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Canadian Police Association Position Paper
Legalization of recreational marijuana

Background:

During the 2015 federal election campaign, Liberal leader Justin Trudeau committed to the “legalization, regulation, and restriction” of access to marijuana. Their election platform read:

“We will remove marijuana consumption and incidental possession from the Criminal Code, and create new, stronger laws to punish more severely those who provide it to minors, those who operate a motor vehicle while under its influence, and those who sell it outside of the new regulatory framework.” (Liberal Party of Canada Election Platform “Real Change”, 2015)

In June 2016, the Liberal government announced the creation of a task force, chaired by former Deputy Prime Minister Anne McLellan, which engaged Canadians, stakeholders, and representatives from provincial, territorial, and municipal governments, and which produced a report in November, 2016, that contained a significant number of non-binding recommendations for the government to consider as they moved forward on the legalization and regulation of cannabis.

Some of the notable recommendations within the report included:

- Set a national minimum age of purchase of 18, acknowledging the right of provinces and territories to harmonize it with their minimum age of purchase of alcohol;
- For edibles, to implement maximum levels of THC per serving and per product;
- Allowing personal cultivation of cannabis with a limit of four plants per residence;
- Maintaining criminal offences for illicit production, trafficking, possession for the purposes of trafficking, and trafficking to youth;
- Investing in research to better link THC levels with impairment and crash risk to support the development of a limit with respect to the impaired operation of a motor vehicle.

The full list of recommendations of the task force can be found at <http://healthycanadians.gc.ca/task-force-marijuana-groupe-etude/framework-cadre/index-eng.php>

Following the recommendations of the task force, the government, led by Justice Minister Jody Wilson-Raybould, has introduced two Bills in the House of Commons, C-45 and C-46. C-45 enacts the Cannabis Act to provide legal access to cannabis and to control and regulate its production, distribution and sale. C-46 amends the provisions of the Criminal Code that deal with offences and procedures relating to drug-impaired driving (as well as makes changes to the criminal code regarding screening for alcohol-impaired driving).

C-45 would, if passed:

- Establish criminal prohibitions such as the unlawful sale or distribution of cannabis, including its sale or distribution to young persons, and the unlawful possession, production, importation and exportation of cannabis;
- enable the Minister to authorize the possession, production, distribution, sale, importation and exportation of cannabis, as well as to suspend, amend or revoke those authorizations when warranted;
- authorize persons to possess, sell or distribute cannabis if they are authorized to sell cannabis under a provincial Act that contains certain legislative measures;
- prohibit any promotion, packaging and labelling of cannabis that could be appealing to young persons or encourage its consumption, while allowing consumers to have access to information with which they can make informed decisions about the consumption of cannabis;
- provide for inspection powers, the authority to impose administrative monetary penalties and the ability to commence proceedings for certain offences by means of a ticket;
- permit the establishment of a cannabis tracking system for the purposes of the enforcement and administration of the Act;
- authorize the Governor in Council to make regulations respecting such matters as quality, testing, composition, packaging and labelling of cannabis, security clearances and the collection and disclosure of information in respect of cannabis as well as to make regulations exempting certain persons or classes of cannabis from the application of the Act.

Effects of marijuana legalization in other jurisdictions:

In November 2012 the states of Colorado and Washington approved ballot initiatives that legalized marijuana for recreational use under state law. Two years later, Alaska and Oregon followed suit.

In Colorado, residents could now buy up to one ounce of marijuana in a single transaction, whereas out-of-state residents could purchase 0.25 ounces. The state imposed a 15 percent tax on sales of recreational marijuana from cultivators to retailers and a 10 percent tax on retail sales (in addition to the existing 2.9 percent state sales tax on all goods). Local governments in Colorado were permitted to impose additional taxes on retail marijuana.

In Washington, ballot initiatives removed most state prohibitions on marijuana manufacture and commerce, permitted limited marijuana use for adults aged 21 and over, and established the need for a licensing and regulatory framework to govern the state's marijuana industry. The state imposed a 25 percent excise tax levied three times (on marijuana producers, processors, and retailers) and

earmarked the revenue for research, education, healthcare, and substance-abuse prevention.

Full legalization passed in Oregon on November 4, 2014. Ballot initiatives legalized recreational marijuana for individuals over age 21 and permitted possession of up to eight ounces of dried marijuana, along with four plants, with the Oregon Liquor Control Commission regulating sales of the drug. The state passed a 17 percent state sales tax on marijuana retail sales and empowered local jurisdictions to charge their own additional 3 percent sales tax.

A ballot initiative in Alaska on recreational marijuana legalization passed in November 2014 with 53 percent of voters in support. It permitted adults aged 21 and over to possess, use, and grow marijuana. It also legalized manufacture and sale. The law further created a Marijuana Control Board to regulate the industry and establish excise taxes.

Studies in these jurisdictions have found recreational marijuana legalization has had little impact on the price of marijuana. According to the Cato Institute, the cost of high-quality marijuana hovers around \$230 per ounce while that of medium-quality marijuana remains around \$200 in Colorado. In Washington State, marijuana prices have been similarly steady and have converged almost exactly to Colorado prices-roughly \$230 for high-quality marijuana and \$190 for medium-quality marijuana. Oregon prices show a rise after legalization, catching up to Colorado and Washington levels.

Studies in Colorado however have shown some cause for concern. According to the Rocky Mountain High Intensity Drug Trafficking Area, a federal task force, since marijuana legalization:

- Marijuana-related traffic deaths increased 48 percent.
- Over 20 percent of all traffic deaths were marijuana related compared to only 10 percent six years ago.
- Marijuana-related emergency department visits increased 49 percent.
- Marijuana-related hospitalizations increased 32 percent.
- Marijuana-related calls to the Rocky Mountain Poison Center increased 100 percent.

It should be noted that many of these statistics are preliminary, due to the lag in reporting requirements for most state agencies and the relatively recent moves towards marijuana legalization. A much clearer picture is expected to be available within the next 2 years.

C-45:

If C-45 were to pass, un-amended, the following limits would be in effect, no later than July 2018.

Adults who are 18 years old or older would be able to legally:

- possess up to 30 grams of dried legal cannabis or equivalent in non-dried form when in public
- share up to 30 grams of dried legal cannabis with other adults

- purchase dried or fresh cannabis and cannabis oil from a provincially regulated retailer
 - in those provinces that have not put in place a regulated retail framework, individuals would be able to purchase cannabis online from a federally licensed producer with secure home delivery through the mail or by courier
- grow up to 4 cannabis plants per residence (not per person) for personal use, from licensed seeds or seedlings supplier, with each plant not to exceed 1 metre in height
- make legal cannabis-containing products at home, such as food and drinks, provided that dangerous organic solvents are not used in making them

Initially, adults would be able to legally purchase fresh and dried cannabis, cannabis oils, and seeds or plants for cultivation. Other products, such as edibles, would be made available at a later date, once federal regulations for their production and sale have been developed and brought into force.

Possession, production, distribution and sale outside the legal system would remain illegal and be subject to criminal penalties proportionate to the seriousness of the offence, ranging from ticketing up to a maximum penalty of 14 years' imprisonment. The current program for access to cannabis for medical purposes would continue under the new Act.

Challenges for law enforcement:

The government has been clear regarding their intentions to legalize the recreational use of marijuana, and from a strategic standpoint, there is little to be gained for the CPA, as a national voice, to be vocally opposed to this policy change. Despite this, the CPA will look to advise the government regarding some of the very real challenges that this legislation will create for front-line law enforcement.

- Impaired driving: While some testing is taking place of road-side detection devices, these tools are still in their (relative) infancy. It remains to be seen how the courts will react to test results provided by these machines. Early breathalyzer tests (for alcohol) were generally not well-received by the courts, and there is a real concern that similar standards will be applied for marijuana detection.
- No standard of impairment: While most jurisdictions have generally settled on a level of .08 Blood Alcohol Content (BAC) as a standard for impairment with respect to alcohol consumption, there is little scientific consensus on a similar level of THC concentration for marijuana. Studies have shown that different levels of THC can affect users at varying concentrations, and it remains to be seen how Canadian courts will react following legalization.
- Edibles and oils: With so many potential delivery devices, it will be challenging for law enforcement to determine whether a product contains marijuana during an encounter. Officers will have to use discretion when a person is found in possession of everything from gummi bears to brownies, and testing will be slow in these circumstances.
- Home grown marijuana: While the government is allowing up to 4 cannabis plants per residence, it will represent a massive drain on police resources to monitor these limits, if it is even possible at all. Will law enforcement have the probable cause necessary to enter residences to ensure that limits are being respected, even if the manpower is available?

- Possession and distribution: Allowing up to 30 grams of dried cannabis will make enforcement of possession and distribution difficult for front-line law enforcement. Black market dealers will undoubtedly exploit these limits to ensure they operate in the “grey” zone this will open.
- Resources: This new regime for marijuana will require a substantial investment into front-line policing. Every police service in Canada will require additional officers trained as Drug Recognition Experts (DREs), and currently, this field training and certification is only available in the United States, at a substantial cost. If the government insists on maintaining their ambitious timelines regarding legalization, it will have to recognize that there is currently no possibility that sufficient numbers of DREs will be trained/deployed in Canada.

Conclusion:

The Canadian Police Association has appreciated the consultation that the government has already undertaken with respect to this new legislation, however more work remains to be done. Thru a coordinated approach with other public safety stakeholders (i.e CACP, CAPG), we will look to support amendments to Bill C-45 at the Committee stage, which should begin hearings on the Bill in early September. Those amendments would be focused on restricting home grow options, and establishing strict criteria for edibles, and other alternative forms of marijuana, while calling for substantial investments into front-line policing to adapt to these new circumstances. It is vital that this social experiment proceeds a pace at which we can better understand the unintended consequences, and as part of this, public safety must be paramount as we evaluate these new policies.