



# LEGISLATIVE SUMMARY



## **Bill C-45:**

# **An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts**

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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*Legislative Summary of Bill C-45*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL C-45: AN ACT RESPECTING CANNABIS AND TO AMEND THE CONTROLLED DRUGS AND SUBSTANCES ACT, THE CRIMINAL CODE AND OTHER ACTS

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## 1 BACKGROUND

Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (short title: Cannabis Act),<sup>1</sup> was introduced in the House of Commons by the Minister of Justice on 13 April 2017. Among other things, the bill:

- permits some cannabis-related activities that had previously been prohibited (e.g., possessing less than 30 g of dried cannabis or the equivalent in public; cultivating up to four cannabis plants per residence);
- prohibits some cannabis-related activities (e.g., sale of cannabis or cannabis accessories to a young person; using or involving a young person to commit certain cannabis-related offences);
- lists prohibited activities in relation to cannabis for which a ticket can be issued (as opposed to prosecution for an indictable or a summary conviction offence);
- provides a framework in relation to permitted and prohibited promotion and sponsorship of cannabis and cannabis accessories; and
- establishes a statutory basis on which the designated minister can issue licences and permits for authorized cannabis-related activities.

### 1.1 OVERVIEW OF CANNABIS AND ITS HEALTH EFFECTS

Cannabis is the common name for a hemp plant belonging to the genus *Cannabis* that grows in temperate and tropical climates. The leaves and flowering tops of cannabis plants contain almost 500 distinct compounds, the principal ones being delta-9-tetrahydrocannabinol ( $\Delta$  9-THC or THC), cannabidiol and cannabinol.<sup>2</sup> Of these compounds, THC is responsible for many, if not most, of the euphoric and addictive effects of cannabis.

According to the World Health Organization, cannabis use can have both short- and long-term effects.<sup>3</sup> In the short term, cannabis use can impair cognitive functioning and motor coordination, which can interfere with driving and increase the risk for injuries more generally. A minority of first-time users may experience anxiety and psychotic symptoms. Acute exposure may also lead to heart attack and stroke in some at-risk individuals.<sup>4</sup>

Long-term use can result in cannabis abuse or dependence in approximately 9% of regular users.<sup>5</sup> However, this risk increases to 16% among individuals who begin using cannabis in adolescence.<sup>6</sup> With respect to cognitive function, individuals who initiate cannabis use in adolescence may also experience more lasting impairments to memory, concentration and other cognitive functions.<sup>7</sup> In addition, maternal use during pregnancy has been shown to affect the development of children's cognitive functioning, behaviour, substance abuse and mental health.<sup>8</sup>

Finally, long-term cannabis use may also play a role in the development of a broad range of other health conditions, such as mental illness, respiratory diseases, cancer and cardiovascular disease; however, there is limited or inconclusive evidence in these areas.<sup>9</sup>

## 1.2 PREVALENCE OF CANNABIS USE IN CANADA

According to the Canadian Tobacco, Alcohol and Drugs Survey, cannabis remains the most prevalently used illicit drug in Canada.<sup>10</sup> In 2015, the prevalence of past-year cannabis use among Canadians aged 15 years and older was 12% (or 3.6 million individuals). Of these users, 24% (or 831,000 individuals) indicated using cannabis for medical purposes. Use was more prevalent among youth aged 15 to 19 (at 21% or 426,000); and young adults aged 20 to 24 (at 30% or 715,000). The median age of initiation of use was 17 years.

## 1.3 CURRENT LEGAL CONTEXT

### 1.3.1 REGULATION OF CANNABIS UNDER THE *CONTROLLED DRUGS AND SUBSTANCES ACT*

The *Controlled Drugs and Substances Act* (CDSA)<sup>11</sup> is the federal drug control statute. It provides a legislative basis for the control of substances that can alter mental processes and may cause harm to the health of an individual or society when abused or diverted into the illicit market.<sup>12</sup> The Act prohibits many activities involving the controlled substances listed under the Act, including production, possession, distribution, import or export. Cannabis and its derivatives and preparations and similar synthetic preparations are currently listed in Schedule II of the CDSA, making their use illegal in Canada. The CDSA also fulfills Canada's obligations within the international drug control regime, which is based upon three United Nations (UN) treaties that collectively prohibit the cultivation, production and trade of cannabis, cocaine, heroin and psychoactive substances and their precursors.<sup>13</sup>

Some provinces, including Ontario, British Columbia and Quebec, have introduced programs or guidelines that allow certain minor criminal offences committed by adults, such as the possession of small amounts of cannabis, to be dealt with non-judicially<sup>14</sup> under certain conditions. For example, although possession of cannabis resin and cannabis are offences under section 4(1) of the CDSA, the offence of possession of 1 g of cannabis resin or 30 g of dried cannabis is to be dealt with non-judicially in Quebec.<sup>15</sup>

### 1.3.2 *ACCESS TO CANNABIS FOR MEDICAL PURPOSES REGULATIONS*

Section 56 of the CDSA grants the Minister of Health the power to exempt any person or class of persons or any substance from any or all of the provisions of the Act, if, in the opinion of the minister, access to the substance is necessary for medical or scientific purposes, or is otherwise in the public interest. Furthermore, section 55(1) of the CDSA allows for the development of regulations granting access to these substances for medical, scientific or industrial purposes, including their medical use when prescribed by a health practitioner.

Since 2001, through regulations made under section 55(1) of the CDSA, the Minister of Health has granted access to cannabis for medical purposes to individuals who have the support of their physician. Thus, an individual with medical documentation from his or her health care provider may register to obtain medical cannabis from a licensed producer, may register to cultivate marijuana for personal medical use or may designate an individual to cultivate marijuana on his or her behalf.<sup>16</sup> Under the regulations, an individual is allowed to possess a 30-day supply or 150 g of dried cannabis or cannabis oil for medical use, regardless of whether this amount is obtained through a licensed producer or personal cultivation.<sup>17</sup>

### 1.3.3 PROVISIONS OF THE *CRIMINAL CODE* THAT RELATE TO CANNABIS

While the CDSA is the main statute that controls the use of cannabis in Canada, there are some provisions in the *Criminal Code*<sup>18</sup> that also relate to cannabis. In particular, under section 253(1)(a) of the Code drug-impaired driving is an offence, and under section 462.2 of the Code the import, export, manufacturing, or promotion and sale of instruments or literature that facilitate or promote the production or consumption of drugs controlled under the CDSA is prohibited.

## 1.4 HISTORY OF PARLIAMENTARY ACTION ON CANNABIS

Though non-medicinal use of cannabis has been illegal in Canada since 1923, its legal status has elicited parliamentary debate over the years.

In 2002, the legal status of cannabis was the subject of two parliamentary committee reports. In September 2002, the Senate Special Committee on Illegal Drugs recommended the legalization of cannabis, arguing that a public health approach should be taken towards illicit drug use,<sup>19</sup> and in December 2002, the House of Commons Special Committee on the Non-Medical Use of Drugs recommended that the use of cannabis remain illegal, but that “the Minister of Health establish a comprehensive strategy for decriminalizing the possession and cultivation of not more than thirty grams of cannabis for personal use.”<sup>20</sup> The House of Commons committee conclusions followed the committee’s study of Private Member’s Bill C-344, An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act (marihuana).<sup>21</sup> Bill C-344 proposed making possession and trafficking in small amounts of cannabis a “ticketable” rather than a criminal offence, as part of a broader study looking at the factors underlying the non-medical use of drugs in Canada.

In response to these committee reports, in May 2003, the federal government introduced Bill C-38, An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act.<sup>22</sup> Bill C-38 proposed legislative reforms that would decriminalize possession of small amounts of cannabis, while imposing tough penalties on cannabis grow operators. Though Bill C-38 died on the *Order Paper* with the prorogation of Parliament in November 2003, it was reintroduced in February 2004 as Bill C-10<sup>23</sup> and included amendments that would allow for cultivation of up to three plants for personal use.<sup>24</sup> However, Bill C-10 also died on the *Order Paper* with the dissolution of Parliament in May 2004.

## 1.5 CURRENT REFORM EFFORTS

In April 2016, the federal government announced its intention to introduce, by the spring of 2017, legislation that would legalize and regulate access to marijuana.<sup>25</sup> On 30 June 2016, the government established the Task Force on Cannabis Legalization and Regulation to provide it with guidance on the design of the new legislative and regulatory system. In order to fulfill its mandate, the task force looked at other jurisdictions, including Uruguay, Colorado and the state of Washington, that had legalized cannabis for non-medical purposes, and, according to its report, released on 30 November 2016, “drew lessons from the way governments in Canada have regulated tobacco and alcohol, and cannabis for medical purposes.”<sup>26</sup>

In the report, the task force recommended, among other things:

- setting at 18 the national minimum age for the purchase of cannabis and limiting personal possession to 30 g for non-medical use;
- maintaining existing criminal offences for illicit production, trafficking and possession of cannabis with limited criminal prosecution for less serious offences;
- regulating the production of cannabis and its derivatives at the federal level, drawing on the current cannabis-for-medical-purposes regime;
- establishing restrictions on advertising, promotion and packaging of cannabis products similar to restrictions under the *Tobacco Act*;<sup>27</sup>
- allowing for personal cultivation of cannabis with a limit of up to four plants per residence;
- maintaining a separate medical access framework to support patients; and
- regulating the wholesale distribution of cannabis at the provincial and territorial level.

Bill C-45 draws on the recommendations made by the task force<sup>28</sup> “to provide legal access to cannabis and to control and regulate its production, distribution and sale.”<sup>29</sup>

## 2 DESCRIPTION AND ANALYSIS

Bill C-45 contains 15 parts and six schedules.

Rather than examining each provision, the description and analysis that follow focus on the substantive changes resulting from the bill.

### 2.1 INTERPRETATION, APPLICATION AND PURPOSE (CLAUSES 2 TO 7)

#### 2.1.1 INTERPRETATION

Clause 2 of Bill C-45 defines numerous terms used in the bill, including the following:

- brand element:
  - includes a brand name, trademark, tradename, distinguishing guise, logo, graphic arrangement, design or slogan that is reasonably associated with, or that evokes,



(a) cannabis, a cannabis accessory or a service related to cannabis; or

(b) a brand of any cannabis, cannabis accessory or service related to cannabis.

- brand-preference promotion:

promotion of cannabis by means of its brand characteristics, promotion of a cannabis accessory by means of its brand characteristics or promotion of a service related to cannabis by means of the brand characteristics of the service.

- cannabis: “a cannabis plant and anything referred to in Schedule 1 but does not include anything referred to in Schedule 2.”<sup>30</sup>

- cannabis accessory:

(a) a thing, including rolling papers or wraps, holders, pipes, water pipes, bongs and vaporizers, that is represented to be used in the consumption of cannabis or a thing that is represented to be used in the production of cannabis; or

(b) a thing that is deemed under subsection (3) to be represented to be used in the consumption or production of cannabis.

Section 2(3) of the bill specifies that for the purposes of defining the term “cannabis accessory”:

a thing that is commonly used in the consumption or production of cannabis is deemed to be represented to be used in the consumption or production of cannabis if the thing is sold at the same point of sale as cannabis.

- distribute: “includes administering, giving, transferring, transporting, sending, delivering, providing or otherwise making available in any manner, whether directly or indirectly, and offering to distribute.”
- illicit cannabis: “cannabis that is or was sold, produced or distributed by a person prohibited from doing so under this Act or any provincial Act or that was imported by a person prohibited from doing so under this Act.”
- informational promotion:

a promotion by which factual information is provided to the consumer about

(a) cannabis or its characteristics;

(b) a cannabis accessory or its characteristics;

(c) a service related to cannabis; or

(d) the availability or price of cannabis, a cannabis accessory or a service related to cannabis.

- organization: This term has the same meaning as that contained in section 2 of the *Criminal Code*, that is:

(a) a public body, body corporate, society, company, firm, partnership, trade union or municipality, or

- (b) an association of persons that
  - (i) is created for a common purpose,
  - (ii) has an operational structure, and
  - (iii) holds itself out to the public as an association of persons.
- produce (cannabis):
  - to obtain it by any method or process, including by
    - (a) manufacturing;
    - (b) synthesis;
    - (c) altering its chemical or physical properties by any means; or
    - (d) cultivating, propagating or harvesting it or any living thing from which it may be extracted or otherwise obtained.
- promote:
  - in respect of a thing or service, means to make, for the purpose of selling the thing or service, a representation – other than a representation on a package or label – about the thing or service by any means, whether directly or indirectly, that is likely to influence and shape attitudes, beliefs and behaviours about the thing or service.
- young person:
  - (a) for the purposes of sections 8 [possession], 9 [distribution] and 12 [production], an individual who is 12 years of age or older but under 18 years of age; and
  - (b) for the purposes of any other provision of this Act, an individual who is under 18 years of age.

### 2.1.2 APPLICATION

Clause 5 states that the *Youth Criminal Justice Act*<sup>31</sup> applies to contraventions of the Cannabis Act or the regulations.

### 2.1.3 PURPOSE

The purpose of the Cannabis Act “is to protect public health and public safety” (clause 7). In particular, its purpose is to protect the health of young persons by restricting their access to cannabis, deter illicit activities related to cannabis, reduce the burden on the criminal justice system and enhance public awareness of the health risks associated with cannabis use.

2.2 PART 1: PROHIBITIONS, OBLIGATIONS AND OFFENCES  
(CLAUSES 8 TO 50)

2.2.1 DIVISION 1: CRIMINAL ACTIVITIES  
(CLAUSES 8 TO 15)

Table 1 summarizes the offences and penalties established by Bill C-45 relating to illicit cannabis possession, distribution, selling, importing and exporting, production, possession for use in production or distribution, and use by young persons. All of the offences listed in Table 1 are hybrid offences, meaning that the Crown can choose to charge the offender with a summary conviction offence or an indictable offence.

Table 1 – Criminal Activities in Bill C-45: Offences and Penalties

Offence	Punishment	Punishment for Young Person	Punishment for Organization
Possession (Section 8)	Punishment	Punishment for Young Person	Punishment for Organization
Individual 18 years of age or older possessing the equivalent of more than 30 g of dried cannabis in public (clause 8(1)(a))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 5 years less a day</li> <li>– Summary conviction offence: Fine not exceeding \$5,000, or imprisonment not exceeding 6 months, or both</li> </ul>		
Individual 18 years of age or older possessing cannabis that he or she knows is illicit cannabis (clause 8(1)(b))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 5 years less a day</li> <li>– Summary conviction offence: Fine not exceeding \$5,000, or imprisonment not exceeding 6 months, or both</li> </ul>		
Young person (12–17 years of age) possessing the equivalent of more than 5 g of dried cannabis (clause 8(1)(c))		– Indictable offence or summary conviction offence: Youth sentence under the <i>Youth Criminal Justice Act</i> <sup>a</sup> (YCJA)	
Individual possessing one or more budding or flowering cannabis plants in a public place (clause 8(1)(d))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 5 years less a day</li> <li>– Summary conviction offence: Fine not exceeding \$5,000, or imprisonment not exceeding 6 months, or both</li> </ul>	– Indictable offence or summary conviction offence: Youth sentence under the YCJA	

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Offence	Punishment	Punishment for Young Person	Punishment for Organization
Individual possessing more than 4 cannabis plants that are not budding or flowering (clause 8(1)(e))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 5 years less a day</li> <li>– Summary conviction offence: Fine not exceeding \$5,000, or imprisonment not exceeding 6 months, or both</li> </ul>	<ul style="list-style-type: none"> <li>– Indictable offence or summary conviction offence: Youth sentence under the YCJA</li> </ul>	
Organization possessing cannabis (clause 8(1)(f))			<ul style="list-style-type: none"> <li>– Indictable offence: Fine at court's discretion</li> <li>– Summary conviction offence: Fine not exceeding \$100,000</li> </ul>
Distribution (Section 9)	Punishment	Punishment for Young Person	Punishment for Organization
Individual 18 years of age or older distributing cannabis (clause 9(1)(a)): <ul style="list-style-type: none"> <li>– if equivalent to more than 30 g (clause 9(1)(a)(i))</li> <li>– to an individual under 18 years of age (clause 9(1)(a)(ii)) (defence available if accused took reasonable steps to determine age: clause 9(3))</li> <li>– to an organization (clause 9(1)(a)(iii))</li> <li>– that the individual knows is illicit cannabis (clause 9(1)(a)(iv))</li> </ul>	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 14 years</li> <li>– Summary conviction: Offences other than distributing to an individual under 18 years of age – Fine not exceeding \$5,000, or imprisonment not exceeding 6 months, or both</li> <li>– Summary conviction offence: Distributing to an individual under 18 years of age – Fine not exceeding \$15,000, or imprisonment not exceeding 18 months, or both</li> </ul>		
Young person (12–17 years of age) distributing cannabis (clause 9(1)(b)): <ul style="list-style-type: none"> <li>– equivalent to more than 5 g</li> <li>– to an organization</li> </ul>		<ul style="list-style-type: none"> <li>– Indictable offence or summary conviction offence: Youth sentence under the YCJA</li> </ul>	
Individual distributing (clause 9(1)(c)): <ul style="list-style-type: none"> <li>– one or more budding or flowering cannabis plants</li> <li>– more than 4 cannabis plants that are not budding or flowering</li> </ul>	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 14 years</li> <li>– Summary conviction offence: Fine not exceeding \$5,000, or imprisonment not exceeding 6 months, or both</li> </ul>	<ul style="list-style-type: none"> <li>– Indictable offence or summary conviction offence: Youth sentence under the YCJA</li> </ul>	

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Offence	Punishment	Punishment for Young Person	Punishment for Organization
Organization distributing cannabis (clause 9(1)(d))			<ul style="list-style-type: none"> <li>– Indictable offence: Fine at court's discretion</li> <li>– Summary conviction offence: Fine not exceeding \$100,000</li> </ul>
Possessing cannabis for the purpose of distributing (clause 9(2))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 14 years</li> <li>– Summary conviction offence: Offences other than possessing for distribution to an individual under 18 years of age – Fine not exceeding \$5,000, or imprisonment not exceeding 6 months, or both</li> <li>– Summary conviction offence: Possessing for distribution to an individual under 18 years of age – Fine not exceeding \$15,000, or imprisonment not exceeding 18 months, or both</li> </ul>	<ul style="list-style-type: none"> <li>– Indictable offence or summary conviction offence: Youth sentence under the YCJA</li> </ul>	
Selling (Section 10)	Punishment	Punishment for Young Person	Punishment for Organization
<p>Selling cannabis to:</p> <ul style="list-style-type: none"> <li>– an individual 18 years of age or over (clause 10(1)(a))</li> <li>– an individual under 18 years of age (clause 10(1)(b)) (defence available if accused took reasonable steps to determine age: clause 10(3))</li> <li>– an organization (clause 10(1)(c))</li> </ul>	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 14 years</li> <li>– Summary conviction offence: Offences other than selling to an individual under 18 years of age – Fine not exceeding \$5,000, or imprisonment not exceeding 6 months, or both</li> <li>– Summary conviction offence: Selling to an individual under 18 years of age – Fine not exceeding \$15,000, or imprisonment not exceeding 18 months, or both</li> </ul>	<ul style="list-style-type: none"> <li>– Sentence under the YCJA</li> </ul>	<ul style="list-style-type: none"> <li>– Summary conviction offence: Fine not exceeding \$100,000</li> </ul>

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Offence	Punishment	Punishment for Young Person	Punishment for Organization
Possessing cannabis for the purpose of selling (clause 10(2))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 14 years</li> <li>– Summary conviction offence: Offences other than possessing for the purpose of selling to an individual under 18 years of age – Fine not exceeding \$5,000, or imprisonment not exceeding 6 months, or both</li> <li>– Summary conviction offence: Possessing for the purpose of selling to an individual under 18 years of age – Fine not exceeding \$15,000, or imprisonment not exceeding 18 months, or both</li> </ul>	<ul style="list-style-type: none"> <li>– Sentence under the YCJA</li> </ul>	<ul style="list-style-type: none"> <li>– Summary conviction offence: Fine not exceeding \$100,000</li> </ul>
Importing and Exporting (Section 11)	Punishment	Punishment for Young Person	Punishment for Organization
Importing or exporting cannabis (clause 11(1)); possessing for the purpose of exporting (clause 11(2))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 14 years</li> <li>– Summary conviction offence: Fine not exceeding \$5,000, imprisonment not exceeding 6 months, or both</li> </ul>	<ul style="list-style-type: none"> <li>– Sentence under the YCJA</li> </ul>	<ul style="list-style-type: none"> <li>– Summary conviction offence: Fine not exceeding \$100,000</li> </ul>
Production (Section 12)	Punishment	Punishment for Young Person	Punishment for Organization
Obtaining or offering to obtain cannabis by any method or process, or altering or offering to alter the chemical or physical properties of cannabis using an organic solvent (clause 12(1))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 14 years</li> <li>– Summary conviction offence: Fine not exceeding \$5,000, imprisonment not exceeding 6 months, or both</li> </ul>	<ul style="list-style-type: none"> <li>– Indictable offence or summary conviction offence: Youth sentence under YCJA</li> </ul>	<ul style="list-style-type: none"> <li>– Summary conviction offence: Fine not exceeding \$100,000</li> </ul>
Individual 18 years of age or older cultivating, propagating or harvesting, or offering to cultivate, propagate or harvest a cannabis plant from a seed or plant material he or she knows is illicit cannabis (clause 12(4)(a)) or more than 4 cannabis plants in his or her dwelling-house (clause 12(4)(b))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 14 years</li> <li>– Summary conviction offence: Fine not exceeding \$5,000, imprisonment not exceeding 6 months, or both</li> </ul>		

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Offence	Punishment	Punishment for Young Person	Punishment for Organization
Two or more individuals 18 years of age or older who share a dwelling-house cultivating, propagating or harvesting cannabis plants if it means that more than 4 plants will be cultivated, propagated or harvested at a time in the dwelling-house (clause 12(5))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 14 years</li> <li>– Summary conviction offence: Fine not exceeding \$5,000, imprisonment not exceeding 6 months, or both</li> </ul>		
Individual 18 years of age or older cultivating, propagating or harvesting in his or her dwelling-house a cannabis plant taller than 100 cm (clause 12(6)(a)); cultivating, propagating, harvesting a cannabis plant at a place other than the dwelling-house (or offering to do so) (clause 12(6)(b)); or cultivating, propagating or harvesting a living thing that is not a cannabis plant from which cannabis can be extracted or obtained (or offering to do so) (clause 12(6)(c))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 14 years</li> <li>– Summary conviction offence: Fine not exceeding \$5,000, imprisonment not exceeding 6 months, or both</li> </ul>		
Young person (12–17 years of age) or an organization cultivating, propagating or harvesting a cannabis plant of other living thing from which cannabis can be extracted or obtained (clause 12(7))		<ul style="list-style-type: none"> <li>– Indictable offence or summary conviction offence: Youth sentence under YCJA</li> </ul>	<ul style="list-style-type: none"> <li>– Summary conviction offence: Fine not exceeding \$100,000</li> </ul>
Possession, etc., for Use in Production or Distribution of Illicit Cannabis (Section 13)	Punishment	Punishment for Young Person	Punishment for Organization
Possessing, producing, selling, distributing or importing anything with intent to use it to produce, sell or distribute illicit cannabis (clause 13(1))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 7 years</li> <li>– Summary conviction offence: Fine not exceeding \$5,000, imprisonment not exceeding 6 months, or both</li> </ul>	<ul style="list-style-type: none"> <li>– Sentence under the YCJA</li> </ul>	<ul style="list-style-type: none"> <li>– Summary conviction offence: Fine not exceeding \$100,000</li> </ul>
Use of Young Person (Section 14)	Punishment	Punishment for Young Person	Punishment for Organization
Using or involving a young person in the commission of certain offences (clause 14(1))	<ul style="list-style-type: none"> <li>– Indictable offence: Imprisonment up to 14 years</li> </ul>		<ul style="list-style-type: none"> <li>– Summary conviction offence: Fine not exceeding \$100,000</li> </ul>

Offence	Punishment	Punishment for Young Person	Punishment for Organization
	– Summary conviction offence: Fine not exceeding \$15,000, imprisonment not exceeding 18 months, or both		

Note: a. [Youth Criminal Justice Act](#), S.C. 2002, c. 1.

Clause 15 establishes that the purpose of sentencing for these offences

is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

Aggravating factors to be considered in sentencing are set out in clause 15(2). These factors include such things as:

- selling cannabis in or near a public place usually frequented by young persons; and
- using or threatening to use a weapon or violence.

While there are no mandatory minimum sentences, the maximum sentence of 14 years' imprisonment means that a conditional sentence cannot be imposed (in accordance with section 742.1(c) of the *Criminal Code*). Sentencing can be delayed to allow the offender to participate in a drug or other treatment program.

## 2.2.2 DIVISION 2: OTHER PROHIBITIONS (CLAUSES 16 TO 39)

### 2.2.2.1 SUBDIVISION A: PROMOTION (CLAUSES 16 TO 24)

The provisions relating to the promotion of cannabis, cannabis accessories and services related to cannabis are similar to restrictions relating to the promotion of tobacco products under the *Tobacco Act* and – if provisions of Bill S-5, An Act to amend the Tobacco Act and the Non-Smokers' Health Act and to make consequential amendments to other Acts,<sup>32</sup> come into force – vaping products.

The restrictions relating to promotion do not apply to literary and other works (clause 16(a)) or to reports, commentaries and opinions (clause 16(b)), if no benefit for including references to cannabis is received, or to promotion directed at those authorized to produce, sell or distribute cannabis or cannabis accessories (clauses 16(c) and 16(d)).

With certain exceptions, cannabis, cannabis accessories and services related to cannabis cannot be promoted:



- by communicating price and distribution information (clause 17(1)(a));
- if there are reasonable grounds to believe that the promotion appeals to young persons (clause 17(1)(b));
- by testimonial or endorsement (clause 17(1)(c));
- by depicting a person, character or animal (real or fictional) (clause 17(1)(d)) or by presenting it “in a manner that associates it or the brand element with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring” (clause 17(1)(e)).<sup>33</sup>

Informational promotion is permitted in communications addressed to individuals 18 years of age or older who are identified by name (clause 17(2)(a)) and in places where young persons are not allowed (clause 17(2)(b)). Telecommunication can also be used for informational promotion if reasonable steps have been taken to ensure that it cannot be accessed by a young person (clause 17(2)(c)).

Brand elements can be displayed on a thing other than cannabis or a cannabis accessory unless the thing is associated with young persons, could be believed (on reasonable grounds) to appeal to young persons, or “is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring” (clause 17(6)).

Neither cannabis nor accessories can be promoted in a false, misleading or deceptive manner (clause 18).

Restrictions also exist with respect to sponsorship (clause 21), naming certain facilities (clause 22), giving out cannabis or providing it for consideration other than money (clause 24(1)(a)) and offering other inducements to purchase cannabis or accessories (clause 24(1)(b)).

#### 2.2.2.2 SUBDIVISION B: PACKAGING AND LABELLING (CLAUSES 25 TO 28)

Selling cannabis packaged and labelled contrary to the regulations is prohibited (clause 25). In addition, cannabis and accessories cannot be packaged or labelled in a way that appeals to young persons, using testimonials or endorsements, depicting a person, character or animal (real or fictional), in a “lifestyle advertising” manner, or in a false, misleading or deceptive manner (clauses 26 and 27).

#### 2.2.2.3 SUBDIVISION C: DISPLAY (CLAUSES 29 AND 30) AND SUBDIVISION D: SELLING AND DISTRIBUTING (CLAUSES 31 TO 37)

There are additional restrictions regarding the display, sale and distribution of cannabis. For example:

- persons authorized to sell cannabis and any cannabis accessory may not display it in a way that can be seen by a young person (clauses 29 and 30);

- cannabis or accessories that have “an appearance, shape or other sensory attribute or a function that there are reasonable grounds to believe could be appealing to young persons” cannot be sold (clause 31) (this prohibition is almost identical to one contained in Bill S-5 – mentioned above – in relation to vaping products);
- cannabis accessories cannot be sold to a young person (clause 32(1));
- certain classes of cannabis products cannot contain nicotine, caffeine or ethyl alcohol (clause 34); and
- cannabis and accessories cannot be sold from a self-service display (clause 36) or from a dispensing device (clause 37).

### 2.2.3 DIVISION 3: OBLIGATIONS (CLAUSES 40 TO 43)

Some of the obligations for producers, sellers and distributors include:

- complying with licence or permit conditions (clause 40);
- publicly disclosing information about cannabis (as required by the regulations) (clause 42); and
- reporting information about any promotion of cannabis, a cannabis accessory or a cannabis service to the minister (as required by the regulations) (clause 43).

The provisions about applying for licences and permits relating to cannabis are set out in Part 3 of Bill C-45.

### 2.2.4 DIVISION 4: MISCELLANEOUS (CLAUSES 44 TO 50)

Clause 44 lists the penalties to be imposed for contraventions of the Cannabis Act if no other punishment is provided by the Act and the offence is not a ticketable one under Part 2, as well as penalties for contravening regulations or certain orders.

The punishment for an indictable offence is:

- a maximum fine of \$5 million;
- a maximum term of imprisonment of three years; or
- both punishments.

The punishment for a first summary conviction offence is:

- a maximum fine of \$250,000;
- a maximum term of imprisonment of six months; or
- both punishments.

The punishment for subsequent summary conviction offences is:

- a maximum fine of \$500,000;
- a maximum term of imprisonment of 18 months; or
- both punishments.

### 2.3 PART 2: TICKETABLE OFFENCES (CLAUSES 51 TO 60)

Clause 51 lists the offences that can be prosecuted either by proceedings under the *Criminal Code* (i.e., charging someone with an offence) or by the issuance of a ticket. These offences include possessing up to 50 g of dried cannabis in a public place and distributing up to 50 g of dried cannabis. Where no penalty is listed in relation to a particular offence, clause 139(1)(z.6) allows for regulations to be made to specify which of these offences can be ticketable, as well as the amount of the associated fine.

Clause 51 also sets out the procedures relating to issuing a ticket, including the information that the ticket must contain (such as the amount to be paid). The amount payable is \$200 plus a victim surcharge and administrative fees for offences listed in clause 51(2) other than provisions specified pursuant to clause 139(1)(z.6). For these latter offences, the amount payable will be set by regulations.

Payment of the ticket amount constitutes a guilty plea. The person's judicial record will show a conviction for the offence, but that record must be kept separate from other judicial records "and it must not be used for any purpose that would identify the accused as a person dealt with under this Act" (clause 52(b)). Persons who plead not guilty and are convicted are liable to the same fine as the original ticket amount (clause 53(1)). Once the person pays the amount, his or her judicial record is treated in the same way as someone who pled guilty (clause 53(2)).

Failure to pay the ticket amount within the set time period results in a conviction being entered, after which the accused has 30 days to pay the ticket amount. Once that amount has been paid, or once the accused has served the period of imprisonment for default of payment, his or her judicial record is treated in the same way as someone who pled guilty (clause 54(2)). Default of payment because of an inability to pay cannot result in imprisonment (clause 55).

If a proceeding for an offence under clause 51 is commenced by the laying of an information, the Attorney General of Canada can still elect to proceed as if the proceeding had been commenced by a ticket (clause 58).

### 2.4 PART 3: LICENCES AND PERMITS (CLAUSES 61 TO 68)

By order, the minister may establish classes of licence and permit applications (clause 61(1)(a)), and may issue, renew, amend (clause 62(1)), suspend without notice (clause 64(1)), reinstate (clause 64(4)) or revoke a licence or permit (clause 65).

Licences and permits may be issued in relation to production, testing, packaging, labelling, sending, delivery, transportation, sale, possession, disposal, importation and exportation (clause 62(1)) of cannabis. Importation and exportation, however, can be authorized for medical or scientific purposes only, or for industrial hemp (clause 62(2)). Certain information must be included in an application for a licence or permit (clause 62(3)).

The minister can refuse to issue, renew or amend a licence or permit on a number of grounds, including to avoid risks to public health or public safety, such as diversion to the illicit market (clause 62(7)(a)), or if the applicant has contravened provisions of the Cannabis Act, the *Controlled Drugs and Substances Act*, the *Food and Drugs Act*<sup>34</sup> or their regulations in the past 10 years (clause 62(7)(c)).

The minister can amend a licence or permit if he or she is of the opinion that doing so is necessary to protect public health or safety (clause 63(1)), or the minister can suspend a licence or permit without notice if he or she has reasonable grounds to believe that doing so is necessary to protect public health or safety (clause 64).

Finally, the minister can revoke a licence or permit on a number of grounds, including situations where the licence was issued based on false or misleading information (clause 65(a)) or there are reasonable grounds to believe that the permit or licence holder has been diverting cannabis, controlled substances or precursors to an illicit market or activity (clause 65(d)).

## 2.5 PART 4: GENERAL AUTHORIZATIONS (CLAUSES 69 TO 72)

As set out in clause 69, an individual authorized to sell cannabis under a provincial Act may possess, sell or distribute cannabis, provided that the provincial measures require that the authorized person:

- sell exclusively cannabis that has been produced by authorized individuals;
- not sell cannabis to young persons;
- keep appropriate records; and
- take adequate measures to reduce the risk that the cannabis they possess is diverted to an illicit market or activity.
- only sell cannabis produced by an authorized person;

## 2.6 PART 5: MINISTERIAL ORDERS (CLAUSES 73 TO 80)

Part 5 of the bill sets out the orders that can be made by the minister in relation to cannabis. For example, the minister can require persons authorized to conduct activities in relation to cannabis under the Cannabis Act or authorized by a province to sell cannabis to do the following:

- provide the minister with information necessary for addressing public health or safety, or relating to compliance (clause 73(1));

- conduct tests or studies on the cannabis to provide the minister with information that he or she considers necessary (clause 74); and
- take any measures necessary for addressing public health or safety issues (clause 75(1)(a)).

The minister can order a recall of any cannabis or class of cannabis if the minister believes on reasonable grounds that doing so is necessary to protect public health or safety (clause 76). If a person fails to comply with an order to take certain measures, or for a recall, the minister can carry out the measures or the recall (clause 77). A ministerial order must be reviewed upon written request:

- if the grounds for review involve questions of fact or questions of mixed law and fact (clause 79(1));
- if the request is made within seven days of the order (clause 79(2)); and
- if the request is not frivolous, vexatious or not made in good faith (clause 79(3)).

Unless the review period is extended (clause 79(8)), the review must be carried out 30 days after the request for review was made (clause 79(7)).

## 2.7 PART 6: CANNABIS TRACKING SYSTEM (CLAUSES 81 TO 83)

The minister can order that a class of persons authorized for certain activities in relation to cannabis be required to provide certain information to the minister (clause 82). This and other information can be used by the minister to establish a national cannabis tracking system to prevent cannabis from being diverted to an illicit market or activity (clause 81). Information in that system can be disclosed by the minister under certain circumstances (clause 83).

## 2.8 PART 7: INSPECTIONS (CLAUSES 84 TO 86) AND PART 8: SEARCH WARRANTS (CLAUSES 87 AND 88)

The minister can designate inspectors to support the administration and enforcement of the Act (clause 84). For the purpose of verifying compliance or preventing non-compliance, an inspector can order an authorized person to provide documents, information or samples (clause 85(1)), and enter a place, including a means of transport, under certain circumstances (clause 86(1)). An inspector can enter a dwelling-house only with the consent of an occupant or with a warrant (clause 86(7)). Among other things, an inspector can seize and detain cannabis or any other thing found in a place the inspector has entered that he or she believes on reasonable grounds contravenes the Act, or needs to be seized to prevent non-compliance (clause 86(2)(j)).

A search warrant can be issued in certain circumstances (clause 87(1)). An individual found in the place to which the warrant applies who the peace officer has reasonable grounds to believe has cannabis or other things referred to in the warrant can be searched (clause 87(5)).

Seized items that no longer need to be detained for compliance purposes must be returned (clause 86(13)).

## 2.9 PART 9: DISPOSITION OF SEIZED THINGS (CLAUSES 89 TO 109)

Within 30 days of seizing, finding or acquiring cannabis while administering and enforcing the Act, the peace officer, inspector or authorized person must send a report with details of the seizure to the minister (clause 89(1)). If the seizure was made pursuant to a search warrant issued under the Act, or the *Criminal Code* or a common law power of seizure, within the same timeframe, a copy of the report must also be sent to the judge who issued the warrant, or a judge who would have had jurisdiction to issue the warrant (clause 89(2)).

With certain exceptions, the *Criminal Code* provisions relating to restitution and detention of seized property apply to things seized under the new Act (clause 90).

### 2.9.1 DIVISION 1: NON-CHEMICAL OFFENCE-RELATED PROPERTY: RESTRAINT ORDERS, MANAGEMENT ORDERS AND FORFEITURE (CLAUSES 91 TO 101)

The Attorney General may apply to a judge for a restraint order to prohibit disposing of or otherwise dealing with seized non-chemical offence-related property except as set out in the order (clause 91). If an order for the return of the property is made under section 490(9)(c) of the *Criminal Code*, the person who applied for the order may be required to enter into a recognizance<sup>35</sup> (clause 92(2)).

With respect to seized non-chemical offence-related property, a judge can appoint a person to take control of that property; a judge can do the same with respect to restrained property (clause 93(1)). In certain circumstances, the appointed person can sell, destroy or have property forfeited to Her Majesty (clause 93(3)).

When a person is either convicted or discharged of a designated offence, the Attorney General can apply to a court for an order forfeiting the property, which must be granted if the court is satisfied on a balance of probabilities that the property is related to the commission of the offence (clause 94). If a provincial government started the prosecution, property is forfeited to the province (clause 94(1)(a)); otherwise, it is forfeited to the federal government (clause 94(1)(b)). A court can also order the forfeiture of non-chemical offence-related property that is not related to the commission of the offence for which the person was convicted or discharged (clause 94(2)), or make an order of forfeiture *in rem*<sup>36</sup> (clause 95). Where a court is satisfied that a property owner appears innocent of any complicity in a designated offence, the court may order that the property, which would otherwise have been forfeited, be returned to the owner (clause 97(3)).

Special rules cover the forfeiture of dwelling-houses (clause 98), including a requirement to give notice, as well as an obligation on the part of the court to consider the impact of forfeiture on an immediate family member of the accused if the house was the family member's principal residence, and whether the family member

appears innocent with respect to complicity or collusion in relation to the offence (clause 98(4)).

With certain exceptions, persons claiming an interest or right in forfeited property can apply to a judge for an order declaring that the interest or right is not affected by the forfeiture, and an appeal from that order can be made by either the applicant or the Attorney General (clause 99). An appeal mechanism also exists with respect to *in rem* forfeitures (clause 100).

## 2.9.2 DIVISION 2: CANNABIS AND CHEMICAL PROPERTY (CLAUSES 102 TO 109)

A person who seizes, finds or acquires:

- cannabis or chemical offence-related property while administering or enforcing the Cannabis Act or other Acts; or
- any chemical that is not chemical offence-related property or anything that contains such a chemical or has such a chemical on it

may return it if there is no dispute with respect to its ownership, and if it does not have to be detained for criminal or other proceedings (clause 102).

Any person may, within 60 days of the seizure, finding or acquisition, apply in writing to a judge for an order to return the property (clause 103(1)). Upon receiving the application, the judge must order that the seized property be returned if it is not needed for any other proceeding (clause 103(2)). A judge can also order that the property be returned after 180 days have elapsed since the application was made, provided that no proceeding in relation to the cannabis or property was commenced, or after the conclusion of the proceeding in relation to the cannabis or property if the applicant is found not guilty (clause 103(3)). The judge can also order that the property be forfeited (clause 103(4)).

The minister can have cannabis plants that are produced contrary to the new Act or regulations destroyed (clause 106).

If a court dealing with certain proceedings is satisfied that the seized cannabis or chemical property is not required by the court, it must order the return of the cannabis or chemical property in certain circumstances (clause 107).

Within 30 days of disposing of or otherwise dealing with cannabis or chemical property, the relevant peace officer, inspector or other person must send a report with details of the disposal to the minister (clause 109).

## 2.10 PART 10: ADMINISTRATIVE MONETARY PENALTIES (CLAUSES 110 TO 127)

Part 10 of Bill C-45 establishes an administrative monetary penalties (AMPs) system for promoting compliance with the new Act. Persons who contravene provisions other than those that deal with activities considered to be criminal activities under Division 1 of Part 1 are liable to a maximum penalty of \$1 million. Violations classified

by the regulations as minor, serious, or very serious have maximum penalties set out in the regulations (clause 111(1)). Proceedings must start within six months of the minister's awareness of the alleged violation (clause 125).

A notice of violation sets out the alleged violation and other information relating to penalty and payment (clause 112). When a person pays the penalty, he or she is deemed to have committed the violation, and the proceedings relating to the violation stop (clause 113(1)). Instead of paying the penalty, a person can ask to enter into a compliance agreement with the minister and is thereby deemed to have committed the violation (the minister can refuse this request under clause 115(1)), or a person can ask for a review by the minister (clause 113(2)).

Section 119 makes clear that certain defences are not available to a person named in a notice of violation. Such a person cannot plead that he or she exercised due diligence to prevent the violation nor can the person plead that he or she reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

Procedures relating to defaulting on a compliance agreement and the review process are set out in clauses 114(4), 114(5) and 116.

Amounts owing under the AMPs provisions are debts that can be recovered in Federal Court.

## 2.11 PART 11: GENERAL (CLAUSES 128 TO 151)

Clauses 128 and 129 provide that the minister can disclose personal information or confidential business information (defined in clause 129(2)) without consent if doing so is necessary to protect public health and public safety.

Clauses 133 to 138 relate to evidence that is admissible for certain proceedings.

The regulation-making authority of the Governor in Council is set out in clause 139. Regulations can be made in relation to the new Act (clauses 139(1)(a) to 139(1)(z.7)), in relation to investigations and other law enforcement activities under the new Act (clause 139(6)), and in relation to investigations and other law enforcement activities under other Acts of Parliament (clause 139(7)).

Clause 140 provides that the minister can exempt persons or classes of persons, or cannabis or classes of cannabis in relation to persons or classes of persons, from the application of the Act if "the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest."

Clauses 142 to 147 relate to fees to be fixed by the minister in relation to cannabis.

Clause 151 sets out the ways in which the Governor in Council may amend Schedules 1 to 4, and the way in which the minister may amend Schedule 5.



2.12 PART 12: TRANSITIONAL PROVISIONS AND RELATED,  
CONSEQUENTIAL AND COORDINATING AMENDMENTS  
(CLAUSES 152 TO 193)

Every decision made by the Minister of Health under the *Controlled Drugs and Substances Act* (CDSA) that relates to cannabis is deemed to be a decision made by the designated minister under the new Cannabis Act. Inspectors and analysts under the CDSA are also deemed to hold the same positions under the new Act (clauses 153–155).

Under section 56 of the CDSA the Minister of Health may exempt from the application of all or any of the provisions of the CDSA or the regulations any person or class of persons or any controlled substance or precursor or any class of either of them if, in the opinion of the minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest. Pursuant to this section of the CDSA, exemptions have been granted for cannabis to be used for medical purposes. Clause 156 of Bill C-45 deems those exemptions to continue in force under section 140 of the Cannabis Act.

The *Access to Cannabis for Medical Purposes Regulations* (ACMPR) set out the rules governing who can possess marijuana for medical purposes and in what amounts. Under section 35 of the ACMPR, the Minister of Health can issue licences to produce marijuana. Under clause 158 of Bill C-45, these licences are deemed to be licences issued under section 62 of the Cannabis Act. Similarly, import permits issued under section 95 of the ACMPR and export permits issued under section 103 of the ACMPR are deemed to be permits issued under section 62 of the new Act. As mentioned in section 2.4 of this Legislative Summary, clause 62(2) of Bill C-45 specifies that licences and permits authorizing the import or export of cannabis may be issued only in respect of cannabis for medical or scientific purposes or in respect of industrial hemp. Clause 62(7) sets out various grounds on which the minister may refuse to issue, renew or amend a licence or permit. These grounds include that there is a risk of cannabis being diverted to an illicit market or activity or that the applicant has contravened in the past 10 years a provision of the Cannabis Act, the *Controlled Drugs and Substances Act* or the *Food and Drugs Act*.

Under the ACMPR, an individual can seek a registration to produce cannabis for his or her own medical purposes or to have it produced by a designated person. Clause 158 of Bill C-45 indicates that such a “registered person” will continue to be considered as such, as will the “designated person” the individual has designated to grow cannabis for medical purposes.

The *Narcotic Control Regulations*,<sup>37</sup> adopted under the CDSA, provide another legal route for the possession of some controlled substances. Under section 9.2 of these regulations, the Minister of Health may issue a dealer’s licence, and no licensed dealer may cultivate, propagate or harvest marijuana other than for scientific purposes. Under clause 159 of Bill C-45, the application of a dealer’s licence to cannabis is deemed to continue under section 62 of the Cannabis Act. A permit issued to any licensed dealer for the importation or exportation of a narcotic is, in relation to its application to cannabis, deemed to continue under the section 62 of the new Act as well. A licence to cultivate, gather or produce opium poppy or cannabis for scientific purposes, issued

under section 67 of the regulations, is also deemed to continue under section 62 of the Cannabis Act.

The *Industrial Hemp Regulations*<sup>38</sup> have also been adopted under the CDSA and they, too, can be used to obtain a licence to deal with cannabis. A licence issued under section 9 of the *Industrial Hemp Regulations* to deal with the import, export, production, selling, provision, possession, transportation or delivery of industrial hemp (defined as “the plants and plant parts of the genera *Cannabis*, the leaves and flowering heads of which do not contain more than 0.3% THC”) is deemed to continue under section 62 of the Cannabis Act. Similarly, permits to import and export industrial hemp (which are required for each shipment) are deemed to continue in force.

Clauses 162 to 164 of Bill C-45 make some related amendments to the *Non-smokers’ Health Act*.<sup>39</sup> This statute regulates smoking in the federal workplace and on common carriers. Section 4 of the Act states that no person shall smoke in any work space controlled by an employer (under the *Canada Labour Code* and some other Acts) except in a designated smoking room or designated smoking area. Bill C-45 amends certain parts of the Act so that it will apply to the smoking of cannabis in addition to tobacco. Thus, the definition of “smoke” in section 2 of the *Non-smokers’ Health Act* is being amended to encompass smoking, holding or otherwise having control over ignited cannabis in addition to an ignited tobacco product. Similarly, section 6 of the *Non-smokers’ Health Act* is amended to prohibit anything from derogating from any law in relation to the protection of persons from exposure to tobacco or cannabis smoke.

The adoption of Bill C-45 will require that consequential amendments be made to a number of statutes. The *Criminal Records Act*<sup>40</sup> provides for a means of suspending a criminal record for individuals deemed by the Parole Board of Canada to have rehabilitated themselves. Section 7.2 of this Act prescribes the cessation of the effect of a record suspension if the individual in question is subsequently convicted of an offence under a number of statutes, including the *Controlled Drugs and Substances Act*, the *Food and Drugs Act* and the *Narcotic Control Act*. To this list is added any offence under the Cannabis Act.

The *Identification of Criminals Act*<sup>41</sup> provides for the fingerprinting or photographing of certain persons, such as anyone alleged to have committed an indictable offence. In most cases, a person is not obliged to be fingerprinted or photographed if he or she is alleged to have committed an offence that is designated as a contravention under the *Contraventions Act*.<sup>42</sup> An amendment in clause 166 of Bill C-45 to the *Identification of Criminals Act* ensures that a person charged by a peace officer with a ticketable offence under clause 51 of Bill C-45 is not fingerprinted or photographed. Ticketable offences under the bill and contraventions under the *Contraventions Act* also have the same legal consequence, namely that a convicted person will not have a searchable criminal record. Similarly, if a person is fingerprinted or photographed for a matter that is then prosecuted as a contravention or a ticketable offence, the fingerprints or photographs will be destroyed.

Section 117 of the *Customs Act*<sup>43</sup> deals with the return of goods that have been seized under that statute. Clause 170 of Bill C-45 amends that section so that cannabis joins such items as alcohol and tobacco as something that is not to be returned to the person from whom it was seized unless it was seized in error.

Under sections 129 and 130 of the *Corrections and Conditional Release Act*,<sup>44</sup> Correctional Service Canada (CSC) reviews the cases of certain inmates eligible for statutory release, including those where the inmate's offence is a drug-related one set out in Schedule II of the Act. In such a case, if CSC has reasonable grounds to believe that the offender in question is likely to commit a serious drug-related offence before the expiration of his or her sentence, the matter is referred to the Parole Board of Canada. If the Parole Board comes to the same conclusion, it can order that the offender not be released until the end of the sentence. Clause 172 of Bill C-45 adds the offences set out in clauses 9 to 14 of the bill to Schedule II such that they are now considered to be "serious drug offences" if they are prosecuted by way of indictment.

The *Seized Property Management Act*<sup>45</sup> authorizes the Minister of Public Works and Government Services to manage property that is seized in connection with designated offences or that is restrained pursuant to a restraint order. It also authorizes the minister to manage and dispose of that property and of property that is the proceeds of crime or that is offence-related property, when such property is forfeited to Her Majesty. Clause 173 of Bill C-45 modifies the definitions of the terms "offence-related property" and "restrained property" contained in the *Seized Property Management Act* so that they include, respectively, property that corresponds to the definition of "offence-related property" found in clause 2(1) of the bill and the definition of "restrained property" found in clause 91 of the bill. Thus, the management and disposal of property associated with offences under the bill come within the rubric of the *Seized Property Management Act*.

Clause 182 of Bill C-45 amends the *Firearms Act*<sup>46</sup> such that a conviction for an offence under clauses 9 to 14 of the new Act can be taken into consideration in determining whether a person should be issued a firearm licence.

Clause 184 of Bill C-45 adds the offences in clauses 9 to 14 of the Cannabis Act to the schedule to the *Youth Criminal Justice Act*. This means that the record of a conviction for any of these new offences can be disclosed in certain circumstances to a list of persons who, under section 120 of the Act, may for a period of time be given access to the RCMP record for the offence found in the schedule.

The *Canadian Victims Bill of Rights*<sup>47</sup> provides certain rights related to the interactions of victims of crime in Canada with the criminal justice system. For example, under section 7 of that statute, every victim has the right, on request, to information about the status and outcome of the investigation into the offence in question and the location of proceedings in relation to the offence, when they will take place and their progress and outcome. Clause 187 of Bill C-45 amends the definition of the term "offence" in section 2 of the *Canadian Victims Bill of Rights* to include a "designated offence" as defined in clause 2(1) of the new Act. A "designated offence" is an offence under clause 9(1), 9(2), 10(1), 10(2), 11(1), 11(2), 12(1), 12(4) to 12(7), 13(1) or 14(1) of the bill, that is, the offences of distribution, selling, importing and exporting, production, possession for use in production of cannabis, and using a young person to commit any of these offences. Thus, if any one of those offences has been committed, provisions of the *Canadian Victims Bill of Rights* will apply.

### 2.13 PART 13: *CONTROLLED DRUGS AND SUBSTANCES ACT* (CLAUSES 194 TO 206)

The key amendment to the CDSA made in Part 13 of Bill C-45 is the repeal of Item 1 of Schedule II of the Act, which is referenced in sections 4 to 7.1 of the CDSA (possession, trafficking, importing and exporting, production, and possession for use in production of or trafficking). Item 1 currently includes cannabis, its preparations and derivatives, including cannabis resin, cannabis (marijuana), cannabidiol, cannabinol, and tetrahydrocannabinol. With the repeal of Item 1, Schedule II contains one item, which refers to synthetic cannabinoid receptor agonists, elements that are functionally similar to tetrahydrocannabinol (THC), the main active compound of cannabis: they bind to the same cannabinoid receptors in the brain as do THC. Methods to manufacture synthetic cannabinoids have been published, and the precursor chemicals can often be purchased from retail chemical suppliers.<sup>48</sup>

As a result of this amendment to the CDSA, the offences in sections 4 to 7.1 of the Act no longer apply to cannabis but continue to apply to synthetic cannabinoid receptor agonists. In addition, amendments to section 7 of the CDSA (production) now contain one set of penalties for production of Schedule II substances rather than the current two sets of penalties.

Bill C-45 further amends the CDSA to take account of clause 8 of the new Act, which allows individuals 18 years and over to possess less than 30 g of dried cannabis in a public place. Thus, clause 195 of the bill repeals section 4(5) of the CDSA, which has special provisions for punishing possession of less than 30 g. Similarly, the bill repeals section 5(3)(a.1) of the CDSA, which has a special provision for punishing trafficking of less than 30 g of cannabis. However the CDSA continues to make a person convicted for trafficking in any amount of a Schedule II substance liable to imprisonment for life. Moreover, the repeal of section 5(3)(a.1) removes this provision from the list of offences within the absolute jurisdiction of a provincial court judge listed in section 553 of the *Criminal Code*.

Section 10 of the CDSA is amended to provide that a convicted person's having previously been convicted of a designated offence under the Cannabis Act is an aggravating factor to be considered in sentencing.

Bill C-37, An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts, which received Royal Assent on 18 May 2017, makes section 34 of the CDSA part of the "Administrative Monetary Penalties" section created by the bill. Clause 199 of Bill C-45 increases the maximum penalty provided in section 34(2) for a contravention of the offences designated by regulation from \$30,000 to \$1 million.

Section 46 of the CDSA provides default penalties for violations of the Act where penalties are not otherwise specified. For indictable offences, the maximum penalty is a \$5,000 fine or three years' imprisonment or both punishments. Clause 200 of Bill C-45 increases the maximum fine amount to \$5 million. The current maximum penalty for a summary conviction offence is a \$1,000 fine or six months' imprisonment or both punishments. This will be increased to a maximum fine of \$250,000 for a first offence and \$500,000 for any subsequent offence. The maximum term of imprisonment for a subsequent offence is increased to 18 months.

Clause 150 of Bill C-45 authorizes the Minister of Health to engage the services of persons with technical or specialized knowledge to advise him or her about his or her powers, duties or functions under the Act. Clause 202 of the bill adds an equivalent provision to the CDSA (clause 54.1).

#### 2.14 PART 14: *CRIMINAL CODE* (CLAUSES 207 TO 225)

Section 25.1 of the *Criminal Code* allows for the possibility, when they are carrying out their law enforcement duties, of public officers committing acts or omissions that would otherwise constitute offences. Section 25.1(14) of the Code expressly forbids a public officer from using this section to commit an offence under a provision of Part I of the CDSA. Clause 207 of Bill C-45 amends this provision to also prohibit violating any provision of Division 1 of Part 1 of the Cannabis Act. This division sets out such criminal activities as possession, distribution, selling, importing and exporting, and producing cannabis.

Section 109 of the *Criminal Code* sets out the circumstances in which a prohibition order concerning weapons and other items, such as ammunition, is mandatory. Currently, an offence contravening sections 5 to 7 of the CDSA mandates such an order. Clause 208 of Bill C-45 adds to this an offence relating to the contravention of sections 9 to 14 of the Cannabis Act.

Clause 210 of Bill C-45 adds sections 9 to 14 of the Cannabis Act to the definition of “offence” found in section 183 of the *Criminal Code*. This definition is used throughout Part VI of the *Criminal Code* – “Invasion of Privacy” – which deals with intercepted private communications. Only those activities classified as offences may form the basis of an application for an authorization to intercept private communications and a warrant for video surveillance under section 487.01 of the *Criminal Code*.

Clause 211 of Bill C-45 repeals Part XII.1 of the *Criminal Code*. This part, entitled “Instruments and Literature for Illicit Drug Use,” makes it an offence to knowingly import into Canada, export from Canada, manufacture, promote or sell instruments or literature for illicit drug use.

Clause 212 of Bill C-45 amends section 462.331 of the *Criminal Code* to specify that a management order for property seized or restrained under section 462.32 or 462.33 of the Code (dealing with proceeds of crime) does not apply to cannabis as it is defined in section 2(1) of the Cannabis Act. As noted in section 2.1.1 of this Legislative Summary, that section defines “cannabis” as a cannabis plant and anything referred to in Schedule I but not anything in Schedule II.

Clause 214 of Bill C-45 provides for forfeitures of the proceeds of crime under section 462.37 of the *Criminal Code* related to offences under sections 9 to 14 of the Cannabis Act that are prosecuted by indictment.

Clause 216 of Bill C-45 adds the offences in sections 9 to 14 of the Cannabis Act – whose maximum punishment is five years or more – to the definition of “secondary designated offence” in section 487.04 of the *Criminal Code*, which sets out the definitions related to forensic DNA analysis. The effect of this amendment is to make individuals suspected of having committed offences under the Cannabis Act liable to

forensic DNA analysis warrants. Form 5.04 (“Order Authorizing the Taking of Bodily Substances for Forensic DNA Analysis”) is therefore amended so that a DNA warrant may be issued where an offender has been convicted of an offence under any of sections 9 to 14 of the Cannabis Act for which the maximum punishment is imprisonment for five years or more and that was prosecuted by indictment.

Sections 490.1 to 490.9 of the *Criminal Code* create a legislative scheme for dealing with property believed to be “offence-related property.” It is similar to the scheme set up to deal with proceeds of crime. The term “offence-related property” is defined in section 2 of the *Criminal Code* as:

any property, within or outside Canada,

(a) by means or in respect of which an indictable offence under this Act or the *Corruption of Foreign Public Officials Act*<sup>49</sup> is committed,

(b) that is used in any manner in connection with the commission of such an offence, or

(c) that is intended to be used for committing such an offence.

Under section 490.81, a judge may make an order for the management of offence-related property that has been either seized or restrained. Such a management order does not apply to a controlled substance within the meaning of the CDSA. Clause 217 of Bill C-45 amends this section to state that it also does not apply to cannabis as defined in section 2(1) of the Cannabis Act (see section 2.1.1 of this Legislative Summary).

Clause 218 of Bill C-45 amends section 515(4.1) of the *Criminal Code*, which deals with the conditions that apply to a judicial release (bail) order. When an accused charged with an offence set out in sections 5 to 7 of the CDSA is released, the release order imposes a firearms prohibition order. Under Bill C-45, such a prohibition applies to anyone released who is alleged to have committed an offence relating to the contravention of any of sections 9 to 14 of the Cannabis Act.

Clause 222 of Bill C-45 amends section 737 of the *Criminal Code* to specify that a victim surcharge will be paid by an offender who is convicted, or who is discharged under section 730, of an offence under the Cannabis Act, in addition to under the Code and the *Controlled Drugs and Substances Act*.

## 2.15 PART 15: COMING INTO FORCE (CLAUSE 226)

Clause 226 provides that provisions other than clauses 161, 188 to 194, 199 to 202, 206 and 225 come into force on a day or days to be fixed by order of the Governor in Council.

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**NOTES**

1. [Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
2. Health Canada, [Information for Health Care Professionals: Cannabis \(marihuana, marijuana\) and the cannabinoids](#), February 2013.
3. World Health Organization, [The health and social effects of nonmedical cannabis use](#), 2016.
4. *Ibid.*, p. 19.
5. *Ibid.*, p. 11.
6. *Ibid.*, p. 17.
7. *Ibid.*, p. 24.
8. *Ibid.*, p. 16.
9. *Ibid.*, pp. 31–35.
10. Government of Canada, [Canadian Tobacco Alcohol and Drugs \(CTADS\): 2015 summary](#), 13 March 2017.
11. [Controlled Drugs and Substances Act](#), S.C. 1996, c. 19.
12. House of Commons, Standing Committee on Health, [Evidence](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament, 1 May 2014, 0845 (Ms. Hilary Geller, Assistant Deputy Minister, Healthy Environments and Consumer Safety Branch, Department of Health).
13. For a complete overview of the international drug control regime in relation to cannabis, please see Robin MacKay and Karin Phillips, [The Legal Regulation of Marijuana in Canada and Selected Other Countries](#), Publication no. 2016-94-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 6 September 2016.
14. “Non-judicially” essentially means outside of the courts. For example, prosecutors may choose not to lay charges.
15. Institut national de santé publique du Québec, [Legalization of Non-medical Cannabis: A Public Health Approach to Regulation](#), October 2016, p. 9.
16. *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230, [s. 3](#).
17. *Ibid.*, s. 6(1).
18. [Criminal Code](#), R.S.C. 1985, c. C-46.
19. Senate, Special Committee on Illegal Drugs, [Cannabis: Our Position for a Canadian Public Policy – Summary Report](#), 2<sup>nd</sup> Session, 37<sup>th</sup> Parliament, September 2002.
20. House of Commons, Special Committee on the Non-Medical Use of Drugs, “[Chapter 9: Cannabis](#),” in *Policy for the New Millennium: Working Together to Redefine Canada’s Drug Strategy*, 2<sup>nd</sup> Session, 37<sup>th</sup> Parliament, December 2002.
21. [Bill C-344, An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act \(marihuana\)](#), 1<sup>st</sup> Session, 37<sup>th</sup> Parliament.
22. [Bill C-38, An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act](#), 2<sup>nd</sup> Session, 37<sup>th</sup> Parliament.
23. [Bill C-10, An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act](#), 3<sup>rd</sup> Session, 37<sup>th</sup> Parliament.

24. Chantal Collin, [Substance Abuse Issues and Public Policy in Canada: II. Parliamentary Action \(1987–2005\)](#), Publication no. PRB 06-05E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 13 April 2006.
25. Monique Scotti, [“Canada one step closer to marijuana legalization,”](#) *Global News*, 30 June 2016.
26. Government of Canada, [“Executive Summary,”](#) *A Framework for the Legalization and Regulation of Cannabis in Canada: The Final Report of the Task Force on Cannabis Legalization and Regulation*, 30 November 2016.
27. [Tobacco Act](#), S.C. 1997, c. 13.
28. House of Commons, [Debates](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2017 (Mrs. Salma Zahid, 1555).
29. Bill C-45, “Summary.”
30. Following is the content of the related schedules to Bill C-45:
  - Schedule 1
    - (Subsections 2(1) and 151(1))
      - 1 Any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a part of the plant referred to in Schedule 2
      - 2 Any substance or mixture of substances that contains or has on it any part of such a plant
      - 3 Any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained
    - Schedule 2
      - (Subsections 2(1) and 151(1) and Schedule 1)
        - 1 A non-viable seed of a cannabis plant
        - 2 A mature stalk, without any leaf, flower, seed or branch, of such a plant
        - 3 Fibre derived from a stalk referred to in item 2
        - 4 The root or any part of the root of such a plant
  31. [Youth Criminal Justice Act](#), S.C. 2002, c. 1.
  32. [Bill S-5, An Act to amend the Tobacco Act and the Non-smokers’ Health Act and to make consequential amendments to other Acts](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
  33. This resembles the definition of “lifestyle advertising” contained in section 22(4) of the *Tobacco Act*.
  34. [Food and Drugs Act](#), R.S.C. 1985, c. F-27.
  35. A “recognizance” refers to an obligation entered into before a judge by which the defendant must keep the peace and be of good behaviour. It often specifies that the subject of the recognizance return to court at a particular date and time. Numerous conditions can be attached to a recognizance, such as that the individual remain within a certain jurisdiction or abstain from communicating with specified persons. See Form 32 in the *Criminal Code*.



36. According to section 490.2 of the *Criminal Code*, a judge may order an *in rem* forfeiture, i.e., an order relating to the property itself rather than to its owner, if the judge is satisfied
- (a) beyond a reasonable doubt that any property is offence-related property;
  - (b) that proceedings in respect of an indictable offence under the *Criminal Code* or the *Corruption of Foreign Public Officials Act* in relation to the property were commenced; and
  - (c) that the accused charged with the offence has died or absconded.
37. [Narcotic Control Regulations](#), C.R.C., c. 1041.
38. [Industrial Hemp Regulations](#), SOR/98-156.
39. [Non-smokers' Health Act](#), R.S.C. 1985, c. 15 (4<sup>th</sup> Supp.).
40. [Criminal Records Act](#), R.S.C. 1985, c. C-47.
41. [Identification of Criminals Act](#), R.S.C. 1985, c. I-1.
42. [Contraventions Act](#), S.C. 1992, c. 47.
43. [Customs Act](#), R.S.C. 1985, c. 1 (2<sup>nd</sup> Supp.).
44. [Corrections and Conditional Release Act](#), S.C. 1992, c. 20.
45. [Seized Property Management Act](#), S.C. 1993, c. 37.
46. [Firearms Act](#), S.C. 1995, c. 39.
47. [Canadian Victims Bill of Rights](#), S.C. 2015, c. 13, s. 2.
48. European Monitoring Centre for Drugs and Drug Addiction, [Synthetic cannabinoids and 'Spice' drug profile](#).
49. [Corruption of Foreign Public Officials Act](#), S.C. 1998, c. 34.