

A Submission to the Task Force on Marijuana Legalization and Regulation

September 2, 2016
Ottawa, Ontario



Introduction

Beer Canada is the voice of Canada's brewing industry. Our members account for 90 percent of domestic beer production.

Beer is naturally low in sugar, low in alcohol, and enjoyed regularly and responsibly by millions of Canadians. A large body of scientific evidence has been accumulated on the benefits of moderate beer consumption. Beer, like wine, has been associated with lower cardiovascular risk and can fit a calorie-wise diet that does not lead to weight gain.

While in other sectors, companies and jobs have moved offshore, beer remains a local industry. Domestic brewers account for 85 percent of all the beer sold in the country. The sale of beer supports 163,000 jobs across Canada. At the end of 2015, there were 644 licenced brewing facilities, covering an estimated 225 federal district ridings. Canada's brewers directly employ 12,000 Canadians and pay \$1 billion in salaries and wages, at an average of \$83,000 annually per employee. Beer is made with malt barley, a grain that Canada is exceptionally good at growing.

We note the body of research on the positive attributes of beer and the significant economic contribution our industry makes to the country because they stand in contrast to marijuana, where the science is still unclear and the economic impact uncertain.

We understand the political willingness to decriminalize marijuana. We remain neutral on the question of legalization. As an established industry that produces, distributes and sells a heavily regulated and highly taxed food product, we can constructively add to the consultation being undertaken by the Task Force. Brewers have invested heavily in responsible use programs and are committed members of Canada's National Alcohol Strategy.

In this submission, we make 11 recommendations for the Task Force to consider as it explores how best to legalize, regulate and restrict access to marijuana.

Minimizing Harms of Marijuana Use

Minimum Legal Purchase Age

At an April 2016 Conference of Western Attorneys General, US Senator Jason Lewis, Senate Chair of the Joint Committee on Public Health, noted that evidence on youth consumption of marijuana is unequivocal: it negatively affects behaviour, cognitive development and mental health, and its health effects are magnified by higher potency.

A 2015 report on effects of marijuana use during adolescence published by the Canadian Centre on Substance Abuse¹ highlights that:

- The earlier that an adolescent begin use and the longer their use continues, the more serious are structural and functional brain changes that impair maturation of executive functions such as working memory, learning, problem solving, judgment, planning and control of impulsivity;
- Early commencement and persistence of use by adolescents predict increased risk of addiction, psychosis, depression and anxiety disorders.

The guidance from the College of Family Physicians of Canada (CFPC) to its members is not to prescribe marijuana to patients who are under the age of 25, because youth who smoke marijuana are “at greater risk than older adults for cannabis-related psychosocial harms, including suicidal ideation, illicit drug use, cannabis use disorder, and long-term cognitive impairment.”²

The College of Physicians and Surgeons of Ontario (CPSO) offers the same guidance as CFPC and highlights that, “given the potentially severe nature of the risks, physicians must not prescribe dried marijuana to patients under the age of 25 unless all other conventional therapeutic options have been attempted and have failed to alleviate the patient’s symptoms.”³

Recommendation:

- 1. Given the concerns of the medical community with respect to prescribing marijuana to young people, the Task Force should consider establishing a minimum purchase age for recreational marijuana that is evidence based and at least equal to the minimum purchase age for tobacco.**

Advertising and Marketing Restriction to Minimize the Profile and Attractiveness of Products

In February 2016, Tweed, an Ontario marijuana manufacturer, entered into a partnership with Snoop Dogg that gives it exclusive rights to use certain content and brands owned by the celebrity rapper. Tweed produces medical marijuana but is readying itself for the introduction of a recreational marijuana market.

¹ <http://www.ccsa.ca/Resource%20Library/CCSA-Effects-of-Cannabis-Use-during-Adolescence-Report-2015-en.pdf>

² http://www.cfpc.ca/uploadedFiles/Resources/_PDFs/Authorizing%20Dried%20Cannabis%20for%20Chronic%20Pain%20or%20Anxiety.pdf

³ <http://www.cpso.on.ca/CPSO/media/documents/Policies/Policy-Items/Marijuana-for-Medical-Purposes.pdf?ext=.pdf>

Whoopie Goldberg, highlighted in August 2016 that she looks to expand her marijuana business into Canada. Her products include a cannabis-infused cacao.

As highlighted in the Task Force's discussion paper, advertising and promotion of marijuana would serve to normalize it in society and thus should be restricted to dampen widespread use and associated harms. Permitting celebrity endorsements of marijuana would lead to normalization, as would marketing activities such as limited-time-offers, loyalty reward programs or two-for-one specials. The use of health claims, or promoting marijuana on the basis of potency, would also result in a false sense of safety and acceptance.

Recommendation:

- 2. The Task Force should consider restricting the advertising and marketing of marijuana, so as not to appeal to youth; and, prohibit celebrity endorsements, health claims and the use of limited -time-offers and reward programs. Promoting marijuana on the basis of THC potency must also be prohibited.**

Taxation and Pricing

Canada has the third highest beer taxes in the world, averaging 50% of the retail price for a 24 pack. From the sale of beer alone, federal, provincial and municipal governments collect \$6 billion annually.⁴

Washington State, with a population of 7 million, generated \$70 million in tax revenue from the sale of marijuana in the first year it was legalized.⁵ By comparison, New Brunswick, with a population one-tenth the size of Washington State, annually collects \$165 million in beverage alcohol taxes, and another \$80 million when federal excise and the HST are included.⁶ The Liquor Control Board of Ontario collected more tax from beverage alcohol sales in January⁷ than Colorado did on marijuana sales in all of 2015.⁸

⁴ Conference Board of Canada 2013

⁵ <http://lcb.wa.gov/marj/dashboard>

⁶ Statistics Canada, CANSIM 183-0025 – New Brunswick

⁷ Statistics Canada, CANSIM 183-0025 - Ontario

⁸ <https://www.mpp.org/news/press/colorados-regulated-marijuana-system-generated-135-million-in-revenue-for-the-state-in-2015-including-35-million-for-school-construction-projects/>

There have been media reports indicating that some Canadian elected officials do not see a great potential for tax revenues from the sale of marijuana.⁹ While taxing marijuana may prove difficult, the tax should be similar to that applied to tobacco, and no less than the tax burden on beverage alcohol. To further protect against harms, the tax structure should discourage consumption of more potent products.

Recommendation:

- 3. The Task Force should recommend a tax on marijuana that is similar to tobacco, and calibrated to discourage consumption of more potent marijuana products.**

Restrictions on Marijuana Products

The evidence from US states that have legalized marijuana suggests that edibles, and concentrates infused with food, will grow to make up a large share of total marijuana sales. In Colorado for example, according to BDS Analytics, in the first quarter of 2016, edibles and concentrates accounted for about a third of overall marijuana sales, up from just 24% a year earlier.¹⁰ BDS Analytics tracks and reports on marijuana industry data, and expects that this market sector will surpass revenues from marijuana flower – not only in Colorado, but also nationwide.

This growth presents a health and safety concern. A study published in the journal JAMA Pediatrics reviewed admissions to the Children’s Hospital Colorado and calls to poison control centers in the state from January 2009 to December 2015. The average rate of marijuana-related visits to the children’s hospital doubled from 1.2 per 100,000 population two years prior to legalization, to 2.3 per 100,000 population two years after legalization.¹¹ According to the study, more than half of the children taken to the hospital ingested the drug in edible forms such as candy and baked goods.

A legal framework for recreational marijuana use will not prevent users from being able to mix, blend or bake their own edible marijuana-infused products. But given the complexities and the risk to children, commercial production of edibles and concentrates should not be rushed. The regulatory framework around foods made with marijuana will need to be robust, considering the need for standards of identity, tamper-evident and child proof packaging as well as consistent

⁹ <http://www.cbc.ca/news/politics/legal-marijuana-taxes-1.3370358>

¹⁰ <http://mjbizdaily.com/chart-of-the-week-sales-of-marijuana-concentrates-edibles-surgin-in-colorado/>

¹¹ <https://archpedi.jamanetwork.com/article.aspx?articleid=2534480>

labelling for potency. The commercial manufacture of edibles requires a separate regulatory consultation process, one that includes the food and beverage manufacturing industry.

In recognition of the more serious and unpredictable impairment effects that result when alcohol and marijuana are combined, the two should not be blended or infused into a consumer product.

Recommendation:

- 4. Considering the potential health and safety implications for children, the Task Force should recommend a separate consultation process be undertaken for the purpose of establishing a legal framework for edible marijuana products, one that involves the food and beverage manufacturing industry, which has expertise in standardization, quality control, food safety, packaging and labelling.**
- 5. The Task Force must recommend prohibiting the commercial production and sale of beverage alcohol products blended or infused with marijuana.**

Limitations on Where Marijuana can be Sold

The Cannabis Trade Alliance of Canada (CTAC), in a position paper published in May 2016, expressed a strong belief that selling alcohol and cannabis products together sends the wrong message to Canadian youth about responsible use.¹² We agree, and would go further. Selling beverage alcohol, or any other food alongside marijuana, would suggest that the latter is a normal everyday product, which it is not. And normalizing marijuana is not the stated objective of legalization.

In our research, when Canadians are asked which places should be allowed to sell marijuana, 61% selected existing medical marijuana shops and 51% selected pharmacies. By comparison, only 35% selected provincially regulated beverage alcohol retailers. Support drops dramatically for more convenient shopping opportunities such as gas stations (10%), convenience stores (8%) and grocery stores (7%). Our survey data makes clear that, while Canadians might be supportive of decriminalizing possession of small amounts, marijuana is not viewed as mainstream, and legalization is objectionable if it entails neighbourhood access.

It is worthwhile noting that in Colorado, following legalization of recreational marijuana, the black market did not go away. It just took on a different form, via resale of legally purchased marijuana. Crime, and challenges with banking and handling large amounts of cash continue to be an issue.

¹² <https://www.sustainablecannabis.ca/pdf/CTAC-Cannabis-Legalization-in-Canada.pdf>

The medical marijuana system would appear to be the most appropriate way to provide access to recreational marijuana without fostering an environment that popularizes the drug and the many ways it can be blended, infused, baked, etc. It offers the greatest control on the producer end for the government to monitor for compliance, quality, potency and innovations around THC delivery formats. By it being only available through mail-order, as it is with medical marijuana today, governments could limit normalization by making experimentation and impulse purchases less accessible and less frequent. Restricting the amount and potency of a marijuana product that can be delivered in one shipment to a user would reduce theft and the overall cost of enforcement. It would also make it more difficult for a legal age buyer to purchase large quantities for resale to vulnerable populations. Given that one of the goals of legalization is to improve public health, online buyers could be required to hold a permit and listen to public health messages on the harms of marijuana use prior to purchase.

Recommendation:

- 6. Keeping order quantities small, applying the medical marijuana mail-order model to recreational marijuana could enable access for adults while keeping costs low, and minimizing the risk of uncontrolled/illegal sales inadvertently putting youth at risk.**

Designing an Appropriate Distribution System

As noted earlier under “limitations on where marijuana can be sold”, the medical marijuana distribution model that relies on Canada Post for delivery to end users would be ideal for recreational marijuana distribution as well. Individual shipments kept small would mitigate the risk of theft while the marijuana is on route to the end user, and prevents users from buying large quantities that could be resold to vulnerable populations.

Recommendations:

- 7. The Task Force should consider restricting recreational marijuana sales to the distribution channel already in place for medical marijuana, which will address the issue of access, mitigate against theft, keep enforcement and compliance costs low, and dampen normalization.**

Enforcing Public Safety and Protection

Strengthened laws and appropriate enforcement response

Establishing a successful legalization regime will require a clear and robust legislative and regulatory framework. Law enforcement will also need to explore their role, and develop policy, training and practices. This will need to be coupled with appropriate actions to enforce measures outlined in the new regime and to deal with those who operate outside of it.

Regulating marijuana will not remove it from the illicit market. Close consideration must be given to new or strengthened sanctions for those who act outside the law. This includes vigilant enforcement as well as new or strengthened laws, at the federal, provincial and territorial, or local level as appropriate, covering all aspects of the production and sale of marijuana as well as its illicit use in the public space.

Resources are important. According to a Canadian Centre on Substance Abuse report, Colorado stakeholders indicated that adequate resources need to be invested in to ensure access to the training required for effective and consistent enforcement. Several Washington stakeholders felt that frontline officers did not view enforcement of the regulations as a priority, which led to the normalizing of transgressions such as use in public. Colorado stakeholders pointed out the lack of labs for sample analysis as a significant obstacle. Washington stakeholders emphasized that the availability of testing labs and the scaling up of impaired driving detection capacity before legalization had been especially beneficial.¹³

Recommendation:

- 8. The legal marijuana framework should include tools that allow law enforcement to investigate and penalize those who choose to operate outside of the legal framework.**

Enforcement Tools for Marijuana Impaired Driving

Brewers continuously invest in promoting the responsible consumption of beer. Since the 1980's the community has come together around a simple and powerful message: "don't drink and drive." In the last 15 years, the rate of drink-drive incidents has decline by 22%.¹⁴

Unlike beverage alcohol, a reliable technology, coupled with clear metrics, is not available to accurately and consistently test for marijuana impairment. Add to this the fact that determining whether someone is impaired by marijuana, as opposed to having merely used the drug, is much more complex than in the case of alcohol. The AAA's Foundation for Traffic Safety recently highlighted in a report that the *per se* laws for THC following cannabis use cannot be scientifically supported.¹⁵ This means that people are being charged when they are possibly innocent, and others are released, when potentially guilty.

¹³ <http://www.ccsa.ca/Resource%20Library/CCSA-Cannabis-Regulation-Lessons-Learned-Report-2015-en.pdf>

¹⁴ Statistics Canada, CANSIM 252-0051

¹⁵ <https://www.aaafoundation.org/sites/default/files/EvaluationOfDriversInRelationToPerSeReportFS.pdf>

In the US, there are 12 states, including some that have legalized marijuana, that have zero-tolerance for THC at any level.¹⁶ This is the approach that should be taken in Canada until the technology and a definition of marijuana impairment is available to support law enforcement, reduce the burden on the judicial system and protect the public.

Recommendation:

- 9. Marijuana impairment when operating a motor vehicle should be based on presence at any level (zero tolerance) until a safe level and a court accepted protocol are identified.**

Restriction of Consumption to Home or Limited Number of Well Regulated Publically –Accessible Sites

To ensure that legalization does not, over time, result in greater normalization, the rules for public consumption of marijuana in any form, whether smoking, vaping, eating, etc. should follow the same rules as tobacco smoking.

The discussion paper notes that consideration will need to be given to the use of marijuana in the workplace, and provides the example of a zero tolerance policy for those that operate heavy machinery. The Task Force will need to consider going further, at least until there is evidence to support job performance, within the context of any occupation, is not negatively affected by marijuana use.

Recommendations:

- 10. Tobacco rules for public consumption should apply to marijuana, including in the workplace.**

Accessing Marijuana for Medical Purposes

The discussion paper highlights the experience in Colorado where the co-existence of distinct market channels for recreational and medical marijuana complicated regulation and enforcement. To avoid paying tax, recreational marijuana users continue to access the medical marijuana market. The tax-free medical marijuana channel sets conditions for the black market to persist. Colorado's experience should inform the development of a legal marijuana framework in Canada. One framework should be developed to address the issue of user-accessing legal marijuana, whether for recreational or medical purposes.

¹⁶ http://www.ghsa.org/html/stateinfo/laws/dre_perse_laws.html

Recommendations:

- 11. One legal framework should cover the production, distribution and sale of marijuana, whether medical or recreational, to maximize control, keep enforcement costs low, and dampen normalization of marijuana use. If an alternative channel is permitted for recreational marijuana, the control elements should be as rigorous as they are for medical marijuana.**

Conclusion

We understand the government's willingness to decriminalize marijuana and agree the drugs' production, distribution and sale needs to be regulated and tightly controlled. We offer the following recommendations to assist the government in preventing the normalization of marijuana:

- 1. Given the concerns of the medical community with respect to prescribing marijuana to young people, the Task Force should consider establishing a minimum purchase age for recreational marijuana that is evidence based and at least equal to the minimum purchase age for tobacco.**
- 2. The Task Force should consider restricting the advertising and marketing of marijuana, so as not to appeal to youth; and, prohibit celebrity endorsements, health claims and the use of limited -time-offers and reward programs. Promoting marijuana on the basis of THC potency must also be prohibited.**
- 3. The Task Force should recommend a tax on marijuana that is similar to tobacco, and calibrated to discourage consumption of more potent marijuana products.**
- 4. Considering the potential health and safety implications for children, the Task Force should recommend a separate consultation process be undertaken for the purpose of establishing a legal framework for edible marijuana products, one that involves the food and beverage manufacturing industry, which has expertise in standardization, quality control, food safety, packaging and labelling.**
- 5. The Task Force must recommend prohibiting the commercial production and sale of beverage alcohol products blended or infused with marijuana.**
- 6. Keeping order quantities small, applying the medical marijuana mail-order model to recreational marijuana could enable access for adults while keeping costs low, and minimizing the risk of uncontrolled/illegal sales inadvertently putting youth at risk.**

- 7. The Task Force should consider restricting recreational marijuana sales to the distribution channel already in place for medical marijuana, which will address the issue of access, mitigate against theft, keep enforcement and compliance costs low, and dampen normalization.**
- 8. The legal marijuana framework should include tools that allow law enforcement to investigate and penalize those who choose to operate outside of the legal framework.**
- 9. Marijuana impairment when operating a motor vehicle should be based on presence at any level (zero tolerance) until a safe level and a court accepted protocol are identified.**
- 10. Tobacco rules for public consumption should apply to marijuana, including in the workplace.**
- 11. One legal framework should cover the production, distribution and sale of marijuana, whether medical or recreational, to maximize control, keep enforcement costs low, and dampen normalization of marijuana use. If an alternative channel is permitted for recreational marijuana, the control elements should be as rigorous as they are for medical marijuana.**

We are grateful for the opportunity to contribute to the discussion on legalizing access to marijuana for medical and recreational use. Canada's brewers have an extensive history in producing, distributing and selling a heavily regulated and highly taxed food product. As the Task Force consults further on this issue, we would welcome the opportunity to participate in future consultations by bringing evidence, and best practices from around the world, to the attention of the government.