



Legislative Review of the Cannabis Act Examen législatif de la Loi sur le cannabis

Submission of the
Canadian Association of Broadcasters
Mémoire de
l'Association canadienne des radiodiffuseurs

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Summary and Introduction

1. The Minister of Health and the Minister of Mental Health and Addictions have launched a [legislative review](#) of the [Cannabis Act](#) (the Act) and invited input from stakeholders to inform the review. As the national voice of Canada's private radio and television broadcasters, the Canadian Association of Broadcasters (CAB) is making this submission to urge the government to make small but meaningful adjustments to its approach to the advertising of cannabis.
2. The CAB is of the view that the regime governing the advertising of cannabis should more closely mirror Canada's long-standing approach to the advertising of alcoholic beverages. Canada's broadcasters and the advertising industry have a long history of a responsible approach to alcohol advertising which can and should serve as a model for a measured and equitable approach to the promotion of cannabis undertaken by businesses in Canada.
3. This submission will demonstrate why elements of the framework that applies to the advertising of alcohol should also apply to cannabis, the ways in which a more balanced framework for cannabis promotion will support the objectives set out in the Act, and the benefits that may accrue as a result of changes to the legislative framework.

Background – Promotion of Cannabis under the current Act

4. Section 7 of the Act sets out seven key objectives, as follows:
 - protect the health of youth by restricting their access to cannabis
 - protect youth and others from inducements to use cannabis
 - provide for the licit production of cannabis to reduce illegal activities in relation to cannabis
 - deter illegal activities through appropriate sanctions and enforcement measures
 - reduce the burden on the criminal justice system in relation to cannabis
 - provide access to a quality-controlled supply of cannabis, and
 - enhance public awareness of the health risks associated with cannabis use
5. The Act generally prohibits the promotion of cannabis, cannabis accessories and services related to cannabis, except in limited circumstances. The prohibitions were designed to support the Government's objective to protect public health and safety, and, in particular, to protect young persons from inducements to use cannabis. Therefore, the Act prohibits:
 - promotion that is appealing to youth
 - promotion through any testimonials or endorsements
 - promotion that presents a lifestyle (such as one that includes glamour, recreation, risk, excitement, or danger).

6. The Act does permit some highly limited promotion to help adult consumers make informed decisions about cannabis; for example, by allowing for informational promotion such as price and availability, as well as brand-preference promotion. Such promotion is subject to several conditions and restrictions including that young persons cannot access the promotion. In effect, such promotion can only be directed to an individual over 18 years (e.g. direct mail), be in a place where young people are not permitted by law (e.g. a bar), or be online with age verification.
7. The impact of these rules is to prevent advertising on radio or television services by businesses that are legally authorized to produce, sell or distribute cannabis.

The example of the Alcohol regime

8. The current approach to the advertising of cannabis appears to have been modeled on the legislation regarding tobacco. In Canada, most forms of tobacco advertising, promotion and sponsorship are prohibited, with a few limited exceptions: namely, tobacco products may be advertised on signs in areas where minors are prohibited (e.g., bars and nightclubs) and in publications provided by mail to a named adult.
9. As highlighted by Health Canada, one of the purposes of the Tobacco and Vaping Products Act is to “protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases.”
10. While alcohol consumption does raise social concerns, since excessive alcohol consumption is a serious health issue and inappropriate consumption is related to several social ills, the advertising of alcohol is permitted within a framework of responsible self-regulation. In fact, neither cannabis nor alcohol raise the same degree of concern as tobacco. Therefore, the CAB believes that the approach taken to alcohol advertising is the more appropriate model for cannabis.
11. The advertising of alcohol beverages has been regulated by the Canadian Radio-television and Telecommunications Commission (CRTC) since that organization’s creation in 1968. Under the CRTC’s regulations, Canadian radio and television providers are permitted to advertise alcoholic beverages subject to three conditions:
 - the sponsor is not prohibited from advertising the alcoholic beverage by the laws of the province in which the commercial message is broadcast;
 - the commercial message is not designed to promote the general consumption of alcoholic beverages; and
 - the commercial message complies with the [Code for Broadcast Advertising of Alcoholic Beverages](#) (the Code), published by the Commission on August 1, 1996.

12. The Code, duplicated as an Appendix, would provide a valuable template for a similar code to govern cannabis promotion. In fact, it already includes provisions that mirror the principles set out in the Act, including rules to prevent advertising directed to youth. For example, the Code prohibits:
 - promotion to youth,
 - endorsements by anyone who is likely to be a role model to youth,
 - inducements to consume, and
 - promotion that presents a “lifestyle” benefit to consumption
13. A similar code could be developed and applied to cannabis promotion. Such a code, in combination with the [Canadian Code of Advertising Standards](#), and a preclearance process like that managed by [Ad Standards](#) for alcohol advertising, would ensure responsible advertising subject to specific guidelines to protect youth. Such an approach would also recognize the familiarity and experience the broadcasting and advertising industries have operating within a clearly defined framework of social responsibility.

Supporting the objectives of the Act

14. According to the consultation document [Taking Stock of Progress: Cannabis legalization and regulation in Canada](#) and results from the [2021 Canadian Cannabis Survey](#), 57% of cannabis users in Canada report purchasing most or all of their cannabis from the legal market. Therefore, despite the Act’s objectives to provide for the *licit* production of cannabis to reduce illegal activities and provide access to quality-controlled cannabis, over 40 percent of cannabis users are still accessing cannabis from illegal, non-regulated sources.
15. Without greater awareness of their legal options, adult consumers of cannabis may continue to turn to illegal sources, thwarting several of the Act’s objectives.
16. Improving access to information about legal and quality-controlled sources of cannabis would better support the Government’s objectives as outlined in the Act, and specifically the government’s identified objective of keeping profits out of the hands of criminals and organized crime.
17. The CAB notes that key themes of the legislative review include:
 - progress towards providing adults with access to strictly regulated, lower risk, legal cannabis products, and
 - progress made in deterring criminal activity and displacing the illicit cannabis market

18. A promotion regime like that applied to alcoholic beverages would permit authorized and regulated companies to draw adults' attention to their products and contribute to decreased consumption of illicit and unregulated cannabis products. And, as described above, the regime could be designed to ensure that such promotion would not contribute to increased consumption or consumption by youth.

Corollary benefits of modernizing the promotion regime

19. As noted above, cannabis producers and retailers have some limited ability to provide informational and brand preference promotion to help adult consumers make informed decisions about cannabis. However, such promotion is subject to specific restrictions including that young persons cannot access the promotion. The mechanism of choice for online promotion is "age-gating." And yet, clearly, a simple "one click" yes/no, or even a simple input of a birth date is insufficient to ensure that youth are not accessing the promotional material or online sales portal.
20. Age-gating is an ineffective option and an unrealistic approach. Further, imposing restrictions on the broadcasting industry while ignoring other advertising streams will only disadvantage and penalize Canada's local broadcasters to no effect. Ineffective mechanisms such as age-gating and unnecessary restrictions on Canadian advertisers only drives advertising dollars away from Canadian media companies which is ultimately harmful to important Canadian cultural objectives. Advertising revenue is the principal mechanism for supporting local radio and television stations and their ability to provide news and information programming to their audiences.
21. The broadcasting industry has a proven track record of self regulation in the area of alcohol advertising through strict codes and guidelines and a robust system of checks and balances. A similar approach in cannabis advertising would provide additional resources to Canadian radio and television stations, and still be as effective as the current promotion restrictions.

How this could be implemented

22. The *Broadcasting Act* specifies that broadcasters have a responsibility for the programs they broadcast and for ensuring that they are of high standard. The CRTC imposes regulations on radio, television and discretionary services to address specific concerns, for example, prohibiting anything in contravention of the law, abusive comment, or false and misleading news. Of note in the context of this legislative review, the regulations also require that all alcoholic beverage advertisements adhere to the *Code for Broadcasting Advertising of Alcoholic Beverages*. Thus, it is the responsibility of the broadcasters working with their advertising partners and Ad Standards to ensure that any advertising for alcoholic beverages meets the provisions of the Code.

23. Health Canada has already developed important guidance on the promotion of cannabis products, including, for example, a fact sheet on the *Promotion of cannabis: Prohibitions and permissions in the Cannabis Act and Regulations* and a *Policy Statement on Cannabis Act prohibitions referring to appeal to young persons*. Building on this important base, Health Canada could work in partnership with the CRTC to adjust its approach to the promotion of cannabis, and ensure that the broadcasting industry has a clear code of conduct for the safe promotion of cannabis to adult consumers. For example, the industry could also be required to adhere to a “watershed” provision that would only permit cannabis advertising during hours when youth are less likely to be listening or watching.

Conclusion

24. In sum, adjusting the cannabis promotion framework will support the objectives set out in the *Cannabis Act*. Permitting socially responsible Canadian radio and television services to provide cannabis advertising under a regime modelled after that for alcohol would not increase consumption or induce youth to consume but would permit legitimate and regulated businesses to provide information more easily so that adults can make informed decisions and chose legal and regulated sources of cannabis.
25. We thank you for this opportunity to share our perspectives and look forward to contributing further to the legislative review process, and in particular to collaborating in the design of a measured and more equitable approach to the promotion of cannabis products by regulated Canadian companies.

Appendix 1 – Code for Broadcast Advertising of Alcohol Beverages

1 August 1996

Commercial messages for alcoholic beverages shall not:

- (a) attempt to influence non-drinkers of any age to drink or to purchase alcoholic beverages;
- (b) be directed at persons under the legal drinking age, associate any such product with youth or youth symbols, or portray persons under the legal drinking age or persons who could reasonably be mistaken for such persons in a context where any such product is being shown or promoted;
- (c) portray the product in the context of, or in relation to, an activity attractive primarily to people under the legal drinking age;
- (d) contain an endorsement of the product, personally or by implication, either directly or indirectly, by any person, character or group who is or is likely to be a role model for minors because of a past or present position of public trust, special achievement in any field of endeavour, association with charities and/or advocacy activities benefiting children, reputation or exposure in the mass media;
- (e) attempt to establish the product as a status symbol, a necessity for the enjoyment of life or an escape from life's problems, or attempt to establish that consumption of the product should take precedence over other activities;
- (f) imply directly or indirectly that social acceptance, social status, personal success, or business or athletic achievement may be acquired, enhanced or reinforced through consumption of the product;
- (g) imply directly or indirectly that the presence or consumption of alcohol is, in any way, essential to the enjoyment of an activity or an event;
- (h) portray any such product, or its consumption, in an immoderate way;
- (i) exaggerate the importance or effect of any aspect of the product or its packaging;
- (j) show or use language that suggests, in any way, product misuse or product dependency, compulsive behaviour, urgency of need or urgency of use;
- (k) use imperative language to urge people to purchase or consume the product;
- (l) introduce the product in such a way or at such a time that it may be associated with the operation of any vehicle or conveyance requiring skill;
- (m) introduce the product in such a way or at such a time as may associate the product with any activity requiring a significant degree of skill, care or mental alertness or involving an obvious element of danger;

(n) contain inducements to prefer an alcoholic beverage because of its higher alcohol content;

(o) refer to the feeling and effect caused by alcohol consumption or show or convey the impression, by behaviour or compartment, that the people depicted in the message are under the influence of alcohol;

(p) portray persons with any such product in situations in which the consumption of alcohol is prohibited; or

(q) contain scenes in which any such product is consumed, or that give the impression, visually or in sound, that it is being or has been consumed.

INTERPRETATION OF THE CODE FOR BROADCAST ADVERTISING OF ALCOHOLIC BEVERAGES

1 August 1996

The following provisions do not form part of the Code. They are intended solely to serve as guidelines for the interpretation of the Code, and should not be considered as exhaustive or comprehensive.

With reference to paragraph (a):

A message should not challenge or dare people to drink or to try a particular alcoholic beverage.

In the event of a promotion, contest or premium offer, there should be at least one clearly stated option that permits participation without purchase of the product and without cost to the participants. It should also be stated that participation is limited to those who are of legal drinking age in the province where the message is to be aired. In television advertisements, in deference to members of the audience who may have impaired vision or hearing, such options and restrictions should be described both verbally and in writing. The written version of the message should be of such size, placement and duration as to be clearly visible.

With reference to paragraph (b):

The message should be overtly directed to persons who are of the legal drinking age in the province where the message is broadcast. No such message should depict, under any circumstances, children, children's toys, children's clothing, playground equipment, or wading pools. Objects that are commonly used by children, but not considered childish when used by adults (e.g. most sports equipment, Frisbees and colouring pencils) may be depicted in such messages. Mythical or fairy tale characters appealing to children, such as Santa Claus, the Tooth Fairy, the Easter Bunny or Hallowe'en characters and symbols, should not be depicted in such messages under any circumstance.

With reference to paragraph (c):

The product should not be portrayed in the context of, or in relation to, for example, a performance, event or activity where the audience or the participants are expected to be predominantly people under the legal drinking age or where the television or film audiences of the featured performer(s) consist predominantly of people under the legal drinking age.

With reference to paragraph (d):

Once established as a role model for minors, a person will be considered to remain a role model for a period of 10 years from the date of retirement from the activity.

With reference to paragraph (g):

Commercial messages should not suggest that the presence or consumption of alcohol may create or contribute to an apparent change in mood, atmosphere or environment, or that a social gathering, celebration or any other activity is, or would be, incomplete or unsatisfactory without the product. In the depiction of alcoholic beverages as part of a celebration, advertisements should not imply or suggest that the presence or consumption of the beverage, itself, is essential to the success of the activity.

It is acceptable to say that one alcoholic beverage is superior in some way to any or all other similar alcoholic beverages, but it is not acceptable to suggest or imply that it is superior to any or all foods or non-alcoholic beverages.

With reference to paragraph (h):

Under this provision, a message should not portray (i) an unrealistic or excessive number of cases or containers or any excessive volume of the product in a context where consumption may reasonably be expected to occur; or (ii) any quantity of containers or volume of the product in a context where the number of individual standard servings represented exceeds or may appear to exceed the number of individuals shown. This provision does not prohibit depiction of the manufacturing, warehousing, distribution or commercial storage of alcoholic beverages.

With reference to paragraph (l):

Introduction of the product will be deemed to have occurred upon the introduction of a flat label, jingle, musical signature, logo, brand name, character or other symbol commonly used to identify the product or its manufacturer. It is unacceptable to suggest or imply that the product is or should be consumed prior to or during operation of any vehicle or conveyance or the riding of an animal. It is acceptable to suggest or imply that consumption may occur after all operation depicted in the message has been clearly completed for the day. It is also acceptable to suggest or imply that consumption may occur (among passengers only) on an aircraft or vessel operated by a professional crew.

With reference to paragraph (m):

Introduction of the product will be deemed to have occurred upon the introduction of a flat label, jingle, musical signature, logo, brand name, character or other symbol commonly used to identify the product or its manufacturer. It is unacceptable to suggest or imply that the product is or should be consumed prior to or during any such activity. It is acceptable to introduce the product after all such activity depicted in the message has been clearly completed for the day.