RESPONSE

CANADIAN NURSES ASSOCIATION®

LEGALIZATION, REGULATION AND RESTRICTION OF ACCESS TO CANNABIS

2016 Government of Canada Consultation

CNA is the national professional voice of over 139,000 registered nurses and nurse practitioners across Canada. CNA advances the practice and profession of nursing to improve health outcomes and strengthen Canada's publicly funded, not-for-profit health system.

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Background

Between June 30 and August 29, 2016, the federal task force on cannabis[1] legalization and regulation sought the engagement of Canadians on key questions related to the legalization, regulation and restriction of access to cannabis by means of a consultation. The consultation was undertaken on the basis of the task force discussion paper, *Toward the Legalization, Regulation and Restriction of Access to [Cannabis]*, which was organized into five main sections:

- Minimizing harms of use
- Establishing a safe and responsible production system
- Designing an appropriate distribution system
- Enforcing public safety and protection
- Accessing cannabis for medical purposes

This document presents the Canadian Nurses Association's responses to the questions posed by the task force consultation under each of the five topics. To help establish the context for each response, citations from the discussion paper are included (highlighted in grey).

Recommendations

1. Minimizing Harms of Use[2]

Possible Options

It is proposed that establishing a national minimum standard for protecting Canadians is critical, and as such it is proposed that federal legislation and regulation be developed to create an overall framework for legal access to [cannabis]. This framework would address the following issues:

1) **Minimum age for legal purchase:** Health protection — particularly for children and youth — demands that [cannabis] purchase and possession be subject to age restrictions. The science indicates that risks from [cannabis] usage are elevated until the brain fully matures (i.e., when someone reaches about age 25). For context, age limits for alcohol and tobacco purchases in Canada vary across provinces and territories — either 18 or 19 years of age. In Colorado and Washington, the state governments have chosen to align the minimum age for purchasing [cannabis] with the minimum age for purchasing alcohol, 21 years.

2) **Advertising and marketing restrictions to minimize the profile and attractiveness of products:** Since marketing, advertising and promotion of [cannabis] would only serve to "normalize" it in society and encourage and increase usage, it has been proposed that these should be strictly limited

[1] This paper adopts the term *cannabis* in keeping with the federal task force decision to discontinue using the term *marijuana*.
[2] From pp. 13-14 of the task force discussion paper.

so as to dampen widespread use and reduce associated harms. This is particularly the case for promotional materials that would otherwise be targeted to impressionable youth. As in the case of tobacco, there may be limitations to possible restrictions on marketing, advertising and promotion of [cannabis]; however within those limits these restrictions should be as tight as possible. Moreover, other limitations could include products being sold in plain packaging with appropriate health warning messages.

3) Taxation and pricing: When used appropriately, effective taxation and price controls can discourage the use of [cannabis] and provide the government with revenues to offset related costs (such as substance abuse services, law enforcement, and regulatory oversight). As such, the design of any regulatory framework should allow accommodation for an appropriate taxation regime in which there is sufficient flexibility in controlling the final price to the consumer. However, the use of taxation and pricing measures to discourage consumption must be properly balanced against the need to minimize the attractiveness of the [illicit][3] market and dissuade illegal production and trafficking.

4) Restrictions on [cannabis] products: THC is the main psychoactive component of [cannabis]. Current research shows average THC levels of between 12-15%. In contrast, cannabis from the 1980s had average THC levels of 3%. In addition, various higher potency [cannabis] products such as "shatter" are available with THC concentrations reaching levels as high as 80-90%. As outlined in section 1, higher concentration products have added risks and unknown long term impacts, and those risks are exacerbated for young people, including children. Given the significant health risks, maximum THC limits could be set and high-potency products strictly prohibited.

5) Restrictions on [cannabis] products: [Cannabis] can be consumed in many ways, including a wide range of products like foods, candies, salves or creams. Some people may choose these methods of consumption, rather than choosing to smoke dried [cannabis]. However, certain products present increased risks, notably when considering the increased potency of some of these derivative products and the increased harms associated with their use. They also represent an increased risk of accidental or unintentional ingestion, particularly by children. This view is supported by the experience in Colorado, where the availability of edible products led to a rise in the number of accidental or unintentional overdoses (non-fatal). As a result, the state government amended their regulatory framework to enact limits on dosing and potency. It is understood that individuals may choose to create [cannabis] products, such as baked goods, for personal consumption. However, consideration should be given to how edibles are treated in the new regime in light of the significant health risks, particularly to children and to youth, including whether and how to limit the potency of [cannabis] and types of products sold.

6) Limitations on quantities for personal possession: Most jurisdictions have set limits on the quantities of [cannabis] that an individual may possess, which has the obvious advantages of helping to dampen demand and to minimize opportunities for resale of legally purchased [cannabis] on the [illicit] market (particularly to children and youth).

7) Limitation on where cannabis can be sold: The availability of cannabis via retail distribution is also an important issue when considering means to minimize harms of use. This issue is further explored in Section 3.

[3] The term *black* market has been changed to *illicit* market throughout this document in keeping with current practice.

Consultation questions on minimizing harms of use

1. Do you believe that these measures are appropriate to achieve the overarching objectives to minimize harms, and in particular to protect children and youth? Are there other actions which the Government should consider enacting alongside these measures?

The Canadian Nurses Association (CNA) uses a harm reduction perspective when appraising considerations related to the legalization, regulation and restriction of access to cannabis. Harm reduction is a pragmatic public health approach aimed at reducing the adverse health, social and economic consequences of at-risk activities, focusing on promotion of safety, prevention of death and disability, and support for safer use for the health and safety of all individuals, families and communities. The values of harm reduction are consistent with the primary values in CNA's *Code of Ethics for Registered Nurses* that guide professional ethical nursing practice: providing safe, compassionate, competent and ethical care; promoting health and well-being; promoting and respecting informed decision-making; honouring dignity; maintaining privacy and confidentiality; promoting justice; and being accountable. Nurses have a responsibility to provide non-judgmental care to individuals and families affected by substance use, regardless of setting, social class, income, age, gender or ethnicity, and they can influence the development of organizational and governmental harm reduction policies related to drug use.

CNA supports the notion that a federal framework needs to address the following seven issues noted in the discussion paper: minimum age for legal purchase; advertising and marketing restrictions to minimize the profile and attractiveness of products; taxation and pricing; limits on THC potency; restrictions on cannabis products; limitations on quantities for personal possession; and limitation on where cannabis can be sold.

Comments on existing options

Advertising and marketing restrictions to minimize the profile and attractiveness of products: CNA supports clear, accessible health labelling to ensure product information is available in plain language. CNA has supported plain packaging initiatives, including plain packaging for tobacco in partnership with the Canadian Coalition for Action on Tobacco.

Taxation and pricing: While it is noted that cannabis legalization can increase tax revenue and reduce government spending to enforce current federal cannabis laws, it is suggested that, within the section on taxation, consideration be given to recommending that generated revenues be used to ensure positive outcomes alongside an economic boost. This includes investment in public education programs for cannabis harm reduction as well as investment in substance use prevention and treatment programs.

Limitation on where cannabis can be sold: In addition to the considerations around limiting where cannabis can be sold, in this section as well as in section 3, CNA recommends that consideration be given to restrictions on hours or days of sale and outlet density. International evidence notes a correlation between the increase in density of retail outlets for alcohol and adverse health and social outcomes. Plans for regulating the distribution of cannabis should consider the best available evidence to balance sufficient access, so as to minimize illicit-market or illegal purchase, and excessive retail distribution, which can negatively impact the health of individuals and communities — particularly, vulnerable populations in high-density communities.

Additional considerations

Public education: Though the need for public health education and awareness activities are noted frequently in the government of Canada's discussion paper, public health education is not listed as one of the overarching objectives to minimize harms, particularly for children and youth. We suggest that this be added to the existing list of seven minimum areas for consideration, as effective public health education campaigns can and have been successful in reducing normalization of potentially harmful activities, protecting vulnerable populations (including children and youth) and helping individuals make informed decisions.

Availability of treatment: While research indicates that legalization of cannabis can have positive outcomes in society — resulting in less harm due to the greater regulation and reliability of the products, a decrease in funds to the illicit-market economy, and the minimization of stigma related to cannabis use — there may also be more use of the drug. While cannabis use is not problematic for all users, given this potential increase in use, the federal government needs to be prepared for a corresponding rise in problematic use and, as such, appropriate prevention and treatment programs should be in place. These programs can be funded in part by the significant economic benefits of taxation revenue and enforcement savings.

Accountability and evaluation: CNA proposes that a federal framework be developed based on the best current evidence available. This evidence may be drawn from international experience with decriminalization and legalization of cannabis as well as domestic and international lessons from alcohol and tobacco regulation. In the spirit of evidence-informed practice, CNA also encourages the use of rigorous, ongoing data collection, including gathering baseline data, to monitor the impact of the regulatory framework and inform gradual change to best meet policy objectives and reduce negative impacts.

2. What are your views on the minimum age for purchasing and possessing [cannabis]? Should the minimum age be consistent across Canada, or is it acceptable that there be variation amongst provinces and territories?

Consistent with the principles of harm reduction, CNA notes that policies and programs related to the legalization, regulation and restriction of access to cannabis must be based on best evidence, cost-effectiveness and local needs, while involving the participation of those who use cannabis and decisions that affect them. With this in mind, CNA suggests that a minimum age for the purchase of cannabis be carefully evaluated to balance known harms of cannabis on developing brains (i.e., those less than 25 years of age) and the knowledge that Canada has the highest rate of youth cannabis use in the world with 28 per cent of 11- to 15-year-olds and 22.4 per cent of 15- to 19-year-olds having reported past year use in 2009-2010.[4] For youth, cannabis use in Canada is 2.5 times higher than adults age 25 and over.[5] Restricting access for individuals under 25 may disproportionately disadvantage this high-risk group by perpetuating illicit-market purchasing, where product potency and safety may be unknown and purchases would be illegal, often in less safe settings. Harm reduction programs have been proven to not only decrease harms to individuals, but also to promote safer communities. Principles of harm reduction provide adult individuals with the right to make informed decisions, to have the same access to services and to be supported in making choices related to substance use that promote safety and prevent death and disability.

2. Establishing a Safe and Responsible Production System[6]

Possible Options

1) **Production model:** Experience with both home cultivation and government-controlled production in the context of relatively small numbers of medical users suggests neither approach would be in the public interest in the context of the larger numbers of users expected in a legalized market. Therefore, some form of private sector production with appropriate government licensing and oversight could allow for safe and secure production of legal [cannabis] with adequate choice (both price and strain) for consumers.

2) **Good production practices:** In general, ingestible products must meet certain quality standards. In the medical [cannabis] regime, Health Canada has established product content and production controls that have proven effective in minimizing risks to clients. Similarly, safeguards could be put in place to ensure that [cannabis] is produced and stored in sanitary and secure conditions. There could be strict

[4] UNICEF Office of Research. (2013). *Child well-being in rich countries: A comparative overview*. Innocenti report card 11. Florence, Italy: Author.
[5] Statistics Canada. (2015). *Canadian Tobacco, Alcohol and Drugs Survey: Summary of results for 2013*. Ottawa: Author.
[6] From pp. 16-17 of the discussion paper.

security requirements to minimize the possibility of diversion. Controls could be placed on pesticides that can be used, and on microbial and chemical contaminants. [Cannabis] could also be subject to analytical testing so that those consuming can be reliably advised of its contents, particularly amounts of THC and CBD [cannabidiol].

3) **Product packaging and labelling:** The way in which products are packaged and labelled offers an opportunity to minimize the harms of [cannabis], particularly for children and youth. Measures to consider implementing include: child-proof packaging to prevent accidental ingestion by children; and, labels on packages to contain both important information about the product (e.g., THC and CBD content) as well as appropriate health warning messages.

Consultation questions on safe and responsible production system

1. What are your views on the most appropriate production model? Which production model would best meet consumer demand while ensuring that public health and safety objectives are achievable? What level and type of regulation is needed for producers?

CNA does not currently have a position on this issue.

2. To what extent, if any, should home cultivation be allowed in a legalized system? What, if any, government oversight should be put in place?

CNA recommends, when considering if home cultivation be allowed in the legalized system, that principles of harm reduction be considered, including the promotion of safety, prevention of death and disability and the promotion of safer use. Documented health and safety issues related to home cultivation in Canada, including increased risks to the occupants from mould, pesticides, fire and increased risk of home invasion, need to be balanced with considerations for appropriate access aimed at curbing illicit-market production and use.

3. Should a system of licensing or other fees be introduced?

While it is noted that cannabis legalization can increase revenue and reduce government spending on the enforcement of current federal cannabis laws, it is suggested, if licensing and fees are introduced, that consideration be given to recommending that generated revenues be used to ensure positive outcomes alongside an economic boost. This includes investment in public education programs for cannabis harm reduction as well as investment in substance use prevention and treatment programs. Consideration for licensing fees should also balance reasonable pricing and consumer access to promote purchasing from the legal system and discourage illegal purchases. This inadvertent discouragement of illegal, unregulated purchases through appropriate pricing and access can result in better outcomes for individuals and the public. Individuals may have better outcomes, as they will be able to make informed decisions on safe, legal purchase, with

knowledge of the potency and production of what they purchase, and be able to do so in a safe, legal, regulated environment.

4. The MMPR [*Marihuana for Medical Purposes Regulations*] set out rigorous requirements over the production, packaging, storage and distribution of [cannabis]. Are these types of requirements appropriate for the new system? Are there features that you would add, or remove?

CNA supports a harm reduction approach, meaning that at-risk practices such as cannabis production and use do not need to be discontinued, but that efforts should focus on promoting safety, preventing death and disability, and supporting safer use for the health and safety of individuals, families and communities. With this in mind, CNA supports the assertion in the discussion paper on legalization, regulation and restriction of access to cannabis that,

> regardless of the production model selected, a new regulatory framework for legal [cannabis] could contain features designed to ensure good manufacturing practices in a safe and secure environment. This could help to address both the potential health risks from [cannabis] as well as the need to ensure that [cannabis] produced in the legal framework stays in the legal framework. The [cannabis] could be subject to appropriate testing, packaging and labelling requirements both to protect children and to ensure adult users have the necessary information to make informed choices. The MMPR contain these features and could serve as a reference point for consideration of the nature and extent of the safeguards required in the legal [cannabis] regime. (p. 16)

In relation to packaging, CNA supports clear, accessible health labelling to ensure product information is accurate and available in plain language. CNA has supported plain packaging initiatives, including plain packaging for tobacco in partnership with the Canadian Coalition for Action on Tobacco.

5. What role, if any, should existing licensed producers under the MMPR have in the new system (either in the interim or the long-term)?

As CNA advocates for accountability and evidence-informed practice, it would recommend that the MMPR at a minimum serve to advise on policy development based on lessons learned.

3. Designing an Appropriate Distribution System[7]

Possible Options

1) **Phased-in approach to distribution:** In the initial stages of legalizing [cannabis], only allowing a proven system of distribution (e.g., through the mail, as is currently done in the medical [cannabis] regime) could minimize the risks of uncontrolled/illegal retail sales outlined above. This system could enable access for adults while using caution in taking a step that may inadvertently put youth at increased risk.

2) **Storefronts:** On the other hand, allowing for some ability for the sale of [cannabis] to occur in a legal, regulated retail environment may be required in order to provide an alternative to the current illegal sellers that exist in certain Canadian cities. Ensuring that the [cannabis] sold in such establishments comes from a legal source would be critical.

3) **Local choice:** Alternatively, decisions on appropriate distribution mechanisms could be left to provincial and territorial governments to determine the best approach based on their unique circumstances. This scenario could result in different models being adopted across the country. Regardless of the distribution model ultimately chosen, significant efforts by all orders of government and by law enforcement will need to be put into shutting down illegal operations, be they store-fronts or internet operators.

Consultation questions on designing an appropriate distribution system

1. Which distribution model makes the most sense and why?

CNA recommends that when considering models for cannabis distribution in the legalized system, that principles of harm reduction be considered, including promotion of safety, prevention of death and disability, and promotion of safer use. Preferred models would be those that on their own, or in conjunction with other models balance access to safe, reliable, regulated product with restrictions related to protecting access for children and youth. In addition, models which promote safety for users and communities through curbing illicit-market distribution should be considered.

2. To what extent is variation across provinces and territories in terms of distribution models acceptable?

CNA suggests that when the federal government recommends the implementation of distribution models that it consider and implore provinces and territories to consider principles of social justice and harm reduction. A model used in a province or territory must be evidence informed and subject to evaluation and a rigorous system of accountability to ensure that the model chosen is the most appropriate to reduce harms to individuals and communities. Examples of harms could be those related to increased cannabis use due

[7] From p. 18 of the discussion paper.

to legalization or, conversely, to poor health effects for individuals and communities if legal access is not provided and illicit-market distribution continues.

3. Are there other models worthy of consideration?

CNA does not currently have a position on this issue.

4. Enforcing Public Safety and Protection[8]

Possible Options

1) **Strengthened laws and appropriate enforcement response:** Establishing a successful legalization regime will require the strengthening of laws that will minimize or eliminate criminal involvement. It could also require the strengthening of laws to punish those who choose to operate outside of its parameters, including those who provide [cannabis] to youth or produce or traffic [cannabis] outside of the new regulated framework, and move it across Canadian borders.

2) **Enforcement tools for cannabis-impaired driving:** There is a need and opportunity for Canada to research, develop, test, train and promote technologies and related guidelines and protocols that can equip law enforcement to deal with possible increased rates of impaired driving, particularly for roadside testing of impairment. This should be complemented by public education campaigns that emphasize risks associated with drug-impaired driving and that advocate preventive measures, as is the case for drinking and driving.

3) **Restriction of consumption to the home or a limited number of well-regulated publicly-accessible sites:** Consumption of [cannabis] could be restricted to private residences. However, the system may need to be pragmatic to respond to the demand for venues to consume [cannabis] outside the home in order to avoid proliferation of consumption in all public spaces. Consideration could be given to identifying — and strictly limiting and controlling — allowable sites for use by adults. This could serve to minimize normalization of [cannabis] and protect against the exposure of non-users to second-hand smoke and vapours. In addition, consideration will need to be given to the use of [cannabis] in work-places. For example, a zero tolerance policy could be applied for those who operate heavy machinery or conveyances.

Consultation questions on enforcing public safety and protection

1. How should governments approach designing laws that will reduce, eliminate and punish those who operate outside the boundaries of the new legal system for cannabis?

CNA does not currently have a position on this issue but agrees with the discussion paper: that emphasis needs to be on designing and enforcing the new system of production and distribution around legal access, while punishing those who act outside of this system (particularly those who distribute to at-risk groups such as children and youth), and on reducing harms through strategies to detect, punish and eliminate cannabis-impaired driving.

[8] From pp. 20-21 of the discussion paper.

2. What specific tools, training and guidelines will be most effective in supporting enforcement measures to protect public health and safety, particularly for impaired driving?

CNA would encourage strategies, tools, training and guidelines for supporting enforcement measures to protect public health and safety (particularly those for impaired driving) that draw upon the principles of primary health care, including appropriate use of technology and active public participation. Public participation can assist in developing the health messaging, resources and educational training for various sectors (health, enforcement) that are appropriate and effective. Appropriate technology needs to be considered and further developed, as per the discussion paper, to ensure that mechanisms for detection of impaired driving are in place. In addition, it is recommended, based on the lessons learned from legalization of cannabis in Colorado, that public health and public education programs (including those around cannabis use and driving) be delivered prior to the legalization of cannabis.

3. Should consumption of [cannabis] be allowed in any publicly-accessible spaces outside the home? Under what conditions and circumstances?

When considering if cannabis be allowed in publicly accessible spaces outside the home, CNA would recommend that harm reduction and public health approaches be taken. Consideration should be given to what type of cannabis use would be allowed (i.e., ingestion of edible products vs. inhalation) and corresponding considerations for user and public safety. This may include reviewing research on the effects of second-hand cannabis smoke, considerations regarding food safety for edible products as well as considerations as to the age of those admitted to these spaces. If such spaces are allowed, consideration should be given to how community safety can be achieved along with the enforcement of regulations around cannabis use and driving.

5. Accessing [Cannabis] for Medical Purposes[9]

Possible Options

1) **Continued access to [cannabis] for medical purposes:** It is anticipated that there could continue to be a need to enable access to [cannabis] for those who require it for medical reasons, but for whom reasonable access is not possible in the legalized context. This might require allowing different production methods (e.g., home cultivation) not available to others. It could also require carve-outs for medically-authorized youth or those who need high potency products. Physician involvement would still be necessary.

[9] From p. 23 of the discussion paper.

Consultation questions on accessing cannabis for medical purposes

1. What factors should the government consider in determining if appropriate access to medically authorized persons is provided once a system for legal access to [cannabis] is in place?

When considering if medical cannabis is necessary, CNA recommends that the government consider the need of existing medical cannabis, and that implementation of a legalized system should not present any barriers to access for medical need, as per the accessibility principle of primary health care. In addition, CNA strongly recommends a rewording of this report to reflect not only that physician involvement will still be necessary, but that nurse practitioners will too, as prescribing controlled and non-controlled substances falls within their scope of practice.