



## Written Brief to the Standing Committee on Health

### **C-45 - An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts - Short Title - Cannabis Act**

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#### ***Introduction***

In light of their role as law enforcement agencies, Canadian police services will undoubtedly be impacted by the proposed legalization of cannabis. Accordingly, the Canadian Association of Chiefs of Police (“CACP”) is sharing its expertise to help mitigate the risk and impact of the proposed *Cannabis Act* (hereinafter, “the Act”) from a public safety and policing perspective.

The goal of this paper is to identify concerns related to several key provisions of the Act, and to provide recommendations in order to achieve the objectives of the proposed legislation. This paper will address the following major themes outlined in the CACP’s opening remarks in detail: Training and the Impact on Police Resources, Personal Cultivation and Possession, Organized Crime, Medical Marijuana, Packaging and Labeling, Return of Property, and Youth and Public Education.

#### ***Training and the Impact on Police Resources***

The CACP submits that Canadian police services will not be equipped to provide officers with the training and resources necessary to enforce the new regime within the existing contemplated timeframe. With the July 2018 legalization date quickly approaching, resource constraints and adequate training of officers are areas of concern for all Canadian police services. Accordingly, the CACP submits that guidance and direction regarding resource allocation, and sufficient time to train front line officers to implement the proposed legislation are critically needed, either through explicit regulations prior to legalization, or through the postponement of the legalization date.

Further, the CACP requests that a standardized approach be implemented in advance to avoid gaps and disparities and to ensure an equal distribution of resources and federal funding across provinces and territories. Examples of training and preparation that will be required include: the training of front line officers on their specific duties vis-à-vis the legislation such as their roles in assisting inspectors, seizing plants, assisting in the implementation of public education on marijuana through School Liaison Officers, and providing details in relation to the ticketing regime (i.e. what will the tickets look like? How will police be able to differentiate licit and illicit cannabis?)

Finally and in light of resource constraints, the CACP requests that under Part 7 of the Act, inspectors be provided with broad powers to investigate, lay charges and issue tickets to offset some of the numerous responsibilities that will be downloaded on police following legalization.

### ***Personal Cultivation and Possession***

The CACP strongly recommends against in-home production and that any provisions related to personal cultivation be removed. It is expected that personal cultivation will result in over production and the manipulation of growth patterns thereby placing a greater demand on police resources, including increased calls for service and investigations. Section 8(1)(e) of the Act states that individuals may possess up to four budding cannabis plants. From an enforcement perspective, this provision is problematic as monitoring the precise amount of plants produced in personal dwellings is restricted and cannot be managed. Secondly, section 12(6) of the Act states that the plants may not be more than 100 centimeters in height. This provision leaves many unanswered questions and does not address the ability to produce marijuana by manipulating the growth of the plant. It is likely that growers will circumvent the rules and processes will be developed to grow plants wider since there is no restriction on width. In sum, it is recommended that the in home production provisions be removed to mitigate risks of over production.

Drawing from the experiences of Colorado and Washington, it is clear that the ability of law enforcement to successfully police personal cultivation has proven to be an arduous task. Concerns regarding cultivation identified by these states include: Significant workload/resource increases and challenges with police agencies following legalization, increase in cannabis seizures due to over production by residential growers, large scale marijuana grows, and an increase in time dedicated to enforcing new laws.

Furthermore, given that cannabis will now be readily accessible in homes, there are risks that this may lead to increased exposure and consumption amongst youth. The CACP submits that the personal cultivation provisions are counter to the Bill's stated objective of protecting youth.

The personal cultivation provisions and section s. 8(1)(b) in particular, also raise concerns of having to prove knowledge of the possession of illicit cannabis. Conceivably, persons in possession may argue a lack of awareness as to what constitutes budding or flowering plants. In addition, since the Act remains silent as to the quantity of cannabis that may be possessed in the home, this leaves open the possibility that individuals can store cannabis that is sourced both legally and illegally, making it challenging for police to determine whether it was acquired lawfully.

In sum, training and education will be required in order to enable police and members of the public to identify between licit and illicit cannabis, to allow for effective enforcement and compliance. Given these challenges, the CACP requests further reconsideration of the personal cultivation provisions.

### ***Organized Crime***

Giving consideration to the simple theory of supply and demand and having had the opportunity to learn from the involvement of organized crime in illicit tobacco, as well as experiences from jurisdictions that have already legalized cannabis, ensuring the regulated cannabis pricing scheme discourages competition from criminal organizations will be critical for deterring organized crime. Accordingly, the CACP requests clarification on behalf of the Federal Government regarding the pricing of cannabis in the legal market and assurance that producers with

criminal backgrounds will be prevented from entering the legal market through adequate security clearance measures.

Criminal Intelligence Service Canada has identified more than 300 organized crime groups involved in the production, distribution, importation and/or exportation of illicit cannabis in Canada. A number of these groups are well established with national, and international criminal networks involved in facilitating and enabling their criminal enterprises. In fact, there have been a number of shootings and homicides across Canada where the victims were actively conducting what would be considered legal business within the medical marijuana framework. At the time of these incidents, the victims were also associated to criminal organizations that are known to traffic in illicit drugs, including cannabis.

Similarly to the Canadian government's objectives in introducing this Act, Colorado and Washington legalized cannabis in order to keep profits out of the hands of criminals; however, according to the 2016 Colorado Department of Public Safety's report entitled *Marijuana Legalization in Colorado: Early Findings* and the 2016 *Washington State Marijuana Impact Report*, individuals and criminal organizations continue to manufacture, distribute, divert and traffic marijuana illegally.

Evidence from these jurisdictions indicates that legalization does not necessarily eliminate the prevalence of organized crime in the production, distribution and sale of cannabis. However, in the event the Act is successful in reducing the presence of organized crime in the illicit cannabis market, it will result in decreased profits for these groups. We fear that consequently, organized crime groups may turn their attention to competing with the legal market by undercutting the regulated pricing scheme and attempting to infiltrate the legally regulated medical marijuana industry as a licensed producer.

Furthermore, we are concerned that the Act will result in increased cannabis consumption, thereby creating an increase in demand and an opportunity for organized crime to profit from an illicit black market by trafficking cannabis with higher tetrahydrocannabinol (THC) content at lower cost to the consumer.

The CACP submits that an approach similar to what is seen in the provincial alcohol and gaming regulations would be beneficial in the cannabis context. Current alcohol and gaming regulations provide the Minister with the discretion to revoke licenses and permits where individuals seeking licenses are associated with criminals and/or criminal organizations, and impose a thorough security clearance requirement. Assessments are comprised of criminal record checks, intelligence checks, local law enforcement indices checks and financial audits. Such a process would ensure that individuals with ties to criminal organizations are not licensed in the legal cannabis regime.

### ***Medical Marijuana***

The CACP proposes merging of the current medical marijuana regime – the *Access to Cannabis for Medical Purposes Regulations* (hereinafter, "ACMPR") – with the legal cannabis regime. As detailed above, police forces across Canada have observed a link between licensed and designated producer provisions that came into force under the ACMPR following the Federal Court of Canada decision in *Allard*, and the illicit sale of cannabis and organized crime.<sup>1</sup>

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<sup>1</sup> The November 2016 final report of the Task Force on Cannabis Legalization and Regulation, entitled "A Framework for the Legalization and Regulation of Cannabis in Canada", estimated that the illegal trade of marijuana in Canada generates an "estimated \$7 billion in income annually for organized crime".

The CACP is concerned with the potential inclusion of organized criminals as licensed growers and distributors within the new cannabis regime. Section 158(1) of the Act states that every license issued under section 35 of the ACMPR that is in force immediately prior to the commencement day will be deemed to be a license issued under section 62 of the *Cannabis Act*. This provision is troubling for the CACP, as the regime will automatically license all personal and designated growth licensees, without the need to satisfy conditions for a license set out in section 62 of the Act. As such, the legislation has the potential of capturing criminal organizations into the legal market, allowing for exploitation within the regime, as is presently occurring in the medical marijuana industry.

It is the position of the CACP that the existing medical marijuana regulations will no longer be needed with the introduction of this Act. Combining the regulatory framework associated to the production, distribution and legal access to cannabis under the new Act for both recreational cannabis and medical marijuana would:

- 1) Reduce the risk of confusion between the two systems and the associated burden placed on frontline police officers who have to interpret the relevant legislations;
- 2) Align the efforts of Health Canada officials and law enforcement agencies responsible for enforcing the associated legislation;
- 3) Limit the number of corporations authorized to produce and distribute marijuana thereby allowing for more robust vetting and quality control.
- 4) Provide an opportunity to go beyond reducing the risks associated to diverting legal cannabis and/or medical marijuana by mitigating the capabilities of organized crime to money launder within the current medicinal marijuana framework and the proposed Cannabis Act.

Whether under a combined regulatory framework, or if only addressed within the regulations of the Act, including forensic financial audits within the initial security clearance process and at regular ongoing intervals would assist with identifying the connection of organized crime to an applicant or designated entity.

### ***Packaging and Labeling***

Although the CACP agrees with the Bill's aim to dissuade youth consumption of cannabis through plain packaging, concerns from a law enforcement perspective nevertheless exist. The CACP recommends that that packaging requirements be sufficiently stringent, providing clear labeling to allow police to identify between legal and illegal cannabis, and giving adult users adequate information to make informed decisions by specifying the strain and THC content that is being displayed/marketed for purchase and to help protect youth. We further recommend that

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Police agencies across Canada have witnessed increasing abuse of Health Canada authorizations (personal and designated production licenses) to grow marijuana for medical purposes. Excessive amounts of marijuana grown under Health Canada authorizations is diverted to the illicit market by organized crime groups and sold by street level traffickers or directly to illegal dispensaries. The size and scale of these grow operations generates profits for organized crime groups into the hundreds of millions of dollars. In some cases, the number of plants being grown exceeds the prescribed limits in extraordinarily high volumes.

Ontario and British Columbia are home to the majority of medical marijuana personal production activities under the existing medical marijuana schemes. In the past three years, police services in Ontario have investigated numerous incidents of medical marijuana overproduction, for example:

- During an investigation into a medical marijuana grow operation in Oxford County police seized **12,232** marijuana plants from 15 greenhouses, 600lbs of marijuana bud, and a loaded handgun. It was revealed that the Health Canada authorizations only allowed for **684** plants to be produced at the location; and,
- Police seized 1025 marijuana plants weighing a total of 30,000lbs from an industrial medical marijuana grow operation in Simcoe County; including one plant with over 10lbs of marijuana bud. In this instance the plants reached over twelve feet tall; this height and yield are not uncommon. It is estimated that these plants had a potential yield of \$9.2 million

adequate labeling include notice regarding the severe penalties for providing cannabis to youth.

### ***Return of Property***

Of major concern to law enforcement is the requirement to return seized property and the impact on police resources. Without question, police services across Canada are in no position to effectively house, store, maintain and care for cannabis plants or provide compensation to owners. Accordingly, the CACP requests that the Act address these concerns by relieving municipal and provincial police forces of any responsibilities associated with the deterioration of seized cannabis plants, their return or the need for compensation.

Under several return of property provisions under the Act such as sections 99(6) and 103, the Minister must, on application from a person with a valid property interest in a particular cannabis plant or plants, direct that the property be returned to the applicant or compensate them the appropriate amount. These provisions create an onerous financial burden and resource capacity issue since presumably, police will now be required to house, provide proper maintenance, or compensate the owner for the value of the property where necessary. The CACP submits that this is a significant issue for police as there are no current facilities or available funding to maintain these plants nor are there any means to provide compensation.

Alternatively, the CACP requests that adequate funding to cover these costs be distributed to police services to ensure that care and maintenance issues and compensation are sufficiently addressed.

### ***Youth and Public Education***

In light of the social share provisions whereby youth are permitted to possess five grams of cannabis or less, the CACP proposes that a more rigorous educational system be implemented across the provinces and territories as this would assist in crime prevention and encourage social responsibility in our local communities. In the interest of mitigating the risk to youth and maintaining the long-term quality of life in our communities, police services will need to amend their crime prevention and social responsibility initiatives to incorporate elements that address the public safety and quality of life risks associated to the use of cannabis. This creates an added resource concern that will require specific training and funding.

While the goal is not to criminalize or sanction minor possession, as this would only contribute to further delays in the system, the CACP recommends that the proposed legislation target youth education and awareness regarding cannabis consumption, and prohibition of use in schools to further safeguard against distribution and illicit sales.

### ***Conclusion***

Given the complexities of the Act and the impact it will have on enforcement, resourcing, funding and training issues, there remain many unanswered questions. It is hoped that an extension of time will be carefully considered to allow for law enforcement officials to perform their roles in an effective, solution-oriented and responsible manner.

The CACP supports the goals of the act which is to protect youth, disrupt organized crime and to eliminate the criminalization of minor marijuana offences. To do this however, we need to ensure that everyone across all levels of government are well aligned in the implementation of the new regime. Additionally, police services must be fully apprised of the new regime with sufficient time to train their members and allocate sufficient resources.