

VIA EMAIL: fin.cannabis-taxation-cannabis.fin@canada.ca, Minister of Health, Minister of Finance, and MP Bill Blair

December 7, 2017

Department of Finance Canada
90 Elgin Street
Ottawa, Ontario K1A 0G5

Subject: Joint Submission to the Consultation on the Proposed Excise Duty Framework for Cannabis Products

Dear Sir or Madam,

On behalf of the patient community, we, the undersigned, thank you for the opportunity to provide input on Finance Canada's ongoing consultation on its Proposed Excise Duty Framework for Cannabis Products.

In summary, we believe that the government's proposal to extend the excise duty framework to cannabis for medical purposes places an inappropriate, unfair burden on patients. We strongly urge the government to reconsider this plan as it moves forward with its proposed cannabis taxation regime (including both excise and sales taxes). **We recommend that cannabis for medical purposes, obtained pursuant to the *Access to Cannabis for Medical Purposes Regulations (ACMPR)* and *Cannabis Act*, must be zero-rated and consequently be exempt from excise and sales taxes.** Below we offer our overarching comments and feedback.

An additional financial burden on patients

A growing number of patients use cannabis as a therapy to manage their health conditions, including seizures, pain, insomnia, neurological issues, nausea and vomiting, and side effects from prescription medications. Despite having legal rights to access cannabis for medical purposes, patients currently experience a constellation of obstacles to accessing their medicine, barriers that patients who treat symptoms with other medications do not face.

The costs associated with the use of cannabis for medical purposes can be extremely burdensome for patients, many of whom are on fixed incomes. These expenses, sometimes upwards of \$500/month¹, are often in addition to the other health expenses borne by patients.

In combination with severely limited insurance coverage and the application of sales tax, the affordability of cannabis for medical purposes is already pushing Canadians to make excruciating decisions about their health. Patients report that they often or always have to choose between cannabis and other necessities such as food, rent, or other medicines because of lack of money, and are switching to less effective medications with sometimes severe side effects.² Applying excise tax to medical cannabis will, for many patients, take the affordability issue from challenge to crisis.

¹ Calculation based on Health Canada published average dose of (2.3 g/day) and average market pricing (\$8.50/g).

² Belle-Isle, L., Walsh, Z., Callaway, R., Lucas, P., Capler, R., Kay, R., & Holtzman, S. (2014). Barriers to access for Canadians who use cannabis for therapeutic purposes. *International Journal of Drug Policy*, 25, 691-699.

While the proposed excise tax is intended to be applied at the point of production rather than sale, it is expected that producers will pass on these costs directly to consumers. Based on average dosage, taxing cannabis for medical purposes costs patients an additional \$1,875 annually.³

The proposed application of taxes on cannabis for medical purposes will compound many of these affordability issues and impose additional barriers for patients' access.

Taxation is a disproportionate policy tool to address abuse of the medical stream

As we understand it, one of the government's underlying rationales for applying taxes on medical cannabis is that it will dissuade recreational/non-medical users from taking advantage of the medical cannabis stream in the post-legalization regime. This issue was alluded to in the Final Report of the Task Force on Cannabis Legalization and Regulation, but was never substantiated or explained. The extent to which taxing cannabis for medical purposes would serve this purpose is questionable.

It is worth considering that United States jurisdictions with dual medical and non-medical cannabis regimes have differential (lower) taxation policies for medical cannabis products.⁴ Moreover, a medical document, much like a prescription, is required to have access to cannabis for medical purposes under the ACMPR, and a claim that non-medical cannabis users would abuse access to the medical stream of cannabis assumes complicity on the part of Canadian physicians.

As in other situations, the remedy is not to impose taxes on a legitimate medicine but to use more appropriate and proportionate policy instruments to address the problem. For instance, improved prescription oversight and enhanced data monitoring are measures that would adequately address the government's concerns while not penalizing all patients for the actions of the few.

Opportunity to address an ongoing inequity

There is an ongoing contradiction in the Canadian system in that cannabis for medical purposes is authorized by healthcare practitioners as a medicine, yet not treated like one. Applying any tax to cannabis for medical purposes is inconsistent with the taxation of prescription drugs and medical necessities, which are zero-rated under the *Excise Tax Act*. In particular, the *Excise Tax Act* proclaims that drugs that are authorized by a healthcare practitioner and which are not available "over the counter" are zero-rated.⁵

Recently, the Tax Court of Canada and the Federal Court of Appeal observed that applying sales tax to cannabis for medical purposes creates "uncertainty and confusion"⁶ and that "this area of legislation needs work".⁷ The government's proposal to impose an excise tax on cannabis for medical purposes adds to this confusion and uncertainty. The government has an important opportunity to take advantage of its cannabis legalization efforts to correct this ongoing inequity.

³ Based on average dose and pricing (above). Inclusive of proposed excise tax and sales tax (13% GST/HST).

⁴ <https://www.leafly.com/news/industry/marijuana-tax-rates-by-state>

⁵ *Excise Tax Act*, R.S.C., 1985, c. E-15, Schedule VI-I-2.

⁶ *Hedges v. Canada*, 2016 FCA 19 at para. 17.

⁷ *Hedges v. The Queen*, 2014 TCC 270 at para. 99.

We greatly appreciate the government's continued efforts to provide an effective and coherent cannabis policy framework and the opportunity to provide our input as to its effects on the lives and well-being of patients.

Sincerely,

Arthritis Society

Janet Yale, CEO



Canadian AIDS Society

Gary Lacasse, Executive Director



Canadian Arthritis Patient Alliance

Linda Wilhelm, President



Canadian Hospice Palliative Care Association

Sharon Baxter, Executive Director



Canadian Pharmacists Association

Perry Eisenschmid, CEO



Canadian Spondylitis Association

Gerald Major, President



Canadians for Fair Access to Medical Marijuana

Jonathan Zaid, Executive Director



Cardiac Health Foundation of Canada

Barbara Kennedy, Executive Director



Crohn's and Colitis Canada

Mina Mawani, President & CEO



Gastrointestinal Society

Gail Attara, CEO



Huntington Society of Canada

Bev Heim-Myers, CEO



Save Your Skin Foundation

Amy Jones, Director of Marketing

