

Marijuana Use and Young People:
Open Letter to Federal and Provincial Governments

The Canadian Coalition for the Rights of Children (CCRC) appreciates that the federal government has made concern for the well-being of young people a high priority for its plans to legalize marijuana. We agree that the current reality does not help young people make wise decisions, while it contributes to the over-representation of some groups of young people in the criminal justice system. The CCRC is concerned, however, about gaps in the proposed approach and the potential for unintended consequences that could subvert the primary objective of improving the situation for young people.

To ensure that the new approach contributes to the goal of supporting every young person to develop their full potential, the CCRC recommends that federal and provincial governments take the following three steps:

1. Do a thorough Child Rights Impact Assessment (CRIA) of Bill C-45

This issue triggers many dimensions of children's rights. Below is a list of key provisions that need to be considered in relation to Bill C-45. The comprehensive nature of the Convention on the Rights of the Child provides a useful framework to better integrate policies and programs with young people at the center. A CRIA will identify gaps and unintended consequences, increasing the likelihood of effective outcomes and potentially saving money.

A CRIA would provide helpful guidance for implementation, identify amendments that may be necessary to improve Bill C-45, and provide a base for on-going assessments and adjustments. It would allow careful consideration of potential impacts for different groups of children, including an assessment of the risk for involvement in the criminal justice system as the new rules are enforced. It would also demonstrate the government's commitment to treat young people with respect as citizens with rights and responsibilities. Compared to the existing negative screen of the Charter and human rights check done as part of the regular cabinet policy development process, a CRIA would help to identify the best options to ensure the government is fulfilling its positive duties to protect the best interests and respect the rights of young people. It is also an international good practice, which will be helpful to show that Canada takes seriously its obligation under the various international treaties related to this issue.

2. Develop a Youth Strategy to Complement Criminal Code Changes

The CCRC appreciates the government's commitment to public education and the recognition that it will take more than the criminal code to achieve the goal of preventing harmful use of marijuana by young people. We are concerned about gaps in what is needed to effectively support adolescents and their families with appropriate services, from prevention to harm reduction programs through to dependency treatment. Community-based approaches that focus on health and well-being will be

needed as well as law enforcement to prevent unintended consequences for young people as Canada tries to bring the illicit trade under control. We note with concern that youth and youth workers were not called to witness before the Health Committee, but they will be primary actors to ensure an effective outcome for young people.

It will take more than a legal change and a public education campaign to effectively support adolescents as they develop their own capacity to make wise decisions, with particular attention to young people who are at greater risk of drug-related harm. A youth strategy could support and engage parents, schools, community services, health care, and other stakeholders to prevent young people from falling through cracks, as frequently happens in the current law-enforcement centered approach.

As stated in the General Comment on the Rights of Adolescents, *States parties should ensure adolescents' right to health in relation to the use of such substances (illicit use of narcotic drugs and psychotropic substances), as well as tobacco, alcohol and solvents, and put in place prevention, harm-reduction and dependence treatment services, without discrimination and with sufficient budgetary allocation. Alternatives to punitive or repressive drug control policies in relation to adolescents are welcome. Adolescents should also be provided with accurate and objective information based on scientific evidence aimed at preventing and minimizing harm from substance use.*¹

3. Children First in Allocation of Resources

The CCRC appreciates the government's allocation of money for public education, but we are concerned about resourcing the full range of supports needed on an on-going basis. Canada's commitment through Article 4 of the Convention is to put children's needs first in the allocation of resources. The CCRC recommends explicit recognition of this principle before final passage of C-45 and the establishment of an on-going mechanism to ensure resources for young people are given priority every year, as part of a comprehensive youth strategy.

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¹ UN Committee on the Rights of the Child. General Comment 20: Implementation of the Rights of the Child during Adolescence, CRC/C/GC/20, 6 December 2016, paragraph 64.

Children's Rights to be considered in relation to Bill C-45

Freedom from Discrimination: Convention Article 2 and Canadian Charter of Rights and Freedoms

Child's right: to be treated without "discrimination of any kind," which includes "age" in the Charter

Duty bearer's role: Differential treatment of young people, based on age, needs to be clearly justified on the grounds of tests established in Charter law: legitimacy (clear connection to objective); proportionality (carefully designed to limit rights as little as possible); and necessity (not arbitrary).

Best Interest of the Child: Convention Article 3

Child's Right: Best interests of children will be a primary consideration in decisions that affect children.

Duty bearer's roles: (1) For this issue, ensure that the best interests of young people have priority over business interests, revenue interests, or law enforcement interests.

(2) Be clear about how the "Best Interests of Children" are determined and monitored, e.g. CRIA process.

Children First in Allocation of Resources: Article 4

Child's right: Realization of rights through "*all measures*" and to "*maximum extent of available resources*"

Duty bearer's role: Commit to putting children's needs first in resource allocation and put in place a mechanism to ensure that supports for youth will be accessible on an on-going basis.

Development of Full Potential: Article 6

Child's right: Right to develop potential to "*maximum extent possible.*"

Duty bearer's role: Pay attention to all the factors that support or limit full development; it may mean short-term restrictions carefully designed to support maximum development and minimize limitations.

Views of the Child, Freedom of Thought and Expression: Articles 12 – 17

Child's Rights: Right to be heard and have views considered, freedom to have and express thoughts, and to participate in society, consistent with the "*evolving capacities of the child.*"

Duty bearer's role: Recognize the principle of the "evolving capacities" of children, support the development of the capacity of adolescents to make decisions for themselves and involve young people in the development and implementation of policies and programs.

Right to Healthy Environment: Article 24

Child's Right: Right to enjoy "*the highest standard of health*" and access to health services, including nutritious food, clean drinking water, freedom from the dangers and risks of environmental pollution, access to information necessary for a healthy life, and abolishing traditional practices that are harmful.

Duty bearer's role: Consider all impacts of policy and programs for health of each child and a healthy environment for all children, including preventive measures and secondary impacts of use by adults in places where children are affected by them.

Right to Protection from Illicit Drugs: Article 33

Child's Rights: All appropriate measures to protect children from the "*illicit use of narcotic drugs and psychotropic substances*" and prevent the use of children in production and trafficking of such substances.

Duty bearer's role: Develop and implement the most effective strategy to prevent harm to young people from all aspects of the illicit drug trade.

Right to Rehabilitative and Restorative Justice: Articles 37, 39, and 40

Child's Right: Arrest, detention, and imprisonment shall be used as "*measures of last resort and for the shortest appropriate period of time.*" Rehabilitation and social reintegration are goals for corrective measures.

Duty bearer's role: Youth-appropriate approach to correction, separate from adult criminal justice system, focused on rehabilitation and reducing criminalization of young people.