

July 31, 2017

The Honourable Yasir Naqvi  
Attorney General  
Ministry of the Attorney General  
720 Bay Street, 11<sup>th</sup> Floor  
Toronto, Ontario  
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Via e-mail: Cannabis@ontario.ca

Reference: Cannabis Legislation

Dear Minister:

As a former Minister of Labour, you are extremely familiar with the challenge Ontario employers and workers face in reducing and eventually eliminating workplace injury. A significant component of this challenge is dealing with the use of alcohol, controlled substances and illegal drugs.

The Ontario General Contractors Association has a mandate to champion workplace health and safety in the construction industry. We have worked with the Infrastructure Health and Safety Association (IHSA) to promote contractors implementing the COR™ program to drive excellence in safety and have established the League of Champions (LOC) to recognize and support companies that have gone above and beyond legal requirements. Our members recognize that construction operations by nature are dangerous and that it is their imperative to do everything practical to keep our workers safe.

We are concerned that the issues we have with impairment and the use of intoxicating substances is a threat to worker safety, and legalization of cannabis is about to make this problem much worse. The pending legalization of cannabis by the Federal Government, and the provincial government's obligation to put in place regulatory requirements for the distribution and safe use of the substance, is problematic for safety in our industry.

Coroners' inquests on workplace traumatic fatalities have determined that up to 40% of workplace fatalities are materially contributed to by cannabis and other drugs. Employers are legally responsible to ensure that workers are fit to work, which includes that they are not impaired by the influence of alcohol or drugs. Employers must have the tools to deal with the abuse of substances in the workplace.

It is our experience that the abuse of substances is a growing issue with our workplaces, and the legalization of cannabis will significantly increase usage, leading to a spike in workplace injury and fatalities. We are asking the Ontario Government to take decisive action to reduce the impact on the health and safety of Ontario workers.

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### **Background / Our concerns**

Cannabis impairs cognitive processing, including short term memory impairment, reducing coordination, causing anxiety and paranoia, respiratory irritation and illness; impairment of gross motor function, combined with reduced risk awareness and judgment, increases the risk of motor vehicle accidents, workplace accidents, and personal injury and fatalities.

Employers currently face a double jeopardy in managing employees who regularly use legally controlled substances that cause impairment. Judicial decisions have established the employer's obligation to make reasonable efforts to accommodate employees suffering from substance abuse or dependency, to the point of undue hardship. Employers in Ontario also have the duty to "take every precaution reasonable in the circumstance for the protection of a worker." They must be able to recognize workers who are unfit for work as a result of impairment, and assign them duties that will not endanger themselves or other workers. This is extremely difficult, and most employers lack the experience or policies to manage these situations.

We face a similar problem with workers using alcohol or recreational drugs including cannabis. Impaired workers cannot be allowed to perform high risk work, including most construction activity. Contractors who allow impaired workers to work are liable, and in some circumstances, have gone to jail when fatalities have resulted.

The legalization of cannabis and the establishment of retail distribution will unintentionally send out the message that it is "okay." The expected commercialization of the product, such as alcohol and tobacco products, will further promote its use and social acceptability. The result will be the increased and relaxed use of the product. This is the experience in Colorado in its experience with legalization.

The Occupational Health and Safety Act recognizes that certain drugs in specific workplaces are unsafe and have prohibited persons to be under the influence of, or impaired by, certain substances. This includes diving, oil, gas and mining operations, but not construction. Contractors have very limited ability to protect their workers from the use of drugs and alcohol but are liable when injuries result.

The Ontario construction industry has a significant problem of employee's use of drugs and alcohol that impairs their productivity, gross motor skills, awareness and judgment, which results in workplace accidents and personal injury and fatalities. The legalization, commercialization and distribution of cannabis will increase the use among the workforce and, failing an aggressive intervention, will result in more workplace injuries and fatalities.

**Consultation Paper Discussion Questions:**

Where can people use cannabis?

The use of cannabis and the resultant impairment is not consistent with providing safe and healthy construction workplaces. Legislation must establish and enforce a prohibition of use in safety sensitive operations, including construction. We recommend that the Occupational Health and Safety Act be amended to expand the definition of industries whose workers are prohibited to be under the influence of, or impairment of, cannabis and other substances. The scope of this change should restrict employees from using cannabis while at work in the named operations.

**Keeping our Roads Safe**

The scope of this section should include keeping our workplaces safe since the issue and tools are similar. The safety of persons using cannabis must be a primary concern of government and it should include restrictions on workplace usage to maintain the safety of the user and the public.

Roadside testing for alcohol has had a long term impact on drinking and driving and the concept should also be used for cannabis. Random testing for drugs and alcohol in safety sensitive operations should be permitted when supported by a policy approach that focuses on the safety of the worker. This will send a clear message to employees and provide tools for employers to support their obligation to take every precaution reasonable for the protection of the worker.

**Public Education**

We agree that public education should include a focus on drug-impaired driving laws but should be broader to include workplace impairment and personal safety. Impaired driving is the only most recognized danger of impairment. Workplace safety must also be publicized as a priority so that users are aware and can act to protect their safety and that of their fellow workers.

Thank you for the opportunity to participate in this consultation. We recognize that the Ontario Government has the ability to provide a regulatory framework and public education that will significantly reduce the anticipated negative impact on workplace health and safety.

We would welcome the opportunity to work with you to achieve this.

Sincerely,  
ONTARIO GENERAL CONTRACTORS ASSOCIATION



David Frame  
Director of Government Relations