

2017

# Cannabis Law Reform in Canada: Pretense & Perils



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*If justice perishes, human life on earth has lost its meaning.*

Immanuel Kant

*Cannabis Law Reform in Canada: Pretense and Perils* examines the Canadian government's campaign to legalize cannabis for recreational use. The government's stated case is that the contraband trade poses a serious threat to cannabis users (including 'kids'), and that a legal, regulated industry will provide protection. This report draws upon research on the contraband trade, our established legal drug industries (alcohol, tobacco, pharmaceutical), and government efforts to regulate these industries. This investigation concludes that the government's case, on all counts, is weak. Its depiction of the contraband cannabis trade amounts to little more than unsubstantiated, vestigial *reefer madness*. Our legal drug industries engage in a relentless, indiscriminate, and sometimes illegal, pursuit of revenue with substantial harm to the public's health and to the Canadian economy. Early indications warn that an ambitious cannabis industry is on a similar trajectory. These industries are enabled by permissive and ineffective regulatory oversight by government.

*Cannabis Law Reform in Canada: Pretense and Perils* recommends immediate decriminalization of minor cannabis-related offences to curtail the criminalization of large numbers of mostly young Canadians. It also supports the legalization of cannabis for recreational use, but strongly asserts that the prevailing profit-driven, poorly-regulated paradigm is a dangerous one. The legalization of cannabis in Canada provides an opportunity to try a different approach – a *not-for-profit cannabis authority* – functioning with a genuine public health priority.

## **About Mike DeVillaer**

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Peter Boris Centre  
FOR ADDICTIONS RESEARCH

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### **About The Peter Boris Centre for Addictions Research**

The Mission of PBCAR is to conduct state-of-the-art research on the causes, consequences, and treatment of addiction.

Addictive disorders, such as alcohol use disorder, nicotine dependence, illicit drug addiction and pathological gambling, are among the most widespread psychiatric disorders in Canada and around the world. Approximately one in five Canadians experience addiction over their lifetime. Addictive disorders commonly co-occur with other psychiatric disorders, such as mood disorders and post-traumatic stress disorder, and are major contributors to cardiovascular disease, cancer, sexually transmitted diseases and accidental injury and death. In economic terms, addiction has an estimated annual burden of 40 billion dollars. In human terms, the toll addiction takes on those who are afflicted and their loved ones is incalculable.

The Peter Boris Center for Addictions Research is a joint collaboration between McMaster University and St. Joseph's Healthcare Hamilton (Ontario Canada) to advance the scientific understanding of addiction. Located at the St. Joseph's West 5<sup>th</sup> campus, the state-of-the-art Juravinski Centre for Integrated Healthcare, the Centre serves as a nexus for faculty in McMaster's Department of Psychiatry and Behavioral Neurosciences and collaborators at St. Joseph's Healthcare Hamilton and Homewood Health Centre. Although the interests in the Centre are diverse, the collective goal is to conduct innovative empirical research that pushes the boundaries of new knowledge and bridges the gap between science and practice.

## **Acknowledgements**

Several individuals made helpful suggestions at various stages in the development of this report. These include Patricia Erickson, Roberta Ferrence, Norman Giesbrecht, James McKillop, Robert Simpson, Paula Stanghetta, and Darryl Upfold. However, the author retains exclusive responsibility for the final content, including any errors or omissions.

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### **Suggested Citation:**

DeVillaer Michael. Cannabis Law Reform in Canada: Pretense & Perils. Hamilton Canada: McMaster University, The Peter Boris Centre for Addictions Research. February 2017.

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## **Preface**

Cannabis law reform will almost certainly be the prominent drug policy issue of the next decade in Canada. This is despite having formidable competition from our more established legal drug industries. Tobacco use continues to account for just about all drug-related deaths in Canada. Alcohol accounts for more illness and injury than any other drug. There is increasing research evidence on its adverse health impact, even at levels of consumption that have traditionally been considered quite low. Widespread social disruption related to the use of the drug continues unabated. Aggressive and improper promotional practices within the pharmaceutical industry, coupled with ill-advised and reckless prescribing practices, were major contributors towards an epidemic of opioid-related deaths that was sweeping across North America as this report was being written. Permissive and ineffective government regulation of drug industries has contributed to all of these scourges.

The perennial high levels of harm associated with either alcohol or tobacco or with the current opioid epidemic would be a worthy candidate for government and public health attention as the drug policy issue of the next decade. There could be justified debate about whether cannabis law reform should hold this dubious distinction. But there are indications that it will.

Over three million Canadians are current cannabis users. Many of them have been waiting a long time for the freedom to do so without the ever-present threat of arrest and a criminal record. Also, an upstart drug industry stands eager to make the enormously lucrative transition from serving a contained medical market to an expansive recreational one. The broader entrepreneurial community has been electrified with anticipated spin-off opportunities. A posting on Yahoo in late December 2016 blurted out: *“If you don’t invest in marijuana right now, you’ll regret it the rest of your life.”* Whether sound investment advice or opportunistic hucksterism, the headline is unlikely to go unheeded, given the issue’s omnipresence in the media.

Organizations with a public health policy mandate, wary of the individual harms and societal burden imposed by our existing legal drug industries, have been actively engaged in the discussions of cannabis law reform, fueled and supported by an inquisitive media. The Canadian Government’s *Task Force on Cannabis Legalization and Regulation* claims to have received approximately thirty thousand submissions during its two-month consultation period during the summer of 2016. Cannabis has our attention and our attention will remain fixated upon the emergence of this new drug industry and upon its impact on life in Canada.

But there is much to learn from the conduct and consequences of our other legal drug industries, as there is much to learn from our attempts to effectively regulate these industries. Our regulatory mechanisms have not performed well in protecting the public’s health and safety from the indiscriminate pursuit of revenue by these industries. Only somewhat tangentially, it is worth mentioning that similar conduct and regulatory failures could also be cited for the gambling, electronic entertainment, and food



industries. The conduct of these industries, and of government regulators, as well as the adverse impact upon public health, is no less deserving of critical commentary. However, such an analysis is necessarily beyond the scope of this report. *Cannabis Law Reform in Canada: Pretense & Perils* places much of its attention on lessons from the regulation of our legal drug industries, and attempts to leverage them as important resources for the current campaign to forge a commercial regime for cannabis. It should also be mentioned that the primary focus of this report is on the legalization of cannabis for *recreational use*. Coverage of *medical use* of cannabis is limited to instances in which it has direct implications for legalization for recreational use.

*Pretense & Perils* was written for government legislators, public health authorities, educators, policy researchers, analysts and advocates, health care providers, members of the legal profession and others working in the justice and enforcement system, cannabis industry leaders interested in social responsibility, journalists, and very importantly, for students and other youth who represent the next generation of these occupational groups, and otherwise-engaged citizens. This next generation will hopefully pursue a new set of bold questions, beginning with: “*Why are Canada’s drug policies so disproportionately concerned with persecuting individuals for simple possession while enabling legal drug industries that plan and implement epidemics and sustain perennial high levels of harm for their financial gain?*”

This report was also written for anyone who wishes to better understand the complexities of cannabis law reform and the importance of setting public health protection and social justice as priorities ahead of revenue. More specifically, this report provides an evidence-based case for a stepped, hybrid approach to reform. The hybrid model includes two steps: immediate decriminalization followed by a slow, methodical approach to legalization with a clear priority of protecting the public’s health.

Excerpts from an early version of this report were submitted to the Task Force on Cannabis Legalization and Regulation in order to meet the Task Force’s deadline at the end of August 2016. In early December, just as this report was nearing completion, the Task Force released its Final Report. The timing was such that a comprehensive review, as part of this report, was not practical. However, some of the content from the Task Force’s Final Report that was essential to the themes already included in *Pretense & Perils* was retrofitted into this Report. The Task Force’s Final Report has its strengths. However, this report has concentrated on the instances in which the Task Force report did not adequately address the evidence that was submitted in August. It is hoped that *Pretense & Perils* will serve to sustain advocacy from health authorities and from the public for social justice and public health priorities in Canada’s ongoing process of reform.

## **Executive Summary**

*Cannabis Law Reform in Canada: Pretense & Perils* addresses important differences between the current narrative on cannabis law reform in Canada and what is revealed in a broad examination of the evidence. These differences hold profound implications for the outcome of this drug policy experiment.

There are two major pillars supporting the government's cannabis law reform campaign: 1) the current state of prohibition forces cannabis users (including children) to buy unsafe product from dangerous criminals, exposing users to serious threats to their safety and propriety; the decriminalization of cannabis would sustain these threats; and, 2) the commercial legalization of cannabis with government regulation would provide safer product from a system that would set public health as a priority and safely operate within the bounds of the law.

On the surface, these two assertions appear reasonable. However, an examination of the pertinent research and broader literature reveals that both points are challengeable. The essential elements of the challenge are as follows:

1) Decriminalization has a long, world-wide track record of not increasing cannabis-related problems while improving social conditions by reducing arrests, with substantial savings for the enforcement and justice systems. Legalization has no such track record.

2) Other nations and many state jurisdictions within the United States continue to choose decriminalization over legalization models.

3) An inaccurate, fear-based depiction of the contraband cannabis trade, once used to prevent justified reform from prohibition, has now been repurposed by the government to discredit decriminalization as a viable reform option for Canada.

4) The Canadian government has adopted a callous indifference to the perennial injustice of tens of thousands of (mostly young) Canadians criminalized for being in possession of small amounts of cannabis. Projections place the actual implementation of legalization at some time in the year 2019. The intervening period remains perilous for cannabis users who, if convicted, stand to suffer considerable harm to their social determinants of health for years to come.

5) Even once implemented, legalization will not end the criminalization of cannabis possession. Those under the legal age and those who continue to use contraband cannabis may still be subject to criminalization. Furthermore, given that the government has shown no interest in granting record suspensions for those previously convicted of possession-related offences, hundreds of thousands of Canadians will continue to bear the legal scars of Canada's punitive history.

6) The great majority of drug-related morbidity, mortality and costs to the economy arise from our legal drugs - tobacco and alcohol. An epidemic of opioid deaths was sweeping across North America as this report was being written. This epidemic had its genesis in

the conduct of our other legal drug business – the pharmaceutical industry. While cannabis does not present the danger of mortality as do opioids, there are health and safety risks associated with indiscriminate use. A new cannabis industry should not be launched with the naïve belief that legalization is a panacea against harm. It may even accelerate the harm.

7) Canadian and international evidence show repeated failure of our legal drug industries to balance protection of the public's health with their revenue interests. Blatant criminality among members of these industries is also evident. Preventable portions of the drug-related harm are directly and indirectly related to the misconduct of our drug industries. Early indications are that the emerging cannabis industry is on a similar trajectory.

8) The government's response to the concerns of Canadians about cannabis legalization has been to provide assurances that the industry will be strictly regulated as are all legal commercial drug industries in Canada, and that this will provide the needed safeguards. The evidence tells a very different story. Across all drug industries (alcohol, tobacco, pharmaceutical), there are repeated failures of government regulation to assure product integrity and safety, to transparently ensure regulatory compliance, and to prevent violation of the country's laws by drug companies. On the rare occasions when punishments are meted out, they are insufficient to discourage recidivism. Drug industry regulation in Canada frequently fails to protect the public, contributing to the perennial high levels of personal and societal harm arising from drug products. There may be more to fear from a revenue-driven, poorly-regulated cannabis industry than there is from cannabis itself.

9) Already, there have been disturbing developments. The cannabis industry and the Canadian government appear to be engaged in a process of ensuring that revenues for both parties prevail over considerations of due process to protect public health. Cannabis industry lobbyists have been enjoying premium access to the government. A founder of one of Canada's largest cannabis producers, *Tweed*, has close relationships with the executive of Canada's currently governing political party. Tweed and the law firm that employs the Chair of the government's Task Force on Cannabis Legalization and Regulation have also been courting a relationship. Tweed has also struck a business partnership with violent criminal elements in the United States entertainment industry. These are shocking revelations that are borne out by the evidence presented in this report.

10) The Final Report of the Task Force on Cannabis Legalization and Regulation provides some constructive recommendations, but it also offers some recommendations that are very friendly to the emerging industry, at the potential expense of public health. This report demonstrates that this is business as usual in the regulation of drug industries by government.

*Pretense & Perils* proposes a different approach for cannabis law reform in Canada, one which genuinely places social justice and public health as priorities over industry

and government revenue. This approach combines features of decriminalization and legalization within a hybrid model to offer a comprehensive two-step approach. This hybrid model begins with decriminalization to promptly halt the scourge of criminal records for simple possession of cannabis. The second step is the continued development of a strictly-regulated, legalization regime. But the rise of a new legal industry should be at a slow, methodical pace, and it should take a very different path from tradition. There is too much at stake for decisions to be predicated upon impatient political expediency and a thirst for colossal revenues. This report accordingly recommends the establishment of a *not-for-profit cannabis authority* which would operate exclusively with public health objectives. Given the well-established direct relationships between the prevalence of use of a drug and associated problems, the authority would serve only the existing level of consumer demand for cannabis product, having no objectives related to market growth. These safeguards must be solidly ingrained within the legislation and regulations, and within the ongoing governance of the authority. The proposal of such a model will not be warmly received by either the cannabis industry or by the government. However, given the chronic failure of our for-profit drug industries and of our government regulators to strike a balance between revenues and protecting the public's health, a not-for-profit model may be our only opportunity for achieving a near-neutral impact on public health with the legalization of cannabis. Otherwise, cannabis law reform in Canada could mark the beginning of the next blight of drug-related harm.

## Recommendations

### Recommendation #1 (Urgent)

The Canadian government should immediately decriminalize possession of small amounts of cannabis using a *de facto*, non-punitive approach.

### Recommendation #2

The Canadian government should continue to work slowly and methodically towards the legalization of cannabis for recreational purposes, with a priority on the protection of public health and safety over revenue.

### Recommendation #3

In the establishment of a legal cannabis regime, the Canadian government should explore the logistics of establishing a not-for-profit cannabis authority for the supply and regulation of cannabis.

## **1. A Brief Orientation to Cannabis Law Reform**

*Cannabis Law Reform in Canada: Pretense & Perils* does not provide an in-depth history of the evolution of cannabis law reform. Others have done this well. The global cannabis reform movement has been described in Erickson (1997), Room et al. (2010), Room (2014) and Caulkins et.al. (2015). The history of Canadian reform campaigns, up to the mid-1990s, has been provided by Fischer (in Erikson, 1997) and extended to 2010 by Erickson & Hyshka (2010). The history in Canada and elsewhere has predominantly been about improved social justice and human rights. Advocates questioned the humanity and the wisdom of criminalizing the possession of a drug for which the legal consequences of conviction, for most users, outweighed the likely adverse health consequences from using the drug. Empirical evidence for these claims was provided in *Cannabis Criminals* by Erickson (1980), an important milestone in cannabis research and policy reform that also demonstrated the futility of cannabis prohibition as a deterrent to use. Most discussions of the time debated the merits and perils of decriminalization of possession of small amounts of cannabis as a solution to the social justice problems arising from prohibition. While these discussions continued to stall in Canada, other nations and many states in the US proceeded to decriminalize cannabis (Caulkins et al., 2015) and continue to do so. The US state of Illinois decriminalized cannabis in May of 2016 (Carissimo, 2016).

The approaching twenty-first century brought unprecedented changes in both debate and policy related to cannabis. First, several states in the US, as well as many nations around the world including Canada, legalized a commercial industry to produce and sell cannabis for medical use (Room, et al., 2010; Room, 2014; Caulkins et al., 2015; Crepault, 2014; Task Force on Cannabis Legalization and Regulation, 2016). Second, the country of Uruguay and the US states of Colorado, Washington, and later Alaska and Oregon, legalized cannabis for recreational use and created a commercial industry for its retail. The US District of Columbia legalized possession of cannabis for recreational use, but not sales (Room, 2014; Caulkins, et al., 2015). These developments marked a significant shift in policy governing the use of cannabis for recreational purposes. The prevailing narrative on cannabis law reform had also radically shifted from its traditional focus on human rights. Now the narrative was primarily concerned with the creation of a commercial cannabis industry that would indulge appetites for recreational use. Discussions of legalization for recreational purposes were not unprecedented, but the rise of legalization from a less-politically viable policy option to one that was a successful contender was meteoric and caught many observers by surprise. In Canada, these discussions came to the forefront during the 2014 federal election campaign when prime ministerial candidate Justin Trudeau announced that, if elected, he would legalize cannabis for recreational purposes.

That same year, The Centre for Addiction and Mental Health (CAMH) in Ontario Canada released its Cannabis Policy Framework (Crepault, 2014). The Framework acknowledged:

- the current popularity of cannabis as a recreational drug
- increased public support for liberalization of cannabis laws for both medical and recreational purposes
- cannabis-related harm is potentially serious but the most serious harm is experienced by a relatively small proportion of users
- failure of the criminal justice approach to curtail cannabis use and related harm
- the additional social harms that arise from our criminal justice approach
- the importance of implementing a reform model that places priority on public health considerations.

These acknowledgments were consistent with points made in earlier reports from national health policy organizations including The Canadian Drug Policy Coalition (Carter & Macpherson, 2013) and The Canadian Public Health Association (2014).

The CAMH Framework (Crepault, 2014) earned widespread attention for overtly recommending legalization, a call that was eventually echoed by the Canadian Medical Association (Spithoff et al., 2015). In 2015, The Rand Corporation in the US released a report (Caulkins et al., 2015) which reviewed twelve approaches to cannabis law reform, describing the merits and perils of each. Rand did not recommend any particular approach, but did issue an overarching warning that jurisdictions should not rush from prohibition to commercial legalization, and should take the time to review other options before choosing a path.

The CAMH *Framework* took a different approach by juxtaposing the models of decriminalization and legalization as incompatible competitors within an oppositional framework, thereby forcing a choice of a lone path for cannabis law reform. There were two groups of observations that led to the Framework's recommendation of legalization over decriminalization.

1) The contraband cannabis trade is characterized by dangerous criminality, cannabis product of uncertain integrity, risk to the safety and propriety of users, and the retention of all revenue in the hands of criminals; decriminalization does nothing to dislodge the contraband trade.

2) A legal, government-regulated cannabis industry would provide safe product, protect public health, safety and propriety, and provide revenue for a new industry, for government, and for worthy causes; the contraband trade "*should shrink significantly and potentially disappear.*" (p.11)

After his successful election campaign, Prime Minister Trudeau followed through on his promise in earnest, establishing a *Task Force on Marijuana Legalization and Regulation*, which was charged with consulting with experts and other Canadians, and issuing a report to government. To orient interested Canadians to the issue, the Task Force released a *Discussion Paper* in June of 2016 (Task Force on Marijuana Legalization and Regulation, 2016). Canadians were invited to submit their thoughts and advice through an online template which was available during July and August. The *Discussion Paper* acknowledged that it was a work in progress and was written, in part,

to solicit advice on the many daunting legislative and regulatory challenges. However, the content of the paper strongly suggested that the Canadian government was interested in only one path for cannabis law reform – a legal, commercial cannabis industry. On December 13 2016, The Task Force publicly released its Final Report with a change to the Task Force's name, replacing 'Marijuana' with 'Cannabis' (Task Force on Cannabis Legalization and Regulation, 2016). The Report maintained the government's call for a legal, government-regulated, commercial regime for cannabis, and addressed a wide variety of regulatory issues with varying degrees of specificity.

In November of that same year, ballot initiatives included in the United States presidential election resulted in the states of California, Maine, Massachusetts and Nevada legalizing sales of cannabis for recreational use. Arizona voted against legalization. Other states continue to explore their options.

## **2. Decriminalization: A Humanitarian First Step**

### **2.1 Definition**

Several variations of decriminalization have been implemented or proposed in various jurisdictions around the world. Generally speaking, cannabis decriminalization could address minor offences such as possession of small amounts by removing the possession offence from the criminal code or by replacing criminal penalties with civil ones. In the latter case, possession is still illegal, but with lesser consequences for those who are apprehended. Offenders typically pay a small to moderate fine without acquiring a criminal record. In a few jurisdictions, fines have been removed and replaced with *cautions*. In some of its incarnations, decriminalization occurs *de facto* by which the laws are not actually changed, but rather apprehension and/or prosecution practices of local authorities are abated as a matter of practice.

### **2.2 Introduction**

Historically, opposition to decriminalization usually came from those who favoured continued prohibition. They expressed fears that decriminalization would send a counter-productive message that would increase cannabis use and related problems. They also asserted that decriminalization would sustain and possibly strengthen the criminally-controlled contraband trade in cannabis and other illegal drugs. Despite these largely unsubstantiated fears, many nations as well as state jurisdictions within the US have proceeded to decriminalize possession of cannabis, and continue to do so.

This section of *Cannabis Law Reform in Canada: Pretense & Perils* assesses the viability of the decriminalization of possession of small amounts of cannabis as a first step in cannabis law reform. It reports the evidence for the impact of decriminalization where it has been adopted in jurisdictions world-wide. This section also reports on the literature on the nature of the contraband cannabis trade and assesses the likely impact of decriminalization in Canada across several relevant domains.

### **2.3 Impact on Consumer Demand, Ease of Access, Use and Associated Problems**

(Duff et al., 2011) have studied cannabis use patterns among regular users in four Canadian cities. Their results demonstrated that under prohibition, cannabis users for the most part, even in times of easy access, moderate their cannabis use such that it does not interfere with their lives or lead to adverse health consequences. These patterns appear to persist under decriminalization. For decades, research on the impact of cannabis decriminalization has shown that, in a variety of jurisdictions in Australia, Europe and the United States, decriminalization does not cause an increase in consumer demand or ease of access. Nor does decriminalization lead to a sustained



increase in prevalence of use or associated problems. At the same time, decriminalization decreases related social problems (criminal records and their impact) as well as enforcement and judicial costs. Detailed accounts of these findings can be found in Single (1989), Single et al. (2000), and Room et al. (2010, p107). All of these findings are acknowledged in CAMH's *Cannabis Policy Framework* (Crepault, 2014 p.9) which has played a major role in accelerating the discussion of cannabis law reform in Canada.

## **2.4 Impact on Public Safety & Propriety**

An often-stated disadvantage of the adoption of a decriminalization model is that it would sustain the current contraband cannabis trade. This means that some of the problems with our current prohibition regime would potentially persist with the adoption of a decriminalization model of reform. In both academic (Crepault, 2014) and popular commentary (Liberal Party, 2016) on the prohibition of cannabis, one encounters concerns that the cannabis trade in Canada is under the control of violent and exploitive criminal elements, and that users (including “children”) are exposed to an illicit supply system and therefore, by definition, to criminals. Concerns are also expressed that users are exposed to other more dangerous illegal drugs and other forms of criminal activity. There are also assertions of how the proceeds of the contraband cannabis trade are retained by organized crime where they can be directed towards other types of criminal activity. Finally, concerns are expressed that the proceeds of the contraband trade are not subject to taxation and therefore deprive government of the attendant revenue from a popular consumer product. The Final Report of the government's Task Force on Cannabis Legalization and Regulation (2016) has continued this narrative:

*“With decriminalization the production, distribution and sale of cannabis remain criminal activities. Thus, individuals remain subject to the potential dangers of untested cannabis. Criminal organizations continue to play the role of producer, distributor and seller, thereby increasing risk, particularly to vulnerable populations.”* (p 10)

In the worst known scenario, it is true that the proceeds from worldwide illegal drug sales support large criminal organizations involved in other kinds of criminal activities, including exploitive and violent ones. However, in Canada, in the case of cannabis, only a share of the illegal trade occurs within international crime syndicates. As early as 2002, the Canadian Senate Special Committee on Illegal Drugs (Senate, 2002) concluded that an unspecified “portion of production is controlled by organized crime elements” (p13). There is good cause to doubt that most cannabis users in Canada would ever have contact with violent, exploitive criminal organizations or people. The evidence from several investigations is that very few cannabis users buy from people who are *dealers* by vocation or part of a large crime syndicate. Rather, they tend to buy small amounts from friends, family members or other close acquaintances (Erickson et al., 2013; Korf, et al., 2008; Coomber & Turnbull, 2007). Another study of regular cannabis users in four Canadian cities found that only 6% reported buying their cannabis from “street dealers”. The rest bought from friends, acquaintances, or grew

their own (Duff et al., 2011). Korf, et al. (2008) reported the particularly important finding that cannabis sellers tended to sell only small amounts of cannabis, and not traffic in other drugs. Evidence cited by Crepault (2014 p 3) that most cannabis users do not use other illegal drugs and do not progress to use them suggests there is little basis for believing that a contraband cannabis industry is acting as a gateway to the use of other drugs. Research by Korf, et al. (2008) also found that most cannabis sellers were not involved in any violent aspects of the drug trade.

The Canadian government's recent *Discussion Paper* (Task Force on Marijuana Legalization and Regulation, 2016) cites 2015 data from the Criminal Intelligence Service Canada that "*657 organized crime groups are operating in Canada, of which over half are known or suspected to be involved in the illicit marijuana market.*" (p 5). It is noteworthy that only a portion of this number is known or suspected to be involved in the contraband cannabis market. Nor is it clear whether "organized crime groups" includes many of the small operations with no ties to crime other than the small-scale local sale of cannabis as documented in the research literature. The findings of that research literature are strikingly inconsistent with the historic and prevailing hyperbole expressed about the perils of prohibition and a decriminalization regime.

The legacy of stigmatized invective was captured by the Senate Special Committee which asked,

*"Who has not heard of drug traffickers, veritable anti-heroes, whom we find both repulsive and fascinating, all of whom we consider the worst kind of scum, who grow rich by selling adulterated and dangerous products to our children?"* (Senate, 2002).

Equally alarmist assertions reside on the website of Canada's currently-governing political party:

*"Every day, our kids turn to dealers, gangs and criminals to buy marijuana, putting them in harm's way."* (Liberal Party, 2016).

The same type of fear-inducing statements prevailed throughout the Liberal Party's election campaign including allusions to "*...criminal organizations, street gangs and gun-runners.*" (CTV News, 2015). Such content was also frequently repeated by members of the government in the June 2016 House of Commons debate on cannabis law reform (Hansard, 2016).

In contrast to the inaccurate and alarmist depictions of the contraband cannabis trade portrayed by such descriptions, Coomber and Turnbull (2007) make the case that, *"Supply of this nature has been argued to be sufficiently different to 'dealing proper' to justify a different criminal justice approach in relation to it. This has been argued to be particularly true regarding social supply among young people who use substances such as cannabis."*

As reported in a University of Toronto publication, similar testimony has been offered by Toronto attorney Steven Tress.

*“Almost all of the clients in that industry are not what the public would characterize as criminals. They are just guys who are in financial trouble, they heard of this thing, and they decided to take the risk. And then they get caught, and you have to deal with a potential criminal record.” (Pasca, 2016).*

In summary, a substantial portion of cannabis trade occurs among acquaintances who operate independently of large drug cartels. Accordingly, there would be no direct contact with stereotypical criminal elements and no exposure to the alleged attendant threats to safety and propriety.

It may be argued that despite having no direct contact with serious drug criminals, a portion of cannabis users, including their typically small-volume suppliers, could form the broad base of a pyramid-shaped crime syndicate, and ultimately support its existence. This syndicate might also have tentacles that extended out to other criminal arenas. However, not all cannabis trade occurs within such structures – it is more diverse than that. The already-cited work of Erickson, Korf, and Coomber & Turnbull compel us to recognize a very different scenario resembling an essentially disconnected cottage industry in which independent, and otherwise law-abiding people, attempt to support themselves and their families. Essentially, they are meeting an existing demand in their community for a product – a product that most Canadians now believe should not be illegal in the first place. It is challenging to identify egregious behavior in such a scenario. Furthermore, Bouchard et al. (2009) have found that high prevalence of cannabis cultivation in a community may be associated with a shortage of legal employment opportunities. Bouchard also reports that participants in the contraband cannabis trade are a demographically diverse group typically involved in small operations. Wilkins and Sweetsur (2007) found a relationship between unemployment in a community and the presence of cannabis purchases for resale. They also found that the associated net annual income of these individuals was less than \$3,000. A significant portion of the participants in the cannabis trade may be legitimately seen, at worst, as people willing to take risks with their personal freedoms for typically small amounts of financial gain. More generously, they might be seen as resourceful victims of a society increasingly unable or unwilling to provide sufficient legal employment opportunities.

A comprehensive international review of the contraband cannabis trade published by the Canadian Drug Policy Coalition (Capler et al., 2016) also found that links between the cannabis trade and violent organized crime groups have been greatly exaggerated, and confirmed that the international picture of the cannabis trade is very similar to that seen in Canada. They also describe cannabis operations as independent, small in size, local, non-violent, and modest in realized revenues. They also found that most people involved in the contraband trade are otherwise law-abiding citizens who are active in their communities, and would welcome the opportunity to be part of a legal trade. Interestingly, both the Cannabis Trade Alliance of Canada and the Craft Cannabis Association of BC formally supported the Canadian Drug Policy Coalition’s submission that presented these findings to the Task Force on Cannabis Legalization and Regulation in August 2016.

Research that describes a more diverse and less threatening contraband cannabis trade adds important nuance to the claim that decriminalization would keep drug profits in the hands of criminals. There are other reasons why it is misleading to argue that users buy their cannabis from criminals in the sense that people typically think of the concept. Certainly, someone who sells a small amount of cannabis to a friend is, technically speaking, engaging in a criminal act. The same would also be technically true of someone who sells a few bottles of beer or a pack of cigarettes to an adult acquaintance. In these cases, the criminality arises because the seller of these legal drugs does not possess the license required to trade in a regulated drug product. Yet, few of us would regard such transactions as seriously criminal. Likewise, given the modern, more liberalized views of Canadians regarding cannabis, it would be an uncharacteristically severe judgment to regard someone selling a couple joints of contraband cannabis to a friend as committing a condemnable act of criminality. The typical discourse on dangerous drug dealers is based upon a narrow and stigmatized view of the contraband trade. It may also expose an inconsistency within our new-found readiness to exonerate the purchaser of a small amount of cannabis but to continue to demonize and harshly punish his typically small-volume supplier.

This report does not intend to justify or excuse serious criminal behaviour. The point to be made is that enforcement/justice resources should be more surgically deployed to those matters where they will do the most societal good. Organizations involved in large-scale drug trade, as well as in other criminal activity, could still be subject to appropriately-measured interventions from the enforcement/justice system, as should individuals who endanger the safety of others through impaired driving or the adulteration of cannabis with harmful additives. The intention of this report is simply to place cannabis use and the contraband cannabis trade within a context that is more balanced than the same overly-dramatized rhetoric that has been used in the past to conjure up support for prohibition and to sabotage justified reform.

It is important to exercise caution that a vestigial reefer madness-like depiction of the contraband cannabis trade is not now inadvertently repurposed to deny decriminalization its legitimate place on the menu of viable reforms. The politics of fear, played out with non-existent threats to our children's safety, may still play well on an election campaign trail, but such jingoism falters upon scrutiny and has no place in responsible drug policy reform. On the heels of their comprehensive review of the international cannabis trade, (Capler et al 2016) recommend, among other things, that the Canadian government abandon its unsubstantiated descriptions of the contraband cannabis trade and base its policy on established research findings.

## **2.5 Impact on Cannabis Product Safety**

In Crepault's (2014) juxtaposition of decriminalization and legalization, attention was given to the lack of assurance of purity or known strength of contraband cannabis, thus raising concerns about decriminalization as a desirable reform model as it does nothing to address these issues. The concern was echoed in the Final Report of the Task Force

of Cannabis Legalization and Regulation (2016). These concerns have been supported by analysis of cannabis samples from illegal dispensaries in Toronto. Reporters from The Globe and Mail bought samples of leaf cannabis and cannabis edibles from illegal Toronto dispensaries and had them tested against the same criteria used by Health Canada for legal cannabis products. One report (Robertson & McArthur, 2016a) found that leaf cannabis samples were contaminated with yeast, mould, and bacteria to the extent that one-third of them would not have passed Health Canada standards. Another report (Robertson & McArthur, 2016b) found that almost all samples of tested cannabis edibles had much less THC (tetrahydrocannabinol, the principal psychoactive ingredient in cannabis) than was indicated on the label.

Another concern with the contraband trade is the reported high potency of today's contraband leaf cannabis, which is reported to increase the risk for causing behavioral problems. The proposed solution has been to put limits on the potency of cannabis sold in legal retail outlets. Imposing limits on potency is justifiable, but not a panacea. First, there is no way to prevent a person from using an increased dosage to compensate for the lower THC level of the legal product. Furthermore, given the assured co-existence of a contraband trade with a legalized regime, some users will continue to buy contraband cannabis just as some do with contraband alcohol, tobacco, and pharmaceuticals. At least some portion of the prevailing risk under prohibition or a decriminalized regime will remain within a legal regime.

The presence of pesticides and other contaminants, as well as the problem of unknown strength, are legitimate concerns with a contraband supply system that will persist in a decriminalized regime. However, research cited in Section 3.6 of this report will demonstrate that both of these problems also persist within a legal, government-regulated supply system. This finding significantly compromises product impurity and inconsistent strength as providing a compelling basis for rejecting decriminalization in favour of legalization.

## **2.6 Impact on Social Justice**

Almost all known jurisdictions that have opted for decriminalization have implemented the traditional model (Single, 2000; Room, et al., 2010, p107f), a testament to its demonstrated positive impact on reducing unwarranted criminal records, creating enforcement/justice savings and its neutral impact on public health and safety. However, the model as typically implemented still remains somewhat punitive in nature harboring social injustice- and equity-related perils. Under such a punitive model, someone using cannabis is still seen as breaking the law. They are confronted by law enforcement officers and subjected to sometimes very public interrogation during the issuance of a ticket. This retains a lingering sense of wrong-doing and stigma which, as noted by Crepault (2014), may also prevent individuals from engaging with various health-related programs and services for fear of judgment and even legal reprisal. Room, et al. (2010, p127) cite evidence that these encounters can be prejudicial against specific vulnerable or marginalized populations, and that the core element of punitive

decriminalization - the imposition of fines - can have more harmful economic, legal, and social impact on vulnerable populations.

There is important context to the finding that prejudice, inequity, and stigma exist within a decriminalization regime. These conditions did not emerge as a result of the establishment of a decriminalization regime. They already existed under prohibition, and more importantly, it is likely that they will continue to exist in a legalization regime. These problems have a life and trajectory of their own. As long as there are cannabis-related offences of any kind that are subject to law enforcement activity and financial penalties, problems of prejudice and inequity will persist. Cannabis-related stigma may also persist for quite some time in a legalization regime. Canada carries several generations of prohibition-related stigma baggage. Such deeply-ingrained societal judgements are unlikely to quickly dissipate with the stroke of the legislative pen.

Despite the punitive approach to decriminalization being the customary choice of jurisdictions, there appears to be little said about the actual utility of the fines around which the approach is built. At a time when there was less public support for decriminalization, the pejorative judgment associated with fines may have served as a political compromise to appease those who were more aligned with the traditional criminal justice approach. The fines may have also served as an incentive for change by maintaining a continuing source of revenue for government. However, it is important to recognize that the fines contribute nothing directly to either the public health or social justice objectives that predominate in the justice-oriented narrative of the cannabis law reform movement. Single (2000) noted that decriminalization, as it has customarily been implemented, has more in common with prohibition than it does with reform driven by a non-punitive, public health priority.

## **2.7 Improving the Traditional Model of Decriminalization**

The traditional approaches to decriminalization are not immutable and can be improved in two respects.

### **2.7.1 Non-punitive Decriminalization**

First, for the reasons already cited, Canada could adopt a non-punitive decriminalization model with no enforcement interventions or fines for simple possession. Under such a regime, possession of a small quantity of cannabis would have no legal consequences.

Despite the relative simplicity and potential advantages of non-punitive decriminalization, there have been no evaluations of such an approach. Even discussions of the approach are rare in the literature. Single et al. (2000) and Room et al. (2010 p82) referred to practices in several Australian states that provide '*cautions*', instead of penalties (although these approaches still retained some punitive elements). Caulkins, et al. (2015, pg 52) have made a reference to the merits of non-punitive

elements in a decriminalized environment by suggesting “*fully legalizing possession for personal use but not sales*”. The U.S. District of Columbia (District of Columbia, 2016) has adopted such a model (p.61). A non-punitive approach was achieved along a more evolutionary path in Alaska. After decriminalizing cannabis in 1975 and allowing for a \$100 fine for possession of small amounts, Alaska eliminated the fine altogether in 1982 (Edge & Andrews, 2014). After two failed attempts to legalize cannabis for recreational use, a third attempt was finally successful, becoming effective in 2015.

There may be evidence of public support for a non-punitive approach in Canada. Fischer (in Erickson, 1997) references a finding of a 1995 Health Canada survey:

*“...almost 70% of the Canadian population favoured a non-imprisonment penalty (fine only) for, or the complete decriminalization of [my emphasis], simple cannabis possession as opposed to criminal punishment.”*

Given the continued liberalization of Canadian attitudes since the mid-1990s, it is reasonable to expect that support for non-punitive approaches will have increased.

A non-punitive decriminalization model could also include a public health component, facilitated by a partnership of local enforcement, education, public health and drug treatment programs. The model could involve these sectors collaborating on the delivery of community-based programs of primary prevention, risk (harm) reduction, and facilitating users’ access to therapeutic intervention, if desired by the user. Such an approach might give cannabis users less cause to be intimidated away from using both prevention and treatment services.

Legislatively, decriminalization should be much less onerous and time-consuming than would legalization with all its regulatory challenges and potentially lengthy legislative process. Establishing a non-punitive decriminalization regime could be as simple as removing cannabis possession from The Controlled Drug and Substances Act. No new legislation and regulations would be required. However, it is still possible that the approval process for making such a change could take some time to formalize and thereby continue to expose cannabis users to prosecution during that period. Fortunately, an even more expedient solution is available.

## **2.7.2 De Facto Decriminalization**

The second improvement Canada could bring to the traditional model of decriminalization would be the prompt implementation of a *de facto* approach. This could be as simple as federal, provincial, and regional authorities diverting enforcement activities away from detection of cannabis possession. Laws do not have to change – only enforcement practices. This *de facto* model has already been used in several jurisdictions worldwide (Room et al., 2010 p 92), providing a rich resource of lessons already learned that could guide Canada’s efforts.

Canadian law actually provides for such a *de facto* mechanism. The Honourable Murray Rankin is the Member of Parliament for Victoria BC and the current Vice-Chair of the federal government's Standing Committee on Justice & Human Rights. He is also a former University of Victoria law professor. According to Mr. Rankin, the *Director of Public Prosecutions Act* could be used to empower the federal Attorney General to direct enforcement authorities and the courts to stop prosecuting people for possession of small quantities of cannabis. A bill to invoke the Act for this purpose was introduced to the House of Commons by Mr. Rankin on June 13, 2016. Unfortunately, this opportunity to bring justice to Canada's law reform efforts was censured by Attorney General Jody Wilson-Raybould and did not receive House support. The rationale offered against the bill during debate, by members of the government, was replete with the customary disingenuous and unsupported party-line vitriol about the enrichment of dangerous criminals who threaten our children's safety and propriety (Hansard, 2016).

## **2.8 The Impact of Delaying Decriminalization**

In April 2016, Canada announced at the United Nations General Assembly Special Session (UNGASS) that it would introduce legislation to legalize cannabis in the spring of 2017. Shortly afterwards the Canadian government released a *Discussion Paper* (Task Force on Marijuana Legalization and Regulation, 2016) that reiterated this target. However, the government has not always been entirely transparent in informing Canadians that the introduction of legislation will mark only an early milestone in a complex and potentially long process. The availability of cannabis for recreational purposes at legal retail outlets will come much later. There are at least eight reasons for the unavoidable delay.

1) There is no evidentiary assurance of an aggregate net gain in public health, or even of an outcome that is near-neutral. Even the most enthusiastic supporters of legalization in the policy arena acknowledge that there are risks if this is not done with a public health priority (Crepault, 2014). The risks and the uncertainty demand a slow thoughtful process to mitigate potential harm to the public's health.

2) There is not over-whelming public support for legalization across Canada. A Nanos poll from May-June 2016 is frequently cited as showing that 69% of respondents supported legalization. However, only 43% provided unqualified support, meaning that more than half of respondents have at least some reservations, questions, or are unsure (Tahirali, 2016). If the lack of assurance among Canadians is communicated to their MPs, there could be a more cautious demeanor in the pending House of Commons debates. The government apparently has some work to do to convince most Canadians that commercial legalization for recreational purposes is a good idea.

3) There is a daunting regulatory labyrinth to be navigated including the determination of government department responsibilities and powers, government relationships with industry, an extensive list of legal, enforcement and justice issues, the interface with medical cannabis, industry structural models, product development options, retail



models, product promotion practices, taxation, and use in the workplace. The enormous complexities for each of these regulatory domains have been described in detail by Caulkins et al. (2015). To make matters even more daunting, there is a paucity of research evidence or even practical experience to guide the resolution of the multi-faceted, complex issues. This will necessitate an enormous amount of cautious work from an extensive diversity of expertise. This complexity will demand a great deal of time.

4) The federal legislative process is a complex and potentially protracted one. The bill must go through a first, second, and third reading in both the House of Commons and the Senate. Each could have its own public and expert consultation processes, internal negotiations, etc. followed by the preparation of reports and revisions. Only when both the House and Senate agree on the same wording of the bill, will it proceed to the Governor General for royal assent. Then the bill becomes law. This multi-stage process could require a long time for completion.

5) Additional pressure will come from other levels of government. Thirteen provinces and territories, as well as indigenous governments, will have their concerns and interests to pursue. Municipalities, through their associated local health departments are also engaged on the issue and have been sending their expectations to the Prime Minister's Office. The Final Report of the Task Force on Cannabis Legalization and Regulation (2016) has recommended that provinces, territories, indigenous governments and municipalities assume at least partial responsibility for several regulatory decisions. These include some of the potentially controversial ones: minimum age, distribution, retail, and oversight of home cultivation. Assuming the federal government takes the Task Force's advice, both provincial and municipal levels of governance would have their own legislative process to engage - more time, possibly much more time.

6) The next arena of complexity is introduced by a large and diverse number of interest groups. These groups, in some cases fuelled by potent levels of passion, will pursue a variety of potentially competing interests including human rights, law and order, access to medicine, the pursuit of pleasurable self-indulgence, protection of public health, responsible fiscal management, and the pursuit of entrepreneurial opportunities - by forceful competitors. The competition will extend beyond those companies operating in the cannabis industry. The alcohol, tobacco, and pharmaceutical industries also have their interests to protect and opportunities to cultivate. They possess the means to bring powerful lobbying artillery to the legislative process. There are also potential benefactors within government and various government-funded services that will assertively pursue a share of a new tax revenue stream. All of these interest groups will attempt in any way they can to influence the decision-making process. The diversity of the myriad interests and the intensity of their pursuit of these interests will not expedite the process of reaching legislative compromises.

7) There are also formidable business logistics to address in establishing the manufacturing and retail capabilities for producing and delivering cannabis products to

users. A competitive process for securing licenses to manufacture and sell can be expected. Following that, there is the acquisition of financing and properties, acquisition, installation and testing of production equipment, establishment of supply chain logistics, and preparation of staffing for both production and retail. Security will also be an issue in all aspects of the supply chain. The Final Report of the Task Force acknowledges these complex post-legislative challenges:

*“Success requires federal leadership, co-ordination and investment in research and surveillance, laboratory testing, licensing and regulatory inspection, training for law enforcement and others, and the development of tools to increase capacity ahead of regulation.” (p 7)*

8) It is also important to mention that there are international treaties that restrict legalization of recreational cannabis among signatories of which Canada is one (Room 2012, p129). The treaties may very well be archaic, not evidence-based, and possibly even counter-productive, at least in the case of cannabis. Nonetheless, they may present a challenge for a prime minister who is a relative novice among world leaders, and hopeful to secure a seat for Canada on the UN Security Council. Given this aspiration, the prime minister may need to be concerned about the optics of ignoring treaties – particularly treaties that (with the lone exception of Uruguay) have not been challenged by his peers. Despite Canada’s bold statement of intent at The United Nations General Assembly Special Session 2016, the meeting ultimately provided no tangible progress in changing the prevailing international regime of prohibition that is maintained by the treaties (Glenza, 2016).

What all this means is that recreational users will probably have to wait for quite some time for the opportunity to purchase their cannabis legally. The rest of Canadians, regardless of their specific interests in the issue, will also have to be patient. The actual amount of time is difficult to estimate. In 2015, the Prime Minister acknowledged that it could take up to “a year or two” (CBC, 2015a). In late 2015, Rehm (Rehm & Nutt, 2015), probably more realistically, estimated that the wait could be as long as four years. If correct, this would establish legal retail in late 2019. A very similar estimate has been provided by an unidentified senior federal government official in a recent *Globe and Mail* report (Leblanc, 2016). This report will now turn its attention to why a delivery date in 2019 poses a serious problem.

Our government’s campaign to reform cannabis law should be guided by a principle borrowed from emergency medicine: *first, stop the bleeding*. The bleeding, in the case of cannabis law reform, is the significant number of mostly young Canadians who continue to obtain criminal records for simple possession of small amounts of cannabis. Data from Statistics Canada (Cotter et al., 2015) suggests that in each of the years that legalization is delayed, approximately 59,000 criminal charges will be laid for simple possession of cannabis. The number of actual convictions that result in a criminal record will be at least 22,000 per year. The continuance of prohibition could therefore result, over the next three years, in a number approaching 70,000 before there is a legal alternative to acquiring cannabis. The consequences are potentially devastating,

interfering with the victims' access to employment and housing, entry into specific professions, travel, financial hardship, and potentially exposing them to hurtful social judgements and stigmatization. Such a wide-ranging and potentially devastating assault on basic social determinants of health can have a profound impact on a person's mental health and overall well-being well into their future. A portion of these individuals will be comprised of those with mental health- and drug-related problems who turn to the health care system for help. It is difficult to imagine how the acquisition of a criminal record could in any way facilitate a person's improved social stability or recovery. It would almost certainly present only an additional barrier. This danger challenges health care and policy institutions to become active advocates for the shaping of policy configured primarily by humanitarian and health priorities.

In contrast, the government's *Discussion Paper*, issued by its *Task Force on Marijuana Legalization and Regulation* (2016), appears to portend the continuation of harsh and even increasing penalties in the new system:

*"...close consideration must be given to new or strengthened sanctions for those who act outside the boundaries of the new system."* (p19)

Those "*who act outside the boundaries of the new system*" would include those under the legal age limit. It would also include those over the legal age limit who continue to use contraband cannabis under the new system. Research shows that a criminal record is more harmful than is the typically moderate use of the drug. This evidence will remain just as compelling during legalization as it is during prohibition, making continued criminalization of possession-related offences under legalization unworthy of support.

And what of the hundreds of thousands of users who already have criminal records for simple possession? Neither the Task Force's *Discussion Paper* nor its *Final Report* showed concern for the plight of cannabis users who bear the legal and social scars of Canada's punitive history, or for those who may fall victim before legalization becomes effective. Government should explore a mechanism by which it could grant record suspensions for all those already convicted of simple possession only. It is difficult to imagine that these suspensions would bring substantial opposition from an increasingly enlightened and sympathetic public. It is also difficult to fathom how doing otherwise would comprise a genuine move from a criminal justice approach to one based on public health.

Long-time advocates of reform, less mesmerized by the spectacle of a glamorous, lucrative, new cannabis industry, may be left wondering what has happened to the compassion and sense of justice that has fueled the drive for reform for so much of the issue's history.

## **2.9 Decriminalization: Beyond the Here and Now**

There are also post-legalization issues to consider.

Experience in US jurisdictions (described in section 3.4 of this report) makes it clear that a contraband supply of cannabis will survive legalization and thrive as do contraband supplies for all of our legal drugs (alcohol, tobacco, pharmaceutical). Given the long-standing existence of contraband cannabis trade in Canada, is it realistic to expect most cannabis users to take seriously the distinction between legal and illegal cannabis? Is a young adult at a party, when passed a *joint*, really likely to ask about the legal status of the offering, or to even care? And is it reasonable to expect law enforcement to be able to make the distinction between a legal and an illegal joint, and is it prudent for the justice system to expend time and resources on providing a ruling based upon making a distinction? If the new legislation attempts to deal in a harsh manner regarding a distinction that few key players recognize as critical, reasonable, or practical, does this pose a risk of bringing discredit to the entire enterprise?

The government must be true to its word in taking “a public health approach” to cannabis law reform. Given the significant impact of criminalization upon people’s social determinants of health, the government’s approach should avoid any continuance of a punitive approach for the simple possession of cannabis. The continued existence of a contraband trade within both a decriminalization and a legalization regime is assured. Its continued monopoly under a decriminalization regime is not ideal. However, establishment of a decriminalization regime may be a reasonable short-term compromise for the immediate benefit of bringing an end to cannabis use criminalization and its attendant harms upon Canadians. Our government would do well to recognize these benefits and to desist with the exaggerated appeals to fear in order to subordinate decriminalization to legalization as a reform option.

Outside of Canada, support for decriminalization continues to flourish as a viable approach to reform. The American Academy of Pediatrics (2015) has issued a strong statement of support for decriminalization while issuing an equally strong recommendation against legalization. In the US, twenty-one states have decriminalized cannabis, fourteen of which continue to resist the temptation of commercial legalization for recreational use (National Organization for the Reform of Marijuana Laws, 2016). States continue to choose decriminalization rather than legalization. Illinois did so as recently as May 2016 (Carissimo 2016). Canada’s Task Force on Marijuana Legalization and Regulation’s *Discussion Paper* (2016, p9) provided an unreferenced statement that twenty-two countries have implemented some form of decriminalization of cannabis. As of November 2016, Wikipedia (2016a), citing individual jurisdictional sources, provided a count of thirty-two.

The Canadian government’s harshly inflexible stance against decriminalization continues to stray further from the wave of discourse across the world which increasingly considers decriminalization, not just of cannabis, but of all drugs. The countries of Portugal and Czechoslovakia have moved beyond talk and have actually

decriminalized all types of drugs. *The Johns Hopkins-Lancet Commission on Public Health and International Drug Policy* (Csete et al. 2016) review of these jurisdictions found: “...*significant financial savings, less incarceration, significant public health benefits, and no significant increase in drug use.*” The Commission recommended international decriminalization of all minor drug use. Just such a call for Canada has recently been issued by health officials in British Columbia (Woo, 2016).

These developments become all the more significant given the 2016 resolution at The United Nations General Assembly Special Session (UNGASS) to maintain a commitment to a prohibition paradigm that rejects legalization of cannabis for recreational purposes (Glenza, 2016). Progress on international drug law reform will be a slow process and this is regrettable. However, many countries appear to realize that decriminalization can provide a promptly-implemented first step for addressing urgent social justice issues, while allowing them both the time and increased comfort level to slowly and carefully consider a legalization regime with public health and safety priorities. A hybrid, two-stage model of cannabis law reform is one that Canada can implement at home and champion on the international stage. Sections 3 and 4 of this report provide further rationale for, and guidance on the design of, such a model.

## **Recommendation #1**

**(Urgent)**

**The Canadian Government should immediately decriminalize possession of small amounts of cannabis using a non-punitive approach, and a *de facto* approach, if necessary.**

### **3. A Legal, Government-Regulated, Commercial Cannabis Industry**

#### **3.1 Definition**

In a legalized commercial model for recreational use, as exists in state jurisdictions in the United States, cannabis production and retail are provided by competitors in the private sector. This is similar to how beverage alcohol is produced and sold. Countries such as Canada have also used government-controlled retail monopolies or a mix of private and government-controlled retail outlets for alcohol. In Canada, such a mixed retail model has also been proposed for legalized recreational cannabis. A not-for-profit co-operative is another model that has been discussed in the literature. More will be said of all these models later in this report.

#### **3.2 Introduction**

The general consensus is that it is still too early to arrive at conclusions regarding the impact of a legal recreational cannabis industry on public health and safety from the early initiatives that are underway in several state jurisdictions within the United States. It is therefore not possible to predict the impact of the Canadian campaign with any certainty. Cannabis legalization for recreational purposes in Canada will be an experiment, and not the controlled kind.

However, this section of *Cannabis Law Reform in Canada: Pretense & Perils* will propose likely trajectories for the impact of recreational cannabis legalization in Canada by drawing upon early indications from research and other developments in the emerging medical and recreational cannabis regimes. It will also draw from published accounts of experiences with our long-established legal drug industries for alcohol, tobacco, and pharmaceuticals. The analysis is organized into five sections:

- harm and costs associated with the use of products from legal, government-regulated, commercial drug industries
- impact of cannabis legalization on the contraband cannabis trade
- impact of cannabis legalization on consumer demand, ease of access, prevalence of use, and associated problems
- impact of cannabis legalization on product safety
- drug industry conduct and government regulatory effectiveness.

Any drug industry, by the nature of its products, must bear a responsibility for ensuring the protection of the public's health and safety. A principal part of the rationale for having a legal industry for recreational cannabis that is regulated by the government is to ensure that the industry operates within the legal and ethical bounds required to provide such protection for consumers. This report reviews the evidence for each of the alcohol, tobacco, pharmaceutical and cannabis industries addressing:

- the priority assigned by the industry to public health protection versus revenue generation
- participation of the industry in unethical and illegal conduct
- the effectiveness of government regulation to deter such conduct.

### **3.3 Harm and Costs of Products from Legal, Government-regulated, Commercial Drug Industries**

This section begins with an acknowledgment of the long-established monopoly of the legal, government-regulated, commercial model for providing drug products to society. This includes both recreational drug products (alcohol and tobacco) and medicinal drug products (pharmaceutical). The model is familiar to governments and governments are apparently comfortable with it. The model appears to have received broad acceptance as an immutable norm.

The wisdom of this unquestioned default monopoly is challengeable given that the level of harm associated with the products of each of our established legal drug industries constitutes a public health crisis in Canada. Rehm et al. (2006) have shown that the combined annual harm of alcohol and tobacco in Canada is 6.5 million hospital days, and 41,467 premature deaths accounting for 663,178 years of life lost (PYLL). The potential culpability of our prevailing drug industry model is suggested upon consideration that alcohol and tobacco combined account for 66.8% of drug-related days in hospital, and 96.1% of drug-related premature deaths accounting for 91.4% of drug-related years of life lost (PYLL). The remaining portions are attributable to all illegal drugs combined. (This data set does not include legally-used pharmaceutical products.) Rehm's group has also demonstrated that this is more than a public health crisis. The estimate for the cost of the combined alcohol- and tobacco-related harm to the Canadian economy is \$31.6 billion annually, which comprises 79.3% of all drug-related economic costs (again, excluding costs from the legal use of pharmaceuticals).

These figures, by themselves, do not prove that the model of a legal, government-regulated, commercial industry is causative of the harm and costs observed. However, with such enormous levels of harm and cost being observed – levels that significantly exceed those attributable to all illegal drugs combined - it is reasonable to consider further the possible contributory role of the model.

While tobacco and alcohol have accounted for most drug-related harm for many years, a new drug epidemic is not only possible but has recently emerged. In the last few years, prescription drug misuse in the United States has been declared an epidemic by the Centre for Disease Control (CDC, 2016). Increased levels of morbidity and mortality associated with prescribed and diverted, as well as illegally-made, opioids have become a major concern in most parts of the western world, including Canada (Gomes, et al. 2014; Martins, et al., 2016). It may be no coincidence that this new epidemic of opioid misuse had its genesis in the very aggressive promotional campaigns of another legal drug business – the pharmaceutical industry. Government regulators did not heed early

warnings and failed to react until the extent of harm reached epidemic levels (Ivison, 2015).

Despite the existence of reasonable cause, alternative models to the commercial one are rarely discussed in the literature. Accordingly, they have received little attention in the transition of recreational cannabis use from a prohibition framework to a legal commercial one. Of particular concern is the emergence of another drug industry that will have high ambitions for expansion beyond the much more contained medical market.

The private commercial model has been the default choice in recent US cannabis law reform initiatives and appears to be the favoured path in Canada for expansion into recreational use of cannabis. In response to public concerns about the safety of legalizing cannabis for recreational use, the government's response, notably in its pre- and post-election press statements, and in its *Discussion Paper* (Task Force on Marijuana Legalization and Regulation, 2016) and *Final Report* (Task Force on Cannabis Legalization and Regulation, 2016), has been to foster complacency by extolling the virtues of a legal, government-regulated industry over an unregulated contraband trade. This claim possesses inescapable surface-level logic. However, sections 2.3 through 2.6 of this report have demonstrated that the perils of the contraband cannabis trade have been significantly exaggerated and fabricated in the prevailing, government-engineered narrative on cannabis law reform. This section of *Pretense & Perils* will complete the process of assessing the veracity of the government's narrative by examining its claim that a legal, government-regulated, commercial regime is an adequately safe approach for recreational cannabis.

### **3.4 Impact on the Contraband Cannabis Trade**

One of the initially-proposed goals of cannabis legalization was that criminal activity “*should shrink significantly and potentially disappear.*” (Crepault, 2014, p.11) In the Task Force's Final Report (2016), the less ambitious intent to simply “curb the illicit market” emerged (p 38). The more modest goal is advisable given that anything more ambitious is inconsistent with actual experience related to other long-established legal drug industries and their contraband counterparts. Despite having had legal and regulated regimes for tobacco and alcohol for many years in Canada, contraband product remains widely available for both drugs. Even contraband pharmaceuticals can be ordered over the internet - with unwitting home delivery by the Canadian government's postal service. The magnitude of contraband sales is sufficiently significant that tobacco, alcohol, pharmaceutical producers and retailers, government regulators, and enforcement agencies have all expressed concern, and in some cases, lobbied government for tougher controls on the trade of counterfeit drug products (Task Force on Illicit Tobacco Products, 2009; NCACT, 2016, Lockington, 2016; Hansard, 2015; Hamilton, 2015; Rubin, 2011; Smithers, 2012; RCMP, 2014; Health Canada, 2010; Burns, 2006; Standing Senate Committee on Social Affairs, Science and Technology, 2015).



It is difficult to fathom how a newly-established legal, regulated cannabis industry could somehow cause a large, diversely-manifested contraband industry to disappear. In fact, the contraband cannabis industry still flourishes in Colorado (Stuart, 2014) and Washington (Kleiman et al., 2015). The Washington data showed that more than a year after legalization, illegal sources still accounted for an estimated 28% of cannabis sold in the state. It seems likely that a new legal cannabis industry in Canada will capture only *a piece of the action*. Most of-age cannabis users would be expected to buy from the new legal industry, simply because they can. However, others will continue to buy from their trusted contraband sources. Underage users will also continue to access a thriving, if somewhat smaller, contraband supply. Under either a decriminalized or legalized model, Canada's contraband cannabis trade will almost certainly persist and thrive as does the contraband trade in alcohol, tobacco and pharmaceuticals. Sections 2.3 through 2.6 of this report demonstrated that the contraband trade was quite diverse and not as dangerous as often alleged. The continued existence of a contraband trade is not ideal. However, it may be less of a threat to the safety of cannabis users than it is to the revenue of the new legal industry.

### **3.5 Impact on Demand, Access, Use and Problems**

The ultimate impact of cannabis legalization for recreational purposes upon public health will be mediated, in large part, by three relationships. The first will be the impact of legalization upon demand for cannabis and upon ease of access to cannabis. The second will be the impact of increased demand and ease of access upon the use of cannabis. The third relationship will be the impact of use upon associated problems. These mediating relationships are closely tied to how the industry is allowed by government to conduct its business, particularly in how it attempts to impact consumer demand for product and the ease of consumer access to the product.

#### **3.5.1 Demand**

It is obvious that many people have decided that they do not require a legal industry or permission from their government to use cannabis. However, survey data tell us that many would feel sufficiently more comfortable to try it for the first time if it were provided by a legal industry. In a national survey of US students, Palamar et al. (2014) found that 10% of non-using students intended to use cannabis if made legal, and that 18% of users expected to increase their use upon legalization of the drug. A poll of Canadians conducted by Forum Research and reported by CBC News (2015b), suggested that the prevalence of cannabis use could increase by over 50% after legalization.

It is important to consider that the projected increased demand for cannabis, as reflected in the survey data, does not include the potential additional impact of an industry's market expansion tactics that could follow legalization. The Canadian government has released a report (Office of the Parliamentary Budget Officer, 2016) which acknowledges the complexity of factors at work that will determine levels of use

of cannabis after legalization. The report also acknowledges that the literature is not conclusive on the expected level of impact, but concludes: "...on balance, legalization appears more likely to increase aggregate consumption." (p.43) The report makes an estimate of approximately 600,000 new cannabis smokers after legalization, and identifies advertising and marketing as a factor that will increase use.

It is to be expected that any commercial company (and therefore any commercial drug company) will have a primary purpose of maximizing return for owners/shareholders. It attempts to do so largely by overall market expansion and by capturing as much of that market as possible. Prominent strategies for market expansion include:

- product promotion (advertising, marketing, sponsorship, celebrity endorsement) to increase demand;
- increased accessibility to the product to increase purchases;
- industry lobbying of government for regulatory practices that facilitate, or do not obstruct, efforts at market expansion and increased accessibility.

These strategies will weave their way through much of the discussion in this section.

Legal drug products, by their nature and their associated harm, are no ordinary commodity. A drug industry, primarily through its attempts at market expansion, thus poses a greater potential threat to public health than do industries providing more benign consumer products. This requires additional constraints on how drug products are promoted to the public. It is reasonable to expect that the sum of information provided to consumers for any legal recreational drug product achieves a balance between promotion of the product and information that encourages and facilitates its safe use.

The research demonstrating an association of increased consumption with promotion of drug products has been cited for alcohol by The Report of the Chief Public Health Officer for Canada (2016) and The Canadian Public Health Association (2011). The research also demonstrates an impact on children and youth (Heung, 2016). Babor (2010) has also referenced the body of research demonstrating that the largely self-regulation of alcohol advertising practices world-wide does not appear to prevent marketing that would appeal to younger people. Accordingly, Babor has recommended a complete ban on the advertising of alcohol products, as has been (nearly) achieved for tobacco in Canada. The evidence on the relationship between promotion and tobacco use has been cited by The Tobacco Control Legal Consortium (2012), and for alcohol and tobacco use by Babor (2010) and Pacula et al. (2014). In the case of cannabis, a complete ban on all forms of promotion of cannabis for recreational purposes has been recommended by The Chief Medical Officers of Health of Canada & Urban Public Health Network (2016), The Canadian Public Health Association (2016), The Canadian Medical Association (Spithoff et al., 2015), The Canadian Paediatric Society (Grant 2016), The Centre for Addiction and Mental Health (2016a) and the United Kingdom Expert Panel (Rolles, et al., 2016). Uruguay, the only nation thus far to legalize cannabis for recreational purposes, has banned all forms of product promotion.

The recommended bans are justified given that cannabis has considerable potential for market growth as a recreational drug in Canada. The Canadian Tobacco Alcohol and Drugs Survey reported that 77% of Canadians 15 years of age and older used alcohol in the past year, compared to only 13% for cannabis (Health Canada, 2016a). The cannabis industry will covet the alcohol industry's high market penetration and be expected to set that as their target. As has been the case for alcohol and tobacco, and in the absence of a ban, a full battery of proven approaches including marketing, advertising, sponsorships and celebrity endorsements can be expected. The Task Force on Cannabis Legalization and Regulation, in its Final Report (2016) has recommended *restrictions* on promotional practices, rather than the *complete ban* that was recommended by public health authorities. The high-risk implications of that compromise will be discussed later in this report in *The Canadian Cannabis Industry in Transition: More Pretense & Perils*.

### 3.5.2 Ease of Access

The creation of an appetite or curiosity for a product among the public through widespread promotion is one factor that impacts use. A second factor is ease of access to the product. Research demonstrating a relationship between increased accessibility with increased use has been cited for alcohol by Rehm et al. (2008), The Canadian Public Health Association (2011), and Pacula et al. (2014), and for tobacco by The Ontario Tobacco Research Unit (2011). Navarro et al. (2014) summarized the evidence specifically associating increased retail outlet density with increased use of both tobacco and alcohol. These findings have significant implications for how cannabis should be made available to the Canadian public for recreational purposes. It is reasonable to expect that the establishment of local retail outlets for legal recreational cannabis would increase comfort and access for those adults who may have been uncomfortable with accessing, or unable to access, contraband sources. Under legalization, a legally protected, assured supply of allegedly safe product at fixed, known (legally and widely advertised) locations with predictable hours of operation would arise. This would provide a much more reliable and convenient source for product than could most contraband supply mechanisms, including the illegal *dispensaries*. It is therefore reasonable to expect some current non-users to try the product and current users to access it more often. The previously-mentioned sources (Office of the Parliamentary Budget Officer, 2016; CBC News, 2015b) can be cited to support this contention.

Another pertinent issue is the impact of legalization on access to cannabis among underage users. Data from Boak et al. (2015) show that, among grade 7-12 students, 46% report that it would be 'fairly easy' or 'very easy' for them to obtain cannabis. The corresponding figures for alcohol and cigarettes are 65% and 53% respectively. Alcohol and cigarettes are regulated drug products that would not be legally accessible to almost all students in these grades. Yet, based upon their daily experience, more students perceive them to be more accessible than cannabis. Does this not at least raise questions about the capacity of regulation to restrict the accessibility of legal drug

products from those who are underage? Given the apparent minor role that regulation plays in restricting young people's access to drug products, there seems little reason to accept the notion that ease of access to cannabis for underage users will diminish under legalization relative to a prohibition or decriminalization regime. The evidence suggests the opposite.

A prediction of increased use of cannabis due to increased access is based upon traditional retail models, and occurs within regulatory models that still allow at least some product promotion. This has led to consideration of alternative retail mechanisms such as ordering by mail/phone/internet and delivery by postal service. Such a model has been adopted for Canada's medical cannabis industry, and was listed as an option for recreational use in the government's *Discussion Paper* (Task Force on Marijuana Legalization and Regulation, 2016). It was also supported as one option in the Canadian Public Health Association's (2016) submission to the Task Force. The option was recommended in the Task Force's Final Report (2016) as only one option that could serve those who were mobility-challenged or living in remote areas where a retail facility was not practical.

### **3.5.3 Increased Use and Associated Problems**

Research demonstrating the direct relationship between increased use of alcohol and increased associated harms has been cited by Rehm et al. (2008), Babor (2010), The Canadian Public Health Association (2011) and Giesbrecht et al. (2013).

The potential for the same relationship to hold for cannabis has been expressed in CAMH's *Framework* (Crepault, 2014), the Canadian government's *Discussion Paper* (Task Force on Marijuana Legalization and Regulation, 2016), and the UK Expert Panel (Rolles, 2016). In its report on cannabis legalization, The Chief Medical Officers of Health of Canada & Urban Public Health Network (2016) recommended that government be prepared for an increased demand for mental health and addiction treatment services.

The evidence cited in this section supports a model for predicting the potential epidemiological trajectory for the products of any legal, commercial drug industry, including a newly-created cannabis industry. The model can be represented as follows:

**MORE PRODUCT PROMOTION = MORE DEMAND**  
**MORE DEMAND + EASIER ACCESS = MORE USE**  
**MORE USE = MORE ASSOCIATED HARMS & ECONOMIC COSTS**

The considerable amount of data supporting the individual components of the model, buoyed by its compelling face validity, has led to its broad support among drug policy researchers, analysts, and public health policy authorities. The recently-emerged opioid epidemic in North America illustrates the model quite well. Aggressive promotion of opioid products by the pharmaceutical industry, in particular to physicians, facilitated the

adoption of a convenient solution for patients presenting with intractable pain-management issues. The large increase in the issuance of prescriptions for opioids coupled with their convenient dispensing at pharmacies led to substantially increased levels of use. The impact of attempts to contain the epidemic was mitigated by the emergence of a contraband market that sustained supply and prevalence of use. Unprecedented levels of morbidity and mortality are now being witnessed. Concurrent increases in economic costs are certain.

The presentation of the model would not be complete without mention of the capacity of industry lobbying of government to impact the elements of the model. The impact is mediated by less-restrictive regulations, reduced enforcement of regulations and the imposition of penalties of insufficient magnitude to motivate compliance. All of these factors can serve industry in ways that increase consumer demand for, and ease of access to, their product. This translates into higher prevalence of use and greater risk to the public's health. Several health policy organizations in Canada and abroad have warned against the perils that industry lobbying may present for protecting the public's health in cannabis law reform. These include: The Canadian Medical Association (Spithoff et al 2015), The Centre for Addiction and Mental Health (Crepault, 2014), The Rand Corporation (Caulkins et al 2015), and The UK Expert Panel (Rolles et al., 2016).

It may not be possible to specifically predict how the many factors related to product promotion, consumer demand, ease of access, use, and associated problems and economic costs will play out in a legalized cannabis regime for recreational use. Nonetheless, from a public health perspective, there is a sufficiently-compelling evidentiary basis to expect that commercial legalization will usher in an increase in use and in associated problems and economic costs. The government should therefore move cautiously along this policy terrain. In the absence of strong data to provide clear direction on any specific issue, the government should, without exception, legislate with public health as a priority over industry revenue.

### **3.6 Impact on Cannabis Product Safety**

The discussion on the merits of creating a legal, regulated supply for cannabis makes reference to the lack of checks on quality and perhaps safety of cannabis product that comes from the contraband trade (Crepault, 2014; Task Force on Marijuana Legalization and Regulation, 2016; Task Force on Cannabis Legalization and Regulation, 2016). This concern has been supported by analyses of cannabis samples from illegal dispensaries in Toronto, as reported by Robertson & McArthur (2016a; 2016b), and described in section 2.5 of this report.

Superior product quality control would provide a clear advantage of a legal, government-regulated industry over the continued unregulated system that would remain under decriminalization. However, there are also some troubling failures to ensure product integrity in the legal, regulated cannabis industry. Over a twelve month period spanning 2014-2015, Health Canada (2017) reported five 'Advisory'

communications regarding problems with medical cannabis at legal regulated Canadian producers. Two advisories concerned cannabis contaminated with bacteria and another reported cannabis contaminated with mold. One of the companies cited for bacteria was later cited for producing cannabis with a potency that exceeded the potency indicated on the label by 50%. Another citation involved unspecified ‘production practices’ as a problem. Health Canada revealed only that the producer’s customers were instructed “to immediately discontinue use”. As recently as December 2016, a licensed cannabis producer is listed in the same Health Canada online document as having to issue a recall of seventy-four lots of cannabis for the presence of unauthorized pesticides, some of which were at levels sufficient to produce a potential threat to health.

Another case, involving a different producer, Mettrum Ltd, occurred at about the same time. Health Canada detected two types of illegal pesticide in samples of product. A Globe and Mail report (Robertson, 2016a) uncovered several serious concerns. These include:

- reluctance in the disclosure of the full extent of contamination to the producer’s customers and to investigative reporters;
- discrepancy between Health Canada’s alleged “zero-tolerance” policy for use of banned pesticides and their lenient treatment of the producer in this matter; and,
- apparent collusion between the producer and Health Canada to minimize public awareness of the problem.

It should be noted that this case did not appear on Health Canada’s webpage on medical marijuana advisory communications, raising a legitimate question as to its comprehensive coverage of all infractions. It is also noteworthy that much of this drama unfolded just before the release of the Final Report of the Task Force on Cannabis Legalization and Regulation.

More recently, this story took on added dimensions with further revelations exposed by the Globe & Mail (Robertson, 2017). Mettrum had used the banned pesticide since 2014, and did so because it knew that Health Canada was not testing for banned pesticides. According to a former Mettrum employee identified in the Globe article, Mettrum also took measures to hide the containers of the pesticide during Health Canada inspections of its production facility. Health Canada’s comment on the matter was that it had assumed that the mere threat of a company losing its license was a sufficient deterrent. The evidence repeatedly fails to support that assumption. If a company’s willful and concealed attempt to poison its customers is not grounds for a license suspension, Canadian cannabis users need to be very fearful of what would be required. Mettrum received only the *administrative sanction* of additional unannounced inspections.

Several of the incidents of contamination described above had been reported on Health Canada’s website before the work of the Task Force on Cannabis Legalization and Regulation was completed. And yet, the issue received no attention in its report. In contrast, the Task Force reported:

*“Task Force members had the opportunity to visit some of these producers and were impressed by the sophistication and quality of their work. “ (p9)*

The Report also recommends,

*“Regulate the production of cannabis and its derivatives (e.g., edibles, concentrates) at the federal level, drawing on the good production practices of the current cannabis for medical purposes system.” (p 33).*

Consumers of medical cannabis can take some small amount of comfort in knowing that the defective products were detected by Health Canada. However, given that the inspections customarily occur monthly, there should be concern about the welfare of clients who are using a contaminated product daily for up to a month without warning. Some of these users have compromised immune systems. Furthermore, given that the inspections are expected by the producers, there is a legitimate question concerning the producers' level of commitment to providing safe product, and about their level of respect for regulations. Heightened concern is also warranted given that the discovery of banned pesticides at Mettrum did not occur as a result of the customary testing protocol, but only through additional testing that was prompted by other independent contamination infractions. This raises the possibility that there may be much more dangerous contaminated product in circulation. There might also be a legitimate question regarding the level of transparency and/or due diligence in addressing this serious problem by both Health Canada and the Task Force.

Despite a paucity of enthusiasm for quality control in the legal medical cannabis industry, there appears to be no shortage of enthusiasm for trade associations to represent the interests of cannabis producers. Investigation for this paper found no less than five such associations claiming to represent the industry. These include: Canadian Cannabis Industry Association, Canadian Medical Cannabis Council, Canadian National Medical Marijuana Association, Cannabis Canada Association, and Cannabis Trade Alliance of Canada. All but one of the five producers cited by Health Canada for product quality infractions are members of one of these trade associations, all of which claim to uphold the highest standards of product development. Only two of the five associations list their members on their website, and only a handful each, thus openly accounting for only a small portion of the authorized licensed producers in Canada. After several years of operation, the legal cannabis trade in Canada appears to be in a state of fragmented disarray.

Canada is not alone in its sorry state of regulating legal cannabis. Issues of cannabis product safety have also arisen in the legal cannabis industry in the United States, particularly around pesticide contamination. Voelker & Holmes (2015) found that cannabis products grown and sold by legal, government-regulated businesses in Oregon contained pesticides and fungicides at levels up to thousands of times greater than those allowed by law. The investigations also found residues from pesticides that are not allowed on crops in any concentration. The authors cite extreme miscarriage of regulatory design as a principal culprit arising from the fact that duly-qualified scientists

were not included in the formulation of regulations addressing the use of pesticides. The authors also suggest that the problems they encountered in Oregon would likely exist in other states as well.

Analysis of medical cannabis samples have also revealed inconsistent product strength resulting in both insufficient and dangerous dosing, with particular concern expressed around edibles which have been found to be inconsistent in ingredients and inaccurately labelled (Thomas et al., 2015).

There is also potential for similar problems to arise in the ever-expanding legal recreational market in the United States. The problems of under-reported THC levels, along with the detection of dangerously high levels of pesticides draws attention to yet another troubling aspect of the US legalization experiment – the introduction of cannabis edibles for retail, often sold in a form (eg. cookies) that would be attractive to children. The edibles are associated with increased hospitalization of children for treatment of toxic reactions from inadvertent ingestion (RMHIDTA, 2014, p.60; Wang et al., 2016). According to Dr. Patricia Daly, the Chief Medical Health Officer for Coastal Health, THC ingestion, in very young children can depress respiration and lead to coma (CBC, 2016a). The prospect of children ingesting potentially toxic pesticides as well as high levels of THC should be a serious concern for government regulators and other health authorities.

Given that legalization would not mark the demise of the contraband industry, and that the current status of drug industry regulation provides inadequate consumer protection, it is not clear that a legal, government-regulated regime, in its current state of practice, would result in a significant overall improvement in product safety relative to the current prohibition regime or to a decriminalized regime.

It must be acknowledged that regulation may better allow for detection of pesticides and irregularities in concentration, providing a clear advantage for legal commercial regimes. However, the finding that dangerous levels of contaminants are indeed found in legal product is disturbing and should be a significant concern for government regulators, public health authorities and the general public who are being wooed by the promise of product safety in a legal regime. As noted by Voelker & Holmes (2015), it is important for government to include duly-qualified scientists in the development of regulations for issues like pesticide use. If government is concerned about the quality and safety of contraband product and confident that a legal industry will produce safer product, it should encourage the legal industry to compete with contraband supply on that aspect. Most people will pay more for a safer product to protect their health and well-being, particularly if they can be assured that the legal product is, in fact, a safer purchase. But consumer confidence can be achieved only if government transparently acknowledges the problem of contaminated legal product in the first place.

It should be noted that evidence of contaminated product from legal cannabis producers in both Canada and the US was submitted to the Task Force by this author near the end of August 2016. The Task Force Report's subsequent offering of its seemingly gratuitous accolades, without justified qualification, provides cause for concern.



However, it is worth noting that the Task Force has recommended the establishment of a seed-to-sale tracking system which, among various benefits, is acknowledged to provide the capacity to trace products in the event of a recall. It should be noted that the Chief Medical Officers of Health of Canada & Urban Public Health Network, in their report (2016), also anticipated the need for recalls of cannabis product in a legal regime.

Finally, the reckless contamination or knowing adulteration of any drug product with a dangerous substance should be punishable with suitable consequences for such disregard for public safety. This should apply to the legal cannabis industry as well as to the contraband trade. Legislators might consider that a legal regulated cannabis producer who knowingly or recklessly provides contaminated product not only threatens the public's health, as does a contraband producer, but also violates the trust that the public has placed in the legal provider. The setting of penalties for violations should consider the greater gravity of this dereliction of responsibility.

### **3.7 Drug Industry Conduct and Regulatory Effectiveness**

Polling data cited by Tahirali (2016) shows that a slight majority of Canadians expressed less than full support for the legalization of cannabis for recreational purposes. The government's response has been to placate Canadians with a promise of establishing a legal, commercial industry that will be held in check with strict government regulation. The fulfillment of this promise will be critical to determining whether legalization will achieve a near-neutral impact on public health and safety or mark the beginning of an acceleration of drug-related harm.

The legal cannabis industry is still in its infancy and thus it is not possible to describe long-term patterns of industry conduct and regulatory effectiveness. However, the long-term track records of our other legal, commercial drug industries and government regulation regimes can be examined. The literature covering these topics is extensive and so a full treatment is beyond the scope of this report. It is also possible to look at early indications from the cannabis industry operating in the United States and from the medical cannabis industry in Canada, and consider the potential implications for longer-term trajectories for the recreational industry in Canada.

What follows is a relatively brief account for each industry with references to sources that provide more expansive and detailed coverage of the evidence.

#### **3.7.1 The Alcohol Industry**

The alcohol industry is a legal, government-regulated, commercial drug industry. Alcohol misuse is a public health crisis in Canada resulting in substantial morbidity, mortality, and economic loss. Rehm et al. (2006) have provided estimates for several indicators of the country's annual harm from alcohol, including 4.3 million days in hospital, and 4,258 premature deaths resulting in 147,571 years of lost life (PYLL). The

estimate for the costs of alcohol misuse to the Canadian economy is \$14.6 billion annually.

Despite being produced and sold under strict protocols, commercial beverage alcohol is associated with over two hundred different diseases, conditions, and injury types (Rehm et al., 2009). It has also been long recognized as a carcinogen (IARC, 1988) – and more recently, even at dosages that many would regard as quite low (Cao, 2015). This is not necessarily an argument for prohibition. Rather it compels us to consider the information made available to consumers that so disproportionately promotes the consumption of alcohol over disclosure of the harms associated with its use. Undaunted by the body of evidence on the harms and the expressed concerns of public health authorities, the long legacy of revenue-centred industry behaviour and of government regulatory indifference continues – at enormous expense to the public's health and to the Canadian economy.

This legacy is covered in quite some detail in a book entitled "*Sober Reflections: Commerce, Public Health, and the Evolution of Alcohol Policy in Canada, 1980-2000*", edited by Giesbrecht et al. (2006). The authors of the various sections detail the Canadian alcohol industry's disturbing legacy of malfeasance and disregard for public health. This includes smuggling operations involving hundreds of on-premise drinking establishments, public disinformation campaigns to sway policy and public opinion, aggressive lobbying, threats to withdraw charitable donations, and corporate largesse for elected officials including campaign contributions and free sports event tickets. Regulatory failure on the part of government has included a failure to implement compulsory labeling information (ingredients and health warnings) on alcohol products. This occurred at a time when the exclusion of ingredient listings on alcohol products was unique among consumer products. The authors also note that regulation has allowed increased commercialization of alcohol as well as liberalization of restrictions on access at a time when increasing consumption was understood to lead to increased problems. They point to changes allowing lower-priced imported products, fewer restrictions on advertising of alcohol products, and the privatization (self-regulation) of the monitoring of advertisements.

Misdeeds in Canada's alcohol industry and failures in adequate regulation did not end at the turn of the century. Contraband alcohol product is commonly available in at least some parts of Canada. The National Post (Hamilton, 2015) reported that in 2015, a Montreal winery was investigated for having imported and sold over two million bottles of "cheap Italian wine" outside of the Quebec government's regulatory and distribution system over a four year period. It is estimated that the fraudulent wine sales avoided approximately \$14 million in provincial and federal tax payments. The police investigation culminated in the apprehension of a ring of twelve individuals including a former Ontario vineyard executive. The group was charged with fraud, conspiracy to commit fraud, trademark infringement and recycling the proceeds of crime. The Ontario winery, whose executive was involved, acknowledged having had a business arrangement with the Montreal winery, but stated that it discontinued that arrangement upon hearing of the police investigation. These aspects of the case raise concerns

about a blurring of the line between the legal and illegal alcohol trades, particularly given the prevailing narrative of the desirability of a legal, government-regulated industry over a contraband trade.

Two elements of the Montreal case - Italian wine and a winery in Ontario - also arose in another case in which contraband wine appeared on the shelves of the Ontario Government's alcohol retail monopoly (Liquor Control Board of Ontario). As reported by the Toronto Star (Rubin, 2011), an investigation by York Region Police revealed that the LCBO was defrauded into selling sub-standard contraband wine in bottles bearing premium Italian product brand labels. The fraud was detected not by government regulators or retailers, but by sophisticated customers, who recognized the difference upon drinking the product. Electronic communications between this author and York Region Police revealed that 221 bottles were returned to the LCBO in York Region, and that additional LCBO outlets had also been defrauded in the same manner with the same contraband product. In York Region, several individuals were arrested and charges laid for fraud, purchasing alcohol from other than a licensed establishment, and unlawfully receiving orders for the sale of alcohol. This case has clear implications for the capacity and/or commitment of a government-regulated retail system to safeguard the integrity, and possibly the safety, of alcohol products.

There is also a continued escalation in the aggressive and glamorous promotion of alcohol products by the industry and even by government-run retail outlets such as the Liquor Control Board of Ontario (LCBO), with little apparent concern from regulatory bodies such as the Alcohol and Gaming Commission of Ontario.

Apart from sporadic and vague platitudes related to responsible use of its product, the alcohol industry, government retailers, and regulatory bodies remain mostly quiet on the significant harms associated with the product. The industry has also been silent on the international development of low-risk drinking guidelines, presumably because the guidelines have the capacity to reduce not only alcohol-related problems, but also overall alcohol consumption and revenue.

Much has been made of the *social responsibility* (SR) campaigns of the alcohol industry, in which the industry was, at least initially, embarrassed into participating. Nonetheless, the alcohol industry in Canada is involved in a variety of initiatives intended to promote responsible drinking (Public Health Agency of Canada, 2016 p 38). However, these efforts remain disproportionately small relative to the effort expended on promotion of the products. An obvious indicator of the relative importance of the social responsibility messages to the industry is apparent in the amount of space in promotional materials or product containers that is devoted to the SR message relative to the amount of space devoted to the glamorous depiction of the product. A casual inspection of alcohol ads in print media reveals that a social responsibility message, if there at all, does not amount to even one percent of the ad's total space. Consider that, by law, tobacco products sold in Canada must display a health warning comprising no less than 75% of the surface of the packaging (Government of Canada, 2016). Despite

being associated with levels of harm similar to those for tobacco (Rehm et al., 2006), beverage alcohol containers are not required to carry health warnings.

Perhaps the best way to gauge the level of priority assigned by government to protect the public's health is the extent to which government requires the implementation of research-based best practices in policy that are known to protect the public's health. Such an evaluation of alcohol policy (Rehm, et.al., 2011) showed that the adoption of six best practices in Canada would, on an annual basis, result in 800 fewer preventable deaths, with a reduction of close to 26,000 years of lost life (PYLL), and more than 88,000 fewer acute care hospital days. The annual savings to the Canadian economy would amount to approximately \$1 billion. The report emphasizes that these are conservative estimates. Stated another way, these annual harmful consequences are largely attributable to the perennial failure of the alcohol industry and government regulation to implement best practices for protecting the public's health. Since the release of Rehm's report, there have been additional warnings against increased liberalization of alcohol laws in Ontario (Giesbrecht, 2015), and a call for a renewed comprehensive public health-based alcohol policy (CAMH, 2015).

Despite such determined advocacy, the alcohol industry and the Ontario government have not only failed to heed the advice, but have implemented even higher risk practices and policies with the introduction of privatized beer and expanded wine retail in grocery stores (Giesbrecht, 2015). Even in those jurisdictions like Ontario where alcohol retail has been controlled by a government monopoly, the absence of a public health priority persists in both alcohol industry practices and government regulation. The timing of the introduction of alcohol product to grocery stores in Ontario was particularly audacious. It followed on the heels of a CBC report (Griffith-Greene, 2015) on how the premier grocery chain allowed to sell alcohol (Loblaws) was found to be tampering with 'best before' dates of food products and selling unsafe food to customers to reduce spoilage costs. Undaunted by the apparent callous disregard for the safety of consumers on the part of Loblaws, the Ontario Government proceeded to issue the grocery chain a license to sell alcohol, one of our most risk-laden consumer products.

There are additional concerns that have arisen about how the LCBO, the government, and the alcohol industry conduct their business partnership, and its impact on the public. Recent controversies have arisen with respect to:

- 1) a lack of transparency on pricing amidst allegations of market manipulation (Cohn, 2014);
- 2) the introduction of legislative changes to nullify a class action suit against the government for 'price-fixing' (Gray, 2015);
- 3) former government employees becoming lobbyists for the alcohol manufacturers (Morrow, 2015);
- 4) a secretive practice of routine largesse in the provision of alcohol products for foreign diplomats (Brennan, 2015); and,
- 5) inadequate privacy protection for customers (Jones, 2015).

The Ontario government's approach to alcohol regulation falls significantly short of the integrity, diligence and transparency that comprise the gold standard in matters of public health.

Despite the regulatory problems in Ontario, the province has actually been found to have the highest rating for regulatory practices among Canadian provinces. Giesbrecht et al. (2013) compared Canadian provinces on a variety of alcohol policy domains and generated an overall score for each province as a percentage of the ideal score. The national average was below 50% and no provinces achieved as high as 60%. The overall picture is that alcohol industry regulation in Canada is not simply less than perfect; it is substantially less than adequate, contributing towards the perennial high levels of personal and societal harm.

Canadian jurisdictions are not alone in alcohol industry regulatory shortcomings. Xuan et al. (2014) have provided an account of how alcohol policies in the United States also fall short of best practices. An examination of the alcohol industry's conduct would not be complete without reference to its proliferation of targeting developing countries to ensure market growth. Karnani (2013) has reported on the role of alcohol in developing countries to precipitate and exacerbate poverty, and the role of the industry in exploiting poor and illiterate populations while bribing corrupt governments for regulatory frameworks that are favourable to the industry's commercial interests at the expense of human welfare.

In summary, the alcohol industry has an established history of illegal and unethical activity, misleading government and the public, and ignoring and concealing the known harms associated with its product. Government regulation of the industry has demonstrated shortcomings in assurance of product quality, a failure to implement evidence-based policy, and government-industry collusion (sometimes covertly) in furthering the industry's commercial interests at the expense of public health. Most notably, the alcohol industry has demonstrated a chronic disregard for public health and human welfare, sometimes preying upon the most vulnerable populations. The industry and government continue to be rewarded with substantial revenues, while health care and social service systems struggle to keep pace with the enormous levels of alcohol-related harm. In the wake of this harm, the reader is reminded that the alcohol industry is a legal, commercial, government-regulated drug industry.

As unsavoury as its legacy may be, the alcohol industry has the best track record of Canada's three established legal drug industries, particularly with regards to criminality. The picture gets worse in an examination of the tobacco industry and much worse in the case of the pharmaceutical industry.

### 3.7.2 The Tobacco Industry

The tobacco industry is a legal, government-regulated commercial drug industry. The legal tobacco cigarette is designed and manufactured in strict accordance with regulator-approved protocols. It is also our most toxic legal consumer product when used in its intended manner. Tobacco use is a public health crisis in Canada resulting in substantial morbidity, mortality, and economic loss. Rehm et al. (2006) have provided estimates for several indicators of the country's annual harm from tobacco, including 2.2 million hospital days and 37,209 premature deaths resulting in 515,607 years of lost life (PYLL). The cost to the Canadian economy is \$17 billion annually.

A significant contributor to this perennial harm is more than a half century of nefarious conduct by the tobacco industry. The reader is referred to two sources. The Canadian story is told in *Smoke & Mirrors: The Canadian Tobacco War* (Cunningham, 1996), while a US account is provided in "Ashes to Ashes" (Kluger, 1997). Both books provide a comprehensive historical account of the epic battle involving the tobacco industry, public health authorities, government regulators and the courts. More recently, a compelling exposure of tobacco industry malfeasance surfaced in the US landmark court case against Philip Morris USA as provided by Justice Gladys Kessler. After reviewing hundreds of depositions and thousands of exhibits, Kessler issued a powerful condemnation of the industry in her 1,742 page opinion (United States District Court for the District of Columbia, 2006). Some highlights of Kessler's findings follow:

*"[This case] is about an industry, and in particular these Defendants, that survives, and profits, from selling a highly addictive product which causes diseases that lead to a staggering number of deaths per year, an immeasurable amount of human suffering and economic loss, and a profound burden on our national health care system. Defendants have known many of these facts for at least 50 years or more. Despite that knowledge, they have consistently, repeatedly and with enormous skill and sophistication, denied these facts to the public, the Government, and to the public health community."*

*"Defendants have marketed and sold their lethal products with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted."*

*"Over the course of more than 50 years, Defendants lied, misrepresented and deceived the American public, including smokers and the young people they avidly sought as 'replacement' smokers about the devastating health effects of smoking and environmental tobacco smoke."*

*"The evidence in this case clearly establishes that Defendants have not ceased engaging in unlawful activity.... For example, most Defendants continue to fraudulently deny the adverse health effects of second-hand smoke which they recognized internally; all Defendants continue to market "low tar" cigarettes to consumers seeking to reduce their health risks or quit; all Defendants continue to fraudulently deny that they*

*manipulate the nicotine delivery of their cigarettes in order to create and sustain addiction; some Defendants continue to deny that they market to youth in publications with significant youth readership and with imagery that targets youth; and some Defendants continue to suppress and conceal information which might undermine their public or litigation position.... Their continuing conduct misleads consumers in order to maximize Defendants' revenues by recruiting new smokers (the majority of whom are under the age of 18), preventing current smokers from quitting, and thereby sustaining the industry."*

The vast engagement in criminality and turpitude described by Justice Kessler was not restricted to the United States. Mahood (2013) has described the direct relationships between the US and Canadian companies and notes that the crimes described by Kessler also occurred in Canada at the same time. Mahood's insightful accounts of this era supplement Cunningham's (1996) previously-cited work, and describe how in the early 1990's, Canada's three tobacco companies were involved in tobacco smuggling operations which caused the government to lose billions in unpaid tobacco taxes. Charges were eventually laid against the companies and individual executives. Charges included fraud, conspiracy to commit fraud, possession of the proceeds of crime, deceit, fraudulent misrepresentation, spoliation [destruction of documents] and a "massive conspiracy." Mahood quotes Justice E.F. Ormston: "The acts committed in furtherance of the conspiracy here represent the largest offense of its nature in Canadian history."

Mahood also describes separate legal actions taken against Canada's tobacco companies by the Canadian government in 2008 and 2010, and notes that the eventual out-of-court settlements recovered only a small portion of the lost taxation revenue. Payment schedules of ten to fifteen years made it easy for the industry to pass the costs of the settlements on to their nicotine-dependant customers. Despite guilty pleas from the companies as part of these settlements, no individuals were convicted of any criminal wrong-doing.

The involvement of Canadian tobacco companies in so much deception, at least in part, prompted most Canadian provinces and territories to seek compensation for health care costs through individual lawsuits against Canadian cigarette manufacturers and their foreign parent companies (Ontario Tobacco Research Unit, 2013). None of these lawsuits has gone to trial thus far. Tobacco control advocates (Mahood, 2013) fear that small out-of-court settlements, as seen in the 2008 and 2010 actions, will provide an easy windfall of cash for governments but will comprise too modest of a financial sacrifice to reform industry perfidy.

It is interesting that the industry's initial reaction to the lawsuits in Canada was to demonstrate the partnership relationship it had with government for much of its activity. This argument was not accepted by the courts as a basis for dismissing the cost-recovery suits. However, given the descriptions provided by Mahood (2013), there is little doubt that government, at best, was negligent in its failure to effectively regulate the tobacco industry, and at worst, was indeed complicit as an enabler of some of the harm inflicted upon the public.

The absence of any serious consequences inflicted upon the industry as a result of legal proceedings to date is perhaps at least partly responsible for the fact that tobacco industry opposition continues to be seen on important public health measures such as plain packaging (Hatchard et al., 2014), bans on flavourings (Brown et al., 2016), increased taxation (Zhang & Schwartz, 2015), and improving the safety of e-cigarettes (Brownson et al., 2016; Kusnetz, 2016). All this suggests that the industry has little fear of serious repercussions from current legal actions brought against it in Canada. Brownson et al. (2016) have also expressed concern about a lack of serious action on the part of regulators in addressing safety aspects of e-cigarettes. Delays of stricter regulation, allegedly based upon a desire for more convincing data, ultimately protect the interests of industry. This is eerily reminiscent of the early days of research, industry influence, and policy development regarding the harms of conventional combustion cigarettes. The protection of the public's health would be better served by placing the onus upon industry to provide evidence to support its interests.

It might be argued that more recent tobacco-related regulatory actions taken by the Canadian federal and provincial governments provide assurance that government regulation of drug industries is now alive and well and capable of protecting the public's health. For example, several provincial governments in Canada have recently passed legislation to ban flavouring in cigarettes, and the Canadian government has promised to introduce legislation for plain packaging. It is tempting to take some comfort in these recent developments in considering the implications for an improved regulatory regime for cannabis. However, there are three reasons for caution.

- 1) Regulatory improvements have occurred in slow piecemeal fashion over a period of a half century since the US Surgeon General's landmark report prompted governments to more strictly regulate the tobacco industry. This is not a clock that health authorities want to start running over again for an emboldened cannabis industry, hungering for unencumbered rewards arising from the large market expansion that will accompany legalization for recreational sales.

- 2) For several years, public health authorities and advocates (including this author) have celebrated substantial reductions in cigarette smoking, particularly by younger age groups. However, recent evidence from the US (Singh et al. 2016) suggests that there is a substantial replacement effect with many young people using other ways to ingest nicotine such as e-cigarettes, vapourizers, hookahs, and chew. Of considerable concern is a recent report on adolescent smoking by Leventhal et al. (2016) that found a positive relationship between higher frequency and heaviness of vaping at baseline and combustible tobacco smoking six months later. The future implications of continued nicotine ingestion through alternative means remain controversial. The tobacco industry is relentless, creative, and highly successful in renewing its customer base and protecting its financial interests. No less should be expected of its disciple cannabis industry.



3) As described by Mahood (2013), the tobacco regulatory changes implemented thus far have done little to seriously harm the industry. The industry remains aggressive in its pursuit of new young smokers and enormously profitable. The architects of the industry's crimes remain largely unpunished. There has been no substantial deterrent effect on the tobacco industry. This would be readily apparent to the emerging, watchful cannabis industry.

The tobacco industry's long-lived malfeasance persists on a global scale. In a report that details the industry's relentless attempts to sabotage international public health efforts, a World Health Organization report (2008) concluded "*The tobacco industry is not and cannot be a partner in effective tobacco control.*" In the presence of this harsh, but deserved judgment, it is important to be reminded that the tobacco industry is a legal, government-regulated, commercial drug industry.

### **3.7.3 The Pharmaceutical Industry**

The pharmaceutical industry is another legal, government-regulated, commercial drug industry. Misuse of its products, and most notably of opioids has been recently described by the US Centre for Disease Control as "an epidemic" in that country (CDC, 2016). The emergence of this epidemic in Canada is suggested by data on opioid-related mortality reported for the province of Ontario. In 2013, Ontario recorded 638 opioid-related deaths (Martins, et al., 2016), a substantial increase from the 165 deaths recorded in 1992 (Gomes, et al., 2014). Gomes also reported a three-fold increase in years of life lost (YLL) between 1992 and 2010. A more recent survey of provincial health authorities showed that the problem prevails across Canada and suggests that the overall prevalence of opioid-related deaths has not diminished between 2014 and 2016. In most provinces, fentanyl now appears to be a major contributor to this continuing crisis (The Canadian Press 2016; ). A *Prescription Opioid Policy Framework* produced by the Centre for Addiction and Mental Health (2016b) reports that the fentanyl problem consists of both legal diverted product and analogue product and also reports an increase in the use of street heroin. At the time of publication of this report, another opioid drug with high potential for overdose, carfentanil, was beginning to capture the attention of enforcement, public health authorities, and the media in Canada (CTV News, 2017).

The escalating opioid-related mortality has prompted two consecutive Canadian federal health ministers to express concern. The previous minister, Rona Ambrose, declared that "Prescription drug abuse and addiction is a significant public health concern across Canada" (Government of Canada, 2015). Her successor, Dr. Jane Philpott, has been reported by the Globe and Mail as referring to the current opioid epidemic in Canada as a national public health crisis (Kirkup, 2016). The rarely-discussed aspect of the epidemic is the role of the pharmaceutical industry in the genesis of the problem. This report will return to that topic shortly, after setting an indispensable context: that the malfeasance of the pharmaceutical industry in the current opioid crisis is not an isolated

case. There is a voluminous literature on the indiscriminate profiteering of the industry at the expense of both the public's health and of the credibility of government regulation.

The literature that details this despairing state of affairs has been effectively summarized by Dukes, Braithwaite, and Moloney in their book "Pharmaceuticals, Corporate Crime and Public Health" (2014). The authors bring impressive credentials to this work, not only as academics but also from experience in international regulation of the pharmaceutical industry with the World Health Organization and also from employment within the pharmaceutical industry itself. Their findings arise from court cases, investigative journalism, a broad collection of government investigations and health/justice agency reports, and most importantly, from some of the most highly-regarded peer-reviewed academic journals including, among others: The British Medical Journal, The Lancet, The Journal of the American Medical Association, California Law Review, The New England Journal of Medicine, The British Journal of Psychiatry, The American Bar Association Journal, The Journal of Law Medicine and Ethics, The International Journal of Epidemiology, and Nature.

Drawing from cases dating back to the 1950s, and up to the present, the authors provide an account of decades of international industry misconduct in its relationships with customers, health care professions, researchers, research subjects, and government regulators and other bodies. The dizzying list of malfeasance includes: withholding and ignoring evidence of harm in test trials; agreeing to testing protocols and then ignoring them; intimidation of researchers; manipulation of supply chains, research practices and findings, testing new drugs in countries with weak regulations thus exposing vulnerable populations to harm; deaths of infants and children resulting from the conduct of illegal trials in which parents were pressured into providing uninformed consent; non-payment of court-ordered settlements to parents whose children died in the trials; recruitment of unemployed vulnerable subjects onto research subject panels; use of prisoners as subjects; testing of experimental drugs without informing subjects of the availability, at no cost, of similar products already established as safe; fabricating research data from nonexistent patients; suppression of uncooperative investigators; ignoring consumer complaints; falsifying reports; forcing less senior executives to take the blame for CEO decisions; workplace safety infractions during manufacturing; environmental infractions; animal rights violations; use of off-shore havens to avoid taxation; use of advertising content that is not evidence-based; overly-aggressive, misleading, and illegal advertising and marketing practices; imposing restrictions on the availability of drugs to countries that are not industry-friendly in their regulation; untruthful "public awareness" campaigns; tampering with court proceedings and legislative processes; abuses of international conventions; selling drugs to publicly-funded medicare programs at inflated prices; failing to keep promises to increase research and development and create new employment in the sector; circumventing competition law, patent law, and safety laws; misleading patent offices to secure patents; bribery; collection of tax breaks from donations of expiring drugs that were useless or likely to do more harm than good for the recipients; use of patent protection to prevent promising research; creation of exploitive monopolies, engagement in anti-trust activity; price-fixing and insider-trading.

Dukes also detail repeated failure of government regulation to prevent and effectively hold the industry accountable for its misconduct, including: allowance of high-risk, highly-profitable drugs on the market; insufficient fines to act as deterrents; lack of administrative or legal action on unpaid fines; not enforcing requirements for ethics review; industry whistleblowers are not protected and sometimes prosecuted by the state; and complicity of regulators with the industry in the commission of crimes.

Early in the book, the authors recount the infamous thalidomide case from the late 1950s-early 1960s. A person with intact conscience might think that such an atrocity would forever deter industry carelessness or malfeasance in bringing a new product to market, but not so for the international pharmaceutical industry. One might also think that such a calamity might place government regulators on perpetual heightened alert to avert a repeat event. In contrast, the authors detail a long legacy of ensuing cases that are just as disturbing in their blatant disregard for human welfare, and emphasize how government regulation repeatedly fails to meaningfully deter misconduct and neglect by the industry. The norm for penalties appears to be government-imposed fines and out-of-court civil settlements in amounts that may seem enormous to the average person, but are clearly insufficient to deter continued malfeasance by the pharmaceutical companies involved. The US-based organization, *Public Citizen* has reported that between 1991 and 2012, US pharmaceutical companies alone settled at least 239 cases for a total of \$30.2B (Almashat & Wolfe, 2012). It is noteworthy that fines and settlements primarily punish company shareholders, and are not targeted to the executives who make the decisions. Industry executives engaged in malfeasance tend to go unpunished while continuing to receive extraordinary high levels of remuneration.

Unfortunately, the bulk of misconduct cannot be dismissed as the actions of *a few bad apples* operating in a few outlier jurisdictions with weak regulation. Dukes' accounting of the wrong-doing touches upon no less than sixty-four companies located in thirty-one countries spread across all well-populated continents. Companies with serial infractions are not uncommon. Some of the infractions occur in highly-vulnerable developing countries or have victims in those countries.

Such a case has been described by Bogdanich & Kolimay (2003). Cutter Biological, a division of the Bayer pharmaceutical company, knowingly produced and sold millions of dollars of HIV-infected blood-clotting medicine to Asia and Latin America, after the product had been banned by the Federal Drug Administration (FDA) in the US and by regulators in Europe. This occurred in contravention of the company's promise to regulators that it would not continue to sell the old infected product since it now had a new safe version which it was selling in the US. The result was that an unknowable number of overseas hemophiliacs were infected - hundreds for certain, most likely many more. In the face of these horrific outcomes, a Bayer spokesperson insisted that the company had "behaved responsibly, ethically and humanely" in selling the older tainted product overseas. Bogdanich & Kolimay also reported that in the midst of the controversy, a senior FDA official had instructed FDA staff that the issue should be "...quietly solved without alerting the Congress, the medical community and the public."

Canada is not excluded from the global scourge of pharmaceutical industry turpitude and government regulatory failure. A recent, highly publicized example is the creation of the current epidemic of opioid-related harm that has swept across Canada as well as much of the western world. This epidemic was ushered in with the introduction by Purdue Pharmaceutical of the highly addictive pain-killer OxyContin. Billions of dollars of annual revenues from its sales were achieved, in both the US and Canada, primarily through aggressive and misleading marketing to physicians that led to large numbers of pain sufferers becoming dependent upon the medication (Van Zee, 2009).

The problem was officially first flagged in Canada in *The Government of Newfoundland and Labrador Oxycontin Task Force Final Report* (2004) which, in observation of these marketing practices recommended: “...that Health Canada ensure that pharmaceutical manufacturers use appropriate marketing strategies that includes information on the dangers of drug abuse and diversion.” The Task Force also recommended strengthening “...the role of Health Canada in monitoring and auditing sales of controlled substances and investigating adverse drug events.” and also, to implement “...legislative and regulatory amendments to facilitate investigation and intervention.”

These early warnings and recommendations were not heeded, and the emerging opioid crisis in Canada continued to escalate. In extensive coverage of the Purdue OxyContin story, *The Globe and Mail* (Robertson, 2016b) reported that the President of Purdue Pharma Canada, Mr. John H. Stewart had sought to minimize Purdue’s culpability. The story quotes Stewart:

*“The answer to abuse of prescription medications is greater education and substance-abuse treatment. The answer to diversion is tough law enforcement, not restrictions on patients and physicians who treat them.”*

As the epidemic also grew in the United States, Purdue executives were found guilty of knowingly making false claims about the addiction potential of the drug and fraudulently marketing a drug for an unapproved use (CBC News, 2007). The company paid a settlement of \$634 million. No individuals were punished. Purdue US blamed the problems on lower level employees who made “misstatements”. They did however shortly thereafter announce the “retirement” of its CEO, a position that was filled by Mr. Stewart from Purdue Canada in 2007. By 2012, Mr. Stewart was being chastised by the U.S. Senate Committee on Finance for the continued economic harm the company was doing to the health insurance industry and for Purdue’s lack of cooperation in responding to the government’s requests for information. Shortly thereafter, Mr. Stewart left Purdue (Robertson, 2016b).

Back in Canada, criticism of the Canadian government’s lack of preventive action was also escalating. Then-Federal Health Minister Ambrose defended her department by noting that Health Canada’s guidelines allowed it to consider only a medicine’s effectiveness for its intended purpose (painkiller in this case) and not its potential for public health or safety implications (Ivison, 2015). This being the case would be a clear

indication that Canada's regulatory regime for the pharmaceutical industry is seriously inadequate for the public's protection.

Class actions against Purdue have been launched in almost all Canadian provinces, and the parties are in the process of negotiating a nation-wide settlement on equal terms. The intent is to resolve all pending OxyContin-related class actions across the country (Branco, 2016). There are apparently no actions naming Health Canada as a defendant or co-defendant. The opioid epidemic, and its wake of tragedy, has continued to persist and mutate in Canada through the emergence of a contraband trade in other prescribed opioids, such as fentanyl (Fischer, 2016).

While there have been no charges laid against industry executives related to fentanyl in Canada, federal and state authorities in the US have been more hawkish. US Federal authorities have charged six former *Insys Therapeutics Inc* executives and managers with bribery of physicians to prescribe an opioid medication containing fentanyl for off-label purposes, and with misleading insurers to secure authorization of payment. Insys has already settled one case for similar claims in Oregon. Other similar legal actions against Insys are underway in at least five other states (Thomson Reuters, 2016).

In November 2016, Health Canada released "Health Canada's Action on Opioid Misuse" – a poster-style plan that outlines the government's efforts to address the current epidemic of opioid-related harm in Canada. It lists five important areas for intervention. Conspicuous by its absence, is any onus placed upon the industry to promote their products in an accurate and responsible manner that would place the welfare of Canadians before the industry's revenue interests. Nor is there any indication of intent on the part of Health Canada to better regulate the industry to prevent such crises in the future (Health Canada, 2016b). On November 18 2016, a one-day "Opioid Conference" was hosted by Dr. Jane Philpott, Federal Minister of Health on behalf of Health Canada and by Dr. Eric Hoskins, Minister of Health on behalf of the Province of Ontario. The gathering was held in Ottawa and webcast live. The agenda provided an impressive list of pertinent issues, but like Health Canada's posted action plan, stopped short of including an item on the importance of improving regulation of the pharmaceutical industry or of using the justice system to introduce deterrents to industry malfeasance (Health Canada, 2016c). This omission of important regulatory changes occurred within a context of available information and calls for their inclusion in a revised regulatory framework (Lexchin & Kohler, 2011; Centre for Addiction and Mental Health, 2016b).

The enormous levels of human carnage from the opioid crisis continue to be heavily covered in the media. One would think that this extensive adverse coverage, or at the very least the line-up of litigants, might give Purdue cause to proceed more responsibly with its opioid products in the future. It appears that this is not the case. Ryan et al. (2016) have reported that, with the diminished North American market for OxyContin as a result of the controversy and of reduced prescribing of the drug, Purdue has turned its attention elsewhere. The company is implementing a massive migration of its OxyContin campaign into Latin America, Asia, the Middle East, Africa and other regions using the same marketing tactics that were employed in North America, with a notable

addition to its arsenal of marketing memes – to combat “*opiophobia*”. Promotional videos prepared for the foreign markets feature people of diverse ethnicities and proclaim “We’re only just getting started” (Ryan, 2016). Perhaps the most frightening aspect of this expansion is that it will involve nations with much less capacity than that of Canada and the United States to effectively cope with the coming epidemics. They will also possess less capacity to seek legal redress from Purdue for the harms.

While the opioid epidemic provides the most recent well-known case of pharmaceutical wrong-doing and regulatory failure in Canada, there are others.

Dukes et al. (2014) recount the 1993 abolition of compulsory licensing of medicines in Canada. This act was expected to raise the average price of medicines in Canada, but the industry had promised, in return for higher revenues, to increase its research and development activity and to create new employment. Dukes cite a report by Lexchin (1997) that demonstrated that the promises, four years later, had remained unfulfilled. Lexchin also provides a revealing overarching picture of pharmaceutical industry-government relations in Canada and the adverse impact upon users of medicines. Disregard for public health in the pursuit of revenue on the part of the Canadian pharmaceutical industry persists to the present day, as does the failure of the Canadian government and of its regulatory body, Health Canada, to effectively regulate the pharmaceutical industry.

More examples were revealed in a recent series of reports published by the Toronto Star. The first article in the series (Bruser & McLean, 2014a) provided evidence that consumers had been exposed to prescription drugs that Canadian pharmaceutical companies knowingly sold as defective and potentially unsafe, and that the companies attempted to hide the evidence by destroying files or altering their contents. The investigation also revealed that some companies failed to divulge evidence of side-effects suffered by consumers. Since 2008, over forty Canadian companies have been cited for “serious manufacturing violations” by Health Canada.

A second article in the series (Bruser & McLean, 2014b), showed that an order by Health Canada to stop imports of suspect drugs from an Indian company was simply ignored by the manufacturer, with no response from Health Canada. Once the story became public, Health Canada quickly took more formal regulatory action to ban more than thirty drugs and approximately thirty drug ingredients from the manufacturer. In a telling aspect of the current relationship between the pharmaceutical industry and government regulation, the Canadian subsidiary of the drug manufacturer in this case has taken legal action against Health Canada for its infringement of the manufacturer’s commercial entitlements (McLean & Bruser, 2015).

Such legal actions are facilitated by the North American Free Trade Agreement (NAFTA) and Canada has been a frequent target for such actions (Sinclair 2015). At the time of writing this report, the status of The Canada-European Union Comprehensive Economic and Trade Agreement (CETA), another international trade agreement, remained uncertain. If passed, CETA threatens to extend such provisions across a much larger part of the globe (Nelson, 2016). Such mechanisms provide an ongoing

opportunity for emboldened corporate malfeasance within a context of regulatory weakness.

A third installment of the Toronto Star series demonstrated that since the beginning of 2013, twenty-four Canadian pharmaceutical companies had been found non-compliant with Health Canada regulations, and that nearly one-third had terms and conditions on their licenses. Such terms and conditions are imposed by regulators in response to identified problems that could pose a threat to consumers (McLean & Bruser, 2014).

A disturbing aspect of these revelations is that the journalists did not acquire their information from Health Canada but rather from the website of the United States Food and Drug Administration. The history of Health Canada's knowledge of the defective products remains as confidential information, and is not available to the public. Recent investigations have unearthed additional examples of industry-Health Canada secrecy regarding acetaminophen overdoses (Yang & Cribb, 2015) and medication for the treatment of nausea and vomiting during pregnancy (Crowe, 2015). Such cases have led two academics to refer to "...the disgraceful culture of secrecy at Health Canada." (Persaud & Juurlink, 2015).

Malfeasance in the Canadian pharmaceutical industry is not limited to the manufacturers and marketers. Criminality and fiscal irregularity have also recently been exposed in the retail arm of the industry. A Canadian pharmacist and seven others have been charged with trafficking narcotics through a community pharmacy (Wetselaar, 2015). In a separate case, tax auditors at Revenue Canada found \$58 million in hidden income by Canadian pharmacies. Fines were levied, but no charges were laid. This exposure of tax avoidance was ill-timed for pharmacies, some of whom were applying to become retail outlets for medical cannabis at the time (Beeby, 2016).

The Canadian government's favourable and lenient orientation to the pharmaceutical industry was demonstrated in an opinion piece (Ogilvie & Eggleton, 2015) published in the Toronto Star by Kelvin Ogilvie & Art Eggleton, respectively the Chair and Deputy Chair of the *Senate Standing Committee on Social Affairs, Science and Technology* which had just issued a report on *Prescription Pharmaceuticals in Canada* (Standing Senate Committee on Social Affairs, Science and Technology, 2015). The main thrust of the report, and particularly of the companion opinion piece in the Star, was to draw attention to Health Canada's wide-ranging regulatory ineffectiveness, even citing "...the department's failure to provide our Senate committee with reliable testimony." The opinion piece and the report provide little more than a timid insinuation of the culpability of the pharmaceutical industry in Canada. Unfortunately, the Committee's approach probably sends a mixed message to Canada's regulator – that the government expects them to effectively regulate the industry, but that the regulator should not expect that government will have its back when Big Pharma pushes back. Health Canada finds itself in the unenviable position of having to work under constraints imposed by a government that is apparently loath to publicly call out the pharmaceutical industry for its misdeeds.

Furthermore, the statements from the Committee on Health Canada's role in the country's pharmaceutical problems are consistent with commentary by Dukes et al. (2014) regarding a tendency for state actions to focus on, or at least to include, its regulators. They cite a US example of a ring of both FDA & industry employees who, for their collusion in criminal acts, were sentenced to prison, fines, and community service (p196). In another case, the Head of China's State Food and Drug Administration was found guilty of gross corruption, having accepted 5.5 million Yuen (approximately \$3.3 million CDN) in bribes to approve drugs that were, in some cases, known to be dangerous (p193). The official was executed by the state.

This section of the report on the pharmaceutical industry has attempted to provide a focus on Canadian cases set against the international backdrop described by Dukes. It is important to keep in mind that the pharmaceutical industry is a global multi-national entity. This means that some of the harmful practices cited at the beginning of this section, while not occurring in Canada specifically, can have a global impact and therefore still affect the well-being of Canadians. Examples would include tampering with research trials and published findings, misleading advertising in medical journals, as well as the manipulation of patent law, international supply chains, and international conventions.

Clearly, there is a disturbing culture of inhumanity that pervades the upper echelons of the pharmaceutical industry, and one is challenged to imagine how such a culture could exist within a civil society and be tolerated by a government that held genuine concern for the welfare of its citizenry. The cases presented herein are illustrative of the enormity of the challenge before us in reforming these cultures of indifference within both the industry and government.

Before concluding this evaluation of the pharmaceutical industry's performance, it must be acknowledged that, unlike the products of the tobacco and alcohol industries, many of the pharmaceutical industry's products can improve our health status. Some of its products save lives. For this important and honourable role, the industry and its leaders are very handsomely compensated with an elevated social standing in Canadian society that includes entitlements and financial rewards that are far out of the reach of almost all Canadians. But what a civilized society should not do is to further entitle the captains of this industry by allowing them, at their convenience, to game and ignore legislation in a relentless attempt to gain even more wealth. All too often this pursuit is at the expense of the public's health and safety. Neither should a civilized society abide government regulation that too often responds to industry turpitude with diversion, secrecy, silence, and apparent indifference. Finally, it is imperative to consider the implications of the poor stewardship of our pharmaceutical medicine supply for the supply of cannabis to Canadians for medical purposes.

The reader is reminded that the pharmaceutical industry is a legal, government-regulated, commercial drug industry.



### 3.7.4 The Cannabis Industry

The Canadian Tobacco, Alcohol and Drugs Survey (Health Canada, 2016a) reports that in 2015, 3.6 million Canadians age 15 and over reported having used cannabis in the previous year. Fischer et al. (2016) have estimated that in a given year, 380,000 Canadians (10.5% of users) show signs of cannabis use disorder. Annual individual participation in specialized addiction treatment for cannabis problems is estimated at: 76,000 - 95,000. The authors also provide estimated annual ranges of 89 - 267 for cannabis-related motor vehicle accident (MVA) fatalities, and 6,825 – 20,475 MVA injuries. The acknowledged imprecision of these estimates is an unavoidable result of the current capacity for collecting data on cannabis-related harm – something that must improve as Canada approaches the drug's legalization for recreational purposes.

Despite the documented harms, some cannabis users find that the drug can bring relief for a variety of physical discomforts. Thus, Canada is one of many jurisdictions in the world that has legalized a commercial cannabis industry for medical use. For this purpose, it is a legal, government-regulated, commercial drug industry. An examination of this novice industry must begin with an acknowledgement of the considerable and frequent concern expressed about the lack of scientific evidence supporting the use of cannabis for most of the ailments for which it is commonly requested and sometimes provided. Cannabis as medicine is not provided to patients with the customary due diligence with which other medicines with a potential for harm are prescribed and dispensed (Wilkinson & D'Souza, 2014). And yet, the practice continues with inadequate funding for research to provide the guidance needed by health care practitioners. This situation represents a significant failure in evidence-based policy and regulation.

The path by which many patients acquire their medical cannabis falls seriously short of what supportive Canadians may have assumed medical cannabis provision to entail, which is:

- a diagnosis of a specific condition for which there is evidence of effectiveness of cannabis as a medicine;
- the diagnosis is made, and the prescription issued, by a licensed, knowledgeable health care professional working in a regulated health care facility; and,
- the dispensing of the medicine is overseen by a licensed, knowledgeable health care professional working in a regulated health care facility.

These expectations represent the customary manner in which the provision of medicine is authorized and dispensed in Canada, and are thus reasonable expectations. The recently-revised Access to Cannabis for Medical Purposes Regulations (ACMPR) allows for patients to receive a prescription from a qualified health care provider and obtain their cannabis by mail delivery from a government-licensed supplier. The patient may also request permission to grow their own cannabis at home. Permission is only granted if certain safeguards are put in place. All other mechanisms or means for the acquisition of cannabis for medical or recreational purposes, including all 'dispensaries', are illegal. The confusing mosaic of illegal commercial options, dominated by these

dispensaries, has arisen from the inconsistent and incoherent manner in which the medical cannabis industry in Canada has been designed, implemented, and most importantly, remains subject to inadequate regulation and at best sporadic enforcement.

A report filed by a CBC journalist (CBC News, 2015c) provides an example. While in Vancouver on an assignment unrelated to medical cannabis, the journalist was approached on the street by a sales representative of a nearby cannabis dispensary and invited to apply for a card to buy medical cannabis. Recognizing the good fortune of stumbling upon an opportunity for an interesting story, the journalist obliged. Once at the dispensary, the journalist attended an interview with a naturopath via remote video connection. A few questions revealed that the reporter was under stress in his job, which was deemed sufficient for the issuance of a card to purchase cannabis for medical purposes. Increasingly, cannabis dispensaries have eliminated the pretence of an assessment altogether. The same CBC report told of another Vancouver operation providing cannabis product from a vending machine. While major Canadian cities such as Vancouver and Toronto are now attempting to place more restrictions on such operations, many remain in business contrary to federal law.

Despite the lack of a solid evidentiary basis for the effectiveness of cannabis as medicine, there may very well be legitimate benefits for some who use it to provide relief from various discomforts. To be fair, there are prescribers and (even illegal) dispensers who appear to attempt to operate in a responsible manner. However, there would seem to be a very simple principle that could begin to bring sense and cohesion to the situation. If cannabis is medicine, then it should be treated as medicine in the same manner as any pharmaceutical product.

In contrast, the overall enterprise is characterized by limited evidence for effectiveness and a lack of control over who is currently prescribing and dispensing. It should be no surprise that a significant portion of the provision of medical cannabis has devolved into little more than a blatant fraud to generate private revenue by selling product to people for purely (illegal) recreational use or, at best, questionably-substantiated therapeutic need. Two different Canadian political parties have formed a federal government and failed to address this situation in an effective manner. The job has been left to local law enforcement where limited capacity, and perhaps limited interest, makes intervention sporadic and haphazard with little overall impact. The illegal, and often wily, dispensaries venture on in full defiance of the law.

Even more astonishingly, an equally cavalier attitude towards regulation and the law can be found among the legal, licensed growers of medical cannabis in Canada. This report (section 3.6) has already covered the issuance of six citations against licensed growers by Health Canada for product safety issues. An additional citation was issued to twenty separate producers for improper advertising practices. The citations were sent after continued infractions following the issuance of an advertising standards bulletin to all producers five months earlier (Health Canada, 2017).

Disregard for protocol has also emerged in the cannabis industry as it relates to investor relations. Canadian securities regulators found that 25 of 62 newly-registered medical cannabis companies were misleading investors with disclosures that "raised serious investor protection concerns". All of the applicants were already involved in other forms of business such as mining, oil, gas, technology, and agriculture, suggesting that the misleading disclosures did not arise out of business inexperience (McFarland, 2015). As a result of a separate investigation, another company, CEN Biotech, submitted an application that was so seriously riddled with misrepresentation that Canada's Health Minister was moved on two separate occasions to refer the matter to the RCMP for investigation (Robertson, 2015).

The current chaos in the medical cannabis industry in Canada has added only confusion to the discussions on law reform for recreational use. The legislative and regulatory quagmire that has emerged for medical cannabis does not bode well for the development of sound public health policy and regulation for recreational use of the drug. The planned transition to a recreational industry has already provided considerable cause for concern. These issues will be addressed in section 3.7.5 of this report, *The Canadian Cannabis Industry in Transition: More Pretense & Perils*.

Several state jurisdictions in the US have legalized the sale of cannabis for recreational use. Already, there are disturbing developments that are reminiscent of the cannabis industry's older drug industry siblings. The cannabis industry, in at least one US jurisdiction, has shown outright contempt for protection of the public's health and for democratic processes. In Colorado, the cannabis industry successfully manipulated and *gamed* the political system to sabotage *Ballot Initiative 139*, a grassroots-initiated attempt to protect the public's health through the introduction of child proof cannabis containers, lower product potency, and health warnings on container labels. First, the industry attempted to use the courts to prevent these changes, and lost. It then tried a different approach. In US state-level ballot initiatives, the sponsor must collect a minimum number of signatures from eligible voters for the initiative to proceed to a ballot. There are private companies that have effective systems for collecting large numbers of signatures to support ballot initiatives, and they charge a fee for this service. The cannabis industry paid all signature collection companies in the state of Colorado not to work on collecting signatures to support Initiative 139. When Initiative 139 sponsors attempted to hire a company from Arizona, the industry paid off that company as well. This effectively sabotaged the required documentation of public support to allow Initiative 139 to proceed (Gazette, 2016). This is a powerful demonstration of the industry's contempt not only for public health protection but also for the very democratic process that allowed the industry to come into existence in the first place. Just as disturbingly, state legislative and justice bodies stood idle. One might argue that Canada's political system is sufficiently different that such strategies would not be possible. However, such an argument misses the point which is that in service of revenue maximization, the industry will exploit whatever regulatory vulnerabilities or legislative mechanisms are available to it within any given jurisdiction.

Disregard for the rule of law in the US cannabis industry does not end with its indifference to public health and its corruption of democratic process. Tax evasion by legal regulated medical cannabis retail outlets has also been documented as a problem in Washington. Kleiman et al. (2015) have estimated that reported sales of legal cannabis for tax purposes are barely one-fifth of actual sales.

In considering the varied and serious improprieties of the cannabis industry, the reader is reminded that they occurred within legal, government-regulated, commercial regimes for medical use in Canada and for medical and recreational use in the United States.

It might be argued that legal cannabis regimes are still in their infancy, and that more time is needed to *get it right*. This argument provided the invitation to investigate our more mature, legal, commercial drug industries in terms of their conduct and the associated track record of their regulation by government. This report has already provided the deeply disappointing results of that investigation.

### **3.7.5 The Canadian Cannabis Industry in Transition: More Pretense & Perils**

#### **3.7.5.1 The Promise and the Reality**

Our examination of drug industry conduct and its regulation has demonstrated that there is a troubling difference between the promise of regulation and the legacy of perils that continues to metastasize. Clearly, the legal, government-regulated drug industry is not the panacea that has been presented to the public throughout the government's cannabis law reform campaign.

The immense failure of drug industry regulation and the profound implications of this failure for the establishment of a new drug industry warrant a brief summary as Canada engages the transition of the cannabis industry from a strictly medical one to the inclusion of recreational use. In sum, our existing legal, government-regulated drug industries have a legacy of frequently subjugating the public's health and safety to the maximization of their revenue. There are numerous troubling examples of legal drug products that are substandard, misrepresented, of illegal potency, and contaminated with harmful toxins. In the worst cases, harmful products have been knowingly sent to market by a legal industry and unknowingly ingested by consumers - sometimes with serious, even life-threatening, consequences. These industries have also promoted the use of their products in a manner that largely conceals the risks in favour of glamorous depictions and misrepresented benefits. Drug product promotion has also targeted specific exploitable populations such as youth, women and those in developing, impoverished countries. In their relentless, indiscriminate pursuit of revenue, these industries have also shown a serial, profound disregard for the rule of law.

The role of government regulators is to provide protection from the conduct of industries that might cause harm to the public. However, drug industry regulators have often been ineffective, sometimes with apparent indifference towards public health. On some occasions they have been actively complicit in industry misconduct. The regulatory failure observed for drug industries includes the development of regulatory frameworks that are excessively industry-friendly and, in other cases, well-designed frameworks that have not been enforced. There is also failure of regulatory authorities to hold drug industries accountable in a manner that discourages first and repeat violations. In sum, government regulation has, far too often, been unacceptably tolerant of drug industry misconduct, even when it places the public in harm's way. The overall picture is that drug industry regulation does not simply fall short of perfect; it is considerably less than adequate. This inadequacy contributes towards the perennial high levels of personal and societal harm associated with drug use. This report does not question the importance of regulation *in principle* in protecting the public's health. However, the effectiveness of regulation *in practice*, as witnessed with existing legal commercial drug industries in Canada and elsewhere, provides us with considerable cause for concern as Canada prepares for an immense expansion of its cannabis industry.

### 3.7.5.2 An Ominous Beginning

Imagine a scenario in which a principle architect of an epidemic in one industry is allowed to become involved in the emerging cannabis industry. An alarming, almost unfathomable, example has been recently reported by Robertson (2016b). Part of this story has already been covered in section 3.7.3 of this report, *The Pharmaceutical Industry*. The reader will recall the case of Mr. John H. Stewart, President of Purdue Pharma Canada and subsequently CEO of Purdue Pharmaceutical in the US. Mr. Stewart was an architect and a denier of Purdue's role in the genesis of the opioid epidemic. He also incurred the wrath of the US government for Purdue's continued malfeasance and lack of cooperation with government information requests. Mr. Stewart might be the poster character for almost everything that is wrong with legal drug industries. After leaving Purdue, Mr. Stewart formed a new company called Emblem Pharmaceutical, based in Paris Ontario. Emblem applied for and received a license from Health Canada to produce and sell medical cannabis. In a private investors meeting, Mr. Stewart described Emblem's intent to innovate medical cannabis by producing pharmaceutical pills and capsules. With haunting irony, Mr. Stewart described how Emblem would promote cannabis as an alternative to opioid painkillers and their attendant harms (Robertson, 2016b). Mr. Stewart's plan appears to make a reality of one of the most extreme conspiracy theory scenarios - become wealthy by creating a problem, and then become wealthier by selling a solution.

In granting Emblem's medical cannabis license, Health Canada appears to think that this is entirely acceptable. One might also ponder the message this sends to all those Canadians who lost, and who are yet to lose, a loved one from the still unfolding opioid crisis. And what will Emblem's innovation of pharmaceutical cannabis mean for the safety of Canadian users? And what are the implications for the fast approaching

legalization of cannabis for recreational purposes? Emblem is also listed as being on the “Advocacy Committee” of the trade association, *Cannabis Canada Association* which, on its website, describes its scope of interest as the “...use of cannabis for medical and non-medical purposes.” This mandate of *Cannabis Canada Association* is quite different from other cannabis trade associations in Canada which limit their interests to medical cannabis. Clearly, a role on an “Advocacy Committee” would involve a major responsibility for advocating with Health Canada for industry favour.

The cannabis industry in Canada has already begun to prepare for a monumental transition from a strictly medical focus to one that will sell product for both medical and recreational purposes. *Tweed Inc.* and *Tweed Farms Inc.* are subsidiaries of *Canopy Growth Corporation*, a listed company on the TSX. It is one of Canada’s largest licensed cannabis producers. Canopy’s anticipation of the market expansion is evidenced by its plans for the expansion of Tweed’s growing facilities - doubling the size of its Smith Falls Ontario operation and opening an additional operation in Niagara-on-the-Lake Ontario (McCooley, 2016). Canopy also recently acquired another large Canadian cannabis producer, Mettrum, a company that (as reported earlier in section 3.6) had been previously sanctioned by Health Canada for its deliberate and concealed practice, over several years, of exposing its customers to a dangerous banned pesticide (Robertson, 2017).

In early 2016, *Tweed* and American entertainer and self-described cannabis aficionado *Snoop Dogg*, announced a partnership to promote each other’s commercial interests. In a CBC interview, Tweed CEO Bruce Linton, speaks openly about Snoop Dogg’s role as a ‘key icon advisor’ in Tweed’s move from the medical market to the recreational market (Foote 2016). The partnership was emblazoned on Tweed’s web site (<https://www.tweed.com/>) as “Leafs by Snoop” when accessed on November 16 2016. The partnership between Tweed and Snoop Dogg is an interesting one. Wikipedia (2016b) cites news items from various media sources such as The LA Times, Associated Press, Reuters, Seattle Times, BBC News, MSN, and Huffington Post that paint a somewhat alarming picture of Snoop Dogg’s pastimes. At times, Snoop Dogg has maintained a relationship with gang members. Between 1990 and 2015, he compiled a criminal record that includes numerous arrests and prison sentences for a variety of crimes involving possession of firearms, other weapons and various illegal drugs, vandalism, assault, and homicide. He was ultimately acquitted of the latter charge. For periods of time, he has been barred from entering The United Kingdom, Australia, and Norway.

A criminal lifestyle is also reflected in Snoop Dogg’s artistic productions replete with allusions to criminality and violence (Giovacchini, 1999). Tweed’s choice of Snoop Dogg as a promotional partner gives us cause to wonder about the branding strategy that Tweed has in mind for its entry into the recreational cannabis market. There is a burning irony in this strategy given that the Canadian government’s often stated primary purpose for legalizing cannabis was to protect young people from the influence of *criminal elements*. The Prime Minister’s public comments in support of legalization include references to protecting cannabis users from “street gangs” and “gun-runners”

both of which seem to be a more prominent part of Snoop Dogg's artistic expression and lifestyle than they are a part of the actual contraband trade in cannabis. (See section 2.4 of this report.) Snoop Dogg has over fifteen million followers on his Twitter account which he uses on a daily basis to promote his own line of cannabis product and to display his edgy thoughts and lifestyle. One could reasonably assume that many of his followers are children.

Tweed's is a brazen act during a time of heightened political sensitivity, when good judgement might dictate decorum of restraint. How will Tweed conduct itself once it possesses the blessing of full license from the Canadian government to normalize and glamourize cannabis for recreational use?

These concerns were raised by the author in a submission to the Task Force on Cannabis Legalization and Regulation in late August 2016, with a specific recommendation that the Task Force pursue a discussion with the government on this potentially embarrassing matter. When Tweed's website ( <https://www.tweed.com/> ) was accessed on December 22 2016, there were no prominent references to Tweed's partnership with Snoop Dogg. It is not known if the author's or others' similar submissions to the Task Force had any impact on this change. However, at another website entitled "Leafs by Snoop", ( <http://www.leafsbysnoop.com/canada#introducing-ca> accessed December 22, 2016), the following reference to the partnership appears, followed by Tweed's logo:

*"The culmination of Canada's finest cannabis grower and the world's most knowledgeable cannabis icon, Leafs By Snoop is a truly unique offering, available only to Tweed patients."*

It is possible that Tweed's preparation for the expansion to recreational cannabis has been in play for quite some time, as suggested by the participation of a Tweed founder in an executive capacity on the Liberal Party of Canada's Board of Directors. In a 2015 Globe & Mail article, Mr. Chuck Rifici is identified as a volunteer Chief Financial Officer for the Liberal Party and a co-founder of Tweed (Kirkup, 2015). A search of the Liberal Party's website in October of 2016 showed that Mr. Rifici was no longer listed in such a capacity nor is his association with Tweed any longer acknowledged on Tweed's website. Nonetheless, the association, regardless of its current public disclosure status, raises questions about undue influence. Should Canadians have confidence in the capacity of their government to dutifully navigate the challenging regulatory intricacies of introducing a new, potentially-harmful drug industry to Canada in the face of such questionable judgment in their oversight of the industry? More serious is the potential for making a mockery of Canada's drug industry regulatory system and the public health and safety issues that are at stake. As demonstrated earlier in this report, the government has significantly exaggerated the perils arising for cannabis users from the contraband trade. Consider the relationships between the federal Liberal Party and Tweed, as well as Tweed's partnership with Snoop Dogg. The government might do well to show more concern for the normalization and glamourization of drug-related

criminal activity arising from the branding strategies of at least one of its already-licensed and Party-connected cannabis producers.

Government has appeared to grant considerably more and easier access to its decision-making processes for cannabis industry representatives than it has for public health advocates. A report from CTV News documented eighty-five entries in the federal government's Lobbyist Registry as of March 2016 (Woodward, 2016). These were private meetings between cannabis industry representatives and senior government officials. A subsequent investigation of the Lobbyist Registry by this author determined that between April and December 2016, Canopy Growth alone had ten such meetings. Canopy (parent company of Tweed and Mettrum) was represented by a consultant from Ensign Canada, a public relations firm with a self-declared specialty in government relations. Representatives of the Government included Directors of Policy Affairs, Policy Advisors, MPs and Senators. (Office of the Commissioner of Lobbying of Canada, 2017).

The intended impact of such meetings, employing the lobbying acumen of professional consulting firms, is simply to facilitate industry-enabling government policy. This premium type of influence stands in stark contrast to that used by most interested Canadians, including public health authorities. For the most part, they attended large gatherings, made written submissions, or completed an online questionnaire. Such inequitable levels of access can have important implications for policy balance between industry interests and public health protection.

The Canadian Government has a responsibility to shepherd the cannabis industry's transition from medical use to recreational use. Indications of what might be expected began during the 2015 federal election campaign and continued through considerable media exposure during the new government's first year of rule. As demonstrated earlier in this report, the government's narrative has been centred on unsubstantiated perils within the contraband cannabis trade and unsubstantiated benefits of a legal government-regulated industry.

### 3.7.5.3 The Task Force on Cannabis Legalization and Regulation: A Conflict of Interest?

A premium level of influence can also become an important outcome determinant during the study and developmental phases of introducing new legislation. These phases began, in earnest, with the work of The Task Force on Cannabis Legalization and Regulation. The Task Force membership included representatives from health and legal professions, municipal politics, law enforcement, and academia. It included no representatives from the cannabis industry thus precluding any direct conflicts of interest. The government has a procedure for declaring *indirect* interests in order to further prevent or minimize undue influence of any financial interests in the development of legislation.



The Chair of the Task Force on Cannabis Legalization and Regulation, the impressively accomplished Anne McLellan, has quite properly declared particularly notable “indirect financial interests” in the “Summary of responses from Task Force members regarding their interests and affiliations”. The specific interest reported involves Ms. McLellan’s declared role as a

*“Senior advisor with Bennett Jones, a law firm in Edmonton since 2006. The firm represents some clients with interests in the legal marijuana business.”* (Government of Canada, 2016).

Among the business associates of Bennett Jones is the previously-discussed cannabis producer, *Tweed*, the same producer whose co-founder has held a working relationship with the Canadian Liberal Party’s National Board of Directors. It is apparent that Bennett Jones LLP has been cultivating a particularly close relationship with Tweed. An item on the law firm’s website describes two partners from Bennett Jones’ Toronto office having been invited to, and attending, Tweed’s official launch of their Smith Falls facility (Bennett Jones, 2014). The article acknowledges Tweed as a “...*frontrunner in the hotly anticipated ‘Green Rush’...*”. It is also clear that the firm’s interests in the *green rush* go much further than Tweed. In a Toronto Star article, one of the same Toronto partners at Bennett Jones speaks of the changing and growing cannabis industry and of Bennett Jones’ ambitions for that industry: “*We want to be the go-to advisors.*” (Flavelle, 2015). “Bennett Jones LLP” is also listed under “General Membership” on the website of the cannabis trade association, *Cannabis Canada Association*. Bennett Jones apparently has an interest in seeing the cannabis industry prosper financially, and it is reasonable to expect that Ms. McLellan would be predisposed to supporting her employer’s financial success. There is nothing improper with any of that. It is all appropriate networking among like-business interests. But matters could be seen as having gone awry when Ms. McLellan was appointed Chair of the government’s Task Force on Cannabis Legalization and Regulation. With its Final Report submitted directly to Cabinet, the Task Force is positioned to have substantial influence on the key decisions that will shape Canada’s legal cannabis regime. This includes decisions on how this industry will be able to conduct its business, and how government will regulate it. Many of those decisions must resolve potential tradeoffs between industry revenue and public health protection. For example, a higher minimum age of twenty one would better protect public health and safety while a lower age of eighteen would generate more sales and revenue. Restricting product innovation such as a ban on cannabis edibles would likely contain cannabis use and associated problems, while allowing edibles would increase sales and revenues. A mail-order only system for purchasing cannabis would prevent increased normalization and glamourization of cannabis while allowing highly-visible retail outlets (as exist for alcohol) would increase visibility, purchases and revenue. A ban on advertising, versus allowing advertising, would carry the same potential impacts. Clearly, any interest of a Task Force member that leans towards industry interests has the potential to compromise the public’s health. The financial interest may be indirect, but that does not eliminate its potential impact. The fact that the Task Force member concerned is the Chair is particularly troublesome.

In the best possible scenario, the indirect business involvements declared by Ms. McLellan may be ultimately inconsequential. However, the broader entanglement of interests among Canada's current ruling party, at least one major cannabis producer, and a prestigious law firm connected to both, and of the cannabis producer's business relationship with criminal elements in the US, may nonetheless pose a credibility risk. It may threaten the confidence that at least some public health advocates and the general public will have in the integrity of a process meant to ensure a public health priority in cannabis law reform. Skepticism is clearly justified given the context of the legacy of industry-government alliances and industry-friendly regulatory practices seen in our longer-established drug industries. It is reasonable to expect that similar dynamics might come into play in the transitioning cannabis industry as well. When selecting its Task Force Chair, our government would have done well not to provide fuel for this reasonable concern. That fuel was provided when government selected someone whose employer was not only intimately tied to the cannabis industry, and had identified that industry as a premium business growth opportunity, but was also positioned to benefit financially from that industry's success. The financial interest was properly declared, but that makes it no less of an interest. The purpose of declaring the *interest* is to expose it to public consideration as to whether it constitutes a *conflict of interest*. This report concludes that it is an unacceptable conflict that is incompatible with the protection of the public's health.

The Task Force's Final Report, quite legitimately, acknowledges the extraordinary complexity of cannabis law reform and the challenge of resolving three major pressure points in arriving at a balanced piece of legislation:

- 1) diminishing the impact of the contraband cannabis trade;
- 2) addressing the needs of a new emerging industry; and,
- 3) protecting the public's health.

If the Task Force felt a pressure point for the contraband cannabis trade issue, it did not arise from the available evidence. This report has already described the evidence that the government's depiction of the contraband cannabis industry in Canada is baseless. These findings cast considerable doubt on the contraband industry as a legitimate pressure point. The government's relentless, stigmatized misrepresentation of the contraband cannabis trade can be viewed as part of an overarching strategy to reduce competition for the emerging legal industry, rather than the unsubstantiated need for protection of cannabis users. The approach, all along, has been disingenuous, to say the least. If the *faux* issue of the contraband trade is eliminated, there are two major pressure points remaining: industry interests and protection of public health. Most of the shortcomings of the Task Force's Final Report can be understood within a framework of disproportional attention to serving industry's interests, often at the expense of the public health component of its mandate. The following cases provide examples in which industry revenue appears to emerge as the priority, in some cases on a basis that is incompatible with the available evidence, with testimony provided, and with the Task Force's declared "guiding principles".

### 3.7.5.4 Task Force Recommendation on Minimum Age

A significant compromise of the Task Force's responsibility to protect public health is seen in its recommendation of a legal minimum age for cannabis use at eighteen. The Task Force's rationale for choosing eighteen is an elusive one. Part of the defence for this recommendation is the Task Force's concern that an older minimum age provides opportunity for a contraband industry that poses a serious threat to the safety and propriety of cannabis users - a contention that has already been refuted in section 2.4 of this report.

The Task Force asserts that there is little basis to direct the selection of an optimal age. Yet there seemed to have been insufficient interest in finding useful guidance. For example, the Task Force does not acknowledge currently recommended best practice to raise the minimum drinking age to twenty-one (Babor et al., 2010), as it has been standardized in the US. There was also no mention that, in 1971, Ontario reduced the legal drinking age from twenty-one to eighteen, and then in 1979, increased it to nineteen to reduce alcohol use in high schools and to reduce impaired driving among young people who were relatively inexperienced drivers and drinkers. The Task Force missed an opportunity to learn important lessons from the regulation of alcohol. With a minimum age of eighteen, approximately half of Canadian grade twelve students will be able to legally consume cannabis – a right that could lead to more use during school hours, and one that could bring additional disciplinary challenges for schools.

Subsequent to the release of the Task Force's Report, The Minister of Health for British Columbia has been advocating for raising the minimum age of use for tobacco in that province to twenty-one from the current nineteen (Canadian Press, 2017). Given recommendations from health authorities that favour age twenty-one for both alcohol and tobacco, the Task Force appears to be paddling against the current of public health thinking.

The Task Force also reports: *"Many [stakeholders] suggested that 18 was a well-established milestone in Canadian society marking adulthood."* Actually, it is just one such milestone. Both nineteen and twenty-one have also traditionally served as such milestones.

Finally, the Task Force acknowledges that: *"Health-care professionals and public health experts tend to favour a minimum age of 21."* (P 17) The Task Force clearly chose not to assign much weight to the input from public health advocates in the matter of minimum age. While the Task Force discloses the preferred choice of a minimum age advocated by public health advocates, there is no disclosure of the minimum age advocated specifically by industry stakeholders – information that is perhaps conspicuous by its absence. However, the Cannabis Trade Alliance of Canada (2016) posted its submission to the Task Force online in which they recommend a minimum age of eighteen or nineteen.

There may be an unacknowledged pressure that guided the Task Force's choice of eighteen. Cannabis use is quite prominent among eighteen to twenty year olds, so their exclusion from the legal market in the case of a minimum age of twenty-one, or their partial exclusion from a legal market with a minimum age of nineteen, would impose a considerable perennial loss of revenue for Canada's legal cannabis industry. One can only speculate as to how significant of a factor this was in the Task Force's decision.

### 3.7.5.5 Task Force Recommendation on Product Promotion (Advertising, Marketing)

Another subjugation of public health to industry interests can be seen in the Task Force's recommendations on product promotion:

*"The Task Force agrees with the public health perspective that, in order to reduce youth access to cannabis, strict limits should be placed on its promotion."* (p19).

The first problem with this perspective that runs through much of the Task Force's analysis and recommendations is the apparent presumption that advertising represents a threat only to youth. Youth may be the most vulnerable target for drug product advertising but they are not the only one. The Task Force seems oblivious to a significant research literature cited earlier in this report that addresses the adverse impact of advertising on adults as well, particularly in the case of the targeting of women by the alcohol industry. This evidence was cited in the author's August 2016 submission to the Task Force.

Equally disturbing is the fact that the above statement from the Task Force misrepresents the "*public health perspective*" as it was provided to the Task Force by Canada's major public health policy organizations. These organizations did not call for mere "*strict limits*", but rather a *full ban* on all forms of product promotion. The calls for a full ban can be viewed in reports issued by The Chief Medical Officers of Health of Canada & Urban Public Health Network (2016), The Canadian Public Health Association (2016), The Canadian Medical Association (Spithoff et al., 2015), The Canadian Paediatric Society (Grant, 2016) and the Centre for Addiction and Mental Health (2016a). The difference is a significant one. Limits, however strict, are much more open to interpretation than is a full ban. Limits present more opportunity for industry to game the restrictions, by exploiting unintended omissions or ambiguities in the written regulations, and by lobbying government for flexibility in their interpretation.

The reader will recall from earlier in this report that Health Canada had to issue two serial communications that threatened several cannabis producers with sanctions, including license suspension, for repeated instances of improper advertising. Enforcement of *restrictions* accordingly becomes a much more difficult and time-consuming task for government than does a less ambiguous *ban*. The challenges of dealing with restrictions are all too familiar to public health authorities from their many years of experience with the conduct of our other drug industries. Their advice to the

Task Force was well thought-out. Yet, the Task Force chose not only to disregard the advice from its public health authorities, but to misrepresent it in their Final Report.

On closely-related content:

*“The industry representatives from whom we heard, while generally supportive of some promotion restrictions—particularly marketing to children and youth, and restrictions on false or misleading advertising—made the case for allowing branding of products.”*

and,

*“It was suggested that brand differentiation would help consumers distinguish between licit and illicit sources of cannabis, helping to drive them to the legal market.” (p18).*

The credibility of the first statement should be appraised within the context of Health Canada’s serial communications on advertising practices to Canada’s cannabis producers (also unmentioned in the Task Force’s report). The second claim appears to have been found compelling by the Task Force, and yet the claim seems unlikely. Any packaging that contains product information such as strain name, price, amounts of THC and cannabidiol, and health warnings, will be easily distinguished from contraband product. There is no further advantage arising in this regard from adding a brand name. At that point, the packaging becomes an advertisement. Adding a brand name will also require more regulations and enforcement on issues such as variations in font style and colour that can reinforce brand differentiation and therefore promotion.

An additional claim from industry advocates was that in order to achieve “*brand loyalty*”, producers would be inclined to produce high quality products and be more accountable to their customers. There may be some legitimacy to this claim. However, given the legacy of our drug industries, including the early days of the cannabis industry in both the US and Canada, it can be expected that product quality and safety would be more reliably served by regular, unannounced product testing and substantial penalties, including license suspension, handed out for failure to meet standards.

Comprehensive coverage of tobacco industry strategies to use brand packaging as a form of advertising can be found in Moodie et al. (2012). Simply stated, this pitch for branding by the cannabis industry stakeholders is a pre-emptive attempt to *game* public health efforts to limit the risks of product promotion. Continued attempts to game the system can be anticipated. The reader will recall the earlier discussion of Tweed’s mutually-beneficial promotional partnership with entertainer Snoop Dogg. The Task Force’s report has provided a recommendation that could compromise the impact of such a celebrity endorsement, were the recommendation to be adopted by the government. The recommendation reads:

*“Apply comprehensive restrictions to the advertising and promotion of cannabis and related merchandise by any means, including sponsorship, endorsements and branding...” (p 20).*

It will be interesting to watch Tweed's attempts to frame their relationship with Snoop Dogg as something other than a celebrity endorsement with considerable potential to influence children. The Snoop Dogg affair effectively illustrates the problem of the Task Force's approach to merely place limits on product promotion rather than the complete ban that was wisely recommended by Canada's public health authorities. Restrictions open the door to interpretation which requires regulatory oversight – a process that is at perpetual risk of favouring industry interests over protection of the public's health, and often does.

The recommendations from public health authorities for a complete ban on cannabis product promotion are well-founded. The Task Force's decision to avoid recommending a complete ban can be understood within three contextual pressures.

#### 1) Inequitable Treatment Relative to the Alcohol Industry

It is difficult to imagine that a commercial cannabis industry would quietly abide such a ban given the potential for significant market growth. It would not take long before cries of discriminatory treatment, (relative to the alcohol industry) are heard from cannabis industry lobbyists who will descend upon senior members of the government. The reader is reminded of the five cannabis trade associations claiming to represent the interests of Canadian cannabis producers and to consider like-minded spin-off businesses forming a groundswell of corporate interests positioning themselves for regulatory gain.

#### 2) A Prevailing Wave of Liberalization of Drug-Industry Regulation in Canada

In the case of alcohol, province-level policy in Canada has been shown to be inadequate (Giesbrecht et al., 2013). The authors made specific recommendations for improvement. However since the release of their report, policy changes are becoming more liberalized rather than serving public health as a priority. Ontario's major alcohol retailer, the Liquor Control Board of Ontario (LCBO), continues to engage in aggressive promotion of alcohol to the point that promotion is omnipresent across the province. The Ontario government has also recently introduced beer and expanded wine sales within grocery stores (Giesbrecht, 2015). The New Brunswick government has liberalized its alcohol policy by allowing home delivery of alcohol from its provincial retail system (CBC News 2016b), and British Columbia has liberalized its alcohol pricing (Judd, 2013). All of these moves are inconsistent with the public health approaches recommended in the report from Giesbrecht et al. (2013).

The trend goes beyond the provincial-level regulation of alcohol. The failure of the Canadian government to hold the pharmaceutical industry accountable for its role in the genesis and growth of the opioid crisis is another example of its drug industry enabling orientation, as is its failure to introduce legislation that would discourage similar industry conduct in order to prevent more epidemics in the future. Another example is the inexplicable permissiveness of all three levels of government in Canada with regards to illegal cannabis dispensaries that continue to proliferate across the land.

Early indications are that provincial governments will not be inclined to treat the recreational use of cannabis differently than it does alcohol. Ontario's Premier Wynne has publicly advocated for inclusion of recreational cannabis product in the province's alcohol retail system (CBC News, 2015d). This is another action that would be discouraged by public health authorities, if sales of both products occurred in the same outlet – a move that could increase cannabis use and concurrent use. While the Task Force's Report discouraged the adoption of this model, it ultimately recommended that the final decisions on retail should be left in the hands of the provinces, territories, indigenous communities and municipalities

New Brunswick has also adopted a very enabling posture for the cannabis industry by indicating an interest in selling cannabis in alcohol retail outlets. The government has already provided subsidization for the cannabis industry in that province, including funding for a cannabis producer and for *Civilized* an online cannabis *lifestyle* magazine (Poitras, 2016). A casual inspection of the contents of this *ezone* suggests that its primary market is not people who use the drug for medical purposes.

Only somewhat tangential, is the Ontario government's entry into the online gambling business. What all of these developments have in common is the subjugation of public health to revenue generation. It is also noteworthy that these government actions (or lack thereof) have been consistently discouraged by the public health authorities who are funded by government to advise them on such matters. Canadian drug policy currently appears to be in a *zeitgeist* of liberalization that is fuelled in part by industry interests as well as the governments own revenue interests. A hungry cannabis industry will not quietly abide the denial of its rightful place at the table of drug industry indulgence.

### 3) Concurrence with International Perspectives

From an international policy perspective, Room (2014) has noted the reluctance of the US Supreme Court to restrict alcohol and tobacco advertising, and cites the work of Gostin (2002) in this regard. It seems unlikely that a different attitude would prevail for cannabis. Such a proposed ban on cannabis promotion in states in the US that have legalized cannabis was blocked by a "freedom of commercial expression" provision – also referenced by Room (2014). It should not be assumed that, even in the absence of a legal "freedom of commercial expression" provision, judicial bodies in Canada would be inclined to think differently if a ban were implemented and then challenged by the industry. Canadian courts may very well decide to act in the *spirit of freedom of commercial expression*.

Despite the good intentions of public health authorities, domestic and international factors appear to work against a full ban on cannabis promotion being put in place. Given the Task Force's recommendation for strict limits rather than a full ban and the Canadian government's complete silence on the issue, it seems less likely that the emerging legislation will include such a ban. The Task Force's recommended strict limits on promotion are indeed quite strict. They seem to allow only some informational content and limited branding on the inside of retail stores and on packaging. However,

recommending that provinces, territories, indigenous communities, and municipalities retain some autonomy on retail issues opens the door to more permissive rules. And of course, the final legislation is still open to the influence at the federal level from industry lobbyists. If the key decisions are left to provinces, territories, indigenous communities, and municipalities, each provides more opportunities for industry lobbying of the respective levels of government. The danger is that industry has far more resources than do public health agencies to bring to that process. The playing field is far from a level one.

The actual danger is that, in place of a ban or even strict limits, *compromise* limits would come into force. For example, in Washington State, advertising is prohibited within 1,000 feet (305 meters) from schools (Washington State Legislature, 2013). The premise behind such a provision could only be that school-aged children do not venture beyond that distance from their schools – an obviously absurd premise. Such weakly-reasoned policy interventions may provide a partial explanation for the finding by Saffer & Chaloupka (2000) that comprehensive bans on tobacco advertising have had more impact than have partial ones.

In the absence of a complete ban on cannabis promotion, there should also be concern about the *slippery slope* phenomenon which would involve a slow erosion of restrictions on the promotion and availability of cannabis, as witnessed for alcohol. If so, cannabis ads can be expected to eventually become an omnipresent visual stimulus in our communities and media. This could include magazines, billboards, buses, bus shelters, radio, and television. In addition to these traditional platforms, is the most daunting promotional platform - the almost entirely unregulated internet – which may have more influence on younger people than do more traditional advertising media. Furthermore, given the nature of information flow through the internet, geopolitical boundaries are now fully permeable membranes. Even in the unlikely event of a cannabis advertising ban in Canada, there will be no way to prevent an infusion of internet promotion of cannabis from the US. Even *the great firewall of China* has been unable to provide that level of cultural protectionism.

### 3.7.5.6 Task Force Recommendation on Edible Products

Also conspicuous by its absence from the Task Force's Final Report is the input of industry on the matter of cannabis edibles, which are recommended by the Task Force for inclusion within the menu of legal cannabis products. The Task Force cites input from observers in Colorado:

*"Expect edibles to have a broad appeal. Cannabis products such as brownies, cookies and high-end chocolates are attractive to novice users."* (p20).

This advice suggests that edibles will be a very lucrative product and will probably increase use, particularly among younger cannabis users. The Task Force comments on another challenge:



*“The net result is that any discussion about regulating a new cannabis industry quickly leads to an understanding of the complexity of regulating not one but potentially thousands of new cannabis-based products.” (p20)*

This is a valid observation. However the challenge that it presents could be avoided by simply not allowing any edible products to be sold and therefore require regulation. The Task Force could have easily made a case for banning edibles, at least initially simply as a cautious approach, but chose not to do so. Instead, The Task Force tells of a movement in Colorado to improve various aspects of safe packaging and labelling of edibles. What the Task Force does not describe are the details provided earlier in this report (section 3.7.4) that these proposals were put forward by a grassroots movement in the form of *Ballot Initiative 139* – an initiative that was essentially sabotaged by the cannabis industry. Ultimately, only the weakest of measures managed to proceed. Amidst wide-scale bribery on the part of the cannabis industry in thwarting Initiative 139, the force of government regulation sat idle and impotent. Towards its recommendation in support of cannabis edibles, The Task Force mentioned, but assigned little weight to the occurrence of increased hospitalizations arising from inadvertent THC ingestion among children of parents bringing cannabis edibles to their home.

So, why would the Task Force maintain such a receptive posture towards the legal retail of cannabis edibles in Canada? One can only speculate as to which forces were in play to prompt it to allow edibles from the outset. This author is inclined to see the revenue interests of the industry as being a prime factor. While much of the basis for this inclination is clearly speculative, it is important to note that it is nonetheless consistent with a historic, pan-industry tendency of government regulators to be more favourable to industry revenue than to public health protection.

### 3.7.5.7 Task Force Recommendation on Distribution

There is also a lack of critical appraisal from the Task Force in its discussion of the distribution of cannabis in the new regime:

*“Indeed, most jurisdictions noted during our consultations that they had well-established and sophisticated government alcohol distribution networks that provided a secure and reliable means to distribute product.” (p33)*

The Task Force recommends that *“...the wholesale distribution of cannabis be regulated by provinces and territories.” (p.33).*

In the Task Force’s discussion, there was no mention of the alcohol and tobacco industries’ past involvement in criminal smuggling operations that compromised government-regulated distribution systems, and resulted in the loss of substantial taxation revenue. Regulatory efforts for a new cannabis industry would be wise to maintain a close watch for similar conduct, and such a recommendation from the Task Force would have been prudent.

### 3.7.5.8 Task Force Inattention to Misconduct and Criminality of Legal Drug Industries

Early indications from Canada and the United States suggest a trajectory for the emerging cannabis industry, and its regulation, that is similar to that of other established drug industries. This invites a skeptical response when our government attempts to placate concerns by invoking regulation as a safeguard of public health. The difference between the promise and the reality of drug regulation should be a major topic of conversation in the Canadian cannabis law reform campaign. In contrast, these issues have received insufficient attention and weight, including in the Task Force's Final Report. While there is an acknowledgement of the driver for much of industry conduct: *"...this new cannabis industry will seek to increase its profits and expand its market..."* (p18), there is no account of the legacy of pan-industry subjugation of public health. There is also no clear, direct statement on the legacy of misconduct and criminal activity in drug industries, and of regulatory failure to hold them in check. The closest the report comes is by way of reporting that it received input on the importance of addressing infractions:

*"There was strong support for addressing infractions by regulated parties—producers, distributors and retailers—within a regulatory framework, except where such activity threatened public safety." (P38)*

The last part of this statement, *"...except where such activity threatened public safety."* is ambiguous. In a telephone conversation with Health Canada staff in December of 2016, it was explained that the statement referred to activity among the illegal trade in cannabis.

There is another recommendation in the Report:

*"Implement administrative penalties (with flexibility to enforce more serious penalties) for contraventions of licensing rules on production, distribution and sale." (p 39)*

This recommendation holds some promise. However, a healthy skepticism should be maintained given that much of the regulatory failure seen in other drug industries arises not only from a lack of regulations or their enforcement, but from penalties of insufficient consequence to act as effective deterrents. This report's pan-industry examination suggests that mere administrative penalties will not be effective deterrents.

### 3.7.5.9 Inconsistency Between Recommendations and Guiding Principles

This section has demonstrated a tendency for key Task Force recommendations to favour industry interests over public health protection. This dynamic is inconsistent with some of the Task Force's guiding principles as identified in its report:

*“We also took a precautionary approach to minimize unintended consequences, given that the relevant evidence is often incomplete or inconclusive.” (p.2).*

*“...it is also our view that revenue generation should be a secondary consideration for all governments, with the protection and promotion of public health and safety as the primary goals.” (p12)*

Perhaps the latter statement was not intended to rule out a priority of industry revenue over public health and safety.

### 3.7.5.10 Political/Societal Context for Legalization

As is the case for any new legislative initiative, the outcome will be shaped by a prevailing political and societal context. This is also true for cannabis legalization. An important part of the political context is that drug industry misconduct does not arise in the form of random, unpredictable, unintended consequences. Rather, it is the calculated, systemic, and predictable result of a corporate culture that assigns priority to revenue generation over the protection of public health and safety. The misconduct is enabled by a highly tolerant orientation of government and its regulators towards the interests of industry. Subjugation of public health protection within a regulatory body such as Health Canada occurs with the understood expectation of government and sometimes under direct duress from government. Neither regulators nor public health authorities lack the knowledge or skills of how to safely regulate a legal drug industry. The problem is the lack of political will that is necessary to allow public health authorities and regulators to do their jobs. Industry is well aware of these dynamics and does what it can to exploit them.

Apart from this political context, there is also a broader societal context and narrative that provides disproportionate attention to only one of two types of drug crime – that committed by people who use and sell drugs that are illegal (e.g., cannabis). The earlier part of this section of *Pretense & Perils* has explored and emphasized the rarely-discussed other type of drug crime: corporate drug crime. These are crimes committed by drug companies that have license to sell a specific legal drug product (tobacco, alcohol) or type of drug product (pharmaceutical), but do so in a manner that is outside of what is legally allowed by that license. These incursions on the rule of law can have serious impacts on the health of large numbers of consumers who use the drug products. And these impacts can be much worse than the impacts of largely possession-related street drug offences. And yet, our criminal justice system continues to attach enormous stigma to, and mete out harsh and unforgiving punishment for, street-level drug violations. A case in point is the January 2017 British Columbia sentencing of Walter James McCormick to fourteen years in prison for street-level trafficking in fentanyl. Contrast McCormick’s fate to that of the pharmaceutical executives who were instrumental in the creation of the opioid crisis in Canada. They remain unpunished and at large. In at least one case, an executive was rewarded with a license to manufacture medical cannabis. His former employer, undaunted by a long

line of class action plaintiffs, is now taking its opioid epidemic to the third world. During McCormick's sentencing, Justice Bonnie Craig quite appropriately admonished him for his reckless disregard for human life. However, she may have demonstrated some insight into the greater scope of injustice when she noted: "McCormick did not create the problem with opioid addiction in the community. He is just one of the players in a far more complicated problem." (McElroy, 2017).

Nonetheless, our government's judicial policy continues to be unfathomably lenient on corporate drug crime, appearing to be more permissive towards criminals in business attire than towards those in *hoodies*. The inconsistency has been juxtaposed as *crime in the suites versus crime in the streets*. Crime in the suites is not just a violation of the law. It is also a violation of the public trust to provide responsible stewardship of a product with potential for significant harm to the public's health. Our legal drug industries have frequently betrayed this public trust. This perfidy is a far greater crime against society than are most cases of street drug crime. Yet, the individuals committing corporate crimes are rarely brought to justice.

The Final Report of the government's Task Force on Cannabis Legalization and Regulation is steeped in the prevailing political/social context. The major overarching shortcomings of its report are that it does not:

- acknowledge the systemic pan-industry failure of the regulation of drug industries;
- acknowledge the implications for an emerging cannabis industry; and,
- consider alternatives to the prevailing model of drug industry operation and regulation.

In fairness to the Task Force, it must be acknowledged that deconstructing that context or Canada's dominant model of drug industry, or proposing alternatives were not explicit expectations within the Task Force's terms of reference. The Task Force's recommendations must therefore be fairly viewed as being imposed by the prevailing, albeit oppressive and inequitable, political/societal context. While it is fair to acknowledge this context, the acknowledgment does not legitimize either the context or the shortcomings of the Task Force's recommendations.

*Cannabis Law Reform in Canada: Pretense & Perils* was written to make a contribution towards exposing the government's campaign of pretense and special interests without the constraints imposed by a terms of reference arising from Canada's injurious political/societal context. The consequences of our current approach to providing recreational and medicinal drugs have been understood for quite some time. And yet, year after year, industry and government abide the harms and costs. This represents an indefensible social injustice. Consider how unnecessary is the continued endangerment of the public's health and damage to the broader economy, in service of the escalating prosperity of drug industries that already possess substantial wealth. In the case of the emerging cannabis industry, under even the strictest regulatory regime, there will be an opportunity to earn enormous revenue. It is absolutely unnecessary to risk compromising public health in order to provide any further advantage for this industry.

How can government continue to abide this injustice for yet another drug industry in the face of its responsibility to protect the public's health and the nation's economy?

### 3.7.5.11 Canada Can Do Better

The good news is that the current scenario of harmful industry conduct, inadequate regulation and social injustice in Canada's drug policy is not immutable. Furthermore, the extensive harm and costs associated with the use of legal drug products can be reduced, probably substantially. Life in Canada would be enormously improved. So how does Canada get to '*enormously improved*'?

Canada will not get there by creating another profit-driven industry that will assign a high priority to market expansion and perpetually game any regulatory attempt to contain its ambitions. Nor will it get there by placating the public with fraudulent platitudes that promise a safe regulatory system. Nor will it get there through the tweaking of supply and regulatory models with piecemeal revisions that typically will not be adequately implemented or enforced. History and epidemiology teach that these approaches comprise a recipe for increasing the prevalence of cannabis use and, more importantly, the associated harms.

Canada should continue its pursuit of a legal, regulated cannabis regime as an alternative to an unregulated contraband one. However, a very different kind of supply and regulatory paradigm is required – one that discards revenue generation as a priority and genuinely places the priority on public health and safety. The best strategy for achieving a near-neutral public health outcome for cannabis legalization must have clearly-written requirements embedded within the legislation and regulations that will ensure several key features:

- 1) no activity that has the potential to increase demand for the product;
- 2) a well-resourced regulatory enforcement mechanism to monitor compliance with regulations;
- 3) a clear understanding and practice of zero tolerance for regulatory violations related to any breach of production, packaging, or retail protocols that pose a threat to public health and safety;
- 4) penalties for any attempt to game the regulatory system for financial gain at the expense of public health; and,
- 5) penalties for serious infractions must be of sufficient magnitude to act as effective deterrents to first and repeat offences.

Such a strict regime, if put into practice, would be unprecedented. Based upon experience thus far, there should be no expectation of a warm reception from our current government or from the cannabis industry to abide such stern impositions upon its *freedom of commercial expression*. But the traditional model of drug industry clearly does not protect the public. If a tightly-restricted model for the pursuit of profit is not palatable or feasible, then the only remaining option is to remove the profit motive altogether.

Neither of these proposed options are unprecedented ideas. The Canadian government would do well to heed the strongly-issued advice from The Rand Corporation's report on cannabis law reform (Caulkins et al., 2015), which is to avoid rushing from prohibition directly to commercial legalization. Rand recommends that jurisdictions patiently explore a variety of models. One of the models their report describes is a *not-for-profit model* which has several features that serve a public health priority very well. The current interest in cannabis law reform in Canada provides the opportunity to explore and even implement a not-for-profit model. The next section of *Pretense & Perils* introduces such a model.

## **Recommendation #2**

**The Canadian government should continue to work slowly and methodically towards the legalization of cannabis for recreational purposes, with a priority on the protection of public health and safety over revenue.**

## **4. A Stepped, Hybrid Model for Cannabis Law Reform**

### **4.1 Introduction**

A review of the literature related to cannabis law reform and the performance of our existing legal drug industries has led to the conclusion that neither decriminalization nor legalization alone will be a panacea. As a solution, *Cannabis Law Reform in Canada: Pretense & Perils* proposes a two-step hybrid model, which includes:

- 1) the immediate decriminalization of possession of small amounts of cannabis; and,
- 2) continuation of a slow methodical process of designing an innovative approach to legalization that would culminate in the establishment of a *not-for-profit cannabis authority* for making cannabis available to adults for recreational purposes.

Step one is relatively straightforward and has already been dealt with in detail in Section 2 on Decriminalization, so this section will provide only a short reminder of the legislative options and steps. It will also make some brief comments on references to decriminalization found in the Final Report of the Task Force. Details related to the second step of the hybrid approach, legalization, will provide the great majority of the content in this section.

This section builds upon the critical message of Section 3 on Legalization which was that the traditional for-profit model will not serve Canadians well, and the current rush to establish such an industry should be suspended. This section provides some rationale for a *not-for-profit model* and lays out a high level description of what such a model might look like. It is not intended to be an exhaustive treatment. Rather, it hopes to introduce enough information to stimulate thought and discussion and inspire further work from people holding a variety of areas of expertise that exceeds that of this author.

### **4.2 First Step: Immediate Decriminalization**

Legislatively, decriminalization should be less onerous and time-consuming than would legalization with all its regulatory challenges and potentially lengthy legislative process. Establishing a non-punitive decriminalization regime may be as simple as removing the possession offence for cannabis from the Controlled Drug and Substances Act. No new legislation and regulations would be required. This should provide a non-punitive approach to decriminalization that would not include provisions for fines or other punishments. If this process should turn out to require a long period for completion, the government should promptly implement a *de facto* approach. This would involve using the Public Prosecutions Act (PPA), as proposed by Murray Rankin, to empower the federal Attorney General to direct enforcement authorities and Crown attorneys to stop arresting and prosecuting people for possession of small quantities of cannabis.

Unfortunately, the government remains intractable on this matter, and the Task Force's Final Report remains unsympathetic:

*"While there are likely to be calls for special measures during this period, such as decriminalization of cannabis, governments should focus on the long-term success of the system."* (P 51)

This is unfortunate. The PPA could be implemented quickly and easily and would do nothing to deter the longer-term agenda of the government. The idea was discussed in the House of Commons as a result of a motion that was introduced and defeated. This debate would be clearly known to the Task Force. There is, however, a curious and perhaps promising recommendation in the Task Force's Final Report:

*"Implement a set of clear, proportional and enforceable penalties that seek to limit criminal prosecution for less serious offences."* (p 39)

This is clearly not non-punitive, *de facto* decriminalization. But it is an opening. Perhaps some light will enter.

There are other reforms that should receive consideration for inclusion in a decriminalization initiative. Reform could also decriminalize sales of small amounts of cannabis among close associates. This would prevent people from being charged with trafficking when they are simply sharing the costs of a small purchase of cannabis to realize an economy of scale in their purchase for personal use. In a discussion on trafficking the Task Force report, recommends:

*"And, the focus should remain on illicit activities for commercial gain, not "social sharing"."*

Another opening, perhaps; more light.

Finally, all Canadians with an active criminal record for possession of cannabis alone should be granted a record suspension. There are several jurisdictions world-wide that have brought in such reforms and could serve as valuable advisors to Canada on the specifics. On this issue, the Task Force declared in a response to a question at its December 13 2016 press conference that the issue was beyond its mandate.



## **4.3 Second Step: Establishment of a Not-for-Profit Cannabis Authority**

### **4.3.1 Introduction**

A primary distinction between the traditional for-profit model and the proposed not-for-profit model concerns the disbursement of revenues that are in excess of operating costs (including taxes). In the traditional for-profit model the excess becomes private capital. In the not-for-profit model, the excess remains public capital, preferably to be reinvested in the realization of the objectives of the not-for-profit organization.

Much of the structure and daily operations of a not-for-profit cannabis authority would not necessarily be that different from a for-profit operation. However there would also be important differences. An over-arching difference would be in the mission and objectives of the not-for-profit authority which would be exclusively concerned with the protection of public health, with no priority for revenue generation. In fact, the long term goal might be to decrease cannabis consumption and therefore revenues. Subsequent content in this section will further illustrate the differences and similarities of the two models.

Not-for-profit organizations are numerous in Canada and most other places in the world. Callard et al. (2005b) have noted that some of our largest organizations: hospitals, universities, colleges and research institutes are essentially not-for-profit organizations. Of course, not-for-profits also include an enormous number of medium-sized and smaller grass-roots organizations serving a variety of social, human rights, environmental, and charitable causes. The track record of not-for-profit cannabis authorities is another matter. There is only a handful of relatively small not-for-profit *cannabis social clubs* that have been recently established in other countries (Room et al., 2010). However, their number is not less than the current number of jurisdictions that have implemented for-profit legalization models.

The proposal of such a model is not unprecedented for a drug industry in Canada. Much of the innovation of thought has come from the tobacco control community in work by Callard et al. (2005b) who recommended transitioning Canada's for-profit tobacco industry to a not-for-profit model. The authors offered a rationale and strategies for doing so, as well as three models for what the not-for-profit approach might look like, including examples of not-for-profits currently operating for various purposes in Canada. The descriptions are impressively detailed and compelling.

This report will not provide the level of detail that is offered by Callard's group. The objective of this section is simply to introduce the concept of a not-for-profit authority as a model for providing cannabis to Canadians. The passionate or skeptical reader is referred to Callard's work for more detail.

### 4.3.2 Why Should Canada Establish a Not-For-Profit Cannabis Authority?

Section 3 on Legalization described more than a half-century of repeated failure of the for-profit drug industry model to protect public health. The long legacy of failure has led public health bodies and academics to propose alternatives. Callard et al. (2005a) asserted that the essence of the problem was that tobacco companies are legally required to make profits for their shareholders. They can only do that by selling tobacco products, and will never willingly temper that pursuit with public health considerations. There may be provisions in corporate law that allow corporations to endure short term loss for long-term gain (The Modern Corporation, 2016), but there appears to be no evidence of such conduct among tobacco or other drug industries.

Callard recommended that responsibility for tobacco production and sale be moved to a not-for-profit organization with a public health mandate to decrease demand for smoking. Despite a compelling rationale, the proposed solution did not exactly sprout wings and soar triumphantly about the corridors of power in government. Nor did it become a prominent idea in the tobacco control community of the day. Perhaps, just too far ahead of its time, the idea languished. But recently, given the observation that tobacco control efforts are achieving diminishing returns on impact, academics and public health advocates have begun to consider less traditional approaches as part of an “endgame strategy” for the tobacco industry (Navarro & Schwartz, 2014). In speaking of the historical malfeasance of the tobacco industry, Navarro & Schwartz (2014) articulated what may be the anthem for why privatization is to be avoided for products such as drugs for which the potential for harm is so great. The authors note how the industry has demonstrated “...an inability to align their goal of profit maximization with the public health goal of reducing tobacco-related disease and death.” Such industry behaviour is to be expected within the explanation offered by Callard et al. (2005a). Navarro & Schwartz go on to recommend Callard’s “...non-profit enterprise with a public health mandate” as one option for regulatory reform. They also recommend several other variants of the approach that remove a considerable amount of control from the tobacco industry.

This report has demonstrated that observations of tobacco industry misconduct also apply to other legal drug industries including alcohol and pharma and that there is no reason to believe that a cannabis industry will play out any differently if the customary model of a private for-profit industry is adopted. Both the US Rand Corporation’s Report (Caulkins et al., 2015) and the UK Expert Panel’s Report (Rolles et al., 2016) have expressed concerns about commercialized cannabis regimes and have put forward not-for-profit options for consideration. Other organizations have made similar recommendations. The Report of the Chief Medical Officers of Health of Canada & Urban Public Health Network (2016) on cannabis legalization recommended that supply be controlled through “a government monopoly and supply management systems” that would oversee production, distribution, and retail, and would ensure that retail outlets do not promote use of the product. In its report on cannabis law reform, The Canadian

Medical Association (Spithoff et al., 2015), consistent with its observation of the legacy of “permissive alcohol and tobacco regulation”, made the following recommendation:

*“The government should form a central commission with a monopoly over sales and control over production, packaging, distribution, retailing, promotion and revenue allocation. The primary goal should be public health promotion and protection (to reduce demand, minimize harms and maximize benefits). The commission should be at arm’s length from the government to resist interference with this goal, such as industry influence and the government’s desire to increase revenues from promoting sales, fees and taxation.”*

It is clear that willingness, and even an urgency, to try something different is emerging in Canada and elsewhere. Canada’s interest in legalizing cannabis for recreational purposes provides an opportunity to do so. Tobacco control advocates who propose switching the tobacco industry to a not-for-profit model face a daunting challenge given how well-entrenched is the tobacco industry. This is not the case for cannabis. There is an opportunity to shape this emerging industry while it is still in a relatively pliable infancy. Should the recreational cannabis industry become firmly established in law and in practice as a for-profit enterprise the force of its escalating momentum makes its reversibility increasingly difficult and unlikely. This same principle was behind a recommendation from the Chief Medical Officers of Health of Canada & Urban Public Health Network (2016): *“Proceed with much caution, and err on the side of more restrictive regulations, since it is easier to loosen regulations than to tighten them afterwards.”* The Rand Corporation (Caulkins et al., 2015, p.61) discussed a similar dynamic of reversibility. They argue that it will be much easier to move from a monopoly model to a competitive commercial one later on, than to transition from a competitive commercial model to a monopoly model.

The potential advantages of a not-for-profit cannabis authority are considerable. It eliminates the harmful activities and influence of profit-driven industries as described in Section 3. This would include compromised production safety processes in the interest of cost containment, aggressive and misleading product promotion for market expansion, industry disinformation campaigns to influence policy development in its favour, and other forms of sabotage of public health initiatives. It would also preclude corporate gaming of regulations, corporate crime, and the allocation of government resources required for the detection and processing of misconduct. Also, rather than being retained in the form of private capital, excess revenue can be more productively directed towards cannabis- and other drug-related initiatives. Such activities would possess the potential to have a positive impact on a significant number of people.

### 4.3.3 What Would a Not-for-Profit Cannabis Authority Look Like?

#### 4.3.3.1 Mission & Objectives

A not-for-profit cannabis authority would maintain a singular mission of protecting the public's health. It would serve this mission by supplying safe product to serve only the existing demand for cannabis. There would be no intent, or provision of incentive or encouragement of any kind to increase use among cannabis users or to induce non-users to start using cannabis. Given the primacy of a public health mission, a long-term objective might actually be to reduce use by individuals and prevalence in the general population. The Authority would provide and promote evidence-based information on the low-risk use of cannabis, and actually encourage and support people who wanted to stop or reduce their cannabis use. The Authority could even encourage life-long abstinence, particularly for at-risk populations. The educational role would be directed towards customers, all players involved in the cannabis supply chain, legislators and regulators, and the general public.

Specific objectives of the Authority might include:

- set cannabis consumption maintenance and reduction targets
- fund and implement research, education, and treatment programs to help address these targets
- implement strategies and set targets related to reducing use of contraband supplies
- implement employee incentives for achieving targets.

Actual objectives would be identified in consultation with key partners and pursued with them. These partners, among others, might include:

- government
- policy analysts
- public health organizations
- addiction/mental health treatment providers
- researchers
- health care professionals
- educators
- cannabis users
- youth

#### 4.3.3.2 Governance

Callard, et al. (2015b) have proposed three different models for a not-for-profit entity. Governance varies depending upon which model is adopted. For our purposes, generic aspects of governance will be drawn from Callard's descriptions. The governance of the Cannabis Authority would ensure a public health priority with no risk of encroachment

by a more traditional business model that emphasizes product innovation, promotion, increased market penetration and market share, etc. The Authority would accordingly be run by a government-appointed, or elected, Board of Trustees, the members of which would possess a proven track record of experience and commitment to any of a variety of areas of expertise including addictions, public health, policy, research, law, economics, etc. This would also be the case for all staff positions contributing other strategic operational expertise. All required finance expertise would be provided through paid staff positions accountable to the management structure and the Board.

All staff would be accountable to a management structure that reported to the Board of Trustees, which might be accountable to a government ministry or to a council of elected stakeholders. Candidates for either body with a previous or current association with a drug or drug-related industry would not be eligible.

#### 4.3.3.3 Source and Disbursement of Revenue

The start-up capital for the Authority would come as an investment from government and would be paid back from the revenues earned in the early years. Once operating, the Authority would be self-funded through the sales and taxation revenues arising from cannabis purchases. There would be no need for private investment that might introduce pressures for market expansion or other potential conflicts of interest.

It would be best to avoid the generation of a new discretionary revenue stream for government which might create an appetite for increasing sales as a means for increasing that revenue stream. Thus, revenue earned in excess of repayment of start-up investment and ongoing operating and capital costs would be directed only to dedicated purposes such as drug treatment, education, and research. This funding would not replace existing government funding for these activities, as that would be equivalent to creating a new additional discretionary revenue stream.

Some specific examples of activities to which revenues could be dispersed are:

- monitoring the progress of the cannabis authority in meeting its goals
- assessing the longer-term impact of cannabis legalization upon public health and safety
- monitoring cannabis law reforms in other jurisdictions for further insights
- funding think tanks for innovative drug and health policy development
- conducting research on the health impact of the use of cannabis and other drugs
- expanding capacity for evidence-informed treatment for those with cannabis- and other drug- or mental health-related problems
- conducting research towards the development of more successful treatment interventions for those with cannabis- and other drug-related problems
- conducting research on the effectiveness of cannabis for the treatment of various illnesses or discomforts
- educating the public on the low risk use of cannabis and other drugs

- supporting the implementation of evidence-based prevention and risk reduction programs in communities, and evaluating their impact.

It is notable that the Prime Minister is on the public record saying that taxation revenues from a new cannabis industry “...*would go to addiction treatment, mental health support, educational programs*” (Bronskill, 2015). In its Final Report, The Task Force on Cannabis Legalization and Regulation (2016) has made similar recommendations.

#### 4.3.3.4 Scope of Operations

A cannabis industry involves several components of a complete supply chain, including production, distribution, and retail. All of these functions could be subject to a not-for-profit model. Existing medical cannabis growers could be subject to an imposed time limit on their current licenses and eventually bought out at fair market price. Growers, now as part of the Cannabis Authority, would provide product only to the Cannabis Authority. The Rand Corporation’s description of a not-for-profit model (Caulkins et al., 2015) is restricted to the retail component only for which they list several advantages including research showing that a regulated government retail monopoly is a better model for protecting public health than are less-regulated options (Pacula, et al., 2014). Rand appears to accept that the production and distribution components of the supply chain would remain with the private sector in US jurisdictions. This is very similar to what is in place for alcohol in many jurisdictions in Canada. There is merit, however, in examining the possibility of all components coming under the control of a government-run Cannabis Authority. This could generate an enhanced return on the types of benefits listed for a not-for-profit retail component in Rand’s report.

#### 4.3.3.5 Research and Development

Research & development activities could address a wide range of important questions, both specific to cannabis products and to larger issues. Cannabis-specific issues might include making cannabis products, or methods of ingestion, less hazardous. There could also be investigation into designing cannabis products in ways that reduced their potential attractiveness, particularly to underage or vulnerable populations.

Research could also be done on a variety of relevant questions ranging from the molecular to policy provisions. This could include the short- and long-term impact of cannabis use on health and wellbeing, investigation of therapeutic applications of cannabis, identifying and evaluating better therapeutic interventions for people with cannabis-related problems, development of technology for road-side impairment testing, determination of optimal legal *per se* limits and population-based approaches to encourage abstinence or low-risk use.

The Cannabis Authority could include a research department as part of its mandate with dedicated research staff and hard funding, or it could contract out research projects to

academics working in existing academic research institutions. It could also fund research conducted in both types of environments.

Responsibility for product testing for quality control might also come under the research department which could maintain an ongoing evaluation and research program for perpetual product integrity improvement.

#### 4.3.3.6 Production, Packaging, Distribution

The daily operational aspects of the cannabis supply chain would closely resemble that of any drug industry, but with some obvious public health-oriented provisions. This would include, for example, tight restrictions on any kind of product innovation such as cannabis edibles which tend to increase popular appeal and consumption. Existing cannabis agriculture operations, once under the purview of the Authority, would continue to grow cannabis, and sell it to the Authority only which would still employ experienced people to run and supervise the production line for conversion of cannabis plants to consumer product. The plain packaging would consist of child-proof containers with clear and accurate potency indication and a risk reduction information sticker. The products would then be loaded onto secured trucks for distribution to retail outlets.

#### 4.3.3.7 Retail, Product Promotion, Demand Reduction

All cannabis retail outlets would be subsumed under a government-owned and -operated monopoly which was controlled by the Cannabis Authority. They would be licensed as stand-alone operations, with strict containment in terms of their numbers, location, hours of operation, and selling cannabis to those who are underage. Knowledgeable staff would be trained in responsible service of the product.

The Rand Corporation's Report (Caulkins, et al., 2015) has articulated four advantages of a government retail monopoly specific to cannabis:

- reduced diversion, which would reduce enforcement costs.
- easier reversibility – easier to go from a government monopoly to a commercial competitive model than the reverse
- reduced or eliminated advertising and product innovation
- can prevent a price drop prompted by increased production efficiency by countering with a tax increase

However, as previously seen in the case of alcohol retail, particularly in Ontario Canada (section 3.7.1), the government retail monopoly model is far from being a panacea, and is fraught with potential liabilities. One of these is the susceptibility of the government retail authority to lobbying from any private players operating in the supply chain. For this reason, it is preferable for all components to come under the control of the Cannabis Authority. Another danger is that provincial government alcohol monopolies can abandon a public health priority through a variety of means including aggressive

and seductive advertising and relinquishing a portion of their monopoly to private interests. For these reasons, Callard et al. (2005b), in their discussions of establishing a not-for-profit tobacco retail environment with a public health priority, introduce measures that would truly revolutionize the concept of retail.

First, there would be no product promotion of any kind including advertising, marketing, product giveaways, event sponsorships, and celebrity endorsements, in any medium, including print or electronic or the use of staged actors. These prohibitions would also apply to other components of the supply chain including production and distribution.

Callard's proposal (2005a) also recommends the implementation of various demand reduction strategies that would be intended to substantially reduce tobacco use over time, and that would be formally enshrined within the mission and objectives of the organization. Barry & Glantz (2016) have not specifically recommended a not-for-profit model but have acknowledged the risks of corporate domination of legalized cannabis as learned from alcohol and tobacco. They recommend that the emerging cannabis industry should be subject to *"...a robust demand reduction program modeled on successful evidence-based tobacco control programs."*

The circumstances are somewhat different for cannabis than for tobacco, but the general principle would be to not reward increased sales, but rather practices that supported rather than acted to sabotage public health efforts. In the case of cannabis, this might include providing information at the point of retail on health risks, promotion of low-risk cannabis use practices including low-risk methods of ingesting THC, and information on accessing help for cannabis-related problems.

This section has already introduced the idea of requirements and performance-based incentives for a not-for-profit cannabis authority to prevent any escalation of cannabis use. There would also be incentives for the Authority to encourage low-risk use among individuals and even to reduce prevalence in the general population.

### **Recommendation #3**

**In the establishment of a legal cannabis regime, the Canadian government should explore the logistics of establishing a not-for-profit cannabis authority for the supply and regulation of cannabis for recreational purposes.**



## **5. The Current System is Not Working; Let's Change it!**

The subversive potential of a not-for-profit cannabis authority is acknowledged. The proposal will provoke no shortage of critics who will prefer the more familiar and comfortable ground of the traditional model despite its ruinous track-record for protecting the public's health. There will be those who will protest the loss of an opportunity for creating yet another lucrative drug industry and the potential for many spin-off industries. Some individuals in government will lament the loss of a new undedicated revenue stream. Cannabis users may express concern about how pursuit of such a model will slow down the process and delay their access to legal cannabis for recreational purposes – for which some of them have been waiting for what seems like a very long time.

For those in industry and government, and for anyone else who is inclined to resist the idea of a major reformation of how drug products are provided to Canadians, the response is straight-forward. The current system is not working. In fact, it is a disaster. The evidence is the data on the annual carnage from the use of alcohol and tobacco: 6.5 million hospital days, 41,467 premature deaths, 663,178 years of life lost – all at an annual cost of \$31.6 billion to the Canadian economy (Rehm, et al., 2006). Under the current paradigm, Canadians can expect similar counts year after year with no cause to expect significant improvement. At the time of writing this report, an epidemic of opioid dependence and death extends across the country courtesy of a poorly-regulated pharmaceutical industry. An emerging cannabis industry shows no sign of charting a different course. Industries continue to reap enormous revenues from these scourges and externalize the harms to health and social service systems that struggle to keep pace with it all. Typically long waiting lists for treatment and care add to the suffering of people with drug problems and their families. With increased access to cannabis, and increased use, there will be an increase in problems and demand for services from these already chronically-underfunded, stressed programs.

Public health policy efforts to address the harm meet with perpetual opposition and sabotage from the drug industries, and often with indifference from government. Where there has been progress, as in the case of tobacco, it has been slow and costly. In the worse scenario, as in the case of the pharmaceutical industry, specifically with regards to the opioid epidemic, progress seems limited to initiatives that are directed towards cleaning up the mess (*parking the ambulance at the bottom of the hill*). There is no apparent plan to improve industry regulation that might prevent the next drug crisis, and the one after that. In the worst scenario, the regulatory environment is actually degrading with increased liberalization of access to alcohol – a move that is strongly contraindicated by the research and by the very public health authorities that government funds to advise it on such matters.

The solid entrenchment of the alcohol, tobacco and pharmaceutical industries will make it very difficult to bring in significant changes to how these industries function or are contained. But the introduction of a recreational cannabis industry, along with a still

young medical cannabis industry, offers an opportunity to do this differently. Saying “*we are taking a public health approach*” must be more than a mere jingoistic distraction from a campaign guided primarily by the relentless pursuit of revenue. A public health priority must be our uncompromised guide to all regulatory design decisions. The idea of a not-for-profit cannabis authority is not that radical. Examples of such organizations, small and large, in a variety of sectors, abound in Canada (Callard et al., 2005a). There may have never been a more compelling case, or favourable conditions, for change.

However, in the early days of 2017, the government's for-profit legalization initiative, emboldened by the Final Report of the Task Force on Cannabis Legalization and Regulation, persists. There would need to be a major objection voiced by the public and by public health authorities to prompt government to pause and consider an alternative. The role of public health authorities is critical to both mobilizing and supporting that voice. If the authorities trusted with protecting the public's health will not assume this responsibility, then who will?

Callard et al. (2005a) offer some encouragement with their observations regarding reform of the tobacco industry: “*The decision to put tobacco in the hands of business corporations was made through government, and can be changed through government. The choice between keeping corporations in tobacco manufacture or replacing them with something else is ours to make.*”

Now is the time for Canadians to speak to their government about cannabis law reform. It can be as simple as writing to the Prime Minister's Office and to the federal Minister of Health. Educate your local Member of Parliament, Member of Provincial Parliament, and municipal counsellors on the matter. It can be as simple as writing letters to the editor of the daily and weekly newspapers or monthly journals across this land, or writing to the many burgeoning independent online news platforms. Educators can raise exciting new ideas in the classrooms in Canada. It can be as simple as taking advantage of the enormous reach of social media and blogging platforms. Encourage others to do the same. In the history of our civilisation, there has never been a greater capacity to spread an idea.

Finally, and only slightly tangentially, consider the current state of our society in which environmental perils and threats to social security appear to be escalating. At the same time, a significant portion of the populace seems preoccupied with chemical and electronic amusements - perhaps at the expense of participation in democratic processes and in local community involvement. It may be that legalizing, and thereby encouraging, use of another chemical distraction is not one of the best things that the country can be doing for its citizens, particularly its youth. At the very least, Canadians deserve a legislative solution for cannabis that does not depend upon pandering to fear and encouraging blind trust in dysfunctional traditions, intended to serve a veiled industry-government tryst of avarice. Our efforts must be evidence-based and humanely-evolved. After all, it is 2017.

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