



August 29, 2016

DELIVERED VIA COURIER & EMAIL

Cannabis Legalization and Regulation Secretariat
Address locator 0602E
Ottawa, ON K1A 0K9

Dear Sirs/Mesdames:

Re: Enform's Submission to the Task Force on Marijuana Legalization, Regulation and Restriction

Please find below the submissions of Enform Canada ("**Enform**") to the Task Force on the Legalization, Regulation and Restriction of Marijuana in Canada.

Background of Enform

Enform is a national safety association for Canada's upstream oil and gas industry and has offices in Alberta, British Columbia and Saskatchewan. Enform was created by the oil and gas industry as a not-for-profit organization dedicated to meeting industry's safety needs. Enform is also a registered charity.

Enform's Board of Directors is made up of representatives from the following associations:

- Canadian Association of Petroleum Producers ("**CAPP**"). CAPP represents companies that explore for, develop and produce 85% of the natural gas and crude oil throughout Canada. Together CAPP's members and associate members represent a national industry with revenues from oil and natural gas production of about \$120 billion a year;
- Petroleum Services Association of Canada ("**PSAC**"). PSAC is the national trade association representing the service, supply and manufacturing sectors within the upstream petroleum industry. Part of PSAC's mandate is to improve safety for its members and to protect the environment. PSAC member companies represent a significant portion of the business volume generated in the petroleum services industry across Canada;
- Canadian Association of Oilwell Drilling Contractors ("**CAODC**"). CAODC represents Canada's drilling and service rig contractors. For 60 years, CAODC's mandate has included a focus on issues that encourage a safer industry for its members;
- Canadian Energy Pipeline Association ("**CEPA**"). CEPA represents Canada's transmission pipeline companies. CEPA members transport 97% of Canada's daily natural gas and onshore crude oil production from producing regions to markets throughout Canada and the United States amounting to 1.2 billion barrels of oil and 5.4 trillion cubic feet of natural gas every year. CEPA is dedicated to achieving zero incidents, through its keynote safety program Integrity First complimented by strong leadership in the area of safety culture, across its network of 199,000 kilometers of transmission pipelines;





- Canadian Association of Geophysical Contractors (“**CAGC**”). CAGC is a trade association representing the business of seismic in the Canadian oil and gas industry with a focus on ensuring safe work performance by its members; and
- Explorers and Producers Association of Canada (“**EPAC**”). EPAC has 135 producer members operating over 60,000 producing oil and gas wells, plus related facilities and pipelines, and supplying one quarter of Western Canada’s crude oil, natural gas and liquids production. Industry safety is a significant focus for EPAC members.

Enform’s Focus on Safety

A focus on safety is critical to Enform and its members. The upstream oil and gas industry is inherently risk-sensitive given the materials and equipment used in the industry. Different components of the oil and gas industry, including storage, transportation, drilling and refining all pose significant safety risks. Further, given the flammable nature of natural gas and oil, risks are increased in the event of a leak or spill. As a result of the hazardous nature of industrial worksites, owners, companies and workers must exercise the utmost care and attention. The heightened risk associated with operations in the oil and gas industry has the potential for catastrophic environmental and life-threatening consequences.

As a safety association, Enform’s vision is no work-related incidents or injuries in the Canadian upstream oil and gas industry. Enform helps companies achieve their safety goals by promoting shared safety practices and providing effective training, expert audit services and professional advice. Most, if not all, of Enform’s training courses have a safety component and a number of the training courses provided by Enform are required for regulatory compliance.

In 2016, most of Enform’s annual budget of \$29.8 million is designated towards improving safety in the upstream oil and gas industry in Canada. Enform is partially funded by Alberta, British Columbia and Saskatchewan trade association member employers through the allocation of Workers’ Compensation Board levies. In 2016, \$6.4 million of funding is budgeted to flow through the Alberta Workers’ Compensation Board to Enform and \$2.2 million is budgeted to be received collectively from the British Columbia and Saskatchewan Workers’ Compensation Boards.

Enform also receives funding on occasion through the courts as a result of fines levied from occupational health and safety prosecutions. The courts have asked Enform to utilize the money to address key safety and training issues in industry.

Enform: Alcohol & Drug Matters

Over the last decade, the use of alcohol and drugs by persons who work in the upstream oil and gas sector in Canada has been a pressing safety concern for Enform and its members. Safety issues pertaining to alcohol and drug use and abuse are at the forefront of the continuing challenges facing the upstream petroleum industry’s efforts to control and reduce the risk of workplace injuries. Upstream petroleum operations are typically located in remote or northern locations. Employees performing work often have limited supervision and are required to assume a degree of independence. Workers are mobile and travel from one site to another, frequently accessing public highways and going through communities.



Employers in the upstream oil and gas sector have a responsibility to prevent workers who may be unfit for duty due to the effects or after effects of alcohol and drugs, from engaging in activities that could have devastating consequences for themselves, their co-workers, the public and the environment. An upstream petroleum worker's use of drugs, including marijuana, whether casual, recreational or arising from a dependency, has the potential to create unacceptable safety risks. Given the carry-over effects of drugs, including marijuana, these risks can occur regardless of whether use occurs at work or in close temporal proximity to when an employee will report to work.

Given pressing safety concerns in the upstream oil and gas industry, in August 2005, an Alcohol and Drug Task Force was created under Enform (the "**Enform Alcohol and Drug Task Force**") and consists of representatives from CAGC, CAODC, CAPP, CEPA, PSAC and EPAC. Through the guidance of the Enform Alcohol and Drug Task Force, Enform has developed numerous tools for employers to address the issue of alcohol and drugs in the workplace, including the Alcohol and Drug Policy Model for the Canadian Upstream Petroleum Industry (the "**Upstream Petroleum Industry Model**").

The Upstream Petroleum Industry Model was released in September 2007 and has been updated and revised on a regular basis, including most recently in 2016. The Upstream Petroleum Industry Model requires that employees, among other things, do not report to work or work with alcohol or drugs in their system at the concentration levels articulated in the Model. Section 3.1 of the Upstream Petroleum Industry Model discusses employee education regarding the safety risks associated with alcohol and drugs at a safety-sensitive workplace.

Statutory Obligations to Ensure a Safe Work Place & to Eliminate Workplace Hazards

Enform and its members have significant legislative obligations to ensure the safety of its workers. The legal obligations to maintain a safe work environment, including for workers present at worksites, are entrenched in the *Occupational Health and Safety Act*, RSA 2000, c O-2, s. 2 (the "**OHS Act**").¹ Employers in the upstream oil and gas sector must address workplace hazards including those associated with alcohol and drugs. If a workplace hazard is identified, employers have a legal obligation to take corrective steps to eliminate or, if not reasonably possible, to control the hazard. In accordance with section 7 of the *Occupational Health and Safety Code, 2009* (the "**OHS Code**"), employers "must assess [their] work site[s] and identify existing and potential hazards". The *OHS Code* requires that any workplace hazard be eliminated or controlled, if elimination is not possible. A failure to identify hazards and take corrective action can result in a conviction under the *OHS Act*, including exposure to significant fines and imprisonment.²

In addition, section 217.1 of the *Criminal Code*, RSC 1985, c C-45 ("**Criminal Code**"), imposes a duty on employers to ensure a safe work place by imposing a "legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task". Failure to comply with the duty under section 217.1 can result in prosecution under the *Criminal Code*.³

¹ Similar language is found within other jurisdictions such as the *British Columbia Workers Compensation Act*, RSBC 1996, c. 492 and *The Saskatchewan Employment Act*, SS 2013, c S-15.1.

² See for instance *R v XI Technologies Inc.*, 2013 ABCA 282, at para. 42; *R v Canadian Consolidated Salvage Ltd.*, 2013 ABPC 120, at paras. 1, 6, 54-60.

³ See for instance *R v Metron Construction Corp.*, 2012 ONCJ 506, at paras. 7, 10; aff'd by 2013 ONCA 541, at paras. 13, 115, 120; and *R. v Kazenelson*, 2015 ONSC 3639.



Environmental Obligations

Employers in the upstream oil and gas sector are also subject to environmental health and safety legislation. The nature of Enform members' worksites is such that an incident caused or contributed to by alcohol or drug use could have catastrophic consequences to the environment and the public, including within the communities surrounding the worksite. Courts have recognized the importance of environmental protection. The penalties imposed under legislation are severe and can include imprisonment.⁴ In determining an appropriate penalty, courts assess the extent to which the harm was "foreseeable" and "reasonably avoidable," and whether a company's director "should have known better".

Marijuana Use and its After Effects are Incompatible with Working in Safety-Sensitive Work Environment

The legalization of marijuana will have an adverse impact on workplace safety and on an employer's ability to ensure a safe work environment. Enform respectfully submits that any legislation that is considered must address the obligations of employers to maintain a safe work environment and the workplace safety risks associated with marijuana use and abuse.

Studies confirm there is a correlation between marijuana use and injury. A study by Goodwin et al. in April 2003 looked at nearly 65,000 subjects, of whom, over 13,000 were current marijuana users. The study found that male marijuana users had a 28% higher rate of hospitalization due to injuries than non-users and female users had a 37% higher rate of the same.⁵

There can be no doubt that marijuana use is incompatible with working in a safety-sensitive workplace. There are psychomotor and cognitive deficits associated with use of marijuana, including hallucinations, visual disturbances, inability to concentrate, decreased motor control, decreased ability to respond quickly to events and an inability to drive safely. People under the influence of marijuana have poor short-term memories. Marijuana use by drivers has been associated with increased accidents and fatalities.⁶

Studies reviewing the effects of marijuana have concluded that "any situation in which safety both for self and others depends upon alertness and capability of control of man-machine interaction precludes the use of marijuana".⁷ Similarly, a 2006 study of marijuana users found that marijuana use was associated with lower alertness and slower response times; performance deficits which pose unique safety risks in hazardous work environments. The 2006 study found that users experienced working memory problems at the start and psychomotor slowing and poorer episodic recall at the end of the work week. The authors concluded that the results suggested a "hangover" type effect and a subtle effect on cognitive function,

⁴ *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, at ss. 228, 231, 232.

⁵ Susan Goodwin Gerberich et al, "Marijuana Use and Injury Events Resulting in Hospitalization" (2003) 13:4 Ann Epidemiol 230.

⁶ F. Couper and B. Logan, "Drugs and Human Performance Fact Sheets" [2004] NHTSA, DOT HS 809 725 4/04 at 7-11.

⁷ M. Huestis, "Cannabis (Marijuana) – Effects on human behavior and performance" (2002) 14(1/2) For. Sci. Rev. 15 at 45. It is also of note that studies regarding marijuana use and its effects generally administer doses that are lower than doses used in the real world (JG Ramaekers et al, "High-potency marijuana impairs executive function and inhibitory motor control" (2006) 31 Neuropsychopharmacology 2296 at 2296.



more apparent under cognitive load and fatigue.⁸ Another study surveyed almost 8,000 UK residents and found that cannabis use was associated with significant detrimental impacts on safety, with those admitting to cannabis use having a 34% increased reporting of a work-related incident and a 17% increase in minor injuries at work. Reporting of work-related road collisions increased by 3-fold amongst marijuana users.⁹

Performance deficits associated with cannabis that are incompatible with working in a safety-sensitive environment have been demonstrated to last after use. Studies have indicated that performance deficits can last up to 2 days after use of low doses of marijuana.¹⁰ In a study involving 9 pilots ingesting 20 mg of THC, the use of marijuana adversely affected performance at 24 hours after smoking. While 7 of the 9 pilots showed some degree of deficits at 24 hours after smoking, only one reported any awareness of the drug's effects. The authors indicated the data "suggest that very complex human/machine performance can be impaired as long as 24 hours after smoking a moderate social dose of marijuana, and that the user may be unaware of the drug's influence...Any time our limited capacity working memory is presented with more information than it is able to process, marijuana carry-over effects may occur".¹¹

Studies have also confirmed additional performance deficits are associated with long-term chronic marijuana use. One study showed that chronic daily users had significantly poorer cognitive and psychomotor performance deficits than occasional users throughout 3 weeks of abstinence. Chronic daily users were also slower in initiating responses and have poor performance on critical tasks.¹²

There is also a recognized abstinence and withdrawal syndrome. This is recognized by the DSM V.¹³ A study by the Harvard Medical School examined heavy marijuana users and whether being abstinent resulted in any observable adverse effects. It was found that abstinent heavy users experienced clear adverse effects, including anxiety and violent and aggressive behaviour, for 3 to 7 days and, for some, as long as 28 days.¹⁴

As discussed above, any legislation or regulation on marijuana use will have a significant impact on employers in the upstream oil and gas sector and their ability to ensure a safe work environment. The implications of an employee attending work unfit for duty in a safety-sensitive work environment can, and has, resulted in serious safety consequences that could affect not only workers, but also the environment, surrounding communities and the public. The public interest is paramount and must be considered as part

⁸ E. Wadsworth et al., "Cannabis use, cognitive performance and mood in a sample of workers" (2006) 20:1 J. Psychopharm. 14.

⁹ E. Wadsworth et al., "A community based investigation of the association between cannabis use, injuries and accidents" (2006) 20:1 J. Psychopharm. 5.

¹⁰ S. Heishman et al., "Acute and residual effects of marijuana: Profiles of plasma THC levels, physiological, subjective, and performance measures" (1990) 37:3 Pharmacol. Biochem. Behav. 561.

¹¹ V. Leirer et al., "Marijuana carry-over effects on aircraft pilot performance" (1991) 62:3 Aviat. Space Environ. Med. 221 at 221, 226.

¹² WM Bosker et al "Psychomotor function in chronic daily cannabis smokers during sustained abstinence" (2013) 8:1 PLoS ONE e53127.

¹³ American Psychiatric Association (2013). Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. Washington, DC: American Psychiatric Publishing, at pp. 516-519.

¹⁴ E. Kouri and H. Pope, "Abstinence symptoms during withdrawal from chronic marijuana use" (2000) 8:4 Exp. Clin. Psychopharmacol. 483.



of the implementation of any legislation regarding marijuana use.¹⁵ Marijuana use is incompatible with working in a safety-sensitive environment. Therefore, at a minimum, there must be an express prohibition on the use of marijuana in safety-sensitive workplaces. There must also be an express prohibition on using marijuana in close temporal proximity to attending work on a safety-sensitive worksite. An express prohibition on the possession, storage, use or sale of marijuana on safety-sensitive workplaces or facilities associated with those workplaces must also be included.

Enform requests the opportunity to make formal oral submissions to the Task Force regarding the significant safety implications of the legalization of marijuana on workplace safety in a safety-sensitive workplace and why work-related prohibitions are essential to the public interest, including ensuring the safety of workers, the public and the environment.

We would be pleased to answer any questions.

Sincerely,
Enform

Cameron MacGillivray
President and Chief Executive Officer

BBJ/am

¹⁵ See for instance *Irving Pulp & Paper Ltd v CEP, Local 30*, 2013 SCC 34, at para. 19; *C.E.P., Local 707 v. Suncor Energy Inc.*, 2012 ABCA 373, at paras. 16, 18 and 19; *Communication Energy and Paperworkers Union, Local 777 v. Imperial Oil Limited*, (27 May 2000) (Alta Arb) (Christian), unreported, at p. 50.