative form is incomplete or not properly executed by the applicant, the CSU will contact the applicant and request the missing information and the correctly executed authorization of representative form. The Authorization of Representative form is available on the CSU website and may be emailed, faxed, or mailed to an applicant on request.

If the applicant is an organization (e.g. a corporation, partnership, or society), the organization must submit an authorization of representative form to the CSU.

The Authorization of Representative allows the CSU to communicate directly with, and to provide disclosure directly to, the representative, as opposed to the applicant. Wherever “the applicant” is mentioned in this policy, it should be read as “the representative” where the applicant has properly executed an authorization of representative form.

### **1.06 Deadline for Application**

A completed Application for the Return of Seized Cannabis must be received by the CSU within 30 calendar days after the cannabis was seized.

The application can be sent by email to [csu@gov.bc.ca](mailto: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

It is the applicant’s responsibility to ensure that the CSU receives the application by the deadline. Pursuant to section 105 of the CCLA, the Director cannot accept applications for the return of seized cannabis received later than 30 calendar days after the date of seizure. If the application is received by the CSU after the deadline, the applicant will be notified that their application cannot be accepted.

### **1.07 Jurisdiction**

Pursuant to section 105 of the CCLA, the Director does not have the jurisdiction to accept an Application for the Return of Seized Cannabis if:

- the application was received by the CSU more than 30 calendar days after the date of seizure, or
- the cannabis was seized:
  - by the Director under any authority other than section 89, 91, or 101 of the CCLA,
  - by a peace officer under any authority other than section 101 of the CCLA, or
  - from a licensee.

If the CSU receives an Application for the Return of Seized Cannabis that is not within the Director's jurisdiction, the applicant will be notified in writing that their application cannot be accepted by the Director.

### **1.08 Seized Cannabis that is the Subject of a Prosecution**

If the application is accepted and the seized cannabis is the subject of a prosecution of an offence under the CCLA, including a violation ticket, the Director is not required to make a decision on the application until the proceedings are complete, pursuant to section 105(7) of the CCLA. The applicant will be notified if a decision will not be made until the legal proceedings are complete.

### **1.09 Applications that Involve Similar Questions**

If two or more applications before the Director arise from a seizure at a single location, or from seizures at multiple locations in which the same person(s) possessed the cannabis, the Director may do one or more of the following:

- (a) Combine the applications or any part of them,
- (b) Decide the applications, or any part of the applications, at the same time,
- (c) Decide the applications one after the other,
- (d) Stay one or more of the applications until after the determination of another one of them, or
- (e) Stay any one or more issues arising in any of the applications until after the determination of another issue.

Where the Director has stayed one or more applications under (d) or one or more issues in applications under (e), if the Director makes a decision that resolves an issue in an application that proceeds, the Director may treat that decision as determinative of the issue in the remaining applications.

The Director will notify an applicant if they decide to take any of the steps described in this section and will set out how the other procedures will be modified accordingly.

### **1.10 Disclosure**

If the application is accepted and the cannabis is not the subject of an on-going prosecution under the CCLA, the CSU will send a CSU disclosure package to the applicant. If the cannabis was seized by the CSU, the CSU disclosure package will consist of a cannabis seizure summary report, which will include evidence such as a seizure receipt and photographs, if applicable.

If the cannabis was seized by the police or another peace officer, the disclosure package will consist of the peace officer's report of the particulars of the seizure, in writing, as provided to the Director pursuant to section 106(b) of the CCLA. This may take the form of a cannabis seizure report or a summary of the evidence.

The CSU will redact information in accordance with section 11 of the CCLA, including third party personal information.

### **1.11 Deadline for Submissions and Evidence**

All additional submissions and evidence an applicant would like to be considered with their application should be received by the CSU by the disclosure deadline. The deadline will be set at **30 calendar days** from the date that the applicant is deemed to have received the disclosure package, as set out in section 1.03.

It will be up to the discretion of the Director conducting the written review to accept submissions or evidence received by the CSU after the deadline. If the Director determines that the evidence received after the deadline will not be accepted, the applicant will be advised of the decision.

All submissions and evidence must be sent by email to [csu@gov.bc.ca](mailto:csu@gov.bc.ca), by fax to 604-591-5611, or mailed to:

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

### **1.12 Decision on the Application for the Return of Seized Cannabis**

The Director will review the Application for the Return of Seized Cannabis, the submissions and evidence provided by the applicant, and the disclosure package, and will provide the applicant with a written decision with respect to whether the Director is satisfied that the cannabis seized was not possessed by the person in contravention of the CCLA and its regulations.

### **1.13 Returning Cannabis to Applicant**

If the Director orders the return of some or all the cannabis in the written decision and the cannabis was seized by the CSU, the CSU will return the cannabis as soon as practicable. An applicant cannot visit a CSU office or facility to obtain the cannabis.

If the cannabis was seized by a peace officer, the police force of which that peace officer is a member will be responsible for ensuring the return of that cannabis to the applicant.

### **1.14 Compensation for Destroyed Cannabis**

If the Director determines that the applicant did not possess some or all the cannabis in contravention of the CCLA or regulations, and the cannabis has been destroyed, the applicant will receive compensation for the destroyed cannabis.

Pursuant to section 105(8) of the CCLA, the amount of compensation will be determined in accordance with Part 5.1 of the *Cannabis Control Regulation* (CCR). Part 5.1 of the CCR provides that the manner and procedure for determining the amount of compensation depends on the type of the seized cannabis.

If the compensation determination is with respect to cannabis that was purchased, the amount of compensation may be based on the purchase price, if it can be proven in a

manner that is acceptable to the Director. It will be pro-rated to account for the quantity of seized cannabis determined to not have been possessed in contravention of the CCLA or regulations. Applicants may wish to provide evidence of the purchase price, such as an itemized purchase receipt or a price list from the place of purchase, for the Director's consideration.

If the purchase price has not been proven in a manner that is acceptable to the Director, the amount of compensation will be calculated in accordance with sections 34.4(1)(b) [cannabis purchased for consumption], 34.4(2)(b) [cannabis seeds], 34.6(b) [other cases], or 34.7(b) [medical cannabis] as applicable, of the CCR.

If the compensation determination is with respect to cannabis that was not purchased (e.g. plants), then the amount of compensation will be calculated in accordance with sections 34.5 [cannabis plant growing at dwelling house and cannabis harvested from plant] or 34.8 [medical cannabis plants and seeds and cannabis harvested from plant] of the CCR, as applicable.

The compensation value and an explanation of how the compensation value was determined will be included in the written decision. The Director will consider the evidence in the disclosure package, as well as any evidence provided by the applicant.

### **1.15 Judicial Review**

Pursuant to section 126 of the CCLA, the applicant can apply for judicial review within 30 calendar days after the date they receive written notice of the decision.