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Victim-Centred Considerations for the Development of a Framework to Legalize, Regulate and Restrict Access to Marijuana

Submission to the Task Force on Marijuana Legalization and Regulation

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August 2016

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The Office of the Federal Ombudsman for Victims of Crime

The Office of the Federal Ombudsman for Victims of Crime (OFOVC) is an independent resource for victims in Canada. It was created in 2007 to ensure that the federal government meets its responsibilities to victims of crime.

Our mandate relates exclusively to matters of federal jurisdiction and enables us to:

- promote access by victims to existing federal programs and services for victims;
- address complaints of victims about compliance with the provisions of the *Corrections and Conditional Release Act* that apply to victims of crimes committed by offenders under federal jurisdiction;
- promote awareness of the needs and concerns of victims and the applicable laws that benefit victims of crime, including to promote the principles set out in the *Canadian Statement of Basic Principles of Justice for Victims of Crime* with respect to matters of federal jurisdiction, among criminal justice personnel and policy makers;
- identify and review emerging and systemic issues, including those issues related to programs and services provided or administered by the Department of Justice Canada or the Department of Public Safety and Emergency Preparedness Canada, that impact negatively on victims of crime; and
- facilitate access by victims to existing federal programs and services by providing them with information and referrals.

We are also involved in ongoing discussions with the Government about our mandate in relation to the *Canadian Victims Bill of Rights* (CVBR). The CVBR, which came into effect on July 23, 2015, gives registered victims of crime a more effective voice in the criminal justice system, and provides statutory rights for victims to information, protection, participation, and to seek restitution. As well, victims who believe that any of their rights under the CVBR have been infringed or denied by a federal entity have the right to file a complaint with its complaint mechanism.

An important part of the OFOVC's work is to ensure that victims of crime in Canada are informed, considered, protected, and supported. This includes ensuring that

victims have a voice when the Government is developing or updating federal programs and services, legislation, and regulations.

The Government of Canada has committed to legalizing and regulating cannabis for non-medical purposes, with legislation to be introduced by spring 2017 and regulations to be introduced thereafter. This submission will focus on a victim-centred perspective related to the legalization and regulation of marijuana for non-medical purposes. It is the OFOVC's perspective that a victim's lens should be an integral part of the work, moving forward. The OFOVC therefore welcomes the opportunity to provide input to the Task Force on Marijuana Legalization and Regulation's engagement process on a framework for legalizing, regulating, and restricting access to marijuana in Canada.

Introduction

The connection between marijuana legalization and victims' issues may not be obvious or intuitive beyond the clear example of concerns related to the potential for increased incidents of drug-impaired driving in a post-legalization context. However, from a victim-centred perspective, there are additional issues and considerations.

Just as the Task Force is considering input from the medical community, industry, law enforcement, substance abuse experts, youth, and others, it is equally important to ensure that the concerns of victims and victim-serving agencies are kept in mind, and to ***apply a victim's lens to the initiative***. A victim's lens would necessarily include the critically important issue of impaired driving, while also adopting a broader perspective that takes into account other aspects of victimization.

Context

Impaired driving

The association between victimization and impaired driving is well documented. Driving under the influence of alcohol and/or drugs continues to be a serious problem in Canada, killing between 1,250 and 1,500 people and injuring another 63,000 every year.¹

From a victim-centred perspective, a very real concern is that if rates of cannabis use increase under a system of legal access, rates of impaired driving could also increase. This would in turn lead to increased victimization: more Canadians being severely injured or killed on our roads.

Currently, after alcohol, cannabis is the most commonly detected substance among drivers involved in crashes in Canada.² Many Canadians report experiences of driving under the influence of marijuana. In 2012, 2.6 percent of drivers in Canada reported that they had driven within two hours of using cannabis at least once in the previous year.³ This represents an estimated 632,576 individuals who reported making 10.4 million trips after using cannabis – an average of approximately 16 trips per person per year.⁴ According to the 2013 Ontario Student Drug Use and Health Survey, one in ten licensed students reported driving a car within one hour of smoking cannabis; this represents 31,500 adolescent drivers in Ontario.⁵

The available evidence indicates that many Canadians – both adults and youth – do not perceive driving under the influence of cannabis to be a risk. For example, State Farm found that one out of ten Canadians of driving age surveyed had driven under the influence of marijuana. Among those who had done so, 44 percent indicated that they did not think that using marijuana prior to driving impacts their ability to drive safely, and 14 percent did not know.⁶ Likewise, in focus groups conducted with youth by the Canadian Centre on Substance Abuse, a perception that cannabis is safe and poses minimal risk to youth was particularly evident with respect to using cannabis while driving; and some youth suggested that cannabis makes drivers more focused.⁷

An important consideration in developing a framework for marijuana is therefore to ensure that measures are in place prior to legalization in order to discourage drivers from getting behind the wheel while they are under the influence of cannabis, and to enhance current legislative, detection, and enforcement tools. Keeping our roads safe and preventing victimization from impaired driving must be a top priority. Taking steps after legalization will be too late and put Canadians at risk of victimization.

Associations between marijuana use and experiences of victimization

In addition to drug-impaired driving, it is important to consider the broader associations between marijuana use and experiences of victimization. Canada's General Social Survey (GSS) on Victimization helps us to understand the victimization experiences of Canadians aged 15 years and over, including incidents not brought to the attention of the police.⁸ According to results of the 2014 GSS on Victimization, overall, Canadians who reported past-month drug use recorded a rate of victimization that was more than four times higher than that of Canadians who did not report past-month drug use.⁹ With respect to cannabis, specifically, the **rate of violent victimization was seven times higher among Canadians who reported daily cannabis use** than it was among Canadians who did not report drug use (436 incidents per 1,000 population, compared to 62 incidents per 1,000 population).¹⁰

The reasons and factors underlying the association between cannabis use and/or abuse and victimization are likely complex. However, one factor is that the trauma of prior victimization may increase the likelihood for an individual to use substances, including marijuana, as a coping or self-medication mechanism to alleviate the psychological distresses of victimization.¹¹ For example, some studies indicate that having lived experiences of abuse and/or of having witnessed violence in childhood increase the risk of subsequent use of drugs, including cannabis.

Part of the limitations in understanding the link between cannabis use and victimization is that studies rarely look at cannabis in isolation from other substances, such as alcohol, or control for a variety of potential mediating or moderating individual or systemic influences. Generally, the available studies

indicate that cannabis typically has a sedating effect and that its use by adults, in the absence of other drug use, does not seem to be associated with a higher likelihood of perpetrating violent offences.

That said, some research indicates that there is an association between cannabis use and various types of violence, including interpersonal violence (IPV), when cannabis is used in conjunction with alcohol.¹² As well, while there are conflicting findings in this area, some studies have found that cannabis use is associated with a higher likelihood of experiencing IPV.¹³

While a key guiding objective underlying legalization is to keep cannabis out of the hands of youth, it is likely that many youth will continue to use cannabis. One U.S. study has identified that, currently, there are no studies which have modelled the joint occurrence of victimization and marijuana use in youth over time and linked them to mental and physical health or other outcomes in adulthood.¹⁴ Another U.S. study concluded that the relationship between cannabis use and peer victimization among youth needs special attention as a research area because both of these are common in adolescent populations and may be related to each other through reciprocal influences.¹⁵

Longitudinal research conducted in the U.S. with over 9,400 youth and young adults indicates that adolescent marijuana use, particularly consistent use throughout youth, is associated with an increased risk of both perpetration of, and victimization by, IPV in early adulthood. The researchers concluded that marijuana use should be considered as a target of early IPV intervention and treatment programming.¹⁶ As well, a study conducted with over 27,000 U.S. high school students found that students who reported frequent recent marijuana use were at increased odds of experiencing physical or verbal teen dating violence victimization compared to students who reported little or no marijuana use.¹⁷

An important consideration in developing a framework for marijuana is to ensure that there is support for research aimed at promoting a more nuanced understanding of the relationship between cannabis use and victimization – both amongst youth and adult populations. This research will be needed, particularly since Canada will become only the second country after Uruguay to legalize cannabis for personal use at the national level. It is still relatively early to be able to

draw conclusions regarding impacts from Uruguay and the five U.S. states that have legalized cannabis for personal use due to the recency of these initiatives and variations in the scope and quality of data collected in those jurisdictions.¹⁸ Therefore, we have limited international experience from which to draw. Such information could have a number of potential applications, including supporting the development of effective, evidence-based anti-violence and substance abuse prevention and treatment programs in Canada.

Child neglect, maltreatment and abuse in a post-legalization context

Parental alcohol abuse and dependence are well-documented factors with respect to increasing the risk of child neglect, maltreatment, and abuse. In contrast, studies of the impacts of marijuana use with respect to abusive and neglectful parenting are rare, despite the fact that marijuana is the most widely used illicit drug, both globally and in Canada.

A study in Colorado following legalization of marijuana for medical purposes (but prior to legalization for recreational purposes) found that children were at an increased risk of marijuana poisoning where parents do not supervise their children adequately when edibles are in the child's reach.¹⁹ The researchers concluded that the consequences of unintentional marijuana exposure in children should be part of the ongoing debate on legalizing marijuana. Since then, following implementation of legalization for recreational purposes in Colorado, there have been several reports of poisoning incidents involving children who have ingested marijuana, resulting in outcomes such as comas.

As well, a survey of over 3,000 respondents living in California – where legalization is in place for medical but not for recreational purposes – found that **current marijuana use was positively related to frequency of child physical abuse**, as was density of dispensaries and delivery services for marijuana for medical purposes.²⁰ In contrast, current marijuana use was negatively related to physical neglect, and the study found no relationship between supervisory neglect and marijuana use. The researchers noted that, “As marijuana becomes more common due to changing norms and laws allowing for recreational use, legalization may result in higher rates of physical abuse in the general population,” yet, “legalization

or wide-spread commercialization of marijuana may result in less attention being paid to parental marijuana use.” The researchers concluded that, as marijuana use becomes more prevalent, those who work with families should screen for how marijuana use may affect child abuse or a parent’s ability to provide for care for their children. While focused on marijuana for medical purposes, the study suggests additional lines of potential inquiry with respect to marijuana legalization – for example, on the relationship between cannabis use (both solo and co-used with other substances) and abusive or neglectful parenting.

Experiences of child neglect, maltreatment and abuse place Canadians at risk for several longer-term negative outcomes and experiences, including victimization. For example, results of the 2014 GSS on Victimization²¹ indicate that **Canadians who experienced child maltreatment reported violent victimization rates that were more than twice as high** as Canadians who did not experience child maltreatment.

From a victim-centred perspective, taking steps to be able to monitor any increases in child neglect, maltreatment, and/or child abuse in a post-legalization context in Canada is another consideration in developing a marijuana framework. Information on whether and how marijuana use and availability of marijuana is related to abusive and neglectful parenting would ultimately be needed in order to assess, prevent, and reduce the potential for child victimization.

Potential for victimization related to illicit marijuana-related activities

According to a March 2016 report by the Colorado Department of Public Safety, the most common marijuana industry-related crime in Denver is **burglary**, accounting for 63 percent of marijuana crime related to the industry in 2015.²² Putting safeguards in place to mitigate against the potential for industry-related burglary, as has been done in the marijuana for medical purposes industry, will be important in order to prevent victimization related to these types of crime.

Equally important will be undertaking proactive measures to protect public safety and prevent victimization caused by **explosions** from THC extraction processes undertaken by individuals seeking to produce highly concentrated marijuana

products (e.g., shatter or hash oil). While the threat of such explosions is by no means unique to jurisdictions that have legalized marijuana, a March 2016 report on the impacts of marijuana legalization in Washington State – one of the first jurisdictions to legalize marijuana for recreational purposes – notes “THC extraction lab explosions are an increasing concern for the state”.²³ According to the report, there were 17 reported THC extraction lab explosions in Washington State in 2014, the year commercial sales of marijuana commenced, including several that occurred in dwellings where children were present. The report further notes that the potential public safety threat of such explosions is “real, harmful, and poses a high risk of death to not only those involved but innocent victims.”²⁴

Recommendations

The above issues illustrate select victim-related considerations with respect to cannabis legalization and regulation. The analysis is by no means exhaustive; ultimately, a public dialogue on these issues and further exploration is warranted. On the balance of available information at this time, the OFOVC urges the Task Force on Marijuana Legalization and Regulation and the Government of Canada to consider the following recommendations, which would contribute to ensuring that a victim's lens is integrated in a new framework on marijuana legalization and regulation:

- **Recommendation 1: Ensure that robust, well-funded, and sustainable tools and resources aimed at preventing and addressing driving under the influence of cannabis are in place prior to legalizing cannabis for non-medical purposes. This includes ensuring that:**
 - evidence-based public awareness campaigns are in place to educate Canadians about the risks; and
 - law enforcement have the best possible tools available to them to detect impaired drivers, supported by the necessary training, resources, and legislative frameworks.

- **Recommendation 2: Ensure that marijuana-related research initiatives include efforts to measure and to better understand associations between victimization and cannabis use and abuse, and related impacts and outcomes.**

- **Recommendation 3: Take early action to enhance and standardize data collection on marijuana and victimization, including on the incidence of specific criminal acts and victimization in the post-legalization context.**

- **Recommendation 4: Ensure that public awareness initiatives include measures to educate Canadians about risks of cannabis use/abuse in relation to engaging in acts that victimize others, and to promote a public dialogue on the association between cannabis use/abuse and victimization.**

- **Recommendation 5: In addition to government funding, direct funds from marijuana revenues to prevention and treatment initiatives and ensure availability of programming that is trauma- and victim-informed.**

Conclusion

One of the key messages shared in the Canadian Centre on Substance Abuse (CCSA)'s report on lessons learned from marijuana legalization in Colorado and Washington State was to “be prepared to respond to the unexpected.”²⁵ This message came particularly in response to the unexpected spike seen in consumption of cannabis edibles and associated overdoses. However, the message has much broader application. With respect to victim-related considerations, the potential impacts of legalization of marijuana for non-medical purposes may not be immediately apparent but it is the OFOVC's belief that these types of considerations must be prioritized during upcoming policy deliberations.

The Government should support research efforts that would help us better understand the linkages between experiences of victimization and cannabis use and abuse (as well as substance use and abuse, more broadly). As understanding in this area increases, the Government would be able to communicate in a more complete and thorough way to Canadians on the full spectrum of public health and safety risks associated with marijuana use and abuse.

At this time, the effects of changing marijuana legislation on various types of victimization are largely unknown. Ensuring that changes in various types of victimization are tracked will be critical to be in a position to respond with any needed targeted responses at the policy, program, or legislative levels in order to prevent further victimization.

Recognizing the need to strengthen research and data collection related to victimization more broadly, the OFOVC has partnered with the Canadian Centre for Justice Statistics (CCJS) on a data mapping study outlining current data collection processes across Canada and key data gaps and opportunities related to victims of crime. A final report is forthcoming, and will identify areas where data is needed or

currently lacking, such as in the area of measuring victim satisfaction with services; data on the nature, prevalence, and incidence of victimization; key characteristics of victims of crime (e.g., victims with mental health issues); research on re-victimization; and other areas. The report will also identify options for developing relevant victimization metrics to respond to identified data needs to inform program development and assist in program evaluation related to victim issues. The work would no doubt provide useful insight that could enable the Government to develop a data collection framework on marijuana and legalization.

The OFOVC welcomes any further opportunity to discuss the application of a victim's lens to the initiative to legalize, regulate, and restrict access to marijuana for non-medical purposes in Canada.

¹ MADD Canada. (January 21, 2016). National Media Release: "Need for New Measures to Detect Drug-Impaired Drivers is Greater Than Ever." Accessed August 26, 2016 from <http://madd.ca/pages/need-for-new-measures-to-detect-drug-impaired-drivers-is-greater-than-ever/>.

² Beirness, D. and Porath-Waller, A. (2015). "Clearing the Smoke on Cannabis: Cannabis use and Driving – An Update". Ottawa: Canadian Centre on Substance Abuse. Accessed August 26, 2016 from <http://www.ccsa.ca/Resource%20Library/CCSA-Cannabis-Use-and-Driving-Report-2015-en.pdf>

³ *Ibid* at 2.

⁴ *Ibid* at 2.

⁵ Centre for Addiction and Mental Health. (December 11, 2013). "Is Smoking Cannabis and Driving the New Drinking and Driving?" Accessed August 26, 2016 from http://www.camh.ca/en/hospital/about_camh/newsroom/news_releases_media_advisories_and_backgrounders/current_year/Pages/osduhs2013_release.aspx

⁶ The State Farm Canadian Driving Habits survey was conducted online with 3,000 drivers across Canada in March 2016. Results accessed August 26, 2016 from <http://www.multivu.com/players/English/7835851-state-farm-marijuana/>.

⁷ Porath-Waler, A., Brown, J., Frigon, A., and Clark, H. (September 2013). What Canadian Youth Think About Cannabis: Technical Report. Ottawa: Canadian Centre on Substance Abuse. Accessed August 26, 2016 from <http://www.ccsa.ca/Resource%20Library/CCSA-What-Canadian-Youth-Think-about-Cannabis-2013-en.pdf>.

⁸ The GSS on Victimization is conducted every five years by Statistics Canada. The survey asks Canadians aged 15 years and older to self report on victimization for eight types of offences, including violent crimes such as sexual assault, physical assault, and robbery.

⁹ Perreault, S. (November 23, 2015). Juristat Article – Catalogue no. 85-002-X, *Criminal Victimization in Canada, 2014*. Ottawa: Canadian Centre for Justice Statistics (Statistics Canada).

¹⁰ *Ibid* at 9.

¹¹ Pahl, K., Brook, J., and Lee, J. Y. (2013). "Joint Trajectories of Victimization and Marijuana Use and their Health Consequences Among Urban African American and Puerto Rican Young Men," *Journal of Behavioural Medicine*, June, 36(3): 3015-314. Accessed August 16, 2016 from <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3439530/pdf/nihms378188.pdf>

¹² Kraanen, F., Vedel, E., Scholing, A., and Emmelkamp, P. (2014). "Prediction of Intimate Partner Violence by Type of Substance Use Disorder." *Journal of Substance Abuse Treatment*, Volume 46, Issue 4. Accessed August 16, 2016 from <http://www.sciencedirect.com/science/article/pii/S0740547213002481>.

¹³ Testa, M., Livingston, J., Leonard, K. (2003). "Women's Substance Use and Experience of Intimate Partner Violence." *Addictive Behaviors*. 2003; 28:1659–1664.

¹⁴ *Ibid* at 11.

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- ¹⁵ Maniglio, R. (2015). "Association between peer victimization in adolescence and cannabis use: A systematic review." *Aggression and Violent Behaviour*, (25)B: 252-258. Accessed August 16, 2016 from <http://www.sciencedirect.com/science/article/pii/S1359178915001172>
- ¹⁶ Reingle, J., Staras, S., Jennings, W, Branchini, J. and Maldonado-Molina, M. (2012). "The Relationship Between Marijuana Use and Intimate Partner Violence in a Nationally Representative, Longitudinal Sample." *Journal of Interpersonal Violence*, 27(8), 1562-1578. Accessed August 26, 2016 from <https://uthealth.influent.utsystem.edu/en/publications/the-relationship-between-marijuana-use-and-intimate-partner-viole>
- ¹⁷ Parker, E., Debnam, K. Pas, E. and Bradshaw, C. (2015). "Exploring the Link Between Alcohol and Marijuana Use and Teen Dating Violence Victimization Among High School Students: The Influence of School Context." *Health Education & Behavior*, Sept. 16, 2015. Accessed August 26, 2016 from <http://heb.sagepub.com/content/early/2015/09/15/1090198115605308.abstract>.
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- ¹⁹ Wang., G. S., Roosevelt, G., and Heard, K. (2013). "Pediatric marijuana exposure in a medical marijuana state." *JAMA Pediatrics*, 167(7), 630–633. Accessed August 26, 2016 from <http://archpedi.jamanetwork.com/article.aspx?articleid=1691416>.
- ²⁰ Freisthler, B., Gruenewald, P., and Price Wolf, J. (2015). "Examining the relationship between marijuana use, medical marijuana dispensaries, and abusive and neglectful parenting." *Child Abuse & Neglect*, 40: 170-180. Accessed August 26, 2016 from <http://dfaf.org/assets/docs/Examining%20the%20relationship%20between%20marijuana%20use%20madical%20marijuana%20dispensaries%20and%20abusive%20and%20neglectful%20parenting.pdf>
- ²¹ *Ibid* at 9.
- ²² Colorado Department of Public Safety. (March 2016). *Marijuana Legalization in Colorado: Early Findings – A Report Pursuant to Senate Bill 13-283*. Colorado: Office of Research and Statistics, Department of Public Safety.
- ²³ Rodriguez, D. (March 2016). *Washington State: Marijuana Impact Report*. Seattle, Washington: The Northwest High Intensity Drug Trafficking Area (NWHIDTA), p.7. Accessed August 26, 2016 from <http://www.riag.wa.gov/documents/NWHIDTAMarijuanaImpactReportVolume1.pdf>.
- ²⁴ *Ibid* at 23, p.102.
- ²⁵ Canadian Centre on Substance Abuse. (November 2015). *Cannabis Regulation: Lessons Learned in Colorado and Washington State*. Accessed August 26, 2016 from <http://www.ccsa.ca/Resource%20Library/CCSA-Cannabis-Regulation-Lessons-Learned-Report-2015-en.pdf>.