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August 29, 2016

Cannabis Legalization and Regulation Secretariat  
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**RE: Input to the Task Force toward the legalization, regulation and restriction of access to marijuana**

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The Toronto Transit Commission (TTC) is the third largest transit system in North America, carrying an average of 1.8 million passengers daily in the city of Toronto, Ontario. We carry passengers via subway train, streetcar, city bus and paratransit bus. Additionally, in order to maintain this system, we have extensive maintenance and signaling functions. Altogether, we have approximately 10,630 unionized positions considered to be safety-sensitive, in addition to 2,005 non-union supervisory and executive positions, which are designated as safety-sensitive due to decision making impacts. Furthermore, we have a number of contract employees on major projects that would be safety-sensitive as well.

Further to the Task Force's discussion paper, we submit for your consideration comments relating the identified categories of:

- Enforcing public safety and protection; and
- Accessing marijuana for medical purposes.

We also respectfully suggest that an additional category that considers the interrelationship between the legalization and usage of marijuana and resultant impacts on workplaces in Canada (Federal and Provincial); specifically, the interaction and implication of marijuana at the workplace with Human Rights Legislation in Canada. In this aim, we recommend a sub-committee to the Task Force ought to be established with representative experts from different jurisdictions, in human rights law, labour and employment.



## Public Safety

The TTC recommends that the Federal Government ought to consider Federal regulations on legislation with respect to the following, and encourage Provincial Government to do the same, in advance of the legalization of marijuana:

1. An accepted tool to detect likely impairment;
2. Requirements for safety-sensitive industry and workers to have mandatory testing (including random testing) programs in place to detect and dissuade usage, including a database where positive results can be shared between associated companies/bodies within the jurisdiction.

As indicated in the associated discussion paper, “marijuana impairs a number of brain functions needed for safe driving, such as co-ordination ... and is second to alcohol as the drug most frequently found among drivers involved in crashes ....” Notwithstanding this, there is no accepted tool in Canada to determine likely impairment, and there is no legislation provincially or federally geared to safety-sensitive industry, such as public transit, trucking, rail etc.

While the technology associated with roadside oral fluid testing is not fully developed, there are other technologies that are. For example, regular oral fluid testing determines recent use, and therefore likely impairment. While there is a 72-hour turnaround time for such testing, this, in concert with other reasonable observation (such as we understand to be done when requesting a roadside breathalyzer) that would trigger a potential need for the testing in members of the public, ought to be sufficient from a public perspective to enable law enforcement to monitor and confirm/or not, impaired driving. Obviously there would be many considerations that would flow from this. However, the notion of an accepted method of testing for criminal purposes under the Highway Traffic Act, may assist in clarity in the law in other jurisdictions and contexts and limit inconsistencies in the various jurisdictions across the country.

For example, oral fluid testing to detect likely impairment, in the Canadian workplace perspective, has been accepted by courts and tribunals up to the Supreme Court. However, because this is not legislated room for workplace disputes that could result in inconsistent findings within Canada. For example, the TTC’s largest union, the Amalgamated Transit Union Local 113, has challenged this technology, which has resulted in a long protracted legal battle of arguably settled case law, and which is costing taxpayers millions of dollars. A summary of the status of this proceeding will be provided below.

The United States, through the Department of Transportation (DOT) has had mandatory drug and alcohol testing for various industries since the 1980s. This is done on a random basis there. The interaction of this, with the decision in various states to de-criminalize or legalize marijuana, ought not to be ignored. The TTC suggests that we cannot view the



U.S. or other jurisdictions as a *comparator* to the Canadian experience in the context of legalization of marijuana, without first considering DOT regulations and other supporting regulations or legislation. Furthermore, in the U.S. currently, the methodology utilized for drug testing is urinalysis. Urinalysis detects the presence of drugs (as opposed to likely impairment). This, in our opinion, highlights the need to distinguish legalities for the general public, while also considering special circumstances involved for those who, due to their occupation, can put the public safety at risk. While the governance within Canada and the U.S. are different, there is opportunity for consultation between the Federal and Provincial Governments to introduce reasonably consistent legislation in Canada and across the provinces that obliges employees working in safety-sensitive industries to submit to drug and alcohol testing. To leave this unregulated, risks a starkly inconsistent approach to testing, including pervasive non-testing, unnecessary liability and costs to employers, diluted safety for the general public within and across jurisdictions, and does not do what is necessary to protect public safety.

Supporting tools, such as information databases geared at preventing employees who are found to have driven impaired, and move from one employer to another, must be created within and potentially across jurisdictions. Additionally, any resultant processes, such as Substance Abuse Professional guidelines, must be designed considering the Canadian context and laws, as opposed to simply adopted from the U.S., which has different frameworks.

### **Medical Marijuana**

The TTC recommends that the following ought to be considered with respect to medical marijuana:

- Tighter restrictions for medical professionals to subscribe this to patients;
- Depending on the nature of the prescription, mandatory reporting to motor vehicle or licensing bodies/license suspensions.

Currently, it is much too easy to obtain a prescription for medical marijuana, and there appears to be no mandatory communication between prescribing physicians and regular treating physicians, where applicable. We have several examples where an employee's treating physician will not prescribe medical marijuana. However, other clinics specializing in this will prescribe. In our own testing of this and resultant visit to a cannabis clinic, TTC staff were advised (to summarize) that it is easy to obtain a prescription, should take no more than 15 minutes and one doesn't need their own doctor's referral. In brief, one must submit to a Skype interview with a physician, note some of the symptoms identified in the pamphlet available, and then a prescription will be provided. It is our respectful submission that such a process does not appear to reflect the spirit in which citizens were meant to have access to marijuana for medical purposes. There should be enhanced regulation and consistency in prescribing medical marijuana.



While one might suggest that increased access to marijuana legally will decrease what we see as "abuse" of this nature, it is our submission that there will still be a number who access medical marijuana as a result of the opportunity this can present for lawful accommodation at the workplace, pursuant to Human Rights legislation.

There are real limits on an employer's ability to obtain information relating to prescription medication. This could have negative ramifications when it comes to employees working in safety-sensitive positions, and has heightened meaning if there are increases in prescriptions for medical marijuana. As such, there ought to be some regulation applied to physicians who prescribe medical marijuana or other impairing medications, and motor vehicle licensing. This would be similar to obligations, as we understand them, surrounding conditions that could impact one's ability to drive safely, such as serious sleep apnea or coronary surgery. This would provide a greater ability for employers to have a tool to ensure employees are safely licensed, while respecting employee's rights to privacy.

### **Employers and Human Rights Legislation**

Finally, there must be consideration given to the interaction between the workplace, legalization of marijuana and the framework of human rights law federally and provincially. Again, when we turn to our U.S. partners, the human rights context within which they function is significantly different than in Canada. When it comes to marijuana usage, medical or otherwise, federal and provincial legislation will have significant impacts on usage in the workplace that would not be predicted from U.S. experience. There is room for unintended consequences and costs, if enough time is not spent exploring this issue. Stakeholders, such as unions, employers, human rights advocates and experts, ought to be a part of this discussion.

### **TTC Experience**

The TTC has been doing post incident, reasonable cause and certification new-hire (pre-employment) testing since 2010. Additionally, we conduct unannounced testing where an employee who was found to have a disability is accommodated. As previously indicated, we have been in ongoing labour arbitration on this matter since that time, and expect this will carry on for a number of years. This has cost taxpayers several million dollars already and will continue to cost more, as we anticipate this will need to be settled at the Supreme Court.

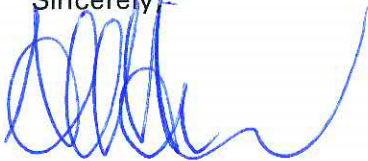
The TTC is taking active steps to implement random drug and alcohol testing given its experience with the above noted testing that has resulted in alarmingly high positive test results with impairment at work, and pre-certification positive results from 2014 to 2015. The trend continues. While Canadian law has not necessarily been supportive of such testing, our experience leads us to conclude that we must undertake this for the benefit of public safety. While we are committed to pursuing this avenue, it is our view that this is something that ought to be legislated and imposed on industry, especially an industry like



public transit that is charged with safely transporting millions of people and ensuring its workplaces, where dangers are ever-present, are safe from anyone who is unfit for duty due to drugs or alcohol.

We remain committed to answer any questions or to contribute in any way that can add value. For any such questions relating to our submission, please contact Megan MacRae, Director of Employee Relations, at 416-393-2944 or [Megan.MacRae@ttc.ca](mailto:Megan.MacRae@ttc.ca) directly.

Sincerely,



Andy Byford  
Chief Executive Officer  
Toronto Transit Commission  
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Submitted on behalf of the following agencies as well:

- The Tokmakjian Group

Copy: TTC Chair Josh Colle  
Canadian Urban Transit Association (CUTA)  
Ontario Public Transit Association (OPTA)  
Ministry of Transportation (MTO)  
Canadian Centre for Substance Abuse (CCSA)  
Canadian Trucking Alliance  
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