

Monique Macaranas
Paralegal
Criminal Law Policy Section, Department of Justice
284 Wellington Street,
Ottawa, Ontario, K1A 0H8

Dear Ms. Monique Macaranas,

As lawyers focused on matters related to the cannabis plant and/or the criminal justice system, we applaud the government's efforts to tackle the problem of impaired driving in this country. It is an important objective and we agree that Canadians should feel safe driving on our roads.

However, we have serious reservations about the proposed *Blood Drug Concentration Regulations* that establishes a summary offence, punishable by a \$1,000 fine, for those found to have between 2 and under 5 ng/ml of THC in their whole blood within two hours of driving a vehicle or operating a conveyance.

While reasonable individuals can disagree over the merits of per se testing of THC as a basis for criminal offences, we strongly discourage the government from enacting a 2 ng / ml threshold that is punishable by a criminal offence.

While an occasional user of cannabis may fall below the 2 ng/ml level a number of hours after ingestion, several studies have indicated that regular consumers of marijuana, such as those authorized to possess it for medical purposes, will often have levels of THC circulating in their blood above that threshold long after they have abstained from consuming cannabis.

Two studies from 2009, including a study in the *Journal of Analytical Toxicology* and another one in the *Addiction* journal, concluded that after seven days of abstaining from cannabis, a significant number of regular cannabis users studied had more than 2 ng/ml of THC in their blood. This was found in both those that had smoked cannabis and orally consumed it (sprays, edibles, tinctures, etc). Therefore, this provision would disproportionately affect the 200,000 Canadians that are authorized to possess cannabis for medical purposes and would also arbitrarily criminalize many lawful Canadians.

The government has asserted that the 5 ng/ml threshold for a hybrid offence "could be associated with some impairment," but has also conceded that the 2 ng / ml threshold is "not directly" tied to impairment, but rather reflects "a precautionary or crime prevention approach."

We're not alone in our concern. The concern with the 2ng /ml threshold has been echoed by Canadians for Fair Access to Medical Marijuana, an organization which was consulted by both the Task Force on Cannabis Legalization and Regulation and the Parliamentary Standing Committee on Health during consideration of the upcoming federal Cannabis Act.

We cannot in good conscience support the implementation of an offence that carries with it a negligible nexus to criminality. We strongly recommend that this provision not be included when the regulations are implemented.

Sincerely,

The Undersigned

Studies Cited:

Karschner EL, Schwilke EW, Lowe RH, et al. Implications of Plasma Δ^9 -Tetrahydrocannabinol, 11-Hydroxy-THC, and 11-nor-9-Carboxy-THC Concentrations in Chronic Cannabis Smokers. *Journal of analytical toxicology*. 2009;33(8):469-477. <<https://www.ncbi.nlm.nih.gov/pmc/articles/19874654/>>

Karschner EL, Schwilke EW, Lowe RH, et al. Do Δ^9 -Tetrahydrocannabinol Concentrations Indicate Recent Use in Chronic Cannabis Users? *Addiction (Abingdon, England)*. 2009;104(12):2041-2048. doi:10.1111/j.1360-0443.2009.02705.x. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2784185/>>

Lawyers:

Maureen Addie
Muhammed Adel Afzal
Russell Allegra
Hugo Alves
Ernst Ashurov
Neil Boyd
Joseph Caprara
Nadia Chaabane
Maureen Currie
Stephen DiClemente
John Conroy
Paul Doroshenko
Marshall E Drukarsh
David Fai
Michael Fairney
George Filipovic
David Genis
Jordana H. Goldlist
Omar Ha-Redeye
Jeff Hergott
Janan Jarrah
Riali Johannesson
Courtney Keystone
Vladimir Klacar
Philip Klumak
Jamie Kopman
Ray Kuszelewski
Sarah E. Leamon

Kyla Lee
Paul Lewin
Mike Lickver
Jack Lloyd
Michael Mines
Rosy Mondin
Giacomo Negro
Peter Northcott
Martin Peters
Daniel Rechtshaffen
Jeffrey Rybak
Amy Naomi Tobey Robern
Sean Robichaud
Sacha Roudette
Caryma Sa'd
Glenn EJ Sandberg
Gabriel Sandstorm
Yossi Schochet
Kim Schofield
Ram Shankar
Michael Spratt
Norm Stanford
Dan Stein
Lori Anne Thomas
Kirk Tousaw
Alex Trica
Alan Young
Nasir Yahya