

REPORT ON

# CANNABIS

LEGALIZATION AND REGULATION

NOVEMBER 2017



CANADA'S  
PREMIERS





**TABLE OF CONTENTS**

**Executive Summary ..... 5**

**Introduction and Background .....12**

**Purpose of the Report .....13**

**Provincial and Territorial Approaches to Cannabis Legalization .....14**

Approaches to Cannabis Legalization .....14

Opportunities for Ongoing Provincial and Territorial Collaboration .....19

**Preparing for Implementation .....21**

The Supply and Production of Cannabis .....21

Taxation Arrangements and Cost Coverage .....25

Enforcement of Impaired Driving and Public Safety .....31

Public Education and Awareness .....35

The Federal Regulatory Framework.....38

**Conclusion .....42**



## **EXECUTIVE SUMMARY**

Cannabis legalization is a complex policy issue that must be managed in a careful and coordinated way in order to achieve the desired objectives of protecting public health and safety, preventing access to cannabis by young persons, and reducing illicit activity. Much of the work involved in the implementation and oversight of cannabis legalization will need to be undertaken by provinces and territories. This includes key issues such as how cannabis may be legally accessed, where it may be consumed, and how the new regime – including measures to prevent drug-impaired driving – will be enforced.

In light of these significant responsibilities, and resulting concerns that the federal government's intended implementation date may be unrealistic, Canada's Premiers have identified several key areas where increased levels of federal engagement and information sharing are required:

- Road safety and enforcement mechanisms
- Preparation and training for the distribution network (including the federal regulatory framework)
- Taxation arrangements and cost coverage
- Public education campaigns
- Cannabis supply and demand, and the relationship to the illicit market

Premiers have stated that if these outstanding issues are not properly addressed by the federal government in a timely manner, including appropriate funding, provinces and territories may require an extension of the implementation date. At the July, 2017 Council of the Federation meeting, Premiers established the Provincial-Territorial Working Group on Cannabis Legalization and Regulation, and tasked their responsible ministers identify and report on common considerations and best practices to legalize and regulate cannabis guided by the objectives of reducing harm, protecting public safety, and reducing illicit activity. The report presents:

- current provincial and territorial activities in preparation for cannabis legalization, including areas with potential for collaboration; and
- areas of common concern where further engagement with the federal government is required, and where federal funding and/or other support may be necessary.

## **Provincial and Territorial Approaches to Cannabis Legalization**

The decision to legalize cannabis by July 2018 is a federal one. Preparing for legalization requires provinces and territories to undertake extensive public consultation, policy development, legislative and regulatory changes, development and implementation of oversight, distribution and retail systems, and all of the associated educational, training, and enforcement efforts. All of these activities are complex, and have significant resource implications for provinces and territories, as well as municipalities and Indigenous communities (including those that have entered into self-government agreements). As a result of the federal government's decision to legalize cannabis, existing provincial and territorial priorities have been displaced and resources have needed to be reallocated in order to be ready by the proposed implementation date.

Provinces and territories are all currently engaged in this ongoing work, and have made progress despite very tight timelines. Most have recently completed or are currently conducting

public and stakeholder engagements to determine an approach that meets their particular needs and objectives. While few formal decisions have been made, some jurisdictions have begun to release policy frameworks that will guide their approach. All are intending to establish the core elements of their legislative and regulatory frameworks, including distribution and retail systems, prior to the intended implementation date. However, the extent to which these systems will be fully implemented and operational (versus needing to scale up incrementally) by July, 2018 remains uncertain.

Provinces and territories are in the process of addressing a common set of policy issues that fall within their jurisdiction. In general, they are guided by shared considerations, though some variation in approach to account for provincial and territorial circumstances and priorities can be expected. Extensive collaboration on particular issues is challenging given the timelines associated with implementation. Key issues falling in whole or in part under provincial and territorial jurisdiction where some decisions have been made and some best practices are beginning to emerge include:

- **Minimum Age** – To date, Alberta, Ontario, and Quebec have indicated their intent to align their minimum age for cannabis use with that of their current age of purchase and consumption for alcohol. There is a general consensus among a number of jurisdictions that aligning with the existing age for alcohol is a reasonable consideration.
- **Distribution and Retail** – Most provinces and territories are in the process of considering options for oversight, distribution and retail models. Some are considering ways to leverage their existing entities responsible for distribution and oversight of alcohol. In terms of retail, jurisdictions are currently considering a range of options on a spectrum from government owned and operated retail systems to private systems with public oversight and regulation. While most retail decisions are still being considered, Ontario has indicated that it will have stand-alone cannabis stores and an online sales channel operated by a new subsidiary to the Liquor Control Board of Ontario (LCBO). Provinces and territories are also considering the role of online retail for its potential to counter the illicit market and offer access to rural and remote communities.
- **Youth Possession** – Jurisdictions are considering enacting provincial and territorial sanctions to address youth possession of 5 grams or less, which the federal government does not intend to criminalize under Bill C-45. Approaches may include seizure, minor fines, and/or education. The protection of youth from known health implications of early consumption of cannabis is a shared priority among all provincial and territorial governments.
- **Drug-impaired Driving** – All provinces and territories have identified the need to prevent drug-impaired driving as a top priority, and will need to determine if additional tools are required for law enforcement. Several provinces and territories either have in place or have expressed their intent to include additional administrative sanctions for drug-impaired driving. Manitoba has passed legislation to enable a 24 hour driver's licence suspension where police have reasonable grounds to believe that a driver is unable to safely operate a vehicle due to being under the influence of a drug. Ontario is also developing new measures which would include prohibiting young drivers (age 21 and under), novice drivers, and commercial drivers from having any impairing drugs in their system.

- **Public Consumption** – A key consideration for provinces and territories is ensuring that the introduction of licit cannabis does not roll back the progress that has been made with respect to anti-tobacco smoking efforts. Many provinces and territories are still in the process of determining an approach that protects public health while considering some appropriate legal venues for consumption.
- **Research, Public Education, and Training** – Most provincial and territorial governments are in the process of determining the most appropriate educational approaches and tools, which may need to include resources for regulators, educators, health practitioners, retailers, customers, law enforcement, and the general public. Provinces and territories also acknowledge the need for more research, including further investigation of the health risks and benefits of cannabis, as well as monitoring and evaluation of the broader system impacts (health, mental health/addiction, social services, etc.) of legalization. In this regard, Nova Scotia has initiated a cannabis surveillance/monitoring project, and Ontario is developing a Performance Measurement Framework to report on overarching indicators for cannabis.

In considering their approach to cannabis legalization, provinces and territories have identified several areas where continued collaboration will be beneficial as implementation proceeds. These include, but are not limited to:

1. **Continued Sharing of Information and Best Practices** – through regular officials level discussions, jurisdictional scanning, and other mechanisms;
2. **Aligning Approaches to Public Education and Awareness** – which may include collaborative development of education materials and training resources, and considering alignment of research priorities and projects; and,
3. **Interprovincial Movement of Cannabis** – including seeking alignment of regulations and policies where feasible to avoid unintended trade barriers or complications.

### **Preparing for Implementation**

Provinces and territories continue to work with the federal government to address areas of shared responsibility or interest. In those areas where Premiers have identified a need for greater engagement or clarity from the federal government, discussions are ongoing, often through dedicated federal-provincial-territorial working groups at the officials' level.

Within those areas, there are certain key issues where meaningful progress has not yet been made, additional federal resources may need to be committed, or change in the federal approach may be required in order to achieve the successful implementation of the legalization of cannabis and ensure the health and safety of Canadians. Provinces and territories emphasize that costs associated with the development, implementation, and enforcement of a legalized cannabis system will fall primarily to provincial and territorial governments, particularly in the early years following implementation. It is incumbent on the federal government, which initiated legalization and established the intended timeline, to provide the necessary support for implementation.

## 1. Supply and Production of Cannabis

An adequate supply of legally sourced cannabis is a necessary prerequisite to a properly functioning retail and distribution system that would displace the illicit market. While this displacement is expected to occur gradually, assurances of adequate supply are needed to enable planning and implementation of viable retail systems. The federal government has recently streamlined its licensing process for medical producers, and has shared its initial, high level supply projections. A more refined federal analysis of likely market demand, including regional variations, is still forthcoming. It remains uncertain how much legally-produced supply will be available upon legalization, and timely, ongoing information sharing by the federal government will be required to clarify this picture over the coming months. Some jurisdictions have expressed interest in discussions on potential measures to ensure a minimum initial supply is available in all provinces and territories. There is also a lack of certainty with respect to how jurisdictions and retailers will be able to legally secure supply in advance of legalization, though the federal government has begun consideration of the necessary transitional provisions.

In addition to adequate supply, an effective seed to sale tracking system will be required to appropriately regulate the industry and protect the integrity of the supply chain. Federal officials have outlined a proposed timeline for the development of this system, including ongoing engagement with provinces and territories to determine system requirements and reporting components. These timelines are highly ambitious, and considerable discussion still needs to occur to ensure functionality and overall system effectiveness, including information sharing and integration with provincial and territorial oversight, distribution and retail functions.

*Continue to engage with the federal government to seek greater clarity on the projected supply and demand of licit cannabis, including timing of availability, to enable the planning and implementation of distribution and retail systems. This should include potential measures in place by April 1, 2018 to ensure initial supply is available in all jurisdictions.*

*Seek a formal commitment from the federal government that an effective tracking system that will enable regulation and monitoring of the licit cannabis market will be in place by April 1, 2018 to ensure sufficient time for deployment and training.*

## 2. Taxation Arrangements and Cost Coverage

Provinces and territories recognize that the approach to cannabis taxation needs to be consistent with the objectives of protecting public health and safety and reducing the illicit market, not maximizing revenue generation. Provincial and territorial governments also strongly emphasize that the approach to revenue sharing must take into consideration the fact that the provinces and territories will bear the largest share of the costs of the legalized cannabis system. The current federal proposal for a 50/50 split of taxation revenues does not adequately account for the imbalance in financial burden and responsibilities between the federal and provincial-territorial orders of government.

Provincial and territorial governments will be responsible for the design, implementation, and regulatory oversight of the legal distribution and retail system for cannabis across the country. In addition, provinces and territories will set the rules that determine where and how cannabis may be consumed and will be required to enforce both federal and provincial and territorial laws and regulations with respect to the non-medical use of cannabis within their jurisdiction. Provinces and territories will also be responsible for addressing the health impacts of legalized cannabis



use, which are not yet fully understood, and may result in increased pressure on provincial and territorial health systems, including mental health and addiction services. There is currently little to suggest that provinces and territories will have access to adequate revenue sources through taxation to meet the increased demands on provincial and territorial system resources. To date, the federal government has only identified dedicated funding for some aspects of impaired driving enforcement, as well as some support for public education carried out at the federal level.

There has been no indication of any up front funding to support the development of the system. No taxation revenue, regardless of the proportion allocated to provinces and territories, will be available in the period leading up to implementation, and revenues are likely to be extremely limited in the early years. This will be particularly challenging for smaller jurisdictions, where the establishment of a distribution system and the provision of services may not be offset by anticipated revenues from their smaller markets. Provincial and territorial ministers responsible for finance will be writing to the federal minister to express concerns with any proposal for a 50/50 split of taxation revenues as well as the need for flexibility to address specific provincial and territorial situations.

*Continue to advocate strongly for an approach to taxation that achieves the desired policy objectives, provides sufficient flexibility, and provides significantly more than 50% of revenue to provinces and territories, recognizing the disproportionate financial impacts on provincial and territorial governments as a direct result of the federal decision to legalize cannabis, and the potential for costs to outweigh revenue in initial years.*

### **3. Enforcement of Drug-impaired Driving and Public Safety**

While drug-impaired driving is an existing concern, it has taken on new prominence due to the impending legalization of cannabis and the federal government's proposed changes to the impaired driving provisions of the *Criminal Code* under Bill C-46. These include new criminal offences based on blood-drug concentrations (*per se* limits). Provinces and territories need to be able to effectively enforce and prosecute these provisions, and must be prepared to address potential impacts on the court system.

The number of trained officers across Canada, particularly certified Drug Recognition Evaluators, is not sufficient to meet the needs of drug-impaired driving enforcement, and there are significant time and resource commitments associated with this training. There are also ongoing concerns regarding the scientific validity and provision of oral fluid screening devices, as well as the capacity of existing labs to provide necessary blood testing in a timely manner. While the recent federal announcement of \$161 million in funding for enforcement and training is welcomed, the identified provincial-territorial share of \$81 million over five years will likely not be adequate to meet the full range of enforcement needs. Further, a transparent funding allocation mechanism based on provincial-territorial input is required.

Many of these issues involve technical clarification and can be pursued by officials through existing working groups. While the federal government has outlined a timeline and approach to addressing these concerns, intensive efforts and concerted attention will be needed to ensure that work on these vital areas continues to progress.

*Seek formal commitment from the federal government to fully address provincial and territorial resource requirements for drug-impaired driving enforcement arising from Bill C-46.*

#### **4. Public Education and Awareness**

Provincial and territorial governments recognize that public education and awareness is paramount to ensuring that the implementation of a legalized cannabis system achieves commonly held objectives of reducing harm, protecting public safety, and reducing illicit activity. The federal government's initial allocation of \$9.6 million over five years towards public education initiatives was not adequate for the ongoing public health education and awareness initiatives required prior to and beyond July 2018. The recent federal announcement of an additional \$36.4 million over five years is welcome, though there is as yet no indication that any funds will be allocated directly to provinces and territories.

Furthermore, additional coordination with provincial and territorial governments will be required to ensure that public awareness campaigns are appropriate for the audience and regions in which they are being carried out. Continued engagement with the federal government at the officials level through the existing Federal, Provincial, Territorial Communications Working Group will be required to determine where opportunities for jurisdictions to leverage and share resources with respect to public education and awareness exist, where public education priorities may or may not align, and what additional resources may be available to provinces and territories.

*Call for the federal government to implement robust and comprehensive public education efforts immediately.*

*Seek greater collaboration from the federal government with provincial and territorial governments in the development of public education and awareness activities to support coordination of approaches and ensure regional needs are addressed. This should include providing adequate and necessary resources to provinces and territories for local and regional initiatives as soon as possible.*

#### **5. The Federal Regulatory Framework**

Bill C-45 creates a legislative framework for the regulation of non-medical cannabis. The federal government has indicated that it will release a consultation paper on its approach to regulation in November 2017. Some provincial and territorial governments have identified questions regarding their ability to legislate beyond prescribed federal government minimums, and are seeking additional clarity around jurisdictional responsibilities under Bill C-45. Officials will continue to discuss issues related to the proposed federal framework through the existing Federal, Provincial, Territorial Working Group of Senior Officials on Cannabis Legalization and Regulation, including questions with respect to the operation of the proposed federal backstop for online retail of cannabis.

Provinces and territories have also expressed concern in regard to the federal government's proposed ticketing scheme for minor offences under Bill C-45. It is believed that this scheme will place unnecessary administrative burdens on provincial justice systems and enforcement agencies, and there are concerns that these offences will still result in criminal records upon guilty plea or conviction and not provide the intended incentive for accused persons to plead guilty rather than going to trial. These concerns have been raised at the officials' level, as well as discussed among federal, provincial, and territorial ministers responsible for Justice and Public Safety. To date, the federal government appears intent on proceeding with the proposed approach in its current form, which continues to be a significant concern to provincial and territorial governments.

## Council of the Federation Report on Cannabis Legalization and Regulation

*Formally express concerns with the federal government's approach to ticketable offences to ensure that these concerns are addressed before Bill C-45 is passed.*

The Council of the Federation Working Group on Cannabis Legalization and Regulation has determined that there is ongoing progress being made by all orders of government in preparation for legalized cannabis. However, some key issues identified by provinces and territories have yet to be resolved and require urgent attention from the federal government. In the absence of timely and appropriate resolution of these issues, proceeding with implementation on the federal government's intended timeline could pose serious risks to achieving the stated objectives for legalization, including protecting the health and safety of Canadians, preventing young people from accessing cannabis, and reducing the illicit market.

## **INTRODUCTION AND BACKGROUND**

On April 13, 2017, the federal government introduced proposed legislation, Bill C-45, the *Cannabis Act*, to legalize and regulate non-medical cannabis use by Canadian adults. The stated intentions of the legislation are to “prevent young persons from accessing cannabis, to protect public health and public safety by establishing strict product safety and product quality requirements and to deter criminal activity by imposing serious criminal penalties for those operating outside the legal framework. The Act is also intended to reduce the burden on the criminal justice system in relation to cannabis.”

The proposed legislation, expected to come into effect by July 2018, enacts criminal possession limits, prohibits cannabis production, distribution and sale beyond that permitted under the Act, and establishes strict penalties for provision of cannabis to minors. As part of the proposed federal legislative framework, areas of federal responsibility would include regulating production, developing industry rules on the types of products that will be allowed for sale, as well as creating rules to limit how cannabis or cannabis accessories can be promoted, packaged, labeled, and displayed.

The *Cannabis Act* provides for provincial and territorial oversight of the distribution and retail sale of cannabis, subject to minimum federal conditions. This entails the responsibility of provincial and territorial governments to design and implement regulatory oversight mechanisms, develop distribution and retail systems, determine where cannabis may be consumed, as well as address consequential impacts to other policy areas, including workplace safety and public health. The federal government has also indicated that where provinces and territories do not have a framework in place for the distribution and sale of licit cannabis by July 2018, a federal backstop of online retail will be implemented to ensure that Canadians have access to the legal market.

While the federal legislation establishes a minimum legal possession age of 18 and would allow for possession up to 30 grams of dried or fresh cannabis as well as for growing up to four plants per residence, provinces and territories will have discretion under their existing authorities to enact more stringent regulations on age of consumption, possession amounts, and home cultivation, as well as advertising and product promotion.

The federal government has also introduced Bill C-46, or *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts*. Bill C-46 has two main objectives: to update and strengthen the drug-impaired driving regime before the implementation of Bill C-45; and to reform the *Criminal Code* transportation regime to create a simplified system to better deter both drug and alcohol-impaired driving.

## **PURPOSE OF THE REPORT**

Cannabis legalization is a complex policy issue and creates a significant societal change that requires a focused approach by provincial and territorial governments. At the Council of the Federation meeting in July 2017, Canada's Premiers established a Provincial-Territorial Working Group on Cannabis Legalization and Regulation to identify common considerations and best practices for cannabis legalization, guided by the overall objectives of reducing harm, protecting public safety, and reducing illicit activity. The Premiers directed the Ministers of Justice of Alberta and Manitoba to lead the working group.

Premiers have expressed a concern that the federal government's timeline for cannabis legalization may be unrealistic, and have emphasized that increased levels of federal engagement and information sharing will be required in order to manage the transition to a system of legalized cannabis properly. Several areas have been identified as key areas of concern that will require resolution, including:

- Road safety and enforcement mechanisms
- Preparation and training for the distribution network (including the federal regulatory framework)
- Taxation arrangements and cost coverage
- Public education campaigns
- Cannabis supply and demand, and the relationship to the illicit market

Premiers have stated that if these outstanding issues are not properly addressed by the federal government in a timely manner, including the commitment of appropriate funding, provinces and territories may require an extension of the implementation date. Responsible ministers were tasked to identify and report on common considerations and best practices to legalize and regulate cannabis guided by the objectives of reducing harm, protecting public safety, and reducing illicit activity. The following report presents:

- current provincial and territorial activities in preparation for cannabis legalization, including areas with potential for collaboration; and,
- areas of common concern where further engagement with the federal government is required, and where federal funding and/or other support may be necessary.

This report provides a summary of where progress has been made and where challenges currently exist, or may arise, as the federally-proposed timeline of July 2018 draws nearer. The information is provided in order to enable the Council of the Federation to determine next steps as provinces and territories collectively move towards the development and implementation of legalized cannabis frameworks within their respective jurisdictions.

## **PROVINCIAL AND TERRITORIAL APPROACHES TO CANNABIS LEGALIZATION**

The decision to legalize cannabis by July 2018 is a federal one. Preparing for legalization requires provinces and territories to undertake extensive public consultation, policy development, legislative and regulatory changes, development and implementation of oversight, distribution and retail systems, and all of the associated education, training, and enforcement efforts. All of these activities are complex, and have significant resource implications for provinces and territories, as well as municipalities and Indigenous communities.

In addition, as a result of the federal government's decision to legalize cannabis, provincial and territorial priorities have been displaced and resources have necessarily been reallocated in order to be ready for legalized cannabis by the proposed implementation date.

Since the introduction of the proposed federal legislation in April 2017, provincial and territorial governments have been working diligently to address the many policy challenges related to cannabis legalization falling within their jurisdiction. The following section provides an update on the current state of preparations for legalized cannabis across provincial and territorial jurisdictions, and includes an overview of emerging practices and approaches. It also provides insight into where provinces and territories currently find themselves with respect to their anticipated approaches to key policy questions and identifies areas where there may be opportunity for provincial-territorial cooperation. While there is significant work ongoing among provinces and territories on these issues, there are several areas of concern where further information is required from the federal government. These are highlighted briefly in this section and are discussed in further detail in subsequent sections of this report.

### **Approaches to Cannabis Legalization**

While concerns have been consistently raised with respect to the federal government's proposed timelines, provinces and territories have been working hard to develop approaches to legalized cannabis under the overarching policy objectives of reducing harm, protecting public safety, and reducing illicit activity related to cannabis across the country. All jurisdictions are working to develop distribution and retail systems by the proposed July 2018 implementation date, as there is a preference to not rely on the federal government's proposed backstop. However, in most jurisdictions, no formal decision regarding distribution and retail models has yet been made.

To date, many jurisdictions have either completed, or are currently conducting, extensive public and stakeholder consultations to determine the most appropriate approach to developing a framework for legalized cannabis that meets the needs and objectives of the diverse communities within their jurisdiction. In addition to ongoing consultations with the federal government, provincial and territorial officials from several sectors of government have been discussing the various ways they are approaching policy issues falling within provincial and territorial areas of responsibility. As discussions have evolved following the introduction of the proposed federal legislation, there are many policy areas where provinces and territories are aligned in their thinking and approach to addressing the complex issues associated with cannabis legalization.

#### ***Minimum Age***

The proposed federal legislation would establish a minimum age of 18 for the legal possession, cultivation, and purchase of cannabis. The federal government has indicated that provinces and territories have the ability to set a higher minimum age if desired.

To date, Alberta, Ontario, and Quebec have officially indicated their intent to align their minimum age for cannabis use with that of their current age of purchase and consumption for alcohol. In the cases of Alberta and Quebec, this means that the minimum age for cannabis use would be 18. Ontario has indicated that its minimum age for cannabis will be 19. While a majority of provinces and territories are still in the process of determining the specific age that will be allowed within their jurisdiction, several jurisdictions are aligning cannabis rules with their existing age for alcohol. At a regional level, the Atlantic Premiers have provided direction to officials to explore opportunities for alignment on age, among other policy considerations.

### ***Retail and Distribution***

The federal government has indicated that provincial and territorial governments will be responsible for the development of legislative and regulatory frameworks and the establishment and oversight of the retail and distribution systems for cannabis within their jurisdiction.

With the exception of Ontario, Alberta, and New Brunswick, most provinces and territories are in the process of considering options with respect to their approach to distribution. Alberta and Ontario have indicated that their publically operated liquor entities, the Liquor Control Board of Ontario (LCBO), the Alberta Gaming and Liquor Commission (AGLC) are likely to be responsible for oversight of distribution of cannabis within these jurisdictions. New Brunswick has indicated that oversight of their distribution system will be managed by a crown corporation. Of the jurisdictions that continue to consider options for distribution, a number are considering the use of their already existing entities that are currently charged with distribution and oversight of liquor, or exploring ways to otherwise leverage existing structures and experience in order to establish a functioning distribution and regulatory system in advance of implementation given the limited timeframe.

In addition to distribution, provincial and territorial governments will be responsible for determining how cannabis is sold within their jurisdictions. Jurisdictions are currently considering a full range of options from fully government owned and operated retail systems, to fully private systems with public oversight and regulation. Online components of retail systems are also currently under consideration by several jurisdictions. Ontario, which is currently the only jurisdiction that has decided on its retail model, will have stand-alone cannabis stores and an online sales channel that would be operated by a new Crown corporation subsidiary to the LCBO. While both Ontario and Alberta have indicated that an online retail option for cannabis will at some point be available within their jurisdictions, the full details of what such systems will look like are still being developed. Overall, provinces and territories are considering online sales as they could help to displace the illicit market and ensure access to rural and remote communities.

Several provinces and territories also recognize that there will be Indigenous communities, particularly those in remote and northern regions, which may be looking to enact community restrictions on cannabis, similar to present approaches to alcohol. While recognizing that care needs to be taken as to not frustrate the federal intent, many provinces and territories are working with Indigenous communities and governments to discuss the mechanisms through which Indigenous communities will have the opportunity to make their own decisions on how they deal with social issues related to drug and alcohol abuse. Discussions are also being held in several jurisdictions as to how self-governing First Nations will be enabled to establish their own laws and approaches to cannabis legalization.

### ***Cannabis Possession***

Bill C-45 establishes a public possession limit of 30 grams of dried cannabis for adults 18 years of age and older. While persons under 18 will not be able to buy or grow cannabis under Bill C-45, they are not prohibited from possessing up to 5 grams of dried cannabis or equivalent amounts for other cannabis products. The federal government's expressed intent behind this provision is to prevent the criminalization of youth for minor cannabis related offences. The federal government has urged provincial and territorial governments to establish regulations that discourage youth from cannabis use.

With respect to adult possession limits, some jurisdictions have indicated that they do not intend to impose further restrictions on the amount of cannabis that adults are allowed to legally possess in public. That being said, no jurisdiction except Alberta and Ontario have formally indicated a proposed direction on this matter and options to introduce lower amounts for adult public possession are still under consideration in some provinces and territories. Both Alberta and Ontario have proposed that they will remain consistent with the federal government's possession limit of 30 grams.

Provinces and territories have indicated that they are considering enacting laws to address youth possession of 5 grams or less as well as filling any gap between age 18 and the provincially-set minimum age if it is higher than 18. Ontario, for instance, has indicated that in an effort to avoid youth interaction with the justice system, police officers will be allowed to confiscate small amounts of cannabis from young people. Alberta has proposed a similar approach, which would allow for the confiscation of product from youth offenders and the imposition of minor fines through a provincial ticketing system. While the majority of jurisdictions are continuing to work towards determining the specific scheme for how law enforcement will handle youth possession of 5 grams or less within their jurisdiction, the safety and protection of youth from known health implications associated with early consumption of cannabis is a shared priority among all provincial and territorial governments.

### ***Drug-impaired Driving***

It is anticipated that drug-impaired driving will continue to pose a significant and ongoing challenge to jurisdictions across Canada following the legalization of non-medical cannabis. Provinces and territories will need to determine if additional tools are required for law enforcement to deal with drug-impaired driving within their respective jurisdictions and, specifically, if additional measures beyond those proposed in Bill C-46 will be required. Provinces and territories have identified the need to ensure road safety and enforce drug-impaired driving as top priorities in the development of their legalized cannabis frameworks. Jurisdictions have expressed a concern with the significant ongoing costs which will be incurred by provincial and territorial governments, and municipalities, and have indicated that continued negotiation concerning the availability of federal funding and resources is required.

In June 2017, Manitoba passed legislation to permit a 24 hour driver's license suspension where a police officer has reasonable grounds to believe that a driver is unable to safely operate a motor vehicle due to being under the influence of a drug, to prohibit consumption of cannabis in a vehicle, and to restrict where cannabis can be transported in a vehicle. Several provinces and territories either have in place or have expressed their intent to include additional administrative sanctions for drug-impaired driving within their jurisdiction. Ontario, for instance, is developing new measures which would include creating a zero tolerance approach prohibiting young drivers (age 21 and under), novice drivers, and commercial drivers from having the presence of a drug in their system, as detected by a federally approved oral fluid screening device. Ontario intends to align its zero tolerance drug sanctions for this group with those in



place for alcohol, as Saskatchewan has already done. Other jurisdictions, including British Columbia, Prince Edward Island, Nova Scotia, Manitoba, Saskatchewan, and Alberta, have indicated that further sanctions on impaired driving are being explored.

### ***Public Consumption***

Provincial and territorial governments will need to determine the rules around public consumption of cannabis within their respective jurisdictions. This issue has been identified as a significant challenge, particularly among municipal stakeholders. It is anticipated that there may be an increase in public nuisance complaints as a result of individuals smoking cannabis, and a key consideration that has been identified is the desire to ensure that the introduction of licit cannabis does not roll back the progress that has been made with respect to anti-tobacco smoking efforts. The challenges inherent in enforcing rules around public consumption have also been raised.

Most provinces and territories have not made decisions, and are still in the process of determining an approach that protects public health while considering some legal venues for consumption. Manitoba has passed legislation to extend existing prohibitions on smoking tobacco in enclosed public spaces and workplaces to apply to smoking of cannabis. Both Alberta and Ontario have indicated their general approaches to cannabis consumption under their respective frameworks. Under Ontario's proposed approach, it would be prohibited to consume any form of non-medical cannabis (smoking, vaping, edibles and extracts) in public places, workplaces or when inside a motor vehicle. Limited exemptions apply to individuals who use medical cannabis. Under Alberta's proposed approach, smoking or vaping of cannabis will be allowed in some public places, but not in areas frequented by children, in vehicles, or in areas where tobacco smoking is prohibited. While Alberta and Ontario have indicated that they will not be authorizing cannabis cafes or lounges initially, this issue may be revisited once the federal government puts in place regulations around edible cannabis products.

### ***Workplace Health and Safety***

Provinces and territories will be required to determine if any additional actions will need to be taken to ensure that workplace health and safety is not adversely impacted as a result of cannabis legalization. Provinces and territories have noted that a balance must be struck in order to ensure that employee rights, particularly those around the use of medical cannabis, are respected and also to ensure that employee safety is maintained. Jurisdictions are continuing to consult on this matter and are conducting further research before reaching any final decisions on whether additional legislative or regulatory action is required.

### ***Research and Evaluation, Public Education and Awareness, and Training***

Public education and awareness is paramount to ensuring that the implementation of a legalized cannabis system achieves commonly held objectives of reducing harm, protecting public safety, and reducing illicit activity. The federal government, through Health Canada and in collaboration with several non-government organizations, has developed public education materials which focus on youth, low risk use guidelines, and general health information on cannabis for release in advance of the proposed implementation date. Provincial and territorial governments recognize that the development and dissemination of public education and awareness tools will be needed from all areas of government. Most jurisdictions have indicated that they will seek to leverage the work currently being done by Health Canada to ensure consistency in messaging around the health and safety concerns associated with cannabis use.

While many decisions still need to be made, provincial and territorial governments are in the process of determining best approaches to developing education tools to help ensure that the

public understands how their respective systems of legalized cannabis operate, and what the new rules around cannabis are. While specific details of each jurisdiction's system remain to be determined, provinces and territories are considering what training tools and information will be needed to ensure that individuals interacting with the cannabis system, such as regulators, educators, health care practitioners, retailers, customers, law enforcement, and the general public, are well informed and/or appropriately trained.

In addition to public education and training, provinces and territories also recognize the need for additional and ongoing research on cannabis and its impacts. There is a need for both continued research into the health risks and benefits of cannabis, as well as increased efforts to ensure that system impacts of cannabis legalization are adequately tracked and monitored. Currently, there is more work being conducted on the latter. For example, Nova Scotia has initiated a cannabis surveillance/monitoring project which began with a focus on the impacts on the health system and will expand to other sectors. The focus of this monitoring initiative is on the impact of legalization on provincial level indicators. Similarly, Ontario is developing a Performance Measurement Framework to report on overarching indicators for cannabis. This framework will be used to evaluate and report performance in areas of focus, like health, youth, road safety, economic benefit and reducing the illegal market.

In considering the above, all jurisdictions have expressed a concern with the significant ongoing costs which will be incurred by provincial and territorial governments, and have indicated that additional discussions around the availability of federal funding and resources are required for training, education and evaluation.

### ***Home Cultivation***

Bill C-45 allows for the legal home cultivation of up to four cannabis plants per residence. It is understood that provinces and territories are able to further restrict an individual's ability to grow cannabis, including where it is grown, the number of plants, and any potential security requirements. All provinces and territories are currently considering whether additional restrictions for personal cultivation may be required, though Alberta has stated that it will maintain the overall four plant limit while prohibiting outdoor cultivation. There are several concerns related to the ability of provincial and territorial governments, Indigenous communities or governments, and municipalities to enforce these rules, from both a resourcing and practical view. There are also concerns that have been raised regarding potential issues with multi-dwelling units, indoor versus outdoor growth and the yield that can be maintained for personal use in a dwelling, and the implications this may have on youth access to cannabis.

### ***Advertising and Packaging***

Bill C-45 would establish restrictions around advertising and promotion of cannabis products, and establish authority to regulate packaging and labeling. If desired, provinces and territories are able to strengthen the federal minimum requirements regarding how cannabis is advertised and displayed in their respective jurisdiction. To date, the federal government has shared a high level overview of how advertising and packaging requirements will be addressed in regulations, but have not shared the specific details or regulatory language, making it challenging for provinces and territories to determine whether supplementary provincial advertising and packaging requirements will need to be developed. Some jurisdictions have identified packaging and labeling as key mechanisms to inform and influence consumer choice and safe use. While no decisions have been made, provinces and territories continue to assess options within their jurisdictions.

Going forward, provinces and territories have identified a need to continue to share information with respect to their intended approach to advertising and packaging since decisions in this area may directly impact other areas of policy such as interprovincial trade and ability to secure products and supply from licensed producers following legalization. Provinces and territories should be key partners and be closely involved in the development of the federal regulations for each of the classes, including edibles and concentrates, described in Schedule 4 of Bill C-45.

### ***Cannabis Supply and Production***

There are currently outstanding questions as to the specific role of provincial and territorial governments with respect to cannabis supply and production. Significant reduction of the illicit market, a central policy objective of cannabis legalization, cannot occur without adequate supply of legally sourced cannabis. Several jurisdictions have expressed concerns about the federal government's ability to ensure sufficient licit cannabis supply in the early months and years of legalization. Most governments are currently assessing what options are available to ensure that their jurisdiction is able to meet market demand for cannabis under the legalized system. New Brunswick, for example, has established agreements with licensed producers to secure supply. Most provinces and territories, however, are still in the process of determining if any specific action is required in this respect, and continue to encourage the federal government to ensure an adequate supply of legally sourced cannabis is in place to support retail frameworks. Following legalization, and in the event of there being a shortage of available cannabis supply, provinces and territories could explore options for transferring excess supply to other jurisdictions if requested.

Some jurisdictions have raised questions over the federal government's assertion of exclusive jurisdiction over production, and have expressed an interest in exploring whether provinces and territories may also have jurisdiction to legislate in this area.

### **Opportunities for Ongoing Provincial and Territorial Collaboration**

Many of the policy areas that have been identified as key areas of interest and ongoing concern to provincial and territorial governments will require them to make decisions based on what works best for their own jurisdictions. At the same time, there are several areas where provinces and territories may wish to continue to collaborate, or endeavor to collaborate further, as the results of public and stakeholder consultations become available and decisions are being considered in a more specific way. These areas include, but are not limited to:

#### **1. Continued Sharing of Information**

In preparing this report, provincial and territorial governments have shared extensive information with respect to their ongoing preparations for legalized cannabis within their jurisdiction. This was accomplished through the development and use of jurisdictional scanning tools that were completed and shared by provincial and territorial officials. Throughout this exercise, the value of information sharing was a reoccurring theme in response to the question of where provinces and territories can better collaborate.

Going forward, these tools will be a valuable means of ensuring effective and timely sharing of information between jurisdictions. Officials have developed an ongoing scanning process to ensure that information on provincial and territorial approaches to legalization and regulation will continue to be shared.

## **2. Aligning Messaging on Public Education and Awareness**

All provinces and territories have identified education as a key component of a successful system for legalized cannabis, and there is general agreement among provinces and territories on the importance of alignment of messaging as it pertains to the health and safety implications of cannabis use.

In addition to aligning on broader messaging regarding the health impacts of cannabis consumption, such as that currently being developed by Health Canada, there are several areas where provincial and territorial governments could further collaborate on development of education and training materials as well as leverage shared resources, including:

- Responsible use guidelines;
- Point of sale education material; and,
- Training materials for retail and front line staff.

There is also an understanding among provinces and territories that further research on the health implications of cannabis use will need to be conducted, and that there may be opportunities to share information and leverage resources across jurisdictions in order to maximize outcomes and minimize duplication. Ongoing federal resources will be required to support this important component of meeting the policy objectives related to cannabis legalization and regulation.

## **3. Interprovincial Movement of Cannabis**

There continue to be many unknowns with respect to how the cannabis economy will evolve in Canada following legalization. The Canada Free Trade Agreement (CFTA) contains a placeholder to recognize that there will need to be ongoing negotiations among all jurisdictions with respect to trade and legalized cannabis. In addition to the CFTA, other regional and international trade agreements will need to be given consideration. While provinces and territories need to ensure that the health and safety of cannabis consumers and the general public remain the focus of jurisdictional policy and legislation, a careful policy approach is required to avoid unintended issues such as creating new interprovincial or international trade barriers. Where provinces and territories are able to regulate beyond minimums that have been established by the federal government in areas such as advertising and packaging restrictions, alignment should be sought where feasible in order to avoid potential complications in the future, and to ensure that industry participants are provided with a manageable and consistent regulatory regime.

Overall, provinces and territories should continue to actively participate in existing federal, provincial, territorial forums where these key issues are being discussed. Additionally and where appropriate, provincial and territorial governments should continue to coordinate their approach to working with the federal government and advocate for ongoing increased levels of resources, engagement and information sharing to ensure that provinces and territories are able to adequately prepare for the legalization of cannabis.

## **PREPARING FOR IMPLEMENTATION**

The federal government's decision to legalize cannabis poses several significant challenges for provincial and territorial governments. While provinces and territories have made progress toward developing the foundations of legalized cannabis systems under a very tight time frame, as outlined in the previous section, there remain several areas of uncertainty. Broadly speaking, these concerns fall into two categories.

1. The federal government's proposed timeline for implementation and the ability to ensure that vital system elements are in place when they need to be; and
2. Costs associated with the development, implementation, and enforcement of a legalized cannabis system will fall primarily to provincial and territorial governments, particularly in the early years following implementation.

Premiers have indicated that they have ongoing concerns surrounding the collective ability of federal, provincial, and territorial governments, municipalities, and Indigenous communities and governments to ensure that key system elements are established and in place by the proposed implementation date of July 2018. This timeline presents significant challenges for provinces and territories, as well as municipalities and Indigenous communities, to put in place a comprehensive regulatory framework for cannabis legalization. Furthermore, the proposed approach to cannabis legalization currently includes several issues that have not yet been addressed in sufficient detail, and as such provinces and territories require further engagement with the federal government in order to achieve common understanding. These outstanding areas of uncertainty have direct implications for the ability of provincial and territorial governments' to develop and design their frameworks for cannabis legalization, and to ensure that key public health and safety issues are appropriately addressed.

### **The Supply and Production of Cannabis**

Under the provisions of Bill C-45, the federal government has asserted authority over the licensing and regulation for the production of cannabis. An adequate supply of legally sourced cannabis is a necessary prerequisite to a properly functioning retail and distribution system that would displace the illegal system. As of October 2017, there have been 67 licenses issued for the production and/or sale of cannabis to eligible persons under the *Access to Cannabis for Medical Purposes Regulations*. Under Bill C-45, the federal government has authority to enact regulations that allow approval of these licenses to be effective for the production of cannabis in the non-medical market. Health Canada has indicated that its strategy to increase supply is to continue to expand the capacity of currently licensed medical producers (e.g. loosening storage requirements, increasing volumes licensed). Although it is anticipated that more licenses will be granted and capacity will increase prior to legalization, it is difficult to project how much licit supply will be available under the federal regime by July 2018.

#### ***Current State***

It is currently unclear how much demand there will be for legal non-medical cannabis at the time of legalization in July 2018. The actual consumption levels for a currently illegal product are difficult to determine, and it is anticipated that consumers' transition to the legal market will occur gradually. As such, determining the amount of supply required is challenging. Although the federal government has proposed that it will ensure Canadians have access to cannabis if provinces and territories do not wish to, or are not able to implement a retail structure, it is expected that provinces and territories will assume responsibility for the retail and distribution

components of the supply chain. Continued communications between federal, provincial and territorial governments will be required to ensure the integration of the various elements required to maintain a functioning system. This is especially true with the seed to sale tracking system.

Currently, the issue of supply is being discussed as a standing agenda item at the Federal, Provincial, Territorial Senior Officials Working Group and federal officials have provided regular updates to provinces and territories with respect to the number of licences being granted for production. Overall, there has been less discussion aimed to specifically address provincial and territorial concerns surrounding the availability and distribution/allocation of licit cannabis in advance of July 2018. There is potential for the early period of the legal market to be supply-constrained, which could lead to upward pricing by producers, competition between provinces and territories and retailers to obtain supply, and continued reliance on the illicit market by consumers. This supply constrained environment could increase wholesale and retail costs unless action is undertaken. While discussions are ongoing and the production and supply environment is continually evolving, there are several issues that remain of concern with respect to the availability of a licit cannabis supply at the time of legalization. These issues are discussed more thoroughly below.

a) Federal Regulation of Production – Ensuring Adequate Supply

As of July 2018, federally licensed producers will not just be serving the non-medical cannabis market, but will also have to support an expanding medical cannabis market across the country. Additionally, several licensed producers have begun, with approval from Health Canada, to export to other countries for their medical market. Several producers have also already indicated that they are not interested in supplying cannabis to the non-medical market. It is reasonable to expect domestic demand for medical cannabis to moderate with the introduction of the legal non-medical market. While it is recognized that it will take some time for the licit market to capture the illegal market, any failure to meet the non-medical demand for cannabis could result in purchasers continuing to resort to the illicit market, which would be contrary to one of the key objectives of the federal legalization of cannabis initiative.

Earlier in 2017, the federal government began expediting the licensing and re-licensing approval process for medical cannabis producers. As of October 2017, in addition to 67 currently licensed producers, there were 447 active applications, of which 186 were at the final stage of review. The federal government is anticipating that there will be nearly 160 licensed producers active by July 2018. The number of licensed medical cannabis producers and licensed applicants is being monitored by the federal government, but the sufficiency of a licit supply for the non-medical market remains a concern for provincial and territorial jurisdictions. The federal government has recognized that cannabis is a highly price-sensitive product, and that product pricing is a key policy lever to encourage the migration of consumers from the illicit to the licit market. Supply shortages may impact prices, requiring reconsideration of taxation levels or the timing and pace of retail system implementation.

A detailed analysis of the projected demand for non-medical cannabis in Canada, based on data from the May 2017 Canadian Cannabis Survey, has been commissioned by Health Canada and the federal government has committed to share this with provincial and territorial governments following its completion in November.

b) Federal Seed to Sale Tracking System

The federal government has indicated in Bill C-45 that it intends to establish a seed to sale tracking system for cannabis. The tracking system is intended to prevent the diversion of product from the licit market to the illicit market. A high level of integration and information sharing between federal and provincial and territorial governments, as well as industry, will be required for the system to operate effectively. This may require multilateral or bilateral intergovernmental agreements to support the system elements that require integration and sharing of data.

Federal officials have recently communicated that their intended approach to the seed to sale tracking system will be to develop an online, electronic version of the manual tracking approach that is currently used by licensed producers for medical cannabis. The system will be a data collection tool that will show inventory and production levels as well as cannabis movement through the supply, distribution, and retail chains. It is expected that this system will be developed and implemented in advance of July 2018.

Officials from other jurisdictions that have legalized cannabis, such as Colorado, have stressed the importance of having an integrated seed to sale tracking mechanism in place to effectively regulate the industry and control the diversion of illicit product into the supply chain. The absence of a full, real-time electronic system (such as a Radio Frequency Identification system like that used in Colorado) would introduce potential challenges related to tracking the movement of licit supply and the associated taxation revenues to the level of detail that may be required by provinces and territories. It may also place additional financial and IT resource pressures on provincial and territorial governments and private entities operating within the cannabis industry if parallel systems need to be developed.

A Federal, Provincial, Territorial Pan-Canadian Cannabis Tracking System Group has been established at the officials' level to discuss the establishment of the seed to sale tracking system. Federal officials have outlined a proposed timeline which includes ongoing engagement with provinces and territories to determine system requirements and reporting components prior to January 2018. This will be followed by validation of the system's user interfaces and functionality, and the development and delivery of user guides and training for system users. Federal officials have indicated that the costs of the seed to sale tracking system, including the licensing, operating, training, and maintenance will be the responsibility of the federal government; however, it is reasonable to anticipate that there will also be some costs to provinces and territories.

The timelines and specific expectations around how this system will function will need to continue to be refined and considerable discussion still needs to occur between federal, provincial, and territorial governments, as well as licensed producers, distributors, and retailers to ensure the functionality and effectiveness of the proposed approach. Provinces and territories will need to evaluate the degree to which the system will meet the needs of their regulatory oversight, distribution, and retail systems.

c) Facilitating the Creation of Legitimate Markets

Many of the activities required to establish legitimate cannabis retail markets and businesses in advance of legalization, such as purchasing cannabis products, are currently illegal, and will remain so right up until implementation in July 2018. Bill C-45 does not include specific transitional provisions to enable provincially or territorially approved

cannabis distributors to legally purchase cannabis and develop a product inventory prior to the anticipated federal implementation of Bill C-45 in July 2018. It will be necessary for the federal government to assist provincially licensed distributors and retailers to legally obtain and possess cannabis from licensed producers prior to legalization. While the federal government has begun to consider how this might be accomplished, clarity will need by early 2018.

d) Cannabis By-products and Edibles

Bill C-45 does not currently make provisions for the legal production and sale of certain cannabis by-products or edibles despite their anticipated market popularity. Proposed amendments to Bill C-45 would commit the federal government to introducing regulations for cannabis by-products and edibles by July 2019. As part of this process, additional clarity will be required on the definition of each of these classes of cannabis, including edibles and concentrates listed in Schedule 4 of Bill C-45, and the federal government's approach to regulating the manufacture of these products. It is anticipated that provinces and territories may need to include provisions within their initial legislation to allow for the future inclusion of edibles. The inclusion of edibles is complex, as there are many additional considerations that must be taken into account, such as the overlap with food safety regulations, additional restrictions for advertising and packaging to deter consumption among youth and children, and restrictions around where edibles may be consumed.

Considering the potential scope of the edibles market and its overlap with the traditional cannabis products addressed in Bill C-45, provincial and territorial governments will need to work closely with federal colleagues to determine how regulations for edibles will impact existing policy frameworks. Depending on the timing of federal regulations, there may be limited time for provincial and territorial governments to establish appropriate regulations within their own jurisdictions to ensure that edibles are sold and consumed in an appropriate manner.

e) Hemp products

Hemp producers have advocated that hemp production and sales should not be subject to the same strict regulatory requirements as cannabis, as the THC content of hemp is too low to cause impairment. Bill C-45 preserves the status quo by allowing hemp to continue to be regulated under the Industrial Hemp Regulations of the *Controlled Drugs and Substances Act*. At the same time, hemp is included in the definition of cannabis in Bill C-45, and the legislation empowers the federal government to transition hemp regulations to the new *Cannabis Act* by way of regulation changes. While federal officials have indicated that industrial hemp would not be subject to many of the stricter regulatory provisions pertaining to non-medical cannabis, the details of future hemp regulation are not yet clear, and further discussions are needed.

***Anticipated Next Steps***

The federal government has previously committed to providing a more detailed analysis of anticipated cannabis demand across the country which would provide some further insight as to what individual provincial and territorial markets may look like. In the absence of a detailed market analysis, there are continued concerns with regard to the availability of supply and the ability of the federal government and licensed producers to ensure that provincial and territorial systems are able to source licit cannabis in advance of July 2018.



In order to ensure that a viable system of legalized cannabis is in place, federal, provincial, and territorial governments will need to ensure that the concerns that have been raised in this section are adequately addressed well in advance of the coming into force of Bill C-45. The ability of the system to achieve its intended outcome of reducing the illicit market for cannabis relies heavily on the system's ability to meet the consumer demand for non-medical cannabis. However, while meeting consumer demand at the outset is important, this needs to be done in a manner that adheres to the new rules and regulations established for licensed producers and retailers in order to maintain the long term integrity of the system, and ensure the protection of public health and safety.

Given the above, it is suggested that provinces and territories should continue to seek greater clarity from the federal government on the projected supply and demand of licit cannabis, including timing of availability, to enable the planning and implementation of distribution and retail systems. This should include potential measures to ensure initial supply is available in all jurisdictions.

Provinces and territories should also seek a formal commitment from the federal government that an effective seed to sale tracking system that will enable regulation and monitoring of the licit cannabis market will be in place prior to legalization.

### **Taxation Arrangements and Cost Coverage**

Under Bill C-45's proposed approach to cannabis legalization, provincial and territorial governments will be responsible for the design, implementation, and regulatory oversight of the legal distribution and retail system for cannabis across the country. In addition to establishing the system, provinces and territories will also set the rules that determine where and how cannabis may be consumed and will be required to enforce both federal, as well as provincial and territorial laws and regulations with respect to the non-medical use of cannabis within their jurisdiction. As a result of these responsibilities, most of the costs associated with legalization will fall upon provincial and territorial governments. The federal government's most recent tax proposal does not adequately account for this imbalance in financial burden between the federal and the provincial and territorial orders of government.

The legalization of cannabis for sale in the consumer market will generate revenues from existing income taxes and corporate taxes. The federal government and harmonized provinces also expect to apply and generate revenues from the GST/HST/QST. Non-harmonized provinces and territories also have the option to levy additional sales or standalone taxes at the retail level. However, provincial and territorial governments will have limited fiscal space to apply sales taxes or additional excise taxes without pushing the price of licit cannabis above the illicit market price.

Provinces and territories recognize that the approach to cannabis taxation needs to be in line with the social objective of eliminating the illicit market and keeping cannabis away from vulnerable populations, in particular youth, and not on maximizing revenue generation. The approach to revenue sharing between the federal government and provinces/territories also needs to recognize that provincial and territorial governments will bear the cost of the distribution and sale of non-medical cannabis, including the net costs or benefits of public education/protection, any health implications, and policing and enforcement.

### **Current State**

At the October 2017 First Ministers' Meeting held in Ottawa, the federal government advanced a proposed plan for the taxation and revenue sharing of cannabis. The proposal includes a flat tax of \$1.00 per gram of cannabis for sales of up to \$10, and an *ad valorem* tax of 10 per cent of the total price of cannabis that exceeds the \$10 threshold. The proposal also stipulates that tax revenues from the sale of cannabis would be split evenly, with 50 per cent being retained by the federal government and the other 50 per cent being distributed to provincial and territorial governments. In addition to the proposed incremental excise taxes, federal and provincial sales taxes may also be applied on the final selling prices. These taxes alone could occupy a large portion of the available tax room. In addition to taxes, any additional mark-ups applied at the retail level would further increase the final selling price.

The federal proposal indicates that cannabis for medical purposes would also be subject to the same duty rates and conditions of the excise duty framework to reduce tax leakages due to potential abuse of the medical cannabis framework. The proposal also states that it will remain illegal to import to and export from Canada any cannabis products without a valid permit issued by the federal government.

While it is recognized that discussions regarding the approach to taxation between federal, provincial, and territorial officials are ongoing, there are several outstanding issues that require further engagement and clarification.

#### a) Revenue Sharing

In preliminary discussions Finance Canada has proposed that cannabis tax revenues be shared with provinces and territories on a 50/50 basis. This sharing of revenues does not recognize that provinces and territories will have significantly greater initial and ongoing costs associated with legalization of cannabis than the federal government. In addition, municipalities and Indigenous communities and governments have expressed an interest in sharing revenues from cannabis. Provincial and territorial costs include start-up costs associated with retail and distribution systems, and ongoing health, social and policing costs associated with the legalization of cannabis. Furthermore, there is currently little to suggest that provinces and territories will have access to adequate revenue sources through taxation to meet the increased demands on provincial and territorial resources. These costs are discussed in more detail in the next section of this report.

#### b) Flexibility of the taxation framework

Further clarification is also needed on how the coordinated taxation approach proposed by the federal government would align with a provincial mark-up and/or direct tax regime. Provinces and territories would need to retain the authority and flexibility to potentially apply their own mark-up and/or direct tax. Should a province or territory not sign onto a coordinated taxation approach, the federal excise duty would need to be set at a sufficiently low rate to provide such jurisdictions adequate taxation room to impose their own mark-up and/or direct tax.

Given the uncertainty of how the licit cannabis market will mature across the country, flexibility will need to be built into a coordinated taxation regime that allows provinces and territories to adjust their rates without undue federal limitation. The focus of the excise cannabis tax applying to the raw cannabis product should ensure all consumer products,

medical and non-medical, are taxed. This way, tax is embedded in green (fresh), dried, oil and any other derivative products generated downstream. Flexibility is also required to ensure that the final tax applied to cannabis products reflects each provincial distribution system and market conditions.

c) Availability of market data

At present, non-medical cannabis market size and sales tax estimates for Canada are preliminary and varied based on a lack of data on this currently illegal market. Health Canada's detailed cannabis use and market size survey results are expected to be available this fall, which is anticipated to help inform government revenue estimates.

Individual provinces and territories will need to consider any additional potential taxation implications for cannabis producers in their jurisdictions, including property tax regimes and tax incentives for farming and manufacturing, such as sales or fuel tax exemptions, and manufacturing investment or research and development tax credits, among others.

d) Timing

Provincial and territorial governments are examining policy options in preparation for July 2018. Detailed information regarding the proposed federal cannabis taxation framework and the corresponding revenue sharing agreement needs to be made available as soon as possible to allow for proper consideration by provinces and territories. If key details are not provided in a timely manner, provinces and territories may be required to develop other revenue mechanisms.

e) Coordination

Intergovernmental coordination of cannabis taxation could help avoid the shortcomings found in the existing Canadian tobacco stamping regime, which has resulted in price differentials across jurisdictions and illicit cross-provincial border movements of tobacco.

Consideration may be given to collecting all taxes (including any sales tax, PST, QST, HST), at the federal level (except in Quebec where the province collects the GST for the federal government), with provinces and territories receiving their share of the excise component based on the province or territory of final sale. The advantage of this approach is that a common pricing structure would form a consistent tax base across Canada that better avoids significant intra-jurisdictional pricing variations that could promote illicit production and distribution.

A coordinated approach, in which taxes are levied at the manufacturer level, can also ensure that taxes are applied to products sold on First Nations lands. Excise taxes levied by the federal government are not subject to the First Nation tax exemption; First Nations are not exempt from the payment of this type of a tax, whereas First Nations consumers are exempt from direct sales taxes (GST/HST/QST). This consideration will be important in determining how cannabis taxation will impact First Nations consumers.

Finally, a coordinated approach to cannabis taxation can also simplify tax administration and reduce red tape for producers and consumers. However, for a coordinated approach to be an attractive option for provinces and territories, they must have certainty that there is enough flexibility in how provincial and territorial tax rates are set as well as assurances that

pertinent data and information will be shared by the federal government to support provincial policy analysis and transparency in accounting for revenues.

### ***Covering the Cost of Cannabis Legalization***

Broadly speaking, the financial impacts of cannabis legalization can be categorized as follows: those that are 1) directly associated with the development and implementation of the system; and 2) those that are associated with the ongoing maintenance and enforcement of the system once it has been established. Both of these cost categories are of concern to provincial and territorial governments, as there is currently little to suggest that provinces and territories will have access to adequate revenue sources through taxation in order to meet the increased demands on their system resources.

There has been no indication to date of available federal funding up front to support the development of the system. No taxation revenue, regardless of the proportion allocated to provinces and territories, will be available in the period leading up to implementation. This means that costs incurred prior to July 2018, and for some time thereafter, will need to come from existing provincial or territorial budgets. It is also noted that the cost of establishing and running the licit cannabis retail and distribution systems will not be recovered by provincial and territorial governments through taxation for several years following legalization. This is particularly challenging for smaller jurisdictions which do not have economies of scale, yet will be required to do much of the same work with respect to the development of a distribution and retail system as larger provinces and territories.

This challenge of timing was identified by health officials from the State of Washington, where up front funding was not made available. As a result, the government was unable to adequately prepare education and awareness materials in advance of legalization. The Washington officials who recently participated in the HESA hearings in Ottawa advised the federal government that it should ensure that funding was made available in advance of the proposed implementation date so that the appropriate systems can be established.

There are several areas where the expected implementation and ongoing costs will have significant impacts on provincial and territorial finances. These include the establishment and operation of the distribution and retail system, the enforcement of impaired driving as well as additional laws and regulations associated with non-medical cannabis use, and the development and ongoing provision of public education and awareness campaigns. It is also recognized that there will be many other secondary costs associated with the legalization of cannabis including potential increases in utilization of health and mental health services.

#### **a) Establishing and Maintaining the Distribution and Retail System**

The success of the legalized cannabis system, as it is currently envisioned under Bill C-45, relies on the ability of provinces and territories to design, implement, and maintain an effective system through which individuals are able to purchase cannabis. Regardless of whether a public or private approach to retail is employed, there will be significant costs incurred by provinces and territories to either establish or license cannabis retail locations and develop distribution networks within their jurisdiction. Provincial and territorial implementation costs associated with establishing retail and distribution systems may include:

- Acquiring necessary building space, leasing and/or maintaining physical infrastructure;
- Developing and enforcing provincial and territorial licensing and regulatory regimes;
- Hiring and training of additional human resources, particularly for publicly operated aspects of the system such as regulatory and licensing personnel; and,
- Establishing and operating inventory management and warehousing practices for cannabis related products.

The longer term costs related to the distribution and retail system remain relatively unknown. Until the cannabis market in Canada has had several years to reach maturity, estimates on the long term cost of running the system are speculative. The federal government has previously indicated that it will make available a more robust estimate of the scale of the potential cannabis market in Canada; however, this has not yet been received. This information will be necessary for provinces and territories to determine how best to establish a viable approach to distribution and retail within their respective jurisdictions.

b) Enforcement

While the federal government has made the decision to legalize cannabis, the cost of enforcing the new system falls largely to provincial and territorial governments. Of the new enforcement responsibilities associated with legislation, enforcing the new impaired driving laws is expected to have the largest financial impact on provinces and territories. Other potential costs include enforcing the new criminal and regulatory provisions under the proposed Bill C-45.

The federal government has announced \$274 million to support law enforcement to detect and deter drug-impaired driving and enforce the proposed cannabis legalization and regulation. Of this, \$161 million will be provided for training frontline officers in how to recognize the signs and symptoms of drug-impaired driving, building law enforcement capacity across the country, providing access to drug screening devices, developing policy, bolstering research, and raising public awareness about the dangers of drug-impaired driving. However, of the \$161 million, provinces and territories will only be able to access up to \$81 million over the next five years. The adequacy and distribution of this funding continues to be discussed among federal, provincial, and territorial officials

i. *Drug-impaired Driving*

Provincial and territorial governments anticipate there will be significant new costs with respect to enforcing the proposed changes to the *Criminal Code* under Bill C-46. Provinces and territories will be required to invest additional resources for:

- Drug Recognition Evaluator (DRE) and Standard Field Sobriety Test (SFST) training and recertification for new and currently trained officers;
- Procurement of drug-impaired driving screening devices and training associated with using these screening devices;
- Research and data collection on impaired driving;
- Evaluation related to cannabis impaired driving; and,
- Additional resources for taking and processing blood samples.

It is unclear how the \$81 million in funding available to provinces and territories will be allocated or distributed between jurisdictions. In any case, preliminary analysis

suggests this amount will not be adequate to meet the new drug-impaired driving enforcement costs.

*ii. Enforcement of Bill C-45 Laws and Regulations*

In addition to enforcing additional laws and regulations that will be put in place by provincial and territorial governments such as rules around public consumption, youth possession of less than 5 grams, or additional administrative sanctions for impaired driving, provinces and territories will also be responsible for enforcing the additional laws and regulations that form part of Bill C-45. This includes enforcing limits on adult public possession of cannabis by amount and age, home cultivation limitations, and other regulatory infractions. The cost of these secondary enforcement responsibilities is unclear at this time, but in the absence of direct federal funding, provinces and territories, as well as municipalities, will bear these additional costs. In addition to training for police, training will also need to be provided for judges and prosecutors. Jurisdictional responsibility for the provision and funding of this training will also need to be discussed among federal, provincial, territorial officials.

If the federal government's proposed ticketing regime for less serious offences under Bill C-45 is operationalized, jurisdictions will also be required to establish a segregated records system to track offences.

**c) Public Education and Training**

Provinces and territories acknowledge that public education on cannabis will be provided by all orders of government, and may also be provided by municipalities or other non-governmental organizations. The funding that has been officially announced by the federal government will only cover a fraction of the costs and topics necessary to responsibly implement the federal government's decision to legalize cannabis, and it is not yet clear what additional funding will be made available to provinces and territories.

While Health Canada is coordinating and funding broader public education campaigns, there will be gaps that provinces and territories will have to address with regards to general public education prior to legalization and on an ongoing basis. The total financial impact of implementing and maintaining robust and rapidly changing public education and training materials is unknown at this time. However, this cost is expected to be substantial and fall primarily to the provinces and territories. As such adequate federal investment will be required.

***Municipal Cost Pressures***

In addition to the direct costs to provincial and territorial governments, municipalities, and Indigenous communities exercising authority under negotiated self-governance agreements will also incur costs associated with the development and enforcement of municipal bylaws and rules around retail and consumption. Provinces and territories recognize that municipalities and Indigenous communities or governments will also be responsible for implementing components of the regulated distribution and retail system including providing oversight for zoning of retail operations (in a private model), public education, and community consultation. These administrations also have a significant responsibility in overseeing enforcement of many of the same offences that have been identified above. As much as provinces and territories are

concerned about the downloading of costs as a result of the federal government's decision to legalize cannabis, these administrations share similar concerns with respect to their own cost pressures.

### ***Systemic Impacts of Cannabis Legalization***

Based on the experiences of jurisdictions that have recently legalized cannabis, Canadian jurisdictions can expect an increased strain on their public health care systems immediately following legalization. As seen in other jurisdictions that have legalized cannabis, provinces and territories could anticipate a near-term increase in hospital emergency room visits and calls to poison control centres due to intentional and unintentional consumption and over-consumption of cannabis, particularly when edible cannabis products enter the legal market. Provinces and territories will also require adequate funding to manage any longer term health care demands, including comprehensive risk management programs and approaches to harm reduction, addictions treatment and mental health, which will need to go beyond public education initiatives. In order to meet the desired outcomes of the proposed legislation, the federal government will need to ensure that adequate resources are provided to cover additional costs to the broader system resulting from the decision to legalize cannabis.

### ***Anticipated Next Steps***

Premiers have previously indicated that a 50 per cent cost share of revenues between the orders of government will not be acceptable. The tax proposal put forward by the federal government does not take into consideration the extensive and disproportionate cost implications for provincial and territorial governments that will result from the legalization of cannabis. Provinces and territories will bear the majority of costs associated with implementing the legal distribution and retail systems, and will also incur the ongoing costs for its enforcement and regulation.

It is anticipated that a detailed report and potential tax legislation will be released and presented to provincial and territorial governments before the end of 2017. Following the release of specific details of the proposed approach to taxation and a framework for revenue sharing, federal, provincial, and territorial finance officials will need to continue to discuss additional arrangements for the administration and distribution of cannabis. Provincial and territorial ministers responsible for finance will be writing to the federal minister to express concerns with any proposal for a 50/50 split of taxation revenues as well as the need for flexibility to address specific provincial and territorial situations.

Provinces and territories should continue to advocate strongly for a taxation system that achieves the desired policy objectives, provides sufficient flexibility, and also recognizes the disproportionate financial impacts on provincial and territorial governments as a direct result of the federal decision to legalize cannabis.

### **Enforcement of Impaired Driving and Public Safety**

Drug-impaired driving already poses significant concerns in Canada and will pose a more significant and ongoing challenge to provincial and territorial jurisdictions across Canada following the legalization of non-medical cannabis. The federal government has introduced Bill C-46, *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts*, which intends to update and strengthen the drug-impaired driving regime before the implementation of Bill C-45 and to reform the *Criminal Code*

transportation regime to create a simplified system to better deter drug and alcohol-impaired driving. The federal government has indicated that it intends to have Bill C-46 enacted prior to July 2018. As a result, provinces and territories must assess their impaired driving enforcement capacity, related training needs, and the cost implications of legalization of cannabis.

In addition to drug-impaired driving enforcement issues, there are also potential concerns about law enforcement related resource and cost burdens that may arise from the legalization of non-medical cannabis.

### **Current State**

Public Safety Canada (PSC) is leading meetings of the Federal, Provincial, Territorial Drug-impaired Driving Working Group to discuss the resource implications of Bill C-46 and to try to determine provincial and territorial needs for federal funding.

There has been little discussion between federal, provincial, and territorial governments regarding roles and responsibilities as they specifically relate to the enforcement of offences contained within Bill C-45. The enforcement of offences contained within the proposed legislation, including limits on age, public possession (for both youth and adults), personal cultivation, and offences related to advertising and packaging will all be enforced by provincial, territorial, or municipal police forces. While it is recognized that provincial, territorial, and municipal police forces enforce criminal offences contained within federal legislation, there has been no recognition of the potential resource impact of these additional provisions. As well, additional information and clarification on this and the regulatory framework will be needed to inform and ensure that law enforcement personnel are appropriately trained/informed and ready to enforce within the new federal and provincial frameworks.

There are several areas with respect to enforcement and impaired driving where further engagement with the federal government is required:

#### a) Oral fluid screening devices/drug-impaired per se limits

Although Bill C-46 authorizes the use of roadside drug screening devices, they cannot be used until the Attorney General of Canada approves devices for use under the *Criminal Code*. There is a risk that roadside screening devices may not be produced, procured and available for use by law enforcement personnel prior to July 2018.

At the federal level, PSC has led work on pilot testing oral fluid drug screening devices for use by law enforcement. The Canadian Society of Forensic Sciences' Drugs and Driving Committee (DDC) has published a report on *per se* limits, which provided a list of nine specific drugs and associated limits in blood that could be reasonably considered for new legislation. The work completed to date does not address the issue of the suitability of oral fluid screening devices as a basis for imposing immediate roadside driver's licence suspensions (as the proportion of THC in oral fluid does not scientifically equate to the amount of THC in blood).

Provinces and territories require scientific evidence that supports and defends the reliability and validity of the devices. Since provinces and territories are responsible for prosecuting *Criminal Code* offences for impaired driving, legal counsel will need to be able to defend against potential *Charter* and/or operational challenges against the drug screening device and new *per se* blood/drug limit provisions. While the DDC information is useful, information



that is more targeted to the defense of the provisions against court challenges would be of more assistance. That information might also assist jurisdictions in determining whether they can impose administrative sanctions based upon the new provisions.

Provincial and territorial law enforcement officials also need to know the detailed specifications and limitations (concentration guidelines, operating temperatures, failure rates, etc.) of the drug screening devices that the federal government will be proposing for use under the *Criminal Code*. These are needed in order to make decisions about how such devices will fit into existing impaired driving enforcement operations and assess if they can be effectively used as part of provincial and territorial impaired driving countermeasures.

There is also a lack of clarity regarding police process when a driver is stopped. When are the demands given, when are *Charter* rights given and when are other procedures carried out after changes to the *Criminal Code* proposed in Bill C-46? The federal government will also have to provide guidance to law enforcement in dealing with drug screening of medical cannabis users.

b) Resources to support blood testing

The new *per se* blood/drug limit offences that will be created by Bill C-46 require police to demand blood samples be taken from suspected drug-impaired drivers for forensic laboratory testing. This creates two issues for provincial and territorial jurisdictions: 1) currently police, especially police in smaller communities, may not have access to resources to draw blood within the evidentiary timelines of the *Criminal Code*; and 2) consideration needs to be given to the sufficiency of forensic laboratory service to handle a large volume of blood tests arising from the new offence provisions of Bill C-46. Thus far discussions at the federal, provincial, and territorial level on drug-impaired driving have not sufficiently focused on forensic considerations such as the availability of blood sampling resources and forensic lab testing services.

The costs of blood testing of suspected drug-impaired drivers could also be significant. This is especially so for rural and remote/northern communities which are fly-in, or only accessible by seasonal roads. There is also a capacity issue regarding the labs that would do this testing. The analysis would be a lower priority than, for example, an investigation of a violent crime, and it is unclear whether the labs are equipped and staffed to handle considerably larger caseloads. Who pays for the testing is yet another issue.

c) Availability of federal resources for training and equipment

Currently, the only tools available to police to obtain evidence of drug-impaired driving are the Physical Coordination Tests (also known as Standard Field Sobriety Tests) and DREs authorized under the *Criminal Code*. However, unlike approved breath testing devices, SFST and DRE cannot be administered by any police officer, but require special training, certification and re-certification, which is costly. Also, DRE certification is currently only available outside of Canada (in the United States). As a result, the number of trained officers across Canada is not sufficient to meet the needs of drug-impaired driving enforcement.

The costs of training police to conduct SFSTs, become DRE officers, and the cost of oral fluid drug screening devices are significant. Full DRE training can cost between \$8000 – \$10,000 per officer, depending on factors such as geographic location and availability of local resources, and the average cost to train an officer in SFST is approximately \$3000.

Furthermore, DRE field certification is currently offered only in the United States, which means that this training is not only expensive, but it is also not within federal, provincial, or territorial control. This situation may not be sustainable over the long term, and limits provinces' and territories' ability to build and maintain capacity.

Depending on the type of device used, the cost to equip police with oral fluid testing devices will be substantial. Depending on the type of device used, the cost of the oral fluid test devices could range from \$20-\$30 per single use test cartridge and a reader could cost between \$2,000 and \$5,000.

Although the announcement of \$81 million for provincial and territorial jurisdictions is welcome, it is based on preliminary consultations with the Federal, Provincial, and Territorial Drug-impaired Driving Working Group and underestimates actual implementation costs. It is difficult to predict the precise costs of drug screening devices without knowing which devices will be approved. It is also difficult to assess potential cost implications concerning drug-impaired driving enforcement without further discussion on SFST and DRE certification and further clarification on the blood sampling and blood testing resource issues. Provinces and territories should continue to work with the federal government to assess the resource requirements for drug-impaired driving enforcement arising from Bill C-46 and request that the federal government provide additional resources once there has been time to assess the actual resource impact.

In addition to training for police, training will also need to be provided for judges, defence counsel, and prosecutors. Jurisdictional responsibility for the provision and funding of this training will also need to be discussed among federal, provincial, territorial officials. Provinces and territories will need to be able to effectively enforce and prosecute the additional provisions contained within Bill C-46, and must be adequately equipped to address potential increases in court appearances and delays.

d) Resources for increased demand on Provincial and Territorial law enforcement

The concept underlying the federal legalization of cannabis regime is not permissive legalization, in the sense of complete decriminalization, but rather restrictive legalization in terms of authorizing a narrow range of permitted cannabis use and making everything outside of that narrow range illegal. That approach brings with it an expectation that the laws against the illegal activity will be vigorously enforced; otherwise, the laws will be quickly disregarded by the public as meaningless.

The expectation of enforcement falls upon provincial, territorial and municipal law enforcement agencies and, as legalization of cannabis is an initiative of the federal government, it stands to reason that the federal government should provide funding to offset those costs. Funding issues between the federal provincial, territorial, and municipal governments related to policing are complex and addressed via mechanisms established under existing funding agreements. However, the existing funding agreements will not provide an avenue to seek funding to compensate for provincial policing and large urban municipal policing costs arising from the enforcement and training requirements of Bill C-45. As such, the question of broader funding to support law enforcement efforts (beyond training) should continue to be pursued by federal, provincial, and territorial senior officials.

### ***Anticipated Next Steps***

All of the challenges identified in this section remain outstanding issues with the federal government and are the subject of ongoing dialogue and discussion. Several of these issues will require significantly more clarity and progress in order to ensure that provinces and territories are able to meet the federal government's July 2018 implementation date. These issues include:

- Detailed technical information on drug screening devices;
- Detailed scientific evidence to support drug screening devices and *per se* limits;
- Available resources to support blood testing;
- The process for the distribution and allocation of available funding for training and equipment, including provincial and territorial involvement in determining this approach; and,
- Clarity with respect to roles and resource availability for the enforcement of provisions within Bill C-45.

Federal officials have indicated that oral fluid screening devices will be further tested, recommended, and approved for use by spring of 2018, and have indicated the following next steps and timelines with respect to engagement with provinces and territories:

- Discussion with provincial and territorial officials to examine training and capacity needs, develop costing, and develop reporting requirements – October/November 2017
- Development of contribution agreement based on provincial and territorial strategic plans – targeted for December 2017.
- Development of contribution agreements for studies on drug concentration and impairment – November 2017
- Discussion and development of standardized data collection and reporting with provincial and territorial governments – January 2018

These issues will continue to be discussed by provincial and territorial officials via both the Federal, Provincial, Territorial Drug-impaired Driving Working Group and the Federal, Provincial, Territorial Senior Officials Working Group on Cannabis Legalization and Regulation. It is suggested that additional meetings, beyond those currently identified, should be scheduled to ensure that work on these vital areas continues to progress.

Provinces and territories should seek a formal commitment from the federal government to continue assessing the resource requirements for drug-impaired driving enforcement arising from Bill C-46 and to provide additional resources once resource impact has been determined.

The need to secure a federal commitment to providing ongoing funding and support toward the enforcement of drug-impaired driving should continue to be raised by provincial and territorial Deputy Ministers and Ministers with their federal colleagues.

### **Public Education and Awareness**

As non-medical cannabis becomes legal in July 2018, many Canadians are turning to their governments for information on how to assess the risks and harms of cannabis use and how the regulation of cannabis will work. This becomes especially important with the aim of the federal framework to take a public health approach to the regulation of cannabis in order to reduce the

potential harms associated with cannabis use. This task is complicated by the number of myths and misunderstandings on the effects of cannabis use that are already well entrenched in the minds of many Canadians. Accordingly, public education and awareness activities will be needed to communicate information, such as lower-risk cannabis use guidelines, to help individuals, especially youth and young adults, understand the potential harms of cannabis use, and to provide reliable information to parents, educators, and others working with youth and vulnerable populations. In particular, targeted education and awareness efforts will need to provide Canadians with accurate information regarding the risks and consequences of drug-impaired driving. Further, it will be critical to develop well researched and targeted campaigns for Indigenous and newcomer populations to prevent a widening of the gap in health status. The general failure of tobacco cessation campaigns among Indigenous populations in particular has demonstrated how critical it is to be culturally relevant and respectful. It is imperative that this work is done concurrently with the broader public education and awareness work already underway, and not after the fact.

As recommended by the federal government's Task Force on Cannabis Legalization and Regulation, messaging about the risks of cannabis use should be consistent across the country. Messaging regarding the risks and harms of cannabis use may come from a variety of sources, including different orders of government, non-governmental organizations and the private sector. Federal, provincial, and territorial governments may want to collaborate on the creation of public education and awareness campaigns to ensure co-ordination and alignment with respect to the timing, tone, and delivery of materials. Coordination between jurisdictions will ensure that gaps and inconsistencies in messaging can be avoided, which will be important in the months leading up to, and immediately following legalization.

### ***Current State***

The issues of public education and communications are being discussed at the officials' level through the Federal, Provincial, Territorial Working Group on Cannabis Communications. The federal government has shared many aspects of its overall plan and approach for public education and awareness with the provinces and territories, and has indicated that communications to the public are anticipated to increase substantially by December 2017. Provincial and territorial governments are currently in varying states of developing their own public education and communications plans.

As part of the 2017 budget, the federal government announced \$9.6 million in funding over five years, and \$1 million per year ongoing, to support public education programming and surveillance activities across the country related to cannabis legalization. On October 31, 2017, an additional \$36.4 million over the next 5 years was announced. While discussions with federal officials are ongoing, there has been no indication as to whether or not any public education and awareness resources will be available to provincial and territorial governments. In advance of July 2018, there are several specific areas related to public education and awareness where concerted engagement with the federal government will be required:

#### a) Jurisdictional Roles in Public Education, Communication, and Training

The federal government has committed to undertake public health education in advance of legalization. Advertising efforts targeted at youth and drug-impaired driving are already underway.

Provinces and territories need to consider the degree to which they will align their own educational and awareness messaging and approaches with federal efforts. Full details of the federal approach and timelines are still being developed and are generally being shared with provinces and territories. Discussions are ongoing to ensure that provinces and territories are equipped with the information that they need to strategically plan public education and awareness campaigns within their jurisdiction. Provinces and territories have also raised concerns that the federal government's current approach and target audiences for education and awareness do not account for each jurisdiction's needs and demographics. Increased collaboration with provincial and territorial governments will ensure that public awareness campaigns are appropriate for the audience and regions in which they are being carried out. The specific role of provincial and territorial governments in the broader, national approach to public education and awareness will need to be discussed and defined at a more detailed level.

Furthermore, as a result of the federal decision to legalize cannabis, provinces and territories are required to establish extensive distribution and retail, regulatory, and enforcement systems within their respective jurisdiction. It is acknowledged that significant resources will be required in order to educate prospective participants in the cannabis market (employees, employers, investors, etc.), provincial, territorial, municipal and Indigenous regulatory and enforcement agencies and employees, as well as the general public with respect to how each jurisdiction's system will operate. There has been limited conversation to date regarding the availability of federal funding or resources to support the increased educational and data collection requirements that have been placed on provincial and territorial governments.

b) Timing and adequacy of resources to support public education activities

During the HESA hearings regarding Bill C-45 in September 2017, the Committee heard from representatives from Colorado and Washington who emphasized the importance of adequate and timely funding for evidence-informed public education. A representative from Colorado's Department of Revenue noted that Colorado dedicated \$12 million for youth outreach and education for a population of approximately five million residents. Comparatively, Washington's representative from the Department of Health indicated that Washington allocates \$7.5 million per year for educational campaigns that are funded primarily through tax revenue. In Washington's experience, the delay in availability of public education resources from the time of legalization meant that the public was not well enough informed to use cannabis safely, and emergency room visits increased as a result, speaking to the importance of a harm-reduction approach to public education and awareness campaigns.

***Anticipated Next Steps***

Provinces and territories acknowledge the federal government's proposed contributions of \$46 million over five years towards public education initiatives; however, it remains unclear whether this amount will prove adequate for the ongoing public health education and awareness initiatives required prior to and beyond July 2018, and there is no indication that any of this funding will be available to provinces and territories. Based on the experiences of other jurisdictions that have legalized cannabis, effective, timely, and appropriate public education initiatives need to accompany legalization to maintain a public health and safety focussed approach.

Provinces and territories should seek firm commitment from the federal government to allocate the additional resources that are needed to enable robust and comprehensive public education efforts in advance of legalization, and on an ongoing basis. This should include resources to directly support provincial and territorial activities that are required as a result of legalization.

The federal Task Force recommended coordination between federal, provincial, territorial, and non-governmental bodies to ensure consistency and clarity for Canadians. Despite this recommendation, very little formal alignment has been sought thus far. Considering provinces and territories will be taking various approaches to establishing the necessary system elements for cannabis legalization, public education campaigns will need to reflect this. Provinces and territories will need to identify where collaboration with both orders of government will be appropriate. Further consultation with the federal government will be required to determine where public education priorities may or may not align.

### **The Federal Regulatory Framework**

Bill C-45 largely follows the recommendations of the December 2016 federal Task Force report on Legalization and Regulation of Cannabis. There are several areas in which the proposed legislation asserts federal jurisdiction through the establishment of minimum requirements. The federal government has indicated its position that provincial and territorial governments will be able to legislate beyond several of the minimums that have been established, though this is not expressed in the proposed legislation.

#### ***Current State***

Bill C-45 creates a legislative framework for the regulation of non-medical cannabis. Many key areas, such as licensing and requirements for producers, requirements to prevent involvement by organized crime or diversion of cannabis, such as the seed to sale tracking system, cannabis potency limits, and packaging requirements, will be established by federal regulation. Bill C-45 is currently being considered by Parliament and, given the short time frame for bringing the Bill into force, federal officials are working on developing the necessary regulations for implementation.

Under Bill C-45, for provinces and territories that have not established their regulatory frameworks for distribution and retail by July 2018, the federal government has authority to license producers to provide access to cannabis for adults over the age of 18 in the province or territory by secure direct mail or by courier. Most provinces and territories have not yet announced their approach to cannabis distribution. As provinces and territories were not formally consulted about the provisions of Bill C-45 before it was introduced, there are several issues and ongoing concerns about the legislation that require further clarification.

#### a) Provincial/Territorial Authority to Establish Additional Restrictions beyond Federal Minimums

The regulation of non-medical cannabis engages areas of both federal and provincial and territorial jurisdiction. The federal government has been clear that Bill C-45 must be interpreted in light of existing constitutional jurisprudence in relation to the division of federal and provincial and territorial authority. The federal government has stated its interpretation of that jurisprudence in articulating the respective areas of authority. On some issues, provinces and territories may take different views and there are a number of ways in which they may choose to address concerns arising from differences in interpretation. Like Ontario, provinces and territories could propose that the federal government amend Bill C-

45 to further clarify the division of powers. Alternatively, provinces and territories could legislate in alignment with their own interpretation of the division of powers jurisprudence and risk assessment.

Key areas where provinces and territories likely have authority to legislate include:

*i. Prohibiting Youth Possession of 5g or Less of Cannabis*

Bill C-45 prohibits persons under the age of 18 from possessing more than 5g of non-medical cannabis. The rationale for this approach is to avoid criminalizing youth for ‘minor’ possession offences. Given that protection of youth is a primary objective of the legalization and regulation of non-medical cannabis, this is an area in which most provinces and territories will further regulate, especially since the federal government has expressed the view that it may be prudent for provinces and territories to further regulate in this area to ensure that potential harms to youth are mitigated. There is consensus that provinces and territories have authority to further regulate youth possession – even to the point of a zero possession limit.

*ii. Personal Cultivation*

Personal cultivation or home growing of cannabis is currently permitted under the medical cannabis program, and the law enforcement community, as well as municipalities, have raised concerns that restrictions on personal cultivation are very difficult to monitor and enforce, resulting in production exceeding permitted limits and diversion of such cannabis production for illegal purposes. Similar concerns have been expressed about the proposed personal cultivation provisions of Bill C-45, especially since there are no provisions concerning federal monitoring and enforcement of limits on production. Federal officials have taken the position that provinces and territories can pass legislation to further reduce number of cannabis plants that can be grown, establish further restrictions on personal cultivation, but this is not expressly provided for in Bill C-45.

*iii. Raising minimum age*

The federal government has stated that provincial and territorial jurisdictions can pass legislation to raise the minimum age for cannabis possession and use above 18 years. However, there is no express legal authority for this in Bill C-45. Some provinces and territories have expressed concern that provincial or territorial offences for possession and use at a higher age could be subject to constitutional challenges on the grounds that they are legislating in the criminal law, as drugs have traditionally been exclusively dealt with by the criminal law.

b) Bill C-45 Ticketing Provisions

Bill C-45 proposes to create a separate regime to permit the use of ticketing for minor offences of possession, distribution, or production of cannabis. The stated federal intention is to expedite the police and court processing of minor cannabis offences by creating a system that would result in a segregated criminal record and thereby offer an incentive to offenders to plead guilty by paying a fine rather than challenging a ticket in court.

However, despite creating a segregated record system for the ticketing regime to prevent the conviction from being recorded in the Canadian Police Information Centre (CPIC), persons who are convicted of a ticketed offence, including those who plead guilty by paying the ticket, will still legally have a criminal conviction. This means they will not be able to say that they have no criminal convictions at border crossings or on job applications, and therefore will not have the incentive to plead guilty as intended by the federal government.

Provinces and territories may have jurisdiction to establish provincial and territorial regimes for addressing the types of activities addressed by the federal ticketing scheme. However, if provinces and territories do not act and instead adopt the federal ticketing scheme, they will have to expend significant resources to develop and maintain a separate record system for the federal tickets to support a regime that may not achieve the desired results of relieving the adverse effects of having a criminal record and managing pressure on the courts by minimizing the number of minor matters that go to trial. The federal government has not made it clear as to why a separate judicial record system is being required. The *Youth Criminal Justice Act*, for example, has stringent information protection rules, but no requirement for a separate record system.

Provincial and territorial officials in the Federal, Provincial, Territorial Ticketing Working Group have urged federal officials to address these concerns, but it appears that the federal government will not consider any changes to the proposed ticketable offences regime.

c) Enhanced Information Sharing Between Governments

Some jurisdictions have expressed concerns that there is a need for confirmation that provincial and territorial governments will have access to data and information from the federally administered seed to sale tracking system and other relevant sources. Federal, Provincial, Territorial Working Groups, such as the Seed to Sale Tracking Working Group as well as the Baseline Data Working Group, have been established to discuss information and data sharing issues related to cannabis legalization. While these working groups continue to meet, it is critical that provinces and territories continue to be provided with specific details of how the federal regulatory system will be managed. Understanding the federal regulatory system is critical for the ability of provinces and territories to understand what data and information will be available to support regulatory oversight responsibilities and public health efforts.

d) Confirming Provincial/Territorial Authority Over Retail

The federal government has stated its intent to step in and act as the default cannabis retailer if a province or territory has not passed the required legislation and established a provincial or territorial cannabis distribution and retail sales regime prior to July 2018. The federal government has stressed that if implemented, the backstop system is intended to be temporary. However, some jurisdictions have expressed concern that this assurance is not expressly reflected in Bill C-45 and there is no explicit recognition of the primacy of provincial or territorial authority over distribution in the event that the federal government steps in as the distributor and retailer. It also remains unclear as to what provincial and territorial system elements must be in place in order that the federal government's backstop would not come into effect. Federal, provincial and territorial officials are continuing discussions on this issue in order to achieve further clarity.



### ***Anticipated Next Steps***

The federal government has indicated that it will release a consultation paper on its approach to regulation in November 2017, which will be followed by a consultation period of 60 days. In addition to publication in the *Canada Gazette*, stakeholders and the public will be invited to submit written feedback.

Many of the jurisdictional ambiguities noted in subsection a) above would require the cooperation of the federal government to make amendments to Bill C-45 to resolve concerns. However, provinces and territories may differ in their interpretation of the issues and desirable remedies. Ontario's Attorney General has recently written to the federal government to suggest the need for amendments to clarify provincial and territorial authority to establish additional restrictions, facilitate creation of legitimate markets, confirm provincial authority over retail, and enhance information sharing between governments. Whether or not the federal government amends Bill C-45 to more explicitly include its own interpretation of the division of powers, this does not obviate the risk of legal challenge, and it is open to provinces and territories to legislate in alignment with their own interpretations and assessment of the risk of challenge.

Despite discussions among senior officials and federal, provincial and territorial ministers responsible for Justice, the federal government's proposed approach to ticketable offences continues to be a significant concern to provincial and territorial governments. As such, provinces and territories should consider formally expressing their concerns in writing to the federal government to emphasize that these issues need to be addressed in advance of the implementation of Bill C-45.

## **CONCLUSION**

This report of the Provincial-Territorial Working Group on Cannabis Legalization and Regulation provides an overview of current activities, envisioned next steps, and outstanding issues related to provincial and territorial preparedness for the implementation of legalized cannabis.

It is evident that preparing for legalization requires provinces and territories to undertake extensive public consultation, policy development, legislative and regulatory changes, development and implementation of oversight, distribution and retail systems, along with all of the associated educational, training, and enforcement efforts. All of these activities are complex, and have significant resource implications.

Provinces and territories are all currently engaged in this ongoing work, and have made progress despite very tight timelines. Many have recently completed or are currently conducting public and stakeholder engagement activities to determine an approach that meets their particular needs and objectives. While few formal decisions have been made, some jurisdictions have begun to release policy frameworks that will guide their approach. All are intending to establish the core elements of their legislative and regulatory frameworks, including distribution and retail systems, prior to the intended legalization date. However, the extent to which these systems will be fully implemented and operational (as opposed to scaling up incrementally) by July 2018 remains uncertain.

At the same time, provinces and territories continue to work with the federal government to address areas of shared responsibility or interest. In those areas where Premiers have identified a need for greater engagement or clarity from the federal government, discussions are ongoing, often through dedicated federal-provincial-territorial working groups at the officials level.

Within those areas, there are certain key issues where meaningful progress has not yet been made, additional federal resources may need to be committed, or change in the proposed federal approach may be required. Provinces and territories emphasize that costs associated with the development, implementation, and enforcement of a legalized cannabis system will fall primarily to provincial and territorial governments, particularly in the early years following legalization. It is incumbent on the federal government, which initiated legalization and established the intended timeline, to invest the appropriate resources to support implementation.

This report highlights several areas where more concerted, high level advocacy efforts by Premiers and Ministers may be warranted in order to achieve resolution by July 2018. Proposed next steps to achieve the successful implementation of the legalization of cannabis and ensure the health and safety of Canadians include, but may not be limited to, the following:

*Continue to engage with the federal government to seek greater clarity on the projected supply and demand of licit cannabis, including timing of availability, to enable the planning and implementation of distribution and retail systems. This should include potential measures in place by April 1, 2018 to ensure initial supply is available in all jurisdictions.*

*Seek a formal commitment from the federal government that an effective tracking system that will enable regulation and monitoring of the licit cannabis market will be in place by April 1, 2018 to ensure sufficient time for deployment and training.*

## Council of the Federation Report on Cannabis Legalization and Regulation

*Continue to advocate strongly for an approach to taxation that achieves the desired policy objectives, provides sufficient flexibility, and provides significantly more than 50% of revenue to provinces and territories, recognizing the disproportionate financial impacts on provincial and territorial governments as a direct result of the federal decision to legalize cannabis, and the potential for costs to outweigh revenue in the initial years.*

*Seek formal commitment from the federal government to fully address provincial and territorial resource requirements for drug-impaired driving enforcement arising from Bill C-46.*

*Call for the federal government to implement robust and comprehensive public education efforts immediately.*

*Seek greater collaboration from the federal government with provincial and territorial governments in the development of public education and awareness activities to support coordination of approaches and ensure regional needs are addressed. This should include providing adequate and necessary resources to provinces and territories for local and regional initiatives as soon as possible*

*Formally express provincial and territorial concerns with the federal government's approach to ticketable offences to ensure that these concerns are addressed before Bill C-45 is passed.*

The Council of the Federation Working Group on Cannabis Legalization and Regulation has determined that there is ongoing progress being made by all orders of government in preparation for legalized cannabis. However, some key issues identified by provinces and territories have yet to be resolved and require urgent attention from the federal government. In the absence of timely and appropriate resolution of these issues, proceeding with implementation on the federal government's intended timeline could pose serious risks to achieving the stated objectives for legalization, including protecting the health and safety of Canadians, preventing young people from accessing cannabis, and reducing the illicit market.



CANADA'S  
PREMIERS

Council of the Federation Secretariat  
Suite 630, 360 Albert Street, Ottawa, Ontario K1R 7X7  
[www.canadaspremiers.ca](http://www.canadaspremiers.ca)