

Report No. 2 of the Regional Solicitor was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on December 14, 2017.

Submission to the Committee on Justice Policy regarding
Bill 174 – *Cannabis, Smoke-Free Ontario and Road Safety
Statute Law Amendment Act, 2017*

Regional Council recommends adoption of the following recommendation contained in the report dated December 6, 2017 from the Regional Solicitor:

1. Council endorse the written submission to the Standing Committee on Justice Policy with respect to Bill 174, *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017*.
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Report dated December 6, 2017 from the Regional Solicitor now follows:

1. Recommendations

It is recommended that:

2. Council endorse the written submission to the Standing Committee on Justice Policy with respect to Bill 174, *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017*.

2. Purpose

This report provides Regional Council with an update on Bill 174, and seeks Council's endorsement of staff's November 30, 2017 submission to the Standing Committee on Justice Policy (the "Standing Committee").

3. Background

Bill 174 sets out Ontario's regulatory framework for the sale and consumption of recreational cannabis once it is legalized by the federal government in July 2018

Bill 174 enacts two new statutes: the *Cannabis Act, 2017* and the *Ontario Cannabis Retail Corporation Act, 2017* and repeals and consolidates *The Smoke-Free Ontario Act* and the *Electronic Cigarettes Act, 2015* into the *Smoke-Free Ontario Act, 2017*, which includes the regulation of smoking lighted medical cannabis, and makes a number of amendments to the *Highway Traffic Act* respecting alcohol, drugs and other matters.

The purpose of Bill 174 is to establish prohibitions respecting cannabis in order to protect youth, public health and safety, as well as to deter illicit activities in relation to cannabis through appropriate enforcement and sanctions.

Bill 174 intends to:

- Create a new provincial cannabis retailer, overseen by the Liquor Control Board of Ontario.
- Set a minimum age of 19 to use, buy, possess and cultivate cannabis in Ontario.
- Focus on harm reduction by allowing for the diversion of people under the age of 19 from the justice system into programs focused on education and prevention, avoiding unnecessary contact with the justice system.
- Ban the use of cannabis in public places, workplaces and motor vehicles, similar to alcohol.
- Regulate public consumption of medical cannabis under the proposed new *Smoke-Free Ontario Act, 2017*.
- Introduce new provincial offences with strict, escalating penalties.
- Establish tougher impaired driving laws including a zero-tolerance approach for young, novice and commercial drivers.

On November 16, 2017, Regional Council adopted resolutions on Bill 174 with respect to funding, revenue tools and resourcing for municipalities

At its meeting on [November 16, 2017](#), Regional Council adopted its own resolution and endorsed a resolution of the [York Regional Police Services Board](#) regarding the financial impacts of recreational cannabis legalization. Both resolutions requested that the Provincial and Federal governments provide the necessary funding, revenue tools and resources that municipalities will require to effectively cope with the increased service demand that will result from recreational cannabis legalization.

4. Analysis and Implications

Bill 174 is progressing through the Legislature at an unusually fast pace

The Ontario government seeks to have rules for legalized recreational cannabis in place in advance of July 2018 so it will be ready to meet the goals of the federal government's *Cannabis Act* (Bill C-45). Bill C-45 will authorize the federal government to licence the production and distribution of recreational cannabis, including through online sales from federally licenced producers. Bill C-45 is currently at second reading in the Senate.

The federal government has yet to introduce any of the regulations that will be necessary to establish the federal framework to regulate licensing, production and distribution of recreational cannabis.

Bill 174 was referred to Standing Committee on November 23, 2017 and the deadline for submissions was November 30, 2017

Bill 174 was introduced in the Provincial Legislature on November 1, 2017 and was referred to the Standing Committee on Justice Policy (Standing Committee) on Thursday November 23, 2017. The deadline to make oral submissions to the Standing Committee was on Monday November 27 and the deadline to make written submissions was on November 30, 2017. Due to this expedited timeline for written submissions, Regional staff submitted the attached written submission (see Attachment 1) before presentation to Regional Council. At the writing of this report, Bill 174 was undergoing clause by clause consideration by the Standing Committee.

Consultation was held with Regional partners and stakeholders on November 28, 2017

On November 28, 2017, York Region and York Regional Police held a consultation meeting with stakeholders from the nine local area municipalities and York Regional Police on Bill 174. A consultation document was circulated and input was sought to guide written submissions to the Standing Committee. The consultation meeting was well attended and included senior staff from York Regional Police, public health officials and representatives from senior management, bylaw enforcement, fire and building enforcement from the nine local municipalities within York Region.

The Region's submission to the Standing Committee highlights gaps in the proposed legislation that will impact the ability of

municipalities and police to effectively enforce the prohibitions contained therein

The written submission to the Standing Committee was guided by the consultation with stakeholders and partners, and Council's previously adopted resolutions. A significant portion of the written submission focused on the technical gaps and challenges associated with the enforcement provisions of the draft *Cannabis Act, 2017*.

The key areas of concern regarding Bill 174 are as follows:

1. Clarification and Broadening of Enforcement Powers - *The Cannabis Act, 2017* should be amended to enhance powers of entry, inspection, testing, copying of documents, duty to identify oneself to an officer, and admissibility of copies of documents and certificates of analysis in order to facilitate in the investigation and proof of offences under the *Cannabis Act, 2017*. In addition, there is a need to clarify which individuals or class of individuals would be responsible for enforcement.

2. Prohibition of Public Consumption – Bill 174 should be amended to restrict use of recreational cannabis to a “Private Residence” to mirror liquor control rather than a prohibition from use in a “public place”, as currently drafted to reflect the intent of prohibiting public consumption.

3. Broad Regulatory Powers in the *Cannabis Act, 2017* - As the Province has had limited time to implement cannabis legislation, due to the timing of the federal mandate, there may be further changes required to the mechanics of enforcement to effect the Province's goals. The broad regulatory powers in the draft legislation should include a further category of broad regulatory powers to address any matter relating to enforcement and prosecution of any offence under the Act similar to the regulations in the *Smoke-Free Ontario Act, 2017*.

4. Lack of Regulation of Home Cultivation – Bill 174 should include express provisions for the regulation of home cultivation of cannabis and expand powers to municipalities to regulate home cultivation through provisions under the Building Code, Fire Code, electrical safety standards and other applicable legislation.

5. Remove Inconsistency between the *Smoke-Free Ontario Act, 2017* and the *Cannabis Act, 2017* – Bill 174 should be amended to remove inconsistencies in provisions governing consumption and strengthen enforcement provisions.

6. Fine Revenue and Funding – Permit municipalities to retain the revenue from fines under the federal *Contraventions Act*, for matters relating to federal cannabis legislation. In addition, the Province should adopt equitable distribution of sales tax revenue from cannabis sales so as to offset increased municipal costs relating to the enforcement, education, nuisance, health and safety concerns associated with the regulation of cannabis.

5. Financial Considerations

As noted in the resolutions adopted by Council and the Police Services Board, there will be significant costs associated with the enforcement and regulation of recreational cannabis. The Region will also have new responsibilities for enforcement of the consumption of cannabis for medical uses. Regional staff will continue to work with our partners to advocate to the Provincial and Federal governments for appropriate funding sources and tools to finance the costs associated with the legalization of recreational cannabis.

6. Local Municipal Impact

Representatives from the local municipalities participated in the stakeholder meeting held on November 28, 2017 and their input was instrumental in guiding the written submission to the Standing Committee on Bill 174. Staff will continue to collaborate as the legislation is implemented

7. Conclusion

The Region submitted a written submission to the Standing Committee on Justice Policy, and staff seeks Council's endorsement of that submission. The written submission was guided and informed by the November 16, 2017 resolutions of Council and a consultation meeting held with stakeholders from the nine local municipalities and York Regional Police. Staff will continue to monitor the progress of Bill 174 and will report further to Council on any initiatives resulting from the passage of the legislation.

The Senior Management Group has reviewed this report.

December 6, 2017

Attachments (1)

#8014528

Accessible formats or communication supports are available upon request

**YORK REGION
WRITTEN SUBMISSIONS TO THE STANDING COMMITTEE
ON JUSTICE POLICY**

Bill 174, An Act to enact the Cannabis Act, 2017, the Ontario Cannabis Retail Corporation Act, 2017 and the Smoke-Free Ontario Act, 2017, to repeal two Acts and to make amendments to the Highway Traffic Act respecting alcohol, drugs and other matters

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November 30, 2017

Introduction

The Regional Municipality of York (“York Region”) is a two-tier municipality comprised of nine local municipalities and is responsible for a broad range of services including police, paramedic services, provincial offences courts and public health. The local municipalities are responsible for local services including licensing, bylaw enforcement, planning, and fire services.

York Region has identified a number of areas which will experience increased demand on services and an increase in costs as a result of cannabis legalization, This has been set out in a resolution adopted by York Regional Council at its meeting on November 16, 2017. (See Attachment 1)

The submissions contained herein are guided and influenced by the input from and consultation with stakeholder groups and partners in York Region including York Regional Police, public health officials and representatives from senior management, bylaw enforcement, fire and building enforcement from the nine area local municipalities within York Region.

York Region respectfully makes the following submissions to the Standing Committee on Justice Policy (the “Committee”) on Bill 174, *An Act to enact the Cannabis Act, 2017, the Ontario Cannabis Retail Corporation Act, 2017 and the Smoke-Free Ontario Act, 2017, to repeal two Acts and to make amendments to the Highway Traffic Act respecting alcohol, drugs and other matters.*

Summary of Recommendations

- 1. Clarification and Broadening of Enforcement Powers** - The *Cannabis Act, 2017* should be amended to enhance powers of entry, inspection, testing, copying of documents, duty to identify oneself to an officer, and admissibility of copies of documents and certificates of analysis in order to facilitate in the investigation and proof of offences under the *Cannabis Act, 2017*. In addition, there is a need to clarify which individuals or class of individuals would be responsible for enforcing the Act.
- 2. Prohibition of Public Consumption** – Bill 174 should be amended to restrict use of recreational cannabis to a “Private Residence” to mirror liquor control rather than a

prohibition from use in a “public place”, as currently drafted to reflect the intent of prohibiting public consumption

3. **Broad Regulatory Powers in the *Cannabis Act, 2017*** - As the Province has had limited time to implement cannabis legislation, due to the timing of the federal mandate, there may be further changes required to the mechanics of enforcement to effect the Province’s goals. The broad regulatory powers in the draft legislation should include a further category of broad regulatory powers to address any matter relating to enforcement and prosecution of any offence under the Act similar to regulation provisions in *the Smoke-Free Ontario Act, 2017*;
4. **Lack of Regulation of Home Cultivation** – Bill 174 should include express provisions for the regulation of home cultivation of cannabis and expand powers to municipalities to regulate home cultivation through provisions under the Building Code, Fire Code, electrical safety standards and other applicable legislation;
5. **Remove Inconsistency between the *Smoke-Free Ontario Act, 2017* and the *Cannabis Act, 2017*** – Bill 174 should be amended to remove inconsistencies in provisions governing consumption and strengthen enforcement provisions; and
6. **Fine Revenue and Funding** – Permit municipalities to retain the revenue from fines under the federal *Contraventions Act*, for matters relating to federal cannabis legislation. In addition, the Province should adopt equitable distribution of sales tax revenue from cannabis sales so as to offset increased municipal costs relating to the enforcement, education, nuisance, health and safety concerns associated with the regulation of cannabis.

Submissions

1. Clarification and Broadening of Enforcement and Powers

The proposed *Cannabis Act, 2017* establishes prohibitions restricting cannabis. While sections 14 to 21 address compliance and enforcement, there are significant gaps in the legislation that will adversely impact the effective enforcement of the Act.

a. **How to prove substances are cannabis?**

The fundamental issue for prosecution of offences under the *Cannabis Act, 2017* that needs to be addressed is the means by which the prosecution will prove that any seized substances meet the definition of “cannabis” as found in subsection 2(1), and as further defined in subsection 2(2) of the *Cannabis Act, 2017*. As currently worded, there is no authority in the *Cannabis Act, 2017* for a police officer or other designated enforcement officers to enter premises, conduct inspections, test any substance that is seized, or admit any certificate of analysis or document into evidence. While there is authority to seize a substance under section 16(1), there is no authority for police to submit it for testing. If a seized substance is tested, the prosecution would be required to tender expert evidence in every prosecution as well as a chain of custody and continuity of evidence to prove that the seized substance is, in fact, cannabis. Such a practice will add unnecessary expense and complexity to the prosecution of these offences, further prejudicing an already over-burdened POA system.

To ensure successful enforcement of the *Cannabis Act, 2017*, we respectfully submit that the *Cannabis Act, 2017* be amended to include the ability of the relevant enforcement agency to submit the seized substance to a prescribed laboratory for testing to determine whether the seized substance is in fact “cannabis”. Further amendments should provide that any report generated from the laboratory would be admissible in court for the truth of the contents contained in the report, without having a representative from the laboratory testify.

Precedent already exists in the federal *Controlled Drugs and Substances Act* (“CDSA”) for such a course of action. Section 45 of the CDSA allows for the enforcement officer to submit the seized substance to an analyst for examination and for a certificate setting out the results of the examination to be generated:

Analysis

45 (1) An inspector or peace officer may submit to an analyst for analysis or examination any substance or sample thereof taken by the inspector or peace officer.

Report

(2) An analyst who has made an analysis or examination under subsection (1) may prepare a certificate or report stating that the analyst has analysed or examined a substance or a sample thereof and setting out the results of the analysis or examination.

Section 51 of the CDSA provides that any such certificate is admissible in any proceeding for the truth of its contents, without having to have the analyst testify:

Certificate or report of analyst

51 (1) A certificate or report prepared by an analyst under subsection 45(2) is admissible in evidence in any prosecution for an offence under this Act or any other Act of Parliament and, in the absence of evidence to the contrary, is proof of the statements set out in the certificate or report, without proof of the signature or official character of the person appearing to have signed it.

An amendment would also be required to specify where the seized substances can be sent for testing. Pursuant to the regulations passed under the CDSA, the Minister has authority to appoint persons to perform such testing, provided those persons meet certain qualifications. By adapting the provisions from the CDSA a similar approach could be incorporated into the *Cannabis Act, 2017*. Such amendments should also specify standards for the storing of any seized cannabis pending the substance being sent to an analyst or pending the outcome of a proceeding.

b. Duty of individuals to identify themselves to enforcement officers

Another fundamental enforcement issue that needs to be addressed is the requirement for individuals to identify themselves. Section 19 of the *Cannabis Act, 2017* provides that if a person apparently in contravention of the Act refuses to identify themselves, a police officer may arrest the person without a warrant. The *Cannabis Act, 2017* is silent regarding a corresponding duty to identify oneself to a designated person. A logical inference from this silence is that there is no corresponding duty; had the Legislature intended that the designated person have ability to require a person to identify themselves, it would have explicitly set out such a duty, similar to section 33 of the *Highway Traffic Act* which requires a driver to identify themselves with a driver's licence or other reasonable identification to an officer. In addition, section 21 of the *Cannabis Act, 2017* provides that the powers of the Act may be performed by a person designated under section 1(3) of the *Provincial Offences Act*, save and except for the powers under section 19, which may be exercised only by a police officer. The concern is that other persons designated to enforce the *Cannabis Act, 2017* will have no power to require a person to identify themselves.

Designated persons are tasked with enforcing the same provisions in the *Cannabis Act, 2017* as police officers. If these designated persons do not have the same ability to require identification it greatly hampers their ability to enforce the Act. After all, if someone refuses to identify themselves, how can the designated person commence proceedings either under Part I or Part III of the *Provincial Offences Act*? A defendant's name must be inserted on a charging document. While we acknowledge that it may not be appropriate for these designated persons (who will not be police officers) to arrest individuals, it would be appropriate to create an obstruction offence in the *Cannabis Act, 2017*. Any person who would fail to identify themselves to a designated person could therefore be charged with obstruction. A police officer could then be called to arrest the individual if the refusal to identify themselves continues.

c. Clarification of who is expected to enforce the *Cannabis Act, 2017* (Sections 6-13, 21)

It is unclear in the current draft of the *Cannabis Act, 2017* which enforcement agencies are expected to carry out the bulk of the enforcement responsibilities contained in the statute. The current draft of the Act provides that persons designated under 1(3) of the *Provincial Offences Act* may enforce the majority of prohibitions in the *Cannabis Act, 2017*; however, the agencies or individuals have not yet been designated for this specific Act and the preamble or commentary to the legislation does not address who will be listed. It is also unclear if the more serious offences under the statute will be the responsibility of one group of enforcement officers while less serious offences will be handled by another group.

Clarification is also necessary to promote consistency of enforcement across regions; in particular, contiguous municipalities in the Greater Toronto Area.

d. Training for Enforcement Officers

In the event that enforcement is expected to be provided by local bylaw enforcement officers or other Regional or local municipal government employees, there needs to be sufficient resources and time for hiring and training personnel and setting up associated funding agreements. Enforcement staff will require training on several fronts, such as how to determine if a product is cannabis to the satisfaction of a court, the distinction between medical and recreational cannabis,

how to determine if an e-cigarette contains cannabis, training of officer competency and ability to handle conflict and other matters.

e. Clear powers of entry and inspection

We also believe it is necessary to clearly specify the powers of entry and inspection for police officers and designated persons to enter premises for the purpose of inspection. While section 17(1) of the *Cannabis Act, 2017* provides that a police officer may require that persons may vacate premises where he/she believes that contraventions of the Act are occurring, there is no explicit statutory authority for the police officer to enter onto the premises in the first place. This becomes problematic when compared with section 12(3) of the *Cannabis Act, 2017*, which expressly provides for the right of police officers to enter into a vehicle or boat and perform a search. If the Legislature intended for the police to have such a power of entry for other premises, it would have explicitly set out such a power as it did in section 12(3). We recognize that in some cases, dwelling units may be used for the commission of offences and we agree that it would not be appropriate to have an unfettered right of entry, into a place actually being used as a dwelling unit, unless the occupier provides consent. However, if consent is denied, it would still be open for the police officer to obtain a search warrant. Similar rights of entry exist in other statutes, such as the proposed *Smoke-Free Ontario Act, 2017* at Section 20 and sections 12, 15.8 and 15.9 of the *Building Code Act, 1992*.

In addition to the power to enter premises, we believe that it is necessary to grant authority for enforcement officers to seize documents and things in relation to their inspection and to remove and make copies of relevant documents. For example, there may be documents present in premises that prove that the owner of premises was selling cannabis, or who the landlord of the premises is (a lease, rent payments, correspondence) that would be relevant in making or obtaining a closure order of the premises. The *Cannabis Act, 2017* should be amended to allow an officer to demand and seize any such document as part of their inspection, to make copies, and that the copies made are admissible in evidence. Similar powers exist in other statutes, including sections 436(2) (5) and (6) of the *Municipal Act, 2001*, which provides as follows:

Inspection powers

(2) By-laws passed under subsection (1) may provide that for the purposes of an inspection the municipality may,

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require information from any person concerning a matter related to the inspection; and
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection. 2006, c. 32, Sched. A, s. 184.

Receipt

(5) A receipt shall be provided for any document or thing removed under clause (2) (b) and the document or thing shall be promptly returned after the copies or extracts are made. 2006, c. 32, Sched. A, s. 184.

Evidence

(6) Copies of or extracts from documents and things removed under this section and certified as being true copies of or extracts from the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the originals. 2006, c. 32, Sched. A, s. 184.

Without these powers expressly enumerated in the *Cannabis Act, 2017*, it is possible that any evidence gathered by a police officer in the course of their investigation would be excluded as an unreasonable search and seizure contrary to section 8 of the *Canadian Charter of Rights and Freedoms*.

f. The *Cannabis Act, 2017* should bind the Province

Given that the Ontario Cannabis Retail Corporation will have the exclusive right to sell recreational cannabis, we submit that the *Cannabis Act, 2017* should expressly be made applicable to the Province to ensure that staff of this new Crown Corporation comply with the Act and can face charges if in breach.

Section 71 of the *Legislation Act, 2006* states no Act binds the province unless it expressly states an intention to do so. A Crown Agency is for all its purposes an agent of Her Majesty, under

section 2 of the *Crown Agency Act*, R.S.O. 1990, chapter c. 48. (the “*Crown Agency Act*”) “Crown Agency” is defined in section 1 of the *Crown Agency Act* as meaning “a board, commission, railway, public utility, university, factory, company or agency, owned, controlled or operated by Her Majesty in right of Ontario, or by the Government of Ontario, or under the authority of the Legislature or the Lieutenant Governor in Council”. Crown agencies are not bound by provincial legislation (see *Toronto Area Transit Operating Authority v. Mississauga (City)*, [1996] O.J. No. 843)).

The Province has included provisions in other provincial statutes to indicate that the provisions of the statute are binding on the Crown (see for example s. 20 of the *Environmental Protection Act*).

In addition, section 17 of the *Ontario Cannabis Retail Corporation Act, 2017* would also need to be amended to expressly provide that employees of the Crown Corporation may be subject to prosecution under the *Cannabis Act, 2017*, as this section prohibits any proceeding being instituted against any employee of the Crown Corporation.

2. Prohibition of public consumption (Section 11 of *Cannabis Act, 2017*)

The draft text of the legislation provides that no person shall consume [non-medical] cannabis in:

- (a) a public place;
- (b) a workplace within the meaning of the *Occupational Health and Safety Act*;
- (c) a vehicle or boat; or
- (d) any prescribed place.

[...]

“public place” includes any place to which the public has access as of right or by invitation, whether express or implied, and whether or not a fee is charged. (“lieu public”)

We understand that the intention of the legislation is to prohibit public consumption and to limit use of recreational cannabis solely to a private residence. York Region submits that, for the purposes of enforcement, the legislation as drafted is not as clear as it could be. A straightforward change to the text of the legislation would be to mirror the provisions contained in the *Liquor Licence Act*, R.S.O. 1990, c. L.19, which provides:

Unlawful possession or consumption**Definition**

31 (1) In this section,

“residence” means a place that is actually occupied and used as a dwelling, whether or not in common with other persons, including all premises used in conjunction with the place to which the general public is not invited or permitted access, and, if the place occupied and used as a dwelling is a tent, includes the land immediately adjacent to and used in conjunction with the tent. R.S.O. 1990, c. L.19, s. 31 (1).

Unlawful possession or consumption

(2) No person shall have or consume liquor in any place other than,

- (a) a residence;
- (b) premises in respect of which a licence or permit is issued; or
- (c) a private place as defined in the regulations. R.S.O. 1990, c. L.19, s. 31 (2).

Exception

(3) Subsection (2) does not apply to the possession of liquor that is in a closed container. R.S.O. 1990, c. L.19, s. 31 (3).

We respectfully submit that the inconsistency between liquor prohibitions and cannabis prohibitions and inconsistency between medical and recreation use, will lead to confusion and difficulties in enforcement, particularly where there is a dispute as to whether a particular area constitutes a “public place”. If the language in the *Cannabis Act, 2017* is amended to reflect the prohibitions in the *Liquor License Act*, R.S.O. 1990, c. the public use prohibitions may be more clear for the purposes of enforcement and prosecution of offences under the *Cannabis Act, 2017*.

3. Broad Powers for the Lieutenant-Governor to Regulate

Provinces have no choice but to work towards implementation of cannabis legislation within a very tight timeline based on the federal mandate. We respectfully suggest that there may be further changes required to the enforcement mechanisms and other matters required to effect the province’s goals in this legislation. This can be appropriately addressed through regulations as municipalities and other stakeholders have more time to review the draft legislation and provide

suggestions and recommendations for improvement.

Although section 28(a) of the *Cannabis Act, 2017* as drafted gives broad power to the Lieutenant-Governor to make regulations “respecting anything that, in this Act, may or must be prescribed or done by regulation”, in our view, this section should be amended to specifically include an additional category that contemplates any matter relating to enforcement and/or prosecution of any offence under the Act. Accordingly, if further enforcement or prosecution issues arise after Bill 174 receives Royal Assent, the Lieutenant-Governor could have clear regard to such an authority and make timely regulations to deal with the issue. Similar authority exists in other provincial statutes, most notably section 24(1)(f) of the proposed *Smoke Free Ontario Act, 2017*.

4. Regulatory Gap with respect to Home Cultivation

Bill 174 contains no provisions in the Provincial statute with respect to home cultivation beyond the federal regulatory regime. The Province has jurisdiction to impose rules governing or restricting home cultivation beyond the provisions set out by the federal government in Bill C-45 (*Cannabis Act*). In the absence of any provisions in the *Cannabis Act, 2017* to regulate home cultivation, Ontario communities will be left without any means of regulating or otherwise managing the many issues that will arise. From consultation with our local municipalities, police partners and stakeholders, we understand that without effective regulation and enforcement, home cultivation will quickly become a significant concern.

We submit that regulation of home cultivation should be addressed in the provincial cannabis statute and regulations. In addition, if municipalities are expected to utilize existing tools to address regulation of location and prevalence of home cultivation, such powers and tools should be identified in the appropriate legislation. The Committee may wish to consider a permit regime or express reference in the *Building Code, Fire Code* or other applicable legislative regime.

Unregulated home cultivation is likely to lead to complaints from the public to local governments yet they do not have sufficient powers to address issues arising from home cultivation. We submit that there should be a defined inspection authority, including provisions that permit entry to a

private dwelling, with powers of entry for Fire Services, the Technical Standards and Safety Authority, Electrical Safety Authority, municipal inspection etc. as required to regulate home cultivation and ensure public safety.

In other respects, the legislation takes a phased approach as was recommended by the federal task force; however, by choosing not to introduce provincial rules governing home cultivation Ontario has no means of addressing the unintended consequences that are likely to arise.

We submit that if home cultivation is not addressed in Bill 174 or associated regulations, this matter should be reviewed within two years for consideration in legislative amendments.

5. Enforcement of Medical Cannabis and Recreational Lighted Cannabis (*Smoke-Free Ontario Act, 2017 Section 12 & Cannabis Act, 2017 Section 11*)

a. Inconsistency Between Enforcement of Medical and Recreational Cannabis

The legislation as drafted will lead to challenges in enforcement given the discrepancies between the medical cannabis (federal) and recreational cannabis (provincial) regimes.

There is bound to be community confusion as to where cannabis can be consumed. Medical cannabis will be permitted under the *Smoke-Free Ontario Act, 2017* in public places not prohibited by the Act, while recreational cannabis use will be prohibited under the *Cannabis Act* from use in a public place.

Individuals designated to enforce the *Smoke-Free Ontario Act, 2017* such as tobacco enforcement officers are not designated to enforce the *Cannabis Act, 2017*; therefore, enforcement officers will be required to determine if the substance is medical cannabis for enforcement under the *Smoke-Free Ontario Act, 2017*, but if the substance or user is non-medical then they will need to contact a cannabis enforcement officer because they do not have enforcement jurisdiction under the *Cannabis Act, 2017*. This will cause practical enforcement challenges. We therefore submit that the government should consolidate the regulation of cannabis for all uses.

b. Public Health Concerns – Consumption in Multi-Unit Dwellings

Multi-Unit Dwellings will pose a unique challenge by their design. While all cannabis use in common areas is prohibited, the shared ventilation in many buildings, along with passive drifting smoke, will expose neighbouring tenants, including many young families, to second hand cannabis smoke. Both police and health units are likely to receive calls for assistance to deal with this issue, but they currently lack sufficient tools to address these concerns.

c. Technical Amendment to the *Municipal Act, 2001* to mirror changes to the *Smoke-Free Ontario Act, 2017*

The *Smoke-Free Ontario Act, 2017* now includes lighted cannabis in addition to tobacco.

Municipalities have an express power to pass bylaws to prohibit or further regulate tobacco use in public places pursuant to section 115 of the *Municipal Act, 2001*:

Smoking in public places, etc.

115 (1) Without limiting sections 9, 10 and 11, a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces. 2001, c. 25, s. 115 (1); 2006, c. 32, Sched. A, s. 56 (1).

Crown bound

(2) A by-law under this section binds the Crown. 2001, c. 25, s. 115 (2)

We submit that Section 115 of the *Municipal Act, 2001* is amended as follows:

Smoking in public places, etc.

115 (1) Without limiting sections 9, 10 and 11, a municipality may prohibit or regulate the smoking of tobacco and/or cannabis in public places and workplaces. 2001, c. 25, s. 115 (1); 2006, c. 32, Sched. A, s. 56 (1).

Crown bound

(2) A by-law under this section binds the Crown. 2001, c. 25, s. 115 (2)

6. Funding for Municipal Costs

a. POA Courts

As a result of the passage of Bill C45 (federal) and Bill 174 (provincial), there will be increased

costs to POA court programs due to charges being filed in relation to federal and provincial offences (court facilities, judicial costs, prosecution and court administration staff and costs, interpreters), and training costs for enforcement and prosecution staff. These costs will be borne by the municipalities responsible for the POA Court programs.

Pursuant to the current Memorandum and Understanding between York Region and the Province, York Region would retain all fine revenues for fines that would result from the new *Cannabis Act, 2017*, the *Smoke Free Ontario Act*, and amendments to the *Highway Traffic Act*. However, pursuant to section 165(5)(d) of the *Provincial Offences Act*, any fines in relation to charges brought under the *Contraventions Act* (prosecutions in relation to federal charges relating to cannabis) would be remitted to the Province. Given the increased costs associated with Bill 174, we submit that municipalities be permitted to retain this fine revenue as well. In addition, we also submit that municipal governments should receive an appropriate portion of sales and tax revenue from the sale of cannabis to fund these increased costs.

b. Public Health

Public Health units anticipate increased workload as a result of cannabis legalization and proposed amendments to the *Smoke Free Ontario Act* which will increase enforcement activities by adding medical cannabis. Municipalities require full funding to support these expanded responsibilities.

c. Municipal Enforcement

The enforcement and regulatory costs borne by municipalities as a result of Bill 174 will be significant. Appropriate dedicated funding for municipalities is necessary for the additional enforcement, and regulatory responsibilities arising from cannabis legalization.

d. Police Services

There will be increased costs to police services as a result of cannabis legalization York Regional Police have identified the potential financial implications. This has been set out in a resolution of the Board which was adopted on November 15, 2017. (See Attachment 2)

Conclusion

We respectfully submit the above noted technical amendments to Bill 174 and the identified issues to be considered by this Committee.

The legislation as currently drafted has significant enforcement gaps which require correction so as to ensure successful enforcement of the *Cannabis Act, 2017*. The legislation as currently drafted imposes significant regulatory costs on municipalities and dedicated funding and the financial impact on municipalities should be considered when reviewing Bill 174. Depending on further determinations with respect to enforcement, additional costs may be borne by municipalities.

A summary chart of selected proposed technical amendments is included on the following pages.

Thank you for taking the time to review our submissions.

Chart of Selected Proposed Technical Amendments

Legislation & Topic	Section	Current Language	Proposed Revised Language or general area of revision
<p><i>Cannabis Act, 2017</i></p> <p>Broad inspection and regulatory powers.</p>	28	<p>28 The Lieutenant Governor in Council may make regulations,</p> <p>(a) respecting anything that, in this Act, may or must be prescribed or done by regulation;</p> <p>[...]</p> <p>(f) generally for carrying out the purposes and provisions of this Act.</p>	<p>Include Sections 20 and 24 from the <i>Smoke Free Ontario Act, 2017</i> in the <i>Cannabis Act, 2017</i></p> <p>20 Powers of inspector</p> <p>(7) An inspector conducting an inspection may,</p> <p>(a) examine a record or other thing that is or may be relevant to the inspection;</p> <p>(b) demand the production for inspection of a record or other thing that is or may be relevant to the inspection;</p> <p>(c) remove for review and copying a record or other thing that is or may be relevant to the inspection;</p> <p>(d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place;</p> <p>(e) remove a sample of a substance or any other thing that is or may be relevant to the inspection or take a specimen that is or may be relevant to the inspection;</p> <p>(f) question a person on any matter that is or may be relevant to the inspection, including questioning a person separate and apart from others;</p> <p>(g) if he or she finds that an employer is not complying with subsection 14 (1), direct the employer or a person whom the inspector believes to be in charge of the enclosed workplace, place or area to comply with the provision and may require the direction to be carried out forthwith or within such period of time as the inspector specifies; and</p> <p>(h) if he or she finds that a proprietor is not complying with section 15, direct the proprietor or a person whom the inspector believes to be in charge of the enclosed public place, place or area to comply with the provision and may require the</p>

		<p>direction to be carried out forthwith or within such period of time as the inspector specifies.</p> <p>Seizure and forfeiture</p> <p>(10) An inspector acting under subsection (8) may seize any tobacco products, vapour products, prescribed products and substances and funds found in the machine and, where the inspector has done so, the products are forfeited to the Crown and shall be dealt with as the Minister directs, and the funds are forfeited to the Minister of Finance.</p> <p>Written demand</p> <p>(11) A demand that a record or other thing be produced for inspection must be in writing and include a statement of the nature of the record or thing required, and may include a date and time for the record or other thing to be produced.</p> <p>Obligation to produce and assist</p> <p>(12) If an inspector demands that a record or other thing be produced for inspection, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.</p> <p>Records and things removed from place</p> <p>(13) A record or other thing that has been removed for review and copying shall be,</p> <p>(a) made available to the person from whom it was removed, for review and copying, on request and at a time and place that are convenient for the person and for the inspector; and</p> <p>(b) returned to the person within a reasonable time.</p> <p>Copy admissible in evidence</p> <p>(14) A copy of a record that purports to be certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original, and has the same evidentiary value, without proof of the signature or official character</p>
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			<p>of the person appearing to have certified the copy.</p> <p>Seizure</p> <p>(15) An inspector in a place under the authority of this section may seize anything that is being stored, sold, offered for sale, distributed or offered for distribution contrary to this Act, and anything seized under this section is forfeited to the Crown and shall be dealt with as the Minister directs.</p> <p>Obstruction</p> <p>(16) No person shall,</p> <p>(a) hinder, obstruct or interfere with an inspector, or attempt to hinder, obstruct, or interfere with an inspector who is,</p> <p>(i) conducting an inspection, or</p> <p>(ii) making a seizure under subsection (10) or (15);</p> <p>(b) refuse to answer questions on any matter that is or may be relevant to the inspection;</p> <p>(c) provide the inspector with false or misleading information; or</p> <p>(d) fail to comply with a direction under clause (7) (g) or (h).</p>
<p><i>Cannabis Act, 2017</i></p> <p>Specific Regulations to Aid enforcement in inspecting, testing and duty to identify oneself</p>	<p>28</p>	<p>NA</p>	<p>Incorporate Specific Provisions from SFOA, and wording similar to s 436 of the <i>Municipal Act 2001</i></p> <p>sections 436(2) (5) and (6) of the Municipal Act, 2001</p> <p>,</p> <p>Inspection powers</p> <p>(2) By-laws passed under subsection (1) may provide that for the purposes of an inspection the municipality may,</p> <p>(a) require the production for inspection of documents or things relevant to the inspection;</p> <p>(b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;</p>

			<p>a matter related to the inspection; and</p> <p>(d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection. 2006, c. 32, Sched. A, s. 184.</p> <p>Receipt</p> <p>(5) A receipt shall be provided for any document or thing removed under clause (2) (b) and the document or thing shall be promptly returned after the copies or extracts are made. 2006, c. 32, Sched. A, s. 184.</p> <p>Evidence</p> <p>(6) Copies of or extracts from documents and things removed under this section and certified as being true copies of or extracts from the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the originals. 2006, c. 32, Sched. A, s. 184.</p>
<p><i>Cannabis Act, 2017</i></p> <p>Specific Regulations to Aid Prosecutions to prove substance is cannabis</p>	NA	NA	<p>Incorporate noted CDSA Provisions</p> <p>Analysis</p> <p>45 (1) An inspector or peace officer may submit to an analyst for analysis or examination any substance or sample thereof taken by the inspector or peace officer.</p> <p>Report</p> <p>(2) An analyst who has made an analysis or examination under subsection (1) may prepare a certificate or report stating that the analyst has analysed or examined a substance or a sample thereof and setting out the results of the analysis or examination.</p> <p>Certificate or report of analyst</p> <p>51 (1) A certificate or report prepared by an analyst under subsection 45(2) is admissible in evidence in any prosecution for an offence under this Act or any other Act of Parliament and, in the absence of evidence to the contrary, is proof of the statements set out in the certificate or report, without proof of the signature or official character of the person appearing to have signed it.</p>
<p><i>Cannabis Act, 2017</i></p> <p>Enforcement</p>	21	A power that may be exercised under this Act by a police officer, other than a power set	<p>b. Clarify who is expected to enforce which provisions.</p>

nt		out in section 19, may also be exercised by a person designated under subsection 1 (3) of the Provincial Offences Act for the purposes of this Act.	
<p><i>Cannabis Act, 2017</i></p> <p>Location of Permitted Consumption</p>	11	<p>(a) <u>a public place</u>;</p> <p>(b) a workplace within the meaning of the <i>Occupational Health and Safety Act</i>;</p> <p>(c) a vehicle or boat; or</p> <p>(d) any prescribed place.</p> <p>“public place” includes any place to which the public has access as of right or by invitation, whether express or implied, and whether or not a fee is charged. (“lieu public”)</p>	<p>Mirror the <i>Liquor Licence Act</i>, R.S.O. 1990, c. L.19:</p> <p>Unlawful possession or consumption Definition</p> <p>31 (1) In this section,</p> <p>“residence” means a place that is actually occupied and used as a dwelling, whether or not in common with other persons, including all premises used in conjunction with the place to which the general public is not invited or permitted access, and, if the place occupied and used as a dwelling is a tent, includes the land immediately adjacent to and used in conjunction with the tent. R.S.O. 1990, c. L.19, s. 31 (1).</p> <p>Unlawful possession or consumption</p> <p>(2) No person shall have or consume liquor in any place other than,</p> <p>(a) <u>a residence</u>;</p> <p>(b) premises in respect of which a licence or permit is issued; or</p> <p>(c) a private place as defined in the regulations. R.S.O. 1990, c. L.19, s. 31 (2).</p> <p>Exception</p> <p>(3) Subsection (2) does not apply to the possession of liquor that is in a closed container. R.S.O. 1990, c. L.19, s. 31 (3).</p>
<p><i>Ontario Cannabis Retail Corporation Act, 2017</i></p> <p>Inspections and</p>	17	<p>17 (1) No cause of action arises against,</p> <p>(a) a director, officer or employee of the Corporation as a result of any act done in good faith in the performance or intended performance of his or her duties or any alleged neglect or default in the</p>	<p>Expressly remove-immunity from prosecution for employees of the OCRC who commit offences and make legislation binding on the Crown</p>

Prosecution of OCRC and employees for prohibited acts		<p>performance in good faith of his or her duties; [...] No proceeding (2) No proceeding, including but not limited to a proceeding for a remedy in contract, restitution, tort or trust, shall be instituted against, (a) a director, officer or employee of the Corporation by a person who has suffered any damages, injury or other loss based on or related to any cause of action described in clause (1) (a); (b) the Crown, a minister of the Crown or an employee of the Crown by a person who has suffered any damages, injury or other loss based on or related to any cause of action described in clause (1)</p>	
<i>Municipal Act, 2001</i>	115	<p>Smoking in public places, etc.</p> <p>115 (1) Without limiting sections 9, 10 and 11, a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces. 2001, c. 25, s. 115 (1); 2006, c. 32, Sched. A, s. 56 (1).</p> <p>Crown bound</p> <p>(2) A by-law under this section binds the Crown. 2001, c. 25, s. 115 (2)</p>	<p>Smoking in public places, etc.</p> <p>115 (1) Without limiting sections 9, 10 and 11, a municipality may prohibit or regulate the smoking of tobacco <u>and/or cannabis</u> in public places and workplaces. 2001, c. 25, s. 115 (1); 2006, c. 32, Sched. A, s. 56 (1).</p> <p>Crown bound</p> <p>(2) A by-law under this section binds the Crown. 2001, c. 25, s. 115 (2)</p>



Minute No. 164 as recorded in the Minutes of the meeting of the Council of The Regional Municipality of York held on November 16, 2017.

164 Legalization of Recreational Cannabis

It was moved by Mayor Van Bynen, seconded by Regional Councillor Spatafora that Council receive the communication from Joy Hulton, Regional Solicitor and Katherine Chislett, Commissioner of Community and Health Services, dated November 16, 2017 and adopt the following resolution contained in amended Attachment 1:

Resolution Re: Bill 174 – Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017

Whereas the Government of Canada introduced Bill C-45, *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*, to legalize and regulate the production, distribution and sale of cannabis and cannabis products by July 2018; and

Whereas the Ontario government introduced Bill 174, *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017* (the Cannabis Act) in preparation for the federal legalization of cannabis and cannabis products; and

Whereas Bill 174 is intended to ensure that Ontario will be prepared to implement the requirements of the federal legislation by:

- Creating a regulated retail and distribution system for cannabis products.
- Establishing 19 as the minimum age to use, buy, possess and cultivate cannabis in Ontario.
- Diverting youth under the age of 19 from the justice system through harm reduction programs focused on education and prevention.
- Banning the use of cannabis in public places, workplaces and motor vehicles, similar to alcohol.
- Regulating the public consumption of medical cannabis under the proposed new *Smoke-Free Ontario Act, 2017*.
- Introducing new provincial offences with strict, escalating penalties.
- Establishing tougher impaired driving laws including a zero-tolerance approach for young, novice and commercial drivers; and

Whereas municipalities and municipally funded services, including police, will face increases in costs and demands for services related to the implementation and enforcement of the *Cannabis Act*;

NOW therefore be it resolved that:

1. The Regional Municipality of York requests that the Government of Ontario and the Government of Canada:
 - i. ensure that municipal governments are fully funded on a cost-recovery basis and provided the necessary supports for their role in implementing and enforcing the new recreational cannabis regime, including increases in demands for service and training requirements associated with their role.
 - ii. ensure the Ministry of Health and Long Term Care provide 100% funding for public health programs to fund the impact on those programs arising from the implementation of legalized recreational cannabis, including but not limited to public education, addiction and related services, and enforcement of the use of medical cannabis under the *Smoke Free Ontario Act, 2017*.
 - iii. ensure that municipal governments receive an appropriate portion of sales and tax revenue from the sale of recreational cannabis to fund the impacts on their services and programs.
 - iv. amend section 165(5)(d) of the *Provincial Offences Act* to ensure that municipalities responsible for operating a POA Court retain all fine revenue associated with offences under the federal *Cannabis Act* and *Controlled Drugs and Substances Act* prosecuted in their court.
2. A copy of this resolution be forwarded to Premier Kathleen Wynne, the Honourable Eric Hoskins, Minister of Health and Long-Term Care, the Honourable Yasir Naqvi, Attorney General, the Honourable Charles Sousa, Minister of Finance, the Honourable Ginette Petitpas Taylor, Minister of Health, and the Association of Municipalities of Ontario.

Carried



Minute No. 165 as recorded in the Minutes of the meeting of the Council of The Regional Municipality of York held on November 16, 2017.

165 Amended Resolution on the Financial Implications of the Cannabis Act

It was moved by Mayor Hackson, seconded by Mayor Bevilacqua that Council receive the communication from Mafalda Avellino, Executive Director, The Regional Municipality of York Police Services Board dated November 15, 2017 and endorse the following resolution of the York Regional Police Services Board:

WHEREAS the Government of Canada has introduced Bill C-45, an Act that will provide legal access to cannabis and will control and regulate its production, distribution and sale (hereinafter the "*Cannabis Act*");

AND WHEREAS the Government of Canada has introduced Bill C-46, which will amend the provisions of the *Criminal Code of Canada* that deal with offences and procedures relating to drug-impaired driving (hereinafter the "*Criminal Code amendments*");

AND WHEREAS the Government of Canada has pledged to enact the *Cannabis Act* and the *Criminal Code* amendments and legalize recreational cannabis in prescribed circumstances as of July of 2018;

AND WHEREAS the Government of Ontario has introduced Bill 174 which will, *inter alia*, regulate the use and distribution of recreational cannabis in Ontario and amend the provisions of the *Highway Traffic Act* that deal with offences and procedures related to drug-impaired driving (hereinafter the "*Ontario Cannabis Act, 2017*");

AND WHEREAS, having regard to the experiences of other jurisdictions that have legalized cannabis, the enactment of the *Cannabis Act*, the *Criminal Code* amendments, and the *Ontario Cannabis Act, 2017*:

Will result in increased cannabis consumption and a corresponding increase in demands on police resources for cannabis related enforcement and calls for service;

Will result in an increase in the number of *Criminal Code* and *Highway Traffic Act* offences associated with cannabis consumption and driving; and

Will not eliminate the prevalence of organized crime in the production, distribution and sale of cannabis;

AND WHEREAS the enactment of the *Cannabis Act*, the *Criminal Code* amendments and the *Ontario Cannabis Act, 2017* will result in a significant increase in York Regional Police training costs associated with, *inter alia*, cannabis enforcement, standard field sobriety testing, the use of roadside drug testing equipment and qualifying police officers as drug recognition experts for the purpose of impaired driving investigations and trials;

AND WHEREAS the enactment of the *Cannabis Act*, the *Criminal Code* amendments and the *Ontario Cannabis Act, 2017* will require York Regional Police to purchase expensive roadside drug testing equipment and supplies at an estimated cost of \$1.7 million over the first three years;

AND WHEREAS the enactment of the *Cannabis Act*, the *Criminal Code* amendments and the *Ontario Cannabis Act, 2017* will require York Regional Police to hire and train additional front line officers to respond to the increase in demands on police resources for cannabis related enforcement and calls for service at an estimated cost of \$5.7 million annually;

AND WHEREAS the Regional Municipality of York Police Services Board (the "Board") has determined, based on a financial outlook and having regard to the experiences of other jurisdictions that have legalized cannabis, that the approximate additional expenses that York Regional Police will incur as a result of the enactment of the *Cannabis Act*, the *Criminal Code* amendments and the *Ontario Cannabis Act, 2017* is \$5.7 million in 2018; \$6.4 million in 2019; and \$8.6 million in 2020; which, on average, amounts to approximately \$6.9 million per annum or two per cent of the police services annual operating budget;

AND WHEREAS, in the absence of sufficient funding from the Government of Canada and the Government of Ontario, presumably from cannabis related sales and taxation, the citizens of York Region will be required to bear the brunt of these policing cost increases either through a significant increase in their property taxes or a significant decrease in the level of service provided to them by York Regional Police;

AND WHEREAS, on July 10, 2017, the Board endorsed a Board Resolution on the effective policing of the *Cannabis Act* and forwarded the resolution to the Canadian Association of Police Governance, the Ontario Association of Police Services Boards, the Premier of Ontario, Ministry of Community Safety and Correctional Services, local Members of Parliament and Members of Provincial Parliament and the Federation of Canadian Municipalities.

THEREFORE, BE IT RESOLVED THAT:

1. The Board calls on the Government of Canada and the Government of Ontario to provide funding to the Board, in the amount of \$5.7 million for 2018, \$6.4 million for 2019 and \$8.6 million for 2020 to offset the additional expenses that York Regional Police will incur as a result of the enactment of the *Cannabis Act*, the *Criminal Code* amendments and the *Ontario Cannabis Act, 2017*.
2. The Board calls on the Government of Canada and the Government of Ontario to establish a stable funding program for cannabis related law enforcement and to provide sufficient funding to the Board, on an ongoing basis and a rate of approximately two per cent of the York Regional Police operating budget, per annum.
3. The Board calls on the Regional Municipality of York to adopt and endorse this resolution and for the Regional Municipality of York to call upon the Government of Canada and the Government of Ontario to provide the Board with stable and sufficient funding for cannabis related law enforcement as aforesaid.

Carried