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Chair

Mr. Bill Casey

Standing Committee on Health

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• (0835)

[English]

The Chair (Mr. Bill Casey (Cumberland—Colchester, Lib.)): Seeing quorum, we will call our meeting to order. This is meeting number 67 of the Standing Committee on Health. We are doing our study on Bill C-45 on cannabis. Today our panel is focused on prevention, treatment, and low-risk use.

I welcome all of our guests who are here both by video conference and at the table.

As individuals, we have here today Michael DeVillier, assistant professor and policy analyst at McMaster University, and by video conference, Mark Kleiman, professor of public policy at the Marron Institute of Urban Management at New York University.

Welcome.

From the Canadian Nurses Association, we have Dr. Lynda Balneaves, a registered nurse and medical and non-medical cannabis researcher, and Karey Shuhendler, policy adviser, policy advocacy and strategy. From the New Brunswick Medical Society, we have Dr. Serge Melanson, by video conference from Moncton. From the Nova Scotia Department of Health and Wellness, we have Dr. Robert Strang, chief medical officer of health, by video conference from Halifax.

Thanks very much. We'll start with 10-minute introductory remarks from each organization. Then we'll go to questions from the members.

We'll start with the Canadian Nurses Association, Dr. Balneaves.

Ms. Lynda Balneaves (Registered Nurse and Medical and Non-Medical Cannabis Researcher, Canadian Nurses Association): Karey will be starting our presentation today. Thanks.

The Chair: Ms. Shuhendler.

Ms. Karey Shuhendler (Policy Advisor, Policy, Advocacy and Strategy, Canadian Nurses Association): Thank you, Mr. Chair.

Good morning, Mr. Chair, and members of the committee. My name is Karey Shuhendler. I'm a registered nurse and policy adviser for the Canadian Nurses Association, the national professional voice representing more than 139,000 registered nurses and nurse practitioners.

I'm pleased to be here today with Professor Lynda Balneaves, registered nurse and medical and non-medical cannabis researcher,

who will be able to answer questions that are more technical in nature.

Professor Balneaves currently serves as an associate professor in the Rady faculty of health sciences college of nursing at the University of Manitoba, and is a nursing leader in the fields of shared treatment decision-making and complementary and integrative health care. She has published and presented on topics related to knowledge translation, integrative oncology, treatment decision-making, and medical and non-medical cannabis.

At the outset, I would like to thank the committee for studying this important issue and for inviting CNA to provide its recommendations. Legalization of non-medical cannabis will impact public health, and as such, requires a preventative approach to reduce the health risks and social harms associated with cannabis use. CNA welcomes the federal government's work to table Bill C-45, which would guide the legalization, regulation, and restriction of access for non-medical cannabis. CNA supports the passing of the bill and believes that legalization is an excellent option for addressing the harms of cannabis.

CNA recently conducted a national survey of nurses to assess the readiness for legalization, determine knowledge gaps and resources needed, and collect input on the sections of Bill C-45 that pertain to the scope of CNA's work.

While the two-month survey remains open until tomorrow, preliminary results indicate that a majority of nurse respondents favour the government's move toward legalization, and that the focus should be on preventing access and associated harms for young persons through a variety of mechanisms, including considerations around packaging, labelling, display, promotion, and sale of cannabis and cannabis accessories. Legalization can support the regulation of quality, dose, and potency, while minimizing social harms as well as the costs of prohibition. In addition, legalization can improve access to research potential harms or medical benefits.

In reviewing the bill, CNA was pleased with the moderate public health approach taken on the complex issue of cannabis legalization. In its current form, Bill C-45 promotes the removal of harms associated with the prohibition model, while recognizing the need to protect vulnerable populations, including youth. CNA has provided four recommendations for amending the proposed legislation, all of which are outlined in our brief. We encourage the committee to include all of CNA's recommendations in its final report, including those related to the sale and promotion of cannabis and cannabis accessories, and considerations around promotion and use related to alcohol.

Cannabis should not be treated in the same way as alcohol. The harms of alcohol use and current alcohol policy can be downplayed at times and should not necessarily serve as the model for cannabis policy simply because it is already established. Additionally, cannabis is different in that there are therapeutic indications and particular formulations for medical use. Thus, medical access should not be forgotten in the wake of legalization. While these other recommendations are not the focus of our presentation today, we would be pleased to answer any questions on the full range of recommendations put forth in our brief.

This morning we would like to focus on two of the four recommendations, namely, those related to youth criminal penalties and the inclusion of a comprehensive public health approach to the legalization of non-medical cannabis.

Our first recommendation, regarding youth criminal penalties, is specific to clause 8 and related subclauses. These state that a young person, aged 12 to 18, in possession of one or more classes of cannabis the total amount of which, as determined in accordance with schedule 3, is equivalent to more than five grams of dried cannabis, is guilty of an indictable offence, is liable and/or guilty of an offence punishable on summary conviction, and is liable to a youth sentence under the Youth Criminal Justice Act.

Not only can a criminal record limit an individual's ability to travel to certain countries, it can also lend itself to considerable social harms. For youth in particular, a criminal record can be a barrier to volunteer opportunities, which are often required by school curriculums, and can play a role in scholarship decisions. A criminal record can also reduce career opportunities and contribute to poverty and poor health outcomes. Legalizing cannabis while maintaining criminal penalties for youth can disproportionately disadvantage young people, particularly those from marginalized or racialized communities, potentially barring them from opportunities to equitably advance and contribute in our society.

Given the evidence that 21% of 15-year-olds to 19-year-olds in Canada have used cannabis in the past year, such legislation could potentially impact a large number of youths. Alternatives to a traditional punitive approach to addressing both minor crime as well as problematic substance use have demonstrated success. Examples such as drug courts, which use a restorative justice approach, offer an alternative to traditional justice processes. These models offer full engagement and accountability of the offender, and help to address the broader range of contributing issues such as poverty, health, or social justice issues that may have brought the person to commit the offence in the first place.

● (0840)

Consider a 15-year-old struggling with problematic cannabis use caught possessing more than five grams for personal use. He uses non-medical cannabis to self-medicate for undiagnosed anxiety and depression which is exacerbated by the stress associated with living in poverty. Would criminalizing possession or even imposing a significant fine help this teen, or would he be better served through a drug court system with a restorative approach, where the teen can be accountable in his own healing, provided with opportunities to link with health and social service organizations to address the root causes of poverty, and offered treatment services to address undiagnosed mental health and substance use issues?

With this in mind, CNA recommends that youth possession of cannabis not be subject to criminal penalties, that the government use a restorative justice approach as the guiding principle for addressing youth possession, and that such depenalization eliminate current or future repercussions for youth by removing the provision under clause 8 and related subclauses of the cannabis bill.

Our second recommendation is for the government's investment in a public health approach to cannabis, including a comprehensive public education program. CNA strongly supports the recommendations made to the federal task force on cannabis legalization and regulation to learn from other jurisdictions, such as Colorado and Washington, and to invest in comprehensive public health and education programs including those related to cannabis use while driving well in advance of legalization.

Canada spends more than one billion dollars annually to enforce cannabis possession laws, arresting about 60,000 Canadians for simple possession, and this accounts for about 3% of all arrests. Legalization should remove significant social harms as well as the financial costs associated with enforcement under the current model of prohibition.

With this in mind, CNA recommends that once legalization is in place, the government use a portion of the savings from enforcement and/or revenue from sales to invest in initiatives that contribute to positive health and social outcomes. Such investments should include tools, training, and guidelines to support public education programs for cannabis harm reduction strategies, programs for substance use prevention and treatment, and research to better understand the harms of non-medical use, as well as the potential benefits of medical use. Cost estimates for these measures can be derived from jurisdictions where cannabis has already been legalized, from public education campaigns that have been launched, and from current federal government investments in public education related to tobacco use.

Nurses are the largest group of health care providers in the country and are often a person's first point of contact with the health care system. As such, nurses are well positioned to contribute to the development and delivery of this kind of health education.

Results of a Nanos Research poll commissioned by CNA in August of this year, which will be tabled, note that more than nine out of 10 Canadians support or somewhat support nurses educating Canadians on the risks associated with non-medical cannabis use.

Preliminary results of CNA's national survey of nurses noted that 49% of respondents indicated that they felt comfortable initiating a conversation or responding to patient concerns about the risks associated with non-medical cannabis use. Based on these results, CNA is committed to providing additional educational resources on non-medical cannabis to support nurses caring for people across the continuum of care.

I would like to close by emphasizing that the legalization of cannabis is an excellent opportunity to reduce harms associated with non-medical cannabis use, but we must get this right. CNA encourages the committee to urge the federal government to incorporate all of the recommendations put forward by CNA.

Thank you.

The Chair: Thank you very much for your contribution.

Now, by video conference, we will go to Dr. Serge Melanson with the New Brunswick Medical Society.

• (0845)

Dr. Serge Melanson (Doctor, New Brunswick Medical Society): Thank you and good morning. My name is Dr. Serge Melanson. I am the chief of staff and an emergency room physician at Moncton Hospital here in New Brunswick. I'm speaking today on behalf of the New Brunswick Medical Society, a professional association representing more than 1,600 physicians in New Brunswick.

As a professional association, we believe that we have a key role to play in advocating for improvements to health care delivery in New Brunswick. We have led the way in various initiatives, such as the promotion of team-based health care delivery. We have also been successful in promoting healthy living initiatives and policy changes to protect youth from health hazards such as smoking and the use of tanning beds.

We recently launched a campaign to make New Brunswick one of the top three healthiest provinces in the next 10 years. We've also collaborated with schools to improve healthy food choices, and we have promoted the mandatory use of ski helmets to prevent head trauma.

[*Translation*]

I would like to thank the House of Commons Standing Committee on Health for inviting me to speak today to the concerns of the New Brunswick Medical Society about the legalization of marijuana for recreational use.

In June this year, our organization published a position paper on the recreational use of marijuana, which included recommendations to the Government of New Brunswick on an appropriate framework to limit the harmful effects of marijuana use on New Brunswickers.

We also want to inform the public about the health issues associated with cannabis use, and we recently launched an information campaign for the public on marijuana use.

[*English*]

Like tobacco and alcohol, cannabis use can lead to negative health impacts. While Canadians will have the choice to consume marijuana legally in little less than a year from now, it is essential that they understand the risks. Making cannabis legal does not make it safe. We understand that the goal of the federal government in legalizing and strictly regulating cannabis is to decriminalize use of the drug and reduce illicit sales of the substance, but we believe there are still substantial concerns to address when it comes to the particulars of legalization.

Our position on legalization is in line with that of the Canadian Medical Association and their recommendations built on Canada's experience regulating alcohol and tobacco. We also support the guidelines developed by the Centre for Addiction and Mental Health for low-risk use of cannabis. One issue of particular concern to us in this discussion, from a prevention and low-risk use perspective, is the proposed minimum age for the legal possession and purchase of recreational marijuana. We believe very strongly that the proposed age of 18 under Bill C-45 sends the wrong message to young Canadians—that it is safe for them to consume marijuana at that age. There is clear scientific evidence that the brain of a young adult is still developing up to the age of 25 and that marijuana consumption can have adverse effects on brain development. While we would ideally like to see the legal age for recreational marijuana set at 25 in Canada, we recognize that this is not likely feasible and that 21 may be a more realistic age for the prevention of illicit purchase by young adults.

Over the past 14 years of practising emergency medicine in Moncton, I've seen first-hand a significant increase in the amount of cannabis use and its negative health effects in patients presenting to the emergency department, whether it be as the primary cause of their medical problem, something that is worsening an existing chronic disease, or something that may be unrelated to why they're there. I deal with the effects of cannabis use in the ER in a number of situations. These can be patients experiencing unexpected effects due to cannabis being laced with dangerous chemical additives, patients experiencing a cannabis-triggered issue called cyclical vomiting syndrome, cannabis triggering serious mental illness, and patients experiencing such serious health issues as chronic lung disease as a direct result of cannabis use.

I see patients who have consumed cannabis, adolescents and young adults, for the most part, who then go on to develop their first episode of psychosis, schizophrenia, bipolar disorder, and other significant mental health issues. Teens or young adults consuming cannabis will have a higher likelihood of developing these mental health issues if they continue to consume cannabis. Some young people may also be under the impression that these medical issues are curable. The reality is that these are lifelong diseases. Young Canadians are taking a significant risk in consuming cannabis. We believe there is a clear association between cannabis use and the onset of psychotic disorders, because the brains of these young adults are still in development.

• (0850)

[Translation]

Since we know that the recreational use of marijuana will be legalized and that increased use is likely to have an impact on health care, it is important that the provinces and territories have adequate resources to deal with it.

If Parliament adopts Bill C-45, the Government of Canada will be responsible for ensuring that the provinces and territories are adequately equipped to react to increased pressure on the health care system.

In addition, the Canadian government must ensure that the provinces and territories have the resources to adequately measure the impact of legislation to better adapt their awareness and

education efforts to the situation, as well as their intervention and treatment services over time. Research on public health will be needed to measure the harmful effects of increased cannabis use on our communities and our citizens.

[English]

It is also critical that governments at all levels invest the necessary resources to support a strong and ongoing education and awareness campaign. If Canadians are to be presented with the choice to consume legal cannabis, they must have easy and clear information on the risks associated with making that choice.

In closing, I would like to make it clear that a decision by the Government of Canada to legalize the use of cannabis must be advised by these precautionary principles. Government has a fundamental responsibility to protect its population. It is of particular importance, on the legalization of cannabis, for government to ensure that it is living up to its responsibilities to all Canadians.

[Translation]

Thank you.

[English]

The Chair: Thank you very much, Doctor. I just want to say that I live in Nova Scotia but I was treated for cancer at your hospital nine years ago, successfully so far anyway. I had great care, and I just want to say thank you for that.

Now, moving to the Nova Scotia Department of Health and Wellness, we have Dr. Robert Strang, chief medical officer of health, by video conference from Halifax.

Dr. Robert Strang (Chief Medical Officer of Health, Nova Scotia Department of Health and Wellness): Good morning to the committee, and thank you for the opportunity to speak to you today. I'm appearing on behalf of the chief medical officers of health for the 13 provinces and territories. I'm providing a collective public health perspective, not jurisdictional positions from any of the provinces and territories.

My remarks will be focused on this morning's topic of prevention, treatment, and low-risk use, but by necessity will touch base on other topics such as legal age, labelling, and packaging, which have been discussed in other sessions.

I have assumed that by prevention you mean the prevention of population and individual harm in relation to how cannabis is produced, distributed, retail, and used, the prevention or at least the delaying of onset of use by those below the legal age, and the prevention of harm to populations that may be at increased risk.

Prevention is not just about providing information and education about risks and harms. Appropriate education and social marketing can be effective but only if they are part of a comprehensive strategy. Policy decisions related to how cannabis will be sold, how it will be priced, how it will be labelled and marketed, and the level of availability and accessibility are the most critical when it comes to preventing population harms, preventing harmful individual use, and minimizing underage use.

To be more specific, to have the strongest prevention approach, we make the following recommendations:

Cannabis should be distributed and sold through government monopolies where the primary objective is protecting public health and safety, and not revenue generation.

As recommended by the task force that advised the federal government, there should be no co-sale of cannabis with tobacco and alcohol products.

At the outset, price will need to be set to maximize purchase from the legal market, but over time, price needs to be used as a key tool in decreasing overall demand as well as encouraging consumption of lower-harm products, such as products with lower THC concentration and non-smokable forms.

Product promotion such as advertising, marketing, sponsorship, and product placement, including at the retail environment, needs to be prohibited at the federal level and complemented by similar provincial restrictions.

Product packages should be plain with clear and prominent warnings about risk.

At the retail level, prepackaged products such as cigarette-type joints should not be allowed as those can facilitate marketing, promotion, and glamorization of cannabis use.

The number, location, and density of retail locations, along with hours of operation, need to be carefully developed to balance access to legal products—and accounting for the current legislation's allowance of personal growing and online or mail order purchases—with prevention objectives.

Over the long term, a minimum age of 21 would be better than 18 or 19 at balancing between shifting young adults to legal supplies and decreasing use by those under age 18. I'm going to explain that recommendation a little more, because it is a key point that keeps coming up.

We know that one of the objectives is to move people from an illegal to a legal market. Certainly, setting age 19 or 18 will bring young adults into the legal market in the short term, but if one of our key objectives is to decrease use amongst youth who are under 18, and will always remain underage no matter if the age is 18, if they are using cannabis, they are going to have to access it from an illegal source. We know from clear evidence around tobacco and alcohol that setting an age of 21 versus 18 or 19 will, over time, have a greater impact on decreasing cannabis use rates and therefore keeping those individuals out of any market for cannabis for those under age 18. If one of our primary objectives is to have a set of circumstances that decreases use of cannabis by those who are underage, we are far better off with an age of 21 than of 19.

Moving along, public smoking and vaping of cannabis should, at a minimum, follow the current approach to public tobacco smoking and vaping, to prevent further normalization of cannabis smoking and re-normalization of smoking behaviours in general.

● (0855)

The approach to bringing edible and other concentrated and derivative products into the legal market needs to be done extremely carefully to minimize the normalization of cannabis consumption and protect children and youth. With respect to edible products, it must be made clear through legislative requirements that products that contain cannabis plant materials and extracts and active ingredients are not food products.

Since it is easier to loosen regulations than to tighten them, the initial regulatory approaches should err on the side of being more restrictive. Adjustments can be made as time progresses based on comprehensive monitoring and research. Such monitoring and research will need to be adequately resourced and established.

Programs that shape social and physical environments to support health and well-being in general, such as supporting healthy pregnancies, enhancing early childhood development, and ensuring adequate housing and income, are all important measures for primary prevention of problematic substance use in general and are and will be important in preventing problematic cannabis use.

Along with this submission, I'm pleased to attach a more detailed position paper from the provincial and territorial chief medical officers of health, as well as the Urban Public Health Network, who are the medical officers of health in urban centres. That more detailed report has been provided to the committee.

With respect to treatment, I do not have experience or expertise in the treatment of cannabis use disorders, but I would say that there are no treatment approaches or therapies that are specific to cannabis use disorder. There is a need for improving appropriate access to treatment of people with cannabis use disorder today as part of the need to improve treatment and access for people with a range of substance disorders. Whether the need for treatment will increase or decrease will really depend on decisions and the implementation of policies that I've discussed previously.

With respect to lower-risk use, an updated set of guidelines for lower-risk cannabis use, the development of which was led by Canadian experts, was publicly released in June of this year. Those guidelines have been endorsed in principle by the council of the chief medical officers of health. In summary, these guidelines recommend that the most effective way to decrease risk is to abstain; that the older one is when cannabis use is initiated the lower the risk of developing problematic use and adverse health effects over the lifetime. Higher THC concentration products have greater risks, so low THC concentrated products should be used. Synthetic cannabinoids, such as shatter, expose users to more acute and severe risk and should be avoided.

To protect lung health, routes of intake that involve smoking and combusted cannabis material should be avoided. Along with that, methods such as deep inhalation and breath holding that increase the psychoactive ingredient absorption also should be avoided. Frequent or intensive use has the highest risk of harm, so if people choose occasional use, one day a week or only on weekends is recommended. Avoiding driving while using alcohol and/or cannabis is extremely important.

Populations that are at higher risk from harm from cannabis and therefore should avoid use are pregnant women, people with a history or close family history of psychosis or substance use disorder. The combination of risk behaviours, such as early age of onset and frequent use, likely magnifies the risk. These low-risk cannabis use guidelines should form a key part of public awareness and educational initiatives related to cannabis legalization and should be incorporated in product labelling and should inform legalization policy decisions by all three levels of government.

With respect to Bill C-45, the provincial and territorial chief medical officers of health and Urban Public Health Network recommended in the paper I have provided that this initiative be guided by public health goals and objectives written into a statute. We were very pleased to see the public health orientation adopted by the federal government for this initiative and the explicit articulation of public health objectives as codified in the purpose section of the act, proposed section 7. We encourage provinces and territories to adopt similar public health orientation and include explicit articulation of similar objectives in their statutes.

- (0900)

Last, we suggest that the bill be amended to replace the word “illicit” with the word “illegal”. The term “illicit” is stigmatizing in nature, and since stigma and discrimination reduction are important aspects of this initiative, we suggest avoiding using the term “illicit” whenever possible. We suggest using the term “illegal” instead, as it is a simple, clear, and unambiguous term that refers to the legal status of possession of the substance and it avoids the stigmatizing nature of the word “illicit”.

Thank you for your time and this opportunity. I look forward to our discussions.

The Chair: Thank you very much for your addition to our report.

Now we're going to go to Michael DeVillaer, assistant professor, policy analyst.

The clerk is pointing out that we also have Mr. Kleiman, professor of public policy, Marron Institute of Management, New York, by video conference.

Mr. Michael DeVillaer (Assistant Professor, Policy Analyst, McMaster University, As an Individual): Mr. Chairman, committee members, I bring to this presentation 40 years of experience in the prevention and treatment of drug problems. I've been a counsellor, a community developer, a teacher and a policy analyst. I think my interest is really in drug policy broadly defined to include alcohol, tobacco, pharmaceuticals, and it's within that context that I view this new drug industry we are establishing.

When we think about prevention of drug problems, we usually think of providing people with information to help them make informed decisions. Another necessary part of an effective drug prevention program is development of a regulatory framework for drug industry practices. This is a critical part of what we mean when we talk about strict regulation.

Alcohol, tobacco, pharmaceuticals, and cannabis are not ordinary commodities. Each year in Canada, alcohol and tobacco alone are associated with approximately 40,000 premature deaths, six and a half million days in hospital and a cost to the Canadian economy of over \$30 billion. I want to emphasize that those are annual figures. The alcohol and tobacco crises have been with us for a long time, so long we don't think of them as crises. Despite our efforts at prevention and treatment, they persist year after year.

Recently a new drug epidemic has emerged. The opioid crisis began when a drug company aggressively launched a misleading advertising campaign for an opioid painkiller, oxycodone. The same company is now taking the same drug to the developing world with the same misleading information. During the campaign to legalize recreational cannabis, Canadians have received repeated assurances that this new industry will be strictly regulated, like other legal drug industries, and that this will provide the needed safeguards of the public's health.

A half century of international drug policy evidence tells us it is not so simple. Across our established legal drug industries, we see frequent failures in the striking of that important balance between industry revenue and protection of public health. The result is an enormous amount of harm that stresses our communities, families and treatment programs.

The state of the union is that we have three legal regulated drug industries and three public health crises. Early indications from the emerging legal cannabis industry suggest that it may be on a similar trajectory.

Perhaps it is time for a new approach. Many of the decisions in the development of legislation require the striking of that balance, sometimes a choice, between facilitating the success of a new drug industry and protecting public health. The logistics of cannabis legalization, as I'm sure everybody is realizing now, are incredibly complex. The stakes are high, outcomes uncertain, and caution is wise. Accordingly, I hope that the Standing Committee on Health will assign priority to the protection of public health and the prevention of harm.

I will provide four specific suggestions for doing so.

The first issue is a minimum legal age for cannabis use. Research shows that young people acquire their cannabis through their network of peer relationships. This is very important. The peer networks of young people, say 15- to 17-year-olds, are more likely to include 18- and 19-year-olds than they are to include 21-year-olds. Consequently, over the long term, a minimum age of 18 or 19 will, as we've heard, give easier access to cannabis for 15- to 17-year olds than will a minimum age of 21.

● (0905)

My first recommendation is that the government should choose public health protection over a larger legal market by setting a minimum age of 21.

The second issue is the importance of a full ban on advertising and other forms of product promotion. Research shows that advertising increases use of a drug and that increases in use of a drug are associated with increases in related problems. Advertising, even with strict limits, will increase cannabis use and related problems.

My second recommendation is that the government should choose public health protection over market growth by legislating a full ban on all forms of cannabis product promotion.

The third issue is the importance of a non-profit model or options for cannabis supply. We already have three legal, regulated, profit-driven drug industries which have not succeeded in protecting public health. We can reduce the risk of creating a fourth by removing the profit motive from cannabis sales. An essential difference is that a non-profit retail model would serve only the existing market, with no product promotion or product innovation intended to increase the size of that market.

My third recommendation is that the government should choose public health protection over market growth by restricting the retail of cannabis to a non-profit organization with public health governance.

The fourth issue is the importance of social justice for prevention and treatment. Between now and the widespread availability of legal recreational cannabis, which will require an amount of time well beyond July 2018, people are expected to continue to "just say no" to the use of recreational cannabis. It is unrealistic to expect that to happen. Charges for simple possession of cannabis amounted to well over 17,000 in 2016. Issuing of more criminal records will continue to have a devastating impact on the social determinants of health of these mostly young Canadians. Prohibition also poses a problem for those who are dependent on cannabis and are seeking treatment to improve their lives. In my experience as a counsellor, I never

encountered a patient who was helped by a criminal record. It actually impeded their efforts.

My fourth recommendation is that the government should immediately decriminalize possession of small amounts of cannabis.

Mr. Chair, that concludes my prepared statement. Thank you again for this opportunity. I will do my best to address any questions committee members may have.

● (0910)

The Chair: Thank you very much.

Now we're going to Mark Kleiman, professor of public policy at the Marron Institute in New York, by video conference.

Professor Kleiman, the floor is yours.

[*Translation*]

Mr. Mark Kleiman (Professor of Public Policy, Marron Institute of Urban Management, New York University, As an Individual): Good morning, ladies and gentlemen.

[*English*]

It's a great honour to have been asked to address this distinguished body as part of this genuinely historic process. I've been working on cannabis policy for almost four decades now. My firm was the adviser to the Washington State Liquor Control Board as it implemented Washington's cannabis legalization.

I would urge you in this process to pay attention to results, not slogans. The case for the legalization of cannabis is not its lack of risk, as we've heard from the other witnesses this morning. The case for legalization is the inability to control the illicit market and the harm the illicit market does and the fact that lots of people would like to use cannabis and can, in fact, do so harmlessly.

There is a tendency in public policy debates and in policies themselves to lurch from one extreme to another. At least in the U.S., we're in the process of lurching from considering cannabis an evil weed to considering it a harmless herb. Unfortunately, each is an imprecise characterization.

For almost any drug, the majority of the users of that drug do so harmlessly, and indeed, with some benefit to themselves. That's what keeps them using it. A minority wind up losing control of their consumption and engaging in problematic use. Tobacco in the form of cigarettes is the one exception to that, where most of the users engage in problematic use.

That minority of heavy users, however, accounts for not only almost all the damage involved with the use of any drug but for a large majority of the consumption of that drug. I don't have the numbers for Canada, but in the U.S., more than half of all the alcohol consumed is consumed as part of drinking binges, even though most drinking occasions are not to intoxication and are harmless. Eighty per cent of the alcohol consumed in the U.S. is consumed by people who drink more than is good for them. We see comparable numbers with cannabis.

The goal of legalization, I suggest, ought to be the availability of cannabis to those who want to use it temperately while minimizing the number of people who get in trouble with it; so, access without excess. As we've heard from others this morning, that is not a goal that is automatically served by a free market, because that same 80-20 rule that drives public health concerns—as I said, 20% of the heaviest users are going to do themselves most of the damage—also drives marketing concerns.

If you are in the business of selling a drug that some people become addicted to, they are your best customers. What from a public health point of view is a diagnosis, from a marketing point of view is a target demographic. That's equally true whether you're British American Tobacco or Imperial Distillery or the Ontario liquor board. If your goal is to maximize the amount of money you make, you're going to focus on cultivating heavy users, and that's precisely the opposite of the public health objective we ought to be serving.

There's a widespread belief that we should regulate cannabis like alcohol, as if we've been successful in regulating alcohol. That seems to be an obvious fallacy once you have stated it. I think it would be wiser, if we're going to imitate some currently illicit market, to imitate the tobacco market, where, short of prohibition, the government makes aggressive efforts to minimize problematic use. That's a policy regime I've called grudging toleration. It seems to me that we ought to be grudgingly tolerating cannabis and not allowing its promotion.

● (0915)

A key element in promoting or controlling heavy use is price, again, as has been noted. It's important to understand that the natural tendency of the price of cannabis as a legal commodity is toward zero. A joint is a small amount of dried plant matter in a wrapping. The legal product that's closest to that is a tea bag. If we allow a free market in cannabis, the price of a joint will tend toward the price of a tea bag, and that's not where we want it to go. We already see in Colorado and Washington steady and rapid decreases in prices in the legal stores. My colleagues Jon Caulkins at Carnegie Mellon and Steve Davenport at RAND Corporation estimate that Colorado and Washington legal prices are falling at 2% per month and there's no bottom in sight.

The way to counteract that, if you're not going to have a public monopoly, is with aggressive taxation. That cannot be taxation based on retail price, because as the retail price goes to zero, the tax will go toward zero. The right way to tax cannabis, from a policy point of view and a health point of view, is to tax the active agent, THC. We need a specific excise, not an *ad valorem* tax. It should be substantial. Something like \$50 a gram of THC would more or less

maintain current illicit prices in the newly licit market, and that seems to me a reasonable objective.

Information is another key element of any prevention policy where we're trying to prevent a substance use disorder. Restricting marketing seems to me a very important idea, not merely because the advertising itself will attract new users, as it's intended to, but because the presence of advertising dollars will influence the editorial content of advertising media. It's striking that in the U.S., the first mass-market magazine to warn about the dangers of tobacco smoking was *Reader's Digest*. It wasn't because it was the most progressive or intellectually adventurous magazine; it was because it was the only one that was supported by reader subscription rather than by advertising. Controlling cannabis marketing will have a big impact on the way cannabis is described in editorial content.

Every cannabis buyer has to confront some seller, either somebody taking an order over the phone or a clerk in a store. That point-of-sale contact is the one place where we can make sure of connecting with every consumer. It seems to me that it would be wise to require those people to have training in pharmacology and in substance use prevention so that people, particularly new consumers, aren't getting their first information about cannabis from somebody who sells cannabis for a living and is frequently a very heavy user themselves. Those retail clerks ought to have a professional qualification and a professional obligation to give advice in the interests of the consumer and not in the interests of the store owner. They ought to be more like pharmacists than packaged goods clerks.

There are two things we might want to encourage both at that point-of-sale and in publicly funded information. One is the notion of use to less than intoxication. The striking difference between cannabis today and alcohol today is that most occasions of alcohol use are not to intoxication. That is not the case for cannabis. "Getting stoned" is a common synonym for cannabis use. It is possible that we might introduce to the population the notion that one might take a puff in order to improve the taste of food, or the sound of music, or the pleasure of conversation rather than having cannabis intoxication as the primary activity one is engaging in. I have no reason to think that this will work, but it's something we could try.

● (0920)

The other thing I'd like to see emphasized, both at point-of-sale and in mass media, is the importance of abstaining from combination use. Forty years ago in the U.S., cannabis on the one hand and alcohol and tobacco on the other were virtually opposites socially. They represented different cultural forces. Now in the surveys, heavy tobacco use, heavy alcohol use, and heavy cannabis use are all the same population.

Through cannabis legalization, one beneficial possibility is that you could substitute for other more dangerous drugs. We undertake policies to encourage that possible beneficial tendency.

Thank you.

The Chair: Thank you very much.

Now we'll go to our question period starting with a seven-minute round of questions.

We're going to start off today with Mr. Ayoub, who is fresh off a town hall meeting on cannabis.

Mr. Ramez Ayoub (Thérèse-De Blainville, Lib.): Exactly, Mr. Chair.

I'm going to ask the question in French. You may want to use the earpieces if you need a translation.

[Translation]

Mr. Chair, I just participated in a town hall meeting last night in my region. More than 150 people came to get information. The facts are troubling. Before I tell you about it, I want to point out that I'm very impressed with the panel we have with us this morning. It includes experienced people from various areas of activity.

In my riding of Thérèse-De Blainville, north of Montreal, in the Lower Laurentians, 45% of youths 17 to 24 years of age admit to having used marijuana in the past year. The average for Quebec is 35%. In the case of youths 11 to 17 years of age, that percentage is 28%, while the average for Quebec is 24.9%.

Yesterday wasn't a cry of alarm, but I said it was urgent to act. This morning, that urgency is even stronger. With all due respect to my colleagues opposite, who want to delay things, it is clear that all the approaches that have been taken over the past 100 years have been a dismal failure in terms of preventing cannabis use among young people. The consequences, of which we are speaking at length, are serious. It has been pointed out in particular that the brain continues developing until the age of 25.

Yesterday, I was informed of some of the issues that you also raised. For me, the important issue isn't the money, but prevention and the health of our young people. But we are urging them to turn to the illicit market and organized crime. These aren't just dealers of cannabis, but of other drugs as well that we want our young people to experiment with even less.

The age issue concerns me. If it is decided that, for medical reasons, the required age should be 25, that isn't a problem. In fact, we all agree that using has consequences. However, we seem to be forgetting that, as of age 18, young people are given the responsibility of voting for representatives like us, who pass laws.

Are we going to tell them that they have the right to vote, but that they don't have enough social conscience to make an informed choice for their own health before the age of 21 or, in other cases, the age of 19 or 25?

I don't understand the logic of that.

Each province is independent in its choice of age. There is a difference between alcohol and cannabis, but are we going to do it for each product that will eventually be on the market?

That said, I would like to hear from the nurses. I quite enjoyed Mr. De Villae's speech. I almost fully agreed with you, although a little less on the age issue. I would like to know a bit more about these kinds of issues. In terms of the market price, on the street, we were talking yesterday about \$20 for 3.5 grams. Price is an important factor. If we offer prices that aren't consistent with the market, we won't change anything.

I have used up four minutes, but I can tell you that the last night was very informative.

I would like to hear your comments on the age issue, the logic around it and the related consequences.

• (0925)

[English]

Ms. Karey Shuhendler: Thank you for the question.

The Canadian Nurses Association approaches the question of age from a harm reduction perspective. For all of the things that have been discussed over multiple days, as we've been hearing, we feel that they need to be very carefully balanced.

We do recognize that brain development continues to occur until age 25, according to the research, and that there are harms associated with cannabis use, but as we've heard just now and throughout the preceding days, we recognize that setting an age too high could continue to leave the people in Canada who use cannabis the most at highest risk from the harms of the illicit market. That includes the crime associated with purchasing in an illegal market and the harms associated with an unregulated product when you don't know the potency or the safety of what's in there.

Instead of on the age itself, we really think that the emphasis needs to be on educating all members of the population, especially vulnerable people or, potentially, the highest users, by developing education and involving all stakeholders so that you can have a conversation with youth, it's not a paternalistic approach, and they know of the harms and can make an informed decision.

Ms. Lynda Balneaves: I'll just add to that. It's well established—the stats are well known—that Canada's youth are among the most prevalent users of cannabis around the world. By raising the age, we're potentially still keeping our cannabis use a very “hidden in the shadows” health behaviour. We need to have youth being able to go to health professionals and to talk about their use, to talk about the problems associated with it, and to receive the appropriate education and the referrals to harm reduction programs in order to address problematic use.

We also need to be able to open the dialogue with our youth about the potential harms, many that they may not be aware of. We've seen research that suggests many youth begin to use cannabis in social settings. They see it as almost a social lubricant. They don't associate harms with it. They may not be aware of what the long-term harms are that are related to career and educational attainment, as well as the cognitive development issues and the mental health issues that have been raised by other panellists today.

We need to make sure that we're opening that dialogue and being respectful of youth's ability to make decisions around their health care behaviour.

Mr. Michael DeVillaer: The only point I would add is that there's something I've found we hear a lot and I find a bit strange. We frequently hear the comment that it's easier for young people to get cannabis than alcohol and tobacco. The reality is that the studies say exactly the opposite.

Specifically, I'm talking about the Ontario drug use and health surveys that the Centre for Addiction and Mental Health does now. They've been doing these surveys for 40 years. They know what they're doing with this. Their data show that underage people report that it's easier for them to get alcohol and tobacco than it is to get cannabis. The reason is that their peers of legal age are their suppliers. In other words, if you're 18, you can get alcohol and tobacco from your 19-year-old peers, but your 19-year-old peers don't have legal access to cannabis, so it's not so easy.

I think this is an important part. We really need to look at the data when we hear comments that get people excited and worried. I'll leave it at that.

• (0930)

The Chair: The time's up.

Ms. Gladu.

Ms. Marilyn Gladu (Sarnia—Lambton, CPC): Thank you to all of our witnesses today.

I agree with what my colleague across the way has said, which is that young people are smoking cannabis. Whether it's legal or illegal, they're smoking it, so we certainly shouldn't be in a rush to worry about whether it's legal or not. What we should be doing is trying to prevent harm.

We've heard over three days this week a consistent message that the key to getting young people to not smoke cannabis is public education, public awareness, and training for them similar to the effort that was done with tobacco, to change public opinion to "grudgingly tolerating". I liked that phraseology. That is definitely what's needed.

In the two years since the Liberal government announced they were going to legalize cannabis, that public awareness campaign has not appeared. Certainly, that's something that needs to be a priority, but we did see pockets of excellence. We had testimony yesterday from individuals who have brought forward training for parents.

I understand, Dr. Melanson from New Brunswick, that you did some public awareness training. I was wondering if you could expand on what your experience has been in Moncton.

Dr. Serge Melanson: Thank you, Ms. Gladu.

Essentially, my first-hand experience as an emergency physician for the past 14 years has been recognizing an exponential increase in the usage of cannabis in patients presenting to the emergency department.

Really highlighting your point on public awareness, one of the things I brought up in my address earlier was this concept of a medical condition that's only now starting to become recognized and

studied. It's referred to as cannabinoid hyperemesis syndrome or cyclical vomiting syndrome. This is a condition where mostly young people, young adults, will present themselves to the ER department after days of uncontrollable vomiting, not knowing themselves what the cause might be. After an extensive panel of medical tests are conducted and we conclude that there is nothing medically or organically wrong with them, we then begin questioning them a bit more thoroughly on their use of cannabis and discover, quite often, that they are using cannabis on a fairly regular basis. They themselves often believe that they are well-informed in regard to the harms of this drug. When we educate them on the likely association of their cannabis use and the cyclical vomiting syndrome, they're often quite surprised. When we provide them with additional information and counselling on how to abstain from cannabis use, we often see this debilitating condition essentially disappear.

I think that speaks very much to your point that, as much as people may believe they are aware of the health risks associated with cannabis, there needs to be a more focused effort on providing more relevant and important information to the consumers of this drug.

Ms. Marilyn Gladu: Very good, thank you.

Picking up on one of your points, I would say that potency has been raised as a big concern. The cannabis of today is much more potent than previously. I think it was the nurses society that said it wanted to see really good control over the quality, the dose, and the potency that people are getting.

Another way of protecting the public from things that are not well controlled is to get rid of one of the suggestions that's in Bill C-45, which is to allow home growth. Home growth has absolutely no quality control on the product, on the potency, on any of these things, and also provides easier access for children.

I wonder if the Canadian Nurses Association would like to start, and then we'll let everyone comment on whether they think allowing home growth is a good idea.

• (0935)

Ms. Lynda Balneaves: The risks posed by homegrown cannabis mirror some of the risks that we have associated with access to alcohol, tobacco, and pharmaceutical drugs in the home. Again, it really points to the need for public education related to the potential harms of cannabis, particularly to children who may consume it unaware of those risks.

It really points to the need for regulation around self-produced cannabis in terms of the source plants or seeds that will be used as a way of limiting potency, limiting the number of plants and plant material that is available within the home, and ensuring that there's regulation related to storage, labelling, and the use of that product in an edible form that may be, again, more attractive to children.

We support regulations related to safe storage and production. Again, it supports the need for open and non-judgmental conversation between parents and children about what cannabis is, how it can be used safely, and why there are restrictions around use in people who are under the age of 18.

Ms. Marilyn Gladu: I was really interested to hear about the statistics on what alcohol and tobacco cost us: 40,000 deaths, 6.5 million hospital days, and \$30 billion annually. The conversation that we've been having is that we should legalize marijuana and treat it similarly to how alcohol and tobacco have been treated. However, this brings to mind that perhaps those things aren't a success, so perhaps we shouldn't be trying to mirror what was done there. Perhaps we should learn from those, and consider a raised age.

One thing I would like to expand on is this idea of the non-profit-driven supply. We heard this yesterday from our friends from Quebec.

I think it was you, Dr. DeVillaer. How would that work in Canada? What do you think that would look like?

Mr. Michael DeVillaer: It's a really good question. People have written about this.

One of the popular models—and the group from Quebec, I think, is very much in favour of this—is something that is found in a number of European countries where they have small co-ops. These are user-run co-ops that pay their staff salaries, but there is no motive to expand membership in any way, no motive to get the current members to use more of the product, and these are key ways of preventing this from becoming a problem.

I think people are familiar with co-ops. There are a lot of people in communities who will join a co-op to get vegetables and so forth. It's really an extension of that very simple concept.

The important thing I think it brings is.... All you want to do is simply serve the existing market and not expand it. What we know from decades of research around alcohol and tobacco is that the more you promote a drug through advertising, the more it's used, and the easier you make access, the more it's used. That's how you expand a market. The problem here is that as the market expands, so does the number of people who have related problems. That's why market expansion is important.

The only other point I'll make very quickly is that, again, we have had a very difficult time internationally, not just here in Canada, of regulating our legal drug industries in a way that they achieve that balance of industry revenue and protection of public health. It's much more difficult than most people think.

The Chair: Professor Kleiman, you signalled a response.

Mr. Mark Kleiman: If I may, on the age question, it's a very difficult question. It's certainly true that 16-year-olds get their supplies from 18-year-olds, so establishing an 18-year-old age limitation is going to increase use among younger people. It's also true that criminal records are catastrophic, but cannabis arrest is much more dangerous than most patterns of cannabis use.

Here is a possible compromise. In the U.S., states that vigorously enforce their law against direct sales from retailers to people under 21 experience reductions in alcohol use down the age range and in

drunken driving down the age range, so that appears to be effective. That needn't be coupled with criminalization of possession or use by people under whatever the legal age is. If you enforce the law on the seller rather than criminalizing the buyer, I think you can get most of the benefit of the age restriction with relatively little of the cost.

• (0940)

Ms. Marilyn Gladu: Very good, thank you.

The Chair: Thanks very much.

Mr. Davies.

Mr. Don Davies (Vancouver Kingsway, NDP): Thank you, Mr. Chair, and thank you to all the witnesses.

Mr. Strang, I want to start with you. I want to quote from the final report of the task force on cannabis legalization and regulation:

Canada's governments, and many other organizations, will need to work quickly to prepare for the implementation of the new system, increasing or developing capacity in many areas relating to production, distribution and retail, quality control and enforcement, and research and surveillance. This increase in capacity will require new resources (human and financial), enhancements to existing institutions and the creation of new ones. Having all elements in place will be necessary for the proper functioning of the regime.

Some provinces are saying they'll have difficulty being fully prepared for the legalization of cannabis on July 1. Given that many of the capacities that I just mentioned will fall to the provinces, does Nova Scotia have any concerns in this regard?

Dr. Robert Strang: I need to emphasize I'm not here representing the jurisdiction of Nova Scotia. I'm here representing the Council of Chief Medical Officers of Health. But I will say that, like many other provinces, we're working as hard and fast as we can through a complex situation.

My last point is that we really need to understand that the current situation, where cannabis is illegal but there's a huge amount of use, is going to continue. If we delay the shift to legalization, it's not going to decrease use. It will actually continue the kind of grey zone we have now where the rules are very unclear.

My own opinion is that it won't be perfect, but the sooner we move to a legal framework, under which we can then start to work on the other pieces, will create clarity for Canadians, clarity for the health system, and clarity for our criminal justice folks.

Mr. Don Davies: Dr. DeVillaer, you have recommended that the Canadian government immediately decriminalize possession of small amounts of cannabis. Why?

Mr. Michael DeVillaer: The first thing is certainly the number—the tens of thousands—of Canadians who are continuing to receive criminal records. As someone has already pointed out, in the great majority of cases, these criminal records will do far more harm than the use of cannabis. This type of decriminalization can be done fairly easily, and it's been done.

Canada is actually a bit of an outlier in this regard. There are 32 countries—the last time I looked—that have decriminalized cannabis; that is, they have stopped giving people criminal records for simple possession of small amounts of cannabis. Even in the U.S. we hear so much about.... I think there are seven or eight states now that have either legalized or are in the process of legalizing cannabis. There are actually twice that number that have consciously decided to choose decriminalization over legalization. That's important.

This is something that should have been done a long time ago. I wish it would have been done when this campaign began. I wish it would have begun when the idea was introduced to the House of Commons in June of last year by Murray Rankin. There is a simple solution to this called the Director of Public Prosecutions Act, and it could be invoked to asked enforcement agencies and crown attorneys to cease and desist charging people with cannabis.

● (0945)

Mr. Don Davies: Thank you.

Ms. Shuhendler—

The Chair: Just a second, Professor Kleiman has a—

Mr. Don Davies: I'll be coming to—

The Chair: He wants to respond to that question.

Mr. Don Davies: Okay. Quickly, Mr. Kleiman.

Mr. Mark Kleiman: This is a question on which I've changed my mind over time. I used to think that punishing users was an important way of suppressing illicit markets, and if that were true, I think I'd still be for it. I think the evidence now is that no country has created enough of a threat on users to substantially decrease consumption. The main impact of punishing users is merely to punish users. This is not merely for cannabis, but also for drugs that we keep completely illegal. I think the practice of punishing drug users is probably a mistake and ought to be abandoned.

Mr. Don Davies: Thank you. I will be coming back to you, sir, with another question.

Ms. Shuhendler, if I heard your evidence correctly, you said that the criminalization approach to cannabis has negative consequences. Is that correct? Did I hear your evidence correctly?

Ms. Karey Shuhendler: We were speaking specifically to criminalization for youth, but yes.

Mr. Don Davies: Does the criminalized approach have negative consequences for youth?

Ms. Karey Shuhendler: Yes.

Mr. Don Davies: You're probably aware that Bill C-45 retains a criminalized approach.

Ms. Karey Shuhendler: Yes.

Mr. Don Davies: It will continue to criminalize things like possession of over 30 grams and cultivation of over four plants.

A 20-year-old selling to a 14-year-old would face potentially up to 14 years in prison. Will that approach continue negative consequences on youth, in your view?

Ms. Karey Shuhendler: I think that's an excellent question.

I think, for the purpose of our brief, in the surveying of our nurses across the country, we wanted to focus on the disproportionate disadvantage for decriminalizing for youth. We did not dive further into the excellent points that you raised, that we heard addressed earlier, a few days ago, by this panel. I think a criminalized approach can be dangerous. The role of nurses in this is really to focus on providing an open space for education, so the move toward legalization is definitely a way to do that.

Mr. Don Davies: Thank you.

Is it Dr. Kleiman or Mr. Kleiman? I'm not sure.

Mr. Mark Kleiman: Mister, please.

Mr. Don Davies: Okay. Mr. Kleiman, I don't know if I understood your evidence correctly, but I thought I heard you say when you were talking about the tax policy that you recommended the price of \$50 per gram. Did I hear that correctly?

Mr. Mark Kleiman: No, I'm sorry, I meant \$50 per gram of THC. For ordinarily potent cannabis in the U.S., which is now about 20% THC by weight, it would be something like \$10 per gram, which was the illicit price in the U.S.

Mr. Don Davies: Thank you.

Mr. Mark Kleiman: The goal ought to be to not have the price decrease.

Mr. Don Davies: Thank you for clarifying that.

I'll go back to Mr. Strang.

I think you mentioned that the public health goal underpinning Bill C-45 is the idea of taking products out of the illicit—I think you prefer the term “illegal”—market. Is that correct?

Dr. Robert Strang: Yes, the goal is to bring people into a legal market, but a legal market that is driven by the objectives of public health and public safety, not for profit.

Mr. Don Davies: This legislation would not do that for edibles and concentrates and other products. In other words, on July 1, 2018, those products will still be in the illegal market without any regulation whatsoever on quality, packaging, on anything.

We've heard evidence that somewhere between 30% and 60% of the products being consumed by people in North America are some form of creams or nasal sprays or tinctures, or edibles of some type.

Would you agree that we should be moving expeditiously to bringing those products into the regulated market exactly for the public health and safety concerns that you mentioned, or should we leave it to the illegal market?

Dr. Robert Strang: I don't disagree that we need to bring in edibles as part of this, but the world of edibles becomes very complex, and I think it's appropriate that we do this in a staged approach.

There are enough complexities right now, as I'm sure you're well aware of from your hearings this week. We need to get through some of the other pieces and then grapple with the very complex area of edibles. Control of consumption, who uses them, workplaces, schools, etc., becomes very difficult, and that requires considerably more thought and policy conversation.

The Chair: Thanks very much, Mr. Davies.

Now we move to Ms. Sidhu.

● (0950)

Ms. Sonia Sidhu (Brampton South, Lib.): Thank you all for being here and sharing your valuable information.

My question is for Dr. Melanson.

We all know that in 2015 the highest use of cannabis in Canada was among youth, at 21%. Professor Kleiman said there's a huge amount used, no matter whether it's legal or illegal. My colleague did a town hall yesterday and shared the fact that 45% of youth are using now. I did a round table in my riding, and the number who are using has doubled.

Dr. Melanson, you said in your statement that you saw a patient in the ER where cannabis was laced with another drug that was more dangerous. It's life threatening for all of our youth.

That is why our government, after extensive consultation with law enforcement, has introduced legislation to legalize, strictly regulate, and restrict access to cannabis. Don't you think this approach is better than when youths are taking laced cannabis? What is your thought about that?

Dr. Serge Melanson: Ms. Sidhu, thank you for that important question.

My reference to the lacing of cannabis was based on my historical experience with the fact that there is currently, as you know, no legalized market for cannabis. I would presume there would be some benefit in having this substance controlled from a safety standpoint, in terms of what additives or not are incorporated into it. I suppose that's also under the assumption that once this substance is legalized the illicit market will entirely evaporate, which I think may not be the case.

I'd also like to point out that there are other significant health risks to youth and young in particular. As you likely already know, the leading cause of death among young people and youth is trauma. We recognize that trauma, whether it be from a motor vehicle accident or high-risk behaviour, is often associated with either alcohol or an

illicit drug, including marijuana use. This is also something I've seen substantially, despite seeing all the public awareness in 2017 around the use of alcohol and illicit drugs and high-risk behaviour.

To answer your question, I think there is the potential to see improvements in regard to the mixing of more potent toxic agents in cannabinoids as we see them today. Unfortunately, I don't think that will remove the risks to youth and young people in regard to what kinds of trouble they can get into.

Ms. Sonia Sidhu: Thank you.

My next question is for CNA.

Our government made a historic investment of \$5 billion throughout 2017 that can ensure mental health support for 500,000 Canadian youth. Mental health resources and research will benefit all Canadians. How will this specific area of funding and research support the government's goal to protect the health of Canadians and minimize the harms of illicit cannabis?

Ms. Karey Shuhendler: Thank you for the question.

Legalizing will remove a lot of the harms of illicit cannabis. On your question about the funding for mental health, that is an excellent investment. We applaud the government's investment in mental health services because they are necessary. There's always room for improvement as well, and as we said in our testimony and our brief, additional investment through either revenue from sales or enforcement savings should go into mental health programs and substance use prevention and treatment programs. I think that while the \$5 billion is a great investment and indicates that there is a need for additional mental health services in Canada, there should be additional money taken from the legalization of cannabis to invest in mental health.

Ms. Lynda Balneaves: Just to add something for information's sake, I'll be meeting with the Canadian Institutes of Health Research on Monday in Montreal. There will be researchers from across the country who will be discussing the CIHR priorities in cannabis research and the use of non-medical cannabis in Canada, and so there will probably be additional funding specific to research that will look at the social as well as the health effects of non-medical cannabis use following legalization.

● (0955)

Ms. Sonia Sidhu: Thank you.

My next question is for Dr. Melanson again.

How do you see the role of health care practitioners, non-profit educators, community organizations, and other non-governmental organizations providing public education for youth on cannabis? I also applaud the work you are doing for public education, especially on healthy eating for kids. What do you think about public education for youth on cannabis?

Dr. Serge Melanson: Again, it's about utilizing tools that youth and young people access. Here in New Brunswick—we're the New Brunswick Medical Society—we use electronic formats and also traditional means of getting the message to them that despite the legalization of cannabis there is still some degree of risk in using it. As the other panel members have mentioned a number of times, an informed decision, understanding all risks, is what is key when using legalized marijuana. That is the staple of the message we have provided to the citizenry in New Brunswick thus far.

I would also point out essentially that the educational campaign would need to be sustained, and not simply reflective of what is going on currently, and that a comprehensive strategy between provinces and across the country likely needs to be adopted, to make sure that the message that our young people in particular are receiving is consistent. We don't want to be sending mixed messages.

Ms. Sonia Sidhu: Thank you.

My next question is for Dr. DeVillaer.

Mr. Michael DeVillaer: Mr. DeVillaer, please. Thank you.

Ms. Sonia Sidhu: Mr. DeVillaer, Bill C-45 proposes very strict regulation of labelling, advertising, and marketing at the outset of legalization, whereas alcohol, pharmaceutical, and tobacco products all entered the legal market with much more relaxed regulation.

Do you think this will make a difference in our ability to protect public health?

Mr. Michael DeVillaer: I think there are some positive aspects of Bill C-45 arising from the task force report. For example, it looks as if the direction we're going in is that advertising for cannabis products will only be allowed in places frequented by adults. That would include cannabis retail outlets, perhaps alcohol retail outlets, gambling casinos, maybe in promotions before adult-rated films. There are a number of possibilities there.

I think that presumes that only young people are affected by advertising and marketing, and yes, absolutely we should be trying to do everything we can to prevent marketing advertising reaching young people. We're still not doing it with alcohol, for example. Alcohol advertising is everywhere you look these days, and there's no way of shielding young people from that.

Adults will still be exposed to advertising, and we should be very careful not to underestimate the power of that industry to influence behaviour. Remember, this is the industry which back in the 1960s convinced everybody that smoking these dried leaves in paper would make you more successful socially, and romantically, and career-wise without doing any harm to your health. Half the adult population bought it. I think we're more sophisticated these days than we were back then, and that will help, but adults are still very susceptible to advertising. Advertising works.

Public health has been making this statement for a long time now, and we see it's beginning to have an impact. We see prominent health

journalists, André Picard, for example, writing about the way alcohol is so aggressively promoted and advertised. Even within the advertising industry, Terry O'Reilly is an icon in the Canadian advertising industry, and he was recently making some comments in his programs about the way in which alcohol is very aggressively targeted toward women. CAMH data shows that alcohol use among women is increasing just as it is among men.

This is why I proposed that we really do everything we can to completely ban advertising of all kinds. Plain packaging is very important. I'm glad to see that being talked about. With regard to retail outlets, one of the things I would like to see is a plain packaging approach to retail outlets as well, because of the principle that a pack of cannabis or whatever, as with cigarettes, is an ad. Every time somebody pulls it out, it's an ad. Plain packaging minimizes that to a significant degree, and I would like to see that same thinking applied to retail outlets as well.

● (1000)

Ms. Sonia Sidhu: Thank you.

The Chair: That completes our seven-minute round.

We'll go to a five-minute round starting with Mr. Webber.

Mr. Len Webber (Calgary Confederation, CPC): Thank you, panellists.

Dr. Melanson, I find it interesting your talking about cyclical vomiting syndrome and how you attribute that to marijuana use, yet people going through chemotherapy and having nausea issues tend to go to marijuana to eliminate the nausea. I find it interesting that it affects some people one way and some people the other way. Do you have any comment on that at all?

Dr. Serge Melanson: It's a very excellent question, Mr. Webber. I think that really underlines our lack of understanding of what the scientific value of cannabis truly is and its perhaps beneficial or harmful effects. You quite accurately pointed that out. Also, as a practising physician, I myself will often encounter patients who will give testimonials to the effectiveness of cannabis with reducing nausea; yet during the same work shift, I will perhaps encounter a young person who is in the midst of a cyclical vomiting syndrome.

To be quite honest, the medical literature is not clear on what the physiological reasons for that are, which I think should give us great pause in regard to whether we are going to expect the increased usage of this substance in our communities and not fully understand its medical implications or health implications. I think it really underscores the importance that research will play going forward in regard to studying the effects not only from a population-based standpoint but also from a medical physiological standpoint. We need to make sure that is heavily promoted. Otherwise we will continue to operate in the dark, as it were, regarding the true effects of this substance on one's health.

Mr. Len Webber: Thank you for that. I agree.

Mr. Kleiman, I have a question for you. You mentioned that you were quite involved with Washington state and their legalization process. Is it Washington state that did not allow home cultivation? Is that true?

Mr. Mark Kleiman: That is correct. Washington allows home cultivation for people with medical recommendations, but not for people who merely want to use it for non-medical purposes. That contrasts with Colorado, which does allow homegrown.

Mr. Len Webber: It's Colorado that allows homegrown for recreational use. Is that—

Mr. Mark Kleiman: Yes. They've had a big problem with people who want cannabis to be sold out of state using a chain of people purportedly home growing as a cover for illicit cultivation, essentially.

I was a big fan of home growing to start with, based on the theory that you shouldn't push people into a market for something that they could do for themselves. I think it turns out that the regulatory problems around home growing were harder than I thought they would be. Therefore, the Washington approach now looks more sound than the Colorado approach.

Mr. Len Webber: Do you see Colorado going down that road because of the problems eliminating home cultivation?

Mr. Mark Kleiman: I know they're moving toward restricting the number of plants. A cannabis plant can produce a wide variety of amounts, but if you allow people to grow six plants, they can produce a fair amount for export.

Mr. Len Webber: Thank you.

I'd like to get the thoughts of others as well with regard to home cultivation.

I'll start with Robert Strang. What are your thoughts on home cultivation?

Dr. Robert Strang: I have two thoughts. It certainly creates a number of problems around continuing to normalize cannabis as totally socially acceptable. In Nova Scotia, we have had meetings with owners of rental properties and there are a number of substantive and real concerns, from their perspective as property owners, about tenants who are growing and the impacts on multi-unit dwellings. However, I also think we have to be realistic. People are going to grow cannabis whether we say it's legal or not, so that becomes a bit of a conundrum around enforcement. Overall, I think it would be better to have cannabis produced, bought, and sold through a well-regulated legal market and minimize other sources.

●(1005)

Mr. Len Webber: Ms. Balneaves.

Ms. Lynda Balneaves: Related to homegrown, I just want to share some research. We've done the national survey of people that are using cannabis for medical purposes and there's been an overwhelming sense that people that have been exposed to self-production prefer that as a route for their medical use because they have control over the product, for one. Many of them are quite good amateur botanists, in terms of developing a product that is able to address the symptoms or health conditions that they're using it for. It also allows them to have ready access to their medication versus waiting for it through the mail system that currently exists. Again, it goes back to my point about the importance of regulating home grows, so that we ensure the safety, not only for the people within the home, but for their neighbours and for the larger community.

I also want to make a quick comment on your comment around hyperemesis syndrome. I just want to point out that the legal status of cannabis has made it very difficult, as a researcher, to actually conduct research on cannabis. In order to actually do a clinical trial of cannabis, it can take up to two to three years in order to gain approval through Health Canada to gain access to the actual substance. Many of us in the research community are quite excited by legalization because hopefully, it will open the door to the much-needed research that needs to take place.

Mr. Len Webber: That's interesting.

The Chair: Your time is up.

Now we'll go to Mr. Oliver.

Mr. John Oliver (Oakville, Lib.): Thank you for your testimony this morning.

Mr. DeVillaer and Dr. Melanson, I want to go back to age limit and the advice you gave. I totally understand the health lens you've applied to this and the recommendation that the age limit be set at 21.

I want to do a really quick backdrop for you, because you are speaking to a federal act and not a provincial act right now. Federally, the definition of youth is 12 to 17 years of age. You would be charged and convicted, if you were under 17, under the Youth Criminal Justice Act, and your name would be kept private and the record would be sealed or destroyed after set time frames. Federally, at the age of 18 you would be charged as an adult, and if you were convicted, you would have a criminal record that's a public record.

If we took your advice federally and moved the age limit to 21, then 18-, 19-, and 20-year-olds would be subject to criminal charges and would have public criminal records. I think the intent of the federal legislation is to protect adults from that, so people 18 and over would be legally allowed to possess cannabis up to a certain amount. It's a minimum age, so provincially or territorially, they could go to a higher age. They could say 21, and in that case, 18-, 19-, and 20-year-olds who were caught in possession of marijuana would be charged under the provincial charges acts. It's a fine, a ticket, or a seizure. There would be no criminal record. Think ticketing or liquor licence charges. It seems to me that this is a better solution.

Is your advice of 21 really aimed at provincial-territorial age limits, or is it really your belief that the health consequences for 18-, 19-, and 20-year-olds are so extreme that they should be subject to criminal charges at the federal level? Given that view, do you think the advice at the federal level is still correct, that it should be 21 before we legalize it?

Dr. Serge Melanson: I'll say a few things. Mr. Oliver.

On your point that the New Brunswick Medical Society and I take a view of this through the lens of health care, that is essentially the lens through which we view most things. Your points on the legal ramifications, however, are very well taken.

I'd like to point out a few things you've brought up, the first of which is that I think the scenario you've laid out would seem entirely reasonable, as long as our provincial jurisdictions are under the same understanding and exert that same degree of responsibility when applying their legislation.

Second, in regard to the balance of criminality versus the health care risks, we've heard from a number of panellists here today on potential compromises or options that could be struck.

I would like to point out, however, that the demographic you laid out, 12 to 17 and then 18 to 21, unfortunately also tends to be the demographic in which we very much see the first episodes of significant mental health problems.

• (1010)

Mr. John Oliver: Just to be clear on the demographic, the federal definition of youth is 12 to 17. Eighteen-year-olds and older are adults.

Dr. Serge Melanson: Agreed. I'm trying to point out that this demographic also represents, from a health perspective, the demographic in which we see major mental health problems first begin. I think the medical literature is quite clear.

Mr. John Oliver: I understand the health consequences. I'm coming back to your advice to this committee to move the age limit for legalization to 21 versus giving that advice to your Province of New Brunswick or the Province of Ontario. Understanding the health risk, I think the committee has heard lots about that. I'm trying to get right to your advice. Do you want the committee to change the age limit to 21? Is that still your advice, given those criminal charges consequences?

Dr. Serge Melanson: As you've pointed out, yes. We stand very strongly on the age of 21 and would not be prepared to lower that for fear of the health implications. As you also pointed out, it would

seem as though there are legal abilities to get around the criminality, as long as the local and provincial jurisdictions were able to cooperate in doing so.

Mr. Michael DeVillaer: My view is that this is part of the reason I supported decriminalization as the first—

Mr. John Oliver: I have one other question. Decriminalization doesn't deal with the black market. It doesn't deal with the right to licence and regulate the production of marijuana. It leaves the country in a much more difficult state. We're really dealing with legalization in this bill, not decriminalization.

Mr. Michael DeVillaer: Yes, I understand.

Let me clarify what my suggestion is. I'm not suggesting decriminalization replace legalization. I'm proposing that as a first step, which will then offer a lot of benefits to making legalization simple. I say let's decriminalize; let's make this a little simpler, and then proceed with legalization as we're doing it. I think there's a popular expression in emergency medicine, "First stop the bleeding." The bleeding in cannabis law reform are all these young people having their futures compromised with criminal records. Let's fix that, and then take our time working on legalization. There are no recreational cannabis emergencies. We should take as much time as we need to get this right.

Mr. John Oliver: Thank you for that.

The Chair: Your time is up.

Dr. Carrie.

Mr. Colin Carrie (Oshawa, CPC): Thank you very much, Mr. Chair.

I appreciate my colleague, Mr. Oliver's, questioning. It bodes the question, and maybe I'll ask Dr. Melanson this one. Why wouldn't we simply decriminalize up to 21, then make it legal over 21? Do you think that might be a solution? Make it a ticketable offence, because nobody wants to see a youth have a criminal offence that follows them through their life. With what we've heard through testimony, maybe that's not even practical right now, but why wouldn't we decriminalize up to age 21 and just make it legal over 21?

What are your thoughts on that?

Dr. Serge Melanson: From a legal standpoint, I think that sounds perfectly reasonable. We would have to make sure that the messaging to our young people, young adults, which is also being lost in this discussion, is that by setting the age we are also taking into consideration the legal ramifications but are not condoning the use under that age. Your point is well taken, and I think it's worth the merit you've suggested.

Mr. Colin Carrie: I want to thank the witnesses today. I am a little frustrated, because the Liberals are rushing this through. I think you are quality witnesses and I like to hear from you, because this is transformational. We all realize there's no other country that's really gone this route. It's a big experiment. It's complex. What we've heard from most witnesses, even though people are anxious to get it through, what's more important is getting it right. We take your point well where you say government's responsibility is to protect its citizens, particularly the youth.

Because this is a panel on prevention, treatment, and low-risk use, I want to get back to that topic, so I think I'll ask this question again, and it's for Dr. Melanson, and maybe Dr. Strang.

The government's had two years to invest in public ad campaigns that raise awareness about cannabis. They've had two years to set up a data system for collection of data, also ongoing data collection. They've had two years to set up research. They've had two years to figure out how to bring people who are having problems with addiction into treatment modes. They've had two years for education. What we want to do is make sure we get this approach right to protect particularly our youth. Do you think the government has missed two years of raising awareness on this issue, and do think that waiting until after it's legal is the wrong and unsafe approach?

Dr. Melanson, I'll start with you and get your comments on that.

•(1015)

Dr. Serge Melanson: Thank you again, Mr. Carrie. I agree with certain [*Technical difficulty—Editor*]

Mr. Colin Carrie: Wow. We finally had a witness who agreed with me.

Voices: Oh, oh!

The Chair: Dr. Melanson, I don't know if you can hear us or not, but we've lost you. Can you hear us?

Mr. Colin Carrie: Well, Dr. Strang, maybe you could agree with me partially.

Dr. Robert Strang: I'm one of the senior officials from Nova Scotia on the FPT senior officials working group that has been working for over a year. From the outset we have been putting forward the need for a robust conversation with Canadians around cannabis and around the coming changes in the legal status of cannabis. There certainly is a lot more work to do on that, and it has been somewhat slow. I do need to make a comment, though, that we're spending a lot of time talking about education and social marketing campaigns.

Those are necessary, but frankly, and the example of tobacco was used earlier, we have not reached the levels of tobacco use in Canada from education and social marketing campaigns, from telling people about the risks of tobacco. We have reached those levels because of using other policy levers around price, significantly limiting

advertising of tobacco, and moving forward on smoke-free places and other pieces. My point is that while we do need social marketing and education campaigns—those are necessary—but if we actually don't control access and price and advertising those things, then all those social marketing campaigns will be a waste of money.

Mr. Colin Carrie: I take your point because you mentioned we do need a comprehensive strategy, because that is my point. We're 290-odd days out if the Prime Minister is going to keep this promise. It appears to me that with the federal government, with this bill and with the announcements they've made, none of the resources that are required have trickled down to the provinces and territories to help set up data collection, research, treatment, and education, which are part of the comprehensive approach.

I'd like to maybe ask—

The Chair: I think we should go back to Dr. Melanson. I'll ask him to finish his answer.

Mr. Colin Carrie: If he's there.

The Chair: Dr. Melanson, you're back.

Dr. Serge Melanson: Yes, I'm back. Sorry for the technical difficulties.

I will be very brief. I wanted to point out that our experience here in New Brunswick has been, as you pointed out in your question, that the medical societies have needed to take a leadership role in this over the past year or two, and I would hope that our local governments as well as the federal government will be quick to catch up to the work that we're attempting to do in educating our public. We've needed to do this from a leadership standpoint because there seems to have been a bit of a vacuum in regard to getting the word out sooner rather than later.

Mr. Colin Carrie: With this approach, this panel, as I said, is about treatment, prevention. We keep hearing that if a young person 12 to 17 possesses over five grams, they can be criminally charged. If an adult possesses 31 grams, they can be criminally charged. Maybe I could go across the panel. Do you think there should be a decriminalization amount? I would start with the nurses.

The Chair: We have to have a quick answer here. We're over time, so just give us a brief answer.

Ms. Karey Shuhendler: The CNA does think that decriminalization is a strategy to help to reduce harms of related substance use.

Mr. Michael DeVillaer: Yes, I think 30 grams is a reasonable amount, and that anything over that might be subject to something more than just confiscation, but not a criminal record.

The Chair: Okay, we have to end it there, Dr. Carrie.

We'll move to Dr. Eyolfson.

Mr. Doug Eyolfson (Charleswood—St. James—Assiniboia—Headingley, Lib.): Thank you, everyone, for coming.

Dr. Melanson, we share a common professional background. I'm a recovering emergency physician from Winnipeg. I practised for 17 years there.

One of the things you said about what we have to be prepared for, and correct me if I misunderstand, is you predicted that we would be seeing increased use of cannabis after legalization.

• (1020)

Dr. Serge Melanson: Thank you for the question, Dr. Eyolfson.

My understanding from other jurisdictions is that by decriminalizing and legalizing cannabis, those districts have seen increased reported use of cannabis, whether that actually translates in actual usage.... But I think the evidence would support that districts that have done so have increased the reporting of the use of cannabis.

Mr. Doug Eyolfson: All right. The reason I ask is that we had some testimony from Washington and from Colorado that actually said the opposite. They said that there was a brief increase, but that was transient and that, particularly around young people, the use among young people several months afterwards plateaued back to pre-existing levels, which were very near the national average. One of our witnesses from Colorado suggested that the latest numbers show that it had actually gone down about 12% among young people since legalization.

Dr. Serge Melanson: That's interesting. In fact, that probably would give me pause to go back to my own references, which I'm afraid I don't have available, but perhaps I would defer your questions to the other members of the panel who have, perhaps, a bit more experience and may be able to reference their experience in other jurisdictions, as well.

Mr. Doug Eyolfson: Mr. Kleiman, working in the American system, what are the statistics that you're familiar with, particularly with Colorado and Washington?

Mr. Mark Kleiman: We need a number of clarifications here. I'm sorry. Both Colorado and Washington had wide open cannabis sales under the medical guise before they formally legalized for non-medical use. At the beginning of their legal full commercial availability, prices in the "recreational" stores were much higher than prices in the medical outlets. So the primary consumers in the early days of legalization, both in Washington and in Colorado, were out-of-staters and a few respectable people who didn't want to go to a physician and get a phony medical recommendation.

The price decrease that we've now seen is not reflected in the data that's being quoted. On a national basis in the U.S., adult use, heavy use of cannabis has soared over the last two decades so that we've now gone from about a million people who are heavy daily users to nearly eight million people who are heavy daily users, but all of that increase has been among adults. The adolescent numbers have been absolutely flat. What explains that stability in adolescent use is an interesting question. One hypothesis is that the decrease in tobacco use among adolescents, which is correlated with cannabis use, is pulling cannabis use down with it.

I think the answer, both in Washington and Colorado, is if you're looking for the impacts of legalization, it's way too soon to tell.

Mr. Doug Eyolfson: Thank you.

Mr. Kleiman, you were concerned about the falling legal prices. You suggested that we have a high tax and increase the price of legal cannabis to discourage its use. Did I misunderstand you, or was that what you said?

Mr. Mark Kleiman: That's correct; a high tax to the equivalent in state monopoly retail. An alternative, as has been suggested by others, would be getting commercialization out entirely and allowing co-ops to do it, and then you could regulate those prices.

Mr. Doug Eyolfson: Yes.

Just yesterday one of our witnesses from Colorado and a witness from Washington agreed that their price has actually fallen well below that of the black market. In fact, what is happening is that the share of the legal market versus the black market is decreasing steadily. The latest data they have, which is a little bit old, shows that in Colorado the legal market is 70% of the market. They're crunching some numbers now, but our witness yesterday suggested that it's likely that close to 90% of the market in Colorado is now legal.

Mr. Mark Kleiman: Yes, if you're thinking of the in-state market. I don't know the numbers from Colorado.

We estimated about two-thirds was legal in Washington state, a growing share for the legal market, which you would expect. As legal prices fall, the illicit market is going to disappear. It's simply not possible to produce illicitly at competitive prices with commercial licit production.

Mr. Doug Eyolfson: Do you still think it is a better thing to tax it and keep the price high? Would we not be better at driving out the illegal market by keeping the price low?

Mr. Mark Kleiman: I think you want the legal price to be somewhat below what the illegal price would have been. That should be adequate to get rid of the illegal market.

The thing that hasn't been mentioned here is the necessity for enforcement. You essentially have what's now a tax evasion market. If you have a high tax and don't enforce that, then you're going to have entrepreneurs come in and sell untaxed cannabis as they sell untaxed tobacco. If you're going to have rules, you need to enforce them. It seems to me that ought to be part of the planning for this policy. The prices should be lower than illicit prices, but not so low as to encourage heavy substance use.

•(1025)

Mr. Doug Eyolfson: Thank you.

The Chair: The time is up.

Mr. Davies.

Mr. Don Davies: Thank you.

You know, on our fourth day of hearings, it's quite apparent that one of the major focuses of the testimony and the attention of committee members has been the impact of cannabis and cannabis legalization on young people, on youth. We've heard that Canadian youth are among the highest users of cannabis in the world, perhaps the second highest. We've heard about the impact on their health and their career prospects and the impact of legalization and criminalization on them. We've heard about brain development. We've heard that they apparently suffer from holding myths and misinformation about cannabis. We've heard advice from people about how to effectively talk to young people about cannabis. We've heard different thoughts about their access to cannabis and whether they do or don't have easier access to cannabis than liquor. We've heard about their attitudes towards cannabis, yet we haven't heard from a single young person at this committee.

Millions of Canadians use cannabis and have acknowledged it. They use it today, have used it, and will continue to use it. The parliamentary budget officer has estimated that somewhere between five million and seven million Canadians will use cannabis once this legislation comes into force, and of course, millions of Canadians, I think, voted very clearly last election for a legalized approach to cannabis, yet we haven't heard from a single, ordinary Canadian at this committee.

We have large, established producers of cannabis in this country right now that have been responsible, for I think a decade, for producing cannabis for the medicinal market. Dispensaries across this country, both in Ontario and British Columbia, and maybe in other provinces, have been very actively serving the market, mainly while politicians and police forces have quietly ignored them. We haven't heard from a single producer of cannabis or the dispensaries about their experience over a decade.

Finally, this legislation, we've heard, also seems, by design, to be excluding edibles and concentrates and non-smokable cannabis products, despite the health concerns and despite the obvious contradiction that the very purpose of this bill is to bring products out of the illicit market, to get rid of organized crime, and to regulate these products for the health and safety of Canadians, yet we haven't heard from a single producer of those products.

I think these are very important stakeholder groups, and I believe that it's important to hear from them for the committee's full consideration of the most comprehensive evidence on this legislation. Therefore, colleagues, I wish to serve notice that I am going to be moving the following motion, to be debated at some convenient point later in the day, because I want to give my colleagues a chance to think about it. The motion will read as follows:

“That pursuant to Standing Order 108(2), this Committee meet for an additional two days for the purpose of the consideration of Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts, and

that the chair be empowered to coordinate the witnesses, to a minimum of 32 witnesses (eight per stakeholder group), the resources, and scheduling necessary to complete this task in accordance with the following guidelines: (1) Witnesses are to represent the following stakeholder groups in four two-hour panel blocks per day: (i) existing Canadian licensed producers and dispensaries; (ii) producers of edible cannabis products and other non-smokable forms of cannabis; (iii) ordinary Canadians who made a written submission to this committee regarding Bill C-45; (iv) young Canadians, 15 to 24 years; (2) That witnesses for each panel block be allotted as follows: two Liberal, one Conservative, one NDP; (3) That witnesses be directed to prepare oral remarks for 10 minutes in length, and that the witnesses be invited to submit written statements prior to appearing; (4) That the meetings be held prior to September 30, 2017.”

Colleagues, to conclude, the purpose of this is not to hold up these hearings. I'm mindful of the government's timeline. It is September 14. I believe that we are meeting next week to hear from ministers. I want to give the clerk and the chair and the parties time to put their witnesses in, but I think extending these hearings for another week and a half to hear from these important groups would be very important.

•(1030)

I'm going to conclude by saying that I've heard from no one but 50-year-olds and 60-year-olds about how to talk to young people. I think it's time we heard from young people about their thoughts on this bill.

The Chair: I just have a thought on that. By the end of tomorrow, we'll have had, I think, 96 witnesses, and everybody's had a chance to submit witness lists. I'm not trying to downplay your thoughts on this, but I just want to make it clear that we will have had 96 witnesses as of tomorrow night, and we all had a chance to submit our lists at the opening. I believe that the first chance you'll have to move that is on Tuesday, so we'll look forward to your moving it.

Mr. Don Davies: Actually, Mr. Chair, I'm not going to get into debate now because I'm just serving notice, but I believe I can move this motion at any time. However, I don't want to interfere with the witnesses' testimony or with colleagues. I want to give my colleagues a chance to think about this. I will say, though, that none of the categories that I mentioned were categories that were identified by the committee to hear witnesses from. I believe that none of the 96 witnesses will actually hear from these groups, and they certainly aren't categories that we were invited to submit witnesses on.

The Chair: Anyway, your time is up, and I appreciate the notice.

Ms. Gladu.

Ms. Marilyn Gladu: Yes, further to this motion, I wasn't involved in the actual submission of the witnesses, so I apologize, but one thing that really concerns me is that all of the provinces that were invited to come don't want to come. We haven't heard from any of them, and many of them have not fully developed their plans. I would think that we would want to find out from them what's missing in the legislation. I'm incredibly concerned about that. I wouldn't mind adding that to the list of things that Mr. Davies wants.

The other thing is that although I see you have a workplace safety panel, you don't really have any of the companies that might be in a dangerous industry and want to implement some things. That group was also on my list of people I might want to hear from, as well as other countries. I used to visit Amsterdam and, believe me, there's a lot of pot being smoked there. I'd be interested to hear what they've done and perhaps something like that.

The Chair: We invited almost all of the provinces, but only one agreed to come, which was a surprise to us.

Ms. Marilyn Gladu: We can compel them, I think.

The Chair: I want to conclude the meeting.

Did you have one...?

Ms. Lynda Balneaves: I'd just like to say something very quickly. I've done qualitative research where I have interviewed individuals, as has my Ph.D. student, Rielle Capler, across Canada in terms of their use of medical cannabis and their access experiences. I know it may not be 100% related, but we do believe that many people who use non-medical cannabis are actually using it for medical purposes. In talking to those Canadians, number one, they want to bring cannabis use out of the shadows and be able to talk about it with informed, non-judgmental health professionals. They're open to education about cannabis risks as well as benefits. They want reasonable access to cannabis within their communities, as well as through their health professionals. They want choice in cannabis in terms of the strains, the products, the mode of administration, and the access points. They want their experiences related to cannabis and their beliefs to be respected, and they all recognize that stigma associated with cannabis use is incredibly damaging to open conversations about their substance use.

The Chair: Thank you very much.

I very much want to thank the panellists today. We've had some excellent panellists all the way through this, but you've brought a lot of new information and perspectives to us. We appreciate all the different visions, ideas, and proposals that you've brought to the table, and they will all be considered. Again, I want to thank you all very much for participating.

Committee members, I want to tell you that I've just been notified that our colleague, Arnold Chan, passed away. I just wanted you to know that. He suffered for quite a while, and he passed away last night.

• (1035)

Mr. John Oliver: Could we have a minute of silence, maybe when we reconvene?

The Chair: We'll take a minute when we come back at 10:45.

Again, thanks very much.

• (1035)

_____ (Pause) _____

• (1050)

The Chair: We'll reconvene our meeting number 67.

As we ended our last session, we learned that our colleague, Mr. Arnold Chan, has passed away. We're going to take just a moment in consideration and remembrance of Arnold. He put up a long fight and passed away last night. Arnold never stopped. He worked right until the last minute. He never slowed down. He was always present. He put up a good fight.

[A moment of silence observed]

The Chair: Here we are on meeting number 67. We're studying Bill C-45. We welcome our guests and our panellists. We're pleased to have you. I think we're somewhere near the 80th panellist we've had so far. They've just been incredible panellists. They have brought great knowledge, background, and experience to us.

I'm going to introduce our panellists here today. From Brazeau Seller, we welcome Trina Fraser, partner. From the Department of Employment and Social Development, we welcome Brenda Baxter, director general, workplace directorate, labour program, and Eric Advokaat, senior director, occupational health and safety, workplace directorate. From Fasken Martineau, we welcome Norm Keith, partner.

Thank you very much.

The way we do this, each organization has a 10-minute opening statement, and then we go to questions after that. We'll start with Trina Fraser.

• (1055)

Ms. Trina Fraser (Partner, Brazeau Seller LLP): Ms. Baxter was going to begin, if that's okay.

The Chair: Okay.

[Translation]

Ms. Brenda Baxter (Director General, Workplace Directorate, Labour Program, Department of Employment and Social Development): Mr. Chair and members of the committee, I am very pleased to appear before you to discuss workplace safety.

I am accompanied by my colleague Eric Advokaat, senior director of Occupational Health and Safety.

[English]

Responsibility for labour matters in Canada, including workplace safety, is shared between the federal, provincial, and territorial governments. For more than 100 years now, the labour program has been protecting the rights and well-being of both workers and employers in federally regulated sectors, which represent approximately 8% of Canadian workers. This includes creating and maintaining safe and healthy workplaces.

[Translation]

As part of its mandate, the labour program is equally responsible for the administration and enforcement of the Non-smokers' Health Act.

[English]

Enacted in 1989, the purpose of the Non-smokers' Health Act and the non-smokers' health regulations is to protect non-smokers from second-hand smoke in federally regulated workplaces, including in the federal private sector, federal crown corporations, designated federal agencies, the Royal Canadian Mounted Police, the federal public service, and Parliament, as well as on certain modes of transportation, such as ships, trains, and aircraft.

The administration of the Non-smokers' Health Act is the joint responsibility of the Minister of Employment, Workforce Development and Labour and the Minister of Transport. The former is responsible for the act's application to federally regulated workplaces, and the latter for its application to common federally regulated transportation carriers.

The Minister of Employment, Workforce Development and Labour is solely responsible for designating inspectors to ensure compliance with the act. Fines for offences under the Non-smokers' Health Act range from \$1,000 to \$10,000 for employers, and \$50 to \$1,000 for individuals.

Since 2007, over the past 10 years, there have been a total of 39 complaints under the Non-smokers' Health Act, with an average of less than two per year in the past five years. This represents 1% of all of the health and safety complaints under just one part of the Canada Labour Code. There are very few complaints under this act.

[Translation]

To date, no prosecution has been filed under the Non-smokers' Health Act.

[English]

Since the Non-smokers' Health Act and the non-smokers' health regulations were introduced in 1989, public views with regard to smoking and second-hand smoke have greatly evolved.

In 2007, in light of scientific evidence on the danger of second-hand smoke, the non-smokers' health regulations were amended to eliminate provisions allowing for the designation of smoking rooms and areas in federally regulated workplaces. Since then, all persons, including employees and members of the public, have been prohibited from smoking in any federally regulated workplace and on certain modes of transportation, except in highly restricted smoking areas such as living accommodations or motor vehicles to which only one person has access during a shift.

• (1100)

[Translation]

More recently, new amendments to the Non-smokers' Health Act were proposed under Bill S-5, An Act to amend the Tobacco Act and the Non-smokers' Health Act and to make consequential amendments to other Acts.

[English]

The proposed tobacco and vaping products act, Bill S-5, would amend the Non-smokers' Health Act to add a prohibition against the vaping of tobacco in federally regulated workplaces and on certain modes of transportation. In addition, the task force on cannabis legalization and regulation recommended that federal, provincial, and territorial jurisdictions extend the current restrictions in place for smoking tobacco to the smoking of cannabis. As a result, amendments to the Non-smokers' Health Act are correspondingly being proposed through Bill C-45.

Bill C-45 proposes to amend the definition of smoke under the Non-smokers' Health Act to include cannabis. Provincial and territorial governments would be responsible for deciding whether to restrict the smoking and vaping of tobacco and cannabis to other public spaces. Should both these bills be approved by Parliament, the smoking and vaping of tobacco or cannabis would be regulated under the Non-smokers' Health Act in all federally regulated workplaces and on certain modes of transportation such as trains, planes, and boats where they cross provincial or international boundaries.

The changes we are proposing would assist in the protection of employees' health and safety at work under federal jurisdiction purview.

Thank you, Mr. Chair.

The Chair: Thanks very much.

Now we'll go to Mr. Keith for 10 minutes.

Mr. Norm Keith (Partner, Fasken Martineau DuMoulin LLP): Thank you and good morning.

In a moment, I am going to take you to five recommended changes to the legislation. I have advised and represented employers and employer associations on this issue for many years and have written a book on the subject of alcohol and drugs in the workplace. I think these changes are essential if in fact recreational marijuana is to be legalized on July 1, 2018, as the bill proposes. Essentially, at the present time, there is no actual or proposed legislative framework that will be necessary to prevent this amendment from resulting in injury, accident, and death.

I will give a bit of background. I filed this in the brief, and the footnotes are available for the facts I'll provide you with.

In Canada, in 2015, the most recent year for which numbers are available, there were more than 232,000 lost-time accidents with 852 fatalities. There are approximately just under 3,000 motor vehicle fatalities every year in Canada. What we know from the Colorado experience is that, at least in the first full year after recreational cannabis was legalized, the number of motor vehicle fatalities, including transportation workers, increased by 225%. It more than doubled. Unless there is a rigorous legislative framework added, which is not yet proposed in the legislation, tragedy will be the result of this amendment allowing recreational marijuana to be legal in Canada.

The other statistics that employers are concerned about are as follows. Ninety-three per cent of businesses deal currently with substance abuse in some form on the part of their workers. This is a serious and important issue. More than 38% of workers' compensation claims are related to alcohol or drug abuse. The risk of a worker having an injury—again, the footnotes provide the references for the authority—is 2.7 times higher if they're involved in alcohol or substance abuse. The presumption of my submission is that the legalization of recreational marijuana will not only increase social acceptance and use, it will also exacerbate what my clients are seeing already, and that is an increased use with the view that legalization is around the corner.

The courts, in fact the chief justice when I was arguing the Irving Pulp & Paper case, suggested to me and other counsel in that random alcohol testing case that the legislature and Parliament is the better place to establish a comprehensive framework than to deal with this case by case, litigated in the courts and before arbitrators. Let me provide you—and, again, I hope that the brief has been provided to members of the committee—with the five recommendations in our submission that we would ask you to consider. They are essential to making sure that workplaces, workers, and the public affected by workers are safe.

First, the Canada Labour Code obviously deals only with a limited number of workers, about 8% or 9%, but there is a duty that exists in every other provincial statute, and that is a duty to protect worker health and safety. Workers also have duties, but the first recommendation is to acknowledge the reality that exists today and will be exacerbated by the legalization of marijuana. There is no current prohibition against a worker coming to work under the influence of cannabis or another drug, so the first requested recommendation is to prohibit workers from coming to work under the influence of cannabis or other drugs, unless they have medical authorization, and thereafter with consultation by the employer. That's a common-sense suggestion that we think should be considered.

Second, safety sensitive positions are discussed and debated without a legal definition. A safety sensitive job is obviously a pilot who takes us in the skies and has to be sober, a truck driver driving on an international or interprovincial trucking route, which is therefore federally regulated, or perhaps a provincially regulated tower crane operator. A safety sensitive position has yet to be defined under the Canada Labour Code. It needs to be, because things flow from that. Greater scrutiny and greater regulatory oversight need to be applied to safety sensitive positions, so our second recommendation is a definition for the term “safety sensitive position”.

• (1105)

Third, there needs to be a positive duty, we submit, for workers, supervisors, managers, who have a lawful prescription for medical marijuana to deal with a medical condition, or other drugs, to report that to the employer if they fall within the safety sensitive positions. There needs to be a connection there for disclosure, transparency, and later I'll make the point, protection of those workers to make sure they're not unfairly discriminated against.

Fourth, and this might be the most controversial of what I'm going to recommend, is the idea of testing for workers, randomly, for cannabis and other drugs if they occupy a safety sensitive position. The law, as you may know, has been set not by Parliament's leadership but by the courts reactively in case-by-case analyses.

The most recent decision on alcohol and drug testing is the Irving Pulp & Paper case. I was involved for an intervenor for that file. That's where the chief justice made the comment, “Mr. Keith, wouldn't it be better if the legislature took leadership in this issue to set a legislative framework as opposed to reacting case by case?” I couldn't disagree with the now former chief justice. But they went on to hold that random alcohol testing, where there's a clear legal Criminal Code threshold for impairment was not permitted in a dangerous pulp and paper place down in New Brunswick that was three blocks from a public school, because there weren't enough cases of people causing accidents when they were drunk. That essentially is the employer's view of the ruling, in Irving Pulp & Paper. It's troubling.

However, Irving Pulp & Paper says you can test if somebody does have an accident, post-incident, or if the employer determines that they are impaired at work. Why do you have to wait? Why can't you, as we do with RIDE programs around holiday season, have a deterrent and detection process of random testing in workplaces? The suggestion is for only safety sensitive positions, so there's not an over-inclusive net being cast.

Last, to complement this and the reporting obligation, we're recommending that the Canada Labour Code be amended to require workers to report if they're in fact taking drugs lawfully. This is an accommodation provision. Some might argue that there is implied case law about the duty to accommodate, and that's true, there is.

I think clarity is part of a comprehensive legislative framework to give employers and unions the legal obligation to accommodate workers who declare that they have a dependency or an addiction problem and they also fit within the safety sensitive regime. If the employee self-declares they have a problem, they're protected. They have job security, but they'll be assisted in hopefully a constructive rehabilitation program.

I think the requirement, as in Elk Valley Coal, the Supreme Court decision dealing with the duty to accommodate, should be if you in fact self-disclose before you cause the accident, because after that, there is accountability that the employer needs to be able to invoke for the worker.

To wrap up, hopefully these five recommendations will be looked at as part of a more comprehensive workplace safety legislative framework that will be fair to workers, protect workers from themselves, from other workers, and reduce the legal risks that employers are unfairly given when in fact they're blamed for not preventing a worker for coming to work sober and safe.

Clearly this legislation is controversial, to legalize recreational marijuana. I'm not commenting on that, but given that it's a very complex social experiment, assuming the government goes ahead with it, then the workplace safety issues and the recommendations we propose hopefully can be well received.

Thank you.

• (1110)

The Chair: Thank you very much.

Now we go to Ms. Fraser.

Ms. Trina Fraser: Mr. Chairman and committee members, thank you for having me here today.

I'm going to approach the panel topic of workplace safety from a different perspective, from the employee perspective, and specifically from the perspective of a specific group of employees, those being the thousands of workers across the country who currently work within the illicit cannabis industry.

It is estimated that over 13,000 individuals in British Columbia alone participate and work in the illicit cannabis industry. This represents an estimated wage amount of over \$600 million. These are obviously estimates only. We don't have reliable statistics, but I think it's safe to say that across the country we're talking about tens of thousands of workers involved in cultivation, processing, or sales of illicit cannabis. The safety of these workers is threatened in a number of ways. In the retail sector, dispensary workers face a threat to their personal safety through the risk of robbery. Dispensaries are a ripe target for thieves due to cash on hand and due to the fact that thieves know that there's a good chance the robbery won't even get reported to the police. There may be environmental risks associated with working in an unregulated grow op or lab, and of course, the personal liberty of these workers is threatened by the risk of criminal prosecution.

I'm here to suggest to you today that the risks to these workers can be mitigated while simultaneously the objectives of legalization are advanced as these workers are provided a meaningful opportunity to participate within the legal market. This can be done by codifying within the bill and the regulations to the bill a tolerance for applicants with certain prior illicit market participation.

Subclause 62(7) of Bill C-45 provides that the minister may refuse to issue a production licence if the applicant has contravened the Controlled Drugs and Substances Act, the CDSA, in the past 10 years. That, in and of itself, excludes anyone who has been convicted of producing, trafficking, or even possessing cannabis in the last decade. The bill also provides that additional grounds for refusal may be prescribed by regulation.

We don't yet know what those regulations will look like, but we can look to the current access to cannabis for medical purposes regulations, the ACMPR, for a sense of this. In section 36 of the

ACMPR, not only is the minister required to refuse to issue a production licence where the CDSA has been contravened in the past 10 years, but the minister is also required to refuse to issue a licence where law enforcement has provided information that raises reasonable grounds to believe that the applicant has been involved in the diversion of a controlled substance to an illicit market. The use of the words "reasonable grounds" here is important because it means that a conviction is not required. Charges are not even required. A mere reasonable suspicion is sufficient to result in the refusal of your application.

In addition, the ACMPR provides that all directors and officers of a licensed producer as well as certain key employees must be security cleared. Clause 67 of Bill C-45 also refers to security clearances, so it appears that this concept is being brought forward into the cannabis act, and again, under section 112 of the ACMPR, mere reasonable grounds to suspect that the applicant has been involved in the diversion of a controlled substance to the illicit market is a factor to be taken into account by the minister in deciding whether to grant a security clearance.

Under the ACMPR clearly we have a framework that essentially denies prior illicit cannabis market participants from obtaining a licence to produce medical cannabis, and also precludes them from holding many key positions with a licensed producer. This also creates a chilling effect on licensed producers with regard to hiring those with prior cannabis convictions, and it appears that we are heading in the same direction with Bill C-45.

This can be contrasted with the approach that's being taken in the United States. Of the eight states in the U.S. that licensed the production of recreational cannabis, seven have legislation that contains what I would refer to as amnesty provisions regarding prior cannabis convictions. Massachusetts, Nevada, and Colorado deny licences to those with a prior felony conviction, but they expressly exclude certain marijuana offences from that rule. Oregon, Maine, and Washington exclude certain marijuana convictions completely from the consideration of whether a licence should be granted. The draft regulations in California are the most inclusive. They provide that a prior conviction for the possession, sale, manufacture, or cultivation of a controlled substance, not involving minors, shall not form the sole ground for denial of a licence application. At least 11 states that have legalized medical cannabis also have some form of amnesty provisions in their legislation.

•(1115)

What I submit to you is that this is the direction we need to take in Canada as well. We need to consider and debate the parameters of acceptable prior illicit market participation. Many of these individuals would embrace the opportunity to operate legally. They would comply with regulations. Granted, some would choose to continue to operate outside of the law, so as not to be burdened by government regulation, and so be it. They would be dealt with on the offence and enforcement side of the equation, but there should be an opportunity to comply and participate.

At the very least, mere possession offences should not inhibit legal market participation, but what I'm suggesting is that we should go further than that because the cannabis entrepreneurs that I'm referring to are producing and selling cannabis products, so they would still be excluded. We need a more nuanced approach to the issue of licensing and who should be prohibited from obtaining a licence. For example, we can exclude those convicted of offences that involve young persons. We can exclude those with established connections to organized crime. We can exclude those convicted of offences that involved guns, violence, or controlled substances other than cannabis. We can build reasonable parameters that exclude those who are likely to be a threat to public health and safety, while also providing an opportunity for those who would not be.

I am a business lawyer. I have advised the medical cannabis industry since it was privatized three and a half years ago with the MMPR. I have seen the shortcomings of this system, but I've also seen the potential of this industry. Current licence producers are not averse to an inclusive industry. What they want is for everybody to be on a level playing field and to be subject to the same set of rules. I'm certainly not suggesting this from the perspective of being a cannabis activist and I'm not suggesting that illicit market participants have somehow earned the right to participate as a reward for their civil disobedience. I'm suggesting it because I believe it's the only way legalization is really going to work. The stated objectives of the bill include the reduction of the illicit market and it attempts to do so by imposing criminal sanctions on those operating outside of the legal framework, but this, in and of itself, will not work. We know this because it hasn't worked. Those who are excluded will continue to operate outside of the law. A better approach would be to design a framework for legalization which permits the inclusion of prior illicit market participants. This will enhance the public health and safety objective by subjecting those individuals to government oversight and regulation. It will increase tax revenues, as these individuals report and pay tax on their income. It will allow the legal industry to benefit from the breadth of knowledge that is possessed by these individuals and it will protect these individuals, by allowing them to work in a safe, regulated environment, free from the risk of criminal sanctions. If we fail to create an inclusive cannabis industry, the black market will thrive, and if it thrives, cannabis will continue to be easily accessible to minors, the public health and safety objective of restricting access to unregulated cannabis products will be compromised, and we will continue to place an unnecessary burden on the criminal justice system.

I would also add that a meaningful opportunity to transition into the legal market involves having regulations which are not so

onerous that they effectively exclude small operators. The task force on cannabis legalization and regulation, in fact, recommended that the government encourage market diversity by creating a space for smaller producers. Under the ACMPR, what I am seeing is that the cost of compliance, in particular relating to security requirements, is a real barrier to small-scale production, and a meaningful opportunity to transition also requires expanding the scope of cannabis products to include edibles and other derivative products. This is what the market wants and demands and it will be required in order to transition the existing producers of these derivative products into the legal market.

Thank you.

•(1120)

The Chair: Thank you very much.

Now we'll go to our first round of questions, which is seven minutes long. We will be in English and in French and your translation equipment is right there, if you need it.

We're going to start with Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Mr. Keith, you said there's no legislative framework to prevent injury and accidental death. I'm sure you're aware Bill C-46, whose study commences next week, deals extensively with impaired driving offences and provides new tools for detecting and testing. Is that not part of the legislative framework you're looking for?

Mr. Norm Keith: In my opinion, sir, no. The companion bill seems to assume that it's only the public that might be harmed or killed by somebody under the influence of cannabis. It ignores every working Canadian who goes to work every day, especially in and around safety sensitive positions.

Since there is no threshold measurement for cannabis impairment yet, and the technology may be evolving, it's difficult to always persuade people that you can do a random test in the workplace that's meaningful, but the TTC has done it. The courts have upheld the random TTC alcohol and drug testing program, but they're in litigation, and their litigation may go for years. If it goes all the way to the Supreme Court of Canada, it may take another decade.

Workplace stakeholders need a framework, and if it's a federal bill that legalizes recreational cannabis, it only makes sense that, even though federal jurisdiction doesn't extend over all workplaces, the federal government should also provide leadership for the serious safety risks. I could bore you with example after example. I've got three cases currently that I'm retained on in the courts where somebody died because they were impaired. In all cases it's the employer who gets blamed.

There needs to be a more rigorous review, and I would suggest these amendments to the Canada Labour Code specifically for workplace safety. The bill on the traffic side deals with public safety to some extent and a little bit indirectly for transportation workers' workplace safety, but you don't want to be walking near a construction site where there's a tower crane where a worker is not screened or worries about cheating the system by being stoned at work and dropping a concrete bucket on somebody's head.

It's a terrible thought, and I deal with it more than I'd like to in my practice, and to just say that under the general duty clause for employers, you have to find a way to do it, when the courts are not generally permitting random testing, I think misses the point that there is already increased use and acceptance, especially in the construction industry in Ontario. It will get more prevalent as you have legality and as you have increased social acceptance. I don't think current legislation addresses the concerns that I have raised.

Mr. Ron McKinnon: I take your point regarding the concerns for safety in the workplace. There is nothing in this legislation that legalizes impairment. In every instance, every case, where it was illegal to operate some piece of equipment or machinery or vehicle impaired, that law is unaffected by this.

I'm curious why you need additional protection or additional powers at this point that are not already present. What do you do with people who come to work impaired under prescription drugs, lack of sleep, or alcohol?

Mr. Norm Keith: I'm not sure they're all fairly comparable to being impaired by cannabis, but an employer has an overarching duty, as I mentioned in my brief, under the Canada Labour Code and every provincial statute, to have a safe workplace for all workers. That's fine and that has been there for a long time.

If you don't have the tools to deter and detect, it's like putting up speeding signs on the 401 that you can't go faster and having no enforcement. You will arrest people after there's an accident, an injury or a death, and you will charge people, so there's a little bit of enforcement, but if there's no proactive enforcement, as there needs to be on our roads, it's the same thing. You need better proactive tools with the greater likelihood of increased use and social acceptance of cannabis, and that, I think, reasonably and fairly falls within random testing, the most controversial of the suggestions.

The United States does it. Europe does it. The Far East does it. We're out of step with most modern liberal democracies by being overly worried about implications and privacy concerns. Those are concerns that can and should be respected in any testing system that's legislatively approved, and it should not be permitted, a legislative system that allows testing for employers to run roughshod or to use that for ulterior motives.

I don't see why the five suggestions we've made aren't essentially common sense if you have a more drug tolerant, legalization kind of society, which we're moving, apparently, towards. Those are additional thoughts.

• (1125)

Mr. Ron McKinnon: I guess I wouldn't characterize it so much as a drug tolerance, but a recognition that criminal sanctions don't work to control drugs and control the markets.

However, I'm still confused a bit. I take your points that certainly the Labour Code needs to address some of this to some degree. People operating a forklift, operating trucks and so forth, in the construction area are already subjected to limitations. They would be affected by Bill C-46, right?

Mr. Norm Keith: With respect, if they're on a private property, they wouldn't.

Mr. Ron McKinnon: Operating a motor vehicle while impaired is illegal no matter where it happens.

Mr. Norm Keith: But it won't be.... All I'm saying is that on a practical level, it will have no benefit or effect.

Mr. Ron McKinnon: Okay.

Mr. Norm Keith: The obligation is still going to be the overriding obligation of the employer to have a safe workplace. If an employer thinks somebody is impaired, are they going to call the police to their workplace to do their job for them? The labour regulator, federal or provincial, will intervene. There will be a union grievance. The matter will be before the courts for years.

If there's not a legislative framework that, from a common-sense perspective, says we want workers to be safe and sober, and we need some tools to do it, that's really all the suggestion is.

I don't think the goal that you're suggesting is any different from mine, but I don't think the companion legislation, Bill C-46, addresses these suggestions that we've made about the Canada Labour Code amendments.

The Chair: The time is up.

Dr. Carrie.

Mr. Colin Carrie: Again, this is a great panel. I wish I had more time with you.

I'd like to start off with Mr. Keith.

I'm from Oshawa, and we have a lot of unions, a lot of labour. I was happy that you brought these things forward because it parrots what I'm hearing from labour interests as well.

There are a few other things that they've brought up with me that you haven't included. These are things along the lines of blood testing, DNA collection, who would own that management cost, who pays for compliance.

There are new technologies. I guess there are other technologies for alcohol, where you can actually put it on heavy equipment. A person has to blow into it and then it will operate. If these new technologies come out, again, who pays for that? With regard to the data collected, who owns that? There are a lot of questions with this piece of legislation. You pointed out just a few of the inadequacies.

You quite rightly say that it's a complex social experiment, but it's also a poorly thought out implementation of public policy. I think by having witnesses here today, it's important that we can look at it and say that the responsibility of government is the health and safety of Canadians. This panel is I think the only one we have on looking specifically at workers.

I will ask you a few things here. We know that with smoking cannabis over the weekend, it can be in your system for days. We've heard that it can be a cumulative effect, even weeks later. Will this be problematic if mandatory testing becomes a standard in the workplace? Again, who is going to define impairment? You mentioned the blood levels. There are a lot of inconsistencies there.

Will it not be hard to punish or reprimand employees for having cannabis in their system for something they were doing legally over the weekend or in the evening in the privacy of their own home? Can you give us some advice on how that should be managed?

• (1130)

Mr. Norm Keith: I'm not a doctor and I don't even play one on TV, but I've done a lot of reading in the area.

What I'd encourage the committee to look at is the injunction decision of the Honourable Justice Frank Marrocco on the TTC policy "fitness for duty". What it essentially does is it takes a consensus of medical experts on cannabis impairment from around the world, gets a consensus statistical average of what the readings are of THC—tetrahydrocannabinol, the active psychoactive ingredient in marijuana and hashish—and then doubles it. It says that anything below that threshold is considered a negative; everything at or above it is a positive.

To protect the privacy concerns of workers and union leaders, the results are not disclosed to the employer. This is the standard for all testing in Canada, limited as it is.

Then the results are reviewed by a medical review officer, and sometimes there is a legitimate explanation and/or a medical authorization—in the vernacular code, a prescription—and a conversation takes place between the worker and the medical review officer or doctor. It is only after the assessment is done that, to protect the privacy and the medical personal interests of the worker, it may be reported as a positive to the employer.

If the employer gets a positive result, the worker—with a union representative, if they're unionized—gets to advise or self-declare, if they have a dependency or an addiction. If they do, human rights legislation across Canada requires the employer to treat it as a disability, and they are accommodated to the point of undue hardship, which is fancy legal talk for saying they're sent to rehab. If they recover and they're sober, they can come back.

That often is happening today. The problem, however, is that there is no detection or deterrent effect because of the inability to have

random testing, which is the law, set down by the Supreme Court of Canada in Irving that is being tested by the TTC.

All of that litigation—

Mr. Colin Carrie: Who covers the cost of all that?

Mr. Norm Keith: From talking to the chief safety officer at the TTC, I understand that the employer bears the entire cost of the program, so it's you and I, as TTC riders, if we're in Toronto. It's the public.

Mr. Colin Carrie: All right.

You mentioned safety sensitive positions, but I've heard concerns about people even in such positions as operating forklifts, taxis, school buses. What my colleague was saying about intoxication was that with alcohol, breathalyzers are inexpensive and you get a really quick result with them, but for cannabis, right now there's no real framework. Even the swab tests that are yes or no will only tell whether it's in the blood. Then you have to get a blood test for intoxication levels.

I was wondering, then, what is going to have to be done differently in the workplaces, especially those that require operation of heavy machinery? What will they have to do differently to ensure the safety of employees?

Mr. Norm Keith: A lot of statistics, largely out of the U.S., indicate that as soon as you have a random alcohol testing program in place, use goes down by more than 50%. Allowing testing will reduce the risk for everybody, period, but then you get to the problem about somebody who is being tested. Is the employer going to pay for it? Generally, yes they are, if they want it.

Should they be authorized to test everybody? Our suggestion is no, it's just in the case of a safety sensitive position, in other words, a position in which somebody such as a TTC bus driver or a pilot can injure themselves seriously, or others, or the public.

The Sunwing case, which has been very public, is a disturbing one, because it took flight attendants to turn in a drunken, incapacitated pilot who was not otherwise subject to testing. None of us wants to think of getting on a flight when we don't have confidence in the flight crew.

In terms of the mechanism, I think it's going to be a choice that employers make, when they have dangerous workplaces with safety sensitive positions. Employers, however, will probably choose to invest and bear that cost because of the cost of injury in workers' compensation costs, the moral imperative, the loss of a good worker, but also the risk of prosecution.

I'm not sure whether you're aware of the Metron Construction case in which four workers died, three of them impaired heavily with THC, on Christmas Eve 2009. The employer was punished by a trial judge; they received a large fine of \$200,000. They were further punished because they failed to prevent workers from being stoned on the job. That's what the court of appeal said; that was one of the three reasons in the Metron case. I've given you the citation.

In other words, an employer who doesn't prevent workers from coming to work when not sober and safe has a real financial risk. That's part of the motivation of a good employer: they care about their workers; they care about the public; they don't want to be harmed. They also care, however, about their bottom line: it's bad business for workers to come to work under the influence of cannabis or other drugs and cause accidents, injuries, or worse.

• (1135)

Mr. Colin Carrie: In Canada today, though, can you force me to give my blood for testing?

Mr. Norm Keith: No. The Supreme Court of Canada has said that except in extremely rare circumstances, you can't do that—or not unless the legislation was amended. But I don't think that's the main point of testing. People get a little bent out of shape about testing, especially on the union side of the debate. The main point is to deter, to discourage, to say, “We don't want you to come to work under the influence, and by the way, you might be subject to a random test. You don't know when it's coming, so just don't do it. Please don't do it.”

But like the speeding sign on the 401 or 403 or wherever you're driving in Canada, it's not enough. You need to know that there's a police officer with a radar gun who might catch you randomly and say, “Slow down. Stop. And here's your reminder: please pay the ticket.”

The Chair: Your time is up.

Mr. Davies.

Mr. Don Davies: Thank you to the witnesses for being here.

Mr. Keith, isn't the reason that the courts strike down random testing regimes, even in safety sensitive positions, the fact that they find they violate Canadians' constitutional rights?

Mr. Norm Keith: No. The decision in Irving Pulp & Paper essentially said that the employer had two choices if they wanted a random test. This is only a random alcohol testing case. One, you either consult with and get agreement from the union...and the union said no. I'll come back to that point. It was an unfortunate lack of union leadership, from my opinion on the issue. They said that if you don't get union agreement, then you have to be able to prove that your testing will be rationally connected to the risk associated with the particular workplace.

At Irving I think there were three accidents caused by people drinking over the course of five or six years. That wasn't enough. In the Suncor case in Alberta—soon to be released by the Alberta Court of Appeal—there were three fatalities in eight accidents in a 10-year period. The arbitration board said that was not enough.

What the courts are saying is that the unions' privacy interest say.... It's vague, somewhat reliant upon section 8 of the charter, but

because it's not stayed action, employer versus worker, it's not a constitutional issue, in my opinion. They're saying that you have to have more evidence, more accidents, more property damage, and possibly more death before you get to implement unilaterally that kind of implementation. There's a great dissent by a court of appeal justice in Alberta who said that this is foolishness. This is madness. Why are we going to have to have a body count, an injury count, of workers before we can protect workers?

Mr. Don Davies: Again, though, that's a dissent. The majority didn't agree with that.

Mr. Norm Keith: You're right.

Mr. Don Davies: I think you've said that the problem is that the employer could not produce enough evidence to establish a rational connection between the testing and the purposes.

Mr. Norm Keith: That was the ruling.

Mr. Don Davies: That's based on extensive evidence, full presentation, all the way to the Supreme Court of Canada.

Mr. Norm Keith: Yes.

Mr. Don Davies: You anticipated my next question, because of course the charter only applies to governmental actors, and these were private sector employers. Let's move to privacy. I mean, as parliamentarians we are seeking a balance here, but it's also our role to nurture and cherish Canadians' well-established privacy rights. As you pointed out, that was an issue as well in the case, that before an employer has the ability to randomly take a bodily fluid from a person, there has to be.... In fact the burden is on the employer to establish that there is a sufficient ground for that. Frankly, the employers in this country have not been able to establish that on an ongoing basis, at least according to the Supreme Court of Canada.

I think my colleague asked you about the problems of distinguishing between present impairment and past use, which is, I understand, a particular issue with cannabis. Alcohol is a bit different, because you can get a blood alcohol reading that is a reliable measure of present impairment.

Is it not the case, Mr. Keith, that with cannabis, it measures the...? I can't remember the term..

• (1140)

Ms. Marilyn Gladu: The THC.

Mr. Don Davies: Well, the substance is broken down by THC in the blood, so you can't really get an effective measurement of present impairment versus prior use. Someone could smoke a joint on the weekend, come to work on Monday morning, be tested, and what would that tell you?

Mr. Norm Keith: I'm not a medical expert. The oral fluid testing technology is advanced beyond what you've just suggested as a methodology. Certainly THC, depending on how much you consume, can stay in the blood for 21 days. That's clear. The common rule of thumb is that you can sleep off the cannabis hangover. I'm told by doctors that this is true generally but not always. Rarely, though, is cannabis consumed without alcohol or other drugs. Mr. Stewart, who had his accident at Elk Valley Coal, had to smoke a few marijuana joints before he came to work, he said, because it would take the edge off the cocaine. They often go together.

It's a complicated issue. With regard to the TTC policy, and I'm not an advocate or here as counsel for the TTC, their program does two samples, for privacy and reliability, just like drug testing in—

Mr. Don Davies: [*Inaudible—Editor*] impairment.

Mr. Norm Keith: Right. I'm going to address that. Sorry, I'm not getting around to it as quickly as I should.

Mr. Don Davies: I have limited time, so I want to get other questions in.

Mr. Norm Keith: The oral fluid testing can measure present impairment. That's my understanding.

Mr. Don Davies: I see.

Ms. Fraser, you articulated well the danger and negative consequences of keeping cannabis products illegal. If I have your evidence correct, you suggested that this would apply to edibles, concentrates, and other non-smokable products. Given that Colorado, Washington, and Alaska have all established effective regimes for regulating those products, do you see any reason why this legislation before Parliament shouldn't be amended to include edibles and concentrates, with the appropriate regulations concerning packaging, labelling, concentration, etc., as Colorado has done?

Ms. Trina Fraser: It should be.

My understanding is that this is the intention, and it's more of a timing issue than anything else as to why that's not included right now. My concern is that throwing millions of dollars at enforcement is not going to solve the problem of the black market and dispensaries that exist right now. We need to look at why they exist. They exist for a number of reasons. They provide enhanced access to cannabis products to people who want or need them, and they provide the type and array of products that people want.

By limiting the availability of cannabis products legally to just dried cannabis and cannabis oil, we are still leaving a wide array of products for which there is clearly a demand, and that the government is not going to be providing through legal channels. People will continue to seek them and access them through illegal channels. Legalization must include a wider array of products. Yes, the concerns about consumption by children or accidental overdosing can all be addressed through prudent packaging, labelling, and product-type regulations. We need to get to work on that right away.

The Chair: Okay, thanks very much.

Now we go to Mr. Ayoub.

[*Translation*]

Mr. Ramez Ayoub: Thank you, Mr. Chair.

[*English*]

My question is in French, if you need the earpiece.

[*Translation*]

Mr. Keith, you say that the bill seems to be a controversial experiment, but I think many of your recommendations are equally so.

You are talking about common sense. I would like to know if you made these recommendations after we started our discussions on the legalization of cannabis or if they existed long before for many substances, including cannabis.

[*English*]

Mr. Norm Keith: I'm not aware if they, especially all five together, have been presented before to a federal parliamentary committee or provincial legislative committee. Controversy complements controversy, so perhaps—to calm the fears of many employers, and they are quite worried, about being able to manage the risk associated with the legalization of recreational cannabis—now is a good time to embrace these amendments, which of course won't only deal with cannabis but also with other drugs.

Canada, as you know, has some of the highest, if not the highest, use of cannabis in the world. It might be a good thesis to look into why, but that's not what we're here to do. In looking at the present condition, as well as the anticipated greater social acceptance and use and its overflow to the workplace, it's important to have a legislative framework. It won't solve all the problems, won't prevent all the accidents, and won't stop all the litigation, but it will do a lot to assist all three of those problems.

• (1145)

[*Translation*]

Mr. Ramez Ayoub: Thank you for your answer.

Here's what I mean when I talk about controversy. Let's stop at your first recommendation to amend the Labour Code. There is a prohibition on all workers. I have a lot of difficulty understanding this idea of prohibiting everyone from this.

We are talking about cannabis, but what does “impaired at work” mean? What other legal drugs and legal medications are available on pharmacy shelves that people take without a prescription and without reporting it? How are we, currently, ensuring that all workers and employers are safe in the face of current situations which, in my opinion, are dangerous to varying degrees?

Adopting a regulation that is very broad to guard against some extremely harmful effects is a bit like killing a fly with a hammer, if I may use that analogy. On the other hand, we are looking for safety for everyone, of course.

Where do you stand on this extreme?

[English]

Mr. Norm Keith: As it relates to the first recommendation, it's simply putting in a policy statement that workers ought not to come to work under the influence of cannabis or other drugs without a medical authorization or prescription, which answers one of your questions, and without employer approval.

Certainly, in non safety sensitive positions, there is a lower worry about it affecting safety. It might affect productivity, and I'm sure it does, but that's a different problem, which the employers will have to deal with. I think the point behind the first recommendation is that it's more of a symbolic statement to say to employers and to workers that it's not a good idea to come to work when they're not sober, but if they're under the influence of a prescription drug, that's fine. They should report discreetly to the HR department. They'll have to keep it confidential, but if the person has some sort of medical reaction, they're at least aware. Many employers have a policy that reflects what I'm suggesting, but it's certainly not the law.

I don't think the health and welfare concern this represents for workers and their safety is a hammer. It's more like a gentle net to catch the fly and set it free.

[Translation]

Mr. Ramez Ayoub: It depends on the perspective, Mr. Keith.

Let's address the legalization issue. Currently, people, in good faith, are going to reveal that they are using cannabis. I say "in good faith" because there is a danger in disclosing this information, especially to an employer during an interview for a new job. People are certainly reluctant to disclose this, I can confirm it.

We still have statistics that indicate some use. By legalizing cannabis, don't you think people will be more inclined to talk about their use? It will be like taking aspirin, medication or any other legal product that is no longer controversially illegal.

Rather than passing a very restrictive legislation, could this provide clarification and perhaps even provide more reassurance for employers who can have a much more open discussion with employees and take advantage of the effects and standards to counter the negative effects of all kinds of drugs?

I'll let you respond.

• (1150)

[English]

Mr. Norm Keith: I'll restrict my answer more to the mandate of workplace safety, if I may.

I think the focus on a safety sensitive position and more information and more potential testing is again to focus on the welfare and safety of the worker. Employers generally are neutral on the politics or the legality of any substance, including cannabis. What they need and want to know is that workers will come to work, they'll be sober, they'll be able to work safely, and they won't hurt themselves or anyone else or the public. That's the key focus of these suggested amendments to the Canada Labour Code.

The other aspect of your question I think is a little broader than my mandate. I think there isn't a great deal of stigma out there, whether you accept this or not, for having a medical authorization for

marijuana. It's been available since 2000. It's funded by workers' compensation boards when people need treatment for a workplace-related injury. In fact, it's talked about freely and openly.

The legality-illegality issue is not the primary focus of worries and concerns. It's the effect it's going to have on safety in the workplace and the fact that it's only the employer who gets blamed when there's an accident if somebody's impaired.

The Chair: Time's up.

That completes our first round.

We'll go to the five-minute round, starting with Ms. Gladu.

Ms. Marilyn Gladu: Thank you, Chair.

Thank you to all of our witnesses.

Mr. Keith, I think that you have pointed out a real gap in the legislation that will result in workers and employers not being adequately protected when marijuana is legalized. I say that because I think I have some experience in this area. I was the director of engineering and construction at Suncor. We had a drug policy that was a zero tolerance policy that we wanted to implement.

I live in a reasonably small community. We have a lot of tradespeople, and we're well aware of which tradespeople chronically use marijuana. We were unable to do anything about them being on the job site or do any assessment. There was no random testing allowed, and there was no mandatory testing allowed. I would contrast that with some of the best practices that we see elsewhere.

I also worked in the States, with Dow Chemical, Shell, ExxonMobil, and a number of organizations. They not only do random testing, which does give the result that you have indicated in terms of the reduction, but a lot of times there's a mandatory health test where they do drug testing for cannabis before somebody is allowed to join a project construction job.

I think there are examples out there. I would like to see some legislation drafted in here.

I guess, if we decide that we're going to do testing, then, I wonder about the cost that this will put as a burden on organizations. At Suncor, if somebody was using a prescription drug, they had a duty to report to the health nurse. We had a nurse on duty who could do a blood test, but, if you don't have that, then how are going to get those resources in place?

I think the other concern I have is with the data you mentioned on WSIB, that 38% of incidents are related to that. It's a very high number of claims that are refused. As cannabis comes in, and there is such a controversy about whether you're really impaired or not and what the technology can do, I worry that will result in further WSIB claims.

Could you talk a bit about the resourcing impact to the businesses?

Mr. Norm Keith: I think, in the amendment to the Canada Labour Code that we're suggesting, it authorizes employers with workers in safety sensitive positions only to do random testing. Again, it is primarily for the purpose of deterrent, but also for detection, and there is a cost associated with that, as you point out.

I think employers may not all be happy to spend that kind of money. They may want to share that cost. That's permitted, if they're unionized, by negotiating a term in the collective agreement. It's unlikely, in my opinion, they'd ever get that agreement.

I think employers who are probably reluctant would be smaller employers with fewer resources. I think most employers, especially with dangerous jobs and safety sensitive positions, realize that preventing accidents is a huge, not only legal burden that they avoid, but also a huge cost burden. I think of the old saying that an ounce of prevention is worth pound of cure. I think most employers would likely—I can't speak for all of them or any of them in particular—embrace that additional cost if it was legally authorized to do it.

What is troubling for employers—and this is what many employers and employer associations have said to me—is that we think we have a pretty good case for random testing, especially after the TTC case, but we don't want to be in litigation for the next eight to 10 years. That's the risk. That's why a legislative framework, even if it's seen as a balanced and restrictive framework, with protections for privacy built in, absolutely.... I would point the committee back to the TTC decision. It very clearly sets out the TTC policy, and it has been judiciously approved, although that's being appealed.

Who knows where it will all end up legally? The point is, how many more accidents do you want to have in a dangerous workplace? How many do we as a society think we want to tolerate in balancing the prevention versus the privacy concerns?

The other point, simply—I didn't make it earlier, but it responds to your question of cost—is, even if the employer bears the full cost, union leadership has really ignored one fundamental problem. That is, they have in every legislation, federally and provincially, a duty of fair representation of all their union members, not just the member who's using drugs. Guess who gets hurt and killed? Union members by union members. There's a lack of leadership or accountability of the union leaders in saying that they are accountable for everybody, and they should encourage reduction of the idea of the use of impairing drugs or alcohol in the workplace. If deterrents through testing are helpful, let's work with employers for a better method to do that.

If there was a framework in the legislation, as we suggested, I think that would be a good start. That would allow employers to do that.

•(1155)

Ms. Marilyn Gladu: Thank you very much.

The Chair: Now we go to Ms. Sidhu.

Ms. Sonia Sidhu: My question is to Ms. Baxter.

You say employees should notify employers when they have a prescription for a drug. How do you propose to bring this forward without infringing workers' rights? Don't you think it's infringing rights that if somebody has a prescription for marijuana they have to notify their employer?

Ms. Brenda Baxter: Absolutely. I think the Canada occupational health and safety regulations are built on the balance of the employer's responsibilities and the employee's rights. I don't know who made the recommendation about reporting prescriptions to an employer.

To start with, people can be impaired from various different substances and circumstances. Fatigue can create impairment. In the workplace, employers and employees work together to identify the hazards in the workplace. The regulations are built so we can have the flexibility to understand the differences in the types of workplaces, the different types of work, and the different types of workplaces. The measures put in place in any workplace are built around employers and employees working together.

With respect to any sort of questions with regard to testing, etc., in the workplace, as has been mentioned there is jurisprudence that speaks to this and measures that must be in place in order to undertake any sort of testing. There is always a balance between preserving an individual's human rights and privacy, and ensuring safety in the workplace.

Ms. Sonia Sidhu: Thank you.

Ms. Fraser, what programs and services should be put in place to support employees for those who use cannabis for medical purposes and who may be dealing with their dependence, or any problematic use?

Ms. Trina Fraser: I believe Mr. Keith already touched upon this. Obviously an employer has a duty to accommodate to the point of undue hardship. In the absence of legislative amendments, employers will be needing to do that through policies within their workplace.

I think one of the interesting issues that's going to evolve is this concept of undue hardship. I think it's a little bit difficult for employers to maybe pin down exactly where that point lies right now. I think every employer would prefer to have a smoke-free workplace, but there is some jurisprudence to indicate that if you're smoking cannabis for medical purposes, that needs to be accommodated. We are seeing an evolution and an expansion of the array of medical cannabis products that are available to employees. We now have cannabis oil available in a sublingual spray. We have dried cannabis in a powder form that can be capsulized. I think we're going to continue to see an expansion of the array of products.

That's just one example of how employers are going to have to keep their eye on the industry, and see how it is evolving, and how that may affect the policies that they put in place to address those issues with employees.

• (1200)

Ms. Sonia Sidhu: Mr. Keith, the Canadian Centre for Occupational Health and Safety published an article related to the federal task force study on cannabis specifically dealing with the question of workplace safety. They noted that federal and provincial human rights resist workplace drug testing.

Why are you thinking the federal government should intervene in a provincial government matter when workplace safety laws and workplace zero tolerance policy reach the same goal?

Mr. Norm Keith: The federal government, as it has jurisdiction over criminal law under the Constitution Act of 1867, also has constitutional jurisdiction over federally regulated workplaces. My recommendations go to those federal workplaces. I think also, because of what the chief justice said to me in the Irving case, because of the lack of leadership and a legislative framework, even though it touches only 8% or 9% of the employees in Canada, it is critical for the same government that opens the door to actually put a gate around the precipice that people might fall into once they go through the door, if I can use that metaphor.

It also will provide needed leadership to provinces, especially smaller provinces that don't have the resources of the federal government, to look carefully at the health and safety implications.

There is no legal right recognized by any court for a worker to come to work impaired, hide that fact, cause injury to himself or herself or someone else, or kill a member of the public. To suggest the federal government shouldn't be involved in putting a legislative framework around the broader use of cannabis I think is reckless.

Ms. Sonia Sidhu: You mentioned the Sunwing pilot's case. I think it dealt with the transport law. Do we still need to intervene with a federal law, because the Sunwing pilot's case dealt with the law already?

Mr. Norm Keith: There is no testing, unfortunately, and that's the whole point. It was co-workers who had to restrain, as I understand the facts of that case, the pilot. There was no employer permission. There was no legislative mandate for the employer to actually deter and detect substance abuse, which is troubling.

The Chair: Time's up.

Now we go to Ms. Gladu.

Ms. Marilyn Gladu: Mr. Keith, did you have an opportunity to give your input to the government as part of the consultation prior to the drafting of this legislation?

Mr. Norm Keith: Personally and through any organizations I represent, no.

Ms. Marilyn Gladu: Clearly, that's why it's been overlooked.

My next question is for Ms. Fraser. You said that if we are allowing people to get licenses to distribute or to be involved in the production of marijuana, we shouldn't discount people who have past criminal offences, if I understood correctly.

One of the objectives of this legislation is to try to get rid of the illegal market. I'm not sure why we would get people who had no respect for the law previously to be involved, if we're trying to get rid of the illegal market. Could you expand on that?

Ms. Trina Fraser: I guess I'm taking a practical approach to this. These people are not just going to disappear. They're clearly prepared to put their personal liberty at stake now. Some of it is opportunistic, admittedly. Some people just passionately believe in the benefits of this plant. They will continue to do so if they're not provided with an opportunity to comply with regulation and participate in the legal market.

I think it's naive to think that throwing more money at enforcement is going to make that illicit industry go away. It might reduce it, but I don't think anything is going to make it go away completely. What I'm saying is that I think there is a large segment of the current illicit market that would embrace regulation and legalization and is eager for that opportunity and would be compliant if given the chance.

• (1205)

Ms. Marilyn Gladu: If we look at the best practices of Washington, for example, which has done the best job, from the testimony we've heard, of getting the black market out of the picture, what they did was take their medically regulated regime and bring the recreational regime into those same suppliers that were already following the rules.

Don't you think that would be a better approach for us to take?

Ms. Trina Fraser: That is essentially what we're doing. My understanding is that the supply for the recreational market will come from the existing licensed producers that are licensed under the medical cannabis regime. Those applications continue to be processed, and they continue to be filed, and that's not going to stop. We need to look at that decision-making process and who those licences are being granted to. Clearly, 58 licenses is not enough. That process is going to continue.

Right now, the way the ACMPR is drafted and the way the bill is drafted, that decision-making process essentially excludes that entire segment of people. I just think that's short-sighted, and it's going to lead to continued frustration that this illicit market continues to exist.

Ms. Marilyn Gladu: Do you know whether Washington allowed people with prior convictions to participate?

Ms. Trina Fraser: I'd have to dig it out to see exactly how it's worded, but there is a certain tolerance for prior marijuana-related offences.

Ms. Marilyn Gladu: Can you send that to me or the clerk? I'd be very interested in what they did there.

Ms. Trina Fraser: Sure.

Ms. Marilyn Gladu: My question now is for Ms. Baxter, and it has to do with Bill S-5. As we look at Bill S-5 and the vaping, and we start thinking about what we should put in as language around cannabis, are there any concerns about potency guidelines or anything like that you think we should be including?

Ms. Brenda Baxter: Questions like that I think would be best answered by Health Canada, which is looking at that particular issue.

Ms. Marilyn Gladu: Okay, very good.

I have one other question for Mr. Keith.

It's always difficult when you start talking about one person's rights versus another person's rights, such as the right of people to have their privacy versus my right to be protected at work. How do we resolve these kinds of dilemmas? You're going to cause people to have to submit to random testing, which I have done—it's not that onerous—which for some people would be an invasion of privacy, versus my right to be safe at work.

Mr. Norm Keith: One way, which is the current way we're doing it, is case by case in the courts. That's expensive, it's time consuming, and with all due respect to the committee, it's an abdication of legislative leadership.

I think a minimal legislative framework has to be put into place. There's no question that people have a right to privacy, but how far does it go? Can I have my privacy to the point where it puts somebody else's life or livelihood or property in danger? Generally, we say no, and that's essentially what Judge Marrocco said in the TTC injunction case. The balance of convenience and the public interest for the safety of workers, and in particular the public, favours testing, which is a deterrent-and-detection method of being able to deal with the problem.

I don't want drug testing to be all you hear from me. It's never a full solution. It's part of a suite of responsibilities and tools to deal with what hopefully everyone agrees with, which is that you don't want workers, especially in safety sensitive, dangerous positions, to be impaired and to hurt themselves or others. I've seen it happen. It will continue to happen, sadly. There needs to be a greater emphasis on prevention. That's one method that would help.

Ms. Marilyn Gladu: Thank you very much.

The Chair: Now we go to Mr. Oliver.

Mr. John Oliver: Thank you to all of you for your testimony.

Ms. Baxter, I used to work in hospitals where there was no smoking on hospital property. Where I lived in Oakville, there was very little second-hand smoke in bars, patios, and all those things, so I was quite taken aback at my personal exposure to second-hand smoke when I started to work in Ottawa.

One of my biggest beefs is with the cluster of smokers just outside the doors of buildings. Is there no setback here to put smokers back nine or 10 metres from doorways? Am I about to see an influx of marijuana smokers mixed in with those tobacco smokers?

• (1210)

Ms. Brenda Baxter: I agree that the intention of the Non-smokers' Health Act is to protect non-smokers from second-hand smoke, and the focus has been within the confines of the building or in various modes of—

Mr. John Oliver: Is there a setback from doorways, like from the main public doorways?

Ms. Brenda Baxter: There is not in the Non-smokers' Health Act. There are other pieces of regulation, municipal and provincial regulation, that would dictate what's required in public places.

Mr. John Oliver: I'd strongly encourage a nine- to 10-metre setback so that we as non-smokers of either tobacco or marijuana products are not being exposed to them.

I understand that Ontario's rules or regulations will come out to ban the consumption of recreational marijuana in public spaces, but I don't believe that provincial rules are applicable to federally owned properties. That would suggest to me that if I were walking down Wellington Street on city property, I would not be able to smoke cannabis, but if I stepped onto the Confederation property, which is federally owned, I could light up. Is there not going to be a problem with clustering of people? I worry about the image of Ottawa when people come to the city and see cannabis being openly consumed on the lawns of our statutory buildings.

Ms. Brenda Baxter: As I mentioned, the Non-smokers' Health Act does look at enclosed spaces, so what you're proposing is outside of that. I think that is something the committee could look at. The question would be—

Mr. John Oliver: As an employee, I'm walking through that space, right?

Ms. Brenda Baxter: I guess the question is what the appropriate piece of legislation is to deal with that. The Minister of Labour and the Non-smokers' Health Act are looking at occupational spaces, so where is the workplace and what are generally public spaces? The question would be what the appropriate piece of legislation is to address that.

Mr. John Oliver: When I was the CEO of the hospital, we came to the conclusion that all hospital property was workspace and we banned smoking from it, and it was a much healthier environment because of that decision. If you could take that back to the committee, I'd appreciate it. I think it's something we should think about.

My second question is to Mr. Keith.

In terms of what is currently in place, it's all law. Under the Canadian Human Rights Commission policy on alcohol and drug testing, it does say that as long as employees are notified that alcohol testing is a condition of employment, random alcohol testing of employees in safety sensitive positions may be permissible.

Would that not be true as well for marijuana, as long as there's a notice in advance, that there is capacity for an employer to do what you are recommending in these five recommendations?

Mr. Norm Keith: I'm not sure the federal Human Rights Commission is correct when you square it with the Supreme Court decision in Irving. Assuming, for the purpose of the question, that it is, then you're partway there, but I think the legislative framework still needs to be completed.

Legislation is not only to just hold people accountable, but it is to give guidelines about what society says is acceptable. I think that's why I'm really promoting this idea of not just one rule or one amendment but a framework that communicates clearly what in fact our expectations are.

Mr. John Oliver: Okay.

Mr. Norm Keith: By the way, a good test of whether it's under the Canada Labour Code would be whether, if somebody trips and falls, they can file a workers' compensation claim against the federal government. Everywhere you have a claim or everywhere the federal government can enforce safety laws for other purposes, they clearly have jurisdiction over second-hand smoke.

Mr. John Oliver: Those are my questions. Thank you.

The Chair: Mr. Davies, you have the last questions.

Mr. Don Davies: Ms. Fraser, I want to explore a little bit of this issue of timing, this concept that we don't have time to bring edibles under the purview of this bill. My understanding is that all we would need to do is.... Schedule 4 sets out the classes of cannabis that an authorized person may sell, and that's where you see the dried cannabis, cannabis oil, fresh cannabis, cannabis plants, and cannabis plant seeds. My understanding is that we just need to add edibles and concentrates to that schedule and then provide the minister with the authority to pass appropriate regulations to govern all aspects of it, which is the general scheme of this bill.

From a structural point of view, I don't believe there is anything particularly difficult about amending the legislation.

Do you have any comment on that aspect? Then I'm going to ask you a follow-up question.

• (1215)

Ms. Trina Fraser: I agree. The amendments to the bill itself would be minimal to provide for that. Again, I'm not privy to where things stand with the drafting of the regulations, but what I had understood from various government representatives who have

spoken to this issue is that they were just running short on time to prepare the regulations that would be required to address the packaging and labelling issues for those types of products.

Mr. Don Davies: Let's look at that. I have here the task force's final report, the McLellan report, that was issued almost a year ago, November 30, 2016. The government struck it in order to inform the legislation. Of course, in this task force they squarely canvassed the issues around edibles and concentrates and recommended, for all the reasons I mentioned earlier, that they be included in the legislation.

Again, recognizing that Washington, Alaska, and Colorado have already done it.... In fact, the testimony we heard was that Colorado initially legalized edibles, had some problems with it—they ran into some issues—and came back at it a second time and corrected them. Don't we already have a set of regulatory provisions concerning all of the aspects of edibles ready-made in Colorado that we could just simply adopt?

Ms. Trina Fraser: I would think so. We can learn from their experiences and their mistakes and take advantage of that learning curve they've already been on. I agree with you.

Mr. Don Davies: Thank you.

Mr. Keith, from a stepping-back point of view, once this bill becomes law, it will be a completely legal activity for Canadians to ingest cannabis. How do you see your proposal for random testing in the workplace squaring with that? Are you saying there can be a regimen constructed where Canadians who are engaging in a legal activity on the weekend will not have their job, employment, or livelihood affected negatively, even in safety sensitive positions, by a testing regimen? Do you see that it could be constructed so that even a crane operator doesn't lose his or her job because they smoked a joint on a Saturday night?

Mr. Norm Keith: Of course, and there are two answers to that. There is building that into the legislative framework, but there is also the counterbalancing human rights aspect from a person who is disabled or an addict.

We may not know, and this answers the question in a different way. As soon as somebody tests positive for alcohol or drugs after they've caused an accident, the advice that unions generally give in this country is to claim you have a problem. You rush out and find an addiction counsellor who agrees that you have a problem, and that will give you an automatic preservation of your job—maybe honestly, maybe not—because you have a disability and you have protection under human rights legislation. That protection is already there, whether it's cannabis, cocaine, or alcohol.

Mr. Don Davies: Leaving aside what unions or addicts may or may not say, I'm talking about a regular, garden-variety Canadian who smokes a joint on the weekend, which this legislation will make perfectly legal.

Mr. Norm Keith: Yes.

Mr. Don Davies: I'm asking whether you are suggesting to this committee that we somehow construct some rule or regulation whereby a person who engages in that legal activity on their own time somehow has their employment jeopardized, even in the safety sensitive position.

Mr. Norm Keith: That, of course, is not any of my five suggestions. What I'm suggesting is that if they're in a safety sensitive position, and the random cannabis and other drug testing takes place, once there's a positive test, there be an inquiry into whether or not there's a medical authorization or a medical condition for which you need to have one. In the meantime, you're taken out of the safety sensitive position so that you don't hurt yourself or others, and it's dealt with appropriately.

If they are under the influence such that they are impaired, even though they were ingesting a legal substance.... Do you want to get on the plane if the pilot is impaired?

Mr. Don Davies: No, absolutely.

Mr. Norm Keith: That's the question for you and every Canadian

Mr. Don Davies: Nobody is defending—

Mr. Norm Keith: —that needs to be answered and that I've tried to address in the framework—

Mr. Don Davies: Nobody is addressing present impairment, but that's my point. Right now, the current state of the law is that the defence is the medical necessity, but this is going to change the law. It's going to be perfectly legal to smoke cannabis on the weekend. Again, is it any of an employer's business what a person does on their personal time, as long as they're showing up for work not impaired?

The problem with random testing as I see it is that this person is going to test positive, and then what?

• (1220)

Mr. Norm Keith: No, you're mistaken. The TTC policy, as I mentioned before, addresses that issue. There is a medical consensus on what impairment is. They've doubled that consensus and have said that anything below that is a negative test. There would thus be a negative test for somebody who smoked up at a Saturday night party and went to work on Friday. They would test positive, but below a threshold at which they'd be identified as positive. In other words, they'd test negative. The test is for impairment, and that's what we want, I think, to keep people safe.

The Chair: Your time is up, and that completes our panel.

Mr. Colin Carrie: I have a point of order, Mr. Chair.

We have almost half an hour left. I wonder whether the members would like to do another round of questioning.

The Chair: We need unanimous consent for that. We have rules.

Do we have unanimous consent for another round of four questions?

Mr. Don Davies: Yes.

The Chair: Is that unanimous consent?

Ms. Marilyn Gladu: Sure.

The Chair: Yes, we have.

Who is our first questioner on this side?

Mr. McKinnon, you look as though you have a question.

Mr. Ron McKinnon: I'm a little unprepared.

I'm going to go back to Mr. Keith. We've had such good conversations.

I take your points about the need to examine the Labour Code for these aspects, but I'm still not persuaded concerning all of the instances I mentioned regarding operating of motor vehicles. You say that an employer doesn't want to call the police in the case of a suspected impairment, but as you say, lives are at stake; health is at stake.

If someone is operating a motor vehicle in an impaired state, they are breaking the law. Their conduct is criminal, fundamentally, isn't that right? Why would the employer not want to report it?

Mr. Norm Keith: That's a hypothetical suggestion.

Let me respond partly with an example. I have a formwork contracting client, who is the largest formwork contracting client in the province of Ontario. They estimate anywhere from 45% to 55% of their workers are using cannabis illegally right now. They have no means to test. They've had a few people thrown off the job who are visibly smoking on smoke breaks. That's what's happening right now.

On a smoke break at a construction site, since it's not prohibited and because it's open air, people are toking up and they're comparing smoking cannabis to smoking a cigarette, when the impairment effect is different. It's almost as if they were breaking out a case of beer on a smoke break. That's a better metaphor or comparison.

Employers don't want to get embroiled in criminal investigations related to the workplace. They don't want workers to get hurt. They just want the workers to come to work sober, to be able to do the job safely, and to get the productive work done.

The spirit behind the suggestion for a legislative framework... I keep quoting the former chief justice because I think the courts are frustrated that there's no leadership and legislation on this complex issue and the balance that's been discussed here between privacy rights and the right to safety of workers in the public.

The practical reality is that there aren't enough police to police everybody who's going to smoke and put somebody else at risk, or do cocaine or drink alcohol. Some of the substances are legal and some of them aren't.

The focus here is not so much on the legality, but that legal cannabis will increase social acceptance and use. The risks are becoming higher for workers and co-workers in safety sensitive positions. The spirit behind the legislative framework I'm suggesting is to make and enhance protective measures in the workplace for the safety of workers and the safety of the public, while at the same time respecting the privacy rights of workers.

Employers just don't want to get involved in the problem of having criminal investigations at the workplace. They will resist it. I've been advising employers for a long time and that just seems to be a common theme, regardless of industry or jurisdiction.

• (1225)

Mr. Ron McKinnon: We've had medical marijuana for a decade now. Is this not an existing problem? Is it new? Does the problem exist with the medical marijuana regime as well?

Mr. Norm Keith: That's a very good question and a very good comparison. There are two different kinds of advice I give to employers who ask questions about people with a medical authorization, also known as medical marijuana. The first is that, through a benefit plan, if it's employer-paid then the employer is aware and the employer has a legal obligation, under health and safety law, to not allow them to be in a safety sensitive position, unless they get a medical opinion that the worker is fit for duty.

What we do is that we either write the letter or the employer writes the letter to the doctor authorizing medical marijuana, saying, "Here is the job and here are the risks associated with it. Can we get your medical opinion? Is the person going to be even possibly impaired?" Most times the doctors say, "Yes, don't put them in a safety sensitive position".

That's easy. The harder part is somebody who might have it and might not want to disclose it because they're afraid of losing their job, but they might be in a safety sensitive position. Then the only way the employer finds out is after an accident, when somebody is injured or killed on the job.

The answer is then that it's not their fault because they have medical authorization. Yes, however, the worker has a duty not to present themselves unsafe. That's why the first recommendation about actually having a formal prohibition against workers coming to work under the influence of cannabis or other drugs makes sense, unless there is a medical authorization as disclosed. It puts some shared responsibility on the worker and their doctor to determine if they could be impaired and could therefore affect the safety of others at work.

The Chair: Go ahead, Dr. Carrie.

Mr. Colin Carrie: Thank you very much, Mr. Chair. I want to follow up a little bit more with Mr. Keith.

First of all, I was shocked that the government didn't reach out appropriately to stakeholders who represent the health and safety of workers. I wonder, if they didn't reach out to you, who else they did not reach out to, because this is extremely important.

I think there is hope, though. We heard a Liberal member who was concerned about his health and safety as far as second-hand cannabis smoke and setback were concerned. I hope the government takes these issues into account when they go forward in trying to roll this

out. We shouldn't rush these things. We should make sure that the health and safety of Canadians is a priority.

I want to put you to the test here, because you have brought up some controversial things in your recommendations. I think that's good; they need to be addressed. I want to dig in a little bit more on mandatory testing and blood testing.

Do you think that mandatory, random testing is going to become the norm in the workplace? We know that police feel that when they're pulling somebody over for intoxication, there may be a swab and then they might have to take the individual to a hospital or a lab to get blood testing done so as to make sure these things stand up in court.

What I'd like to know from you is, if these changes become the norm, what does the government need to do to get ready? What changes do they have to make to legislation?

Mr. Norm Keith: There is more attention. The companion legislation to Bill C-45—Bill C-46—is moving towards dealing with a framework for public safety, in particular motor vehicle safety, and as technology advances and law enforcement concerns are understood and reflected in legislation, that will be dealt with.

Most Canadians seem to be more worried about public safety on our roadways than about workplace safety. My experience, if I have any expertise, is more in occupational workplace safety. It is a matter for concern, because it seems as though we're valuing the travelling public on the road more than we are the worker in the workplace.

I think there should be complementary legislative proactive testing measures taken. The proviso and the theme of the legislative framework I'm recommending is hopefully striking a balance between respecting workers' privacy and their need for assistance if they're proven to be impaired. There can, however, be as much or more harm done in a dangerous workplace or to a travelling member of the public—situations in which you have public safety but also occupational safety at play—than there would be with roadway safety.

The statistics are that for every person killed on the roadway you have about one person killed in the workplace, and it seems that the workplace risk of fatalities is being given less attention. That's why I've emphasized the points I have.

• (1230)

Mr. Colin Carrie: My colleague wants to ask a follow-up question as well.

Mr. Len Webber: I don't know how much time I have, but I'm curious, Ms. Fraser. I enjoyed all of the presentations, but in particular yours. You talk about the tens of thousands of people who are currently working in the illicit cannabis industry and suggest that there should be amnesty clauses put in the bill to enable people who have small convictions to apply for and gain licences.

I think about individuals who perhaps may not have any criminal record but have affiliation to gangs such as the Hells Angels. They may be known to police, yet they do not have any criminal convictions. I have problems with those individuals being allowed to get licences and to perhaps produce one day. Your suggestion is, though, that these individuals should have the opportunity to apply and have a fair hearing, is it?

Ms. Trina Fraser: No, not at all.

Mr. Len Webber: Okay.

Ms. Trina Fraser: It's the converse. What I was saying was that this would be one example of an exclusion to the right to participate that I would suggest. In fact there are already a number of different grounds for refusing a licence under the ACMPR. Affiliations with organized crime is one of those grounds.

That makes sense.

Mr. Len Webber: Right.

Ms. Trina Fraser: It stands alone, separate and apart from any involvement in the illicit drug trade. For sure this exclusion should stand and should carry forward. I was speaking more to participation in the illicit market in and of itself, in the absence of these other factors.

Mr. Len Webber: Thank you.

The Chair: Mr. Davies.

Mr. Don Davies: Thank you.

Mr. Keith, do you know what percentage of workplace fatalities annually are due to impairment?

Mr. Norm Keith: No. That's a really good point you raise. The Association of Workers' Compensation Boards across Canada, which collects the most reliable data that covers most, but not all, workplace accidents and fatalities, measures on a number of collection criteria but they don't collect the data on alcohol or drug-related fatalities.

In Ontario, the chief coroner has a policy—it's not legislation or regulation but a policy—that every time a worker dies at work, the worker is tested for drugs or alcohol. That's how we often know what the substance is; otherwise the employers or the public never know.

Mr. Don Davies: In that jurisdiction, do we know then? If they are testing after fatality they must know what the percentage is.

Mr. Norm Keith: Yes, absolutely.

Mr. Don Davies: So what sort of percentage is there?

Mr. Norm Keith: The coroner has that information and it's estimated between 38% and 40%.

It's sad and tragic.

Mr. Don Davies: That would be a correlation that they find the presence of a substance but that's not necessarily a finding of cause of the death, I would take it?

Mr. Norm Keith: Correct.

Causation is always a complex analysis.

Mr. Don Davies: I would like to get your views on how we would define safety sensitive positions. Engineers design bridges. A mistake made by an engineer in a critical calculation could cause a bridge to collapse. It is the same thing for architects. A fire in Britain caused 80 deaths. It looks like there was a decision made by someone not to put fireproof cladding inside the building. Doctors make life-and-death decisions; surgeons have people under the knife. Police carry guns.

I'm curious, it strikes me that all those are safety sensitive positions. Would you include those groups in your proposal to randomly test?

Diplomatically, I'm keeping lawyers out.

Mr. Norm Keith: Definitely keep the lawyers out.

Safety sensitive positions are defined in employer policies in industries across Canada and around the world. The problem is that different interest groups and different industries are going to have a different approach to defining "safety sensitive position".

The courts and arbitrators keep crying out for legislation, and for legislative and parliamentary leadership on defining a framework for that term. It may not be a definitive or an exhaustive term. It may or may not include engineers who are designing safety sensitive, public safety-related cladding in buildings.

I think without any legal definition or attempt to define it as part of a framework, and that being of course the basis upon which you then can test people.... We're not suggesting that everybody get tested. The thing is that this be a rational process. Otherwise, what you're doing is saying, it's all up for grabs, and it will be litigated to death.

My interests really are against the interests of lawyers. You're going to reduce the amount of litigation, which is not a bad thing in society, I think I would suggest.

● (1235)

Mr. Don Davies: Ms. Baxter, did you want to say something?

Ms. Brenda Baxter: I did want to say that through the jurisprudence they actually have somewhat defined what a safety sensitive position is. It's:

A safety-sensitive job can be characterized as one in which incapacity due to drug or alcohol impairment could result in direct and significant risk of injury to the employee, others or the environment.

You have to consider that in workplaces, you have large workplaces, small workplaces, medium-sized workplaces, unionized and non-unionized ones. I think what's at the core of this, in determining what is a safety sensitive position, is really the tenet of the occupational health and safety regimes in Canada, which is that dialogue between the employer and employees to be able to determine what the hazards are in the workplace. In doing so, you would be defining what some of those safety sensitive positions are and what measures need to be taken to reduce and mitigate those risks in the workplace.

Having a definition that runs across all workplaces doesn't work. You need to have some ability, some flexibility, to respond to the variety of different types of work, workplaces, and sizes of workplaces.

The Chair: Thanks very much.

Mr. Oliver.

Mr. John Oliver: I just wanted to correct the record a little bit here with respect to some comments made by my colleague, Dr. Carrie.

The task force on legalization of marijuana travelled across Canada. I think they were five or six months on the job. They had 20,000 submissions from all walks of life, all professions, all areas. Under this section, on what we heard, they dealt specifically with people working in safety sensitive positions, such as health care workers, law enforcement personnel, and employees in transportation, construction, and resource extraction industries. They heard about the challenges associated with providing reasonable accommodation of employees who use cannabis for medical purposes. Employer groups were in to see them calling for more guidance from federal, provincial, and territorial governments about appropriate workplace drug use and drug testing.

So I think there was extensive consultation by the government through the task force in the area of testimony that Mr. Keith is bringing to us and others have today.

Again, we are dealing with implementation at this point.

I guess that's my question to you, Mr. Keith. With concerns being heard by the task force, the concerns you bring forward.... As I've already told you, there is already case law, and there seem to be permissions in place for employers for safety sensitive positions to advise in advance that someone will be tested and to implement those. You said we're partially there.

In terms of implementation, I heard you suggest we should more comprehensively address the issue in the Labour Code. Is there anything more you would add to those five recommendations?

Mr. Norm Keith: In the McLennan report, on page 29, it reads, "Employer groups called for more guidance from federal, provincial and territorial governments about appropriate workplace, drug use and drug testing policies."

I think the request has been out there for awhile.

Mr. John Oliver: Right.

Mr. Norm Keith: It's not just so that employers can find out who's using drugs or drinking on the job; it's to make sure that

workers are safe at work. With the absence of any federal or provincial definition of a safety sensitive position, it's left to workplace parties to work it out and, ultimately, to litigate this. There are literally hundreds of cases every year fighting about whether a particular position is safety sensitive or not. The statutory definition wouldn't answer everything, but it would give guidance, and that's what needed.

Mr. John Oliver: Would your advice to this committee, as part of our clause-by-clause review of Bill C-45 and any amendments or attachments we decide to put with it, then be to address those five principles that you brought forward?

• (1240)

Mr. Norm Keith: Yes, that would be the bottom line in my recommendation.

Thank you.

Mr. John Oliver: Thank you very much.

The Chair: That brings to a close our panel on workplace safety of the justice committee; at last it feels like a justice committee meeting.

This afternoon will return to our health committee, and we'll have a panel on indigenous communities.

I want to thank our panellists very much. We've all learned a lot from you, and we appreciate you taking the time to share your knowledge and experience with us.

I suspend the meeting until 1:45 pm.

• (1240)

(Pause)

• (1350)

The Chair: We will reconvene our 67th meeting of the Standing Committee on Health with our third panel today. Our third panel is on indigenous communities.

I'm looking forward to this. I'm sure it's going to be an interesting presentation, and I'm sure we'll learn a lot.

Our guests today are, presenting for the Métis National Council, Clara Morin Dal Col, minister of health. Also we have Wenda Watteyne, senior policy advisor, and Eduardo Vides, senior health policy adviser.

On behalf of the Chiefs of Ontario, we have Isadore Day, Ontario regional chief.

We'll ask the Métis National Council to make a 10-minute opening statement. Then we'll have Chief Day make an opening statement, and then we'll have questions after that.

Ms. Dal Col.

Ms. Clara Morin Dal Col (Minister of Health, Métis National Council): Thank you.

Mr. Chair and committee members, thank you for the opportunity to participate in your hearing today. I am here in the capacity of minister of health of the Métis National Council. I am also the president of Métis Nation British Columbia. I'm pleased to be here to provide the Métis nation perspective on Bill C-45.

To provide some background, the Métis are a distinct aboriginal people as defined in section 35 of the Constitution. The Métis nation emerged with its own collective identity, language, culture, way of life, and self-government in the historic northwest prior to Canada's westward expansion following Confederation. The Métis nation continues to exist as a distinct aboriginal people and seeks to advance its right to self-determination, including self-government within Canada.

The Métis National Council is governed by five members. These governing members are Métis Nation British Columbia, Métis Nation of Alberta, Métis Nation of Saskatchewan, Manitoba Métis Federation, and the Métis Nation of Ontario. MNC governing members, through their registries and democratically elected governance structures at the local, regional, and provincial levels, are mandated and authorized to represent the citizens who comprise the Métis nation.

About one-third of all indigenous people in Canada identify as Métis. According to the 2011 census, more than 450,000 people reported they were Métis, with almost 85% located in the western provinces and Ontario. More than 70% of Métis live in urban centres, the largest concentrations being in Winnipeg, Edmonton, Vancouver, Calgary, Saskatoon, and Toronto.

I'd like to talk a bit about the overall health status of Métis people. In the Métis context, we take a "social determinants to health" approach. Everything is interrelated; what happens in one area impacts upon another.

Such historical and current events as residential and day schools, the sixties scoop, racism, loss of family unit security, loss of community wellness and unity, and loss of culture and language have had a lasting impact upon Métis health and wellness.

Métis are vulnerable to chronic diseases such as mental health disorders. These disorders include depression, anxiety, substance use, and chronic pain, including emotional pain. For example, we know from the Métis health status and health care utilization study done in Manitoba in 2010 that Métis had statistically higher rates of depression, anxiety, and substance use than the general population.

The federal task force on cannabis legalization and regulation spoke to the risks of vulnerable populations. The Métis are a vulnerable population in terms of overall health status. It is therefore important that we be involved as equal partners in the work ahead.

I would like to take this opportunity to commend the Prime Minister and Government of Canada for entering into the Canada-Métis Nation Accord in April of this year. This commitment sets out a nation-to-nation, government-to-government relationship between Canada and the Métis nation. Under this accord, we have co-committed to advancing a range of priorities, including Métis health and wellness.

Now I will speak more directly to the proposed legislation. The Métis National Council supports the stated purpose of Bill C-45, including its intent to protect the health of young persons by restricting their access to cannabis, to protect young persons and others from inducements to use cannabis, to reduce the burden on the criminal justice system, and to enhance public awareness of the health risks associated with cannabis use.

Unfortunately, we have not had the opportunity to engage with or consult our citizens and communities on the proposed bill or its regulatory framework. There are indeed a number of matters of importance to the Métis nation, including the potential impacts that legalizing marijuana will have on health and wellness, justice and corrections, and economic development.

The Métis National Council proposes four key recommendations to ensure that there are opportunities for more adequate engagement with the Métis nation in implementation matters.

Recommendation number one is that the Government of Canada ensure meaningful engagement of the Métis nation in the development and implementation of a regulatory framework for cannabis.

● (1355)

The task force advised the Government of Canada that successful implementation of a regulatory framework will take time and will require that governments meet a number of challenges with respect to capacity and infrastructure, oversight, coordination, and communications. It indicated that federal, provincial, municipal, and indigenous governments will need to work together on information and data sharing in coordination of efforts to set up and monitor new systems. Organizations that have appeared before the committee recognize the importance of consultations with indigenous communities on legislation, preventive measures, and interventions to meet local conditions and cultural requirements. We support these recommendations.

Recommendation number two is that the Government of Canada provide the Métis nation with resources to minimize the harms of cannabis use in the Métis population.

The Métis National Council agrees with the task force on cannabis legalization and regulations advice that a public health approach should be taken to promote health and reduce harm. This approach considers the risks associated with cannabis use, including the risks of developmental harms to youth. It is imperative that resources be provided to Métis governments to mitigate harms associated with cannabis use. The Métis nation is prepared to work with all levels of government to undertake health promotion activities and to develop approaches to minimize harms in the Métis population. Funding supports should be provided by the federal government to Métis governments to undertake this work.

Recommendation number three is that funding be provided by the Government of Canada to support prevention, education, and treatment supports, especially for Métis youth. Of particular concern to the Métis nation is the health and wellness of Métis youth.

We understand that legalizing cannabis will have impacts upon the Métis, particularly Métis youth. The Métis population is young. According to Statistics Canada, 41% of the Métis population is under 25, compared with 30% of the non-indigenous population. Many of our Métis youth are already dealing with issues surrounding drug use and addiction issues. We know from a Métis study by McCreary Centre Society in B.C. in 2013 that around half, 48%, of Métis youth had tried marijuana. Among those who had tried it, 23% had used marijuana on six or more days in the preceding month, 30% of males and 18% of females.

We want to ensure that Métis, including Métis children and youth, have access to information to enable them to make informed decisions. We also want to ensure that Métis children and youth have access to Métis-specific prevention, education, and treatment supports. On that front, we agree with the task force that governments should commit to using revenue from cannabis regulation as a source of funding for prevention. Funding should be provided to Métis governments to address these needs.

To minimize harms, we would like to see the minimum legal age set at 19 years. The age of 19 is consistent with the legal age of drinking in most provinces.

Recommendation number four is that the Government of Canada work with the Métis nation in enforcing public safety and protection. The Métis nation supports the task force's recommendations that the federal government take a leadership role to ensure that capacity is developed among all levels of government, including Métis governments, prior to the start of the regulatory regime; that it develop and coordinate national research and surveillance activities, including Métis population-specific research and surveillance; that it establish a surveillance and monitoring system inclusive of Métis; that it engage with indigenous governments, including Métis governments, to explore opportunities for their participation in the cannabis market; and that it engage with indigenous communities, including Métis communities, to develop targeted and culturally appropriate communications.

In particular, resources should be provided to implement an evidence-informed public education campaign targeting the Métis population. Métis are the experts in relation to their own health and health needs and can play a meaningful role in public education.

The Métis nation seeks to work as an equal partner in the development and implementation of regulatory matters and in optimizing help for Métis people in Canada. The Métis nation is committed to working with all levels of government to ensure that the task of legalizing and regulating cannabis is done carefully and safely. Métis governments have the ability to effectively reach Métis people and communities in ways no other government can do. We look forward to contributing to the work ahead.

Thank you again for the opportunity to participate in this panel. We welcome any questions you may have.

Marsi.

● (1400)

The Chair: Thank you for your presentation.

Now we go to Chief Day, Ontario regional chief, for a 10-minute introduction.

Chief Isadore Day (Ontario Regional Chief, Chiefs of Ontario): Before I begin, I want to extend my condolences to the family, colleagues, and friends of Arnold Chan, a member of Parliament who passed away this morning. I'm sure he will be greatly missed by his Ontario Liberal caucus colleagues and members of Parliament, who valued his thoughtful contributions to the democratic process in Parliament. Just on a personal note, I've known Arnold Chan throughout the last 15 years, when he worked with Dalton McGuinty and in the private sector as well. He was an upstanding individual who will be sadly missed. Again, our condolences.

I also want to acknowledge the unceded territory of the Algonquin Nation. I am presenting here today as the Ontario regional chief. I'm also the national chair of the Assembly of First Nations chiefs committee on health.

As we all know, Bill C-45, the cannabis act, intends to provide legal access to cannabis and to control and regulate its production, distribution, and sale. The objectives of the act are to prevent young persons from accessing cannabis, to protect public health and safety by establishing strict product safety and product quality requirements, and to deter criminal activity by imposing serious criminal penalties on those operating outside of the legal framework. The act is also intended to reduce the burden on the criminal justice system in relation to cannabis.

As the committee has already heard earlier this week, police officials have stated they will not be prepared to deal with Bill C-45 when it becomes law on July 1, 2018. That's consistent among many jurisdictions and communities. It's accurate to say that first nations are also not prepared to deal with the ramifications of Bill C-45. In fact, this is a critical issue that is going to have huge impacts on first nations and all Canadians, but we're not yet in a position to fully understand and fully address those impacts.

In this part of my presentation I will probably put a lot of questions to the committee, because there are some unanswered questions, as you know.

The first is: does Canada even know the full impacts of cannabis yet? This is a situation where we're damned if we do and damned if we don't, and that speaks to the issue of engagement readiness. The reality is, the complexities of much of the process—just as an example, environmental legislation, or even getting communities' engagement ready, to ensure we have a substantive say on any legislative changes—make it a daunting task. It's complex in nature.

The Assembly of First Nations does not yet have a position on cannabis. It has been proposed that a national first nations summit on cannabis be held in the very near future.

In Ontario, it's accurate to say that first nations are much more engaged with the province's plan to establish a cannabis control board by July 1, 2018. Last Friday, when the Ontario government announced its cannabis plans, the chiefs of Ontario were briefed in advance by the Attorney General and the Minister of Finance. In the coming months, we will establish a bilateral table to work collectively on the Ontario cannabis control act. We are meeting with INAC minister on October 2, just prior to the first ministers' meeting. Rest assured, this will certainly be one of the major issues on the table for discussion.

Initial meetings with Ontario are proving to be respectful and focused on the real issues and challenges faced by first nations in preparation for the retail and distribution of cannabis. There will be many issues and opportunities that will need to be addressed. First, how will first nations communities regulate the sale and consumption of cannabis at the local level? Some of our communities may want to explore the potential of jointly owned cannabis operations, which will—or may—be federally approved.

What I mean is that there are going to be some jurisdictional issues and questions. As you know, unlike our brothers and sisters within the Métis community, we have a very specific land tenure under the Indian Act. Some communities may want to ban the sale and consumption of cannabis, much like dry communities ban alcohol, stemming specifically from provisions in the already embattled Indian Act.

Land governance, again, unlike with our Métis brothers and sisters, is going to be the crux of the challenges we face. All you have to do is look at the tobacco issues that we're faced with in many of our jurisdictions. I'll only speak for Ontario, but we have spent years dealing with those issues at the community level.

• (1405)

Any provincial legislation needs to have the flexibility to support first nations communities in pursuing development in ways that align with their own specific cultural and community values, for example the banning of recreational cannabis around community events and ceremonies. We take our protocols and ceremonies very seriously, and to a large extent cannabis has not been part of those ceremonies and community protocols. How do we deal with that? How is our jurisdiction respected if the communities set out their own laws and ordinances around that?

I remain optimistic that first nations will directly benefit from any revenue generated from these ventures. While historically Ontario first nations have been neglected in resource revenue-sharing with the Province of Ontario, this new industry provides an opportunity to

turn a new leaf and to examine innovative revenue-sharing opportunities. We just need to avoid the potholes in the path going forward.

However, the biggest concern that first nations in Ontario and across the country have with Bill C-45 is the health and safety of our peoples. According to the national native alcohol and drug abuse program, cannabis is the second most-abused substance after alcohol, followed by cocaine and opioids. It was estimated as far back as 2003 in Ontario that an additional \$33 million per year was needed to treat first nations drug and alcohol addictions. This is as a result of decades of underfunding.

What will happen when cannabis is legalized and more of our people are able to access this drug? We know there will be an increase in the need for addiction treatment. We know there will be a need for an increase in law enforcement as well. When the states of Colorado and Washington legalized cannabis sales in 2013, American Indian tribes were negatively impacted. This should be examined. Cannabis products were sold illegally on reservations as far as New Mexico, Arizona, and North and South Dakota. The primary targets were native American teenagers.

To quote the July 25, 2014 *Denver Post* article:

...tribal leaders are fighting a heroic but losing stand as state-legalized marijuana, cannabis-infused food, liquids, e-cigarette cartridges and other products make their way to young people from Colorado and Washington state-licensed dispensaries.

How are we going to ensure this does not happen here in Canada? For example, first nations policing is already chronically underfunded and understaffed. Over the past several decades the Chiefs of Ontario have passed at least 43 resolutions calling for more funding for first nations community policing.

To quote from our May 2017 "Strategy for a Safer Ontario" position paper:

The federal First Nations Policing Program fails to meet the needs of First Nations Police Services in Ontario, and its archaic assumptions place the safety of First Nations Officers and their community citizens at risk.

The Ontario Police Services Act provides a legislative basis for police services in the province of Ontario. However, first nations police services are not afforded the same protections other police services receive in the province, because there is no equivalent legislation for them specifically. Securing funding that is stable and sustainable is an ongoing necessity to improve the delivery of first nations police services. Funding is needed to build capacity to ensure the safety of first nations officers in responding to calls, to create specialized services, and to ensure there is adequate housing and infrastructure in support of first nations police services.

The need for training beyond front-line policing training is an integral part of community policing. This training should include cultural awareness training for native and non-native officers alike, so they understand the cultural norms of first nations communities. It should also include understanding social services, including dealing with addictions and other societal problems common in first nations communities.

On that list of quotes, I want to emphasize that you just had folks here from the police chiefs' organizations federally, and they were stating they are not going to be prepared, so you can only imagine what is going to need to be examined for first nations communities. We definitely are going to render ourselves hopeless here if something isn't looked at and responded to.

- (1410)

From the economic development standpoint to date, resource revenue-sharing agreements have largely been left to the provincial governments in relation to geological and environmental resources such as mining, forestry, and hydroelectric power. The bill has completely neglected any specific opportunity for first nations to participate meaningfully in or have any resources to appropriately respond to the implications of this emerging market.

Section 60 of Bill C-45 states that the Attorney General of Canada may enter into an agreement with the government of a province, or with any provincial, municipal, or local authority, respecting the sharing of fines and fees that are collected in respect to the prosecution of offences and for the compensation, administration, and enforcement of this act.

If the Government of Canada is serious about its dedication to a government-to-government relationship, first nations need to be included in this section to provide adequate responses to the implications of this bill within and surrounding first nations communities. This could include supporting first nations emergency responders, such as police, ambulance, and fire response, which will be impacted by manufacturing and sales within this emerging industry. A revenue-sharing agreement with first nations would ensure quality emergency response to promote community safety, which is an important factor in self-government.

While there may be some first nations that are unwilling to participate in the industry, which is their prerogative, there will be others that will want to participate as meaningful partners or even sole owners of related businesses. Within section 6.1(a), the minister may establish classes of applications for licences and permits. First nations should be a separate class and have a designated number of licences and permits attached to the class. The act permits the

minister to revoke licences based on business incorporation being formed or organized outside of Canada.

As the Attorney General continues to work on federal legislation that impacts first nations' own ability to self-govern, more first nations will begin to assert their sovereignty and their jurisdictions. This could include self-regulation on cannabis but also on business licences and incorporation.

At this point, let me just make a very quick observation and suggestion. With respect to taxation in the province of Ontario, we know for sure that within the provincial and territorial regimes, when it comes to retail and distribution, that is going to be a ticket item. That's going to be part of the bottom line. We feel it's very important to examine what has happened in Ontario.

We will certainly want to explore the issue of taxation, and we know that the only way to do that within the context of the harmonized sales tax in Canada is through a CITCA. That was a heavy negotiation in Ontario. This legislation and the relevant policy-makers should be looking at that very closely, because taxation will become an issue.

- (1415)

The Chair: How much further do you have to go there? We're beyond our time, and we want to get to questions.

Chief Isadore Day: I have probably about two more minutes.

The Chair: Fire away.

Chief Isadore Day: It is always important to be mindful of the changes to come in how colonial legislation includes the impact on the first nations' ability to generate revenues to appropriately govern their nations.

In conclusion, there are a lot of unanswered questions about how the legal sale of cannabis will affect first nations. This is why the AFN is calling for a national cannabis summit. How will our communities benefit in terms of economic opportunities and revenue-sharing? How will our people be affected in terms of health and safety, and how much funding will the federal government set aside for first nations in terms of education, especially for our youth, on the impacts of cannabis? How will we use the many millions of dollars generated to treat the ongoing issue of cannabis addiction?

At the AFN's AGM this past July in Regina, Public Safety Minister Ralph Goodale told the chiefs that there simply is no funding in the current budget to properly fund first nations police services. Canada must take funding of first nations policing services as its top priority. Before Bill C-45 becomes law next year, our communities must have the proper health, policing, and public safety resources in place.

Let me repeat, there appear to be more questions than answers. This leaves first nations—and, I might say, the feds, provinces, and territories—in a compromised state leading into an accelerated timeline on legislation.

To that end, my concluding question to the committee is, who is going to pay for the impact of hasty and forced legislation?

Thank you, and I'm open for questions.

The Chair: Thank you.

Now we're going to go to our first round of questions. They will be seven-minute questions and answers, and we'll start with Mr. Eyolfson.

Mr. Doug Eyolfson: Thank you, Mr. Chair, and thank you all for coming.

One of the things we've been aware of was brought up by a number of people at a town hall I held on the subject of cannabis a couple of weeks ago. This parallels an experience in the United States as well, that a lot of our current drug laws—the criminalization of drugs, including cannabis—have particularly affected groups that are overrepresented already in the justice system and are already subject to poverty and other issues. In Canada, that includes our first nations population.

I put this to everyone here. Do you find our current criminalization strategy is unfairly or overtly targeting indigenous groups? Would you say they are overrepresented among those that are being disadvantaged by this?

Mr. Day, I'll start with you.

• (1420)

Chief Isadore Day: Speaking to the issue of overrepresentation—whether it be in the child welfare system, the criminal justice system, and so on and so forth—we sometimes see society address the surface issues. We know for sure that when it comes to addiction, the addiction itself is only a surface issue.

My friend and colleague next to me talked to the social determinants on health. In my remarks, I spoke to the issue of needing to have effective funding and policing. From an overall systems perspective, we know for sure there are deeper issues, and the cannabis issues and the criminalization over the last several decades have only spoken to the fact that there are deeper issues.

My point is that there will need to be an examination of what is at the core of issues of addiction in the community. We can send good money after bad on this issue, but if we're not addressing the core issues in our first nations communities, we'll always be putting money where it's not going to be best used.

Mr. Doug Eyolfson: One of the things we've heard in our testimony, and I found in my own experience as a physician as well,

is that there is a correlation between mental illness and drug addiction. We know there are many people who suffer from mental illness, who then go on to experiment with drugs, self-medicate with drugs, and consequently become addicted to drugs. This causes its own problems, and also actually makes treatment of the underlying mental illness more of a challenge. This becomes a bit of a vicious cycle with people from all populations, not just indigenous ones.

In regard to the indigenous population, the Government of Canada has made some substantial funding commitments in mental health over the next few years, for non-indigenous as well as indigenous people. Right now, part of that commitment means almost \$120 million for mental health for indigenous people over the next five years.

Do you believe that will help address the roots of one of the issues that are getting people in indigenous groups into problems with drugs? Again, I'll allow everyone on the panel to answer that.

Ms. Morin Dal Col.

Ms. Clara Morin Dal Col: Thank you for that, and I'm glad you switched to indigenous and not just first nations.

Mr. Doug Eyolfson: Yes. That was my mistake.

Ms. Clara Morin Dal Col: Thank you very much.

Mental health is a big issue. We're looking forward to working with the federal government on funding for Métis, which we've never really had before. Drug use, mental health issues in our Métis communities, and suicide among the youth in all our Métis communities are huge problems for us. That's why it is so important for us to have the funding resources, so we can have better care for our Métis people in these communities and in our urban centres. These are huge problems for us.

The cannabis issue is just a part of that because, as you said, mental health and drug addiction are a big problem for Métis and all indigenous people.

Mr. Doug Eyolfson: Yes, sir.

Chief Isadore Day: Can you just give me the simple, one-line question, so I can answer it directly?

Mr. Doug Eyolfson: We're making a commitment to vastly improve mental health funding. Do you think it will help address this, by preventing some of these people from the indigenous communities from becoming exposed and addicted to drugs in the first place?

Chief Isadore Day: That's a really good question. I want to make the delineation here between indigenous and first nations. It's an important one, as my friend and colleague sitting next to me stated. I must state that when it comes to first nations health, under Health Canada we have the first nations and Inuit health branch. There's a program that deals specifically with first nations. The larger extent of suicide issues and social problems that have been in the media are largely focused on first nations communities.

There is an underlying thread of commonality in some of the main issues, which is the jurisdiction and governance of health. Let me point to that specifically. It will be very important for this committee to recognize the issues and implications of cannabis on first nations governments. As first nations health authorities and governance become more developed, you will find that communities and territories that have a handle on the governance—that have control and authority within their community and their catchment, and for their citizens—are able to provide better health outcomes.

I just attended a community of the Samson Cree First Nation, called Hobbema. They have four communities that have a health system—an integrated model where they have a handle on their governance and a direct relationship with Canada.

My point is that it's not just the money coming in and the service being provided, but it will ultimately be the governance and authority of those first nations communities to take an active role and responsibility in addressing the addiction problems in the community.

• (1425)

The Chair: Time's up. We'll go to Ms. Gladu.

Ms. Marilyn Gladu: Thank you, Chair. Thank you to our witnesses. Actually, you may know that Gladu is a Métis name. My daughters are both non-status Métis. It's an honour to have you here today and to hear your testimony.

My first question is going to be to you, Chief Day. You mentioned the tobacco situation in Ontario, which I'm quite familiar with, because in my riding it's quite a business. Obviously tax is going to be a point of discussion, because that would be a price advantage.

How do you see us resolving that as we go forward?

Chief Isadore Day: I'm not going to speak to the tobacco issue in that context, because that's not what I referred to in the context of tax. What I referred to was the instrument called CITCA, which is the agreement between Canada and Ontario on the harmonized sales tax and the point of sale tax exemption for first nations in Ontario. I'll say that.

However, you referred to the tobacco issue, and I did as well, so let me draw the comparison. The comparison is going to be around having to address this tax issue down the road when it comes to cannabis. We know that's what the jurisdiction of the province is going to be leaning on. That's how they're going to generate revenues and maintain that new infrastructure and law in Ontario.

I'm here to state that I can only speak for Ontario, but we will definitely want to address that issue. I can't make any assumptions. I can't make any initial conclusions as to what that would look like.

I'm just advising the committee that it will have to come to grips with that issue.

I would draw the example that in Ontario we were able to do that through the CITCA, and when a government-to-government-to-government dialogue and negotiation happen, good things can take place. We're going to have to go into this with goodwill, good minds, and a willingness to recognize the sovereignty and rights of first nations on tax exemption.

Ms. Marilyn Gladu: Absolutely. I also really agreed with your comments about how this legislation is being rushed in a rather irresponsible way. There are 289 days left, and the police have said they're not prepared. Many of the provinces haven't come out with a plan, and you've indicated there's a lack of readiness among first nations and indigenous groups as well.

I'm very concerned because when I think about the Colorado experience and what happened there, I'm worried that we may see some of the same things. One of the troubling things in Colorado was that in 16% of youth suicides, ages 10 to 19, cannabis use was present.

How long do you think it will take to get the things in place for you to properly implement the legislation?

• (1430)

Ms. Clara Morin Dal Col: We feel it's being rushed. This is something that is going to take time provincially, and even at borders: what's going to happen when somebody wants to cross the border into the U.S.? There are a lot of issues for us to deal with, and we really feel it is being rushed. We need the time to consult with our communities, which is something we haven't had the opportunity to do—lack of funding being one reason. We need the opportunity to have that dialogue with our Métis people.

Thank you.

Ms. Marilyn Gladu: We heard testimony that at the border, because it's illegal federally in the U.S., if you were asked if you smoked pot and you said yes, you would be refused entry to the country. That's what we know today.

I don't know if any of you have any experience with the law, but we had a conversation in testimony earlier, where we were talking about provinces or territories that wanted to not implement the cannabis legislation—they wanted to ban it. It was said that wouldn't be allowed because, from a judicial point of view, it would interfere with the federal intent. I don't know if there's an exemption for indigenous sovereign nations or not. Do you know anything about that issue?

Chief Isadore Day: I know the concern is the acceleration of the legislation. The word we're getting back is that, in the event a province or territory is not ready, there will be federal online dispensaries made available, and those will be regulated in their own right.

This is going to become a problem for first nations. I can't speak for the provinces and territories, but with respect to first nations we definitely need to ensure that any parts of the act that may affect us—that may be modified because of our land jurisdiction, our sovereignty, and the authority of first nations jurisdictions—are going to be part of a separate discussion. I don't think the days and weeks ahead are going to be adequate to deal with that. There will be some major concessions, and I fear there possibly will be legal challenges in the future if the federal government doesn't deal with this appropriately.

Ms. Marilyn Gladu: The addiction issues that we're seeing are on the rise across the country, and we've talked about how they exist with you as well. What resources are currently available in terms of treatment? How much more do you think you would need to deal with issues that are expected to arise, as they have in other jurisdictions that have implemented?

Ms. Clara Morin Dal Col: We don't have Métis-specific funding. Everything is provincial health funding and the money that comes to the provinces. In B.C. we have 204 first nations, so Métis are way at the bottom of that list. We always encourage the federal government to step forward and include the Métis. We don't have any Métis-specific funding in British Columbia, and there is very little in other provinces.

Ms. Marilyn Gladu: That's a huge gap as well.

Thank you. I think that's my time.

The Chair: Mr. Davies, seven minutes.

Mr. Don Davies: Thank you for being here, all of you.

Chief Day, was the Assembly of First Nations consulted by the federal government on the drafting of this legislation?

Chief Isadore Day: To our knowledge, no, not to any great extent. There have been minimal notifications, but there clearly has not been a meaningful engagement.

Let me qualify that. One way that the federal government tried to come in and speak on this issue was from the health perspective. As the chiefs' committee chair on health, I have been privy to a couple of times that the federal government came in, but they came into this discussion with a lot of other mandates attached to the dialogue. That simply is not a focused or fair way to begin meaningful engagement.

Mr. Don Davies: Let me read you a quote from the task force report, the McLellan report, which was issued in fall 2016:

Canada's governments, and many other organizations, will need to work quickly to prepare for the implementation of the new system, increasing or developing capacity in many areas relating to production, distribution and retail, quality control and enforcement, and research and surveillance. This increase in capacity will require new resources (human and financial), enhancements to existing institutions and the creation of new ones. Having all elements in place will be necessary for the proper functioning of the regime.

They recommended, "that the federal government...[t]ake a leadership role to ensure that capacity is developed among all levels of government prior to the start of the regulatory regime."

In terms of the first nations or indigenous governments in Canada, has the federal government been working with you on a nation-to-nation basis to develop those capacities?

• (1435)

Chief Isadore Day: No, they haven't, and again, it's going to be really critical. I would ask the committee to visualize where we're at as the Assembly of First Nations. We have been given many assurances by the Prime Minister and other line ministries on a number of fronts.

Currently, there's the first ministers' meeting that will take place October 3, the law and policy review, and we have a fiscal table. Those are three critical tables that the AFN is just now getting to in any meaningful way. It's very challenging.

If you try to take the issue of, say, the environmental legislation that is being reviewed right now in this country, and look at the cannabis bill, the process of reviewing, engaging, and making determination of where capacity is needed has to be done well in advance. The legislative process, the capacity, and the mutually agreed-upon processes as to how we're going to gel and work together to meet a collective outcome are going to be the challenge. That is simply not happening with this government.

Mr. Don Davies: Let me pick a specific focus. We've heard a lot of evidence about the need for education, particularly aimed at young people. Has the federal government been working with the assembly—or any indigenous first nations groups—on developing specific, targeted educational material in collaboration with indigenous and first nations input to roll out in advance of July 1 of next year, or has it given you any money to do so?

Chief Isadore Day: No.

Mr. Don Davies: Pardon me if you've covered this, but I'm not sure I understand exactly. How prevalent is cannabis use among first nations, generally, and youth?

Chief Isadore Day: Right now, there are two reasons why people use cannabis. One is for recreation purposes, and the other is to medicate, so health and social. The numbers are glaring. There is obviously more use within first nations communities. Why is that? It is because of the social and legacy issues in our communities. The rates of addiction are obviously higher. Suicides are higher. The addictions and the use of cannabis from that perspective are going to be higher.

Another thing we're finding is that more people are wanting to get off opiates. They're wanting to find better pain management for cancer. We're finding that people are saying they're just going to use cannabis for pain management, because it works. This is a reality. The issue at hand is that no studies have been done yet to substantiate that these are, in fact, effective. We have a problem because right now we're looking at individuals who have prescriptions for medical cannabis. They're currently not covered under NIHB, whereas veterans in this country are covered under that program. There are some very contradictory plays at hand, and we feel this needs to be addressed.

Mr. Don Davies: I keep using the term "indigenous first nations". Correct me if I'm using the term incorrectly, Chief Day.

When you submit reimbursement requests for medicinally prescribed cannabis to the government, it's not paying, but it is paying for veterans?

Chief Isadore Day: That's correct.

● (1440)

Mr. Don Davies: We've heard already, and we all know indigenous people are disproportionately represented in the Canadian justice and prison systems. How has cannabis criminalization factored into that, specifically?

Chief Isadore Day: You can just assume that some of these summary convictions and ongoing addiction problems of our young people, and being charged for breaches and for carrying marijuana, have created many issues in our communities. Because policing programs are not adequately funded, the training in community-based policing is not going to be there. You have the heavy cost of the justice system in our communities. You have remote situations where, if someone is caught with marijuana and charged with an offence, that charge is left hanging because court only happens every so often.

The impacts of cannabis in our communities are much greater. Just those small examples should suggest strongly to the committee that the impacts of cannabis on first nations need to be looked at in great depth.

The Chair: Your time is up.

Mr. McKinnon.

Mr. Ron McKinnon: Thank you, Chair.

I'm going to start by perhaps answering in a small way some of your concerns about funding. I note that in terms of helping to implement Bill C-46, the provinces and territories can access up to \$81 million for the purchasing of and training on oral fluid drug screening devices and training for field personnel for field sobriety testing and drug recognition expertise and so forth.

Provinces and territories will be responsible for distributing this funding to municipal and indigenous police forces within their jurisdictions. Beyond that, I think the funding concerns are the taxation and sharing schemes and are certainly beyond my scope. I think those are things that you're probably best advised to address with the new Minister of Crown-Indigenous Relations, as well as the Minister of Indigenous Services.

In terms of concerns that we are being rushed, I've heard this from a number of sources, of course, but from my experience in project management, it is important to have target dates. If you don't have target dates, things just slide out into infinity. It is important to have these dates to work towards, and I have found that it helps people to put the resources in place to try to meet these dates. I think they will be challenging, but I think we have to do our best to do it.

In terms of being ready, what aspects are most concerning to you? What aspects of this legislation do you think are going to be the most difficult for you to meet?

Chief Isadore Day: I think this year it's just timelines; we're mere weeks away from this legislation. The federal government has started off on a bad foot already. Our communities simply are not ready.

There is a lot of education that has to happen at the community level and also in terms of the engagement of local leadership. For example, there are going to be treaty regions that have vested authority and interests within their regions when it comes to negotiating permits and licences. These are all things that the legislation is there to support and help expedite. I think the actual literacy with respect to the legislation is going to be the first real challenge. Obviously, the point you made about us having to address this issue with the minister of INAC is also going to be a problematic piece. For us, if the committee is thinking like that already and thinking that we're going to be relegated under the line ministry of INAC and not deal directly with line ministries within the context of this emerging legislation on a government-to-government level, then we're going to have problems.

In terms of going forward, for the bilateral work that is going to be needed within the regions with the Assembly of First Nations and on the ground with first nations specifically, the whole relationship piece as to how this law recognizes the legal rights and authority of first nations jurisdictions will be a piece that I think you're going to have to come to grips with. In order for us to do that, we need to get that dialogue happening on a government-to-government basis.

● (1445)

Mr. Ron McKinnon: My suggestion to talk with the Minister of Crown-Indigenous Relations is fundamentally because this committee is charged with the responsibility of studying this law.

Chief Isadore Day: Yes.

Mr. Ron McKinnon: Some of these other things you're talking about, I think, are well beyond the scope of this law. I would certainly welcome specific suggestions you have on how we could improve this law for your needs.

Chief Isadore Day: I will give you one suggestion. Put it right in front of the law and policy review that is currently before the AFN and the Prime Minister's Office. I think it's one that is going to affect our communities. It should be on the roster of laws and policies that should be reviewed. It's better to do it if it's at the inception stage, rather than one that's left the barn already.

Mr. Ron McKinnon: Would the Métis council like to address these questions?

Ms. Wenda Watteyne (Senior Policy Advisor, Métis National Council): Thank you.

I think part of the brief that the Métis National Council put forward does reflect upon those recommendations that the task force made in terms of governments working together. There needs to be better coordination. There hasn't been bilateral engagement between the Métis nation and the Government of Canada to date, at least not in a meaningful way.

I do want to point out that it's very clear that the provincial governments have a fair bit of jurisdiction when it comes to the regulations. If I may respond to one of the questions raised earlier in regard to access to mental health supports, I'd like to point out an example.

Fairly recently, all provincial governments, as you know, finalized federal-provincial agreements on health. There was considerable funding there for mental health, as well as home and community care. I believe that about \$11 billion over 10 years was to be invested in these areas. An ongoing concern for the Métis nation is that when federal resources are transferred to provincial and territorial governments, it does not always mean that there actually will be any level of collaboration with or investment into Métis communities. We expect that this will probably be the case with mental health. As far as I'm aware, there isn't any funding being provided by the federal government directly to the Métis nation for mental health.

That's the case in many instances, so I want to make the point that the level of coordination between all three levels of government is extremely important. It's a broad recommendation, but I think it's one of the most important foundational ones from our perspective. That's why we reiterated the same recommendations that made sense to us and that the task force had advised.

The Chair: That completes our seven-minute round. We'll go to our second round of five minutes, starting with Dr. Carrie.

Mr. Colin Carrie: Thank you very much, Mr. Chair.

Also, I want to thank the panel for being here today, but again, it emphasizes my frustration that we have such a short period of time with you. I have a lot of questions, but I only have time for a few.

I'm thinking about the 289 days. We've had the advantage of Colorado and Washington in front of us, which have said that to be successful, before you come to the date when you implement, you should have proper education—or in other words, in your case, very important culturally appropriate education—and prevention measures and data collection. You should be working on baseline now and then figuring out how to collect this moving forward. On treatment, you should know how to get especially our kids into treatment, and there's also the research.

What I found very disturbing from your testimony is that it appears that the federal government hasn't reached out through other levels of government to get any of this in place, and we have 289 days. For me, when we see some of the Liberal members criticize other levels of government and law enforcement for not being ready yet, they've had two years to get this in place.... I'm very much concerned, but again, I have a lot of questions, and I would like to talk to you about probably some of the more difficult, controversial things.

Chief Day, you brought up something that no other panellist has brought up about the autonomy and the unique circumstances of some of your communities. You brought up this idea of dry communities. I was wondering if you could explain the rationale for this a bit, but also, because I probably won't have time to ask you again, maybe you can fit in this next part that I think is really important, because this legislation obviously doesn't allow for the necessary autonomy you need. If you could get one thing into this legislation, what would you like to see?

Those are the two things. First, could you talk to me about the controversial...about dry communities? Nobody has brought that up. I want to put you on the spot for that. Also, what would you like to see? Because if they're going to do it this way, we want to make it the best legislation we can to protect the health and safety of our kids. What we learned from Colorado and Washington—and Chief Day was right on it—is that organized crime targets youth. We want to make sure that this is the best legislation we can get. I'll shut up there and let you speak, Chief Day.

● (1450)

Chief Isadore Day: With respect to the issue of autonomy, I think that for the federal government having Minister Jane Philpott moving over to INAC now is a good move. She and I have worked considerably well together in the last couple of years, and that's why we've seen some off budget cycle investments. We've seen really good work come from her shop, and I'm so glad that I have an opportunity to work with her.

When it comes to first nations health transformation, look at what's happened here in the last year or so with regard to the health accord in Canada. The federal government had to deal and negotiate specifically with the regions across the country. Manitoba was the last holdout, but finally there was an agreement. For first nations, we have been pushing on health transformation, because we have issues of autonomy. We have health governance issues, capacity issues, and systemic issues.

To answer your question, what I would want to see in the legislation going forward is that the first nations health transformation agenda be considerably recognized and that components within the legislation build on the principle that there is a first nations health crisis that has been here for decades and it's going to take years for the federal government and first nations to fix that. Health transformation for first nations is going to be a much deeper exercise, and I think the legislation needs to recognize that.

Mr. Colin Carrie: Could you comment on the dry communities?

Chief Isadore Day: The dry community piece is there. In many cases, it's there for good reason. If you don't have the proper health care system, proper social programs, or infrastructure, to add alcohol into a community is like adding fuel to a fire. In many cases, as you know, not because of any of the moral aspects.... I want to be clear about that. This is not a moral issue. This is an issue of the human right to health. First nations do not have access to the human right to health in a substantive way in our communities. Therefore, alcohol and drugs make things worse. Communities say, "Because we have the ability, we want a dry community, because we don't want our community to hurt any further."

Mr. Colin Carrie: Can the federal government force you to, because of these mail orders...? They've said that if you're not ready, there'll be mail order. What would you think of that situation?

Chief Isadore Day: That's a jurisdictional grey area. This is why we need to look at the first nations health transformation piece very closely, and it's why we need a bilateral table. This committee should strongly recommend that any preparatory work or capacity front-end loading in terms of getting us ready should be done. We turn to the committee for support on that.

Mr. Colin Carrie: Can we hear a comment from the Métis council?

Ms. Wenda Watteyne: From the Métis nation perspective, I think one of the things that would be a huge benefit is explicit recognition of the Métis nation, and perhaps other levels of first nations and Inuit governments as well. Explicit recognition and inclusion in the legislation would be an important step that will define how we work with the Government of Canada, and perhaps will provide a greater safeguard that resources will be provided and that we will work in collaboration. I think it just provides much more assurance and spells out a way that we can work together, as opposed to being an afterthought or just not having adequate consultation and engagement. I think that would be a real strength.

• (1455)

The Chair: That's it. Thanks very much.

Mr. Ayoub.

Mr. Ramez Ayoub: Thank you, Mr. Chair.

[Translation]

Thank you for being here. It is very important for us to hear what you have to say. Like all the other witnesses, you raise some very interesting points.

First of all, could you please comment on your relationship with the federal government in the past two years, particularly with respect to health, and on communications with the federal government since the change of government?

How would you describe these relationships? Do you think they have been increasing, open, closed or progressive?

[English]

Chief Isadore Day: On our relationship with or impression of the current government, I'll speak specifically to the health file, because this is a multi-faceted issue. Cannabis is legal. It's social—

Mr. Ramez Ayoub: I want the big picture.

Chief Isadore Day: The big picture?

Mr. Ramez Ayoub: I want the big picture, to see what the relationship is now.

Chief Isadore Day: Our relationship is at a crossroads right now. We know that the federal government has made substantial commitments. There has been a setting of the table, if you will, but we've not yet experienced the full-meal deal from the federal government. It's really important to recognize that time is of the essence. We cannot be strung along and provided commitments on certain things but not be afforded the resources and the opportunity to help shape the process from the front end and not from halfway down the road. Our challenges are quite deep. We have capacity in our communities to know what our issues are. Oftentimes the federal government going forward on, say, law and policy review will basically shape and shift the process, and we're not at the front end.

We understand, sir, that we're not part of the federal family, but we are the neighbours next door, who've been here since time immemorial. We should be participatory in all parts of the process at the front end. For example, in setting out this legislation, we need to have the resources available. We need to have the ability to help shape how the draft legislation will be done, to have co-development of legislation. I think the federal government is beginning to—

Mr. Ramez Ayoub: I have only five minutes, so if you could get to the answer—

Chief Isadore Day: I think the federal government is getting there, but there's more work to be done.

Mr. Ramez Ayoub: Thank you.

Perhaps the Métis could answer now.

Ms. Clara Morin Dal Col: I'll refer back to the accord we signed with the federal government. We've been working really well with this government, with growth and openness, especially after the Daniels decision and the commitment set forward to work nation to nation, government to government, in terms of the relationship between Canada and the Métis nation under this new accord. We have co-committed to advancing a range of priorities for the Métis, which we've never had before.

So it's been working really well for us in moving a lot of these initiatives forward, especially in health.

[Translation]

Mr. Ramez Ayoub: Your answers, particularly Chief Day's, tell us that there is a lot of work to be done, even though the relationship with the Métis is going well.

Moreover, the situation can't change completely overnight. There is a lot of work to be done. Time is an important factor, and we can't make amends for what wasn't done in the past. We can only move forward and make changes for the future.

In the case of health, cannabis is one aspect and a cornerstone of legislation that will change. Communication, information sharing, assistance and support are important.

What efforts have you made to communicate with your people? We're talking about local public meetings, I've held them myself. We are talking about money and financial aid, but consulting people didn't cost me much money. As a member of Parliament, I have been able to hold town hall meetings and I can hold others; it's quite simple.

We can listen to our people, find out their concerns and deal with them. I would like to know what you have done on your side over the last two years, knowing that the legalization of cannabis was coming.

• (1500)

[English]

Chief Isadore Day: Thank you, sir. I'll answer very quickly.

We have been doing work. I must say that on one side that's a fair question, and on the other side it's a red herring. You do need resources to actually go deeper into issues and impacts of cannabis. If you lived in one of our northern communities for two weeks, I think you'd have a very different opinion around the ability to consult.

Mr. Ramez Ayoub: I don't have any opinion and I don't have any judgment. I just want the facts.

Chief Isadore Day: Okay.

That was my first point. Second, we have the Thunderbird Partnership Foundation. I'll leave the document for the committee. It has already begun to lay out some of the initial discussion points and questions. There are questions here, "8. Key considerations for indigenous communities". I won't read them into the record, but they're here.

There is the ability for us to begin that work, but it's a much, much deeper discussion that does require resources and collaboration with the federal government.

Thank you.

The Chair: Thank you very much.

Now we're going to Mr. Webber.

Mr. Len Webber: Thank you, Mr. Chair.

Thank you for being here. I'm pleased that you were included as part of this health committee study. I'm a little disappointed that you feel you weren't included in the task force deliberations.

One thing I do want to say, though, is that as the aboriginal relations minister of Alberta for a number of years, I had the honour and the pleasure of working both with your first nations communities and with your Métis communities. I can tell you that I know what challenges face both of your communities. I wish and hope that the future will be brighter for the indigenous communities, including the Inuit communities, which are not represented here today and likely were not represented at the task force hearings either—I don't know.

In any event, one thing that has not been brought up yet today is the inclusion in the bill of the opportunity for Canadians to cultivate at home up to four plants. What are your thoughts on that and how it affects your communities?

I'll start with Chief Day.

Chief Isadore Day: I'm going to keep this very straightforward. Again, there is a land tenure/land jurisdiction issue with respect to the Indian Act. That's going to be a very specific study, a very specific exploratory dialogue with first nations, because, as you know, first nations are now developing their own constitutions, for example. There will be a very different set of issues from a legal standpoint that you will have to deal with within the mainstream. Our communities will want to be putting that information forward.

Again, in regard to the previous committee member, on the question of getting out there and having discussion, there are much deeper issues that need to be looked at. This question you raise is one of those.

Mr. Len Webber: The Métis nation community...?

Ms. Clara Morin Dal Col: That's a difficult one for me to answer. We haven't had many consultations on the four-plant issue.

As you know, our communities are so diverse throughout our nation. We do have community engagement. I travel within the province and across our nation, and we do communicate with our communities; however, it's the funding for education and communication that we don't have. Yes, we talk to them in a one-on-one type of thing, but to get to all the communities can be so difficult, and it's also difficult for them to travel from northern Alberta to Edmonton.

There are these issues that face us, but we haven't gone into that one, so I can't really answer that question on the four plants.

Mr. Len Webber: Both of you have concerns with regard to not being ready by the July 1 deadline. You've mentioned a number of issues for what has to be done before you will be ready. Of course, funding is a big part of that, but if the government does provide those funds—they're good at spending money, providing funds—if they do, is the date of July 1 reachable for you to be prepared? Or do you have a specific date for when you think you will be prepared for this new legislation?

• (1505)

Chief Isadore Day: I'm going to speak from the perspective of the sequence of our assemblies. Our first nations have almost tiered assemblies. For example, we have two major assemblies, and then we have special assemblies of chiefs and annual assemblies. The next major assembly for the AFN is in December. We will be scurrying and we will be pressured to address the issue of cannabis legislation. The next one is not going to be held until after the legislation has been introduced, so yes, we need the resources.

Secondly, the issue here is going to be that we have not been considered with respect to the decision-making process even in our own assemblies as first nations, so that's going to be a major sticking point. I think it's one that is going to suggest to the committee that they recommend to the federal government that they're going to have to reconsider this, because first nations simply will not be ready from the context of our constituencies, of being our chiefs, and of making decisions in those assemblies where we formally feed back to the federal government.

Mr. Len Webber: And in the Métis community?

Ms. Wenda Watteyne: Well, it is an ambitious time frame, but we feel that a lot could be done, particularly when we think about the role of the Métis nation in terms of health promotion activities. Those are things that we can move on right away. The Métis governments have their infrastructure in place. They have networks and infrastructure in terms of working with citizens and communities. Those are things that we could start on right away, but we see this as being a longer-term partnership, particularly when it comes to reviews every five years, reviews of the legislation.

This is an opportunity to reinforce our recommendation for investments in research and surveillance. Of course, surveillance is something that you'd want to see sustained over a longer period of time.

I don't know if that helps.

The Chair: Thank you.

Now we go to Ms. Sidhu.

Ms. Sonia Sidhu: Thank you, Chair.

Thank you, all, for being here and for your valued presentations.

I just want to say for the record that ITK was invited to join us today.

Ms. Col, I was reading your submission, and I came across data that said that incidents of self-harm among Métis girls rose from 27% to 36% from 2008 to 2013. Those are obviously troubling numbers. Can you tell us about the need for instilling a strong cultural identity within indigenous youth to combat mental health

and substance abuse issues? When the suicide rate is very high, don't you think there's a need to do something?

Ms. Clara Morin Dal Col: There's definitely a need to do something regarding suicide. We know that we have alcohol and drug problems within all our communities, as I mentioned earlier, and in the urban areas. As you can see, some of this data is 10 years old. We know that suicide rates are extremely high within our communities. This is going to have an effect, definitely, on these communities. The rates are going up all the time compared with non-aboriginal populations.

I hope I answered that question.

Ms. Sonia Sidhu: As we carefully study this bill, we'll be moving into more detail. Is there anything within the federal government's authority that you feel could be added to benefit indigenous communities? The youth are already consuming cannabis. The numbers are very high. It was one of our campaign promises, and we are being very careful in bringing in this legislation. The youth are consuming a lot. The numbers are there. What are your thoughts on this legislation that's coming? It is not affecting those youth in that we're talking strictly about legalizing.

• (1510)

Ms. Clara Morin Dal Col: The education part is very important to start the prevention as young as possible within the communities, with our youth. I talked earlier about communication and education. For me, it's important to start as young as possible on the education front to try to get these numbers down. Right now it all stems back to mental health. There are many underlying issues. For us, it would be education—

Ms. Sonia Sidhu: In order to bring that number down.... We are hearing that we're rushing. That's why we are taking that step. Can you elaborate on that? Do you think that step is not right?

Ms. Clara Morin Dal Col: That they're rushing...?

Ms. Sonia Sidhu: I'm hearing that the federal government is rushing. Do you think it's not the right time to take the step?

Ms. Clara Morin Dal Col: I'm not saying it's not the right time. It's how we approach it, to get this legislation in place, and what our needs are as Métis across our homeland. It's getting communication. There's a timeline, and I'm sure we can work within that timeline. It will be very tight for us. We've been working on communication within our communities, if I'm answering the question correctly, on this issue, but it will be tough for us to work on this any further.

The Chair: Chief Day, do you want to say something?

Chief Isadore Day: Yes. The delineation here, again, is that the Métis community is absorbed by the mainstream. There is no land tenure. There are no treaties. There are no Indian Act issues to address. Much of our problem is the Indian Act. There is going to need to be, for us.... My response will be that, no, it's too fast. We're not ready. We simply will not be ready.

I think it's really important for the federal government and this committee to make the strong suggestion that we need to understand what the impacts are. That's the theme of my presentation, impacts to public health. We need to look at prevention. We also need to look at law enforcement and, overall, the socio-economic impacts in the strategy going forward. That front-end work simply hasn't been done in the context of first nations in Canada in response to dealing with the issues, the systemic problems with the Indian Act and the Indian residential school legacy.

The Chair: Time is up.

Mr. Davies.

Mr. Don Davies: Chief Day, we know the federal government has decided to download the questions of distribution onto the provinces. I'm just wondering who will determine distribution methods on band lands or reserves.

Chief Isadore Day: First nations are saying it will be first nations. That's the issue right now. For example, being the Ontario regional chief, I don't have the types of delegated authorities that the province has. I'm merely a spokesperson on issues that I have a mandate to speak from, and that is being....

Every first nation has its own authority, its own jurisdiction. Ultimately, those issues and those major concerns around first nations jurisdiction have not been put on the table yet.

There is a lot of work to do to understand from the standpoint of our work in the province. The provincial government is trying to make an effort now to meet the timelines, and they simply don't.... In Ontario, they don't like to have to deal with the time pressure either, but they know they need to do something. So—

Mr. Don Davies: I'm sorry. I'm going to try to understand this.

Is it clearly understood by the federal government and the provincial governments that it will be first nations determining distribution on band lands and reserves?

Chief Isadore Day: Yes, that's correct. It has not been discussed yet to any great degree. There will be a push and pull for quite some time until it gets sorted out. There is no mutual understanding yet. That hasn't been an issue that has come to terms yet.

Mr. Don Davies: We're 10 months away from legalization, and the whole question of whether it's going to be in retail stores, dispensaries, or through some form of band corporation or economic body.... None of that has been.... The work on that has not really started.

• (1515)

Chief Isadore Day: No, it hasn't. If you look at the continuum of implementing such a law, you not only have the policies, regulations, quality assurance, those types of standards, but you also have the ability or inability to enforce laws. Right?

Mr. Don Davies: You anticipated where I was going next, which is enforcement. Who will be responsible for enforcing Bill C-45 on reserve lands and band land?

Chief Isadore Day: I think it's highly irresponsible of the federal government to not be able to answer that question at this committee right now. That's one of the outstanding questions we have that is going to really determine whether we state we're ready or not.

I have to tell you that most communities are very nervous right now about, in fact, not being able to enforce their own laws or even the federal-provincial laws with respect to medical and recreational cannabis.

Mr. Don Davies: We've had a number of people testify about the harm that criminalization metes out, particularly to youth, particularly to marginalized groups, particularly to people of colour, and of course the indigenous communities, as well. There has been a call to have the government, particularly the Minister of Justice, instruct federal prosecutors to stop prosecuting people for simple acts of possession now. Is that a call that you would favour and support?

Chief Isadore Day: I would support that, yes, the caveat being that there needs to be a plan to deal with the impact of that.

We certainly know that the cultural shift in Canada is changing now. We smell marijuana when we walk down the road in our urban centres now. What is that doing to the family? What is it doing to the communities? We know that, once this rolls out formally, there will be major changes in our communities. The federal government needs to consider that going forward.

Mr. Don Davies: Finally, are there any first nations producers that you're aware of? Is anybody in the first nations world looking to this as perhaps an economic development potential for first nations?

Chief Isadore Day: Yes, there are. I need to be clear on that. This is where I don't have the authority to give you any information as to where they are, but they do exist.

Our first nations communities are entrepreneurial. They know what their sovereignty rights are, and they certainly are preparing for the economic opportunities. I'm being told that first nations businesses and communities are going to want to assert their rightful place within this emerging industry.

Mr. Don Davies: Thank you, Chief.

The Chair: That completes our official time. I want to thank—

I beg your pardon, Ms. Gladu. go ahead.

Ms. Marilyn Gladu: Do we have time for another round? I don't think we finish until 3:45.

I'd like to move to seek unanimous consent to have another round.

The Chair: Do we have unanimous consent for another round of five-minute questions? We do.

Ms. Sidhu.

Ms. Sonia Sidhu: Chief Day, it is a known fact that throughout the criminal justice system indigenous Canadians are overrepresented. How do you think the use of the Youth Criminal Justice Act might help benefit indigenous youth? This legislation also includes a ticketing option for minor offences by adults. Do you see a similar benefit to the indigenous community?

Chief Isadore Day: I think so. I think it will prompt the federal government to again look at the community justice systems. Finding those solutions won't be of a one-size-fits-all nature. It will be very important for the federal and provincial governments to recognize that community justice programs per region will need appropriate attention and appropriate investment. One region—the Province of Alberta, let's say—may have a different working relationship with the first nations in that region, and those programs may be different in nature.

In Ontario, we're continually looking at ways of improving our relationship with the Ontario government, but again I'll say that it is always going to boil down to the types of investments that are made in community policing. Community safety will always be our target, but enhancing and augmenting those capacities at the community level will require that we have a hand in any changes in legislation that promotes moving beyond reacting to addiction and kids in courts and the penal system to those who are actually moving beyond that and getting the proper mental health services and proper prevention programs.

Yes, I think there should be adjustments made. I think that should be a high consideration for this committee to consider.

• (1520)

The Chair: Ms. Gladu.

Ms. Marilyn Gladu: Thank you, Chair. My question is for the Métis nation.

I was interested to hear, when you were talking about the age statistics, that 41% of Métis are under 25. We've had a lot of discussion here about what the age of legalization should be. We had testimony from the Canadian Medical Association, and also quite a number of doctors, that everybody under the age of 25 using cannabis has had an increased risk of schizophrenia, psychotic disorders, depression—a number of mental health issues. I'm interested in your view on where we should set that age for legal smoking and possession.

Ms. Clara Morin Dal Col: When we were looking at that, we talked about that same issue. It's different from B.C. to Ontario. That's why we came up with the legal age of 19 for consent. That's the drinking age, so that's why we went with the age of 19. If we go to 25.... Realistically, they're going to be smoking cannabis anyway, so we thought 19 was a good age.

Earlier, there was a question about possession. We have to look at how it's necessary to separate the drug use from the criminal field and the illegal market. There are a lot of issues that we have to look at.

Ms. Marilyn Gladu: Yes, with respect to possession for children ages 12 to 17, the bill recommends that they could have up to five grams. There was conversation about whether they should receive any criminal charge if the possession amount was above that, or whether it should be a ticketable offence, or whether there should be

perhaps mandatory education and medical follow-up. Do you have any opinions? I would ask all of you if you have any views to share.

Ms. Clara Morin Dal Col: I think there has to be that education and medical follow-up. Again, for us, the education part is really important and the communication. You know, if they get a criminal charge at that young age, it's going to be with them for a long time. I know a lot of communities like to deal with this within their communities also. For us, that education and health component would be how to move forward on that.

Ms. Marilyn Gladu: Go ahead, Chief Day.

Chief Isadore Day: Just quickly, you know, the regulatory impacts of this legislation are going to be huge on our communities. We're dealing with a long list of policy and legislative issues on a day-to-day basis. This one is going to be huge because it's not just the health, not just the economic, but the social. I would say that the social impact burden of cannabis use and age levels and provisions within the law are going to need to be discussed in our communities very quickly. Given the fact that there are 289 days left, I can't even fathom that we'll be ready to accept legislation from the federal government by that time.

Ms. Marilyn Gladu: All right.

The hemp producers were here, and they asked to be exempted from this legislation. They asked us to add them to the schedule. Would there be any concern from your communities if we did that?

• (1525)

Chief Isadore Day: I have no comment on that. I have not put any thought to that.

Ms. Marilyn Gladu: Okay.

My final question then has to do with packaging. Obviously the purpose of the packaging part of this is to try to make sure it's not an attractive package that's going to appeal to youth and all that kind of thing. Are there any cultural considerations that we should include in the packaging regulations?

Ms. Clara Morin Dal Col: We haven't even gone down the packaging road yet. I mean, look at cigarettes. There is no packaging and it's all behind doors. So, we haven't even looked at the packaging side of that at this time.

Chief Isadore Day: For first nations, again, I think the overall effort in the tobacco control strategy and what the federal government has done around packaging is based on prevention. We definitely don't want people getting sick as a result of cannabis. If we use packaging as a way to prevent illness and the impact of such, then I think we do support that.

But there is also the other side of it, the proprietary interests and rights of first nations. First nations are always going to defer and try to find, in our discussions with federal and provincial governments, the rights and proprietary interests of our people in business. Things are different in our first nations communities. You look at the cigarette industry. We have seen some accelerated advancements in that industry in Ontario that benefit the communities. They certainly look at branding and at packaging, and it is something that is a proprietary interest and something that's now going to need to be protected as well.

The Chair: Go ahead, Mr. Davies.

Mr. Don Davies: To all of you, I think we're not yet aware of what the tax proceeds will be from cannabis, but I think we're speculating that there will be some significant funds that will be flowing from the revenue stream. I'm just wondering what the revenue split should be and where you would like to see that revenue directed.

Chief Isadore Day: Obviously there is always going to need to be public and private sector interests. Our nations need to find ways to be participatory to help sustain communities. One of the obvious ones will be in the area of health, possibly in education, but to ensure that there is an economic footprint and opportunity in our communities, that's going to be really key.

Let me speak to the issue of exemption in taxes. I will impress upon the committee again that there needs to be immediate discussion, not just provincially but federally as well, with regard to tax exemption as well as what instruments will need to be explored to ensure harmonization could occur. Again, I'll just use the example of the HST and PST exemption in Ontario. First nations are exempt from paying provincial sales tax. That will be on the table. It will be a consistent expectation from our first nations communities. How do we move beyond that? Again, those are my comments.

The Chair: Ms. Dal Col.

Ms. Clara Morin Dal Col: As Métis people we do pay taxes, so I'd like to see some of that tax money come back to the Métis nation and to our people for, like I keep saying, education, prevention, health resources, and treatment centres. We're going to need all these things, and so I'd like to see some of the tax money that we do pay come back to the Métis people.

Mr. Don Davies: Thank you, Mr. Chair.

The Chair: That concludes our session.

I want to say on behalf of the committee, you've made an amazing presentation. We've had over 80 presentations, but you've still brought new facts and new issues to the table, and we appreciate it very much. I think you've done a great job of presenting your issues. I want to thank you all for your time, the effort you put into this, and the thought you put into it as well.

That completes this session, and we're going to suspend now until 3:45 p.m.

Thank you.

• (1525)

(Pause)

• (1600)

The Chair: We're reconvening our meeting number 67 of the Standing Committee on Health. We're studying Bill C-45 on cannabis. Our panel this afternoon is going to discuss labelling and packaging.

Our witnesses today are Dr. David Hammond, professor, University of Waterloo School of Public Health and Health Systems, by video conference.

From the Atlantic Convenience Stores Association, we have Mr. Mike Hammoud, president; and from the Non-Smokers' Rights Association, we have Melodie Tilson, director of policy, and Pippa Beck, senior policy analyst.

Each organization will have a 10-minute opening statement, and then we'll open it up for questions from the members.

We will start with Dr. Hammond for 10 minutes.

Dr. David Hammond (Professor, University of Waterloo, School of Public Health and Health Systems, As an Individual): Thank you, and good afternoon.

I'm a scientist, and for almost 20 years I've been conducting research on the impact of health warnings, product labelling, and the effect of branding and marketing in the areas of tobacco, food, and most recently, cannabis. I want to be clear that I don't accept any industry funding, and I don't represent any organization for or against cannabis legalization. I've also served as an adviser to the World Health Organization and regulatory agencies around the world and been an expert witness in tobacco litigation, including on behalf of the Government of Canada.

Now I'd like to focus on the public health implications of three areas. One is restrictions on branding and package, the second is health warnings, and the third is product labelling.

Of all the areas covered in the act, marketing and promotion can have the most direct impact on who uses cannabis, what types of products are used, and for what reason. The marketing restrictions proposed in the act are largely modelled on those for tobacco products in Canada. Like tobacco legislation, the cannabis act seeks a balance between allowing product information to reach adult consumers while prohibiting marketing that promotes use, especially among young people.

The question, of course, is how to balance and how to accomplish that balance, and I would like to touch upon several lessons from our experience with tobacco marketing over many decades.

The first lesson is that branding has the greatest impact on young people, those whom the act seeks to protect.

The second is that limited marketing restrictions have limited effectiveness. When most traditional forms of tobacco advertising were prohibited, the marketing expenditures didn't stop. They simply shifted to other channels, including packaging and the retail environment. For this reason, Canada and other countries are implementing what we call standardized or plain packaging of tobacco products that removes logos and brand imageries from packs, but allows product information to be displayed.

Plain packaging is an effective public health measure. Not only does it reduce the promotional appeal to young people, it also enhances the impact of health warnings. If the government were to pursue its objectives without implementing plain packaging, the government would find itself with the responsibility to police thousands of individual packages to ensure that brand imagery does not increase appeal among youth or promote a positive lifestyle. That's an incredibly resource-intensive and difficult task that has proved ineffective for tobacco products, as it almost certainly would for cannabis products.

The third lesson from tobacco is that, once marketing and promotion is allowed, it's very difficult to scale back through regulation or new legislation. Consider that it's taken 50 years and multiple legal challenges for Canada to achieve the current restrictions on tobacco marketing. It is much harder to restrict marketing after it's been permitted than it is to loosen restrictions, and once it's been allowed, the effects of promotion and marketing can persist long after removal. In short, it's very hard to put the genie back in the bottle.

The fourth lesson is that the removal of branding does not promote illegal or contraband sales. Testimony to this committee earlier this week suggested that restricting cannabis branding would make it more difficult for consumers to distinguish between illegal and legal products. That simply is not accurate. Cannabis products acquired through legal retail outlets will be clearly distinguished by health warnings and other labelling requirements. It's simply not credible to associate reduced branding with an advantage for illegal products. The same argument has been made by tobacco companies to oppose plain packaging laws, and these arguments have been refuted in multiple legal rulings. Overall, if the government wishes to prevent lifestyle advertising and promotion to young people, the act should include plain packaging.

Health warnings are another essential component of labelling policy. The question is, what should cannabis warnings look like? What does Canada want to say about the risks? Is driving high really all that risky? Does it really harm a baby when their mom uses cannabis when pregnant? Most Canadians are uncertain about the potential risks of these products, and they want this information.

Health warnings are the most cost-effective, self-sustaining way of communicating with Canadians about cannabis. Should cannabis warnings look like the ones on cigarette packs? Well, if they don't, they should at least incorporate the same basics of effective warnings. That is, they should be large, they should use colour, and include pictures. Large pictorial warnings are the most effective

way to reach children and youth and the most vulnerable members of our society with low literacy.

● (1605)

Warnings aren't just about scaring consumers away from a product. They are about informing consumers, but they also provide an opportunity to provide support for those who need it, and for addiction. In Canada, every cigarette pack includes a telephone helpline number and a website for helping Canadians quit smoking. We have evaluated this, and it works well. I would urge the government to display the same services on cannabis packages to demonstrate its commitment to reducing addiction.

Lastly, I'd like to briefly discuss labelling of product contents and dose. I think there is strong consensus that THC levels should be displayed on packages, but we can't simply rely on providing numbers to consumers. How many people in the room today intuitively understand what 50 milligrams of THC means? Is that a little? Is that a lot? What does it mean in terms of different products or routes of administration?

Consider that Canada is about to start using what we call traffic-light labels or high/low symbols on food packages. We're going to be doing that because it's easier for consumers to understand and use. The same principles should apply to cannabis labelling. If it's important enough to use symbols for canned soup and sugary drinks, it's important enough for cannabis products.

I would argue that THC and dose labelling should also be reflected in the actual packaging. When edibles are eventually sold on our market, each dose should be individually packaged. Think about individual pieces of gum that are packaged within the larger packaging, or those little Halloween chocolate bars that we hand out, which are now sold, again, in a larger packaging.

To conclude, overall the public health impact of cannabis will largely be determined not simply by whether it's becoming legal, but by how it's regulated in a legal market. Comprehensive restrictions on marketing and promotion should be given precedence in the act and should include plain packaging. Large, clear health warnings that use images will provide governments with an efficient and highly cost-effective means of communicating with consumers. They should also be used to support Canadians who need help with addiction.

Regulations should also heed the lessons from Washington, Colorado, and other states that have legalized cannabis, to ensure effective labelling standards for edibles and different forms of cannabis. Collectively, these measures will demonstrate the government's commitment to ensuring that cannabis legalization benefits public health.

Thank you very much.

The Chair: Thank you very much.

Now we'll move to Mike Hammoud, president of the Atlantic Convenience Stores Association. Welcome.

Mr. Mike Hammoud (President, Atlantic Convenience Stores Association): Thank you.

Good afternoon, everyone. I'm Mike Hammoud, president of the Atlantic Convenience Stores Association, ACSA. On behalf of the ACSA, I'd like to thank the Standing Committee on Health for inviting us here today to speak on the labelling and packaging of retail cannabis as it pertains to Bill C-45.

Within the context of my presentation today, it is our understanding that the objectives of the act are to prevent minors from accessing cannabis, to protect public health and public safety by establishing strict product safety and product quality requirements, and to deter criminal activity by imposing serious criminal penalties for those operating outside the legal framework. It is also our understanding that the act is intended to reduce the burden on the criminal justice system in relation to cannabis.

More specifically, the focus today is on the labelling and packaging of regulated cannabis products at retail. To that end, I believe our experience with tobacco retailing has significant relevance to the issues you are dealing with.

First, I will begin with some information about the ACSA, our members and our collaborators. Secondly, I would like to delve into the specific issues of the labelling and packaging of regulated cannabis sales, and our experiences with tobacco packaging and labelling.

The ACSA was established in 2009 as a not-for-profit trade organization to promote responsible convenience retailing and to represent the economic interests of our convenience store members. Today, our membership includes more than two-thirds of the convenience store locations operating in Atlantic Canada.

In collaboration with the Canadian Convenience Stores Association, the Western Convenience Store Association, the Ontario Convenience Stores Association, the Quebec Convenient Stores Association, and the National Convenience Stores Distributors Association, we have considerable experience with and insight into convenience retailing.

Convenience retailers are heavily regulated, be it lottery, food services, beverages, alcohol where available, and in particular tobacco. In tobacco retailing, we have experienced monumental change over the years and we have worked with regulators in our industry to achieve what we believe to be two primary goals. The first is to minimize tobacco consumption among minors; the second is to minimize the rampant distribution of illegal tobacco.

Ladies and gentlemen of the committee, I am of the firm belief that we can bring relative and pertinent insights to your deliberations, so let's move on to the labelling and packaging of federally or provincially regulated cannabis at retail.

At present, legislation—Bill S-5—has been put forward that would introduce plain packaging for tobacco products in Canada. As mentioned earlier, this legislation would eliminate the branding of products. By this we mean the trademarks, individual logos, graphics and colours that differentiate one product from another. With a standardized generic package, the only brand identification would be the product name in a small and simple standardized font. Everything inside would look the same.

The catalyst for this is Australian plain-packaging legislation that came into effect in late 2012. However, that example and others demonstrates that plain packaging doesn't work. In the case of Australia, the reality is that an examination of all publicly available, relevant and reliable data, after five years points to the same conclusion, that there's been no statistically significant decline in Australian smoking prevalence. In the Australian plain-packaging environment, there has also been a dynamic shift in market share between legal and illegal tobacco products, with consumption of illegal products increasing.

Is there a correlation between plain packaging and illegal consumption? Our Australian colleagues are of the opinion, and we concur, that plain packaging is the catalyst for a race to the bottom in terms of the lowest price point being the primary purchase motivator. When the price becomes the primary purchase motivator, that opens the door to illegal purchases that can be made at a fraction of the price of legally sold product.

In Canada, we estimate that illegal products account for some 20% of the overall consumption of cigarettes, with the illegal market share being upwards of 33%, and higher in Ontario. In the end, labelling and packaging are immaterial to many tobacco purchases relative to access to cheap smokes. How would this be any different for retail sales of cannabis?

We know that many illegal cigarettes are sold unbranded and loose in poly bags, also known as baggies, but it should be noted that plain packaging opens the door to increased distribution and sales of counterfeit or look-alike packaged cigarettes, simply because it is so much easier for illegal producers to replicate the packaging. Will your average smoker know the difference? It's unlikely.

•(1610)

More recently, plain tobacco packaging became mandatory in France as of January 1 this year, in what was described by proponents as a decisive weapon against smoking. To the surprise and shock of many, first-quarter sales of cigarettes in France increased 7% compared with the same period in 2016. The French health ministry dismissed the sales increase, saying that plain packaging would not influence current smokers, that plain packaging was principally targeting younger people, and that the impact would only become apparent in the medium- to long-term future. What we have, then, is a plain-packaging advocate saying that plain packaging will have no impact on established smokers, and that the target population for plain packaging is youth.

Well, look at the situation in the Canadian context. As far back as 2003, there have been strict rules in place in Canada related to tobacco marketing that prevent the advertising or promotion of tobacco, testimonials, accessories, and anything else tobacco-related that could be appealing to young people. Today there is also mandatory use of locked cabinets or screens at point of sale to hide tobacco products from display.

At the same time, a large majority of retailers are vigilant in screening out underage buyers through the widespread practice of asking for proof of age identification. Our industry takes great pride in its ability to be a responsible and diligent partner to government in the controlled sale of age-restricted products like tobacco. Such training programs as “We Expect ID” are a commitment to assist retailers and their staff in upholding the highest standards of professionalism and ethical conduct and to support public health and safety. Underage youth in Canada today have negligible exposure to cigarette packaging and labelling. In our opinion, the unintended impacts of plain packaging, such as the lowest-price mentality among consumers or the risk of increased contraband sales, far outweigh any perceived benefits.

It is notable that youth cannabis smoking rates in Canada are twice as high as youth smoking rates. According to Health Canada, the national youth tobacco smoking rate in 2015 was 10%, while the national youth cannabis smoking rate was 21%. Generic packaging would not be an effective tool in achieving what is a common goal for all of us, which is negligible rates of both tobacco and cannabis consumption among youth. We believe that if governments are serious about reducing smoking, be it tobacco or cannabis, then there is much more work that can be done in the areas of education and smoking cessation.

Convenience retailers believe that the types of initiatives in place for tobacco retail sales in Canada can be replicated effectively for the retail sale of cannabis without resorting to the questionable value and impact of plain labelling and packaging. As is the case with tobacco, industry, anti-cannabis groups, health care organizations, and governments should work together to minimize the number of youth and adults consuming cannabis.

In conclusion, we recommend to the committee that branding on cannabis retail packaging be allowed for two important reasons: one, to reduce the ability of criminals to produce and distribute contraband product; and two, to minimize the impact of lowest

price point by educating and allowing legal consumers to make informed decisions on their product choices.

Thank you.

•(1615)

The Chair: Thank you very much.

Now we'll go to the Non-Smokers' Rights Association.

Ms. Tilson, you have 10 minutes.

Ms. Melodie Tilson (Director of Policy, Non-Smokers' Rights Association): Thank you, Mr. Chair. Good afternoon, honourable members. Thank you for the opportunity to speak to you today.

As you heard, my name is Melodie Tilson. I'm the director of policy with the Non-Smokers' Rights Association. With me is our senior policy analyst, Pippa Beck. Together we have more than 40 years of experience in tobacco control.

Our organization, the Non-Smokers' Rights Association, has been at the forefront of tobacco reforms in Canada since its inception in 1974, leading campaigns for the federal Tobacco Products Control Act and its successor the Tobacco Act, and for plain packaging as far back as 1994—so the impetus for plain packaging around the world including Canada did not come from Australia's move in 2012 just to correct that piece of misinformation—and for world-precedent setting graphic health warnings on packages, to name just a few.

It is this wealth of experience in effective regulation of an addictive and harmful product, one that is primarily smoked, that we bring to bear on your consideration of issues related to the appropriate regulation of cannabis and in particular the packaging and labelling of these products.

First let me say we are pleased that the government recognized the importance of taking a public health approach to the regulation of cannabis. Such an approach prioritizes measures to maintain and improve health by minimizing the harms associated with use. However, where there is a profit motive in the selling of drugs, public health is at risk. Make no mistake.

The tobacco industry has shown us what an uncontrolled industry is willing to do in pursuit of profit. Big tobacco is the disease vector whose activities and behaviours are responsible for the entirely preventable epidemic that we continue to battle today. Cannabis legalization needs to be protected from commercial interest or Canada could face big tobacco 2.0, big cannabis. Indeed, there are indications from jurisdictions that have already legalized cannabis that this risk is very real.

The federal government has the opportunity to learn from tobacco's grievous history and to get the legal framework for the cannabis industry right or at least more right from the outset.

So what should a public health approach to cannabis regulation entail? We fully support the government's goals of preventing youth from accessing cannabis and protecting public health and safety by establishing strict product requirements. Note that expanding the cannabis industry and its market should not be a goal.

Given the focus of this panel, I will devote most of my remarks to packaging issues, but before doing so, I would like to highlight a few other areas where cannabis regulation would benefit from lessons learned in tobacco control.

Keeping cannabis out of the hands of youth will require devoting adequate resources to enforcing the ban on underage sales and imposing penalties for non-compliance that are high enough to serve as deterrents.

Safeguarding public health requires measures to protect the public from breathing second-hand cannabis smoke. This means including the smoking of cannabis in all federal and provincial smoke-free laws as recommended by the Canadian Cancer Society and others to this committee.

Finally, providing adequate public education is essential, not only about the risks of use, but also about the risks of breathing second-hand smoke and about relative risk. There is little public understanding of the fact that smoke is smoke, and most of the risk comes from inhaling smoke whether tobacco or cannabis, or of the fact that vaping poses much less risk to health than smoking.

One of the reasons for Canada's success in reducing smoking rates is our multipronged, decades-long effort to de-normalize tobacco products and tobacco use so that smoking is no longer a social norm. Tight restrictions on advertising and promotion have been integral to changing the social norm.

The task force on cannabis legalization and regulation rightly concluded in a discussion paper that:

Since marketing, advertising and promotion of marijuana would only serve to "normalize" it in society and encourage and increase usage, it has been proposed that these should be strictly limited so as to dampen widespread use and reduce associated harms.

In its final report, the task force recommended comprehensive restrictions on advertising and promotion and plain packaging for cannabis products.

Our organization supports a comprehensive ban on cannabis promotion with the exception of information advertising in stores off-limits to minors. Because packaging is a key form of promotion, NSRA strongly supports requiring cannabis products to be sold only in plain packaging.

The recommendation for plain packaging is based on a large body of robust research including consumer product research and internal tobacco company documents.

● (1620)

There have been more than 100 studies from at least 10 countries, including 25 empirical studies conducted in Australia since plain and

standardized packaging was implemented there five years ago, and the experience in jurisdictions that have already legalized cannabis.

I would like to show you just a few examples of cannabis packages available in jurisdictions where it is legal, but where packaging is not strictly controlled.

As you can see, a wide range of consumers are targeted, from youth, obviously in these examples, to perhaps young adults to sophisticated adult consumers. It is no wonder it has been said that a product is just a product. The packaging is the brand. When most other forms of promotion are prohibited, the package not surprisingly becomes the most important marketing vehicle. As early as the 1970s, tobacco companies foresaw the day when their ability to promote their products would rest solely on the pack.

According to a 1979 document by British American Tobacco:

Under conditions of [a] total [advertising] ban, pack designs...have enormous importance.... Therefore, the most effective symbols, designs, colour schemes, graphics, and other brand identifiers should be carefully researched. An objective should be to enable packs, by themselves, to convey the total product message.

There is substantial evidence from consumer product research that effective packaging increases sales. For example, when milk in school cafeterias was sold in plastic bottles instead of the traditional gable-top cardboard cartons that we're all familiar with, sales increased by as much as 24%. Students said the milk tasted better, and all of a sudden it became cool and fun to drink.

Shape and colour are two design elements that exert a strong influence on brand image and the impact of packaging. Package colouring is one way tobacco companies target specific brands to specific subpopulations.

This pack of Vogue Super Slims featuring pastel colours on the outside as well as matching liners is a prime example of a brand targeting young women. The brand name Vogue Super Slims clearly preys on the body image concerns of young women. Also noteworthy is the pack's diminutive size. Various studies demonstrate that consumers perceive that cigarettes in these tiny packs are less harmful than cigarettes in a standard pack. The pack size also enables tobacco companies to circumvent the intent of Canada's large graphic health warnings. As you can see, with a pack of this small size compared to a standard slide and shell pack, the image has virtually no impact, and the text is illegible.

As their ability to exploit packaging elements to promote sales has been curtailed, tobacco companies have become more creative with brand and variant names, using names to connote aspirational lifestyles, reduced risk, or misleading product attributes. For example, the brands LD Club Night and Peter Stuyvesant New York Blend both conjure images of a hip urban lifestyle.

We are concerned that without restrictions here in Canada, the same will happen with cannabis brands. A quick Internet search revealed evocative names such as Suicide Girls, Pura Vida Health, and Everyone Does it.

The large and growing body of research on plain and standardized tobacco packaging shows that plain packaging reduces the ability of the pack to create and communicate brand images, increases the effectiveness of health warnings, reduces package-based deception, and ultimately reduces tobacco use. Indeed, prevalence of smoking in Australia, despite what my colleague has said, is at a historic low with an independent assessment concluding that the packaging reforms were responsible for one-quarter of the total decline in smoking rates during the first three years after plain packaging was implemented.

Given the government's stated intention of taking a public health approach to regulating cannabis to reduce harms, a comprehensive ban on promotion is warranted, including strict controls over brand names and a requirement that cannabis products be sold in plain packaging with no promotional elements, health claims, or any kind of false or misleading statement. Only essential information should be permitted on cannabis packaging.

To conclude, we support a public health framework for the legalization and regulation of cannabis sales in Canada. We believe the measures we have proposed will go a long way to further safeguard the interests of public health.

• (1625)

As Professor Hammond said, "it is [much] easier to loosen restrictions" on advertising, promotion, and packaging down the road if warranted, rather than trying to rein in a burgeoning market and a powerful industry.

Thank you. We look forward to your questions.

The Chair: Thank you, and now we'll start with a round of seven-minute questions, quite appropriately with Mr. Oliver.

Mr. John Oliver: I don't know why that is, but thank you very much.

Mr. Hammoud, I have just a quick question. Do the convenience store associations or convenience stores receive direct funding from the tobacco industry?

Mr. Mike Hammoud: I'm sorry. Could you repeat the question?

Mr. John Oliver: Are convenience stores or your associations funded in any way directly by the tobacco industry?

Mr. Mike Hammoud: Are we funded...? We are funded through a membership, just like Coca-Cola would pay its membership, just like

Mr. John Oliver: Do you receive direct funding from the tobacco industry?

Mr. Mike Hammoud: Yes, but you're making it seem like they're the only ones that give us funding.

Mr. John Oliver: No, I just wanted to ask that.

Mr. Mike Hammoud: Okay.

Mr. John Oliver: Right now, I think that about 40% of convenience store sales are tobacco sales.

Mr. Mike Hammoud: If you're excluding gas and food service...?

Mr. John Oliver: Yes.

Mr. Mike Hammoud: Yes.

Mr. John Oliver: Okay. Then us using plain packaging to stop smoking would have a fairly significant impact on your convenience store businesses?

• (1630)

Mr. Mike Hammoud: Stopping plain packaging...?

Mr. John Oliver: If we were trying to reduce the use of cigarettes and smoking by using plain packaging, that would have a very—

Mr. Mike Hammoud: It would have no impact.

Mr. John Oliver: It would be a negative financial impact on you.

Mr. Mike Hammoud: It would have no financial impact on our business.

Mr. John Oliver: You can lose 40% of your sales inside and it not have an impact on your business?

Mr. Mike Hammoud: I don't understand how you think that we would lose 40% of our business. Do you think everybody would stop smoking tomorrow because of plain packaging?

Mr. John Oliver: Okay. I'll leave it at that.

Mr. Mike Hammoud: It doesn't make any sense.

Mr. John Oliver: I want to come back to plain packaging, which is really where the heart of my questioning is. There's quite a section on it in the bill, and our job at the end of the day will be to review the bill and respond to advice given to us by witnesses like yourself. Have you read division 2 yet, which deals with promotion, branding, and point of sale?

Most of the paragraphs deal with prohibiting communications and advertising in a manner that would be "appealing to young persons... by means of a testimonial or endorsement, however displayed or communicated", or "by means of the depiction of a person, character, or animal, whether real or fictional", or "by presenting it or any of its brand elements in a manner that" conveys "a positive or negative emotion about...a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring".

Does that do the job for you? It still allows branding on some products, but it really prohibits anything that's attractive or promotes it to young people. Is that good enough?

That's for any of you: Dr. Hammond, Ms. Tilson, or Ms. Beck.

Dr. David Hammond: I can speak to that if you like.

What I can tell you is that there were similar restrictions on tobacco marketing prior to Canada entertaining plain packaging. The problem, which I referenced in my comments, was that it put the onus on the government.

Probably none of us knows how many different products are going to be out on the market, but I imagine it's thousands. What becomes very difficult is that the government is then responsible for policing whether a particular brand imagery or a particular logo actually is appealing to youth, so it requires retroactive action on behalf of the government, and that's extremely difficult to do.

All you need to do, if you have Googled a lot of the packages—

Mr. John Oliver: I only have seven minutes. Do you think we should go to still more prohibited language, like no colour, no brand...?

Dr. David Hammond: Yes. That's what plain packaging does. It will provide the protection that I think that wording seeks to achieve.

Mr. John Oliver: Okay. Thank you.

Ms. Melodie Tilson: Can I add to that very briefly? The current restrictions are woefully inadequate for tobacco. As Dr. Hammond said, this is what—

Mr. John Oliver: I need to know.... We're going to be reviewing the bill, so I don't need to know about the market for tobacco. It's the act itself. Are you—

Ms. Melodie Tilson: The wording is the same as in the Tobacco Act currently. This is why it doesn't work: because Health Canada has shown itself loath to police. We have a requirement in Canada of 75% graphic warnings, and this is the kind of package that the tobacco companies have come out with.

Mr. John Oliver: Okay. Bill S-5, then, which is dealing I think with tobacco products and plain packaging, would prohibit use of colouring agents to design a trademark on tobacco products—to display a mark—so you'd be looking more for that kind of taking the colour out and taking the branding out.... That would be what you'd like to see added to what's already here. Is that fair?

Ms. Melodie Tilson: Comprehensive wording to ensure that there are no logos, no branding elements, only a brand name.

Mr. John Oliver: No colour, just—

Ms. Melodie Tilson: Just a brand name and required information.

Mr. John Oliver: Okay.

Under required information, I certainly heard the health warnings and I completely support that. This is not a safe.... During this week, we've heard lots of testimony about the risks of marijuana, particularly for young people but also for everybody. At the same time, I was just looking at the Colorado Pot Guide. When people want to use pot—adults, people who are making a conscious decision to consume it once it's legal—that helps one identify strains for energy, sleep, pain management, anxiety, and the dosages of

THC, CBD, CBN, CBG. I don't know what those things are, but I think they're important to the impact of what you're looking for in a marijuana strain, I guess.

Would you support that kind of information being available, so a consumer would know what level of THC, CBD, CBN, CBG would be available in a product?

This question is for either Dr. Hammond or Ms. Tilson.

• (1635)

Dr. David Hammond: I think it's perfectly appropriate to label things like THC and some of the cannabinoids that can fall under constituent labelling. There's a whole lot of information about use and different strains. You don't need the manufacturer or the government to provide that. Consumers will provide that on their own. There are periodicals and all sorts of things. But absolutely, I think it's reasonable to include things like the THC amount. As I said, you need to do that in an effective way.

Mr. John Oliver: I'm just thinking, if there's no brand identifier how do you know what you're getting in those different quantities? Ms. Tilson or Ms. Beck, did you want to add to that?

Ms. Melodie Tilson: We think that in addition to the brand name, the package should include the cannabis strain, the THC and CBD content, the amount of the product in the package, basic manufacturer's information and, of course, a health warning and other government-mandated information.

Mr. John Oliver: Really, what we're doing is taking the colour out of the brand name. That's really the thing that we need to add to this legislation.

Ms. Melodie Tilson: It goes far beyond colour. We're talking about fancy fonts. We're talking about package shape and size, opening style; all of these attributes that convey brand images. It's not only about colour. There's a very comprehensive list of restrictions in the government's consultation document on plain packaging, and I refer you to that.

Bill S-5 does not have detailed language in it. That will come in the regulations.

Mr. John Oliver: Thank you.

The Chair: Time's up.

Mr. Webber.

Mr. Len Webber: Ms. Tilson, where are the props that you showed coming from?

Ms. Melodie Tilson: These are all packages available in Canada.

Mr. Len Webber: These are obviously illicit cannabis or... cigarettes.

Ms. Melodie Tilson: They're both. These are all cigarettes that are available on the legal market. I brought them as examples of how the industry is able to skirt what they claim to be very tight packaging restrictions, and as an argument in favour of plain and standardized packaging. Without that very rigid requirement, the industry continues to innovate and appeal to young people, and mislead consumers about the risks of the product. There's no reason to believe the cannabis industry wouldn't do the same.

Mr. Len Webber: I see from the one here that it looks like a cannabis leaf right on the front. Is that tobacco?

Ms. Pippa Beck (Senior Policy Analyst, Non-Smokers' Rights Association): No, these are images we pulled off the Internet. These are products that are available in the United States in jurisdictions where they don't have strict packaging and labelling requirements.

The Chair: Can we pass those around?

Ms. Pippa Beck: Yes.

Mr. Len Webber: Is that tobacco or cannabis?

Ms. Melodie Tilson: This is cannabis, this is tobacco. I'm sorry for the confusion.

Mr. Len Webber: Mike Hammoud, you said you feel that branding should be allowed because it is more difficult for the illicit community to counterfeit, to copy. Is that the main reason why you think branding should be allowed? I know that you said generic packaging is not an effective tool, and that branding should be allowed. Is it because of—

Mr. Mike Hammoud: If you make something very easy to make.... I know we're comparing ourselves to jurisdictions across the world, but Canada is unique because we have some of the highest contraband rates in the world when it comes to tobacco, and the experience that we have in the tobacco sales.... I personally have been selling tobacco for over 30 years in my convenience stores. My brothers and I and my parents have been in the business for about 40 years. I have experience with selling tobacco. I have experience with the changes that have happened in our industry over the last 40 years. Today we have far fewer smokers than we did 10 years ago, and we've done that by working with governments and doing things.

The display bans that came into effect that we had to do, again, were very tedious for retailers, but didn't really make a difference on the sale of the tobacco, and I think it's very difficult for people to say anything different unless they work in the business. All that it did was cause a lot of harm and pain for retailers who had to try to find the stuff, so it becomes extra work. When it comes to plain packaging, our interpretation is that government wants to move people over from an illicit product to a legal product, so you want to be able to distinguish between what is legal and what is illegal.

• (1640)

Mr. Len Webber: Yes.

Mr. Mike Hammoud: So if you want to make it look illegal, you might as well keep it illegal. What's the difference? You should be able to move a product and have quality assurances, and there should be things in place to show that this is a legal product. This is why it's here.

We already have over 50 factories in this country right now producing tobacco.

Mr. Len Webber: Sure.

Mr. Mike Hammoud: And they're selling it illegally. You don't think for a moment that, as soon as you come up with a standardized pack.... Think about that for a moment. You're going to come up with a standardized pack that could be made very easily by anyone. What would stop them from duplicating that product? And, if you follow the same route of what you're following on Bill S-5, you're saying that everything inside the pack isn't going to have any labelling either.

So how do you distinguish between, inside the pack, what's legal and what's illegal if the package is plain? It doesn't make any sense.

Mr. Len Webber: Ms. Beck.

Ms. Pippa Beck: As we've said, packaging for cannabis, as we're advocating for tobacco, will be in plain and standardized packaging, but we're not saying it's going to be in a baggie like you find on the illegal market. It would have the features that we've talked about. It is also important that it will have the tax stamp that has covert and overt sophisticated measures in place, and this wouldn't be any different for cannabis, so consumers will be able to tell based on the fact that it has that tax stamp.

I also just want to point out that there have been studies done in Australia following plain and standardized packaging. Our colleague said that it was confusing, and it really slowed things down for retailers, but there have been studies done on this, and they're smart people, and they were able to accommodate the changes very quickly. The experience in Australia has been very positive, and there's lots of good evidence to support those statements.

Ms. Melodie Tilson: I just have one last comment about the contraband market in Australia. All credible evidence shows that there has been no increase in contraband. The only sources that said the contraband market there has increased are those funded by the tobacco industry, specifically reports by KPMG that come with a disclaimer that they are not to be used for any purpose other than what the funder decreed because the terms of reference were so narrow that they cannot be used to draw any broad inferences.

Mr. Len Webber: Right.

You mentioned brand name. When you say brand name, are you suggesting that the licensed producer's name be on that package? What do you mean by brand name? Is it the producer of the product, or is it the name that they've called this particular leaf? I don't know what you mean.

Ms. Melodie Tilson: There's the manufacturer, Imperial Tobacco in the case of a tobacco product, and the brand name is Player's. There would be the manufacturer's name of the cannabis—

Mr. Len Webber: Yes, that's its producer.

Ms. Melodie Tilson: —yes, the licensed producer, and then the brand name, but controlled, because we don't want to see a brand of marijuana called "Everybody Does It".

Mr. Len Webber: Exactly. Okay.

The Chair: Dr. Hammond wants to say something.

Dr. Hammond? Do you want to make a comment?

Dr. David Hammond: The first thing I would say about plain packaging is that you can allow whatever product information you want. What you're doing is restricting the types of packaging elements that can cause problems.

I think it's very clear that this committee gets appropriate information on plain packaging. I've served as an expert witness in five different court cases on behalf of the Australian government and the U.K. government. Plain packaging has had a positive impact. The Australian government's own official evaluation has estimated that 100,000 fewer Australians smoke as a result of it.

With all respect to Mr. Hammoud, the arguments he is making have been forwarded by tobacco companies in court cases, and they have been rejected. Tobacco companies have challenged plain packaging in five separate legal rulings, and they have lost. Each of those rulings has affirmed the positive public health impact of plain packaging.

Second, there is no evidence that plain packaging has increased contraband sales. None. That includes numbers from the partner of KPMG, whom the tobacco companies hired to try to find evidence. KPMG took the extraordinary step of writing to the U.K. minister of health to state that the industry was misusing its numbers.

This committee, of course, will make the recommendations it sees fit, but it should be doing so on the proper evidence. I'm afraid that, with all due respect to Mr. Hammoud, those are false claims.

• (1645)

The Chair: Okay. We're moving on to Mr. Davies.

Mr. Don Davies: Thank you to the witnesses.

Dr. Hammond, what does the research establish about the known health effects of cannabis? What do we know?

Dr. David Hammond: You will probably be hearing from medical doctors and others who are better positioned to answer that question. What I can tell you is that the scientific consensus is that it causes less population-level harm than tobacco and alcohol, but that should not be confused with its being harmless. Tobacco causes a range of harms to unborn children and, of course, there's impaired driving. There is a strong association with mental health among those who are susceptible, and exacerbating some of those problems. An estimate of the consequences in Canada says that about half of the deaths come from impaired driving, and about half come from respiratory issues related to smoking, and that's unique to the mode of administration.

That's a quick snapshot. I don't pretend to be a medical doctor, but I think that's a fair summary of the most recent evidence.

Mr. Don Davies: The task force concurs with that. They said quite clearly that cannabis is not known to have as serious health consequences as tobacco or alcohol. Don't get me wrong. I'm not

saying it's harmless, and I'm not saying that we shouldn't put appropriate warnings. If we are going to take a science-based, evidence-based approach to what the proper warning should be on this product, it starts with an understanding of exactly what we know about it.

Is cannabis known to be a carcinogen?

Dr. David Hammond: My knowledge is that there are no carcinogens in the product itself. Like smoking, most of the carcinogens come from combustion, when you light something on fire and inhale it. That's also true of tobacco products.

Mr. Don Davies: Is cannabis known to be as physically addictive as nicotine?

Dr. David Hammond: I think the general consensus would be no, but the consensus would be that it does have addictive properties and abuse liability.

Mr. Don Davies: What I understand is that the addictive qualities of cannabis are more akin to alcohol, where people can become dependent and can get substance use disorder. They can become dependent on alcohol, and they can become dependent on cannabis, both being mind-altering substances, as opposed to tobacco, which is known to be extremely physically addictive very quickly and very difficult to stop. Would that be a fair understanding of their relative addictive qualities?

Dr. David Hammond: I think that's fair to say. There are few things that compare with nicotine in terms of an addictive substance. Of course, it depends on how you use it. Lots of people use nicotine gum, and it has a very low abuse liability. When you smoke something, the mode of administration means that it gets into your bloodstream and into your brain more quickly.

In general, I concur with what you're saying.

Mr. Don Davies: The only people I know using nicotine gum are people trying to quit. I don't know too many people who start picking up nicotine gum and chewing it.

Dr. David Hammond: That's absolutely correct.

The Chair: I think Ms. Beck wants to say something.

Mr. Don Davies: I was just going to turn to you, Ms. Beck. Can I ask you a question?

Bill C-45, ironically, will legalize dried flower, which is mainly ingested by smoking, and will leave illegal, for the moment anyway, edibles and other non-smokable products. Do you have a comment on that from a health point of view?

Ms. Pippa Beck: It is my understanding that in schedule 4, I think there are four or five items that will become immediately legal, including oil which can be vaped. But you're right, the edibles will come later. There are relative risks, as Dr. Hammond mentioned, in terms of how things are taken. Those will need to be communicated clearly to Canadians, because I think we have a big problem in that not a lot of people appreciate that smoke is smoke. There are perceptions that because cannabis is natural or organic, it's somehow less harmful than breathing in the smoke, and that's not the case.

I also wanted to speak to your earlier comment about comparing the two. Tobacco has a very powerful industry behind it and, as Melodie said at the top, it's the disease vector in this issue. For cannabis, we're just starting, and if we let them out of the gate the way the tobacco industry has operated, patterns of use can change with the branding and the promotion and the advertising and all of that, so we need to be very careful.

Mr. Don Davies: I just wanted to—

Ms. Pippa Beck: Also, pardon me. One other point is the co-use between tobacco and cannabis. What are the statistics here? It's one-third of cannabis users in Ontario actually mix tobacco with their cannabis, but they don't identify themselves as smokers. As you rightfully pointed out, nicotine is very addictive, so we're very concerned about this co-use of mixing them together, because tobacco burns better than cannabis so it's quite common to do that.

• (1650)

Mr. Don Davies: I'm not sure about the answer on this, but I'm not sure it's correct that oil will be allowed to be vaped under this bill, because I think there are other sections of the bill that prohibit the solvents that are often used. I'm not going to say that affirmatively, but I don't want to leave that comment out there. It's something we should look into.

Ms. Pippa Beck: Yes, definitely.

Mr. Don Davies: The other thing I was going to say about the challenges of proper labelling is that it could be that cannabis should be labelled like tobacco. It could be it should be labelled like alcohol. It could be that it requires its own special and unique kind of approach, but I keep thinking of walking into a liquor store where there are tight regulations on the products. They're certainly not marketed toward children, but colours are allowed and there are descriptions on the back of wine bottles that sort of describe the general properties of the wine. Is that an inappropriate approach to take toward cannabis, given that it's not a carcinogenic probably, given that it's not as addictive as nicotine, given its properties are quite similar to alcohol? Do you see problems with that?

This is to anybody who would like to answer.

Dr. David Hammond: I think we need to be a little careful about using the tobacco and alcohol markets, because if we started regulating those markets based on public health, they would not look like they do now. Tobacco products would not be sold. Where we're at with those markets is partly due to historical quirks and things like that. I approach this in looking at the government's objectives. If the government's objectives are to minimize and discourage use of these products among youth, I find it very hard to identify any public health benefit to allowing this sort of branding.

When I was talking about the health risks, I omitted an important point. That is, whatever the risk is, the risk of problematic use of disease and long-term health effects is worse when you start younger, addiction and everything else.

I don't want to get into carcinogen or not, because there are harmful effects from cannabis. I think it is important to compare them with other products, but where we are in the tobacco and alcohol market is not necessarily how it could be aligned with public health if we were to start.

Mr. Don Davies: Dr. Hammond, I was going to ask you quickly, if I can—

The Chair: Very quickly.

Mr. Don Davies: That's only one of the purpose of the bill. One of the other purposes is to deter illicit activities and provide for the licit production of cannabis. We're not operating in a vacuum here. If we're going to move people from the illicit market to the licit market, we have to recognize that branding of products will be available by the illicit market. Is that not a consideration in terms of making sure that we have appropriate labelling of packaging to draw people into the licit world?

Dr. David Hammond: I think the most important factors drawing people into the licit market are availability and price and the different types of product on offer. Anyone who uses cannabis already should not be induced to use more through branding. Branding has more impact on youth and initiation than it does on established smokers. I couldn't agree more about the desire to reduce illicit tobacco, but that's why I said that we have 20 years, 30 years of experience in tobacco and restricting branding. There is no association.

I think it's some of those other measures that you will have heard from experts about that are most important. Branding serves to induce use among young people primarily. I don't think it's going to stop a consumer who already uses marijuana and wants to buy it through a legal retail outlet.

The Chair: Thanks very much. Now we go to Dr. Eyolfson.

Mr. Doug Eyolfson: Thank you, Mr. Chair, and thank you all for coming.

Ms. Beck and Ms. Tilson, this is something I've followed for a while, the plain packaging. Again, I know this is about cannabis, but we have a precedent already, which is why I'm talking about tobacco and plain packaging because we want to know what effect this might have on the upcoming legislation. I was glad to hear you and Dr. Hammond, as well, corroborating the effect of the plain packaging laws in Australia. I heard much of the same information. I also read much of the misinformation about it and about how heavily promoted this misinformation is. Are you familiar with the group, I believe it's the Canadian alliance against contraband tobacco.

• (1655)

Ms. Melodie Tilson: The National Coalition Against Contraband Tobacco...? Yes.

Mr. Doug Eyolfson: Have you heard the allegations that much of their activity is in fact lobbying for the tobacco industry? Would you agree that their activities have been that?

Ms. Melodie Tilson: Absolutely. In fact, we brought with us today a presentation from Imperial Tobacco to its parent company British American Tobacco talking about the contraband market in Canada and the campaign that they waged for many years ostensibly to get contraband under control, but as the presentation reveals, it's been an ongoing public relations exercise to convince lawmakers and the public that contraband is out of control. Why I bring this up in answer to your question is that the presentation makes clear that their partners, Imperial Tobacco's partners, in this campaign to deceive lawmakers are the Canadian Convenience Stores Association, the Canadian one and their western Atlantic and Ontario counterparts, as well as the National Coalition Against Contraband Tobacco.

The tobacco companies in Canada and around the world repeatedly raised the bugaboo of contraband in response to any discussion of a tobacco control intervention. They claimed that when we were talking about display bans. In fact, the then head of the Canadian Convenience Stores Association in around 2010-11 was going around the world to Australia, New Zealand, the U.K. saying that the display bans had caused the contraband problem in Canada, which of course they had nothing to do with. We have display bans across the country. We have a contraband problem in Ontario and Quebec where there is illegal manufacturing on reserves that is not being adequately addressed by enforcement.

Mr. Doug Eyolfson: Thank you.

Dr. Hammond, you look like you were nodding in agreement on this. Did you have anything else to add, or just agreement?

Dr. David Hammond: I testify in court cases. I'm no stranger to the tobacco companies and their activities, but I must admit this past week I have been alarmed by the extent to which the tobacco companies have been infiltrating this discussion. I'll just leave it at that.

Mr. Mike Hammoud: Can I comment because I want to make it very clear?

Mr. Doug Eyolfson: I actually have a question for you, sir.

Mr. Mike Hammoud: Okay.

Mr. Doug Eyolfson: Then you can make your comment after I ask this question.

Mr. Mike Hammoud: I'm not here because of them, just so we're clear.

Mr. Doug Eyolfson: I have a question for you and then you can make a comment, sir. This is a story from *The Globe and Mail* dated April 2017. It says, "CCSA has financial ties to tobacco companies and has faced recent criticism for working with at least one major tobacco company to promote industry interests."

It then goes on to say:

Last fall, Imperial Tobacco documents made public by non-smoking advocacy groups indicate the company worked with CCSA on cross-country campaigns to promote the industry's interests, including lower tobacco taxes and focusing attention on the problem of contraband tobacco. CCSA members include Imperial Tobacco, JTI-Macdonald Corp. and Rothmans, Benson & Hedges.

For the record, does the CCSA lobby for the interests of the tobacco industry, yes or no?

Mr. Mike Hammoud: I would say that we lobby for the interest of convenience store retailers.

Mr. Doug Eyolfson: So you deny that you lobby for tobacco companies.

Mr. Mike Hammoud: We lobby for every one of our members. I don't appreciate that we're being tailored to one product and one product only. Let's just be clear on something.

Mr. Doug Eyolfson: No, I'm not saying that you don't do any others. I'm saying in regard to this industry. Do you lobby for this industry among your activities?

Mr. Mike Hammoud: We don't lobby for them. We lobby for ourselves because you have to understand our business. I don't think people have any understanding of what a convenience store is in this country, or what we do, or any of that.

Mr. Doug Eyolfson: I'm not talking about what convenience stores do. I'm talking about—

Mr. Mike Hammoud: You are, because you're saying that the only reason I'm here today having a conversation about plain packaging is that I want to do it for the benefit of big tobacco. You need to understand something. It has nothing to gain from marijuana, or from cannabis, from any of that. It is not even in that business anywhere in the world. It has nothing to gain from this.

We have nothing to gain from marijuana because we're under the perception that it's probably going to be sold by government agencies across the country.

Mr. Doug Eyolfson: I understand that, but I—

Mr. Mike Hammoud: Just let me finish. All I want to say is that I want to give you input on the experience we have. I personally have worked in a convenience store for over 30 years, selling tobacco. I've had experience with the big power walls, as they used to call them, with all the colours behind us and all of that, and people walking in.

Listen, I'll tell you that I have never had an individual who was a non-smoker walk into any of my stores and see a pretty orange package, and say, "Oh my God, I think I'm going to start smoking today."

• (1700)

Mr. Doug Eyolfson: I'm going to have to cut you off because I'm running out of time. I have just one more point to make. The reason I bring this in is exactly what Dr. Hammond said. The reason this has to be brought up is how much the tobacco companies have infiltrated this discussion on Bill C-45, themselves and through their lobby groups.

Mr. Mike Hammoud: I think it's entirely up to this government to make that decision on where they are going to go. My thoughts are just based on the experience we have of selling another combustible product. We have worked with many government agencies over the years on how we can do a better job of keeping it out of the hands of youth.

You walk into a convenience store today. Do you see any tobacco? No, you can't see it. It's not visible to anybody who walks into a store. When you walk into a liquor store, do you see liquor? Yes, it's very visible.

I think we've taken huge strides over the years to keep it out of the hands of youth.

Mr. Doug Eyolfson: I would just say, though, that is because that was legislated.

I have no further questions.

Thank you.

The Chair: That completes our first round of questions.

Now we go to our five-minute round with Ms. Gladu.

Ms. Marilyn Gladu: Thank you, Chair.

Thank you to our witnesses.

I want to talk a bit more about branding. I know we've talked about it already. Originally there was a desire to distinguish the licit production from the illicit, but the more I listen to the testimony, and the more I think about it, and the more I think about all the hoops we've jumped through trying to keep our money from being counterfeited, I can see that's not going to work. This branding thing may not work.

It looks to me then that we might have to take more of an approach like the one Washington took, where it had very strict control. When it combined its medical and its recreational marijuana, it had its suppliers and distributors and those who were allowed to sell it, and it was all tracked so the government could make sure there wasn't more product coming in. Kids weren't allowed into the stores, so it was a non-issue.

Do you agree that is probably the best approach?

I'll start with you, Mr. Hammond.

Dr. David Hammond: Yes. It's what you said has happened in other jurisdictions for cannabis. It's the sort of system that we've gotten better at with tobacco internationally, and that is the way to reduce illicit tobacco.

For the record, it is not difficult to counterfeit any packaging you might wish. I do studies where we go down the street, and for \$50 we can have someone design a package. I think you're starting to hit the nail on the head in that those are the measures you use to reduce illicit tobacco.

Ms. Marilyn Gladu: Great. What about the rest of you?

Ms. Melodie Tilson: It's my understanding that the legislation does provide for a tracking and tracing mechanism. The illicit trade protocol for tobacco is also requiring a global tracking and tracing mechanism as Dr. Hammond referred to, and it is currently being established. Pippa Beck referred earlier to the tax stamp that's on tobacco packages now. This has overt markings, ones you can see, and covert ones, which aren't visible but are much harder to counterfeit. It's that type of thing, as well as aggressive enforcement.

We haven't had aggressive enforcement with cannabis in the last number of years as we started discussing legalization or decriminalization, and we certainly haven't had adequate enforcement when it comes to contraband tobacco, largely because of the—

Ms. Marilyn Gladu: I don't really want to talk about tobacco.

Mr. Hammoud, what do you think?

Mr. Mike Hammoud: I agree as well. Anything you can do to help stop it from going to the illicit side, I think, is what everybody agrees with. That's the point.

Ms. Marilyn Gladu: All right. I'll turn to warnings. We've seen and heard testimony about how bad the effects are for youth who consume this, especially under the age of 25, and pregnant women, and a number of instances. It looks to me that you could almost write a novel of warnings if you tried to put that on the packaging.

Do you have any advice about what would be the best way to communicate warnings?

We'll start again in the same order with Mr. Hammond.

Dr. David Hammond: Sure. I've worked with our government and governments around the world to assist with this. Right now, for other products we have rotating warnings. It's up to a government to determine the key messages and risks that they'd like to communicate. You can have a number of different warnings that rotate through the packages. You can change them over time. We've done it now in Canada a couple of times. We're about to do it again. It's very effective.

The lessons are not rocket science. I've wasted more of my career demonstrating these things.... They have to be big enough for people to see them. There should be images. I have a bunch of children, and when I leave cigarette packages around, they look at them. They can't read, but they know what it communicates.

I would suggest that we do not take our lead from U.S. states. You just have to look at the tobacco warnings that have been there from 1984. Their marijuana warnings look like a legal disclaimer. That is not the way to design a warning. We have very good experience with it. It's up to the government, but let's use effective principles for communicating with people, whatever those messages might be.

• (1705)

Ms. Marilyn Gladu: Okay.

What about names? I heard the testimony about how we don't want to have...like, everybody uses it, or everybody does it, or whatever. Is the solution to that to not even allow the naming but to go with the numbering of products?

I'm interested in what you have to say, Ms. Tilson.

Ms. Melodie Tilson: I certainly wouldn't object to that. I think consumers would object. Given that the government is trying to balance the rights of adults to choose the product versus keeping youth away from it, a compromise, I think, would be to allow a limited range of brand names.

Ms. Marilyn Gladu: Okay.

One other interesting thing is that we have producers of medical marijuana, and they do supply here in Canada, but many of them are shipping globally. They want to brand their products. They want to ship them globally and they want to advertise them with e-commerce.

How do we incorporate that into the whole equation, Mr. Hammond?

Dr. David Hammond: I'm sorry for mentioning the word "tobacco" again, but you know, there's nothing stopping.... When you sell a product in another country, you follow that country's laws. I think there's some wording in the act where you're not allowed to advertise through foreign media for Canadian products that would be coming in. I think that's a reasonable principle.

I just want to be super clear about plain packaging. You can allow product information. It doesn't mean you have to strip everything. What it means is that you're just taking away that tool of colours and images and logos and things like that. It's not inconsistent with saying that manufacturers can provide product information to consumers. The government can choose what goes in that product information. I think that the companies, whether medicinal or recreational, need to respect the laws of the country in which it's being sold, whether it's manufactured here and exported to other countries or imported from other countries.

Ms. Marilyn Gladu: That's my time.

Thanks.

The Chair: Mr. McKinnon.

Mr. Ron McKinnon: Thank you, Chair.

I'll start with you, Professor Hammond. What does standard packaging mean in terms of product offerings? You can't just have ad hoc packaging every time you have a new product. Someone has to design the package for the product. Who would do that? Let's say you have a new kind of product that fits within the schedule of what you can sell. How would you arrange to get packaging that was appropriate to that product?

Dr. David Hammond: That's a good point. I use the term "standardize" because that's essentially what you're doing. We talked about standardizing the look in terms of similar background, colours, and no logos. Certain countries regulate the shape and size. We do have a diversity of tobacco products that come in different shapes and sizes. Clearly you would need to have different criteria standards, whether for a dried herb or flower, an edible, or something else.

That would be the government's prerogative in terms of to what extent they would like to standardize the shape and size. It's quite possible to standardize by removing logos and imagery and having more flexible guidelines on standardized shape. You just want to avoid things like edibles being shaped as gummi bears. The government can prescribe their standards, and then the companies design their product containers and shapes to fit within those.

Mr. Ron McKinnon: Thank you.

Would the Non-Smokers' Rights Association like to add something?

Ms. Melodie Tilson: Yes. I would just add the quick comment that we would not be averse to having looser restrictions on the non-smoked versions of cannabis. As you heard a number of times today, the smoked form is the most harmful to health and poses the most risk. The vaped forms and edibles could have looser restrictions on packaging.

Mr. Ron McKinnon: You are saying standardized packaging for some variance of the product, but not necessarily standard packaging for all.

• (1710)

Ms. Melodie Tilson: Absolutely.

Mr. Ron McKinnon: I see.

Mr. Hammoud.

Mr. Mike Hammoud: I don't think any of us are really experts when it comes to retailing cannabis in this country right now, or how it will all go down.

I think one of the things that needs to be taken into account is what a package is going to look like for cannabis, and, let's be honest, how big the pack is going to be. I'm assuming it's not going to have 25 joints. I'm assuming it's not going to be similar to tobacco in that way. It's probably either going to be an oil or it's going to be some sort of a dried tobacco in a pouch, or something that's relatively small that they would call a dime on the road or whatever. These are other things that need to come into consideration when you're talking about warning labels, names of products, explaining what the product is, and trying to get it all to fit on what it is that you're trying to sell as the product.

Mr. Ron McKinnon: Mr. Hammoud, you stated earlier that plain packaging is a race to the bottom in price. We've heard a lot of testimony that says that lower price basically drives the black market out of business, and that's one of our goals. It seems to me in that respect that this counters your argument against—

Mr. Mike Hammoud: But you've failed miserably on the tobacco side. If you look at where the cost of tobacco is today compared with what the cost of illicit tobacco is, you have one way up here and you have one way down there.

To go back on a question asked before, the people who have the most to lose by losing tobacco sales are the federal and provincial governments, who make the most money off the sale of tobacco, not us. I just want to clarify that.

Mr. Ron McKinnon: Are you saying it won't decrease the price, the race to the bottom?

Mr. Mike Hammoud: If the federal government does what they intend to do and their goal is to move people over from an illicit product to a legal product when it comes to cannabis, if they really stick to their guns and do what they do and sell it for around the same price as people can buy it for on the illicit market, it will probably work. But what you need to understand is that you have provincial governments that are starving and in need of revenue, that are probably going to do the same thing with cannabis that they've done with tobacco to find a way to generate revenue for their provinces, and they're probably going to slowly tax it to the point—

Mr. Ron McKinnon: But these are considerations beyond packaging, right?

Mr. Mike Hammoud: I understand, but you're talking about packaging and you're talking about moving someone over to a legal product, and you just said, to the lowest price—

Mr. Ron McKinnon: I'm talking to your assertion that plain packaging would start a race to the bottom on price—

Mr. Mike Hammoud: Yes.

Mr. Ron McKinnon: —which would encourage the black market. But according to our other testimony, if you start lowering the price enough it prices the black market out of business.

Mr. Mike Hammoud: If you start lowering the price.... My perception of that is it's not the government that's lowering the price.

Mr. Ron McKinnon: I'm not talking about who's lowering the price, but if the price gets lower it will price the black market out of business.

Mr. Mike Hammoud: If the legal product gets lower. Is that what we're saying? Yes.

The Chair: Thank you very much.

Ms. Gladu.

Ms. Marilyn Gladu: Thank you, Chair.

One thing I'm disappointed about is that we're only talking about packaging and labelling because promotion was another whole part of this equation. I'm going to risk putting you out of your comfort zones on packaging and talk a little bit about the restrictions.

We have restrictions on the entertainment industry that have sort of exempted them from what we're trying to do with everything else, which is to make sure we're not appealing to children and we're not glorifying smoking cannabis or using cannabis. I know there's always that argument about censorship versus what we allow, but do you have any opinions about the promotion within the entertainment industry?

I'll start with Ms. Beck.

Ms. Pippa Beck: I can't speak too intelligently about that industry, but I do know that in the act there are allowances for promotion, specifically in shops that would be off limits to minors by law. There could be information and promotions at the point of sale for adult consumers about the products, so there is greater leniency in that respect.

Ms. Marilyn Gladu: All right.

Mr. Mike Hammoud: I agree with that, too. When it comes to promotion of the product, it should be very similar to the way they promote tobacco. If it's anything outside, it shouldn't be promoted.

Ms. Marilyn Gladu: Mr. Hammond.

Dr. David Hammond: I think one of the reasons why I haven't spoken to some of the broader promotions is that I think it's generally fairly well constructed. As I read it, the act would restrict any types of sponsorship. In other words, a cannabis company can't pay to have their product in a movie or to have someone use it to sponsor a sporting or dramatic event. As I read the exemptions, it's saying that I as a scientist can represent cannabis products in certain ways, that it could be in a movie but it's not allowed to be paid for as a form of sponsorship.

If that reading is correct, then I think that's an appropriate balance.

• (1715)

Ms. Marilyn Gladu: Okay, excellent.

There was another good question that was raised about what size the packaging should be, which I think is really good because, especially when I saw the little promotions of the little slender ones and all that kind of thing, it does make a difference.

We know that the adult possession has been set at 30 grams. I don't know how much room that takes up, but do you have any opinions on the size of the packaging that should be allowed? I'll start with Mr. Hammond.

Dr. David Hammond: We're quite right that cigarettes are very uniform in terms of how they're sold, but if we broaden the market a little bit to include smokeless tobacco and other nicotine products, we see the sort of variability that you might see in the cannabis market.

With respect to the 30-gram amount, I think manufacturers will shape and size their packages accordingly. I think that you're just trying to avoid any structural size-related messaging that would contravene what's in the act.

One of the reasons for those standardized packages with cigarettes is that we have what are called super slim and slim cigarettes that promote the belief that smoking helps you stay thin, which is a very potent predictor of youth smoking. It was to get rid of all the novelty packaging where they really don't look like a cigarette pack and they look like something else.

I think there will be more variability in the cannabis market. I think there is room for that variability without it being a problem.

Ms. Marilyn Gladu: Are there other opinions?

Ms. Melodie Tilson: We've worked for a number of years to control the size of tobacco packaging, starting in the early 1990s. We had kiddie packs banned—they were packs of five cigarettes—largely because they were affordable to youth, not because of the size per se.

I think that may be a consideration in the future. How large the package on the market ends up being will be largely determined by how much it costs, and if it's too expensive, consumers won't buy it. Packages of individual joints, for example, may be affordable and attractive to youth, so I think that needs to be monitored over time. There should be some regulatory flexibility to further restrict packaging sizes if it becomes necessary.

Ms. Marilyn Gladu: Mr. Hammoud.

Mr. Mike Hammoud: Yes, going back to your 30 grams and the recommendation, after being a part of many meetings with medical doctors and with everyone getting a sense of what 30.... I didn't realize that 30 grams could be like 60 joints, or as high as 90 joints depending on how it is cut, as they say, or whatever you need to do to make it work.

Ms. Marilyn Gladu: It's 300 bucks, so....

Mr. Mike Hammoud: That's a lot of money. That, to me, seems like a very large sum to have in somebody's possession, and you're allowed to share it, which amazes me as well. You could have four people, each with 30 grams, and they could be sharing it with four other people, and so on and so on. It doesn't make any sense to me from that perspective. I think that needs to change, really, because that's a lot.

From—

Ms. Marilyn Gladu: I'm out of time, I think.

Mr. Mike Hammoud: On the question of package designs and different things, I think it has to be a little different because there are so many different varieties of what you're going to be able to put together, and I do agree with them. One joint or two joints maybe isn't the way to go, but it's all going to come down to pricing as well on whether they can move them over.

The Chair: Thanks very much.

Now we'll go to Mr. Ayoub, and possibly in French.

Mr. Ramez Ayoub: Possibly, for sure, I'm going to ask the question in French.

[*Translation*]

This is a very interesting discussion. Since I'm speaking last, I tried to be attentive all the time, but there is one thing I probably didn't hear.

Currently, there is talk of non-uniform distribution of private cannabis products. They are distributed by no one knows who yet. Is this right? Are we talking about distribution of private products with different packaging, depending on the brand and the producer? Are we talking about producing and distributing a product through a single distributor? Do we want the government to be behind this, to provide distribution, to have its dispensaries and specially licenced affiliated producers?

A little earlier, in this instance, the example of milk was given. If we all have the same carton of milk, the same package of cigarettes, the same package of joints, will that wipe out the differences in colour? We would forget the colours and brands; only the name, THC level and health problems, so that people know, would be indicated. As for the rest, there would be no marketing, no advertising, none of that.

At present, medical marijuana dispensaries and stores don't advertise. Are we going around in circles about solutions, when we should be asking the government to take responsibility for distribution and completely eliminate the advertising aspect?

My question is for you, Professor Hammond.

● (1720)

[*English*]

Dr. David Hammond: If I understand your question correctly, as I read the act, that is the objective, to eliminate any promotion that's going to encourage use or make it appealing to young people, but to recognize that for manufacturers and consumers, there is still product information that will be helpful in guiding their choice.

As I said in my opening remarks, how do you execute that in a framework? What I and others are suggesting here is that most of the restrictions in the act are perfectly well founded and consistent with that. On the specific issue of using branding elements on packages, that is very difficult to police. I don't see any public health benefit and it's the area that's most likely to promote use among kids. What you described is pretty much what's in the act, with the exception of understanding what the regulations might look like for packaging.

I apologize if I haven't answered your question properly.

The Chair: Ms. Tilson.

[Translation]

Ms. Melodie Tilson: I'm not sure I understood either.

[English]

Mr. Ramez Ayoub: I can repeat. I want to make sure that you understand the question, because it is important to me.

[Translation]

It's elimination and control by the government.

[English]

You don't have any more private companies. You don't have any promotion. There is nothing left. There is only one cartoon, one advertisement from the government, regulated by the government. It's regularized. It's standard. There's no difference.

[Translation]

Ms. Melodie Tilson: That isn't what we're looking at. There will always be producers and retailers. The government will establish the regulations for packaging and what information needs to be on the packages. Packages will be standardized in all provinces and territories.

However, there will always be many different producers. The sales systems will be different depending on the province.

Mr. Ramez Ayoub: I may be simplifying, because I have a few seconds, but I'll make an analogy using apples. There's the Granny Smith, the McIntosh, and there are others. That's all. There's no other labelling. These products come from Vancouver Island or Quebec, and they're distributed by the government. Apart from the name and the information, you don't need to advertise, have different packaging or identify the producers. You only need to indicate where the product originates from and what it contains.

I may be wrong, but I have the impression that if the government takes over, the whole aspect of advertising and packaging, which is the problem we see with cigarettes, will be eliminated.

Ms. Melodie Tilson: That is a possible model, but I don't think the federal government wants to get involved in selling marijuana.

Mr. Ramez Ayoub: I'm asking you a question, that's all.

● (1725)

[English]

The Chair: You're over time now.

Mr. Ramez Ayoub: I know, but it's not a decision; it's a question.

The Chair: Thank you very much.

We'll go to Mr. Davies for the final question.

Mr. Don Davies: Thank you.

Dr. Hammond, again, I want to state from the beginning that I think there is broad agreement by everybody on this committee that we don't want any marketing towards children. We want safe, proper labelling. We want accurate, evidence-based warnings. We understand that it's a product with known health consequences. We want to make sure that we don't encourage use.

Given that context, though, is there a danger in reaching overboard the other way? What I'm thinking of is the old "this is your brain on drugs" commercials, with eggs frying in a pan, or the

Reefer Madness approach. If we go overboard and try to communicate information that the broad public doesn't believe, do we risk a lack of credibility?

We're not operating in a vacuum here. There is an illicit market. If you go online, you can find Kif Kat kush. You can see products online that you can order, with Yosemite Sam and cannabis coming out of the guns. Those aren't going to stop. We want to be very cautious and conservative on labelling, but is there a concern that if we don't get that balance right, we will not be effective in pulling people away from the illicit market and will risk a lack of credibility?

Dr. David Hammond: That's a great question, and I don't envy any provincial or federal regulator on this issue because you have people from both sides saying you need to loosen and you need to tighten. I can tell you this, we've done work with young people looking at health warnings for cannabis, and it's a surprise to most people to know that even smokers, who are very marginalized in our society, support the picture warnings. I can tell you that most Canadians, especially young Canadians, are curious. They would like to know what the information is about the health warnings.

I always say that where a health warning goes overboard is where it is no longer credible, where it's not providing truthful, forthright information. I think that speaks to the importance of designing these properly. On the issue of whether consumers will turn away from the licit market because there is information about the health risks, I don't believe that to be the case. I think the difference between illegal and legal sales is going to be on price, availability, and accessibility. I think a lot of the things that we're talking about today are in terms of information and promotion, which are less of an issue with respect to legal and illegal, if that helps.

It's about finding a balance, but I think most scientists, and I think consumers, would say that balance includes providing reasonable health warnings for these products. We haven't talked a lot about concentrated extracts, but most of what we know about cannabis in our scientific literature is about smoking and eating. We have a brand new category of products, of highly potent, concentrated products, that are being consumed in different ways. That is something the government should be communicating as part of this process, and warnings is one possible way of doing that.

Mr. Don Davies: I'm just going to ask this because I'm curious. As a matter of logic, we've already heard that alcohol is more dangerous than cannabis. Why don't we take away colours, images, and branding from alcohol in this country? There's been a suggestion that we can't do that, the cat's out of the bag, but we've done it for tobacco. Shouldn't we be doing this for alcohol? If not, why not?

From a public health point of view, why are we letting this one product continue to be branded with colours and imagery and things that are prohibited by the cannabis legislation if it's a more dangerous product and we know we can do it?

Dr. David Hammond: I think it's a reasonable question. Why don't we have nutrition labels on alcohol products? We have them on bottled water. We have them on every other beverage that's sold in this country except alcohol. There are other countries that have sought to prohibit marketing of what they call "alcopops", coolers that are very much oriented at young women. I don't propose to give the government guidance on those issues because I'm not an expert. But if you're pointing out that there are differences that don't seem logical in terms of how different product domains are regulated, I would agree with you.

Mr. Don Davies: Okay.

Thank you. Those are my questions.

The Chair: Okay, that winds it up.

I'm just listening to all this packaging discussion, and colours and logos and everything, and in the last break I called a young successful businessman in Nova Scotia. I know he participates once in a while with a little marijuana, and I said, where do you have to go to get marijuana? He said, I don't go anywhere. I said, what do you mean? He said, I just make a call. It's delivered to my door seven days a week, 24 hours a day. He doesn't care about the package much, what colour it is or anything else. That's what we're up against. I had to laugh I was so surprised. Anyway, that's what we're dealing with.

On behalf of the committee, I want to thank all the panellists, all of you, for your contribution and the knowledge and experience you've brought. It's been really helpful to us. This is the first discussion we've had on packaging and labelling and it's been very helpful. On behalf of the committee, thank you very much. We appreciate your time, especially with the video conference. We know it's a hard way to participate in a discussion, but you've done a great job. Thanks very much.

With that, I suspend our meeting until six o'clock. Thank you.

• (1725) _____ (Pause) _____

• (1800)

The Chair: I call the meeting to order again. This is meeting number 67, and we're continuing with our fifth panel for the day. Tonight's panel is going to focus on international considerations. I think it's going to be really interesting. I'm sure we're all going to learn.

We have three video conferences. I'm going to introduce our video participants first.

From the RAND Drug Policy Research Center in Brazil, we have Dr. Beau Kilmer, co-director. From the United Kingdom, we have Stephen Rolles, from the Transform Drug Policy Foundation. From the Tousaw Law Corporation, we have Kirk Tousaw.

Present with us, we have Dr. Steven Hoffman, professor in the faculty of health and at Osgoode Hall law school, York University.

We're going to open with each one making a 10-minute statement, then we'll go to questions by the members. I'll invite Dr. Hoffman to go first.

• (1805)

Dr. Steven Hoffman (Professor, Faculty of Health, Osgoode Hall Law School, York University, As an Individual): First, thank you very much to the committee and the chair for this kind invitation to allow me to present. It's really quite an honour to be here.

I'm here as a private individual with expertise in international law. By way of background, I'm a full professor at York University in the faculty of health at Osgoode Hall Law School. As far as I can tell, I'm the only public international legal scholar in Canada who focuses on health issues. I'm really pleased to be here to convey that aspect, which I understand is an aspect of this issue that hasn't yet come before this committee, so thank you very much.

My testimony here today is informed not only based on my own research, but also based on my previous experience having worked in the international system for the World Health Organization, as well as in the UN Secretary-General's office. I've also published on this issue. In fact, one of my shorter articles was circulated to this committee for translation and for you to read. I'll refer to it later in my testimony.

My interest in being here is that I'm hoping we don't break international law in the process of legalizing cannabis. My hope is that in trying to achieve a particular objective, international law and multilateralism don't become collateral damage in this process.

I'll say right up front that I think it's very clear that the proposed legislation, as it stands, would violate the three UN drug control treaties and Canada's international legal obligations under them. But the good news is that we have options, and I'll sketch those out. Some of them aren't great. A couple are more feasible, but ultimately my hope is that this committee and Parliament insist that the government have a plan to address these international legal obligations before legislation is passed into Canadian law.

Let me walk you through these treaties that I mentioned, the three UN drug control treaties that overall govern the way the world manages narcotic drugs. I'll refer you to the material I circulated. The last sheet is an appendix, which lists some of the key treaty provisions implicated. Overall, there are three treaties. The first is the Single Convention on Narcotic Drugs, 1961. The second is the Convention on Psychotropic Substances, 1971, and the third is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

Let me emphasize that the treaty obligations in these laws are very clear. Among international lawyers, there's really no controversy around this particular situation we find ourselves in. I am very happy to delve into the legalities during the question and answer period, but for now I just want to highlight a couple of key sections.

The first is in article 4, paragraph (c) of the single convention, which limits the use of drugs “exclusively to medical and scientific purposes”. Later in the appendix, you will see article 36(1)(a), which requires state punishment for their possession, production, sale, and delivery.

You'll see toward the bottom of the appendix circulated that article 3(2) of the trafficking convention specifically criminalizes drug possession, even if just for personal consumption. However, at the beginning of that provision, there's a pretty big loophole in that countries are allowed to not be held to that if it violates their basic law. It's a big loophole that even a country the size of Canada can drive right through.

Overall, looking at the treaties, there's no real controversy that they overall require countries to have state punishments but not necessarily criminalization of a substance like cannabis.

Of course, when looking at treaties, we find there are always flexibilities in how they're implemented. For example, the treaties don't actually specify what kind of state punishment is required. Portugal would be one example of a country that still prohibits drugs, but where people are not sent to jail and do not face criminal penalties but instead might have mandatory treatment, access to education, or a fine.

Another flexibility in the treaties is that they don't specify that the provisions have to be enforced. A country like the Netherlands still has a criminal prohibition against the possession, use, and manufacture of drugs except it's just widely stated that police won't be enforcing those provisions. That's okay under the international law.

A third flexibility is a constitutional override, whereby if a country's constitution specifically allows something that the treaty doesn't allow, the constitutional provision overrides the treaty. For example, Bolivia took advantage of this in 2009 when it added a constitutional right for its citizens to possess and consume coca leaf, which had cultural significance, as a way to, then, take advantage of that flexibility.

• (1810)

However, flexibilities have limitations. If we look at the case of Uruguay, we see that it is a country that is actually breaking international law at the moment. The country is arguing that general human rights norms trump the specific requirements of the UN drug control treaties. That may be a great political statement, but that's just not how international law works.

Similarly, if we look to the U.S. example, the U.S. would also currently be violating international law. However, it's harder to fault the U.S. given that in the U.S. the federal government has the legal ability to sign on to treaties whereas the states have the criminal law power to fully implement them. In that case, in the U.S., yes, they're breaking international law, but there is a federal ban and it's harder to hold them culpable. In Canada, it's the same level of government, the federal government, that has both the power to sign on to treaties as well as the power to implement them through criminal law or other mechanisms.

We have options in Canada. First, we can change our constitution. Second, we can renegotiate the treaties. Third, we can obtain special

exceptions. Fourth, we can try to use some creative lawyering to work our way out of this, or fifth, we can withdraw from these treaties.

I think four of those options are not particularly feasible; three in particular are not. The way I'll impart that is that I think convincing the 32 countries that currently have death penalties for drug smuggling to renegotiate the treaties or to grant Canada a special exception seems as politically impossible as adding a constitutional right to our Canadian Charter of Rights and Freedoms for the possession of cannabis. I think everyone here would agree that's probably not politically feasible, although I defer to you on that.

From my perspective, I really tried to be a creative lawyer. If I were hired to try to think through how I would get around this international legal obligation, the best creative workaround I could find was trying to use the treaties' scientific purposes exception. As I mentioned, in the treaties, they generally have a ban and require states to prohibit narcotics, except for medical and scientific purposes. Theoretically, we could imagine that if the government and if Canada signalled that the legalization of cannabis was part of a big scientific experiment around seeing the intergenerational effects of cannabis consumption, or something like that, you could actually make a legal argument. However, for the International Court of Justice to uphold that, it would actually have to be a real thing. There would have to be major research funding to make that happen.

The other potential workaround that some people have argued for is related to something called principled non-compliance. This is where a government or a country would say that, on principle, they are not going to comply, and would then violate the treaties. I think that's a cute political strategy, but as an international lawyer, I can tell you that's just not the way international law works. Basically, that would be the equivalent of civil disobedience, except that when it's an individual doing civil disobedience, they're in a position where they can't actually withdraw from the law, whereas Canada as a country can withdraw from treaties.

That gets me to the fifth option we have, which I think is the most feasible, and that is to actually withdraw from these UN drug control treaties. I don't think that's a problem, necessarily. I think that joining a treaty is an exercise of sovereignty, and removing ourselves from a treaty is also an exercise in sovereignty. Of course it's a bit weird for an international lawyer like me to be recommending withdrawing from treaties. I'll agree that it's not my ideal solution, but it's certainly better than violating treaties, which is something I don't think any of us would want to see.

Additionally, these treaties that we're talking about aren't the best treaties out there. As I mentioned, the first one stems from 1961. They're rather outdated. They're from another era and they're actually kind of mean, in the sense that they treat people with an addiction as being evil in the text of the treaty, instead of as people who deserve dignity in treating any medical problem they might have.

Now the challenge with withdrawing from treaties is that you have to give notice. In this case, if the goal was to have cannabis legal in Canada for non-medical purposes on July 1, 2018, then cabinet would have had to give notice of withdrawal before this past July 1, 2017.

• (1815)

If cabinet withdraws today from the treaty, it means the earliest that we could legally legalize cannabis would be January 1, 2019. If cabinet waits for this upcoming spring, then the earliest that Canada could legally legalize cannabis under international law would be July 1, 2019.

One thing that people often ask me is why this international law stuff actually matters. I have to say, there is actually a pragmatic reason. It's not just that it would affect our reputation. By not following international law, we actually undermine the best mechanism that we have in Canada for solving the big problems facing this world. Canada can't condemn other countries for violating international law if we ourselves are planning for it. Just one read of a newspaper would show that we really need a rules-based order in our world today.

To conclude, I just wanted to emphasize the important role that this committee plays in all of this. A lot of people think of international law as something negotiated in fancy places such as New York and Geneva, but actually, the practice of international law happens in rooms like this, at committees like this, by people like you. It's a collection of micro-decisions that determine whether we're going to allow legislation to go through that's going to break international law, or alternatively, to take the small steps needed to make sure that we legalize cannabis in a way that doesn't break international law.

I'm really pleased to be here to be able to share that international legal expertise. My ultimate recommendation would be for cabinet to immediately give notice of withdrawal from these treaties, before any legislation is approved.

Thank you very much. I'm happy to answer your questions.

The Chair: Thank you very much for outlining those options. I appreciate them.

Now, we're going to go by video conference to Dr. Beau Kilmer from Brazil.

Dr. Kilmer.

Dr. Beau Kilmer (Co-Director, RAND Drug Policy Research Center): Good evening, Chairperson Casey, Vice-Chairperson Davies, Vice-Chairperson Webber, and other distinguished members of the Standing Committee on Health. Thank you very much for the opportunity to testify before you today.

I am a senior policy researcher at the non-profit, non-partisan RAND Corporation where I co-direct RAND's drug policy research centre. Over the past two years, I've been fortunate enough to travel to Canada multiple times to meet with researchers, policy-makers, and members of the task force to talk to them about Canada's policy and provide an objective assessment about what is happening with cannabis legalization in the United States.

I was invited today to testify about my general thoughts on Bill C-45 and on some of the international implications if it passes. I want to make it clear that RAND does not take positions on legislative bills or ballot initiatives. My goal for today is solely to help inform Canada's policy debate at the federal, provincial, and municipal levels. I will divide my comments into three sections: prices, taxes, and the international implications.

With respect to prices, many of the outcomes featured in debates about legalizing cannabis will be shaped by its retail price. For example, those seeking to reduce the size of the illicit market will want the retail price to be competitive enough to move users to the newly legal market. On the other hand, those concerned about an increase in problem cannabis use and cannabis use disorders will want to prevent retail prices from significantly declining because cannabis users are price sensitive.

Over time, legalization is expected to dramatically reduce the production and distribution costs of cannabis for many reasons. Most important is getting rid of the risk. Right now when people buy heroin, marijuana, or cocaine, a lot of what they're doing is compensating the drug dealers and everyone else along their supply chain for the risk of arrest and risk of incarceration. With legalization, that goes away. Also, firms will be able to take advantage of economies of scale as they move from producing in backyards and basements to larger farms and facilities. Also it will be easier to take advantage of advances in technology if the activity is legal.

For those who are concerned about an increase in cannabis consumption and use disorders that are related to a price drop, jurisdictions have several options. I want to talk briefly about six of them. The first option to help inflate the price would be to implement a government-run monopoly and it sounds as if that's what Ontario is thinking about doing. When the government has that control, it can set the price. The second option is to minimize competition. If you are going to allow private firms to get involved, you can minimize the number that are competing so that should help reduce a drop in price.

The third option would be to cap production. A fourth option would be to impose costly licensing fees and/or regulations such as accurate testing protocols. For example, requiring cannabis producers and/or processors to submit to rigorous product testing for potency and adulterants ends up driving up costs to the firm, which are then passed on to the consumer in the form of higher prices. This can also help protect public health. The fifth option for keeping the prices higher is to require minimum pricing, and Canada does have experience with that with respect to alcohol. The final option would be to levy cannabis taxes.

Before I get into more detail about cannabis taxes, I want to make it very clear about the trade-offs involved when we're talking about prices. Realize that if your goal is to eliminate the illegal market as quickly as possible, you're going to want to minimize regulations and you're going to want that price drop to happen as quickly as possible. Now if you're concerned about the public health implications of a price drop, you're going to want to take actions to inflate that retail price. It's important to acknowledge this trade-off and realize that people have different goals for legalization. Just acknowledging that can lead to more productive discussions throughout the country.

Now back to taxes. Let's make it clear, nobody knows the best way to tax cannabis, and there are trade-offs with all the options. For example, taxing as a function of price is attractive because it's very easy to apply. For example, Washington State levies a 37% tax at the retail level, but the main drawback to that particular option is that the tax revenue per transaction will fall as the price falls.

Another option is to tax as a function of weight. For example, Alaska applies a \$50 per ounce tax at the wholesale level. Once again, it's also easy to apply but some are concerned that it creates incentives for the producers to sell more potent cannabis. We know very little about the health consequences, both the risks and the benefits, of these higher-potency cannabis products that are being sold in the stores in Washington and Colorado. We realize that most of the research that's been done on the health effects of cannabis was largely based on people who were smoking lower-potency cannabis in the 1980s and the 1990s. We have a lot of research to do.

• (1820)

Another option is to tax cannabis as a function of THC, which would allow the government to nudge cannabis users to lower potency products. Such an approach is similar to how many countries typically tax alcohol, with higher taxes imposed on products with higher ethanol content. The final report of the task force recommended that Canada develop strategies to encourage consumption of less potent cannabis, including a price and tax scheme based on potency, to discourage purchase of high potency products, but Bill C-45 is largely silent on this issue.

I now want to focus my final comments on the international implications. I will largely focus on the movement of people and cannabis across international borders, and I want to say a few words about the banking situation in Uruguay.

I will not speak to Canada's international drug treaty obligations and the various options Canada could pursue if it legalizes cannabis for non-medical purposes, including doing nothing. I will note, however, that what Canada does, and perhaps more importantly, how other countries respond to those actions, could send a signal to other countries about their drug treaty obligations. Given Canada's size, its proximity to the United States, and its status as a member of the G7, national legalization in Canada could have a much larger international impact than the legalization of cannabis in Uruguay.

With respect to the movement of people across international borders, drug tourism will happen if provinces and territories do not limit sales to Canadian residents. If provinces and territories allow public consumption in cannabis cafés or cannabis lounges, this will make tourism even more attractive.

There is also the issue of Canadians being denied entry to the United States because of cannabis consumption or previous arrests. It is unclear whether the United States will change its approach if Canada legalizes cannabis, and if it does change its approach, whether that will become more or less strict.

With respect to the movement of cannabis across borders, we must acknowledge that this is already happening via legal and illegal channels. Currently, Canada legally exports cannabis products to some countries for medical or research purposes. As for smuggling cannabis and money across the U.S. border, the amount, as well as the direction, will depend on cannabis production costs, retail prices, risk of arrest, and oversight on both sides of the border.

Finally, Canada should pay attention to the cannabis banking issue in Uruguay. While Uruguay legalized cannabis for non-medical purposes in December of 2013, residents could not purchase it at pharmacies until July 2017. Then last August it was reported that U.S. banks would stop doing business with banks in Uruguay that provided banking services to pharmacies selling cannabis. In response, *The New York Times* noted that the Uruguayan banks warned some of the pharmacies over the last few weeks that their accounts would be shut down.

Now it is unknown whether U.S. banks would apply the same pressure to Canadian financial institutions doing business with Canadian entities supplying cannabis for non-medical purposes, but if Bill C-45 passes, this possibility should not be ignored.

In sum, the federal and provincial governments will confront complex decisions if Bill C-45 passes. Because it is hard to predict the international and domestic consequences of these choices, jurisdictions considering alternatives to prohibiting cannabis supply should proceed cautiously and build flexibility, especially with respect to prices and taxes, into the proposed regulations.

With that I will close, and I look forward to your questions and comments.

• (1825)

The Chair: Thank you very much for that background.

Now we go to Tousaw Law Corporation with Kirk Tousaw by video conference.

Mr. Kirk Tousaw (Lawyer, Tousaw Law Corporation): Mr. Chair, members of the committee, my name is Kirk Tousaw. I am a barrister based in British Columbia. I formerly practised in the United States, which is perhaps why I am on the international panel. I represent clients across Canada, exclusively in cannabis law and policy, and have done so for the past decade.

My firm currently acts for hundreds of people charged with cannabis offences in Canada, many younger, few with other criminal records, all of whom do not deserve to be treated like criminals for their cannabis-related activities.

I was part of the legal team that successfully challenged the prior medical cannabis regime on charter grounds in the Allard case and litigated *R. v. Smith*, the only medical cannabis case to reach the Supreme Court of Canada. It resulted in a unanimous per curiam decision, finding the CDSA unconstitutional because of its prohibition on access to medical cannabis derivative products.

I commend the Government of Canada on its decision to move toward a rational and empirically based model for production, distribution, and possession of cannabis by Canadians.

Before making substantive comments on Bill C-45, I would like to take a moment to speak about why Canada is taking this important step. The Government of Canada posits two main reasons for legalization: to protect young people and to eliminate the black market.

As a father of four, ages seven to 17, and you may hear them outside the room later today, I certainly agree that protecting young people is an important social goal. The best way to protect young people is to stop criminalizing them. By far the most harm done to young people related to cannabis is done by the criminal justice system, not the use of the substance itself.

As a lawyer who has represented hundreds, if not thousands of people unjustly charged with violating the cannabis laws of both the United States and Canada, I support eliminating the black market in the sense of allowing those who are now involved in the cannabis industry, or wish to be involved, to do so lawfully.

When we speak of the black market as it relates to domestic cannabis production and consumption, we are not speaking of what most Canadians understand to be organized crime. We are not speaking of gangs. Instead, the domestic black market is comprised almost exclusively of ordinary Canadians, otherwise law-abiding, who make their living, pay their bills, and support their families by working in the cannabis industry. They do so for a variety of reasons. Some are committed to the plant and the cause. Some are entrepreneurs, employers, and small business people who simply want to be part of a vibrant industry that produces a product that brings people joy, with very little in the way of negative effect. Almost none are violent or otherwise harmful to society in any way.

While I agree that eliminating the black market is a critical goal, I strongly urge this committee and the governments of Canada and the various provinces and territories to understand elimination to be synonymous with transition and not with incarceration. This includes provinces like Ontario that are moving toward a misguided and unworkable government monopoly on retail sales. Private dispensaries are preferred by consumers, both domestically and in other legal jurisdictions internationally, and already do a great job of providing dignified reasonable access to cannabis.

There are other more important reasons to end cannabis prohibition. Canada is a constitutional democracy committed to notions of individual freedom and individual responsibility. This requires allowing Canadians to make autonomous decisions about

their own bodily integrity, without undue interference or criminalization of their choices by the state. Prohibition has caused incalculable harm, both to society and to individuals entangled in the criminal justice system. Twenty-six thousand Canadians were charged with simple possession of cannabis just last year. Many will have difficulty crossing the border into the United States.

Over the course of this failed policy, hundreds of thousands of Canadians will be criminalized to no good end. Each time a Canadian is arrested, handcuffed, and caged for cannabis-related activity, an injustice is done, harm is caused, and we all suffer. Moreover, cannabis prohibition detracts from respect for the rule of law. Millions of Canadians violate the law by possessing cannabis each year. Some of these citizens have achieved positions of great prominence in our society. That is because, either through accident of law, social or racial privilege, or powerful connections, they've been able to avoid entanglement in the criminal justice system. Hundreds of thousands of Canadians are not so privileged.

When millions of otherwise law-abiding and decent people feel it unnecessary, impractical, or harmful to obey the law, respect for the rule of said law suffers. When police officers are tasked with enforcing laws that are ignored by millions of Canadians, the relationship between the police and citizens suffers. It is far past time to right these wrongs. Amnesty for Canadians charged with cannabis offences is long overdue, and I urge this committee to recommend amendments to Bill C-45 that would eliminate the criminal records of, at a minimum, those convicted of simple possession of cannabis. This would go a long way to restoring their ability to travel, in particular to the United States.

• (1830)

Turning to the substance of Bill C-45, I say with regret that much work remains to be done. This bill takes us in the right direction, but does not and in its present form cannot achieve either the goals I've identified or the goals that Canada seeks to accomplish.

Bill C-45 continues to criminalize young people for possessing more than five grams of cannabis, an extraordinarily small amount. It is very likely that, post-legalization, thousands of young Canadians will continue to be entangled with the criminal justice system, doing irreparable harm to the future course of their lives. I agree with age limits related to sales of cannabis to Canadians by commercial entities. Parents, not shopkeepers, should be making these decisions. Age limits for sales, however, are an entirely different thing than imposing criminal penalties on young people for simple possession. I urge this committee to recommend amendments to Bill C-45 to remove any possibility of criminal penalties being applied to any young people in the country for activities related to cannabis.

Bill C-45 also contemplates criminal penalties being applied to adult Canadians who possess more than 30 grams of cannabis or grow more than four 100-centimetre plants per household. These are arbitrary numbers.

These criminal restrictions are decidedly unlike the way our country regulates alcohol, a vastly and inarguably more dangerous substance than cannabis. At this moment in Canada, a 19-year-old can walk into a liquor store and purchase enough alcohol to kill that person and all that person's friends and acquaintances. Indeed, there's enough alcohol in one bottle of vodka to kill the consumer. Similarly, there are virtually no restrictions on individual Canadians' rights to brew beer or make wine for their individual consumption or for non-commercial sharing with friends and acquaintances. Canadians can also currently grow 15 kilograms of tobacco per year, enough for some 15,000 cigarettes.

Given that reality, it's ludicrous or, to put it in legal terms, arbitrary, overbroad, and grossly disproportionate to allow Canadians to be arrested and caged for simply possessing any amount of cannabis, or for possessing cannabis deemed to be illicit, which is, in any event, a wholly unenforceable distinction. There is no empirically, morally, or legally sound reason why cannabis should be treated more strictly than alcohol.

There are also practical difficulties related to these arbitrary restrictions. Cannabis, particularly outdoors, can easily grow five or more metres high in its natural state. Do we really need or want a rule that would require Canadians who wish to grow a few plants in their gardens to continually tie down the branches or otherwise artificially manipulate a plant during its growth to keep it no more than 99 centimetres high? The 100-centimetre limits are the height of absurdity.

In addition, the limit of four plants per household arbitrarily penalizes those living in large households. These limits, backed by criminal sanctions, will certainly lead to legal challenges based on section 7 of the Charter of Rights and Freedoms, which requires that the liberty of Canadians not be infringed by arbitrary, overbroad, or grossly disproportionate laws.

The restrictions on possession amounts and plant numbers and sizes for personal non-commercial production of cannabis also detract from the goal of eliminating the black market. Allowing Canadians to be self-sufficient and to obtain their cannabis by growing for themselves supports the transition away from reliance on the black market.

I urge the committee to recommend amendments eliminating limits on what Canadians can possess or grow for non-commercial purposes and removing the artificial and unenforceable distinction between licit and illicit cannabis. At the very least, possessory limits should be increased substantially, and plant limits should increase and be calculated per person, not per household.

Also critical to ensuring a workable transition away from the current vibrant and enormous but unlawful market for cannabis in this country is to make the process of becoming a commercial producer and distributor of cannabis as easy as reasonably possible. Most details related to becoming a commercial producer of cannabis are not contained in the bill and are instead left to regulations to be

determined. If those rules mirror the current situation involving production for medical purposes, they will be too onerous, there will not be enough people or companies able to participate, there will be an insufficient amount of lawfully produced cannabis to Canadians, and the black market will continue to thrive.

The black market will also continue to thrive throughout the entire supply chain, from production to processing to sale, if legalization does not include products that are becoming increasingly popular. Edibles, concentrates, and products such as vape pens must be legal. Trends in Canada and other international legal jurisdictions, particularly in the United States, demonstrate the increased popularity of these methods of consumption, which are also potentially less harmful to the consumer and less bothersome to non-consumers.

• (1835)

On a practical note, there are literally hundreds of companies operating in Canada making these products right now in a professional, safe, and sophisticated manner. These products are not going away, and all rely on someone growing the raw plant material to make them. If they are not legal, then, as always, consumer demand will be filled by persons operating outside the law. It is better by far to allow the existing industry to come out of the shadows and into the light.

I urge the committee to recommend amendments to Bill C-45 that legalize cannabis derivative products, eliminate barriers to entering the lawful industry for persons currently participating in the unlawful marketplace, and carve out from federal oversight the intraprovincial production and sale of small-batch craft cannabis.

Thank you for the opportunity to address the committee. I look forward to your questions.

The Chair: Thank you for your very clear presentation. We appreciate this.

Now we'll go to Mr. Stephen Rolles from the Transform Drug Policy Foundation in the United Kingdom. Welcome.

Mr. Stephen Rolles (Senior Policy Analyst, Transform Drug Policy Foundation): Thank you for the opportunity to address you on this important issue.

I am the senior policy analyst for Transform Drug Policy Foundation, which is a U.K.-based charity and think tank. We're involved in policy analysis and advocacy in the field of drug policy, specifically drug policy reform. Our speciality has been to focus on models of legal regulation and advocacy to bring them about.

We've been involved in this work for more than 20 years now. Our work has substantially focused on cannabis in recent years because of the nature of the debate. We've produced a detailed book, available online as a PDF download, that looks at the detail of cannabis regulation models, from production through how you would regulate the products in terms of such things as preparation, price, and packaging, as well as taxation issues, some of the things that Beau touched on, how you regulate vendors in terms of training and licensing requirements, how you regulate the outlets that cannabis would be available from in terms of things such as opening hours and storefronts, and how you regulate access, who has access to this market, and issues such as age controls or membership clubs.

In the question section afterwards, obviously I'll be happy to speak to any of those particular issues that the committee is interested in. We also have specific chapters on cannabis-impaired driving, cannabis-related tourism, and cannabis and the international treaties, which I'll come to in a moment.

Before I get into specifics, I have a few general comments that to a large extent are going to echo things that other speakers have said both tonight and during the week.

The importance of evidence-based policy is clear to everybody; therefore, it's vital that proper evaluation and monitoring mechanisms are hard-wired into the policy framework from the outset. It's obviously important to know what's working and what's not working and to have a system that is able to respond to that evidence in a flexible way. It might be that the system is too loose and needs tightening up. It might be that the system is too restrictive and needs to be relaxed in some ways. However, we need to be constantly monitoring the evidence, looking at what works and responding to that in a scientific and responsible way.

Secondly, clearly there is a tension between the interests of public health and the interests of commerce and commercial entities. Public health will tend to seek to moderate and reduce use, whereas commercial entities are essentially profit seeking and might seek, as a result, to increase sales or initiate new use. That's not to say that all commercial entities are going to behave irresponsibly or in an unprincipled way, but there is clearly a tension there. It's vital that we learn the lessons from alcohol and tobacco regulation around the world and look at what has worked and what hasn't worked. That's very much what has informed Transform's work in terms of developing our proposals, propositions, and analysis around cannabis regulation.

There is a particular focus on advertising and marketing, bearing the previous point in mind on the need to regulate retailing of cannabis and access to cannabis markets in particular. Whilst I very much support the freedom of people to consume cannabis and to be able to access it and buy it, I'm less enthused by the freedom of profit-making commercial entities to aggressively market potentially risky products as lifestyle accessories. Again, looking at the experience with the bad old days of alcohol and tobacco regulation, I think we need to learn those lessons and make sure we don't repeat those mistakes.

My final point, just a general introductory point, is on the need to start cautiously. I don't think there's any need to rush into a program of legalization. There are many things we don't know. It's absolutely

fine to err on the side of caution initially, see how it's working, have an initial system bedding in, and then move cautiously forward on that basis, looking at what's working and what's not working. We don't have to make everything available overnight. We can move in stages.

• (1840)

Part of the work I've done on this issue was working with the Canadian task force. I thought their report was an outstanding piece of work and I was very happy to be an adviser. Beau was also an adviser with that group.

Along with Transform's other work we have also supported the work that's taken place in Uruguay. I was an adviser to the Uruguayan government, developing their regulation models, and we've worked with a number of other governments in various forms. We've been very actively involved in the debate in Mexico, in various European countries, in Jamaica, and elsewhere.

The task force, I thought, did an excellent job and the issues I've had with the bill as far as I have scrutinized it—which I have to be clear is not in forensic detail—are generally where they have diverged from the recommendations of the task force.

I'd certainly echo some of Kirk's comments about criminalizing young people. That really is not sensible. It's not going to deliver any of the outcomes we all seek.

I also think there are some absurdly harsh sentencing proposals within the bill. I noticed there was a potential maximum 14-year sentence for supplying drugs to minors. While that obviously does need to be an offence, I looked at the Canadian law and saw that it's one year for doing that for alcohol, and I believe 90 days for tobacco, so it's clearly disproportionate and it's inconsistent. I think that kind of thing undermines the rule of law and doesn't support the goals that are outlined at the beginning of the bill, and it's certainly not going to help protect young people. I would encourage amendments to modify those absurdly disproportionate sentences.

Coming briefly onto treaty issues, I have some disagreements on political strategy with what Professor Hoffman said, although much of what he said I was very much in agreement with. Clearly the treaties were drafted in the forties and fifties, nearly 60 or 70 years ago—the 1961 treaty—and a lot of it was based on treaties from even further back, the 1912 Hague International Opium Convention and others. These are hideously outdated treaties that were written in another time when the political, social, and cultural landscape was vastly different from the one we live in today and they simply do not fit the purpose.

I don't see the tensions that have emerged for Canada as Canada's fault. I see them as the fault of a broken, outdated international legal system in drug control that is badly in need of modernization.

As Professor Hoffman has outlined, there are a number of ways in which these tensions that have emerged could be resolved, but I'd absolutely agree with Professor Hoffman that if Canada does proceed, the legislation will put them in non-compliance with their obligations, or at least some of their obligations in the treaties with regard to cannabis.

The treaties can be amended but that requires a consensus and that is very unlikely to be achieved at the UN, given the lack of support among many countries for these sorts of reforms. The treaties can be modified. That doesn't require a consensus in rescheduling cannabis, so cannabis could be removed from the treaties altogether by a scheduling decision. That requires a majority vote at the UN, but again, that seems highly unlikely given the balance of opinion within UN member states.

Individual member states do have options, and Professor Hoffman has outlined some of these. Withdrawal is one of them. I would disagree about the desirability of withdrawal. It seems to me it could come with serious political consequences. There are international trade deals that are linked to participation in the treaties. The UN still has its system of judging countries in their application of the UN drug treaties. Also, parts of the treaties are very useful and important and for which a consensus does exist, the most obvious one being the control and regulation of the trade in medical drugs and control of medicines. We would not want to see that jeopardized by individual states withdrawing.

• (1845)

There is the possibility of withdrawal and reaccession with a reservation on cannabis, but that comes with its own issues and challenges. I can certainly talk about that during the questions and answers if people are interested.

There is another option that was touched by Professor Hoffman, which is certainly one I think is strategically perhaps the most favourable from my analysis, which is to continue with implementing domestic reforms in what we would call principled non-compliance. Clearly, open non-compliance with international legal obligations is not desirable. However, in some circumstances temporary periods of non-compliance may be necessary. Indeed, domestic laws and practice change in a wide range of fields and non-compliance is a fairly common feature of international regime evolution and modernization.

To be very clear, the problem at hand here is not Canada's opting for a regulatory approach to cannabis. Rather, it is the outdated legal treaty framework that gives rise to this need for a temporary and transitional period of principled non-compliance. As such, the recognition of the fact that Canada can no longer comply with the conventions' obligations regarding cannabis, need not be seen as disrespectful of international law, in my opinion. On the contrary, if accompanied by reasonable arguments and the expressed intention to resolve the situation over time, taking a stance of principled non-compliance can in fact confirm that treaty commitments do matter and that they require careful consideration.

There are ways in which Canada could proceed. For example, they could attempt in parallel to their domestic reforms to entertain treaty amendments and treaty modifications. Now, problems may arise with that and they may not succeed, but they are showing a

commitment to resolving their problems and resolving their obligations. They can also—

The Chair: Mr. Rolles, we have to move to questions pretty soon. Thank you.

Mr. Stephen Rolles: Okay, I will conclude.

I can take questions on more of the details and issues around that as we proceed.

The Chair: That would be excellent.

Mr. Stephen Rolles: I just want to say that we are moving in many ways into uncharted waters with regard to treaties, so there are many questions outstanding in terms of how individual countries or countries working together should proceed to resolve the tensions that cannabis regulation is presenting.

The Chair: Okay, thank you very much.

Now we'll go to questions. We have our first round of seven-minute questions and we'll start with Ms. Sidhu.

Ms. Sonia Sidhu: Thank you, Mr. Chair, and thank you to all of the presenters. My question is to Mr. Rolles.

One of the goals of this legislation is to reduce the black market and organized crime. Do you think other jurisdictions with legalized use of cannabis have had success with this?

• (1850)

Mr. Stephen Rolles: It's actually quite early to tell. In Uruguay, the cannabis stores only opened very recently, within a matter of weeks ago. Probably the best evidence, and I think Beau could probably speak to this better than I can, would come from Colorado and Washington where the retail stores have been open for a couple of years.

It's quite difficult to estimate the degree to which the criminal market has been undermined. While I think some people have estimated that as much as 60% of the market has now moved into the legal sphere, there is an issue in that those states border other states that are still prohibitionist, so a lot of people are obviously crossing state lines, buying cannabis in the legalized places and then leaving again. It's quite difficult to make an estimate. I would bounce that question over to Beau if he's happy to take it.

Ms. Sonia Sidhu: You just made a statement about treaties being outdated and non-compliance. Can you tell us about the treaty modifications? Can you explain that a bit?

Mr. Stephen Rolles: There are various mechanisms that are clearly outlined within the treaties themselves, and I'm sure Professor Hoffman can speak to this as well, by which the treaties can be modernized. Amendments can be tabled and they are then either accepted or subject to a conference of the parties, or they are rejected.

Modification is a mechanism of the scheduling of particular drugs, so the drugs are placed in a particular schedule, rather like—I'm not sure how the Canadian system works—but the schedule they're placed in determines how strictly those particular drugs are regulated and controlled. Cannabis could potentially be rescheduled from schedule 1 down into a less strict schedule that might make it more accessible in some ways, or it could be de-scheduled and actually removed altogether from the treaties. It's not entirely impossible.

Ms. Sonia Sidhu: In your view, if somebody can do that, on that modification side, there's nothing to violate international law.

Mr. Stephen Rolles: The problem is that those decisions have to be made by the group of member states, and there are many member states who would oppose such a move, so it becomes very difficult. Whilst there are a growing number of member states who are exploring options for regulation and are keen to explore issues around treaty reform to allow those to proceed without creating these tensions, there's also a large group of member states that are very much opposed and would act as a bloc.

In the short term at least, whilst it might be worth pursuing issues of amendment or modification to show goodwill and also to make sure these issues are being actively discussed in key UN forums, they are unlikely to prove successful in the short run. That then means that, if Canada is to resolve these issues, it may have to act either unilaterally or with a group of like-minded states they can act in conjunction with.

Ms. Sonia Sidhu: Thank you.

My next question is to Mr. Kilmer. You mentioned different options for taxation. You also submitted a paper. We heard this week that setting up a tax rate for cannabis is a complicated decision with important implications.

Could you talk about the proposal you submitted of taxation by weight and taxation by THC level and discuss any benefits or concerns with these?

Dr. Beau Kilmer: Sure. There are a number of different ways to tax cannabis, and I want to make it clear nobody knows the best approach. In my testimony I only highlighted three of them. There are many other approaches, but I do want to spend some time talking about the three I discussed.

The one that is most popular here in the United States is an ad valorem tax. That's taxing as a function of the price. As I said in the testimony, the advantage is that it's easy to set up. We're comfortable doing that. We do this for other products. There are two potential drawbacks with a price-based tax. First of all, you have to be smart about bundling. If you're not, someone can just say, I'll sell you this pipe for \$30 and give you the cannabis for free. People may do things like that as a way to avoid the tax, so you have to be smart about bundling.

The other issue is that, as the prices go down, the amount of tax revenue you're going to generate is not going to be as high as you thought it was going to be. This is important because now there are a lot of people getting into this, different consultants and people who are trying to make projections about what's happening, what's going to happen with tax revenues by the year 2025 and year 2030. You have to be skeptical of some of these estimates that are coming out

because I don't think they're necessarily accounting for the fact that there could be this large price drop.

A second approach is tax as a function of weight. Like I said, Alaska does this. They tax at the wholesale level. It's a \$50-an-ounce tax. The advantage is that it's very easy to apply and it's very easy to collect. The potential drawback with that is that it creates incentives for the producers to produce more potent cannabis as a way to avoid the tax. As I said, we know very little about the health consequences associated with some of the high-potency products that are being sold.

To give you some insight in terms of what's happening in Washington state, I've been working with a team that's been analyzing all of their data from their traceability system, their seed-to-sale system. They're tracking the plants all the way through to the final sale and keeping track of prices and potency. Washington is selling about 100 million dollars' worth of cannabis products every month. Of that, probably 70% is cannabis flower, and of the flower that's being sold, more than half of it is reported to be of THC levels of 20% or higher. There might be some inflation there, so maybe it's only 18%. But at the end of the day, some of the flower that may be 10% to 12% THC, you're just not seeing much of that in stores.

Also, the fastest growing segment of the market in Washington isn't edibles, although edibles get a lot of attention. It's actually the concentrate, so these are your waxes, your oils, and also the vape pens or the e-cigarettes, but instead of having a nicotine solution, they'll have a hash oil solution. That's the fastest growing segment, and to be honest, we don't know much about the health consequences of the higher-potency products, either the flower products or the oil products.

I also want to make it very clear that when we talk about health consequences, we need to be talking about both the risks and the benefits.

There's also this issue of titration. It might be the case that whereas before someone used to smoke a whole joint that was 5% THC, maybe if it was 15% they would only smoke one-third. It turns out we don't have much research on this issue of titration. I know of a few studies that have been published in Europe, but none in Canada or the United States. There are some concerns there about a weight-based tax creating incentives for people to use these more potent products, thus leading to a third option—the tax as a function of THC. In fact, that's what many jurisdictions do when they're creating their alcohol taxes; the tax will be a function of the ethanol content. What this does is it gives the jurisdictions the ability to nudge some users toward these lower-potency products.

The advantage of that is you're taxing as a function of intoxication. To the extent that we think that intoxication is associated with the number of public health harms, this could help reduce those harms. On the other hand, the system could be hard to set up. It's all going to depend on how good you feel about the rigour that's in your current testing and labelling regime. If you feel good about the labels that are going on those packages and what's being reported, then taxing as a function of THC is easy. However, if you don't feel good about your testing regime, if you don't feel that it's accurately portraying what's in those packages, you still have other options.

• (1855)

One of the things I talked about in the testimony was that in the short run, if you don't feel your testing regime is providing useful information with respect to the THC or CBD content of the plant material, it's easy to tax the concentrates and oils as a function of THC. But for the flower, you could actually have an alternative minimum tax. The tax could be determined by the stated THC the company puts on the package, or it could be a weight-based tax. The way they would set it up is that whichever tax ends up being higher, that's the tax you would have to pay.

That's a solution you could implement in the interim while you're developing a rigorous testing regime.

• (1900)

The Chair: Thanks very much.

Ms. Gladu.

Ms. Marilyn Gladu: Thank you, Chair.

Thank you to all of our witnesses for appearing.

I want to go back to the topic of treaties. I think it's completely unacceptable that the Liberal government, by choosing an arbitrary implementation date, would put us in a position where Canada would breach three treaties that may jeopardize trade deals that are dependent on us complying to them. I think that's ridiculous. It's naive to think that we could have any kind of integrity on the world stage by violating the treaties. I think "principled non-compliance" was the term used. This is ridiculous. We are always calling out other countries that don't abide by the treaties they've signed with the UN. We will lose that ability if we don't address this situation. I think this is completely irresponsible.

In terms of withdrawing from the treaty, I think you said, Mr. Hoffman, that if we gave notice now, we could then legalize in January of 2019. Is that right?

Dr. Steven Hoffman: Yes.

Ms. Marilyn Gladu: Okay.

Our other option would be to try to somehow get recognition that these treaties are old, and either get cannabis taken off or do some kind of modification. Can you tell me how long that would take and whether you think there's any likelihood of success?

Dr. Steven Hoffman: I think the reality is that countries have very different views about how best to regulate narcotics, including cannabis. The challenge then is that we have this multilateral treaty that most countries of the world are part of, and as a result of differences, it would probably take quite a bit of time to negotiate a

change to that treaty that would allow the current legislation as drafted to be legal under those international treaties.

It can happen. Certainly renegotiating them would be the ideal. If Canada did that, that would be great, because it would give a legal avenue to do what's being proposed. But the reality is that if I'm interested in making sure, not only in the long term but also in the short term, that we're not breaking international law, we would not be able to successfully negotiate a change in the treaty before, for example, a July 1, 2018, deadline.

Ms. Marilyn Gladu: The only option we would have, then, would be to not legalize marijuana but to do what Amsterdam is doing and basically stop enforcing criminal charges.

Dr. Steven Hoffman: Canada has several options. The one that's most feasible in terms of both allowing the legalization of cannabis and not breaking international law would be to actually withdraw from the existing treaties. Certainly the government would be able to, for example, decriminalize cannabis. That would be allowed under the treaties. Also, like the Netherlands, the government could decide not to enforce the treaties. That would be allowed under international law. The current proposal is to legalize and regulate cannabis, which would not be possible under the three treaties as currently written.

Ms. Marilyn Gladu: All right. Thank you.

Another concern of mine has to do with the ability to cross the border into the U.S. We had testimony from various people who indicated that because it's illegal federally in the U.S., any Canadians who have charges or who declare that they have smoked pot will not be allowed to enter into the U.S.

Do any of you know of a potential way around that, or what the solution to that is?

I think Mr. Rolles would like to speak.

Mr. Stephen Rolles: I have no visual here, so I can't see anything, unfortunately. I'm looking at a black screen. The signal is gone, but I can hear what's going on.

Ms. Marilyn Gladu: All right. Go ahead.

Mr. Stephen Rolles: The obvious solution would be for federal legalization to take place in the United States. That would presumably resolve the problem and may not be that far away. Many states have legalized or are about to. The Democratic Party has the path to legalization as part of its policy platform now. Obviously the current administration isn't terribly interested in that, but that issue may resolve itself in time. It can't be that far away before federal legalization takes place in the U.S. Until then, you are beholden to whatever the U.S. determines.

Of course, it's worth remembering that you have borders with some legalization states as well, so I don't know quite how that's going to work. Presumably, it would be quite strange to stop people who had cannabis convictions from going into states where cannabis is legal. There is this quite strange tension between federal and state law as well.

It's a rapidly evolving field, so this may all change very soon.

•(1905)

Ms. Marilyn Gladu: Thank you very much.

Mr. Tousaw, I think you commented that you don't think Ontario's plan to have this government monopoly is workable. Could you expand on that?

Mr. Kirk Tousaw: I certainly could. There are a number of practical difficulties with a government monopoly coupled with a federal jurisdiction over production.

Let's take a simple example. Presumably the Government of Ontario is seeking to exert its purchasing power to try to negotiate lower per gram costs of purchasing cannabis from the federally licensed producers. If those federally licensed producers, all of whom currently have direct-to-retail distribution systems in place, are not satisfied with Ontario's offer to purchase the cannabis, they may well just decline to sell to them, in which case consumers in Ontario essentially would have no access to cannabis through Ontario's government monopoly model.

Certainly, if I were running as a licensed producer and Ontario tried to come in and suggest to me that I should sell to them for \$3 or \$4 a gram while I'm selling direct to consumer in other provinces for \$8 to \$12 a gram, why would I sell to Ontario? Then you would have a situation in which residents of Ontario either don't have access or have to go through the artificial step of obtaining a doctor's prescription so that they can then access the medical cannabis model, which would give them direct access to the licensed producers. That's one small problem among many.

Another problem is that there's already a very vibrant distribution system operating in the grey market in Ontario. There are probably somewhere in the neighbourhood of 100 to 200 private dispensaries selling cannabis to consumers in Ontario right now. These entities are not just going to disappear, and if you don't transition the black market into the lawful market, then you're setting up a system of competition. The only way to shut down the competition is through the use of, likely, draconian police state tactics. Prohibition hasn't stopped any of these people from doing what they're doing. In fact, prohibition has led directly to the situation we find ourselves in here now, so there's just no practical way.

Here's what I think the fundamental misconception is. I think a lot of people think that legalizing cannabis is the creation of an industry. It's not the creation of an industry. The industry exists. It's vibrant. It's massive. There are literally thousands and thousands of people engaged in working in this industry in every province in this country. There are millions of different products out there. There are very sophisticated businesses working in this sector right now, so we're not creating an industry.

The best we can hope for is to compete with the existing industry. The best way to do that, as I say, is to transition into the legal marketplace those people who already have the expertise and who are already doing the job and doing it quite well and quite successfully. Anything else is likely doomed to failure.

Ms. Marilyn Gladu: I think I'm out of time.

The Chair: Yes. Thanks very much.

Mr. Davies.

Mr. Don Davies: Mr. Tousaw, I'm going to be directing most of my questions to you.

I think you very articulately described the problems with criminalization. To give the government credit, I think that's something that it has recognized itself and is some of fundamental rationale behind this bill. I think Prime Minister Trudeau has recognized that criminalization has simply pushed products underground and has led to the creation of an illicit market that doesn't really work.

You've also pointed out, though, that this bill, Bill C-45, essentially retains a criminalized approach to cannabis. There are criminal sanctions for possession over 30 grams. There are criminal sanctions for growing more than four plants. There are criminal sanctions for selling and, in fact, with penalties of up to 14 years. If criminalization doesn't work generally, is it not somewhat misguided to take a quasi-criminal approach to Bill C-45? Are we going to have problems down the road with the maintenance of the criminalized approach in this bill?

•(1910)

Mr. Kirk Tousaw: I think we're absolutely going to have problems with the maintenance of the criminalized approach in this bill. I think it's not just a little bit misguided; it's deeply misguided.

I think there are probably some practical and some political reasons why the government has chosen to proceed in this fashion. The political reasons are quite clearly to legalize cannabis and to try to deflect political criticism from the right, typically, but from some aspects of the left, about this process and these steps that we're taking, and therefore to try to do it in the most small-c conservative way possible.

The practical consideration may well be that we know the Supreme Court of Canada in a ruling in the Malmo-Levine case said that Parliament retains the power to prohibit simple possession of cannabis as an aspect of criminal law power. If this is not a criminal law enterprise, it becomes a little less clear what the jurisdictional basis for the federal government's involvement in this area of commerce actually is.

I think those are surmountable obstacles. At the end of the day, I think we need to look at some fundamental fairness. Cannabis is safer than alcohol. Fundamentally, empirically, that is beyond question. Cannabis is safer than tobacco. There's no good reason why we're going to treat cannabis in a way that's significantly stricter than we do alcohol. Alcohol in our society is a source of tremendous harm, and it's also a source of tremendous pleasure and joy. I enjoy a good glass of wine. I like to go to my local vineyards. I'm a regular patron at the small batch, craft-brew pub down the street from my house. I have a keg of their beer in my garage. I'm not anti-alcohol, but I recognize the harm it does to our society.

All those things by the way, the vineyards down the road here in the Cowichan Valley—we have probably 20 wonderful vineyards, many more in the interior of our province—the small craft-brew industry that's growing rapidly here in British Columbia are provincially regulated enterprises, as well they should be. The federal government's role really ought to be minimized in this area, and quite frankly with the greatest respect for what the government has done so far, it hasn't done a very good job regulating access to medical cannabis. The medical cannabis system that was started by court order in 2001 has been struck down by the courts repeatedly in litigation that I'm sure has cost the Government of Canada tens of millions of dollars.

Mr. Don Davies: I'm going to stop you there because I have a few other questions.

I want to talk about edibles, concentrates, and other non-smokable products. Again, as you know, the government has not included those in this bill. I have received a number of different answers from the government. They say it could happen imminently. It's down the road. They didn't have time to do it. I'm not quite sure.

Given Colorado's experience and Washington's and Alaska's with successful regulatory regimes around edibles, do you see any reason why we shouldn't put edibles and concentrates into the legal framework now? What are the consequences of not doing so?

Mr. Kirk Tousaw: There is every reason to put those products into the legal framework. The consequences of not doing so are the continuation of perpetuation of the black market all the way from growing the raw plant material they use to make the products through to the point of sale. We're seeing this even in municipal jurisdictions that are regulating cannabis dispensaries but have taken the step of banning edibles.

People want these products. Consumers want these products. Any time consumers demand a product, someone's going to rise to fill that demand.

Mr. Don Davies: You described the majority of people involved in the marijuana industry as law-abiding, non-violent, and entrepreneurial. This is the black market we talk about really. There's a tendency to think Hells Angels and Crips as organized crime, but you described a very different picture of the thousands of people who are currently involved in this industry.

You have said we have to remember that virtually all the cannabis produced and sold in this country right now is done so unlawfully, but if the government wants to eliminate that portion of the industry, this bill is not the way to go about doing it.

Can you expand on that? Should we bring those people into the legal market? Does Bill C-45 do that, and if not, what should we do to help facilitate that transition?

• (1915)

Mr. Kirk Tousaw: Not only should we do that; we have to do it for this to be successful in eliminating the black market.

The fact of the matter is that there are tens if not hundreds of thousands of people involved in the illicit industry today. I've represented many of these people. I would invite them all to my home to have dinner with my family. They are wonderful, good people. There is no reason for them to be considered or lumped into

this category of “organized crime” with its connotations of violence and gang-related activity. That's just not what's going on.

In perhaps thousands of disclosures that I've seen in criminal cases, a small fraction of them contained any evidence of any involvement with what Canadians traditionally believe is organized crime. You've heard from Professor Boyd, I believe. His research in this area shows that 95% of people are not involved with organized crime.

How do we bring them out of the shadows and into the light? We have to make it easy for them to participate. We have to get rid of some of the onerous barriers to access that exist in the medical production system, the unnecessary security requirements, the government's micromanaging and requirement that 800- or 1,000-page standard operating procedures be provided in order to get a licence. Government should be setting baseline standards that private enterprise has to meet. If you meet those standards, you get to participate in the new, licit system.

That's how we do it. It sounds simple because it is simple. We need to get rid of this paradigm of considering people who are in the cannabis industry today as somehow criminals whom we have to prevent from participating in the future. They are not going to stop. Why would they? Prohibition hasn't driven them out of business. Legalization certainly won't.

The Chair: Time is up.

Mr. Oliver.

Mr. John Oliver: Thank you for your testimony here today—Mr. Rolles in particular. It must be early in the morning there on Friday. Thank you for hanging in with us this late into the night or early in the morning on your end. I very much appreciate it.

To come to the RAND Corporation's work, we've had a lot of information on not-for-profit and for-profit corporations, with cases being made either way. Has the RAND Corporation studied this? If you think about our three objectives of getting the product out of the hands of young people, of deterring organized crime, and of ensuring safe, legislated product, has RAND studied that question of profit versus non-profit? Does it have any conclusions on that particular question?

Dr. Beau Kilmer: We've done a fair amount of work looking at the various models that jurisdictions could consider if they're thinking about doing something other than prohibiting cannabis supply. Going back, there was an earlier question about the government monopoly. This is where we can learn from all the research that's been done on alcohol. It's very clear that the state government, state monopoly, approach on alcohol is much better for public health than allowing for-profit companies to supply the good.

A lot of this comes down to what we would call Pareto's law, or the 80:20 rule. For alcohol, 20% of users account for 80% of the consumption and expenditure. That's who alcohol companies are targeting. They're targeting those heavy users.

In some work I did for the White House Office of National Drug Control Policy, we found that it was also 20% of the users of cannabis who accounted for 80% of the expenditures. These are your daily and near daily users. If you're going to allow for-profit companies to produce, sell, and advertise, this is who they're going to target. They're going to be focusing on those heavy users. That's one of the things we have to consider if you're going to allow for-profit companies to get involved.

One of the advantages of the state monopoly system is that the state could control the price. It could make it easier to limit the products. It could also potentially limit advertising, although you have to realize—and you see it with gambling, too—that governments do advertise. There are drawbacks with all these options. In the middle of those two options is the not-for-profit approach. Instead of allowing for-profit companies to produce, distribute, and sell, you could just have non-profits, perhaps those with a focus on public health or on child welfare.

At the end of the day, you're helping to create a new legal industry. There have been cannabis transactions in Canada and the United States for decades, but this is your chance to create this new entity. As I hope I made clear in my testimony, we really don't know how this is going to play out, especially with respect to public health. There are a few different approaches. If you go from prohibition all the way to the for-profit model, and then you decide 10 years later you want to try something else, it's going to be a lot harder to put that genie back in the bottle once you have all these companies and their powerful lobbyists.

If you're risk averse, the other approach would be to start with the government monopoly, see how that goes, and then, if you want to change it, maybe move to non-profit. From there, you could potentially move incrementally toward a for-profit approach, especially with respect to all the high-potency products. That's largely what you're going to be seeing. My guess is that's what you're going to see being sold in the stores, unless there are limits on them.

Right now we just don't know much about those health consequences, so I think you're going to want to proceed cautiously.

• (1920)

Mr. John Oliver: Thank you for that.

Mr. Rolles, in terms of edibles, in our current schedule edibles are not legalized. We've heard from some of the people who were working on the drafting of the legislation that the advice from Colorado.... They got into edibles very quickly, and there were a lot of problems and a lot of issues. They advised to go slowly with that, but we've heard from others that, if we don't move into edibles, then the organized crime piece or the black market will continue to supply them, and we're going to be promoting that.

Colorado has since come a long way. They have quite extensive regulations and a regulatory framework around edibles. Do you think it would be wise for Canada to borrow from Colorado? Can you see any downside to do doing that? Would it be a way to move us into edibles faster, do you think?

Mr. Stephen Rolles: I have mixed feelings about it. I think you're right that Colorado probably did move too fast, or the model they put in place for edibles was inadequate and did create problems. But I

think it at least showed a success of the regulatory system. It acknowledged those problems and a lot of those rules were then tightened up. Now I think they have single servings only, clearer packaging, markings on the edible products themselves, and a series of other regulations that have helped reduce some of the challenges they faced. I think it's obviously going to be very important to look at that and learn the lessons from it. Washington also had some similar issues.

One of the things we've advocated is that the new legal market shouldn't diverge too far from the existing illegal market in terms of the range of products that is available. To that extent, what I mean is that you wouldn't suddenly open up necessarily a vast array of new products that aren't currently being sold or consumed. If you do that, there could be unpredictable impacts in terms of consumption, behaviours, and potential public health impacts.

A lot of people have argued that edibles are intrinsically less risky than, for example, smoked cannabis because you avoid the risk to lung health that you get from smoke products. I think that's a reasonable argument, but there is a counter-argument that edibles are intrinsically more difficult to titrate and dose because the effects take so much longer to play out.

There are clearly health benefits on one hand, and health risks on the other hand. On balance, I think it's probably positive that edibles would be made available, but I think it's also reasonable to be cautious, particularly in places in Canada where there isn't already a medical edible market. I don't think there's any need to rush into edibles, and I certainly don't think there's any need to rush into concentrates. From my perspective, it's perfectly reasonable to propose that they could be part of, perhaps, a second wave of regulatory expansion once the herbal cannabis market has been established, bedded in, and initial teething problems have been dealt with. I think it's okay to be cautious on this, but I certainly wouldn't suggest banning them.

I think it's also reasonable to point out that if you have herbal cannabis available, turning herbal cannabis into an edible product is not that difficult. You can just bake it in a cake, or you can mix it with some butter. It's not that difficult. There's not some, to my mind, terribly egregious denial of accessibility to edibles if you have access to herbal cannabis.

• (1925)

The Chair: You're time's up.

That completes our first round of questions. We'll now go to five-minute questions and start with Mr. Webber.

Mr. Len Webber: Thank you, Mr. Chair, and thank you to the presenters as well.

I do concur with my colleague here. I think it's absolutely unacceptable that we are violating UN treaties to pursue the legalization of marijuana in this country. I don't know what the Liberal government is going to do, whether they're going to either withdraw from the treaties or just violate the treaties. I would like to know from that government what they plan on doing.

I have a question for Dr. Hoffman.

I enjoyed your presentation, the different options that we have. Convincing other countries to renegotiate sounds impossible, according to Mr. Rolles. Creative lawyering.... Of course, this is a big scientific experiment here in this country. Perhaps we can pursue that. As you said, we need major research dollars to make that happen. It obviously looks like we are not going to comply. We are violating UN treaties. We'll either withdraw.... What will the ramifications be, the consequences to our country, of violating these UN treaties?

Dr. Steven Hoffman: I really would love to emphasize that the consequences actually are quite severe in the sense that it's not just our reputation. It's not just Canada's standing on the global international scene. If we violate international law we are actually undermining the best mechanism we have to get countries to work together and solve some of the biggest challenges we face in the world. One only needs to think about examples like serious use of chemical weapons, or North Korea testing nuclear weapons, or even closer to home, the United States imposing illegal trade barriers against softwood lumber. Canada wants to be in a position that we are able to rely on our fellow countries, our partners around the world, to follow these rules that make Canadians safer, that make Canadian businesses prosper, yet it's very difficult for Canada to be taking moral stances on international laws if Canada is also violating them.

In my mind, it's very clear that Canada can't pick and choose which international treaties to follow without encouraging other countries to do the same. When one thinks of the global context of this, I know it's just one law, it's just to do with cannabis, it's just drugs, but I think Canadians, and I think all of you probably do care about international law when it comes to things like nuclear weapons, when it comes to human rights abuses. We can't pick and choose without encouraging other countries to do the same.

The Chair: Mr. Rolles, go ahead.

Mr. Stephen Rolles: I agree with the legal analysis there that Canada would be in non-compliance with the cannabis section of the treaties, but I don't think withdrawal is a way to respect the treaty system. I think it's far more disrespectful to simply withdraw from the treaty system than to make a principled argument that the treaties are not serving the interests of member states and that they need to be modernized to bring them into line with the needs of member states. The power of the treaty system is essentially the consensus of member states that support it. That consensus is crumbling, and I don't think that in any way it is immoral to move into technical non-compliance of one element of these treaties, if a case is made that it is being done in order to serve higher UN goals of human rights, public health, development and security issues. I think the case can be made that it is in defence of the higher goals of the charter that one part of one treaty is moving into technical non-compliance.

Perhaps I can read a sentence from the Global Commission on Drug Policy, which is a group of former heads of state and UN luminaries, including Louise Arbour, who is the Canadian former UN High Commissioner For Human Rights. It says:

Unilateral defections from the drug treaties are undesirable from the perspective of international relations and a system built on consensus. Yet the integrity of that very system is not served in the long run by dogmatic adherence to an outdated and dysfunctional normative framework. The evolution of legal systems to account for changing circumstances is fundamental to their survival and utility,

and the regulatory experiments being pursued by various states are acting as a catalyst for this process. Indeed, respect for the rule of law requires challenging those laws that are generating harm or that are ineffective.

I would also point to Uruguay that by common consent has moved into a superb position of non-compliance. The sky has not fallen. The UN treaty system has not collapsed. Uruguay is not seen as a pariah on international human rights or at the UN. It still has a great deal of respect. It has a long history of respecting human rights law and being a very great advocate for the treaty system, just as Canada does.

I think there's a little bit of over-dramatization here, that somehow the whole system would cave in if you move into a technical non-compliance for a period, especially if you're making a clear moral case on UN grounds based on higher UN principles, and you are clearly showing an effort to resolve the tensions that have emerged. I would caution in regard to some of this rather over-dramatizing situation. It needn't be this terrible cataclysmic situation. You can progress things without the whole system collapsing. I just wouldn't worry quite as much as some of the committee members seem to be doing.

● (1930)

The Chair: The time's up.

Now we go to Dr. Eyolfson.

Mr. Doug Eyolfson: Thank you very much, Chair.

Thank you all for coming.

Just as a bit of an aside on international law, yes, you can be banned from the United States for saying you smoke pot, but—and I just looked this up—you can be banned from the United States for admitting to be a member of the Communist Party. That is still the law today, so whatever that says....

Mr. Tousaw, keep in mind that I'm coming from the point of view of a staunch supporter of the legalization of cannabis, but I have to take exception to something you said about those who participate in the illegal market or the black market. Again, I cannot paint all with the same brush—there are some gentle people who are just simply entrepreneurs—but I spent 17 years practising emergency medicine in Winnipeg when it had the dubious distinction of being the murder capital of Canada. I looked after an unconscionable amount of violence including gunshot wounds and stab wounds. A large proportion of that was in fact the black market in drugs and most of that was cannabis, and that was all verified. So I think we have to caution our judgment as to what we call the black market and understand there is a very dark and dangerous element to this, and this is part of what we want to control and undermine.

One of the things you said in your submission was that you did not want a government monopoly. You said that Ontario's plan was very ill advised. However, experience in Colorado and Washington has shown that, when you keep the price low, you can undercut the black market and in fact that's working very well. In Colorado at least 70% of the market is now legitimate, and that may be trending close to 90%. If you had a government program that was not profit-driven, would that not be a more efficient vehicle to sell this in a way that's not profit-driven and therefore can keep the price low and undermine the illegal market?

Mr. Kirk Tousaw: Let me just point out that the Colorado system is a system of private enterprise, not a government monopoly, so that's—

Mr. Doug Eyolfson: However, on that I should just point out that this was not by choice, but so they wouldn't violate federal law. But please go on.

● (1935)

Mr. Kirk Tousaw: It was by choice of the voter.

Be that as it may, I think government doesn't have a particularly good track record of competing with the marketplace. Here's the difficulty. Many of these suggestions may be all well and good if we were starting with a tabula rasa, if we were at a clean slate talking about something that had never been done before and never been seen before. But we have an existing massive industry in cannabis in this country, and the government monopoly is going to compete with that industry. It can either compete on price and customer service and attractiveness, which is going to require some advertising, something that the government may not want to do; or it can compete using the police forces to try to enforce its monopoly, which is something that is going to offend the charter and I think should offend anybody who believes in a free and democratic society. Many of these suggestions might make sense in a vacuum, but they don't make sense on the ground as we sit here and stand here today.

It's sort of like talking about the treaties. Canada has been in technical non-compliance with these treaties since it began to sell marijuana by not collecting it through private enterprise since at least 2005. We're already in violation of all these treaties. These treaties are also responsible for creating a paradigm of prohibition that's led to the international black markets in all these drugs, and devastation, destruction, and death across the world, including the opioid epidemic that's ongoing everywhere in this world and in particular in this country and in the United States.

We're not starting from a blank slate. We're starting from trying to claw our way back from a failed system that does a tremendous amount of damage today, and a system that—

Mr. Doug Eyolfson: Sir, if I may interject, on the opioid crisis, a huge contributor to that was over-advertising by a private company that was selling OxyContin.

Mr. Kirk Tousaw: The over-prescription of opioids is definitely a big contributor, but the reason people are dropping dead in the streets is not that. The reason people are dropping dead in the streets is that they can't get clean product of known potency because of prohibition.

Mr. Doug Eyolfson: Thank you. I have no further questions.

The Chair: Now we go to Ms. Gladu.

Ms. Marilyn Gladu: Thank you, Chair.

Mr. Hoffman, which trade deals may be jeopardized if we breach these treaties?

Dr. Steven Hoffman: When it comes to trade, I think what's most implicated by the treaties is the trade in medicines in the sense that it was mentioned that these treaties do govern not only the illegal use of narcotics but also their medical use. From that perspective that is one advantage of the treaties as they exist, and the treaties do regulate the trade of medicines quite well.

I'd be happy to look into this and happy to get back to the committee about other treaties, but when we talk about these treaties and trade often what we're talking about is trade in medicines.

Ms. Marilyn Gladu: I'd appreciate it if you could, and to Mr. Rolles' comments I'll let Canadians decide how dramatic they think it is that Canada will breach these treaties, especially after I remember my NDP colleagues calling for action on this even in 2016, already being aware that the deadlines were approaching.

Mr. Tousaw, you made a comment about the home-grow aspects of Bill C-45, especially the very prescriptive charges around heights of plants and that sort of thing, that they violated or that you thought they would get a court challenge under section 7 of the charter. Can you elaborate on that a bit?

Mr. Kirk Tousaw: Section 7 of the charter requires Canadians not to be deprived of their liberty in particular by laws that are arbitrary, overbroad, or produce grossly disproportionate consequences. If you have a person in a household, say of one and they are able to grow four plants legally, and then you have a person in a household with two adults they can still only grow four plants legally but let's say they grow six, their liberty could be infringed because of that four plant per household restriction. That seems to me to be utterly arbitrary, and it certainly captures conduct that is overbroad. In other words, it does nothing to further the goals of the legislation, the purposes of the legislation. It unjustly and unnecessarily criminalizes Canadians who engage in that conduct.

If we have these arbitrary limits in place, the first person stopped with 31 grams instead of 30 grams in their pocket, the first person who grew five plants instead of four, I'm happy to take those cases and I expect to win those cases. I don't want to continue to fight these battles in court. I thought that by legalizing cannabis I'd be out of a job as a criminal defence lawyer, but they are subject to challenge. I think the challenges are easy to make out. What's the point? You can brew as much beer in your basement as you want and give it away to your friends. Why should cannabis be any different? It's safer and, frankly, it's easier to make.

● (1940)

Ms. Marilyn Gladu: It's certainly problematic.

I have a question about second-hand smoke. We had some discussions about what to do about second-hand smoke. Is anybody aware of anybody in any other jurisdiction internationally that has a regulation with respect to second-hand smoke?

A voice: Pertaining to cannabis...?

Ms. Marilyn Gladu: Yes, or tobacco that we could pattern something after.

Mr. Kirk Tousaw: Most legal jurisdictions ban the public consumption of cannabis. That's an argument I think in favour of designated consumption spots, like vapour lounges. I think that's an important component of legalizing cannabis. You have to give people a place to consume it socially.

Dr. Beau Kilmer: California is in the process of legalizing, and it's supposed to go live in early 2018. One of the aspects of California's law, which is different from what we see in Washington and in Colorado, is that California is going to allow for marijuana lounges, so on-premises consumption.

From a public health perspective it's unclear about how this is going to play out, especially when we talk about impaired driving. If you have a bunch of people who used to consume at home and now they're consuming in a marijuana lounge that could increase the number of people driving under the influence of cannabis. On the other hand, if you had people who used to just go to the bar and get drunk and drive and now they're just going to the marijuana lounge and getting stoned and driving home, that would probably be a net win for society because we know that the bulk of the research suggests that people who are driving drunk tend to get in more accidents than those who are driving stoned, but still, the bulk of the research suggests that driving stoned is worse than driving sober.

One of the interesting things is going to be what happens to people who drive under the influence of both alcohol and marijuana. That's where there's a really significant risk in increasing the probability of getting into an accident. It's unclear about how these on-premises businesses are going to influence that. That's why I think public policy can play an important role in thinking about whether or not to allow this and allow for zoning.

One of the things is that the provinces may likely be making decisions about this. One of the things we could do is to hold off on that and watch what happens in California and learn from their experiences. They're also going to be dealing with this indoor air law. It's unclear to me what's going to happen. Will you be able to vape inside, maybe dab inside, but if you want to smoke a joint you'll have to go outside? I'm not sure how that's going to play out, and I expect there's going to be a fair amount of variation in California that Canada could learn from.

The Chair: Thank you very much. The time is up.

Now we'll go to Mr. McKinnon.

Mr. Ron McKinnon: Thank you, Chair.

I'll start my questions with Mr. Kilmer. This goes along the lines of earlier questions. For edibles, what are the impacts of not putting appropriate controls in place at the outset? What will happen to the market? Are we going to be able to control it later?

Also, what do you think about the cookie-cutter approach, copying and pasting the Colorado approach to edibles?

Dr. Beau Kilmer: When we're talking about edibles, people think there are flowers and there are edibles, but when we begin thinking about non-flower products, we also have to begin thinking about the concentrates and waxes. There can be up to 80% THC in the vape pens. I want to make it very clear that we don't know much about the health consequences. I know a lot of people might be using them, but we really don't know much about the health consequences, either the benefits or the risks of these particular products.

One of the issues you have to consider if you're going to allow for-profit companies to produce and sell these products and you don't put any limits on it is that if, say, in five or 10 years from now you decide maybe you don't necessarily want to allow a certain product or you don't want to allow flavouring in the vape pens, it's a lot harder to crack down on those products once the industry is already in place, and the lobbyists are powerful.

One approach here would be to take it very slowly and maybe not necessarily allow some of these products. Yes, there might be

demand for them on the black market, but this is the trade-off that I was talking about in that if your only goal is to reduce the size of the illicit market, you wouldn't have many regulations. You'd want to have the price go as low as possible to drive out all the producers. However, there are some potential public health consequences associated with that in terms of increasing cannabis consumption and also the potential for an increase in cannabis-use disorder. That's the tension there.

For example, if you do limit products, yes, there might still be demand for that in the illicit market, but at least you won't see it in stores or advertised. It's a trade-off. Much of this comes down to people's values and preferences for risk and what their priorities are. If your priority is public health, you'd want to take it very slowly.

With respect to a cookie-cutter approach and doing what Colorado did, I would step back and look at what other jurisdictions are doing as well. Colorado had more of a wait-and-see approach, and they don't necessarily allow as many products as are allowed in Washington state. In fact, there is also variation in terms of the amount of THC that can be allowed in a single serving. There are a couple of different states where the limit is at 10 milligrams, and in two other states, the limit is at five milligrams. I don't know if much research has looked at that.

Therefore, I would not necessarily just take what Colorado has done and apply it in Canada. I would look at what has been happening in the other states as well, and take a very slow approach. If you're going to allow for-profit companies to get involved, it's going to be a lot harder to make changes down the line, so take it slowly.

• (1945)

Mr. Ron McKinnon: Thank you.

Mr. Tousaw, I want to drill down a little more on what Dr. Eyofofson said about black market activity. I represent the Lower Mainland riding of Coquitlam—Port Coquitlam. There is a great deal of gang-related violence in the Lower Mainland and there is a public perception that it's related to the illicit pot market. Would you say that's an incorrect perception? If so, what do you think is driving that activity?

Mr. Kirk Tousaw: I think it is an incorrect perception and I think the empirical evidence, particularly what I think Professor Boyd shared with the committee, demonstrates that about 95% of people involved in the cannabis trade are not involved in organized crime as that term is commonly understood by Canadians. Undoubtedly, there's too much gang violence. There's too much fighting over the street corners, but by and large, that's not about cannabis. It's about other substances.

The problem, of course, is that we continue to take a prohibition-based paradigm to the use of substances or certain substances by Canadians. The real solution to gang violence is to end drug prohibition entirely and to take a more focused public health approach to drugs generally. I do want to say a little about public health though.

Public health isn't just about the health consequences or benefits of using a particular substance. Public health also includes considerations of undue and unnecessary criminalization of people, use of the courts, use of the legal regime, misuse of police resources, distrust between the police and the police, and all of those things are amplified by taking some sort of restrictive approach to people accessing relatively safe products like cannabis. I know we can say over and over again there's not a lot of research. It's the most heavily researched illicit substance in the history of humanity. People have been using it for millennia. There are not a lot of significant negative health outcomes associated with the use of cannabis. People have been smoking hash for thousands of years, which is high-potency cannabis.

I think we need to be a little cautious about making claims about perceived, possible future harms. The history of humanity demonstrates otherwise.

Mr. Ron McKinnon: Okay. Thank you.

The Chair: Mr. McKinnon, thank you very much. The time's up.

Mr. Davies.

Mr. Don Davies: Thank you.

I only have about five minutes, so I'm just going to make a brief response to Mr. Rolles and Mr. Kilmer on your comments on edibles, because I find it quite astonishing. You each seem to argue that it's not essential or even desirable to legalize edibles or other products because of—here's what interchangeably you said—the difficulty, the complexity, of titrating and dosing, and in other cases because we don't understand the public health impacts.

You're content to leave that to the black market where there's absolutely no regulation whatsoever. That strikes me, with the greatest of respect, as absurd. We're going to leave these products to the titration and dosing of people operating in the black market, because we know we've heard evidence that 30% to 70% of the consumers consuming cannabis are using these products.

It strikes me if you're really concerned about public health, you would absolutely want to bring those products within the legal regulated market. You're quite right, Colorado legalized edibles and other products and they had an initial script outlay and then they learned the lessons and came back with regulations on single servings, childproof containers, stamped products, no products marketed to children, known dosages, even concentrations. That's what Colorado does now. You seem to be arguing, "No, let's not do that. Let's leave that to the black market where none of those things can happen."

The other point I would make is about leaving it to baking at home. With baking at home, you have absolutely no ability to control dosage or concentration. I just want to make that statement.

Mr. Tousaw, I want to turn to you. Do you have any experience with Canadians being denied entry to the U.S. simply by admitting that they used cannabis?

● (1950)

Mr. Kirk Tousaw: I don't have any direct experience. I have some anecdotal experience with that. Generally speaking, it's hit or miss. I have clients who have convictions for trafficking offences of

cannabis who have no problem going to the United States. I have people who have merely been charged but not convicted with cannabis offences who are denied at the border. It's really left up to the whim of the individual border guard.

Unfortunately, it's a thorny problem. There's not necessarily a legal solution to it. It involves political change in the United States and it involves Canada perhaps taking a stand on behalf of its citizens to say to the United States, "Look, we're your biggest trading partner. We're your most important ally. We share a long border. Stop banning our citizens from entering your country for negligible reasons."

Mr. Don Davies: Mr. Hoffman, I have a quick question to you. I don't really understand the government's motivation on these treaties, because, clearly, we're going to be in contravention of our treaties. We missed the deadline for withdrawing from the treaties, so we haven't withdrawn in recognition of our new reality nor do we have an explanation for why we're staying in.

Do you think this is because the government may think that this will jeopardize their attempt to get a seat on the UN Security Council?

Dr. Steven Hoffman: That could definitely be the case. I don't know what the government is thinking on this matter, but I think it could equally.... Violating a treaty could also jeopardize a seat on the UN Security Council.

In that respect, I don't think we'd go with that—

Mr. Don Davies: Either way we have a problem.

Dr. Steven Hoffman: I think at least in one way we can say that we're not violating international law—which is, I definitely want to emphasize, a serious thing. Yes, these laws are not perfect. In fact, as I stated, they're rather mean. Yes, we should ideally seek to renegotiate them to make them better.

Just being in non-compliance with them is not a good way forward. You're never going to hear a lawyer tell you that you can just break the law—

Mr. Don Davies: With impunity.

Dr. Steven Hoffman: That's right.

Mr. Don Davies: Mr. Tousaw, just quickly, what about the fact that the federal government is still prosecuting people today? Do you have any advice to the government on what you'd like them to do?

Mr. Kirk Tousaw: It's a travesty. There were 26,000 Canadians saddled with criminal records from simple possession of marijuana last year while we were moving toward legalizing this product. Their lives are irrevocably harmed by this law.

I want to underscore what I said earlier, that Canada has been in technical non-compliance with the drug treaties since at least 2005, when it allowed private companies to begin selling medical cannabis to Canadians without the government collecting and redistributing all of that cannabis. We've been violating these treaties for the better part of a decade. There have been no negative repercussions whatsoever.

The Chair: Thank you very much.

That's it, unless anybody wants to have another panel. Is there a desire to have another panel? I don't think there is.

I want to thank our presenters very much for their contribution to our study here. I'd like to thank especially Mr. Rolles, who was up all

night. You were all of great help to us. You helped us understand a lot of different perspectives. Thank you very much for participating.

With that, I will end meeting 67. We are adjourned.

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