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A Public Health Approach to the Legalization, Regulation and Restriction of Access to Cannabis

**Submission from the Canadian Public Health Association
to the Task Force on Marijuana Legalization and Regulation**

August 29, 2016

About CPHA

Founded in 1910, the Canadian Public Health Association (CPHA) is the independent voice for public health in Canada with links to the international community. As the only Canadian non-governmental organization focused exclusively on public health, CPHA is uniquely positioned to advise decision-makers about public health system reform and to guide initiatives to help safeguard the personal and community health of Canadians and people around the world. CPHA is a national, independent, not-for-profit, voluntary association. CPHA’s members believe in universal and equitable access to the basic conditions which are necessary to achieve health for all.

Our Vision

A healthy and just world

Our Mission

CPHA’s mission is to enhance the health of people in Canada and to contribute to a healthier and more equitable world.

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Purpose

To describe the Canadian Public Health Association's (CPHA) position on the legalization and regulation of marijuana.

About CPHA

Founded in 1910, the Canadian Public Health Association is the independent voice of public health in Canada with links to the national and international communities. As the only Canadian non-governmental organization focused exclusively on public health, CPHA is uniquely positioned to advise decision-makers about healthy public policy and to guide initiatives to help safeguard the personal and community health of Canadians and people around the world. CPHA is a national, not-for-profit, voluntary, membership-based association. Our members believe in universal and equitable access to the basic conditions that are necessary to achieve health for all.

CPHA's membership has passed several resolutions concerning the use of cannabis and other illegal psychoactive substances, and the need to develop regulatory frameworks based on a public health approach. The Association is also a signatory to the Vienna Declaration that calls for "reorienting drug policies toward evidence-based approaches that respect, protect and fulfill human rights" and "implementing and evaluating evidence-based prevention, regulatory, treatment and harm reduction interventions". In 2014, CPHA released the discussion paper "*A New Approach to Managing Illegal Psychoactive Substances in Canada*", which defines a public health approach to this issue.¹ The Association supports community-based supervised consumption facilities (SCF) and needle exchange programs in prisons, as well as the legalization and regulation of cannabis. CPHA participated in the study tours to Colorado and Washington led by the Canadian Centre on Substance Abuse.

During its recent national conference (Public Health 2016, June 13-16, 2016), the Association hosted a 90-minute workshop to investigate various aspects of a public health approach to the legalization and regulation of cannabis. Approximately 100 public health professionals attended the session and discussed five areas of concern: allocation of resources, access to the product, law enforcement, monitoring and evaluation, and research. The expert advice received through these discussions has informed this submission.

It is from this perspective that the Association provides its comments. Our approach is to first define the term "public health", followed by its meaning when applied to legalization and regulation of cannabis. We will then respond directly to the questions raised in the discussion paper.

What is "Public Health"?

Public health is an approach to maintaining and improving the health of populations that is based on the principles of *social justice*, attention to *human rights* and *equity*, *evidence-informed policy and practice*, and addressing the underlying *determinants of health*. Such an approach places health promotion (based on the *Ottawa Charter for Health Promotion*), health protection, population health surveillance, and the prevention of death, disease, injury and disability as the central tenets of all related initiatives. It also bases those initiatives on evidence of what works or shows promise of working. It is organized, comprehensive, and multi-sectoral.

What is a public health approach to the legalization and regulation of cannabis?

The Canadian Charter of Rights and Freedoms* and several United Nations conventions† provide the legal and social foundation on which to build a public health approach. It is driven by identifying and then acting on the determinants of health across the life course. This includes addressing physical, biological, psychological, and social determinants, as well as social and health inequities.

A public health approach emphasizes evidence-based, pragmatic initiatives, and takes into consideration social justice, equity, respect for human rights, efficiency, and sustainability. It also recognizes that problematic substance use is often symptomatic of underlying psychological, social, or health issues and inequities. As such, it includes the perspective of people who use illegal psychoactive substances or are affected by problematic use. Vital to this approach is the concept that those who work with people affected by, or on issues concerning, illegal psychoactive substances have the necessary education, training and skills to understand and respond to the needs of people who use these substances and their families. This knowledge base includes understanding the relationship between substance use and physical and mental disorders.

A public health approach also ensures that a continuum of interventions, policies, and programs are implemented that are attentive to the potential benefits and harms of substances, as well as the unintended effects of the policies and laws implemented to manage them. The goal of a public health approach is to promote the health and wellness of all members of a population and reduce inequities within the population, while ensuring that the harms associated with interventions and laws are not disproportionate to the harms of the substances themselves.

In this context, a public health approach includes the following strategies:

- health promotion to reduce the likelihood of use and problematic use;
- health protection to reduce the harms associated with use;
- prevention and harm reduction to reduce the likelihood of problematic use and overdose;
- population health assessment to understand the extent of the situation, and the potential impact of the interventions, policies, and programs on the population (evaluation);
- disease, injury, and disability surveillance to understand the effect on society and to evaluate the effects of these activities; and
- evidence-based services to help people who are at risk of developing, or have developed problems with substances.

The risks and benefits of such an approach are summarized in CPHA's discussion paper on this subject.¹

* Section 7 of the *Canadian Charter of Rights and Freedoms* provides for "...the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice" and was used as the legal argument for the Supreme Court decision concerning Insite, the supervised consumption facility in Vancouver, as under Canadian law addiction is considered an illness.

† CPHA recognizes Canada's obligations under the UN agreements to limit the sale and use of illegal drugs; however, we believe that our responsibilities under the following UN Agreements are of equal importance: the *International Covenant on Civil and Political Rights*; the *International Covenant on Economic, Social and Cultural Rights*; the *Convention Against Torture and other Cruel, Inhuman and Degrading Treatment*; the *Declaration on the Rights of Indigenous Peoples*; and the *International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*. The latter commitments should form the basis of the proposed regulatory regime.

Responses to the Discussion Paper Questions

CPHA recognizes the complex inter-relationship of federal, provincial and municipal authorities that exist concerning the regulation and sale of alcohol and tobacco, as well the precedents and constitutional authorities that support those regimes. We also realize that these authorities need to be reflected in structuring the proposed legalization and regulation of cannabis. This initiative, however, is a rare opportunity to develop a control system that respects Federal/Provincial/Territorial (FPT) rights while providing consistent pan-Canadian control for the substance. CPHA believes that an FPT framework of concerns and approaches for their management should be developed that would be applicable within the legal frameworks of the various jurisdictions. It is from this perspective that the Association provides our responses to the issues identified in the discussion paper.

CPHA recommends that:

A consistent pan-Canadian legislative and regulatory approach be developed that reflects the concerns of all FPT jurisdictions.

Minimizing Harms of Use

Minimum Age for Legal Purchase

There is a higher proportion of cannabis users among youth aged 15-25 in Canada, than in other developed countries. The use of cannabis has been normalized among that population in spite of scientific information demonstrating that youth who consume on a regular and heavy basis before age 15 are at a greater risk of negative physical and mental health outcomes.² Specifically, early and consistent use has been shown to increase the risk of addiction, psychosis, depression and anxiety,² and could affect academic achievement. The scientific evidence also demonstrates that this risk remains elevated until brain maturation at age 25.³ Similarly, a study examining mortality among youth as they passed the legal drinking age (LDA) showed that rates for young men who reach the LDA at 18 saw a 14.5% increase in mortality while those who reach the LDA at 19 saw an increase of only 7.2%.⁴ Similar results were shown with young women. It should also be noted that maintaining a single legal consumption age for cannabis may reduce the likelihood of cross-border shopping based legal age. On the other hand, the legal age for sale of tobacco and alcohol in the provinces and territories has been established at 18 or 19 years regardless of the known health effects of both families of products.

CPHA recommends that:

The minimum age for legal consumption be established at 19 years in each province and territory, regardless of the age of majority for the legal consumption of alcohol and tobacco.

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

The Canadian Centre on Substance Abuse identified the motivational factors for youth cannabis use as being: excitement, social pressure, coping, conformity, and increased understanding.⁵ In addition, youth generally receive conflicting messages from their peers, media, teachers and parents concerning the harms that may result from the consumption of these products. As a result, youth generally view cannabis use as relatively harmless. These motivational factors and views must be considered when establishing this regulatory package. Similarly, it should be recognized that there is a near complete ban on tobacco advertising, and that alcohol products have restrictions on advertising.

CPHA recommends that:

Advertising and sponsorships associated with the sale of cannabis-containing products be prohibited.

Targeted health promotion and harm reduction messaging describing the harms of cannabis consumption be developed and implemented, prior to the initial sale of these products.

Cannabis-containing products that could be attractive to minors (e.g., THC-infused candy or drinks) be prohibited.

Taxation and Pricing

Careful consideration needs to be given to taxation and pricing. The challenge will be to determine both the price elasticity for these newly-controlled products, and establishing a price point that reflects product cost, profit margins and a taxation rate that acts as a deterrent to sale, particularly for youth, while limiting the potential of maintaining an illegal market. Examples of such pricing can be found for both the sale of alcohol and tobacco. In both cases, taxation is used as a deterrent to sales, however, arguments can be made that further increases in taxation rate for alcohol and tobacco are no longer effective at reducing sales. It should also be noted that, in the United States, Washington State's current tax rate on cannabis products is 44%, and Denver, Colorado has a rate of 29%.⁶

Complicating this situation is the fact that tax revenues are received by a central revenue fund or account, and that programs are funded based on a perceived need, irrespective of the problem they address. The legalization and regulation of cannabis provides an opportunity to reconsider this model by having tax revenues resulting from cannabis sales directed back to the programs necessary to manage the production, distribution, sale and use of these products.

A final consideration is that the marketplace for cannabis may see the development of a variety of products with varying levels of tetrahydrocannabinol (THC) with different levels of risk. As such, consideration should be given to establishing tax rates for such products based on their THC concentration.

CPHA recommends that:

Governments establish (a) taxation rate(s) based on an analysis of price elasticity for these product(s).

All tax revenues from the sale of cannabis and related products be directed back to support the establishment and management of the programs and activities necessary to manage its legalization and regulation.

A variable taxation rate system should be established for all THC-containing products that is based on the concentration of THC, with higher-concentration products having a higher tax rate.

Restrictions on Cannabis Products

The discussion paper noted the variety of products and the varying levels of THC in those products that are offered for sale. It is also noted that THC concentration has been on an upward trend over the last decade, from 3% to 16% or higher.⁷

It should be noted that US states have found it easier to **start with tight regulations and then ease them in the future**, if appropriate. For THC concentrations, US states have unsuccessfully tried to implement concentration regulations after cannabis products became legalized without a maximum THC

concentration. Careful consideration needs to be given to product regulations, specifically, smoked forms and edibles.

CPHA recommends that:

A THC concentration of 15% should be established as the maximum permitted for usable cannabis products (including the dry product, edibles, creams, salves and oils) sold under this legislation and these regulations.

Oils and other products having higher THC concentrations (greater than 15%), which are used for therapeutic purposes, should not be sold for recreational use. This point will be considered in a subsequent section of this submission.

Restrictions on Quantities for Personal Possession

For personal possession quantities, three US states have set the limit at one ounce (28 grams) per day for dried product for residents, and have established limits for other product types based on the relative THC concentration.⁸ Information is limited to support the selection of these limits from a regulatory perspective. It should also be noted that, in Canada, limited restrictions have been placed on the sale of alcohol and tobacco products, which could serve as regulatory comparators at the provincial level.

CPHA recommends that:

Governments establish a maximum purchase amount for personal consumption of 28 grams per day of the dried usable product, and that equivalent maximum purchase amounts should be established for other related products based on the relative THC concentration.

Retail Locations

The current retail sales model for medical cannabis in Canada uses an e-commerce approach, although storefront dispensaries have been established (illegally) in certain Canadian jurisdictions. The dispensary model is similar to the sales model in the United States. For example, in Washington State, retailers require a license and are limited to selling only cannabis products.⁵ The e-commerce model has numerous benefits in that consistent, high-quality information concerning products can be provided, and online 'chat' support can augment the information available online. It also eliminates the likelihood of placement of shops near areas where children congregate, and concerns regarding signage and advertising for such shops.

CPHA recommends that:

An e-commerce sales model be maintained and expanded to support the recreational regulatory framework.

Should a decision be made to permit storefront retail sales, detailed recommendations regarding their location and operation should be established, with specific reference to the criteria established in Washington State, including limits on the distance between retail operations and areas where minors congregate.

Regulations include limitations on outdoor signage, and any kind of promotional activity.

Establishing a Safe and Responsible Production System

Production Models and Good Manufacturing Practice (GMP)

CPHA recognizes the value of the current medical cannabis production system, including the “seed to sale” tracking system and acknowledges the judicially-mandated amendment to permit home cultivation of cannabis. We also note the regulations concerning the production of alcoholic beverages in Canada, which encompass many of the same principles, including tightly limited standards and use of good manufacturing practices within a competitive marketplace. This is accomplished by private enterprise under federal and provincial/territorial government controls. Within the proposed recreational cannabis system, GMP would be ingrained in the same manner that GMP are required for the medical cannabis system and food and drug production plants at the federal and provincial/territorial levels, and include limits on agricultural practices such as the use of pesticides and herbicides.

CPHA also recognizes the expected consumer demand for home production of cannabis. Home production could parallel that which is provided for home brewing and wine-making. In the latter cases, such production is permitted under specific provincial controls, while the production of distilled beverages is prohibited. A similar structure could be permitted for the home cultivation of cannabis, but with prohibitions on the production of higher-THC-concentration products and the provision of that product to children. This approach has been reinforced by recent court decisions.

CPHA recommends that:

The regulations and standards currently in place regarding the production and processing of cannabis products under the medical marijuana regulations should be maintained as part of the regulatory framework for recreational cannabis.

Home production of cannabis plants should be permitted under specific controls, including prohibitions on the production of higher-THC-concentration products, the sale of home-grown products, and provision of home-grown cannabis to children.

Product Packaging and Labelling

Governments should undertake **steps to inform citizens of the potential harms associated with the consumption of cannabis and cannabis-containing products, as well as safe consumption practices.** These could include: prohibition of general advertising for cannabis-containing products (as previously noted) similar to that required for tobacco products, as well as the proposed plain packaging requirements. Limitations should be placed on the use of corporate logos and graphics on packaging and advertising materials. Also, mandated labelling requirements, including evidence-informed health warnings and contraindications as required for beer, wine and spirits (should the evidence support the designations), and information on where to access support services should be considered.

CPHA recommends that:

All cannabis and cannabis-containing products be subject to plain packaging regulations.

All cannabis and cannabis-containing product labels include evidence-informed health warnings, contraindications, harm reduction messages and information on accessing support services.

Designing an Appropriate Distribution System

CPHA recognizes the value of the current medical cannabis production, processing and distribution system. The anticipated increase in demand when the recreational-use system is established, however, could exceed the capacity of the e-commerce sales and mail delivery system. In addition, the establishment of a storefront retail commercial system could lead to an increased variety of products, and purchasers may wish to have the freedom to view and purchase these products in person.

A parallel can be seen between the controlled-access liquor commissions that existed through the mid-1970s in Canada compared to the current “liquor mart” approach. The public health concerns associated with broadening the sale of alcoholic beverages have been documented in CPHA’s 2011 position paper,⁹ while work has been undertaken to mitigate some of these concerns through the National Alcohol Strategy (Canadian Centre on Substance Abuse). Further complicating this situation are the current provincial/territorial responsibilities to establish the means of sales for alcohol and tobacco in each province/territory.

Maximizing market participation through open markets with effective regulation could be an additional approach to achieving the goal of elimination of the illicit trade in cannabis, and has been successful for the sale of alcohol.¹⁰ However, the challenges of establishing a free market approach to the sale of cannabis have been discussed elsewhere,¹ which noted the limitations of a private sales approach. As such, an effective method may include the establishment of government-run, dedicated cannabis retail centres with trained staff who could enforce limitations of the sale of product, while providing other support information.⁶ However, given the concerns regarding co-use of cannabis and alcohol, the sale of these two products in the same location should be prohibited.

CPHA recommends that:

The e-commerce sales model currently established for the medical cannabis regime be maintained and expanded to support the recreational regulatory framework.

Market information should also be developed concerning the development of cannabis retail sales centres. The model, if implemented, should be operated by non-commercial entities.

Retail cannabis operations should not be co-located with existing alcohol retail operations or with existing retail pharmacy operations.

Enforcing Public Safety and Protection

Managing the Illicit Market

The legalization of cannabis has the potential to dramatically limit the involvement of illegal activities. To date, however, there is a lack of conclusive evidence to support this contention in Washington and Colorado States.¹¹ The likely reasons for this situation may include accessibility and product selection for the legal product, and enforcement regimes targeted at the illicit market. It may be necessary for the Government of Canada to address product and access issues, while providing consistent enforcement of renewed, stricter laws to apprehend those that operate outside the boundaries of a new legal system.

CPHA recommends that:

A portion of cannabis tax revenues be allocated to strengthen the ongoing efforts of law enforcement agencies to limit the illegal growth, production and sale of cannabis.

Impaired Driving

Impaired driving is currently the leading cause of criminal death in Canada.¹² In advance of the legalization of cannabis use, approaches to educate Canadians to guard against cannabis-impaired driving will be required. Between 1996 and 2013, cannabis use for youth in Ontario increased from 28.3% to 40.4%, and, in 2012, approximately 9% of licensed Ontario drivers in this age group had driven within an hour of using cannabis.¹³ Traditionally, traffic safety efforts have been focused on the prevention of alcohol-impaired driving; recent statistics, however, indicate that more young Canadians are driving after using cannabis than after using alcohol.¹⁴

In Canada, police use a standard physical impairment test to assess the level of impairment resulting from cannabis consumption; however, there appears to be a lack of drug recognition expert capacity to support this testing. In addition, oral fluid drug screening devices are being piloted to determine their viability for detecting drug-impaired drivers.¹⁵ These approaches should continue until evidence is gathered to specify legal THC limits for operating a motor vehicle, and standardized testing protocols and conditions are developed to accurately determine a driver's levels of impairment. These policing approaches must be partnered with health promotion messaging to discourage driving while impaired.

CPHA recommendations that:

Standardized roadside sobriety tests, tools, and devices be developed and implemented for use in all Canadian jurisdictions.

A portion of taxation revenue from the sale of cannabis products be allocated to law enforcement to ensure that officers have the necessary training to assess and prosecute those who drive under the influence of cannabis.

Health promotion campaigns be developed with funding from cannabis-product taxation to provide Canadians with reliable information on the risks associated with cannabis use.

Consumption in Public Spaces

Much as restrictions have been placed on public consumption of tobacco products as a means of reducing inhalation of second-hand smoke, and the public consumption of alcohol, similar restrictions should be in place for cannabis consumption.

CPHA recommends that:

All relevant smoke-free bylaws for public spaces, and workplace tobacco and alcohol consumption policies, should be adapted to include cannabis consumption.

Accessing Cannabis for Medical Purposes

As previously noted, Canada’s “Marijuana for Medical Purposes Regulations” allow cannabis consumption for medical purposes with strict regulations on licensing, growing, and distribution. These regulations are not encumbered by either restrictions on cannabis potency or age of consumption. However, the College of Family Physicians of Ontario does not recommend prescribing dried cannabis with a THC concentration above 9%, or prescribing cannabis to patients under the age of 25, unless all other conventional therapeutic options have been unsuccessful (<http://www.cpso.on.ca/policies-publications/policy/marijuana-for-medical-purposes#EndNote15>). Furthermore, these regulations do not allow for edibles or other forms of medical cannabis that have been demonstrated to have therapeutic efficacy in specific situations (<http://www.theglobeandmail.com/news/british-columbia/canadians-have-fewer-legal-marijuana-options-compared-with-americans/article23887921/>).

It should also be noted that results from the CCSA study tour of Colorado, a state which supports both a recreational and medical cannabis regulatory system, noted the confusion and overlap resulting from maintaining the two systems.

CPHA further recognizes that certain patients under the legal age for purchase may require access to the product, while other patients may require higher THC concentrations for treatment than might be accessible through the recreational system. For these patients, exceptions to the new regulatory framework may be required. Patients younger than 19 would require a medical document that functions like a prescription from their family physician to access specific cannabis-containing products, but physicians should take care in recommending the lowest-potency products to meet their patients’ needs. Similarly, CPHA recognizes that certain patients may require more potent forms of cannabis than would be legally available. Distribution of these specialized products should be restricted to those with medical requirements and be produced by authorized manufacturers. Finally, if cannabis is therapeutically necessary, it should be treated as a pharmaceutical in Canada, and patients should receive appropriate insurance (public or private) coverage for their required dosages.

CPHA recommends that:

The recreational and medical cannabis systems be amalgamated where a product required by the medical user is accessible through the recreational use system.

In certain situations, access to therapeutic cannabis products be permitted to minors and/or at higher THC concentrations than allowed by the recreational regulatory framework, and as recommended by a licensed physician. Products containing higher THC concentrations should be produced by specifically authorized manufacturers.

All cannabis-containing products be subject to the same taxation policy.

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