

TASK FORCE RELEASES REPORT ON CANNABIS LEGALIZATION IN CANADA

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The government has taken yet another step towards the legalization of cannabis for recreational use in Canada, with the release of the final report^[1] from the Task Force on Cannabis Legalization and Regulation (the “**Task Force**”). The report provides guidance on the design of a new regulatory framework to manage the use of cannabis for recreational purposes.

The Task Force spent a number of months in consultation with various stakeholders, including all levels of government, indigenous leaders, advocates, patients, youth, as well as representative organizations, employees and industry. The Task Force also sought international guidance, meeting with officials from jurisdictions that have already legalized marijuana for recreational use including the State of Washington, USA, the State of Colorado, USA and Uruguay (the first country to legalize and regulate cannabis for non-medical purposes). The Task Force drew parallels to Canada’s regulation of the tobacco and alcohol industries, both harmful substances with widely different regulatory approaches, as well as the comprehensive regulatory scheme already in place for medical cannabis under the *Access to Cannabis for Medical Purposes Regulations* (the “**ACMPR**”),^[2] which informed the recommendations contained in the report.

The Task Force consists of nine individuals with representative backgrounds, among them a lawyer, two former police officers with organized crime and drug enforcement expertise, doctors, and experts in public health, human and social development, addiction and mental health.

The report sets out a number of recommendations for establishing a regime to manage the legalization of cannabis, in line with the overarching goals of reducing harm and promoting health. Throughout the report the Task Force highlights the need to invest in further research, to communicate with the public, focus on harm reduction, and ensure that the framework put in place is flexible and can adapt to changing requirements. The report is organized under the following principles: minimizing harms of use, establishing a safe and responsible supply chain, enforcing public safety and protection, maintaining medical access and implementation. Highlights of the recommendations from each of these categories are summarized below.

Minimizing Harms of Use

Set 18 as the minimum age for the purchase cannabis, however provinces should harmonize this with respective drinking age minimums.

- The advertising and promotion of cannabis and related merchandise (which also includes branding, sponsorships, and endorsements) should be strictly limited. This is similar to the approach Canada has taken with tobacco. Limited promotion may be allowed in areas only accessible to adults.
- The limits above also apply to packaging – the Task Force has recommended that cannabis products have plain packages, with clear warnings and labels that, among other things, specify tetrahydrocannabinol and cannabidiol (“THC” and “CBD”) content. Again, this is similar to the direction Canada is taking, and in fact more closely resembles the approach Australia has already taken, with tobacco products. The benefit of differentiation for consumers was not seen to outweigh the associated harms.
- Prohibit mixed products, such as products containing cannabis with caffeine, alcohol or nicotine.
- Strictly prohibit any product that appeals to children, such as products that look like candy or resemble familiar food items, and require packaging to be child-resistant.
- Conduct an economic analysis to develop a pricing and taxation scheme that discourages accessing cannabis through the illicit market, distributes taxation money fairly between levels of government and encourages the use of lower-potency cannabis.
- Continually monitor the effectiveness of the regime, facilitate and monitor research and adapt as necessary. Develop preventative resources including education, programming and treatment to address the risks associated with cannabis use, and implement public educational campaigns.
- Investigate limiting the amount of THC, one of the main psychoactive components in cannabis, per serving and per product.

Establishing a Safe and Responsible Supply Chain

- Regulate production federally to ensure consistent quality, and implement a system that tracks cannabis from “seed-to-sale”.
- Implement a licensing structure, similar to what has been done in the regulation of medical marijuana under the ACMPR, to promote a competitive and diverse marketplace.
- Personal cultivation should be allowed, but with certain restrictions, such as limiting the number of plants to four per residence, restricting plant height to under 100 cm, and requiring that residences have reasonable security measures in place to restrict access to the plants.
- Allow the provinces and territories to regulate distribution, and also to regulate the retail of cannabis but in coordination with municipalities. The location of retail stores should be limited to reduce density and ensure that retail stores are not in close proximity to vulnerable populations, such as near children’s

schools and playgrounds. There should be no co-location of cannabis with alcohol or tobacco sales, and where this is not possible strict safeguards should be put in place.

- Maintain a mail-order system, similar to how patients can currently obtain medical marijuana from licensed producers under the ACMPR, for populations that may not have access to a retail store.

Enforcing Public Safety and Protection

- The federal government should implement clear and enforceable penalties, both administrative and criminal, that are proportional to the harm done. Criminal prosecution should be limited for less serious offence. “Social sharing” – providing cannabis to friends and family – should be excluded. Rather than incorporate these into current legislation, the Task Force recommends that the federal government draft a new piece of legislation to address provisions relating to cannabis.
- Much like with tobacco, smoking (and vaping) cannabis in public places should be restricted.
- Individuals should be restricted to possessing 30 grams or less of dried cannabis (this does not apply to individuals authorized to possess cannabis for medical purposes).
- Regarding impaired driving, the Task Force was clear that there needs to be further research into the interrelation between THC levels and impairment, in order to define a limit (or determine whether there should be a limit) while driving, and develop a national campaign to educate the public on the risks associated with driving while impaired by cannabis.

Medical Access

- Given that a regime is already in place under the ACMPR to regulate the use of cannabis for medical purposes, the Task Force had to determine whether the legalization of cannabis generally should replace this regime, or whether two separate regimes should be in place. Several factors, including concerns over access to products containing the right balance of cannabinoids, led the Task Force to recommend that medical use should be maintained under a separate regime, with the caveat that this be re-evaluated in five years.
- The government should phase out the concept of a “designated producer”, an individual appointed by another to grow cannabis on his or her behalf. Under the ACMPR, the Task Force observed that some designated producers have been shifting product to the illicit marketplace. Phasing out this concept of a designated producer is intended to reduce that risk.
- The report also recommends promoting and supporting pre-clinical and clinical research on the use of cannabis and cannabinoids for medical purposes.
Pharmacies may provide a safe and effective means of distribution in the future. However, there is currently not enough research on the effectiveness and safety of cannabis.

Implementation

- In order to put in place and manage a framework for recreational cannabis, the government will be required to develop sufficient capacity, infrastructure, communication and oversight mechanisms. The federal government should take the lead, but all levels of government, including indigenous governments, must coordinate their efforts and share information. This will require training, increasing capacity to manage implementation and oversight, educating the public about cannabis and the new regulatory scheme.
- Revenue generated from cannabis can be used to: pay for the costs associated with the administration of the regulatory framework; to fund educational programming for the public; fund prevention, treatment, and related programming; to fund research; and to fund monitoring and enforcement mechanisms.
- Evaluate the new framework and report on the results in a timely matter, as well as institute a program evaluation every five years to ensure that required objectives are being met.

The report's recommendations with respect to establishing a framework for legalizing cannabis for recreational use are advice only and are not binding on the government. In other words, the legislation, expected to be tabled in 2017, may depart from the recommendations suggested in the report. Moreover, after being tabled it may take some time for the new law to be implemented. Therefore stakeholders are encouraged to keep abreast of continuing developments in this area and to seek advice where necessary.

About McMillan's Medical Marijuana Industry Group

Start-up medical marijuana businesses are booming in Canada, after recent legislation including 2016's Access to Cannabis for Medical Purposes Regulation came into effect. McMillan is on the leading edge of these developments, helping clients who are entering or expanding in the market as growers, retailers, supporters or technology providers with comprehensive legal services required for businesses to operate in the industry.

McMillan's Medical Marijuana Industry Group is made up of lawyers who understand the laws, regulations and business landscape in Canada. Our professionals provide valuable legal solutions for financing, accessing public markets, mergers and acquisitions, licensing and regulation, employment law, workplace issues, and intellectual property to help businesses succeed in this new and evolving industry.

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[1] Health Canada, A Framework for the Legalization and Regulation of Cannabis in Canada: The Final Report of Task Force on Cannabis Legalization Regulation (Ottawa: Health Canada, December 2016).

[2] Access to Cannabis for Medical Purposes Regulations, SOR/2016-230.

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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