



TOUSAW LAW CORPORATION

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To the Cannabis Legalization and Regulation Secretariat:

Thank you for considering this submission. This is an historic moment in the development of cannabis policy and the growth of the cannabis industry in British Columbia. I write this as my own submission, and not on behalf of any individual clients. That said, the suggestions and thoughts in this document are the product of nearly 30 years of advocacy for law reform and 20 years of legal practice, the last 12 spent in this Province working exclusively within the cannabis industry.

My practice began almost exclusively in the area of criminal law. Increasingly, and in particular over the past 3 to 5 years, my experience is that arrests and prosecutions for cannabis-related offences have decreased dramatically. This is a welcome trend and one that, I hope, continues as we begin to implement a model of legal production, sale and possession of cannabis.

This Province has a very rich history in leadership on cannabis issues, both within and outside government, and the coming law reform presents us with an opportunity to continue that leadership role and to be an example of best practices in transitioning from a mostly illicit economy to a licit one.

This transition also presents many challenges. Myths that have been propagated for so long that they have been internalized are obstacles to implementation of sensible policies. The vitality of these myths creates political considerations that can undermine good decision making. I urge British Columbia to reject policy making based on fear and, instead, to move forward with an understanding of, and respect for, the history of cannabis in this Province and the vitality and energy of the existing, though illicit, industry.

Cannabis consumers, farmers and distributors are people

This concept may seem self-evident. Unfortunately, my experience dealing with the stigma around cannabis consumption has taught me that many people consider cannabis consumers to be the “other” or somehow deviant. This false conception manifests itself in many ways. I encounter it regularly in municipal licensing situations, principally thus far in the City of Vancouver process including more than two dozen appearances before the Vancouver Board of Variance. A constant theme of those hearings is members of the public opposing dispensaries in their neighbourhoods out of fear of increased crime and social disorder.

Nothing could be, empirically, further from the truth. Research from other jurisdictions demonstrates that dispensary access reduces crime, reduces overdose death, increases property values and contributes to the revitalization of local communities. Cannabis consumers come from all walks of life. We are your neighbours, employees/employers, friends and family. The use of cannabis is normal, not deviant. Choosing to use cannabis (particularly instead of much more dangerous substances like alcohol) is rational and should be encouraged, not marginalized. Recognizing the humanity and normality of cannabis consumers means accepting that we deserve dignified access in at least the same manner and with the same ease that others access alcohol. It also means crafting policies that do not discriminate against people on the basis of prior unlawful involvement with cannabis.

The same extends to those who currently grow cannabis, sell cannabis or make cannabis derivative products. I've spoken to hundreds of people in the cannabis industry in this Province. The vast majority are passionate about what they do and excited to grow or make or sell great products. Their passion is no different from the passion that a craft brewer, master vintner or great chef exhibits and it is long past time that we stopped treating them as criminals.

Legalization is not creating a new industry

As Canada has grappled with legalizing cannabis and debated how best to achieve our collective goals, the discussion has often taken place in a vacuum. There is an underlying premise, unstated and incorrect, that legalization is equivalent to the creation of a new cannabis industry.

But in British Columbia, perhaps more than any other place in Canada, it is critical to understand that the existing illicit cannabis economy is massive, vibrant, entrepreneurial and predominately well-intentioned. It is populated not by stereotypical organized criminals and gangs but, rather, by ordinary people from all walks of life. It has been the lifeblood of many small communities in this Province, particularly in times of economic struggle and has contributed as much, or more, to the economic health of British Columbia than many of our major industries. More people work in the illicit cannabis trade in this Province than anywhere else in Canada. We are the Canadian birthplace of dispensaries and have a well-earned reputation as the source of some of the highest quality cannabis grown anywhere in the world.

What this means at a practical level is that creating a "new" industry while failing to assimilate and transition the existing industry will lead, inevitably, to competition between the two. And the illicit industry has a huge head start, more resources, more experience, an existing dedicated base of consumers and a wider variety of products and choices than will be available (at least initially) in the licit marketplace. Unless British Columbia is prepared to return to a time of increased criminal enforcement and new civil battles, clogging already overburdened courts with cannabis offences and civil claims, a competition between licit and illicit

industries is likely to prove to be expensive and ultimately as much a failure as our current prohibition model is. Moreover, it is unnecessary.

Instead, I urge British Columbia to recognize the vitality and entrepreneurial spirit of the existing market participants and to harness that energy cooperatively rather than attempting to compete against it. This means being willing to accept a time of transition, in which both sides of the legal dividing line exist but during which we direct our energies into finding the best way to bring the current actors out of the shadows and into the light.

Privately owned dispensaries must be part of the future

There are currently in excess of 300 privately owned dispensaries operating in British Columbia. Since the first two dispensaries opened (in Vancouver and Victoria) in the mid-1990s, these organizations have provided dignified reasonable access to cannabis to medical consumers in spite of police raids, prosecutions and now a combination of municipal licensing and civil actions seeking to close them. Despite these efforts to alternatively support and close dispensaries, determined largely by local decision-making, the number of and sophistication of dispensaries has gradually increased.

Contrary to prevailing mythology, many dispensaries test their products and have established quality control procedures that, to date, appear to be working quite well. Dispensaries have varying levels of rigour in their intake procedures and recently some have moved away from the medical-only model to an adult-only customer base. What is clear, however, is that residents of British Columbia enjoy the ease of access, selection of products and customer service provided by storefront dispensaries. Also clear is that private dispensaries will not simply disappear with the advent of recreational cannabis legalization. This is particularly true because the first stage of legalization will feature a very limited range of lawful products and it appears unlikely that existing lawful suppliers will be able to adequately supply the market demand.

Other provinces have announced their intention to respond to this challenge by instituting public monopolies over retail distribution of cannabis and doubling down on the proven failure of enforcement heavy approaches to the existing industry. Ontario, for example, is taking this path. That is a mistake and is likely to produce significant unintended negative consequences and to work contrary to the goal of gradually eliminating the illicit market for cannabis.

In terms of concrete suggestions, in my view the Province should implement a regulatory model that permits privately owned retail storefronts. This model will produce significant benefits including:

- Encouraging the growth of small community-based businesses;
- Harnessing the entrepreneurial spirit already existing in the dispensary industry;

- Reducing the burden on taxpayers that would otherwise exist if law enforcement criminal justice actions against dispensaries become more common;
- Reducing the burden on taxpayers from expensive civil litigation attempting to shut down private dispensaries;
- Hastening the transition away from the illicit market to a fully-licit marketplace;
- Providing British Columbians with the most options for their consumer decisions.

Further, strong consideration should be given to also allowing local municipalities to continue to use their power over zoning and business licensing to regulate illicit dispensaries during a transitional period and until such time as the full range of products are made lawfully available to British Columbians.

Consumers should be provided choice

Retail cannabis sales in British Columbia already take place in storefront dispensaries, by home delivery services and through e-commerce. These options will remain available outside the regulated market for the foreseeable future. In order to maximize consumer transition to licit sources, all existing illicit supply options should be part of the legal marketplace. This means permitting direct-to-consumer sales via mail, by personal delivery and on-site sales and on the sites of production in a manner similar to vineyards.

E-commerce provides easy and discrete consumer access. Home delivery provides those benefits coupled with allowing the consumer to inspect and discuss products prior to purchasing. Retail storefronts give consumers a familiar and comfortable purchasing experience. And permitting a vineyard-like experience connects consumers with farmers in a way that is simply not possible today, fostering greater understanding of the way the plant is grown.

Consumption sites must be an option

Part of providing British Columbians with choice, respect and dignity is recognizing that people enjoy consuming cannabis socially. It also means understanding that not everyone has the option of consuming in the places that they reside. Cannabis consumption lounges allow those who wish to consume cannabis socially a place to do so. These lounges have operated successfully in Vancouver and other jurisdictions for many years and should be permitted to continue doing so. Social consumption sites should be licensed to sell cannabis directly to consumers for on-site consumption and take-away, much the same way that alcohol bars are currently permitted.

Home production is safe and should be encouraged

A persistent myth around cannabis is that it is inherently dangerous to grow. It is not. It is a plant, like many others, and requires no special training or dangerous

practices to cultivate successfully. In particular, outdoor production requires nothing more than plants, sun, water and good soil. The *Allard v Canada* litigation, involving extensive fact and expert evidence on home production, should have answered any lingering doubts about the safety of producing cannabis, even indoors. Unfortunately, fear-based rhetoric on this issue continues to dominate the discussion.

British Columbia is home to the more legal production sites than any other province. It has a long history of being the place where the best cannabis in Canada, and perhaps the world, is grown. While exceptions exist, the vast majority of this production occurs safely and without damage to people or property. Most of the harms associated with indoor production is a product of its current illegal status and legalizing personal production for recreational purposes will eliminate these harms and allow many British Columbians to be self-reliant, further hastening the transition away from the illicit market. Outdoor production under the sun rather than high powered lights should not only be permitted, but encouraged as an environmentally responsible option.

The federal government should be urged to reduce red tape

It is currently far too onerous, expensive and time-consuming to obtain federal approval to grow cannabis commercially. This must change. Regulatory controls must be commensurate with risk, which is low, and not prevent small craft producers from participating. British Columbia should ask the federal government to allow it to regulate intra-provincial production and sale in a manner similar to wine productions.

Thank you for your consideration.

Yours very truly,



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