

**A Submission to The Standing Senate Committee on Social Affairs,
Science & Technology on Bill C45, The Cannabis Act**

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Introduction

My interests are in drug policy broadly defined to include alcohol, tobacco, and pharmaceuticals. Accordingly, I regard cannabis law reform within the context of these other legal drug industries.

Alcohol, tobacco, pharmaceuticals and cannabis are not ordinary commodities. Each year in Canada, alcohol and tobacco are associated with approximately 50,000 premature deaths (Rehm et al., 2006; Dobrescu, et al., 2017), 6.5 million days in hospital, and a cost to the Canadian economy of over \$30 billion (Rehm et al., 2006). We now have an opioid crisis which began when a drug company aggressively launched a misleading advertising campaign for an opioid pain-killer (DeVillaer, 2017).

Canadians have received assurances that the cannabis industry will be 'strictly regulated' like other drug industries to protect the public's health. A half century of international drug policy evidence tells us that it is not so simple. Our regulatory bodies often fail at containing the ambition of these industries. In 2015, a report from The Standing Senate Committee on Social Affairs, Science and Technology alerted Canadians to the failure of Health Canada to effectively regulate the pharmaceutical industry. The same challenge persists with federal and provincial regulation of the tobacco and alcohol industries. The result is an enormous amount of drug-related harm that stresses our communities and our homes.

The state of the union is that we have three legal, permissively-regulated drug industries and we have three public health crises. Early indications from the emerging legal cannabis industry suggest that it is on a similar trajectory. I provide many examples in my report "Cannabis Law Reform in Canada: Pretense & Perils" (DeVillaer, 2017).

Cannabis Advertising and other Product Promotion Practices

Research, also referenced in my report, has provided consistent results for two important issues. First, promoting the use of a drug increases its use among the population; and secondly, increased use of a drug among the population is associated with increased problems related to that drug.

Attempted restrictions on alcohol and tobacco promotion have shown that companies are enormously resourceful at circumventing such restrictions. The cannabis industry will be no different.

Bill C45 includes restrictions on cannabis advertising. The industry is now discussing strategies to "...circumvent or navigate these regulations in a creative way". For example, they plan to use technology that allows viewing a cannabis plain package through a smart phone lens to reveal hidden features. When clicked, these features will provide access to brand information such as a video to be viewed on the smart phone (Ligaya 2018). This is exactly what Bill C45, and its regulations, had intended to prevent.

Tweed, a subsidiary of Canopy Growth, Canada's premier medicinal cannabis producer, has selected an American entertainer Snoop Dogg as, what CEO Bruce Linton has referred to, their 'key icon advisor' for Canopy's entry into the recreational cannabis market (Foote, 2016). Snoop Dogg has a record of serial violent felonies for which he has been repeatedly incarcerated. He has been banned, at various times, from entering Australia, Norway and the UK. Canopy made public their choice of Snoop Dogg at the same time that our government was telling Canadians that they were legalizing cannabis to protect our children from criminals. Snoop Dogg has over eighteen million followers on Twitter.

The cannabis industry has also formally indicated its desire to advertise on web sites and social media platforms that include up to 30% underage visitors (Aphria et al., 2017). That could mean potentially millions of underage Canadians being exposed to cannabis ads. Clearly the cannabis industry has not bought into public health protection as an important part of its business model. My report, "Cannabis Law Reform in Canada: Pretense & Perils" provides many more examples.

Jonathan Caulkins, an internationally-renowned American drug policy researcher, has this to say about the future of commercial cannabis legalization: "...there's a good chance that people in 25 to 40 years will look back and shake their heads and ask, 'what were you thinking? Why did you think it was a good idea to create an industry of titans to market this drug?'"

The cannabis industry will make all possible effort to circumvent restrictions on product promotion. This is a major reason why five public health organizations in Canada, including The Chief Medical Officers of Health, The Canadian Public Health Association, The Canadian Medical Association, The Canadian Pediatric Society, and the Centre for Addiction and Mental Health, have recommended not mere restrictions, but a complete ban on product promotion (DeVillaeer, 2017).

Following the lead of our public health experts, the product promotion restrictions currently in Bill C45 should be replaced by provisions for a complete ban with meaningful penalties for attempts at circumvention.

Revisions to Bill C45

The following provision (once revised by legal staff) should be embedded within, and replace much of, Section 2.2.2.1 (Clauses 16-24), Section 2.2.2.2 (Clauses 25-28), and Section 2.2.2.3 (Clauses 29 & 30).

All forms of product promotion including advertising, marketing, sponsorships, and endorsements are prohibited in all types of venues. This includes all promotional or packaging elements, including those features that become obvious only upon electronic enhancement or alteration.

The following provision (pending legal review) should be added to Section 2.2.4:

An initial offence is punishable by fines and/or imprisonment (as provided in Section 2.2.4).

Repeat offences would be punishable by a mandatory license suspension.

Contaminated Cannabis Product

One of the promises of cannabis legalization is that we would have properly-labeled product that was free of the contamination sometimes found in illegal product. After almost two decades, the legalization of medicinal cannabis has not delivered on this promise. Health Canada's webpage on cannabis product recalls lists numerous violations for inaccurate labeling and also for contamination with bacteria, contamination with mold, and excessive use of pesticides. In at least one case, no reason for a recall was provided. All we know is that patients were instructed to discontinue use immediately (Health Canada, 2018). In the worst cases, producers were found to be using dangerous banned pesticides (Robertson, 2017). Existing medical cannabis regulations provide for license suspension for using banned pesticides. Despite several incidents, not one license suspension has been issued. Consider a company's decision to repeatedly poison their patients, some of whom have compromised immune systems, and to then conceal the evidence from Health Canada's inspectors (Robertson, 2017). One is compelled to wonder - if that is not grounds for a license suspension, what would be? We must also consider why a regulator would not issue a suspension for such conduct.

Bill C45 must ensure uncontaminated product for consumers. Consumers need to be made aware of this problem on product labels, and there must be meaningful consequences for violations.

Revisions to Bill C45

The following provision (once revised by legal staff) should be embedded within Section 2.2.3 (Clauses 40-43).

All product packages must include the dates of any product recalls issued by the respective producer. All product packages should also include the link to Health Canada's webpage that lists cannabis product recalls.

The following provisions (pending legal review) should be added to Section 2.2.4 and embedded within Clauses 44-50.

An initial offence for a producer who sells contaminated product (with the exception of the offence of known application of banned pesticides) is punishable by fines and/or imprisonment as provided in Section 2.2.4.

The known application of banned pesticides, even upon first offence, is punishable by a mandatory license suspension.

All repeat offences for a producer who sells contaminated product are punishable by a mandatory license suspension.

The illegal growing and/or selling of contaminated cannabis product is also subject to fines and/or imprisonment as provided in Section 2.2.4.

References

Aphria, Aurora, Canadian Medical Cannabis Council (and 16 others). Adult Use Cannabis Advertising and Marketing Self-Regulatory Guidelines for Licensed Producers. November 2017. Available at: <https://static1.squarespace.com/static/554e6babe4b0261b84b9c43b/t/5a023ec1e2c483bbd05d2242/1510096579164/Guidelines+for+Cannabis+-+EN+-+Nov+6.pdf> . Accessed April 13 2018.

DeVillaeer Michael. Cannabis Law Reform in Canada: Pretense & Perils. Hamilton Canada: McMaster University, The Peter Boris Centre for Addictions Research. February 2017. Available at: <https://fhs.mcmaster.ca/pbcar/documents/Pretense%20%26%20Perils%20FINAL.PDF> . Accessed April 13 2018.

Dobrescu Alexandru, Bhandari Abhi, Sutherland Greg, Dinh Thy. The Costs of Tobacco Use in Canada, 2012. Ottawa: The Conference Board of Canada, 2017. Available at: <http://www.conferenceboard.ca/e-library/abstract.aspx?did=9185> . Accessed April 13 2018.

Foote Andrew. Snoop Dogg deal represents changing marijuana industry: Tweed CEO. CBC News Feb 13, 2016. Available at: <http://www.cbc.ca/news/canada/ottawa/snoop-dogg-tweed-smiths-falls-1.3445854?cmp=rss> . Accessed April 15 2018.

Health Canada. Recall of marijuana for medical purposes. Health Canada. Available at: http://www.healthycanadians.gc.ca/recall-alert-rappel-avis/search-recherche/result-resultat?search_text_1=medical+and+marijuana (Accessed April 13, 2018).

Ligaya Armina (The Canadian Press). Pushing the boundaries: Canadian cannabis companies aim to skirt strict rules with creative marketing. The Toronto Star, April 12, 2018. Available at: <https://www.thestar.com/amp/business/2018/04/12/pushing-the-boundaries-canadian-cannabis-companies-aim-to-skirt-strict-rules-with-creative-marketing.html> . Accessed April 13 2018.

Rehm J, Baliunas D, Brochu S, Fischer B, Gnam W, Patra J, Popova S, Sarnocinska-Hart A, Taylor B. In collaboration with Adlaf E, Recel M, Single E. The Costs Of Substance Abuse In Canada 2002 Highlights. Ottawa ON: Canadian Centre on Substance Abuse, 2006. Available at: <http://www.ccsa.ca/Resource%20Library/ccsa-011332-2006.pdf> (Accessed January 24 2017).

Robertson G. Canadians not told about banned pesticide found in medical pot supply. The Globe and Mail, March 23 2017. Available at: <https://www.theglobeandmail.com/news/national/marijuana-supplier-hid-pesticide-from-inspectors-former-worker-says/article33962026/> . Accessed April 13 2018.

Standing Senate Committee on Social Affairs, Science and Technology. Prescription pharmaceuticals in Canada: Final report. Government of Canada, 2015. Available at: <http://www.parl.gc.ca/Content/SEN/Committee/412/soci/rep/rep18mar15-e.pdf> (Accessed January 24, 2017).