

**CHILD RIGHTS IMPACT
ASSESSMENT OF BILL C-45, AN
ACT RESPECTING CANNABIS AND
TO AMEND THE CONTROLLED
DRUGS AND SUBSTANCES ACT,
THE CRIMINAL CODE AND OTHER
ACTS**

**Presentation to the Legislature Select
Committee on Cannabis by the
Office of the Child and Youth Advocate
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EXECUTIVE SUMMARY

1. Unless there are amendments to this proposed legislation, it will be an offence for a young person to possess more than 5 grams of cannabis, while for adults it will be an offence only over 30 grams. This differential treatment disproportionately criminalizes young persons based on their age.

Recommendation: The provincial government should request of the federal government that the Bill be amended to remove this status offence.

2. Children and youths face increased susceptibility to physical and mental health impairments due to their stage development.

Recommendation: The provincial government should develop a comprehensive youth strategy prior to legalization, and should request of the federal government to do the same, coordinating with all jurisdictions across the country. This strategy should be evidence-based, with a focus on informing youth about the health and developmental risks of cannabis.

3. The provincial government has an opportunity to ensure that revenues from the sale of cannabis be targeted toward better health and overall development outcomes for children and youth.

Recommendation: The provincial government should craft regulations to identify a *specific* percentage of taxes collected from the sale of cannabis products to support youth-oriented education, addictions treatment, research, and data monitoring. The provincial government should request of the federal government that it does the same.

4. The bill leaves some aspects of the regulation of cannabis sales to the provinces.

Recommendation: The provincial government should ensure the following protections:

- A set perimeter to be established for cannabis sales outlets to ensure that no cannabis sales take place within one kilometer of a school, playground or park.
- A prohibition against minors entering stores in which cannabis is sold.
- A prohibition against the sale of cannabis in retail outlets that sell alcohol;
- Packaging requirements to ensure inclusion of information on potency and potential harms as well as a prohibition on child-friendly packaging;

- A restriction on the sale of cannabis in edible forms that could be more attractive to children and youths, and could be nearly impossible to control consumption of in schools;
- A restriction on sales other than through outlets operated by provincial or territorial governments;
- A prohibition of public smoking of cannabis due to second-hand smoke health risks;
- A prohibition of the smoking of cannabis in homes or vehicles where children are present.

5. Bill C-45 does not fully recognize the harms of cannabis on the developing brain.

Recommendation: The provincial government should at a minimum set the legal age of consumption at 21, and there should be restrictions on the allowable potency and quantity of cannabis permitted for purchase by those under age 25. The provincial government should also urge the federal government to set potency limits to which provinces and territories must conform. This restriction should be stipulated in the Bill and then the legal potency limits should be enshrined in federal regulations.

6. Bill C-45 has not undergone rigorous analysis to ensure that it conforms to Canada's legal obligations under the UN Convention on the Rights of the Child and other core international law instruments that have been ratified by Canada.

Recommendation: The provincial government should request of the federal government that a Child Rights Impact Assessment be undertaken to ensure conformity with the UNCRC. A key aspect of this analysis should be widespread consultation with children and youth, pursuant to Article 12 of the UNCRC.

THE CHILD AND YOUTH ADVOCATE

The Child and Youth Advocate is legislatively mandated to protect and promote the rights of all those under the age of 19 in New Brunswick.

In furtherance of this mandate, our office attempts to ensure that the views of children and youth are heard and given due consideration in all matters that affect them. We insist that children and youth have access to services to which they are entitled. We provide advice and recommendations to government and communities regarding the effectiveness of existing policies, programs and practices that affect children and youth. And where insufficient policies, programs and practices exist, we advocate for their creation.

Our office is, in the parlance of the international human rights community, an Independent Human Rights Institution (IHRI). As such, the office of the Child and Youth Advocate has been created with legislated powers to ensure an independent and impartial focus on children's fundamental rights throughout the province. The UN Convention on the Rights of the Child serves as a foundation for this human rights advocacy.

CHILD RIGHTS ANALYSIS OF BILL C-45

This following analysis takes as its fundamental starting point the rights of those under the age of 18 as reflected in the UN *Convention on the Rights of the Child (Convention)*. This is an international human rights treaty that Canada has ratified, and every jurisdiction in the country has the legal obligation of implementing it. The rights in the *Convention* reflect the basic standards that have to be met for children and youth to develop with dignity and a sense of self-worth.

Canada ratified the UN *Convention on the Rights of the Child* after the federal government consulted with provinces and territories. Between signing the *Convention* in May 1990 and ratifying it in December 1991, the federal government ensured that each province and territory agreed that its laws, policies and practices would comply with the *Convention*.¹ Provincial and federal (including Constitutional) law is to be interpreted and applied in light of the *Convention on the Rights of the Child*.²

¹ See, for explanation: Final Report of the Standing Committee on Human Rights, *Children; The Silenced Citizens, Effective Implementation of Canada's Obligations with Respect to the Rights of Children*, April 2007.

² See, for example: *Baker v. Canada (Ministry of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

ISSUES

ISSUE 1

One of the Bill's stated purposes is to "reduce the burden on the criminal justice system in relation to cannabis." Unless there are amendments to this proposed legislation, it will be an offence under s. 8(1)(c) for a young person to possess more than 5 grams, while for adults it will be an offence only over 30 grams. This creates a "status offence" for youth. The rate of youth accused of cannabis possession accounted for 79% of youth drug crime in 2015³ and this section of the Bill does not reflect an effective means of addressing over-criminalization.

This section of Bill C-45 actually criminalizes youth, and this does nothing to reduce the burden on the criminal justice system in relation to cannabis, and nor does it do anything to "protect the health of young persons" – quite the opposite.

Some youth (and younger children) drink alcohol or use drugs due to peer pressure or experimentation. Others do so as a means of coping with difficulties or trauma in their lives. These difficulties may be the result of family, school or social situations. Some youths use drugs and drink to address depression, anxiety, abuse or other hardships. A public health approach to substance use treats it as a health issue – not a criminal one.

These criminal sanctions for youth:

- Do not reflect a balanced approach to the principle that the best interests of the child shall be a primary consideration in all legislative actions, as required by Article 3 of the UNCRC;
- May potentially have a disproportionate negative impact on youths with mental disabilities or from trauma-backgrounds, thereby discriminating against certain groups of children, in contravention of Article 2 of the UNCRC;
- Do not accord with the principle that the arrest, detention or imprisonment of a child shall be used only as a measure of last resort, per Article 37 of the UNCRC

These sanctions furthermore do not accord with the purposes and principles of Canada's *Youth Criminal Justice Act*. The more severe penalty for a young person compared to an adult also raises a Charter of Rights and Freedoms equality issue under section 15.

Recommendation: The provincial government should request of the federal government that the Bill be amended to remove this status offence.

³ Statistics Canada, <http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14642-eng.htm>

ISSUE 2

Cannabis is associated with increased risk of problems with cognitive and psychomotor functioning, respiratory problems, dependence, and mental health problems. Children and youths face increased susceptibility to such harms due to their stage of physical and intellectual development. Legalization of cannabis without a comprehensive plan in place to address and mitigate these harms is a violation of the child's right to:

- The development of the child to the maximum extent possible (Article 6 of the UNCRC);
- The highest attainable standard of health (Article 24 of the UNCRC);
- Protection from the illicit use of narcotic drugs.

Recommendation: The provincial government should develop a comprehensive youth strategy prior to legalization, and should request of the federal government to do the same, coordinating with all jurisdictions across the country. This strategy should be evidence-based, with a focus on informing youth about the health and developmental risks of cannabis.

ISSUE 3

The social determinants of health are recognized universally as primary drivers of child wellbeing. The social determinants of health are the conditions people live in. They include factors such as early childhood development, education, social services, health services, housing quality, family income, food insecurity, ethnicity, disability, social exclusion and gender. Addressing the social determinants of health and promoting healthy lifestyles are essential for the physical and mental well-being of New Brunswick's children. This means that the right to the highest attainable standard of health for children is dependent upon the implementation of all of their rights in a holistic manner. Public policy in these areas can have a profound effect on the health foundations of our young children.

The provincial government has an opportunity to ensure that revenues from the sale of cannabis be targeted toward better health and overall development outcomes for children and youth. The federal government also has this opportunity, although at present Bill C-45 does not earmark specific youth-focused uses for the federal taxes that will be collected from the sale of cannabis products.

Recommendation: The provincial government should craft regulations to identify a *specific* percentage of taxes collected from the sale of cannabis products to support youth-oriented education, addictions treatment, research, and data monitoring. The provincial government should request of the federal government that it does the same.

ISSUE 4

The bill leaves some aspects of the regulation of cannabis sales to the provinces. This creates an opportunity for New Brunswick to lead the country in terms of child rights adherence, but it also poses the risk of creating inconsistent regulation across Canada. New Brunswick can implement strong rights-respecting protections and can also urge the federal government to do the same.

Recommendation: The provincial government should ensure the following protections:

- A set perimeter to be established for cannabis sales outlets to ensure that no cannabis sales take place within one kilometer of a school, playground or park.
- A prohibition against minors entering stores in which cannabis is sold.
- A prohibition against the sale of cannabis in retail outlets that sell alcohol;
- Packaging requirements to ensure inclusion of information on potency and potential harms as well as a prohibition on child-friendly packaging;
- A restriction on the sale of cannabis in edible forms that could be more attractive to children and youths, and could be nearly impossible to control consumption of in schools;
- A restriction on sales other than through outlets operated by provincial or territorial governments;
- A prohibition of public smoking of cannabis due to second-hand smoke health risks;
- A prohibition of the smoking of cannabis in homes or vehicles where children are present.

ISSUE 5

Bill C-45 does not fully recognize the harms of cannabis on the developing brain. Prohibiting cannabis use until the mid-20s would protect adolescents during that critical period of brain development. Restrictions should be in place to more closely adhere to what neuroscience evidence has shown in relation to the age at which the pre-frontal cortex has generally finished development.

Recommendation: The provincial government should at a minimum set the legal age of consumption at 21, and there should be restrictions on the allowable potency and quantity of cannabis permitted for purchase by those under age 25. The provincial government should also urge the federal government to set potency limits to which provinces and territories must conform. This restriction should be stipulated in the Bill and then the legal potency limits should be enshrined in federal regulations.

ISSUE 6

Bill C-45 has not undergone rigorous analysis to ensure that it conforms to Canada's legal obligations under the UN Convention on the Rights of the Child and other core international law instruments that have been ratified by Canada.

New Brunswick has an obligation under the *Convention on the Rights of the Child* to implement these rights by undertaking all appropriate measures for its fulfillment. This fulfillment must be to the maximum extent of available resources, as per Article 4 of the *Convention*. This means that in respecting and promoting the rights of children, government must consider all potential means of improvement, including implementation of laws, policies and practices. These obligations on government also extend to how we regulate society as a whole. Government has a responsibility to ensure that civil society (including both the not-for-profit sector and the business sector) are regulated in order to protect children and youth, and ensure that their fundamental rights are respected.

Recommendation: The provincial government should request of the federal government that a Child Rights Impact Assessment be undertaken to ensure conformity with the UNCRC. A key aspect of this analysis should be widespread consultation with children and youth, pursuant to Article 12 of the UNCRC.

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