

## BRITISH COLUMBIA HUMANIST ASSOCIATION

400 – 3381 Cambie Street  
Vancouver, BC V5Z 4R3

+1 (604) 265-9298  
bchumanist.ca  
info@bchumanist.ca



On April 20, 2018, the Board consensus was that BCHA write a letter of support for the legalisation of cannabis but expressing our concern on the issue of cannabis impairment assessment. This position paper was subsequently agreed by email. An updated version was posted following the Government of BC's introduction of its cannabis bills.<sup>1</sup>

April 26, 2018

### CANNABIS LEGALIZATION IS TWO STEPS FORWARD AND ONE STEP BACK

The legalization of cannabis represents a positive step toward a freer and more just society but specific provisions in British Columbia and Canada's approach should worry Humanists.

Humanists value personal autonomy and liberty, which includes "the right of every human being to the greatest possible freedom compatible with the rights of others." These commitments are incompatible with the criminalization of activities that do not infringe on the health, safety or freedoms of others. We are therefore encouraged by moves to end the criminalization of the recreational consumption of cannabis.

Humanists also have a long commitment to civil liberties and human rights. The decades-long War on Drugs has resulted in the needless incarceration of many otherwise law-abiding citizens. This criminalization violates fundamental principles of justice, wastes public resources and disproportionately affects racialized and indigenous communities<sup>2</sup>. Both the broad criminalization and the systematic racial effects of the War on Drugs are antithetical to Humanist values.

However, bills C-45 and C-46, the legislation currently before Parliament to legalize and regulate cannabis, and the Government of British Columbia's Cannabis Control and Licensing Act, introduced today, fall short of the promise of full legalization. The bills perpetuate a prohibitionesque regime that raises numerous civil liberties issues. Most disturbingly for Humanists is the prospect of subjective and unscientific roadside tests being used to perpetuate the criminalization of people who use cannabis. By attempting to mitigate risks of drug impaired driving, our governments may ultimately be forced to

---

<sup>1</sup> [https://www.bchumanist.ca/cannabis\\_legalization\\_two\\_steps\\_forward\\_and\\_one\\_step\\_back](https://www.bchumanist.ca/cannabis_legalization_two_steps_forward_and_one_step_back)

<sup>2</sup> <http://www.macleans.ca/news/canada/canadas-prisons-are-the-new-residential-schools/>

rely on flawed and inaccurate science. This puts individuals at risk of having their civil liberties violated in troubling ways.

Numerous experts, including substance use researchers, forensic scientists, toxicologists, criminal defence lawyers, the ACLU and others, report that there is no scientifically accurate way to conduct a reliable and accurate roadside drug test to show someone is too impaired to operate a motor vehicle. Cannabis is a largely subjective effect, and can vary largely between individuals with the same quantifiable levels of THC in their blood or saliva. Further, many tests can register cannabinoids or THC in the body days to months after ingestion, well after psychological impairment has worn off. Other tests rely on the subjectivity of an officer and inevitably have limited accuracy.

Reliance on these inaccurate and subjective tests puts drivers at the will of the officer who pulls them over – and any biases they bring with them. This puts people of colour and people with disabilities, who are more likely to be mischaracterized as being under the influence, at risk of being charged with driving under the influence on little scientific evidence.

These concerns are reflected by the legislation introduced by the Government of BC today. Under the bill, drivers face a 90-day administrative penalty if they're deemed to be under the influence of cannabis. However, it's still unclear which tests will be used to determine that impairment. Further, the bill would ban new drivers from having any THC in their system. However, tests for THC do not indicate when or how the material was encountered. So THC may enter the bloodstream through second-hand smoke. Both of these cases raise serious concerns about the reliance of our justice system on questionable science.

The use of administrative penalties in BC raises further concerns. Attempts to challenge these penalties are dealt with through provincially run administrative tribunals. In part because of the increasing number of traffic violations that are dealt with by these tribunals, backlogs have developed. Therefore, the presumption of innocence has effectively been reversed as individuals face these consequences before they've even had the chance for a hearing. This disproportionately affects poor and marginalized individuals and those living in rural communities who may be left without a vehicle for days or months, as they cannot get to work, drop their children at school or childcare or otherwise complete the litany of tasks required to survive.

Our concerns around roadside tests are but one of a multitude of issues raised by civil liberties advocates regarding the proposed legislation. Others have spoken out about the continued criminalization of cannabis prior to its legalization and the continued criminalization of youth. Instead of continuing to treat cannabis as a criminal justice issue, we support taking a public health approach and putting more effort into tackling the systemic issues around substance use through education, harm reduction, rehabilitation and treatment. These approaches should be informed by the best available

evidence and respect the fundamental legal rights enshrined in the *Charter of Rights and Freedoms*.