Cabinet Paper

Title
A proposal to target criminal justice objectives in the taxation of cannabis

Proposal
The purpose of this Cabinet submission is to highlight the importance of taking a criminal justice approach to the taxation of cannabis in the Cannabis Act. The Act is rooted in a framework of public health and safety. However, the federal government has indicated that the purpose of the Cannabis Act is to legalize, regulate, and restrict access to marijuana, reduce the burden on the criminal justice system, and eliminate illicit markets. These policy objectives are predominately concerns of the justice department. As such, approaching policy objectives from a criminal justice perspective will help to achieve desired outcomes.

Executive Summary
Although the Cannabis Act highlights a number of key concerns regarding cannabis legalization, the framework emphasizing the protection of public health and safety will not be effective in realizing desired outcomes. According to the 2015 Speech from the Throne, Prime Minister Justin Trudeau aims to legalize, regulate, and restrict access to marijuana, particularly from high-risk users such as youth and the mentally ill. Moreover, the federal government indicates that cannabis legislation must remove market profitability from criminal organizations and reduce the burden on the criminal justice system. Although public health and safety objectives must be considered in this legislation, it is clear that the primary goals of the Cannabis Act are rooted in justice policy. Nevertheless, the federal government has elected to frame the Cannabis Act in public health and safety. The logic justifying this approach is based in treating cannabis like tobacco, which is increasingly taxed to encourage smoking cessation and improve national health. For example, the Task Force on Cannabis Legalization and Regulation highlighted the effectiveness of tobacco taxation in reducing smoking patterns, indicating tobacco policy as a potential framework for future cannabis legislation. However, the context surrounding cannabis use is far different than tobacco, and as such, legislation on cannabis should be treated differently. Moreover, academic research in North America has demonstrated that tobacco taxes have been ineffective in deterring smokers from purchasing tobacco products. In order to achieve the goals of the Cannabis Act, the federal government must reconsider its approach to taxation.

Background
Across the world, states are realizing that prohibitive drug policies are ineffective. These policies fail to reduce high youth usage rates, fail to prevent economic gains for criminal organizations, and increase burdens on the criminal justice system by imposing thousands of minor possession of cannabis charges on the Canadian population. Cannabis remains a restricted drug in Canada under Schedule II of the Controlled Drugs and Substances Act. According to the 2015 Speech from the Throne and subsequent government studies, the federal government ultimately aims to legalize, regulate, and restrict access to cannabis in Canada through new legislation. In addition, the federal government aims to prevent criminal organizations from profiting on illegal cannabis trade and reduce the burden on the criminal justice system by eliminating minor possession of marijuana charges through the proposed legislation.
A number of states and sub-state entities have enacted legislation to legalize or decriminalize cannabis, to varying degrees of success. Moreover, Portugal has recently decriminalized all drugs and has experienced a significant reduction in drug trafficking, providing a precedent for more sweeping policy. In order to create a cannabis framework that addresses the concerns of Canadians, administrators must examine the successes of other legislative bodies and apply best practices to the Canadian context. The Canadian government elects to use high taxation rates on legal drugs such as alcohol and tobacco. Importantly, within the framework of public health and safety, the federal government intends to include a similar taxing process on legal cannabis products. However, as smoking trends and criminal activity in the contraband cigarette market have demonstrated, this policy is failing to achieve desired health and safety outcomes.

Comment
According to the United Nations Children’s Fund (UNICEF), Canada ranked highest amongst all countries in terms of youth marijuana usage in 2013. Fully 25% of youth aged 15-24 reported past year use of marijuana or its derivatives in the same year. In terms of illegal trade, marijuana creates seven billion dollars in revenue for criminal organizations in Canada. Moreover, most of the illegal cannabis distributed to Canadians is grown in Canada. In 2014, marijuana possession charges accounted for 57,314 police-reported offences, more than half of all police-reported offences in the country. Of these, 22,223 led to criminal charges. In 2013-14, impaired driving and drug possession accounted for 15% of all completed criminal cases in Canadian courts (11% and 4%, respectively). In 2015, police reported 3000 drug-impaired driving cases, accounting for 4% of all impaired driving cases, doubling totals from 2009 when drug-impaired driving statistics first became available. Drug-impaired driving is increasing while impaired driving as a whole is at its lowest levels in Canada since 1986.

A leading rationale regarding cannabis regulation is the comparison with tobacco restrictions. While implementing similar purchasing and branding restrictions is reasonable, heavily taxing marijuana will not realize policy objectives. One of the major concerns for the federal government is eliminating market profitability from marijuana sales to criminal organizations. If this is to be a primary goal, taxation should be avoided or used limitedly. According to academics and think tanks like The Cato Institute, tobacco taxation is mostly ineffective. Studies on the effects of taxation on tobacco consumption demonstrate that taxes reduce usage among some subgroups of the smoker population. Individuals who consume ten cigarettes a day are unaffected by tax increases, while heavier smokers reduce their consumption but ultimately continue to smoke at a high rate. Moreover, health literature demonstrates that those who consume less than ten cigarettes a day run similarly high risks of chronic disease as heavy smokers. Furthermore, as cigarette taxation increases, sales of illegal cigarettes also rise. Recent studies suggest that one-third of cigarettes sold in Ontario are contraband products. In Northern Ontario, 51% of survey respondents indicated purchase of illegal cigarettes. This rise in illegal tobacco sales occurs despite Ontario having the second lowest total tobacco sales in Canada. In 2018 and 2019, Ontario is due to increase its cigarette taxes by two cents per cigarette.

Unlike tobacco, the critical problem facing the provision of legal marijuana is the monopoly criminal organizations have on the existing market. While marijuana remains an illegal substance, Canada has the highest rate of marijuana users in the world. Logically, these rates are likely to remain high in the case of legalization. Moreover, as criminal punishment does not
appear to be a deterrent, purchasing cheaper products from illicit markets is likely to continue if cannabis tax makes governmentally provided marijuana economically inaccessible.

Under these conditions, it is essential that the Canadian government limit the usage of taxation on marijuana products. In order to compete with a monopoly market, government sources need to provide competitive prices while maintaining a firm grasp on quality control. Moreover, as the example of tobacco indicates, taxing addictive substances does not promote a public health and safety agenda. Individuals who use these substances are likely to continue using, despite increased tax costs. Moreover, as the study in Ontario has demonstrated, implementing taxes opens the market for the sale of contraband cigarettes. Logically, with a monopolistic market on cannabis products, unwillingness to provide competitive pricing would likely cripple legal marijuana production. As such, electing to use low taxation rates on cannabis products is essential in limiting or eliminating the criminal market. Moreover, if a revenue neutral approach is taken toward governmentally produced cannabis, revenue from cannabis tax could be reinvested into the criminal justice system to fund rehabilitation programs and drug-learning programs as seen in Portugal. Effectively, this approach would first tackle the criminal market, address criminal justice needs, and as a result, promote the public health and safety objectives highlighted by the Task Force on Cannabis Legalization and Regulation.

Consultation
As Canada works toward the legalization of cannabis, the federal government should seek to consult the states of Washington, Oregon, and Colorado for their lessons learned since cannabis became legal. The federal government should also consult with private organizations like CannStandard and CanAccord Genuity who conduct research and provide projections regarding licit and illicit cannabis prices. In order to ensure legal cannabis prices are competitive with the black market, the federal government must be aware of illegal market trends. Moreover, if cannabis becomes legal, the federal government should increasingly promote research into the health effects of cannabis use, particularly the effects on mental health. For example, in 2014, the Centre for Addiction and Mental Health at the University of Toronto published an article cannabis policy framework, approaching policy from a health care perspective with particular focus on mental health. As public health and safety is an important feature of Canadian cannabis policy, the federal government should frequently consult health sciences experts about their findings as it relates to recreational cannabis usage. Lastly, as one of the primary objectives of the Cannabis Act is to reduce the burden on the criminal justice system, the federal government should communicate with not for profit organizations, like the John Howard Society, to monitor the effects of the policy on the justice system, criminal justice professionals, and the individuals within the criminal justice system.

Financial Implications
According to a 2016 report from the Parliamentary Budget Office (PBO) the average price for a gram of illicit marijuana in Canada was $9.36. Importantly, black market sellers often give discounts to bulk purchasers, which lower the price to $8.82. According to CannStandard, an Alberta based cannabis research organization, the present price of medical marijuana in Canada is $9.12 per gram. Moreover, CanAccord Genuity, a global finance and investment banking services company, project licit medical and recreation marijuana prices to be $8.00 per gram until 2020. Critically, this estimated price does not account for federal, provincial, or municipal
taxation. Although taxation of marijuana products could create billions of dollars in revenue, it is imperative that all levels of government ensure licit prices are less than or equal to prices in the illegal market. If the central objective of legislation is to eliminate criminal participation in marijuana sales, the government must create accessible pricing.

Additionally, the federal government could consider the example of Portugal for crime reduction strategies. Recently, the government of Portugal decriminalized all drugs. Rather than penalize drug users, new policy in Portugal mandates that individuals found using “hard” recreational drugs participate in drug rehabilitation and drug learning programs. Importantly, these new policies have led to an overall reduction in drug trafficking in the country. If the government considers a revenue neutral approach to cannabis policy, revenue from limited taxation could be directed to programs like those finding success in Portugal. This approach would work toward both the criminal justice objectives highlighted in this submission and the public health and safety objectives of the federal government.

**Gender Perspective**
No gender implications observed.

**Aboriginal Perspective**
Aboriginal communities have comparably high unemployment rates to the rest of the country. As the example of Colorado has demonstrated, the cannabis industry has been highly profitable for local communities and, as such, could provide a new job market for First Nations peoples.

**Disabled Perspective**
Medicinal marijuana for the disabled and chronically ill are outlined in the *Access to Marijuana for Medical Purposes Regulations* and in the proposed *Cannabis Act*. However, scientific research has demonstrated the negative impacts of cannabis on persons with mental illness.

**Rural Perspective**
No rural implications observed.

**Environmental Perspective**
Legislation mandating that public places and buildings be smoke-free would apply to cannabis.

**Communication Strategy**
Although cannabis policy has been subject to much speculation, many Canadians are still debating the merits of legalization. Polling studies suggest that support for cannabis legislation varies from roughly 50-70% of the voter population. Importantly, support for legalization was higher earlier in Prime Minister Trudeau’s mandate and steadily decreased throughout 2016. Critically, the proposed approach should address the concerns of cannabis supporters and detractors. Low taxation rates will sustain the support of cannabis users, while detractors will rally to the revenue neutral strategy that directs revenue to rehabilitation and crime reduction programs. When presenting revised legislation to the House and to the public, facilitators should highlight the critical role of criminal justice in the framework of cannabis policy in providing a sustainable program. Moreover, facilitators should demonstrate how incorporating a criminal
Justice approach to the cannabis framework would help attain the public health and safety objectives outlined by the Task Force On Cannabis Legalization and Regulation.

**Recommendations**
The Minister of Justice recommends that, the framework on cannabis legislation must have a strong focus on criminal justice objectives. Specifically, it is critical that criminal justice objectives are considered when addressing the question of cannabis taxation. Moreover, framing the Cannabis Act from a criminal justice perspective can effectively tackle the public health and safety objectives highlighted by the Task Force on Cannabis Legalization and Regulation that are the current drivers to cannabis legislation. Critically, it is important to recognize that the objectives of Canadian health administration and Canadian justice administration are not mutually exclusive. If approached wisely, pursuing one set of outcomes may produce desired results in the other. Therefore, the Minister of Justice recommends that the federal government:

1. Examine the example of Portugal to develop a revenue neutral approach to cannabis policy.
   Portugal has created a highly innovative policy framework that delegalized all drugs. Rather than penalize drug-users, the new framework directs users to rehabilitation and drug-learning programs. If the federal government explores a revenue neutral taxation policy on cannabis legislation, revenue from cannabis tax could be directed to drug programs like those employed in Portugal. While using licit cannabis would not require entry into such programs, individuals who are apprehended using illicit cannabis or “hard” drugs could be directed into these programs. If the trends indicated from Portugal’s policy are generalizable, this approach would take increased pressure off the criminal justice system by removing minor cannabis possession charges and decreasing recidivism through federally funded rehabilitation programs. Importantly, such a strategy would require further research. Moreover, in this context, the Cannabis Act would become a feature of a wider framework addressing drug use and criminal justice.

2. Create a federally directed system of taxation that ensures lower prices than the illicit market and prevents excessive taxation from provincial authorities.
   One of the critical problems of present legislation is that it allows each level of government to increase total taxation of cannabis products. As the example of tobacco has demonstrated, increased taxation of undesirable drugs does not effectively reduce drug consumption to a desirable level. Moreover, annual increases in tobacco tax have led to a strong contraband cigarette market in Ontario. If the primary objectives of cannabis legislation are to reduce youth usage and eliminate the criminal market, the example of tobacco indicates that excessive taxation is not the optimal approach. Rather, taxation should be directed at the federal level. Maintaining a low federal tax rate would allow provinces to prorate provincial taxes based upon need and public opinion. However, as Minister of Finance Bill Morneau has indicated, total taxation prices must keep prices competitive with criminal markets.

3. Create a framework that redistributes a percentage of tax revenue from federal taxation to provincial and municipal authorities.
   In this strategy, tax revenue from cannabis sales can be redistributed to provincial governments to tackle drug abuse problems and fund drug-learning programs. One of the concerns that provinces noted about low cannabis taxation was the ability to pay for production processes. If a
A revenue neutral approach is taken, federal taxation revenues can be redistributed upon a per capita basis while considering comparative need. Furthermore, under this framework, provinces with higher rates of drug use could incrementally increase taxation of cannabis in their jurisdiction in order to support rehabilitation programming, while federal transfers bolster funding to programming and address the production concerns of the provinces. Importantly, an unscheduled increase in cannabis taxation should be considered an ancillary action to combat a marked increase in drug activity. Lastly, any increase in taxation would have to ensure cannabis prices remain less than or equal to the price of illicit cannabis in the province. Under this strategy, strong cooperation is required from federal and provincial authorities.

Alternatives

1. Abstain from taxing cannabis products.

Abstaining from taxing cannabis products would be more successful in reducing the accessibility of illicit cannabis markets than instituting any amount of taxation. However, this approach would result in additional costs to federal programs. Rather than create a revenue neutral or revenue building framework, a tax ban would likely result in using taxpayer dollars to sustain the program. Moreover, as the Canadian population is still split on the matter of legalization of cannabis, this approach would likely receive criticism from the public and anti-cannabis interest groups. Lastly, creating a no-tax policy would eliminate the ability to fund rehabilitation and drug-learning programs without making additional expenditures. If the goals of the Cannabis Act are to ensure public health and safety and reduce the burden on the criminal justice system, the aforementioned rehabilitation and drug-learning programs could be critical features in achieving both of these objectives.

2. Permit provincial jurisdictions full authority over taxation of cannabis products.

Cannabis has been highlighted as a matter of national importance. Moreover, legal obligations require the federal government to take the first action in making cannabis accessible. Importantly, cannabis prices vary among the provinces. Allowing provinces full authority over taxation would permit some provinces to benefit from higher illicit cannabis prices in their region. Moreover, some provinces, like the Prairies, are more reluctant to accept cannabis legislation. These jurisdictions could create comparatively higher taxation rates on legal cannabis that are not competitive with illegal markets. Mandating a flat federal taxation rate ensures that cannabis is equally accessible to users across all jurisdictions. Moreover, this approach ensures that the provinces adhere to the objectives of the Cannabis Act and any subsequent action on drug policy in Canada. Lastly, redistribution of revenue ensures that each jurisdiction has sufficient funding to generate the rehabilitation and drug-learning programs that have proven effective in Portugal. In this way, cannabis legislation would combat both illicit cannabis sales and the proliferation of hard drug usage in the country.

These actions are not recommended.

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Sources Consulted


