

Memorandum

To: Regional Council

From: Joy Hulton, Regional Solicitor

Date: May 25, 2017

Re: **Legalization and Regulation of Cannabis**

Background

As part of its 2015 election platform, the federal Liberal party promised to legalize marijuana and to create new, stronger laws to punish more severely those who provide it to minors, those who operate a motor vehicle while under its influence and those who sell it outside the new legal regulatory framework. This commitment was reflected in the December 2015 Speech from the Throne in which the government committed to legalize, regulate and restrict access to cannabis.

The terms “cannabis” and “marijuana” are often used interchangeably but “cannabis” is the name for the plant; marijuana is the term most often used in reference to the product made from dried flowers and leaves of the cannabis plant. Possessing and selling cannabis (marijuana) for non-medical purposes is currently illegal. Cannabis is a Schedule II drug under the Controlled Drug and Substances Act, and unless otherwise permitted for medical purposes, production, distribution and possession of any quantity is subject to criminal prosecution under that Act.

The federal government plans to legalize cannabis for recreational use by July 2018

The government’s plan to legalize cannabis is distinct from “decriminalization.” The term “decriminalization” is generally used when criminal sanctions for some offences are not imposed or are replaced with administrative sanctions such as fines. If cannabis is simply decriminalized, production, distribution and sale would remain criminal activities. By legalizing cannabis, the government seeks to create a regulatory framework in which cannabis can be produced, distributed, sold and consumed legally for both medical and recreational uses.

The federal Cannabis Legalization Task Force reported its findings and recommendations in November 2016

The Task Force on Cannabis Legalization and Regulation was established in June 2016 to obtain input from experts in public health, substance abuse, and law enforcement to provide advice to the government on the design of a new legislative and regulatory framework. Following months of consultation with various levels of government, experts, advocates and representative organizations, the Task Force released its report “A Framework for the Legalization and Regulation of Cannabis in Canada” in November 2016.

The report contains 80 recommendations based on 5 themes:

1. Minimizing harms of use
2. Establishing a safe and responsible supply chain
3. Enforce public safety and protection
4. Maintain medical access
5. Implementation

A requirement of the Task Force’s mandate was to engage with provincial, territorial, Indigenous governments and municipalities. In the report, the Task Force recognizes the important role that provincial and territorial governments will play in the implementation of a new regulatory framework and the need for collaboration among all levels of government in the design, implementation, and evaluation of the new framework. The Task Force recommends that many of the elements of regulating production, distribution and consumption of cannabis should fall under provincial or territorial jurisdiction.

Legislation to legalize cannabis was introduced on April 13, 2017

Bill C-45 (*Cannabis Act*) was introduced on April 13, 2017. It provides for legal access to cannabis, and controls and regulates its production, distribution, sale and consumption. The current program for access to medical cannabis would remain in place under this Act. Bill C-45 seeks to restrict access to cannabis by youth (defined as less than 18 years), deter and reduce criminal activity associated with the production, distribution and sale of cannabis, protect public health through strict product safety and quality requirements, and reduce the burden on the criminal justice system.

The federal government also introduced Bill C-46 to amend the *Criminal Code* and other statutes to create new offences for drug impaired driving and modernize the impaired driving regime across several federal statutes. The government seeks to have Bill C-45 proclaimed no later than July 2018. Bill C-46 may be implemented in phases to reflect the need for provinces to make changes to impaired driving provisions.

Responsibility for overseeing the legalized framework will be shared by federal and provincial and territorial governments

Under Bill C-45, the federal, provincial and territorial governments would share responsibility for overseeing the new system.

Federal Responsibilities

- Set strict requirements for producers who grow and manufacture cannabis
- Set industry wide rules and standards including: types of products allowable for sale, labelling requirements, potency, prohibition of certain ingredients and restrictions on promotional activities

Provincial Responsibilities and Authority

- License and oversee sale and distribution
- Increase the minimum age in their province or territory (but not lower it)
- Create additional rules for growing cannabis at home, such as lowering the number of plants allowed per residence
- Set the personal possession limit in their jurisdiction (lower than federal level of 30 grams)
- Restrict where adults can consume cannabis, such as in public or in vehicles

Legalization of cannabis will have significant impacts on policies and programs for Canadian municipalities

While many of the key decisions required for implementation of the legalized cannabis framework will rest with federal and provincial or territorial governments, legalization will have a significant impact on local municipal governments. Municipalities are likely to face increased costs of policing due to anticipated increases in impaired driving and criminal activity; increased enforcement costs to ensure compliance with the new framework for production, distribution and consumption; increased public health costs for education, response to addiction and mental health issues; and inspection and enforcement ; and implications for municipal planning, zoning and licensing controls. The federal Task Force report recommended that the federal government take a leadership role in the coordination of governments and other stakeholders including municipalities but it does not address municipal impacts or the role of municipalities in any detail. Municipalities will therefore have to look to the provinces and territories to address their concerns.

AMO is advocating on behalf of Ontario municipalities for resources and other tools to deal with the legalization of cannabis

In 2016, the Association of Municipalities of Ontario created a task force to identify issues of concern for municipalities and develop submissions to the federal Task Force and to the Ontario government on behalf of municipalities. The AMO consultation process included a review of the experience of municipalities in the United States where cannabis has been legalized. The AMO recommendations include:

1. Per capita funding for municipalities to support public safety and public health
2. New or enhanced powers to address business licensing, zoning and siting, and the authority for municipalities to “opt-out”
3. Updated federal regulations to address outstanding problems in the medical marijuana regime and prevent similar problems in the regulation of recreational marijuana
4. Authority for municipalities to impose local excise tax for products sold within their boundaries

The costs associated with the implementation of a legalization framework are one of the most pressing areas of concern for municipalities. The federal, provincial and territorial governments have the authority to tax cannabis products. Municipalities do not currently have such taxing authority yet they will likely incur the majority of costs arising from legalization. The federal Task Force recommended that the federal government work with provincial and territorial governments to determine a tax regime that includes equitable distribution of revenues. Municipalities must therefore rely on the provinces and territories to recognize their role in the legalization framework and to distribute tax revenue accordingly. Otherwise the burden will fall to the property tax base. As a result, municipalities across Canada are calling on the federal and provincial governments to ensure that funding including tax revenues from the legal sale of cannabis be allocated to support health and public safety programs (including prevention, research and law enforcement).

Ontario has established a Legalization of Cannabis Secretariat to oversee the development of policies and programs to implement Bill C-45 in the province

The Ontario government has recently established a dedicated Legalization of Cannabis Secretariat to coordinate legal, policy and program development across all ministries, and to align cannabis policy with other policy and program development. A steering committee has also been established to oversee the work of six cross-ministry working

groups focused on the regulatory and distribution framework, enforcement and oversight, health and social issues, legal analysis, research and analytics, and communications.

According to the Secretariat, the government is committed to working closely with key partners who will experience the impact of legalization, including municipalities, police services, fire services, public health units and Indigenous communities. The Secretariat plans to engage municipalities through AMO's Task Force, and to engage other stakeholders through expert forums such as the Ontario Association of Chiefs of Police and the Public Health network. A series of meetings will take place over the next three months with the goal of tabling policy options by the end of the summer.

Municipal stakeholders need to be engaged in the development of Ontario's cannabis legalization framework

The AMO Task Force is representing Ontario municipalities in the consultation being undertaken by the Cannabis Secretariat. Staff anticipate that further updates will be provided by AMO as consultation with the government progresses. York Region Public Health co-chairs the "Ontario Public Health Unit Collaboration on Cannabis" group was established in June 2016 and is comprised of professionals from 32 health units in Ontario who have joined together to promote a comprehensive public health approach to marijuana legislation.

Staff will continue to monitor the consultation process, coordinate with local municipalities and report back to Council as more details become available. Future staff reports will also address the specific impact of the new legalized cannabis framework on Regional policies and programs, including public health and police.

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