

BRIEF SUBMITTED BY THE BARREAU DU QUÉBEC

Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts

Presented to the Senate Committee on Legal and
Constitutional Affairs

April 18, 2018

Mission of the Barreau du Québec

To ensure the protection of the public, the Barreau du Québec oversees professional legal practice, promotes the rule of law, enhances the image of the profession and supports members in their practice.

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Ms. Ana Victoria Aguerre
Ms. Sylvie Champagne
Ms. Pearl Eliadis
Ms. Rea Hawi
Ms. Stephanie Laurin
Ms. Arianne Leblond
Mr. Nicolas Grand Alary
Mr. Pascal Levesque
Mr. Fernand Poupart
Mr. Richard F. Prihoda
Mr. Marc Sauvé
Mr. Luc Thibaudeau
Mr. Charles Wagner

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Overview of the Barreau du Québec's position

✓ The Barreau du Québec is generally satisfied with the framework proposed by Bill C-45.

Generally speaking, the Bill is comprehensive in that it provides clear measures for the production, distribution and sale of cannabis, while respecting the exclusive jurisdiction of each level of government. In addition, the Bill provides that distribution and retail sales may be subject to provincial regulation, provided that minimum federal conditions, including criminal law, are respected.

In this regard, the Barreau du Québec is calling on the federal government to rapidly engage in talks with the provinces and territories to ensure that the Bill comes into force in a manner that is not only effective but also predictable for those affected by it. In particular, we believe that transitional measures are needed to ensure that cases of simple possession will be decriminalized by the time the Bill comes into force, scheduled for July 2018. In this regard, the timeline proposed by the federal government seems reasonable, but collaboration and coordination between the federal, provincial and municipal levels is essential. We must remember that the legalization of cannabis raises issues that challenge all levels of government and their respective jurisdictions. We therefore ask the government to give the provinces that intend to draft legislation on the distribution and retail sale of cannabis the time they need to do so, thereby respecting shared jurisdiction.

In addition, the Barreau du Québec welcomes the allocation of substantial funding to develop awareness and education measures. However, the Barreau du Québec stresses the need to provide additional funds and resources for research purposes, with the aim of collecting solid evidence on the effects of cannabis, particularly among young people.

✓ The Barreau du Québec has some specific comments with respect to Bill C-45.

Possession offence

We understand that the legislator intends to allow the possession of four cannabis plants for personal cultivation (production). As it is written, paragraph 8(1)(d) of the *Cannabis Act* appears to allow for the possession of more plants, depending on whether or not they are budding and flowering. The possession offence should be clarified by removing any reference to the type of plant allowed.

We want to emphasize the importance of not criminalizing minors for conduct that is otherwise permitted among adults. While we recognize the importance of preventing cannabis use among youth, it seems illogical to criminalize them, given that they would have to live with the significant consequences that can follow a criminal conviction.

We must remember that this is a particularly vulnerable population that must be properly protected.

“Dwelling-house” as defined in section 12 of the Cannabis Act

The definition of a “dwelling-house” in which the personal cultivation of cannabis is permitted is broadly worded to ensure that the individual does not circumvent the four-plant limit imposed by the *Cannabis Act*, depending on whether the individual cultivates plants where he or she is ordinarily resident or on any adjacent land and building thereon. However, this definition would allow cultivation outside a house, for example, in a garden. To ensure safety, especially for young people, we believe that personal cultivation should be restricted to an enclosed and protected space, as is the case in Colorado and California. National safety standards for personal cultivation should be considered and an amendment to the *Cannabis Act* may be required.

Packaging and labelling

In the interest of public health and safety, we believe that packaging regulations for cannabis sold at retail must provide for dissuasive information and images, similar to tobacco packaging. National safety standards for packaging and labelling at this level should also be considered and an amendment to the *Cannabis Act* may be required.

Sale authorized by a province

The Bill recognizes the power of the provinces and territories to authorize and monitor the distribution and sale of cannabis, subject to compliance with the minimum federal conditions listed. However, we note that this list is not exhaustive in light of the provisions of the *Cannabis Act* and the federal government’s exclusive jurisdiction over criminal law. This could lead to some confusion regarding what rules the provinces must respect when legislating the retail sale and distribution of cannabis. For the sake of clarity, the legislator should amend the *Cannabis Act* accordingly.

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1. THE BARREAU DU QUÉBEC IS GENERALLY SATISFIED WITH THE FRAMEWORK PROPOSED BY THE BILL

1.1 Objectives of the Bill

Without commenting on the advisability of legalizing cannabis in Canada,¹ the Barreau du Québec believes it is important to distinguish between “legalization” and “decriminalization” in order to understand the choice of the legislator and the objectives pursued by Bill C-45.

Decriminalization is a process by which acts formerly considered criminal are no longer so characterized. In the case of cannabis, this means that possessing it, especially for the purpose of consumption, would no longer be an offence. However, the production, processing, transportation and sale of cannabis would still be prohibited. It should be noted that although possession of cannabis would no longer be an offence, the purchase of this product would still be prohibited under decriminalization. Yet cannabis consumption rates in Canada are among the highest in the world.² Thus, in order to obtain cannabis in a decriminalized context, consumers must produce it illegally or obtain it from people who produce it illegally, often from organized crime. This illegal market is itself a danger to the consumer (violence, exposure to other drugs and unknown drug composition), and puts public health and safety at risk.

Legalization is a process of adding sanction and authority of law to that which before was without or against law.³ In terms of the use of cannabis and its derivatives, the aim is to establish a legal framework in which all operations from production to consumption would be permitted under certain conditions. These conditions concern the rules of hygiene and quality control during production, the persons authorized to transport the substance, those who can sell it, the places where it can be consumed, and the minimum age for consumption.

Having opted to legalize cannabis in Canada, the government⁴ mandated, on June 30, 2016, the Task Force on Cannabis Legalization and Regulation (hereinafter the “Task Force”) to undertake a national consultation and consult

¹ Historically, the Barreau du Québec has never taken a specific position on the legalization of cannabis. On the other hand, the Barreau du Québec has previously criticized the criminalization of cannabis as part of its study of Bill S-19 in 1975. In 2002, the Canadian Bar Association raised the same concerns during the work of the Senate Special Committee on Illegal Drugs.

² DUFF, CAMERON, et al., “A Canadian perspective on cannabis normalization among adults,” *Addiction Research and Theory*, Vol. 20, No. 4, 2011, p. 271 to 283. See also UNICEF, “Child well-being in rich countries: A comparative overview,” *Innocenti Report Card 11*, UNICEF Office of Research, Florence, 2013.

³ The Law Dictionary, [Legalization](#), Black’s Law Dictionary.

⁴ Specifically, the Minister of Justice and Attorney General of Canada, the Minister of Public Safety and Emergency Preparedness, and the Minister of Health.

experts and the public in order to obtain recommendations “on the design of a new legislative and regulatory framework for legal access to cannabis.”⁵

Bill C-45, *An Act respecting Cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts* (hereinafter the “Bill”), introduced on April 13, 2017, essentially incorporates the recommendations of the Task Force. The Bill creates the *Cannabis Act*, a national framework to control the production, distribution, sale and possession of cannabis in Canada.

Under the *Cannabis Act*, the federal government would be responsible for creating and maintaining a consistent national framework for the regulation of production, the adoption of health and safety standards and the establishment of criminal prohibitions.

In addition, all levels of government in Canada would be required to establish certain cannabis requirements, depending on their areas of jurisdiction. It should be noted that the production of cannabis falls under the exclusive jurisdiction of the federal government and that distribution and retail sales are the responsibility of the provincial government. Specific comments about shared jurisdiction, and more specifically, provincial jurisdiction over the legislation of cannabis, are found in Section 2.5 [Translator’s note: should read “2.4”], “Provincially authorized selling in the *Cannabis Act*.”

1.2 General comments by the Barreau du Québec on the Bill

The Barreau du Québec is keenly interested in the respect for the rule of law and in the issues that undermine public safety, and it is pleased to see that the Bill introduces quite a comprehensive legal framework overall that addresses the consumption, production, distribution and retail sale of cannabis, while respecting the constitutional jurisdictions of the various levels of government.

In general, we welcome the severe penalties put forward for any possession, sale, production and distribution that does not comply with the Bill. In addition, the Bill introduces several measures to prevent the cannabis market from being taken over by organized crime and to protect minors, notably by creating two new offences – giving or selling cannabis to minors, and using a youth to commit a cannabis offence, both of which carry a 14-year prison term.

Subject to the criminal offences provided for in the Bill, the Barreau du Québec notes that the legislator has established a legal framework for cannabis that is consistent with the current framework for alcohol and tobacco, two other legal substances that must meet provincial and federal minimum standards, particularly regarding sales to youth and advertising. Thus, citizens in comparable situations should be treated fairly similarly, although it must be admitted that there is very little solid evidence on the effects of cannabis on people, especially young people.

⁵ TASK FORCE ON CANNABIS LEGALIZATION AND REGULATION, “*A Framework for the Legalization and Regulation of Cannabis in Canada, the Final Report of the Task Force on Cannabis Legalization and Regulation*,” (hereinafter the “Report”), Health Canada, Ottawa, November 30, 2016, p. 2.

We are pleased to note that the Bill provides for the coexistence of cannabis consumption regimes for recreational and therapeutic purposes. People who use cannabis for medical purposes would be able to claim discrimination relating to “a handicap or the use of any means to palliate a handicap,” provided that they demonstrate that their use of cannabis is to palliate the symptoms of their disease. These users would therefore benefit from the protection of the *Charter of Human Rights and Freedoms* against all forms of discrimination related to the use of cannabis for therapeutic purposes,⁶ and reasonable accommodations would have to be made to allow them to do so, especially in a workplace setting.

In addition, we note that Bill C-46 - An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts⁷ was tabled at the same time as Bill C-45 and that it aims to amend the legislative provisions on driving while impaired by drugs and alcohol. In this bill, the government plans to add new offences to the *Criminal Code* in order to apply zero tolerance to impaired driving under the influence of cannabis and other drugs. In addition, the bill will provide police with new powers and authorize new tools to help them detect the presence of drugs in a driver’s body. The Barreau du Québec is starting to analyze this bill and reserves its comments on the subject, which will be made public in another brief.

The Barreau du Québec also acknowledges the legislator's desire to regulate cannabis by-products (e.g., edible products) at a later date and awaits another bill on the subject.

Finally, it is essential for the federal government and the provinces to coordinate their actions so that the standards for the consumption, production and distribution of cannabis can be harmoniously applied. This work must be initiated quickly so that the law and regulations can come into force within a reasonable amount of time. In addition, the active involvement of provincial and territorial governments will be essential to prevent young people from accessing cannabis and to ensure that those who do not comply with the legislative framework regarding sales are subject to severe criminal penalties.

⁶ In Quebec, under section 10 of the *Charter of Human Rights and Freedoms*.

⁷ Presented by the Minister of Justice and Attorney General of Canada.

1.3 Issues raised by the Bill

1.3.1 Proposed timeline and need to collaborate with provinces and territories

The federal government is expecting the Bill to come into force in July 2018, which leaves the various levels of government little more than a year to agree on the implementation of the measures in this legislation.

The legalization of cannabis will require provinces, territories and municipalities to take action in their respective areas of jurisdiction.

The Bill provides that provinces and territories may assume responsibility for developing, implementing, maintaining and enforcing the regimes to monitor the distribution and retail sale of cannabis, in close collaboration with municipalities.

In particular, it is also proposed that the provinces and territories enact legislation containing minimum provisions to ensure public health and safety objectives are implemented throughout the country. As a result, provinces and territories will be able to raise the minimum age, lower the possession limit and impose additional requirements on personal cultivation. Finally, the provinces and territories, according to their own powers, can establish additional restrictions and local requirements for cannabis, such as zoning restrictions on cannabis-related businesses and restricting where cannabis can be consumed in public.

We are calling on the federal government to rapidly engage in talks with the provinces and territories to ensure the Bill comes into force in a manner that is not only effective but also predictable for those affected by it.

In addition, we are asking the federal government to provide additional time for provinces that wish to support the federal regulations related to the legalization of cannabis, but are unable to meet the July 2018 deadline.

1.3.2 Legalization of cannabis: the need for an effective and consistent framework in the short and medium terms

The Barreau du Québec believes that a law that does not meet the needs of society and is not effective discredits the legislator and undermines citizens' confidence in their institutions. The social relevance of legislation lies in its ability to respond to the needs of society.

In this regard, the decision to file criminal proceedings is the responsibility of both the Attorney General of Canada and the Attorney General of each province. Depending on the case, it will be up to them to apply the *Cannabis Act* and/or the provincial cannabis laws⁸

once they come into force, as well as the *Criminal Code*⁹ and the *Controlled Drugs and Substances Act*¹⁰ in order to determine whether it is in the public interest to prosecute. In Quebec, the Directeur des poursuites criminelles et pénales may issue directives to all Crown attorneys not to take legal action over the possession of small amounts of cannabis for personal use, as provided for in the Bill. In Canada, the Attorney General may issue these guidelines for federal prosecutions.

Currently, thousands of people receive a criminal record for possession of cannabis.¹¹ The government expects the *Cannabis Act* to come into force no later than July 2018, but until then, citizens will continue to be charged with possession of small amounts of cannabis for personal use.

It is obviously outside the mandate of the Barreau du Québec to advocate the decriminalization or legalization of cannabis. However, we believe that a transitional framework, which would not require legislative changes, would not only ensure legal consistency and predictability for the benefit of the public, but would also unclog the courts. We therefore invite the federal government and the various legislatures to promptly initiate a dialogue to this end.

1.3.3 Public information and awareness

In addition to working with the provinces and territories to establish a secure supply chain, the federal government must work with them to raise awareness and educate Canadians about the risks associated with cannabis use and monitor the impact of providing tightly controlled access to cannabis.

In its 2017 budget, the government committed \$9.6 million over five years for a major public education and awareness campaign as well as for monitoring activities. We welcome this initiative, but we believe that more money should be allocated to research and solid evidence-gathering on the effects of cannabis, particularly among young people.

The government has committed to annually monitoring cannabis usage trends and perceptions surrounding cannabis consumption among Canadians, particularly youth, through the Canadian Cannabis Survey, in order to inform and refine public education and awareness activities and to mitigate the risks and harms of cannabis use.¹² We would like to have more information on this project,

⁸ Adopted within provincial jurisdiction.

⁹ RSC 1985, c. C-46.

¹⁰ SC 1996, c. 19.

¹¹ In 2013, as in the past, the majority of police-reported drug offences in 2013 involved cannabis (67%), by Adam COTTER, Jacob GREENLAND and Maisie KARAM, "[Drug-related Offences in Canada, 2013.](#)"

¹² HEALTH CANADA, "[Background - Legalizing and strictly regulating cannabis: the facts.](#)" April 2017.

in particular, on the contribution by the provinces, and the amounts that will be allocated to such a project.

Since health is a shared responsibility between the federal government and the provincial and territorial governments, the provinces and territories are expected to complement federal public health programs, including the management of public health and safety issues and education, especially in schools.

2. THE BARREAU DU QUÉBEC COMMENTS ON ASPECTS OF THE BILL

2.1 Possession offence in the *Cannabis Act*

S. 8(1)(e) of the *Cannabis Act*

Possession

8(1) Unless authorized under this Act, it is prohibited

(a) for an individual who is 18 years of age or older to possess, in a public place, cannabis of one or more classes of cannabis the total amount of which, as determined in accordance with Schedule 3, is equivalent to more than 30 g of dried cannabis;

(b) for an individual who is 18 years of age or older to possess any cannabis that they know is illicit cannabis;

(c) for a young person to possess cannabis of one or more classes of cannabis the total amount of which, as determined in accordance with Schedule 3, is equivalent to more than 5 g of dried cannabis;

(d) for an individual to possess, in a public place, one or more cannabis plants that are budding or flowering;

(e) for an individual to possess more than four cannabis plants that are not budding or flowering; or

(f) for an organization to possess cannabis.

Punishment

Subject to section 51, every person that contravenes subsection (1)

(a) is guilty of an indictable offence and is liable

(i) in the case of an individual who is 18 years of age or older, to imprisonment for a term of not more than five years less a day,

(ii) in the case of a young person, to a youth sentence under the Youth Criminal Justice Act, or

(iii) in the case of an organization, to a fine in an amount that is in the discretion of the court; or

(b) is guilty of an offence punishable on summary conviction and is liable

(i) in the case of an individual who is 18 years of age or older, to a fine of not more than \$5,000 or imprisonment for a term of not more than six months, or to both,

(ii) in the case of a young person, to a youth sentence under the Youth Criminal Justice Act, or

(iii) in the case of an organization, to a fine of not more than \$100,000.

Section 8(1) of the *Cannabis Act* provides for the offence of cannabis possession. This offence involves various prohibitions concerning the person’s age, the quantity possessed, the form of the substance (whether or not it is budding and flowering) and its state (lawful or unlawful), and where the possession takes place.

To fully understand the possession offence, it should be specified that the cannabis plant is an annual. It is the flowering part of this plant that, once harvested and processed, will contain cannabis that can be consumed.

2.1.1 Possession offence for those 18 years of age or older

Paragraph 9(d) of this provision states that no person shall have in his possession, in a public place, one or more cannabis plants that are budding or flowering (hereinafter “flowering plant”). Conversely, the wording of this provision indicates that, in a public place or elsewhere, a person may have in his possession one or more plants that are not budding (hereinafter “seedlings”).

This situation is tempered by paragraph (e), which prohibits a person from possessing more than four cannabis plants that are neither budding nor flowering (seedlings). Read alongside paragraph (d), this prohibition leads to two conclusions: first, no more than four seedlings are allowed in a public place. Second, one can have more than four plants in any location other than a public place, provided that the additional plants are flowering.

This conclusion seems inconsistent with the legislator’s desire to permit the cultivation of cannabis in residential homes provided that this crop is restricted to four plants, as provided for in section 12(4)(b) of the *Cannabis Act*. We also point out that any violation of this provision is liable to imprisonment of up to 14 years.¹³

For the sake of clarity, we suggest that paragraph 8(1)(e) of the *Cannabis Act* be amended to delete the words “that are not budding or flowering”. We believe that this wording is more consistent with section 12(4)(b) of the *Cannabis Act*

¹³ Upon summary conviction, the person is liable to a fine of not more than \$500 or to imprisonment for a term of not more than six months. In addition, section 51(2)(g) of the *Cannabis Act* provides that the offence of possession of five or six plants by a person may be punishable by a simple ticket.

and ultimately, with the government's expressed intent regarding the maximum number of plants that can be grown in a dwelling-house.

2.1.2 Possession offence for those under 18 years of age

We note that the Bill legalizes the possession and distribution of cannabis for youths aged 12 to 17, for any amount equal to or less than five grams. Provinces and territories will, however, have the flexibility to prohibit the possession of any quantity of cannabis by a young person, thereby allowing the police to seize cannabis in a young person's possession.

We want to emphasize the importance of not criminalizing minors for conduct that is otherwise permitted among adults. While we recognize the importance of preventing cannabis use among youth, it seems illogical to criminalize youth, who would have to live with the significant consequences that can follow a criminal conviction. We must remember that this is a particularly vulnerable population, which must be adequately protected.

It should also be noted that the regime provided for in sections 51 and following of the Bill does not apply to persons under 18 years of age. These sections provide that persons 18 years of age or over who commit certain offences may be prosecuted by the issuance of a ticket, while this possibility does not apply to minors. The regular criminal process is therefore imposed on a population that is particularly vulnerable.

Health Canada points out in the background paper entitled "Legalizing and strictly regulating cannabis: the facts"¹⁴ that the "proposed Act seeks to avoid criminalizing youth and subjecting them to the lifelong consequences of a criminal record." Imposing such a strict limit could, however, have the opposite effect.

In addition, let us remember the principle set out in the *Youth Criminal Justice Act*¹⁵ that the sentence determined by the youth court must not be more severe than that imposed on an adult guilty of the same offence committed under similar circumstances.¹⁶

Let us not forget that some deterrent measures can be put in place without disproportionately punishing minors. The system in place for alcohol in Quebec is a good example: minors who purchase or attempt to purchase alcoholic beverages are committing a criminal offence punishable by a fine.¹⁷

¹⁴ HEALTH CANADA, *Supra*, note 12.

¹⁵ SC 2002, c. 1.

¹⁶ *Id.*, s. 8(2)(a). [Translator's note: there is no section 8(2)(a)]

¹⁷ *Act respecting offences relating to alcoholic beverages*, CQLR, c. I-8.1, s. 103.9.

The Task Force mentioned in its final report:

“We are mindful of the negative consequences that involvement in the criminal justice system can have for youth, especially disadvantaged or marginalized youth, and believe that this should be avoided to the extent possible. To that end, we do not believe that simple possession of cannabis by youth should be a criminal offence (apart from the limits on personal possession, discussed below). When youth engage in activities that are defined as criminal offences under the new framework, the discretion and flexibility available in the criminal justice system, in particular under the *Youth Criminal Justice Act*, should be used constructively to minimize these negative consequences.”¹⁸

“The amount of non-medical cannabis that individuals are permitted to carry on their person in a public place should be limited to 30 grams.”¹⁹

We share the Task Force’s view of the importance of not criminalizing youth for simple possession of cannabis below the legal limit permitted. For these reasons and in the interest of consistency, we consider it preferable to prohibit the possession of less than 30 grams of cannabis among young people by means of a penal rather than a criminal offence. This would allow peace officers to confiscate the cannabis in a young person’s possession and issue a ticket, whereas possession of more than 30 grams would be punishable by a criminal offence, under the *Youth Criminal Justice Act*.²⁰

In closing, we consider awareness, education and prevention to be the best ways to eradicate cannabis use among young people. Indeed, the criminal system must not be used to compensate for an inadequate system of prevention and education.

2.2 “Dwelling-house” as defined in section 12 of the *Cannabis Act* (production)

Section 12(8) of the *Cannabis Act*

Definition of a dwelling-house

(8) For the purposes of this section, a dwelling-house, in respect of an individual, means the dwelling-house where the individual is ordinarily resident and includes

(a) any land that is subjacent to it and the immediately contiguous land that is attributable to it, including a yard, garden or any similar land; and

(b) any building or structure on any land referred to in paragraph (a).

¹⁸ TASK FORCE ON CANNABIS LEGALIZATION AND REGULATION, supra note 5, p. 39.

¹⁹ Id., p. 40.

²⁰ SC 2002, c. 1.

Section 12 states that it is legal to cultivate up to four cannabis plants per “dwelling-house”²¹ and not per number of adults living there.²² In addition, legal cultivation is limited to a dwelling-house.

Section 12(8) of the *Cannabis Act* provides a definition of “dwelling-house” specific to the application of section 12.²³ This definition is broadly worded to ensure that an individual does not circumvent the limit of four legally cultivable cannabis plants on the pretext that the plants are being cultivated within the actual house or on the grounds of the house.

However, this definition would allow cultivation outside the home and we wonder if this practice is really safe, especially for young people. Thus, we believe that cultivation should be limited to areas that are enclosed, have restricted access or are protected from view, as is the case in Colorado or California.

In this regard, these states provide for the following measures:

“Colorado Constitution, art. XVIII, s. 16(3)(b):

(b) Possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale.

California Health and Safety Code, s. 11362.1:

(3) Possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants;

California Health and Safety Code, s. 11362.2:

(a) Personal cultivation of marijuana under paragraph (3) of subdivision (a) of Section 11362.1 is subject to the following restrictions:

(1) A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with subdivision (b).

(2) The living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of

²¹ Section 12(4).

²² Section 12(5).

²³ This specific definition is outside the general definition applicable to the rest of the *Cannabis Act* and refers to the definition of a dwelling-house in the Criminal Code.

that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.

(3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.

(b) (1) A city, county, or city and county may enact and enforce reasonable regulations to reasonably regulate the actions and conduct in paragraph (3) of subdivision (a) of Section 11362.1.

(2) Notwithstanding paragraph (1), no city, county, or city and county may completely prohibit persons engaging in the actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.

(3) Notwithstanding paragraph (3) of subdivision (a) of Section 11362.1, a city, county, or city and county may completely prohibit persons from engaging in actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 outdoors upon the grounds of a private residence.

(4) Paragraph (3) shall become inoperative upon a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law, and an act taken by a city, county, or city and county under paragraph (3) shall be deemed repealed upon the date of such determination by the Attorney General.

(5) For purposes of this section, ‘private residence’ means a house, an apartment unit, a mobile home, or other similar dwelling.”

Thus, it should be ensured that the permitted cultivation meets national safety standards, requiring an amendment to the *Cannabis Act* to this effect. Failing that, this is another example where the federal and provincial governments are called upon to work together to implement a clear and safe framework for the legalization of cannabis for the benefit of the public.

2.3 Packaging and labelling in the *Cannabis Act*

S. 26 of the *Cannabis Act*

26 Unless authorized under this Act, it is prohibited for a person that is authorized to sell cannabis to sell it in a package or with a label

(a) if there are reasonable grounds to believe that the package or label could be appealing to young persons;

- (b) that sets out a testimonial or endorsement, however displayed or communicated;
- (c) that sets out a depiction of a person, character or animal, whether real or fictional;
- (d) that associates the cannabis or one of its brand elements with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring; or
- (e) that contains any information that is false, misleading or deceptive or that is likely to create an erroneous impression about the characteristics, value, quantity, composition, strength, concentration, potency, purity, quality, merit, safety, health effects or health risks of the cannabis.

With the legalization of cannabis, it is expected that some existing industries will try to take over the market for this product. Given the known risks of cannabis use, but most importantly, given what we still do not know about the use of this substance, the rules on promoting, advertising and marketing will be critical to public health, especially for young people.

We are pleased to see that the *Cannabis Act* provides clear and detailed restrictions on the packaging and labelling,²⁴ display,²⁵ sale and distribution of cannabis.²⁶ These restrictions are very similar to the current system in place for tobacco. The legislator opted for plain packaging for cannabis products, which is Australia's approach to tobacco products and which will soon be applied to tobacco products in Canada. Plain packaging refers to packages without distinctive or attractive features and with limitations on how the brand name is displayed (e.g., font type, colour and size).

We believe that the federal government could go even further in terms of packaging and labelling obligations and restrictions. Indeed, we believe that the federal government could impose the addition of information and images on the packaging, as is currently the case for tobacco.

The need for this youth-oriented approach becomes crucial when considering the group aged 19-25 [Translator's note: the author likely meant 18-25]. It will be legal for young people in this age group to buy cannabis, but data on the potential harm suggests that consumption by this group should be discouraged for reasons of public health and safety. So, although there must be a federal minimum age of 18, we believe that the *Cannabis Act* should include a clear obligation to impose dissuasive information and images in order to minimize the use of cannabis by people between 18 and 25 years of age.

²⁴ *Cannabis Act*, s. 25 and seq.

²⁵ *Cannabis Act*, s. 29 and seq.

²⁶ *Cannabis Act*, s. 31 and seq.

Therefore, we suggest that the *Cannabis Act* be amended to include a national packaging and labelling standard for the addition of dissuasive information and images related to cannabis use.

2.4 Provincially authorized selling in the *Cannabis Act*

S. 69 of the *Cannabis Act*

Provincially authorized selling

69 (1) A person may possess, sell or distribute cannabis if the person is authorized to sell cannabis under a provincial Act that contains the legislative measures referred to in subsection (3).

Application

(2) Subsection (1) applies only if the provincial Act and the legislative measures are in force.

Legislative measures

(3) For the purposes of subsection (1), the legislative measures in a provincial Act that authorizes the selling of cannabis are the following in respect of persons authorized to sell cannabis:

- (a)** they may sell only cannabis that has been produced by a person that is authorized under this Act to produce cannabis for commercial purposes;
- (b)** they may not sell cannabis to young persons;
- (c)** they are required to keep appropriate records respecting their activities in relation to cannabis that they possess for commercial purposes; and
- (d)** they are required to take adequate measures to reduce the risk of cannabis that they possess for commercial purposes being diverted to an illicit market or activity.

Section 69 of the *Cannabis Act* recognizes the authority of the provinces and territories to authorize and control the distribution and sale of cannabis, subject to compliance with the minimum federal requirements detailed in paragraphs (a) to (d) of subsection (3).

In addition, provincial governments can even adapt certain rules provided for in the *Cannabis Act* and ensure compliance.²⁷ These provincial rules could include:

- Licensing for distribution and retail sale in their own province or territory, and performing compliance and enforcement activities under the related statute;

²⁷ For example, by imposing fines.

- Establishing additional regulatory requirements to address issues of local interest. For example, provinces and territories may increase the minimum age or further restrict possession or personal cultivation, such as reducing the number of plants or limiting the areas where cannabis can be grown;
- Establishing provincial and territorial zoning by-laws for cannabis businesses;
- Restricting the places where cannabis can be consumed;
- Amending provincial and territorial road safety legislation to address cannabis-impaired driving (e.g., provide for a 24-hour license suspension for adults or zero-tolerance for young drivers).

Since various levels of government share jurisdiction over these matters, it appears that in the provinces and territories that will not have a regulatory framework for retail sales when the *Cannabis Act* comes into force, individuals will be able to buy cannabis and plants online from a federally licensed producer.

The fact remains that if a province uses its power to authorize the retail sale of cannabis through legislation, it will have to meet certain conditions related to public health and safety, and more specifically, to criminal law.

However, we find that the list of minimum conditions in section 69 is not exhaustive in light of the provisions of the *Cannabis Act* and the federal government's exclusive jurisdiction over criminal law. For example, the federal minimum packaging and labelling requirements, the violation of which is punishable by criminal prosecution, are not part of the minimum mandatory requirements listed in section 69(3). This can lead to some confusion regarding provincial compliance when legislating the retail sale and distribution of cannabis.

The legislator has two options to increase clarity:

- amend section 69 to delete subsection (3), in which case the provinces will legislate in accordance with the minimum standards in the *Cannabis Act*, as explained, which are more numerous than those currently provided for in paragraphs (a) to (e);
- or amend section 69 to add at subsection (3) any federal minimum standards which have been enacted under jurisdictional authority and which the provinces will have to respect when legislating the distribution and retail sale of cannabis.

SCHEDULE 1 - SUMMARY OF THE RECOMMENDATIONS BY THE BARREAU DU QUÉBEC

LEGALIZATION OF CANNABIS	
SUBJECT	RECOMMENDATIONS
The advisability of legalizing cannabis	<ul style="list-style-type: none"> ▪ It is obviously outside the mandate of the Barreau du Québec to advocate the decriminalization or legalization of cannabis. This is a political decision that belongs to elected officials. ▪ It is essential to coordinate the activities of the federal government and the provinces so that the standards for the consumption, production and distribution of cannabis can be harmoniously applied. ▪ It is preferable to have two regimes for cannabis use (for therapeutic purposes and for recreational purposes).
Shared jurisdiction	We conclude that cannabis production falls under the jurisdiction of the federal government, while the distribution and retail sale of cannabis falls under the provincial jurisdiction.
Minimum age	<p>The Barreau du Québec will not express an opinion on a specific minimum age, but it believes that:</p> <ul style="list-style-type: none"> ▪ The federal government and the provinces each have the respective jurisdiction to determine a minimum age; ▪ The provinces have the power to harmonize the minimum age with the minimum age for alcohol, which is 18 in Quebec; ▪ There is a lack of solid evidence regarding the age at which cannabis use is safe; ▪ It is important not to criminalize or unduly penalize people who have not reached the minimum age.
Driving while impaired	<ul style="list-style-type: none"> ▪ It is important to establish a per se limit to facilitate enforcement of the law and proof of drug-impaired faculties; ▪ The “zero-tolerance” rule must apply to new drivers; ▪ There is an urgent need for funding for drug impairment research; ▪ There is an immediate need for funding to train drug recognition experts. There is a lack of capacity to respond to current drug-impaired driving rates.

Advertising, promotion and marketing	<ul style="list-style-type: none"> ▪ Clear and detailed restrictions on the advertising, promotion and marketing of cannabis must be established similar to those for tobacco and alcohol. ▪ Strict penalties must be imposed on false or misleading promotions, as well as promotions that encourage excessive consumption, when promotions are permitted. ▪ Both levels of government must coordinate their work so that standards for the consumption, production and distribution of cannabis can be harmoniously applied.
Taxes and prices	<ul style="list-style-type: none"> ▪ The sale of cannabis must be subject to the general rules on taxation and non-competitive practices. ▪ The zero-rated status of the sale of cannabis for therapeutic purposes must be maintained.
Edible products	<ul style="list-style-type: none"> ▪ Rules similar to those in Colorado and Alaska should be established, for example, determining a maximum amount of THC per unit, prohibiting attractive packaging for children, prohibiting the production or sale of products that resemble a familiar food or a familiar drink, etc. ▪ The production and sale of products featuring blends of cannabis, alcohol or tobacco must be prohibited.
THC content	The Barreau du Québec will not take a position on this aspect.
Public Education	<ul style="list-style-type: none"> ▪ The importance of coordinating the information and education campaigns between both levels of government must be emphasized. ▪ A public education campaign based on solid evidence should be launched as soon as possible, targeting the entire population and focusing particularly on youth, parents and vulnerable populations.
Workplace safety	<ul style="list-style-type: none"> ▪ There is a need to strike a balance between the legal use of cannabis and the obligation of employers to ensure a safe workplace while respecting employees' privacy rights. ▪ Given the limited data available, it is important to support research on the effects of cannabis and more specifically on impairment in the workplace.