

COMPLIANT AT THIS TIME: CANADA'S OPTIONS REGARDING ITS TREATY OBLIGATIONS AND THE LEGALIZATION AND REGULATION OF NON-MEDICAL CANNABIS

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Canada is party to three treaties which obligate the country to maintain the prohibition and criminalization of cannabis for non-medical and non-scientific purposes. Due to the specific notice provisions of these treaties, July 1, 2017 was the last day that Canada could have withdrawn from its treaty obligations in time to meet the federal government's self-imposed deadline to legalize and regulate non-medical cannabis on or before July 1, 2018.

The three treaties Canada is a signatory to are: (i) the *Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961*, (ii) the *Convention on Psychotropic Substances, 1971*, and (iii) the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* (each a "**Treaty**" and collectively the "**Treaties**"). The legalization and regulation of non-medical cannabis is in violation with the terms of each of the Treaties, leaving the federal government of Canada with three potential avenues if it wishes to legalize and regulate non-medical cannabis: withdraw from the Treaties, disregard the Treaty obligations, or seek accommodation or attempt to comply within the terms of the Treaties.

In order to gain some insight as to the government's intentions on this matter, James Munro, Co-Chair of McMillan's Cannabis Practice Group, contacted Global Affairs Canada and asked where Canada stood regarding its obligations under the Treaties. A representative of Global Affairs Canada provided the following response:

"The federal government is taking a regulatory approach to better protect the health and safety of Canadians. This is our priority. We are currently examining a range of issues, including our international commitments. Four American states have legalized recreational marijuana and four have voted to legalize. Uruguay has also legalized marijuana and it is among the countries, like Canada, that is a signatory to the international drug treaties.

We are committed to working with our global partners to best promote public health and combat illicit

drug trafficking. Canada remains fully compliant with its obligations under the international drug treaties at this time.”

In the following paragraphs, we will consider the federal government’s three potential options regarding the Treaties, as well as the response by Global Affairs Canada.

Withdrawal

The *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*, establishes that withdrawal from the Treaty takes effect one year after notice is received by the Secretary-General. Due to Canada’s failure to provide such notice by July 1, 2017, it is unlikely that Canada will be able to be compliant with this Treaty in time for the federal government’s self-imposed legalization and regulation deadline of on or before July 1, 2018. However, if withdrawal from this Treaty occurs in the near future, such non-compliance would be for a limited duration.

The withdrawal terms of the *Single Convention on Narcotic Drugs, 1954, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1954*, and the *Convention on Psychotropic Substances, 1971* are somewhat different. Both of these Treaties require withdrawal notices to be provided on or before July 1, 2017 in order to take effect January 1, 2018. Any notice provided after July 1, 2017 would take effect on January 1, 2019. Clearly, if the federal government of Canada legalizes and regulates cannabis for non-medical purposes on or before July 1, 2018, any notice provided as of today’s date under these two Treaties will result in a relatively lengthy period of non-compliance.

Disregarding Treaty Obligations

One possibility that exists for any sovereign nation that voluntarily enters into a treaty is to simply disregard its treaty obligations. As an example, Uruguay was also a signatory to the Treaties. In 2013, Uruguay opted to not withdraw from the Treaties when it enacted legislation to legalize non-medical cannabis. The International Narcotics Control Board sharply disapproved Uruguay’s choice to ignore its obligations under the Treaties; however, the ramifications for Uruguay appear to have been limited^[1].

Taking into account Canada’s active role in the international community, it seems unlikely that the federal government of Canada would opt for the route Uruguay chose and ignore its treaty obligations. However, in their above-quoted response, Global Affairs Canada provides Uruguay as an example of a country that legalized cannabis for non-medical purposes and was subject to the Treaties. Does this mean that the federal government of Canada is considering the option of disregarding its obligations under the Treaties in a similar manner to Uruguay? Canada, unlike Uruguay, is a G7 country, and therefore one may expect that Canada’s violation of an international treaty would generate more upset within the international community than in the

case of Uruguay.

Global Affairs Canada also provided the example of four American states that have legalized cannabis for non-medical purposes. This example is not relevant to Canada's obligations under the Treaties because these states are not signatories to the Treaties. The United States federal government is the signatory to the Treaties and the United States federal government has not legalized cannabis use^[2].

Accommodation within the terms of the Treaties

Canada can also seek various types of accommodation from the participating countries of the Treaties. Canada could attempt to negotiate with the other parties to the Treaties for an exemption that allows Canada to create its non-medical cannabis industry. The probability of success for such a diplomatic endeavour remains unknown, as there would be many parties at the negotiating table, each with their own priorities regarding the restriction of narcotics.

A recent paper from the University of Ottawa proposed another mechanism that Canada could use to achieve compliance with the Treaties while meeting the July 1, 2018 legalization deadline^[3]. Each of the Treaties contains an exemption for use of cannabis related to 'scientific purposes'. The authors conclude that if Canada instituted a national study of the impact of cannabis legalization and claimed the scientific purposes exemption, there is a possibility that Canada could remain bound by the terms of the Treaties while proceeding with the proposed legalization and regulation. It remains unknown whether the scope of such an exemption would be properly met in this case, or whether the federal government of Canada would consider relying on such an exemption.

Conclusion

If the federal government of Canada wishes to effect the legalization and regulation of non-medical cannabis on or before July 1, 2018, its options under the Treaties are limited. The deadline for withdrawal under the Treaties has passed. The other two options of disregarding the obligations of the Treaties or seeking accommodation/compliance within the terms of the Treaties are limited and imperfect. The federal government of Canada has not provided any clarity on how it intends to address its obligations under the Treaties. If Canada is to become a leader in the non-medical cannabis industry, the federal government of Canada should proceed thoughtfully regarding its obligations under the Treaties and be transparent in its intended approach.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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[1] Hugo Alves, Matthew Kronby & George Reid, "[Alves, Kronby & Reid: When it comes to pot, Canada shouldn't worry too much about treaty obligations](#)", The National Post (18 January 2016).

[2] The concepts of "medical cannabis" and "recreational cannabis" do not exist under U.S. federal law. Specifically, under the U.S. *Controlled Substances Act* "marihuana" is illegal under U.S. federal law and is classified as a Schedule I controlled substance.

[3] Fultz et al., Reconciling Canada's Legalization of Non-Medical Cannabis with the UN Drug Control Treaties, Global Health Law Clinic Publication Series, April 2017.