TRANSFORM
Drug Policy Foundation

México Unido
Contra la Delincuencia

CAPTURING THE MARKET:

Cannabis regulation in Canada

Contents

Further Reading

Transform and MUCD have produced a number of other publications on cannabis regulation which we would recommend reading. These include:

Altered States: Lessons from US Cannabis Regulation (English only)

Modelos de Regulación Legal del Cannabis en Estados Unidos (Spanish only)

How to Regulate Cannabis: A Practical Guide

Cannabis legalisation in Canada – One year on

Cannabis legalisation in Uruguay: public health and safety over private profit

Cannabis policy in the Netherlands: moving forwards not backwards

Cannabis regulation in Colorado: early evidence defies the critics

On 17 October 2018, Canada moved to legally regulate cannabis for non-medical use. This marked an important milestone in the growing trend towards legal regulation across North America. It also raised questions about how regulation would be implemented in practice, and provides an instructive example for other countries moving towards more humane drug policies.

This report looks at how legal regulation has been shaped at the federal and provincial level, what the early measures are in terms of successes and failures, and what underlying questions still remain for regulation to answer.

Background

The Canadian Government emphasised three key goals of regulation: the protection of public health; the protection of young people; and the reduction in criminality associated with the illegal market. It gave these aims a statutory basis in its Cannabis Act, which sought to create 'a strict legal framework for controlling the production, distribution, sale and possession of cannabis across Canada'.[1]

Lawmaking in Canada can be done at different levels, which filter down to the next:

Federal: the national level — i.e. Canada as a whole. The Canadian government is the federal government and makes laws and regulations that apply nationwide.

Provincial: Canada has 13 provinces and territories, which are given a degree of autonomy over their own laws. These provinces, in turn, contain municipalities — such as cities and towns. Provinces are subject to federal laws and regulations and may make their own laws and regulations which apply to municipalities within their jurisdiction.

Municipal: the most local level — including cities, towns, villages and hamlets. Municipalities are responsible for property taxes, property standards, zoning, business licences, and local by-laws. They are subject to relevant federal and provincial laws and regulations.

The Cannabis Act was enacted at a federal level, meaning certain additional restrictions could still be implemented by individual provinces or territories. The responsibilities of the Federal government were to set 'strict requirements for producers who grow and manufacture cannabis' and 'industry-wide rules and standards', including packaging and labelling requirements for products and good production practices. To achieve this, the Cannabis Act was supplemented by federal Cannabis Regulations. In contrast, provinces and territories remain responsible for 'for developing, implementing, maintaining and enforcing systems to oversee the distribution and sale of cannabis'.[2]

1 Canada Department of Justice (2017). Cannabis Legalization and Regulation. https://www.justice.gc.ca/eng/cj-jp/cannabis/
2 Canada Department of Justice (2017). Cannabis Legalization and Regulation. https://www.justice.gc.ca/eng/cj-jp/cannabis/

Responsibilities for Regulation

Regulation seeks to control every part of the process through which cannabis is grown, distributed, sold and consumed. In Canada, responsibility for regulation has been split between federal and provincial governments.

Controls on:	Responsibility of:
Growing (and producing)	
Personal growing limits*	Federal and provincial government
Commercial production rules Commercial production licensing	Federal government
Distribution	
Unauthorised distribution	Federal government
Sale	
Retail model Retail locations and rules	Provincial government
Zoning laws/local prohibitions on stores	Provincial and municipal government
Advertising and promotion* Packaging*	Federal government
Taxation Ensuring compliance	Federal and provincial government
Consumption	
Possession limits* Age limits* Impaired driving laws	Federal and provincial government
Public consumption	Provincial and municipal government

Source: Adapted from table from Prince Edward Island Provincial Government[3]
**Federal minimums are set but further restrictions can be applied at the provincial level (e.g. a total restriction on personal growing in Manitoba and Quebec).*

Provinces and territories are able to adopt further restrictions beyond those applied by federal law, such as: increasing the minimum age; reducing the personal possession limit; reducing the number of cannabis plants available per residence; and restricting where adults can consume cannabis — such as prohibiting consumption in public.[4]

They also have responsibility for shaping the retail market in their jurisdiction. While the federal government controls how cannabis is cultivated and who can cultivate it, provinces control how and where cannabis can be sold, and who can sell it. This requires dealing with both online and in-person transactions. Provinces also decide whether outlets should be government-owned or private.

3 Available at: Prince Edward Island Government (Undated). Cannabis Policy and Legislation. https://www.princeedwardisland.ca/en/information/finance/cannabis-policy-and-legislation
4 Canada Department of Justice (2017). Cannabis Legalization and Regulation. https://www.justice.gc.ca/eng/cj-jp/cannabis/

The Federal Regulatory Framework

At the federal level, legislation sets an initial framework for legalised possession of cannabis. The Cannabis Act established that individuals over 18 can (subject to further restriction at the provincial level):

— **Possess** up to 30g of (dried) cannabis in public[5]
— **Share** up to 30g of (dried) cannabis with other adults
— **Purchase** cannabis or cannabis oil from a provincially-licensed retailer or online store (or cannabis edibles as of 17 October 2019)
— **Grow** up to four of their own cannabis plants per residence[6]

The Cannabis Regulations implemented further controls (such as those in relation to packaging), and importantly established a licensing framework to regulate the cannabis market. Under this system, licences are required to:

— Cultivate cannabis
— Process cannabis (typically to turn it into another product — like edibles)
— Conduct cannabis testing
— Sell cannabis (the Regulations focusing on sale for medical purposes)
— Research cannabis
— Produce a drug containing cannabis (via a 'cannabis drug licence')

Licences permit certain activities, such as growing cannabis, and are required for activities in the commercial framework of the cannabis market. If you don't have a licence, you are not authorised to perform these activities. It should be noted that no licence is required for an adult to possess cannabis, although possession over 30g of legally obtained cannabis is prohibited in public.

The Regulations spell out the limits of what a licence holder is authorised to do, and their responsibilities in doing so. The licensing framework therefore allows the government to retain control over actors in the market and to ensure that its aims of public health, protecting children and reducing criminality are facilitated.

Growing, processing and producing

The federal Cannabis Regulations established the 'cultivation' and 'processing' class of licence.[7] Those licensed to cultivate cannabis are, by necessity, authorised to possess cannabis. They are also, by extension, authorised to sell cannabis — but only to specified individuals, namely other licence holders such as those licensed to sell cannabis.[8] This highlights the role of licensing in regulating the market chain.

This allows regulators to apply different controls to different licence holders, and to vary controls according to the type of work being conducted. For instance, restrictions on the use of pesticides are clearly highly relevant to the work of cultivators, but are not going to be an issue in practice in the work of researchers. The Regulations therefore set out specific obligations and restrictions for each

5 30g of dried cannabis was given an equivalent of 150g of fresh cannabis; 450g of edibles; 2100g of liquid product; 7.5g of concentrates; and 30 cannabis plant seeds. The limits mean that an individual already possesses 30g of dried cannabis, they cannot possess any other cannabis products — dried or otherwise. Equally, if an individual already possesses 450g of edibles, they cannot possess any dried cannabis, concentrates, plant seeds or other products.
6 Canada Department of Justice (2017). Cannabis Legalization and Regulation. https://www.justice.gc.ca/eng/cj-jp/cannabis/
7 Government of Canada (2018). Cannabis Regulations (SOR/2018-144). s8(1). https://laws-lois.justice.gc.ca/eng/Regulations/SOR-2018-144/index.html
8 Cannabis Regulations, s11(1)(a), 11(1)(d), 11(5).

class of licence holder, with the regulatory aims in mind.

General requirements

Under general requirements outlined in the Cannabis Regulations, cultivators and processors are required to have a Head of Security, responsible for ensuring the compliance with security measures outlined in the Regulations.[9] They must also 'establish and maintain a system of control that permits the rapid and complete recall of every lot or batch of cannabis that has been sold or distributed', and simulate this every 12 months to ensure that their plan is fit for purpose.[10] This allows regulators to be confident that, should an issue with a product or batch arise, market actors are able to respond quickly and efficiently to combat it.

Part 4, on Physical Security Measures includes restrictions on (amongst other things):

— Site design (it must prevent unauthorised access)
— Requirements for visual recording devices and alarm systems
— A system of record-keeping for detected intrusions on the site[11]

Similarly strict requirements apply within the premises — including physical barriers between operations and storage areas; keeping a record of every individual entering or exiting a storage area; and a requirement for recording devices in both operations and storage areas, functioning at all times.[12] Whether such restrictions are cost-effective, or necessary in practice, is open to question. However, this is an important demonstration of the precautionary principle in practice: in a new, developing market — especially for a drug that still has an extremely lucrative illegal market — it is prudent to protect more against diversion from the outset. Controls can always be reduced as the illegal market is subsumed, and risk of diversion is correspondingly reduced, if necessary.

Cultivation

The Cannabis Regulations provide for different classifications of cultivation licence:

- a standard licence;
- a 'micro-cultivation' licence, which limits the licence holder to a surface area of 200 metres squared to grow their plants; and
- a 'nursery' licence, which limits the licence holder to an area of 50 metres squared and 5kg of flowering heads, which must be destroyed within 30 days of harvest.[13]

All cultivators are required to 'retain the services of one individual as a master grower.'[14]

Cultivators are subject to additional security requirements, which include a physical barrier surrounding the cultivation site and a separate barrier surrounding storage areas.[15] This is aimed at reducing criminality: because cultivators have a high volume of cannabis in their possession at any one time, they are at greater risk of theft for diversion onto the illegal market.

9 Cannabis Regulations, s38(1).
10 Cannabis Regulations, s46.
11 Cannabis Regulations, s62(1), 63(1), 64-65, 66(3).
12 Cannabis Regulations, s68(2), 69, 71(1).
13 Cannabis Regulations, s13(1), 16(1).
14 Cannabis Regulations, s12(1).
15 Cannabis Regulations, s74.

Image: An indoor cannabis cultivation facility in Ontario

Processing

Processing licences allow holders to produce cannabis 'other than obtain it by cultivating, propagating or harvesting it', as well as to possess and sell it in the same way as cultivators.[16] They are for companies that wish to manufacture cannabis-based products, rather than simply cultivate cannabis plants. As with cultivators, there is provision for a 'micro' licence classification, which limits processors to possession of 600kg of dried cannabis or equivalent (other than in plants and seeds) over a calendar year.[17] Holders of processing licences must employ a 'quality assurance person', who is approved by the Minister of Health. This, in theory, allows the government greater oversight of production.[18]

The Cannabis Regulations require that, when shipping their cannabis products, processors include a copy of the federally-produced consumer information guidance.[19] This guidance, available on the Canadian government's website, includes information about harm reduction when eating or drinking cannabis — for instance, noting the delayed onset of effects and suggesting that new consumers look for products with 2.5mg THC or less.[20]

Good production practices

In Part 5, the Cannabis Regulations set out a series of 'Good Production Practices', which licence

16 Cannabis Regulations, s17(1), 17(5).
17 Cannabis Regulations, s21(1).
18 Cannabis Regulations, s19(1).
19 Cannabis Regulations, s18.
20 Government of Canada (2019). Consumer Information — Cannabis. https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/regulations-support-cannabis-act/consumer-information.html

holders must meet in order to sell, distribute or export cannabis.[21] They include prohibitions on the use of pest control products (with a specific exception for edible cannabis, so long as this is in alignment with separate pest control regulations designed to apply for foods), as well as requirements to store and distribute cannabis in a way that 'maintains...quality'.[22] The Regulations also provide detailed tolerance levels for residues of pest control substances that are obtained from other products and other contaminants, and link to wider legislation in the area (such as the Food and Drugs Act).[23]

Buildings where cannabis is produced, packaged, labelled, stored or tested must be equipped to prevent cannabis odours escaping outdoors and food cannot be produced, packaged or labelled in the same building.[24] There are also strict cleanliness controls, including (if necessary) hand sanitizing stations, as well as requirements to ensure individuals wear protective coverings including gloves, a hairnet, a beard net and a smock.[25]

Cannabis products

Cultivation and processing produce cannabis products, such as dried cannabis, edibles or cannabis concentrates. These are also strictly regulated. This is especially important given the level of product innovation that characterises new cannabis markets, and the fact that new products (e.g. certain edibles) may appeal to children. Regulators need to take into account that they may be seeking to control product types which are not currently on the market. For instance, alcohol companies have already invested in new cannabis drinks.[26] The federal aims of public health and protecting children are, therefore, particularly relevant.

Licence holders must provide the Minister of Health notification if they are planning to introduce a new class of product at least 60 days before introducing it. This must include information on the class of product, a description and the date it will be made available.[27] Health Canada will then review the application to ensure the product's compliance with the Regulations. This measure meant that, despite cannabis edibles becoming officially legal on 17 October 2019, they were not immediately available to consumers since this date was only when producers could submit their notification to the Minister.[28]

The content of products, and the types of product available, may be further restricted at the provincial level. For instance, in Newfoundland and Labrador, regulations establish the power of the Liquor Corporation to 'fix the classes, varieties, types and brands of cannabis that may be sold', as well as the size of units.[29] Meanwhile, Quebec has moved to prohibit certain types of edibles that may appeal to children (including cannabis brownies, chocolate and gummies) from being sold on the market.[30] In light of concerns regarding lung disease associated with vitamin E acetate, a chemical added to some vaping liquids, Quebec and Newfoundland and Labrador have both prohibited the sale of cannabis vaping products, while Nova Scotia has banned flavoured vaping products.[31] A contrasting

21 Cannabis Regulations, s79, 80.
22 Cannabis Regulations, s81-83.
23 Cannabis Regulations, s92-94.
24 Cannabis Regulations, s85(1), 88.3(2).
25 Cannabis Regulations, s87, 88.92.
26 See, e.g.: Lewis, A.C. (2019). Drink Up, Stoners. The Verge 30 July. https://www.theverge.com/2019/7/30/18639829/weed-beer-drinkable-marijuana-cannabis-drinks-alcohol
27 Cannabis Regulations, s244(1).
28 See: Eneas, B. (2019). Cannabis edibles, extracts, topicals now legal, but unavailable in Sask. for at least 60 days. CBC News 17 October. https://www.cbc.ca/news/canada/saskatchewan/edibles-extracts-topicals-unavailable-60-days-1.5324505
29 Newfoundland and Labrador (2018). Bill 20: An Act Respecting the Control and Sale of Cannabis. s73(1). https://assembly.nl.ca/HouseBusiness/Bills/ga48session3/bill1820.htm;
30 Forster, T. (2019). Quebec Officially Outlaws Most of the Fun Marijuana Edibles. Eater Montreal 30 October. https://montreal.eater.com/2019/10/30/20940028/quebec-cannabis-restrictions-edibles-ban-brownies-gummies-chocolate
31 CBC News (2019). Province extends flavoured vape ban to cannabis products. CBC 6 December. https://www.cbc.ca/news/canada/nova-scotia/cannabis-vape-health-flavour-ban-1.5387308; Saminathe, N. (2019). Quebec, Newfoundland & Labrador say they will not allow cannabis vape sales. Reuters 4 December. https://www.reuters.com/article/us-canada-marijuana-vaping-nl/quebec-newfoundland-labrador-say-they-will-not-allow-cannabis-vape-sales-idUSKBN1Y82HY

response is that of Michigan in the US, where the sale of cannabis vaping products was temporarily halted to allow for testing, before recalling products that failed new requirements testing for high levels of vitamin E acetate, while allowing for sale of other cannabis vaping products to resume.[32]

Servings and quantities

The Cannabis Regulations outline THC limits for certain products: such as a maximum of 10mg THC content per 'discrete unit of a cannabis product' intended for uses other than orally or through inhalation.[33] Edibles are limited to 10mg THC per 'immediate container' (the outermost package). If a package contains multiple units, these must in any event add up to no more than 10mg THC.[34] Cannabis topicals (i.e. products intended not to be consumed, e.g. hair products) must not contain a quantity of THC 'that exceeds 1000mg per immediate containers', and must not contain more than 90ml of extract.[35] However, there is a small tolerance for variance — 15-25% either way depending on the particular cannabis product.[36] This recognises that measuring the exact percentage of THC is not always possible, but nonetheless obliges producers to take steps to ensure labelling is sufficiently accurate to ensure consumers are aware of product potency.

Products that have multiple units must have these units separated into equal serving sizes and, for dried cannabis, the net weight in each discrete unit must not exceed 1 gram.[37] This prevents consumers being misled or confused over the exact amount they are consuming.

Product safety

Certain products are prohibited entirely. The Regulations provide that products 'intended to be used in the area of the human eye' and the surrounding area, or on 'damaged or broken skin', which are likely to be of particular risk to individuals, are not allowed at all. Products with synthetically added THC are also prohibited except for research or testing purposes.[38] The Regulations also prohibit anything in cannabis extracts or topicals 'that may cause injury to the health of the user'.[39] There is a contradiction, however, as any combustible product inevitably causes some damage to the human body. As a result, the Regulations expressly provide for an exception for any potential 'injury as a result of the intended combustion and inhalation'.[40]

The Regulations specify that edible products must only contain 'food and food additives', but expressly prohibit meat, poultry or fish — except as additives — from being included in products.[41] While it seems unlikely that this would be an issue in practice, it is important that regulations are forward-thinking and cover for all possible scenarios with potential risk. There is also a prohibition on caffeine unless it is introduced through 'ingredients that naturally contain caffeine' (caffeine is naturally occurring in cocoa beans, for instance) and, in that event, a limit of 30mg of caffeine per container of cannabis product.[42]

Cannabis edibles are classified as food products and therefore have to meet relevant food standards. The Cannabis Regulations address this by cross-referring to the Canadian Food and Drug Regulations, the Food and Drugs Act and the Safe Food for Canadians Act and Regulations.[43] There

32 Medical Xpress (2019). Michigan halts sale of marijuana vape products, orders tests. 22 November. https://medicalxpress.com/news/2019-11-michigan-halts-sale-marijuana-vape.html; Strachan, J. (2020). Michigan Recalls Vape Cartridges Over Vitamin E Acetate. Patch 7 February. https://patch.com/michigan/detroit/michigan-recalls-vape-cartridges-over-vitamin-e-acetate
33 Cannabis Regulations, s96(1).
34 Cannabis Regulations, s102.7.
35 Cannabis Regulations, s101.2.
36 Cannabis Regulations, s97, s98.1, 100.
37 Cannabis Regulations, s98.1, 100.
38 Cannabis Regulations, s98(a),(b), 99.
39 Cannabis Regulations, s101(1).
40 Cannabis Regulations, s101(2).
41 Cannabis Regulations, s102(1),(3).
42 Cannabis Regulations, s102.2.
43 Cannabis Regulations, s102.

is a separate prohibition on edible products that require refrigeration and, in some cases, where they require airtight sealing.[44]

Sale

While production is controlled at the federal level, provincial governments control retail. In provinces with government-run sales, the designated government agency, following purchase from federally-licensed cultivators, sells products directly to customers — whether online or through retail stores. For example, legislation in Quebec requires that producers only sell directly to the Société québécoise du cannabis (SQDC, a subsidiary of the government alcohol agency), and that only the SQDC can transport, store and sell cannabis.[45] In Nova Scotia, the Nova Scotia Liquor Corporation may purchase, possess, distribute and sell cannabis produced by federally-licensed producers, as well as regulate the operation of stores.[46]

Where provinces operate a retail licence model, legislation may expressly outline that stores can only sell cannabis purchased directly from the provincial regulatory agency.[47] This ensures provincial oversight at all stages, rather than allowing retail licensees to bypass government controls and purchase directly from growers.

Province/ Territory	Age limit	In-person sales	Online sales	Possession limits
Alberta	18	Private licensed stores	Government	30g dried cannabis (public) No home possession limit
British Columbia	19	Government and private licensed stores	Government	30g dried cannabis (public) 1000g home possession limit
Manitoba	19	Private licensed stores	Private	30g dried cannabis (public) No home possession limit
New Brunswick	19	Government stores*	Government	30g dried cannabis (public) No home possession limit
Newfoundland and Labrador	19	Private licensed stores	Government	30g dried cannabis (public) No home possession limit
Northwest Territories	19	Government stores	Government	30g dried cannabis (public) No home possession limit

44 Cannabis Regulations, s102.4, 102.5.
45 Encadrement du Cannabis au Québec (2020). The legislation on cannabis. https://encadrementcannabis.gouv.qc.ca/en/loi/loi-encadrant-le-cannabis/
46 Nova Scotia Legislature (2018). Cannabis Control At. s9(1). https://nslegislature.ca/legc/bills/63rd_1st/1st_read/b108.htm
47 See: Government of Ontario (2018). Cannabis Licence Act, 2018, S.O. 2018, c. 12, Sched. 2. s18(1). https://www.ontario.ca/laws/statute/18c12; British Columbia (2018). Cannabis Control and Licensing Act. s15. http://www.bclaws.ca/civix/document/id/complete/statreg/18029; Province of Alberta (2018). Gaming, Liquor and Cannabis Act: Gaming and Liquor Amendment Regulation. http://www.qp.alberta.ca/documents/orders/Orders_in_Council/2018/218/2018_027.pdfs104(2); Manitoba (2018). The Liquor, Gaming and Cannabis Control Act (as amended). s101.6(1). https://web2.gov.mb.ca/laws/statutes/ccsm/l153e.php

Province/ Territory	Age limit	In-person sales	Online sales	Possession limits
Nova Scotia	19	Government stores	Government	30g dried cannabis (public) No home possession limit
Nunavut	19	None	Private	30g dried cannabis (public) No home possession limit
Ontario	19	Private licensed stores	Government	30g dried cannabis (public) No home possession limit
Prince Edward Island	19	Government stores	Government	30g dried cannabis (public) No home possession limit
Quebec	21	Government stores	Government	30g dried cannabis (public) 150g home possession limit
Saskatchewan	19	Private licensed stores	Private	30g dried cannabis (public) No home possession limit
Yukon	19	Private licensed stores**	Government	30g dried cannabis (public) No home possession limit

**New Brunswick's cannabis store operator is presently out to tender to private companies.*[48]
***Yukon operated a temporary government-run retail store until October 2019 when private retailers were up and running.*[49]

All provinces, except Saskatchewan, Nunavut and Manitoba, operate online sales through a government-run website. For in-person retail purchases, however, the picture is much more varied. Far more provinces have allowed individuals or private companies to sell cannabis in their jurisdiction.

The provincial government agencies tasked with regulating the retail market have generally been those with pre-existing duties to do the same for alcohol, such as the Liquor and Cannabis Regulation Branch (previously the Liquor Regulation Branch) in British Columbia. Where there are government retail stores, agencies are vested with authority from the government to run the stores. For instance, in British Columbia, the Cannabis Distribution Act specifically outlines that the Liquor Distribution Branch may establish and operate stores for the sale of cannabis and an online system on the government's behalf.[50]

Where private companies are allowed to retail, it is certainly not the case of a 'free-for-all'. The operation of stores is subject to strict licensing requirements overseen and managed by the provincial government agency, usually specified in provincial regulations. In Ontario, applicants are deemed ineligible for retail licences where they have been previously charged with an offence under provincial legislation (for instance, selling to a minor while previously operating under a retail licence), or where there are reasonable grounds to believe that they would behave in contravention

48 Magee, S. (2020). Eight companies seek to take over Cannabis NB. CBC News 13 January. https://www.cbc.ca/news/canada/new-brunswick/cannabis-pot-new-brunswick-companies-1.5424992
49 Tukker, P. (2019). Yukon government to close its pot store. CBC 13 September. https://www.cbc.ca/news/canada/north/yukon-government-pot-store-closing-1.5281868
50 British Columbia (2018). Cannabis Distribution Act. s5(1). http://www.bclaws.ca/civix/document/id/complete/statreg/18028

with the legislation.[51] There may also be a limited number of licences available; Ontario implemented an initial cap of 25 retail licences, which has since gradually been lifted, as well as coinciding limits on licences per individual applicant.[52] Similarly, in Alberta, individuals or 'groups of persons' are not allowed to hold more than 15% of total licences at any one time.[53] In Ontario, licences were awarded by a 'lottery' system, which limited opportunities for the province to strategically distribute retail stores and hindered the role of regulators to prioritise licences for applicants demonstrating the most comprehensive business models.

While provinces are able to shape retail markets in line with their own aims, they usually reflect the general aims of regulation at the federal level. In New Brunswick, legislation sets out key aims of responsible management of distribution and sale, and promoting responsible consumption.[54] In Quebec, legislation emphasises the importance of a 'health protection perspective' and integrating consumers into, and maintaining them in, the legal cannabis market without encouraging consumption.[55] In Alberta, the four key priorities are: 'keeping cannabis out of the hands of children'; protecting safety on roads, in workplaces and public spaces; protecting public health; and limiting the illegal market for cannabis.[56]

The government-sale model implies a precautionary approach, and assumes that regulation should, at first, be stricter and, if justified, relaxed at a later stage. Provinces that have adopted this model may believe it is far easier to synchronise their aims with retail actors who have less incentive to maximise private profit. Taking this approach, however, does not preclude changing course at a later date. In Nova Scotia, for example, legislation expressly outlines that the Nova Scotia Liquor Corporation is an 'authorised seller' for the purposes of the Act, but provides that regulations may authorise other sellers at a later stage.[57] In New Brunswick, the agency set up by the government Cannabis Management Corporation to operate all retail sales in the region, Cannabis New Brunswick, is in the process of being privatised.[58] Cannabis New Brunswick has struggled financially since its inception, losing $12 million in its first six months, though sales have since picked up.[59] The New Brunswick Health Minister laid the blame for these failures at the feet of federal regulation, saying 'I'm convinced Health Canada did not want it to succeed. Health Canada has come out with rules like you can't smile in pictures on our website, because that might encourage people to take part in this activity.'[60] In comparison, the Yukon government ran a single retail store for the first year of business, making $4 million in sales in a territory with less than 40,000 people. However, despite its success, the government continued with plans to close the store once private retailers were up and running in the area.[61]

51 Government of Ontario (2018). Cannabis Licence Act, 2018, S.O.2018, c.12, Sched.2. s4. https://www.ontario.ca/laws/statute/18c12#BK3
52 Government of Ontario (2018). Cannabis Licence Act, 2018: Ontario Regulation 468/18. s8.1(2). https://www.ontario.ca/laws/regulation/180468#BK10; Alcohol and Gaming Commission of Ontario (2019). First allocation of stores - Expression of Interest Lottery. https://www.agco.ca/cannabis/cannabis-retail-lottery; Alcohol and Gaming Commission of Ontario (2019). Stores on First Nations Reserves. https://www.agco.ca/cannabis/stores-first-nations-reserves; Government of Ontario (2018). Cannabis Licence Act, 2018: Ontario Regulation 468/18. s12. https://www.ontario.ca/laws/regulation/180468#BK10
53 Province of Alberta (2018). Gaming, Liquor and Cannabis Act: Gaming and Liquor Amendment Regulation. s106. http://www.qp.alberta.ca/documents/orders/Orders_in_Council/2018/218/2018_027.pdf
54 Government of New Brunswick (2017). Bill 17: Cannabis Management Corporation Act. s1(a),(b). https://www.gnb.ca/legis/bill/FILE/58/4/Bill-17-e.htm; New Brunswick (2018). Cannabis Management Corporation Act. s7. https://www.gnb.ca/legis/bill/FILE/58/4/Bill-17-e.htm
55 Encadrement du Cannabis au Québec (2020). The Act respecting the Société des alcools du Québec. https://encadrementcannabis.gouv.qc.ca/en/loi/loi-sur-la-societe-des-alcools-du-quebec/
56 Government of Alberta (Undated). Alberta Cannabis Framework and legislation. https://www.alberta.ca/cannabis-framework.aspx#p6241s1
57 Nova Scotia Legislature (2018). Cannabis Control Act. s3(a), 14. https://nslegislature.ca/legc/bills/63rd_1st/1st_read/b108.htm
58 Magee, S. (2020). Eight companies seek to take over Cannabis NB. CBC 13 January. https://www.cbc.ca/news/canada/new-brunswick/cannabis-pot-new-brunswick-companies-1.5424992
59 Quon, A. (2019). New Brunswick moves to privatize Cannabis NB. Global News 14 November. https://globalnews.ca/news/6168223/new-brunswick-privatize-cannabis-nb/; Cannabis New Brunswick (2020). Cannabis NB issued third quarter financial results. https://www.cannabis-nb.com/about-cannabis-nb/
60 Quon, A. (2019). New Brunswick moves to privatize Cannabis NB. Global News 14 November. https://globalnews.ca/news/6168223/new-brunswick-privatize-cannabis-nb/
61 Tukker, P. (2019). Yukon government to close its pot store. CBC 13 September. https://www.cbc.ca/news/canada/north/yukon-government-pot-store-closing-1.5281868

Retail Stores

Province/Territory	Retail stores	Retail stores per 100,000 residents
Alberta	415	9.44
British Columbia	147*	2.88
Ontario	55*	0.38
Quebec	43**	0.50
Manitoba	30	2.18
Newfoundland and Labrador	25	4.79
Saskatchewan	24	2.04
New Brunswick	20	2.56
Nova Scotia	12	1.23
Northwest Territories	5	11.14
Prince Edward Island	4	2.53
Yukon	4	9.75
Nunavut	0	0

(Figures correct as of 7 February 2020)[62]
**29 retail stores in Ontario were authorised to open and 38 stores in BC were 'in progress' as of 7 February 2020.*[63] *A further 26 licences were granted to First Nations Reserves in Ontario, which for this table have been assumed to have opened.*
***In an October 2019 article, it was announced that 43 stores would be open within 6 months. Security protocols prevent SDQC's website from being accessed outside of Canada to verify this.*[64]

Every province except Nunavut allows for 'bricks and mortar' retail stores. In Nunavut, cannabis can only be purchased online from the Nunavut Liquor and Cannabis agency's 'approved agents', which are limited to Canopy Growth and AgMedica.[65] However, new legislation approved in March 2020 is beginning to pave the way for the registration of suppliers and licensing of cannabis retail operations.[66] As of February 2020, Alberta had the most retail stores in operation (415). Except for the Northwest Territories and the Yukon (particularly small sample sizes given both have populations under 50,000), no other province or territory recorded more stores per resident. This may be in part due to its comparatively cheap licence fees; In British Columbia, a retail store application costs

62 All figures as of 7 February 2020:
Government of Ontario. Cannabis Licence Act 2018, Ontario Regulation 468/18. s8(1). https://www.ontario.ca/laws/regulation/180468#BK10;
Alcohol and Gaming Commission of Ontario. Status of current Cannabis Retail Store Applications. https://www.agco.ca/status-current-cannabis-retail-store-applications;
Cannabis New Brunswick. Find a Store. https://www.cannabis-nb.com/stores/;
Liquor, Gaming and Cannabis Authority of Manitoba. Buying Cannabis in Manitoba. https://lgcamb.ca/cannabis/store-list/;
British Columbia Cannabis Licensing. Map of Cannabis Retail Stores in B.C. https://justice.gov.bc.ca/cannabislicensing/map;
Alberta Gaming, Liquor & Cannabis Commission. Cannabis licensee search. https://aglc.ca/cannabis/retail-cannabis/cannabis-licensee-search;
Cannabis NL. Find a Store. https://shopcannabisnl.com/apps/store-locator;
Northwest Territories Liquor and Cannabis Commission. Where to Buy Cannabis. https://www.ntlcc.ca/en/where-buy-cannabis; NSLC. Stores. https://www.mynslc.com/Stores; Nunavut Liquor and Cannabis. CAnnabis Purchasing. https://www.nulc.ca/news/?id=addf6310-40ce-e811-a979-000d3af49637;
PEI Cannabis. General FAQ. https://peicannabiscorp.com/pages/general-faq;
Saskatchewan Liquor and Gaming Authority. Cannabis Retailers in Saskatchewan. https://www.slga.com/permits-and-licences/cannabis-permits/cannabis-retailing/cannabis-retailers-in-saskatchewan;
Cannabis Yukon. Store Locations. https://cannabisyukon.org/store-locations.
63 Alcohol and Gaming Commission of Ontario (2020). Status of current Cannabis Retail Store Applications. https://www.agco.ca/status-current-cannabis-retail-store-applications
64 https://montrealgazette.com/news/quebec/cannabis-sqdc-to-double-number-of-outlets-by-march
65 Nunavut Liquor and Cannabis (Undated). Cannabis Purchasing. https://www.nulc.ca/news/?id=addf6310-40ce-e811-a979-000d3af49637; Government of Nunavut (2019). Buying cannabis legally in Nunavut. https://www.gov.nu.ca/finance/news/buying-cannabis-legally-nunavut
66 Legislative Assembly of Nunavut (2020). Bill 42: A Bill to Amend the Cannabis Act. https://assembly.nu.ca/sites/default/files/Bill-42-Cannabis-Act-Amendment-EN-FR.pdf.

$7,500, and a further $1,500 for the first year of the licence and every year at renewal.[67] In contrast, in Alberta, application fees are $400 while licence fees are $700.[68]

The number of retail stores can be shaped by regulation. In provinces with government-run retailers, the agency overseeing cannabis retail can directly decide exactly how many stores to open (within funding limits). In provinces with retail licensing systems, regulatory bodies are able to restrict the number of licences made available. In Ontario, for instance, there was an initial cap of 25 licences for retail stores, which was lifted to 42 in July 2019. A further 26 licences were given to stores on First Nations Reserves, meaning only 93 store licences were available until March 2020, when the limit was lifted.[69]

The legalisation of cannabis for non-medical purposes represents a cultural shift which may be met with friction in some areas more than others. A sudden and visible takeover of city centre shopping spaces by cannabis retailers may not always be popular among residents. Provinces may also be cautious of the possibility that a sudden influx of stores may encourage use, particularly in the first few months after legalisation where legal purchase and consumption of cannabis represents a novel possibility. For these reasons, provinces may wish to restrict the number of retail stores available at first, or ensure that their implementation is more gradual. On the other hand, ensuring availability of retail stores to purchase cannabis is the best method available to provinces to reduce the size and scope of the illegal market, and to bring consumers into their own market — with protection of public health and children as core aims.

Meeting the market demand

The first year of legal regulation was characterised by market instability, including gaps in supply and delays in opening retail stores.[70] Developing and regulating a new market of this size was always likely to have teething problems, particularly owing to a lack of case studies to draw upon. This market instability, however, has had a large impact on recorded consumption rates and limits the conclusions that can be drawn about the comparative success of provincial retail models. Further, the dynamics of the new market are a consequence of multiple, complex factors — including cultural and economic variables that are largely independent of policy and law. It is therefore difficult to disaggregate the drivers of any changes with certainty.

There is no clear correlation between regional consumption rates and the volume of retail stores in an area — suggesting that markets are still adapting to their consumer base, but also that the illegal market is still meeting a decent degree of demand. Nova Scotia has the highest consumption rates (an average of 25.7% of residents reported cannabis consumption in the past three months in 2019). However, only the two largest provinces — Quebec and Ontario — had fewer stores per resident. The province with the most stores per resident, Alberta, has middling consumption rates (18.8%, roughly in line with the Canadian average). Quebec, the lowest-consuming province, recorded only 11.8%, which is reflected (albeit disproportionately) in the fact that it has only half a store for every 100,000 residents — although the average distance to a store is only 35km, roughly average for Canada as a whole.[71]

67 British Columbia (2018). Cannabis Control and Licensing Act: Cannabis Licensing Regulation. Schedule 1. http://www.bclaws.ca/civix/document/id/complete/statreg/202_2018#Schedule2

68 The Legislative Assembly of Alberta (2017). Bill 26: An Act to Control and Regulate Cannabis. Schedule 1, s14. https://docs.assembly.ab.ca/LADD-AR_files/docs/bills/bill/legislature_29/session_3/20170302_bill-026.pdf

69 Government of Ontario. Cannabis Licence Act, 2018: Ontario Regulation 468/18. s8.1(2). https://www.ontario.ca/laws/regulation/180468#BK10; Alcohol and Gaming Commission of Ontario (2019). First allocation of stores - Expression of Interest Lottery. https://www.agco.ca/cannabis/cannabis-retail-lottery; Alcohol and Gaming Commission of Ontario (2019). Stores on First Nations Reserves. https://www.agco.ca/cannabis/stores-first-nations-reserves

70 Mohanty, S. (2020). Exploring Canada's Cannabis Demand-Supply Landscape. Market Realist 8 January. https://ww.marketrealist.com/2020/01/exploring-canadas-cannabis-demand-supply-landscape/#aprd; Jeffords, S. and Ligaya, A. (2019). Over half of Ontario cannabis store openings delayed. Canadian Underwriter 3 April. https://www.canadianunderwriter.ca/risk/over-half-of-ontario-cannabis-store-openings-delayed-1004161582/

71 Rotermann, M. (2020). What has changed since cannabis was legalized? Statistics Canada. https://www150.statcan.gc.ca/n1/pub/82-003-x/2020002/article/00002-eng.htm

Consumption data can be interpreted to roughly estimate the total cannabis consumers in any given province. For instance, in New Brunswick, which has a population of roughly 780,000, 20.3% of individuals reported cannabis consumption within the past three months in 2019. From this, it can be estimated that roughly 160,000 residents consume cannabis. Using this premise, it can be estimated that Ontario has the largest market for cannabis, about 2.5 million, followed by Quebec — because of its overall size but in spite of its comparatively low consumption rates — and British Columbia, which hover just above and just below 1 million respectively.[72]

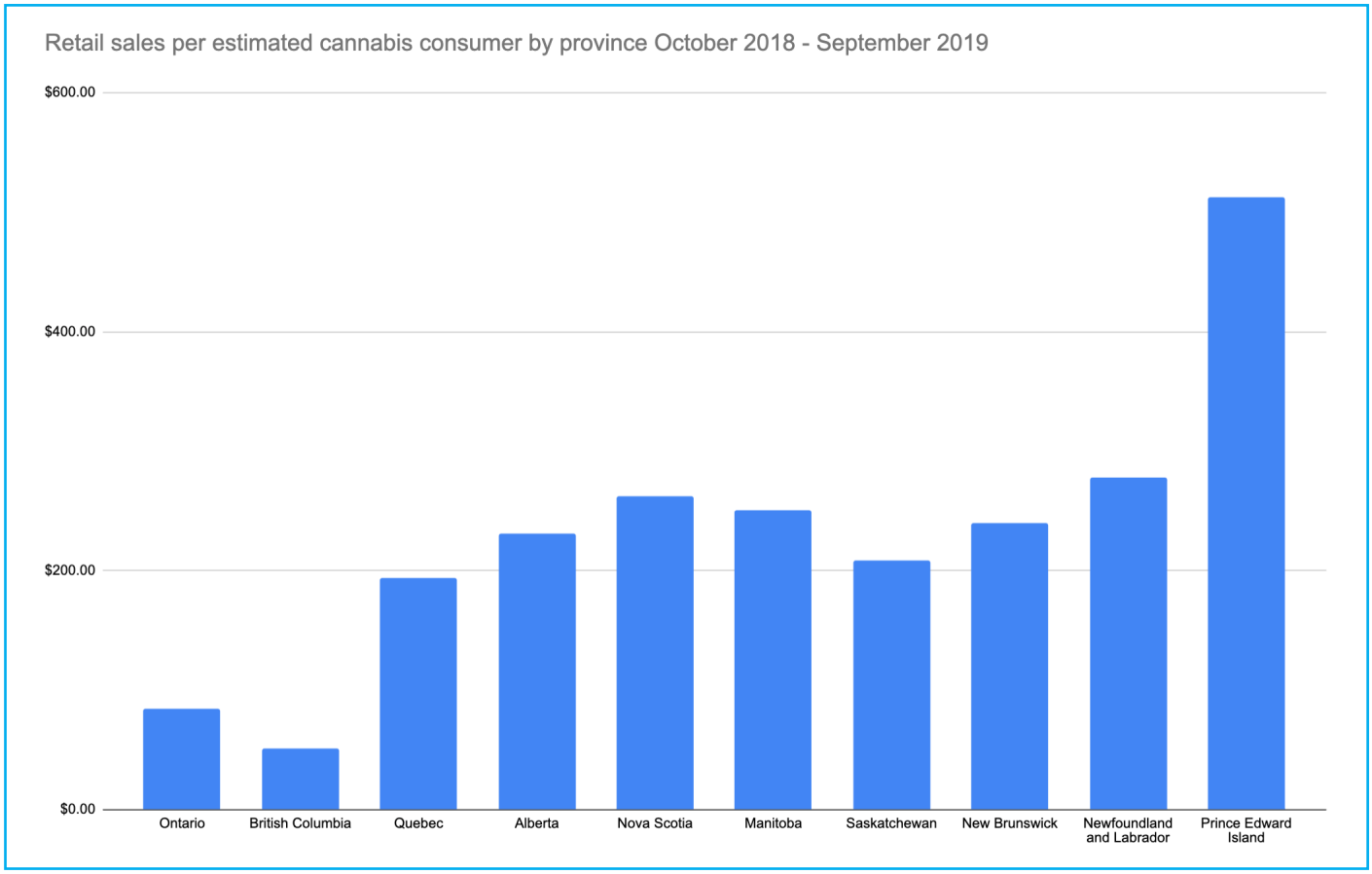
Of course, not all of these individuals are consuming cannabis bought from the legal market. They do, however, provide an idea of how many cannabis consumers provincial retail markets have available to them. This can in turn be used to assess the relative success of provincial retail markets at capturing these potential consumers — and bringing over revenue from the illegal market.

The below graph compares total legal retail sales by province between October 2018 and September 2019 (excluding online sales) against estimated market size.[73] It indicates that Prince Edward Island, which operates only 4 government-run retail stores, has by far the most sales per consumer. This suggests that Prince Edward Island is doing a better job than any other province at getting cannabis consumers in its jurisdiction to purchase from the legal market. Prince Edward Island is the smallest province in terms of both population and land mass, meaning the market is arguably easier to capture.

The least successful retail market is British Columbia, which was comparatively slow in establishing legal outlets compared to other provinces, operating only 16 (government-run) retail stores in March 2019, growing to 57 by July 2019 and around 150 by February 2020. Linked to this was the existence of many quasi-legal dispensaries in the area which continued to operate after October 2018 (although these are subsequently being shut down) which served initial post-legalisation demand without contributing to recorded revenue on the legal market. The second worst performer is Ontario, which has low consumption rates but is by far the most populated province, resulting in the largest potential consumer base. As of July 2019, stores were, on average, further away from individuals in Ontario than any other province.[74] This highlights the importance of retail markets being accessible to consumers in order to encourage them away from existing illegal markets for cannabis.

Generally, most retail markets measured similar levels of performance, regardless of whether the market was government-run or private, with all but three provinces hovering around $200 in sales per consumer. The three outliers (Prince Edward Island, British Columbia and Ontario) are the smallest and two largest markets respectively. It may, therefore, be that the key factor in achieving market success is the overall market size (i.e. number of individuals consuming cannabis) of the province: with larger provinces having greater difficulty establishing themselves. It may take longer for provinces with larger consumer bases to develop the infrastructure to capture consumers from the illegal market. However, there were also political factors impacting market development in British Columbia and Ontario. In British Columbia, provincial government elections were held in May 2017 and significantly delayed decisions over the design of the retail model.[75] In Ontario, the election of a new government months before cannabis was due to be legalised resulted in a sudden shift in regulatory outlook, dropping plans for a government operated market in favour of a private licensed one.[76] This again highlights that the dynamics of new markets are underpinned by many factors — including social and political — and cannot be considered in isolation.

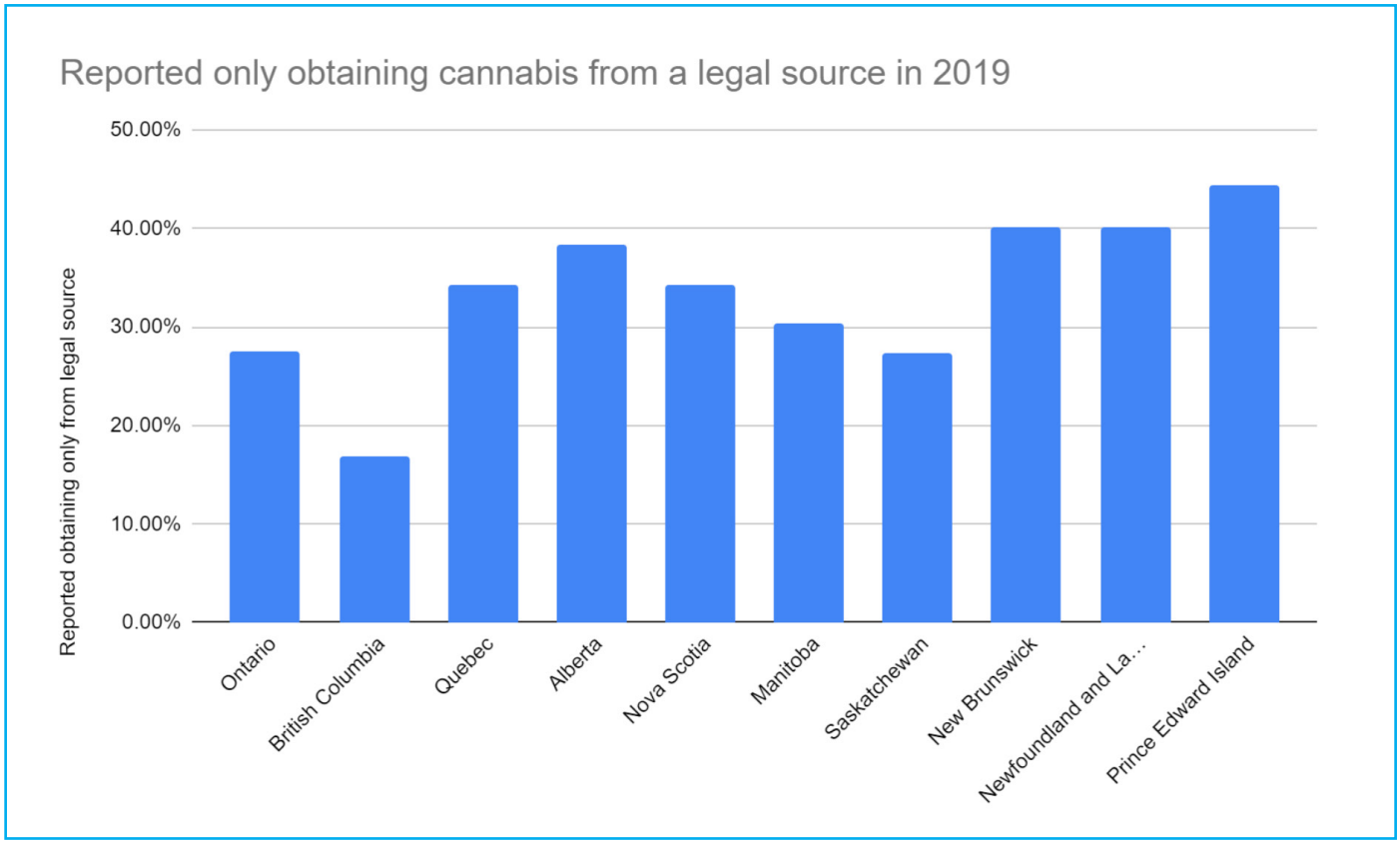
72 Rotermann, M. (2020). What has changed since cannabis was legalized? Statistics Canada. https://www150.statcan.gc.ca/n1/pub/82-003-x/2020002/article/00002-eng.htm
73 Statistics Canada (2019). The Retail Cannabis Market in Canada: A Portrait of the First Year. https://www150.statcan.gc.ca/n1/pub/11-621-m/11-621-m2019005-eng.htm
74 Statistics Canada (2019). The Retail Cannabis Market in Canada: A Portrait of the First Year. https://www150.statcan.gc.ca/n1/pub/11-621-m/11-621-m2019005-eng.htm#correction-notice
75 See: Hager, M. (2017). B.C. party leaders mostly silent on marijuana opportunities. The Globe and Mail 7 May. https://www.theglobeandmail.com/news/british-columbia/bc-party-leaders-mostly-silent-on-marijuana-opportunities/article34916354/
76 Crawley, M. (2018). Questions swirl around Ontario's pot plans as Doug Ford prepares to take power. CBC News 20 June. https://www.cbc.ca/news/canada/toronto/ontario-marijuana-cannabis-sales-doug-ford-1.4713848



Source: Consumption and sales data from Statistics Canada (2019-2020). See: The Retail Cannabis Market in Canada: A Portrait of the First Year https://www150.statcan.gc.ca/n1/pub/11-621-m/11-621-m2019005-eng.htm; and Prevalence of cannabis use in the past three months (after legalisation). https://www150.statcan.gc.ca/n1/pub/82-003-x/2020002/article/00002/tbl/tbl01-eng.htm

These trends are corroborated by the Statistics Canada data on percentages of individuals reporting only obtaining cannabis from a legal source — detailed above. Across Canada, 29.4% of individuals say that they only obtain cannabis legally (whether on the medical or non-medical market), with 52% saying they sometimes obtain it legally, but sometimes obtain it illegally.[77] The above figures may therefore underrepresent the transition to the legal market. However, this survey (upon which consumption data is also based) is particularly prone to response bias as individuals may feel uncomfortable saying that they have purchased cannabis from an illegal source, and answers cannot be verified. Nonetheless, the available data suggests that Prince Edward Island is doing the best at bringing over consumers to its legal retail market, and Ontario and British Columbia are doing the worst.

77 Statistics Canada (2020). Number and percentage of consumers who accessed cannabis from each source. https://www150.statcan.gc.ca/n1/pub/82-003-x/2020002/article/00002/tbl/tbl03-eng.htm



Source: Statistics Canada (2020). Number and percentage of consumers who accessed cannabis from each source. https://www150.statcan.gc.ca/n1/pub/82-003-x/2020002/article/00002/tbl/tbl03-eng.htm

Retail locations

Arguably, location of retail stores is a more important factor than total stores per region in bringing consumers over from the existing illegal market. In a vast country like Canada, however, the density of retail stores varies dramatically between provinces and territories, and more retail stores will be expected in more densely populated municipalities.

In July 2019, the average distance for Canadian residents to the nearest cannabis store was 34km. In Prince Edward Island, New Brunswick and Alberta, three of Canada's five most densely populated provinces, the average distance was just 12-15 km. In Yukon and the Northwest Territories, two of the least densely populated regions, the average distance was over 100km.[78] In less densely populated areas, online sales are of heightened importance in ensuring accessibility of the legal cannabis market.

Given the sheer size of many provinces, it is important that retail stores are distributed so as to ensure access in all municipalities. Regulation is key to managing the distribution of outlets. For instance, before the limit of 93 licences was lifted in March 2020, Ontario regulations specified the maximum number of retail stores allowed in each area: 18 for Toronto; 12 in the Greater Toronto Area; 12 in the East region; 18 in the West region and 7 in the North region.[79] The final 26 stores, as discussed above, were made available for First Nations Reserves (see further social equity). In Saskatchewan, the provincial government has attempted to encourage retail stores outside of cities by offering reduced annual licence fees: $3,000 for a store in a city, and $1,500 for a store outside.[80]

78 Statistics Canada (2019). The Retail Cannabis Market in Canada: A Portrait of the First Year. https://www150.statcan.gc.ca/n1/pub/11-621-m/11-621-m2019005-eng.htm#correction-notice;
79 Government of Ontario. Cannabis Licence Act, 2018: Ontario Regulation 468/18. s8.1(2). https://www.ontario.ca/laws/regulation/180468#BK10.
80 Saskatchewan (2018). The Cannabis Control (Saskatchewan) Regulations. s5-1(2). https://www.saskatchewan.ca/government/cannabis-in-saskatchewan

Provinces may also wish to prevent stores from opening near certain spaces. For instance, in Ontario stores must be at least 150m from a school.[81] In Alberta, stores must be at least 100m from a health facility or a school, but municipalities are able to vary this distance.[82] Regulations may also specify that licences are subject to existing municipal zoning requirements, as applied to other businesses.[83]

Municipal controls help ensure local communities have an influence on how cannabis retail operates in their area. In Ontario, municipalities can prohibit retail stores entirely, with 73 areas doing just this.[84] This has led to gaps of access, including in some densely populated areas. In response, the province has allocated $40 million over two years to 'help municipalities...with the implementation costs of recreational cannabis legalization', allowing for more funding to be allocated to municipalities which have not prohibited stores.[85] In Alberta, licences cannot be granted in municipalities unless permits have been issued by that municipality.[86] In Saskatchewan, municipalities may designate 'all or some locations' where retail stores are not allowed.[87] In British Columbia, local governments must recommend to the Liquor and Cannabis Regulation Branch that a licence be issued before the Branch grants a licence — but this does not require it to grant such a licence.[88]

Local input on licensing is important, but can also create a 'patchwork prohibition' effect, where retail stores may exist in some parts of province, while remaining prohibited in others. This has been a particular issue in the US, where a number of legally regulating states have had vast swathes of municipalities opt-out of retail sales. In California, 76% of cities have rejected cannabis stores, leading to criticisms that patchwork prohibition is undermining state-wide regulation efforts to combat the illegal market.[89] The effect is similar in Colorado, where nearly three-quarters of its 271 municipalities have opted out, and Michigan, where nearly 1,400 of 1,773 municipalities have opted out.[90]

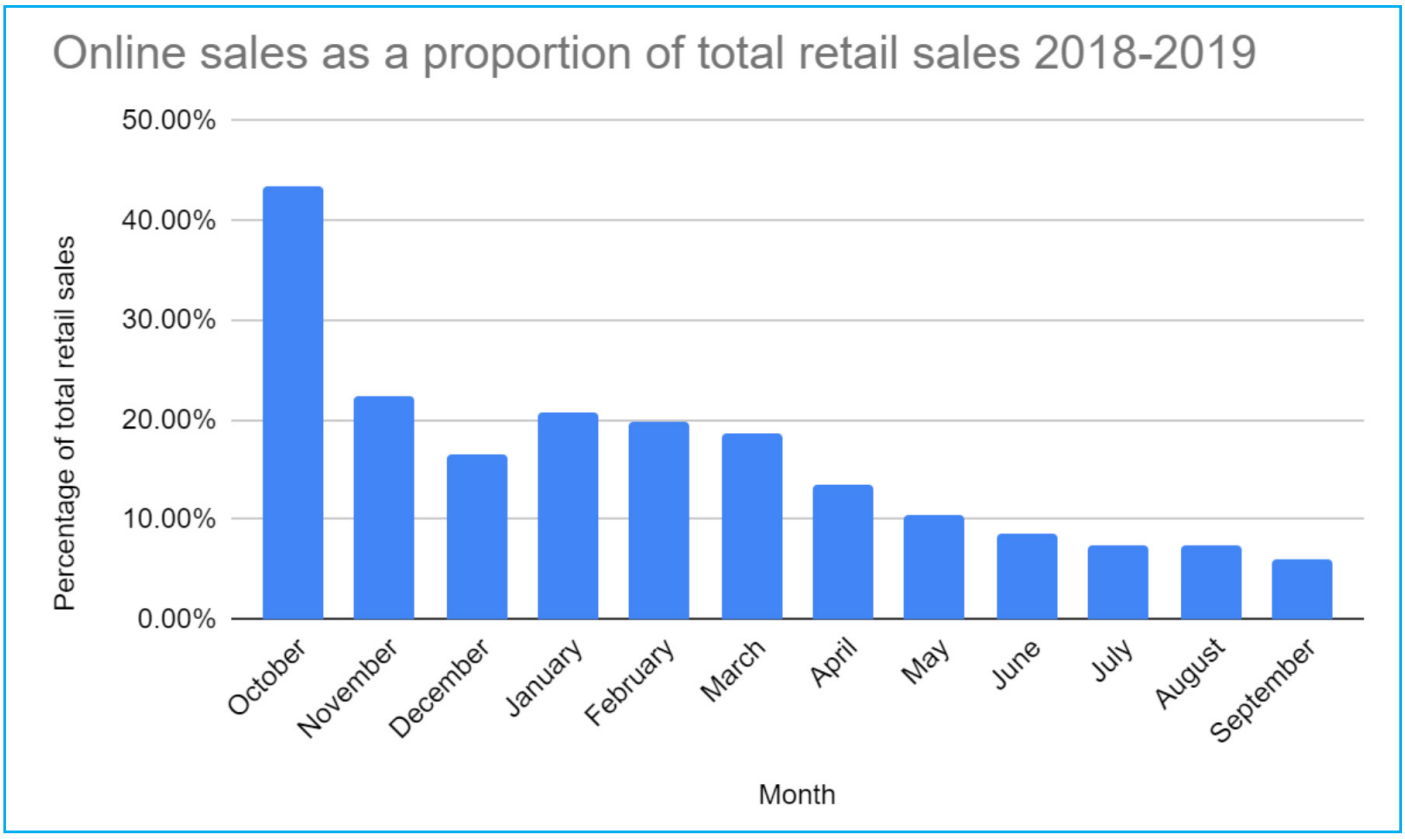
Online sales

All provincial online stores are government-run, except for Nunavut, Saskatchewan and Manitoba. Online sales have progressively made up less of the total retail sales in Canada as markets have developed. In October 2018, immediately after cannabis was legally regulated, 43.4% of sales were online. A major reason for this is that very few offline stores were licensed in certain provinces, severely limiting the opportunity for legal purchase. In British Columbia, for instance, only 16 retail stores were open by March 2019.[91]

Online sales were therefore particularly important shortly after legalisation, while licensed stores were in shorter supply, but are becoming less important now as more 'bricks and mortar' stores are licensed. Online sales in September 2019 were less than half of the $17,166,000 spent across

81 Government of Ontario (2018). Cannabis Licence Act, 2018, Ontario Regulation 468/18. S11. https://www.ontario.ca/laws/regulation/180468#BK10
82 Province of Alberta (2018). Gaming, Liquor and Cannabis Act: Gaming and Liquor Amendment Regulation. s105(3)-(4). http://www.qp.alberta.ca/documents/orders/Orders_in_Council/2018/218/2018_027.pdf
83 See: Manitoba (2018). The Liquor, Gaming and Cannabis Control Act (as amended). s106(3). https://web2.gov.mb.ca/laws/statutes/ccsm/l153e.php
84 Government of Ontario (2018). Cannabis Licence Act, 2018, S.O. 2018, c.12, Sched. 2. s41(1). https://www.ontario.ca/laws/statute/18c12; Alcohol and Gambling Commission of Ontario (Undated). List of Ontario municipalities prohibiting or allowing cannabis retail stores. https://www.agco.ca/cannabis/list-ontario-municipalities-prohibiting-or-allowing-cannabis-retail-stores
85 City of Toronto (2018). 2018 Cannabis Legalization. https://www.toronto.ca/city-government/council/2018-council-issue-notes/cannabis-legislation/
86 Province of Alberta (2018). Gaming, Liquor and Cannabis Act: Gaming and Liquor Amendment Regulation. s105(2). http://www.qp.alberta.ca/documents/orders/Orders_in_Council/2018/218/2018_027.pdf
87 Saskatchewan (2018). The Cannabis Control (Saskatchewan) Act. s3-3. https://www.saskatchewan.ca/government/cannabis-in-saskatchewan
88 Province of British Columbia (Undated). Cannabis Retail Store Licence. https://justice.gov.bc.ca/cannabislicensing/policy-document/cannabis-retail-licence
89 McGreevy, P. (2019). California now has the biggest legal marijuana market in the world. Its black market is even bigger. LA Times 15 August. https://www.latimes.com/california/story/2019-08-14/californias-biggest-legal-marijuana-market
90 Murray, J (2018). Colorado communities pocket big bucks from legal marijuana, but threats loom for some. Denver Post 28 December. https://www.denverpost.com/2018/12/28/colorado-marijuana-taxes-local-cities-towns/;Marijuana Regulatory Agency (2019). List of municipalities who have notified the MRA that
they have opted out of the licensed establishments portion of MRTMA (Unofficial document, as of 8 November 2019). https://www.michigan.gov/documents/lara/MRTMA_Municipality_Opt-Out_Update_1-25-2019_644664_7.pdf; see also: Marijuana Regulatory Agency (2019). List of municipalities who have opted in (Unofficial document, as of 8 November 2019). https://www.michigan.gov/documents/lara/Municipality_Opt-In_Spreadsheet_2-16-18_614253_7.pdf.
91 Statistics Canada (2019). The Retail Cannabis Market in Canada: A Portrait of the First Year. https://www150.statcan.gc.ca/n1/pub/11-621-m/11-621-m2019005-eng.htm#correction-notice

Canada in October 2018.[92] Linked to this are concerns over the retention of private purchase data and how it may be used, with US border officials even suggesting that evidence of prior cannabis purchase may be used as evidence to bar access to the country (although this has not happened in practice).[93] Of course, some individuals may prefer buying cannabis online, especially in remote areas where retail stores may be very difficult to access. It is, therefore, important that online markets are still available to meet this demand. However, data suggest that online buyers are a relatively small group of consumers.



Source: Statistics Canada (2019). The Retail Cannabis Market in Canada: A Portrait of the First Year. https://www150.statcan.gc.ca/n1/pub/11-621-m/11-621-m2019005-eng.htm#a5

Restrictions on sale

Provinces further regulate stores by controlling how and when they may operate. For instance, in British Columbia and Saskatchewan, cannabis can't be sold by self-service or through a vending machine.[94] Generally, however, the primary ways in which sale is controlled are through purchase limits, prohibiting sales to particular groups of individuals and through controlling when stores can open.

Purchase limits

As outlined in the federal Cannabis Act, adults are limited to purchasing 30g of cannabis. This public possession limit is the same in all provinces. However, the law is not applied identically in all areas.

92 Statistics Canada (2019). The Retail Cannabis Market in Canada: A Portrait of the First Year. https://www150.statcan.gc.ca/n1/pub/11-621-m/11-621-m2019005-eng.htm#correction-notice

93 Office of the Privacy Commissioner of Canada (2018). https://www.priv.gc.ca/en/privacy-topics/collecting-personal-information/gd_can_201812/;https://www.priv.gc.ca/en/privacy-topics/collecting-personal-information/gd_can_201812/; Cain, P. (2020). Pay cash for pot if you can, federal privacy commissioner urges. Global News 18 December. https://globalnews.ca/news/4773407/privacy-commission-pay-cash-for-pot/; Savoie, A. (2019). Cannabis Purchases, Privacy and the Canada–U.S. Border. Library of Parliament. https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201913E#a2

94 British Columbia (2018). Cannabis Control and Licensing Act. s48. http://www.bclaws.ca/civix/document/id/complete/statreg/18029; Saskatchewan (2018). The Cannabis Control (Saskatchewan) Act. s3-17. https://www.saskatchewan.ca/government/cannabis-in-saskatchewan

In British Columbia, legislation simply says that 30g of dried cannabis is the maximum that may be sold 'in a transaction'.[95] In theory, however, there is nothing to stop a single transaction being followed by another single transaction (except individual breach of public possession limits). To combat this, in Quebec, the purchase limit is therefore expressed as a limit in 'the course of a same visit' while, in Ontario, it is expressed as applying to 'a single visit, whether in single or multiple transactions'.[96] This still doesn't quite solve the issue, though, as multiple visits might be made to the same store on the same day. In Colorado in the US, one business owner faced criminal charges for facilitating just this.[97]

The purpose of purchase limits is partly to avoid diversion: to prevent individuals purchasing large amounts of cannabis legally and selling it on illegally for their own profit. Some US states have attempted to resolve this by being even more explicit in regulations and specifying that purchase limits additionally apply within one day. In Oregon the purchase limit applies 'at any one time or within one day' while California's regulations expressly state 'in a single day'.[98] This helps prevent the circumvention of purchase limits by vendors, but it does not necessarily constrain purchaser behaviour. Even where purchase limits expressly apply to a single day, an individual may simply buy from multiple stores. Vendors can only do so much. Short of creating a system where purchasers require a registry-linked buyer's licence (as has happened in Uruguay, for example) — which would be controversial for many reasons — the bypassing of purchase limits cannot be definitively prevented.

Sales to particular groups

A number of provinces prohibit selling or providing cannabis to an intoxicated person.[99] Legislation in Prince Edward Island expressly states that this refers to 'alcohol or a drug' (though presumably they didn't have caffeine in mind), but additionally clarifies the ban extends to anyone who appears to be intoxicated.[100] This allows leeway for staff unable to tell for certain whether an individual has consumed a drug of any kind. Prohibiting sales to intoxicated persons is a measure commonly used to restrict alcohol sales, but one that is often poorly applied in practice. With similar motivations in mind, Manitoba legislation requires that stores post public service notices in relation to responsible consumption.[101] Whether, in practice, restricting cannabis sales in such a way will be any more successful than is the case for alcohol is open to question.

Retailers are also barred from selling cannabis to minors. However, this is enforced differently by province. In Alberta, legislation expressly implements a 'challenge 25' rule at licensed premises, requiring vendors to ask anybody who looks 25 or under for identification prior to purchase.[102] A similar scheme for alcohol sales operates in the UK — the purpose being to encourage vendors to ask more people for ID than they would otherwise. Similarly, both Manitoba and Saskatchewan

95 British Columbia (2018). Cannabis Control and Licensing Act: Cannabis Licensing Regulation. s5(1). http://www.bclaws.ca/civix/document/id/complete/statreg/202_2018

96 Encadrement du Cannabis au Québec. The legislation on cannabis. https://encadrementcannabis.gouv.qc.ca/en/loi/loi-encadrant-le-cannabis/; Ontario (2018). Cannabis Licence Act 2018. s21(1)-(2). https://www.ontario.ca/laws/statute/18c12

97 Foody, K. (2019). Colorado Pot Owners Plead Guilty as a Result of 'Looping' Practice. Claims Journal 29 January. https://www.claimsjournal.com/news/west/2019/01/29/288944.htm

98 Oregon Liquor Control Commission (Undated). OLCC Marijuana Program: Frequently Asked Questions (all). https://www.oregon.gov/olcc/marijuana/Documents/MJ_FAQS.pdf. Page 3.; Bureau of Cannabis Control California (2019). California Code of Regulations Title 16. § 5409 Daily Limits. https://bcc.ca.gov/law_regs/cannabis_order_of_adoption.pdf

99 See: The Legislative Assembly of Alberta (2017). Bill 26: An Act to Control and Regulate Cannabis. s90.05. https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_29/session_3/20170302_bill-026.pdf; Government of Ontario (2018). Cannabis Licence Act, 2018, S.O. 2018, c.12, Sched.2. s7(5). https://www.ontario.ca/laws/statute/18c12; British Columbia (2018). Cannabis Control and Licensing Act. s49(2). http://www.bclaws.ca/civix/document/id/complete/statreg/18029; British Columbia (2018). Cannabis Control and Licensing Act. s79. http://www.bclaws.ca/civix/document/id/complete/statreg/18029#section61; Manitoba (2018). The Liquor, Gaming and Cannabis Control Act (as amended). s101.16. https://web2.gov.mb.ca/laws/statutes/ccsm/l153e.php; Saskatchewan (2018). The Cannabis Control (Saskatchewan) Act. s3-8. https://www.saskatchewan.ca/government/cannabis-in-saskatchewan.

100 Prince Edward Island (2018).Cannabis Control Act. s17(1). https://www.princeedwardisland.ca/sites/default/files/legislation/c-01-2-cannabis_control_act.pdf

101 Manitoba (2018). The Liquor, Gaming and Cannabis Control Act (as amended). s101.20-21. https://web2.gov.mb.ca/laws/statutes/ccsm/l153e.php

102 The Legislative Assembly of Alberta (2017). Bill 26: An Act to Control and Regulate Cannabis. s90.03(1). https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_29/session_3/20170302_bill-026.pdf

provide for mandatory training requirements of staff at retail stores.[103]

Opening hours and security

The times at which stores are open can have a significant effect on consumer behaviour, as has been shown in alcohol research. Cannabis is different from alcohol, however. Although any increase in availability is liable to increase sales, for alcohol, late opening is especially linked to antisocial behaviour. This is less of a pressing issue for cannabis, however, so the purpose of controlling opening hours is different.

Provincial governments have nonetheless sought to control opening times. In Ontario, stores can open between 9am and 11pm.[104] In Alberta, opening times are limited to 10am - 2am, but may be restricted by individual municipalities.[105] In Saskatchewan, this is 8am to 3am — or until 3.30am on New Year's Day. To ensure that licences are actually used (and not simply snapped up in case someone decides they may want to open a store in the future) stores in Saskatchewan are required to open for a minimum of six hours a day for six days a week.[106] A similar provision applies in Newfoundland and Labrador, where licences may be revoked owing to a period of inactivity.[107]

Provincial regulations may further detail security requirements for retail licensees, similar to those applied at a federal level. In Manitoba, shops need a monitored security alarm and continuous video surveillance of all interior areas and storage areas must be locked at all times when access isn't required.[108] Federal requirements that cannabis and cannabis accessories cannot be displayed 'in a manner that may result in the cannabis, [cannabis accessory,] package or label being seen by a young person' have caused controversy.[109] Provinces including British Columbia have interpreted this by requiring that retail stores have frosted windows, conflicting with municipal bylaws that shops have transparent windows and drawing criticism from business owners that it puts safety at risk.[110] In Alberta, a series of robberies prompted stores to remove window coverings aimed at ensuring compliance with the federal non-visibility requirement.[111]

Advertising and promotion

Federal level

Cannabis is not a risk free product, and the goals of promoting public health and protecting young people require the restriction of advertising or marketing which encourages use, broadens appeal or misleads consumers. As a general principle, this is easily expressed, but much corporate marketing and branding blurs the line between encouraging consumption and simply distinguishing themselves as a unique entity. The federal framework is, therefore, restrictive in terms of what is allowed.

103 Saskatchewan (2018). The Cannabis Control (Saskatchewan) Regulations. s3-9. https://www.saskatchewan.ca/government/cannabis-in-saskatchewan;Manitoba (2018). The Liquor, Gaming and Cannabis Control Act (as amended). s101.20-21. https://web2.gov.mb.ca/laws/statutes/ccsm/l153e.php

104 Government of Ontario (2018). Cannabis Licence Act, 2018, Ontario Regulation 468/18. s17. https://www.ontario.ca/laws/regulation/180468#BK10

105 Province of Alberta (2018). Gaming, Liquor and Cannabis Act: Gaming and Liquor Amendment Regulation. s121(2), Part 2, Schedule 3. http://www.qp.alberta.ca/documents/orders/Orders_in_Council/2018/218/2018_027.pdf

106 Saskatchewan (2018). The Cannabis Control (Saskatchewan) Regulations. s3-6. https://www.saskatchewan.ca/government/cannabis-in-saskatchewan

107 Newfoundland and Labrador (2018). Bill 20: An Act Respecting the Control and Sale of Cannabis. s34(1). https://assembly.nl.ca/HouseBusiness/Bills/ga48session3/bill1820.htm

108 See: Manitoba (2018). The Liquor and gaming Control Act (C.C.S.M.c.L153), Cannabis Regulation. s3, 5, 6. http://web2.gov.mb.ca/laws/regs/annual/2018/120.pdf

109 Cannabis Act, s29, 30.

110 Korstrom, G. (2019). Governments put cannabis store owners in Catch-22 situation over windows. Business in Vancouver 18 March. https://biv.com/article/2019/03/governments-put-cannabis-store-business-owners-catch-22-situation-over-windows; Staniforth, J. (2020). Do covered windows compromise safety at cannabis stores? Leafly 2 March. https://www.leafly.com/news/industry/covered-windows-safety-cannabis-stores

111 Kaufmann, B. (2020). Cannabis store robberies prompt retailers to remove legislated window coverings. Calgary Herald 24 February. https://calgaryherald.com/cannabis/cannabis-business/cannabis-store-robberies-prompt-retailers-to-remove-legislated-window-coverings/

Under the federal Cannabis Act, it is prohibited to promote cannabis by appealing to young persons, by means of an endorsement, or by associating cannabis use with 'glamour, recreation, excitement, vitality, risk or daring'.[112] The legislation clearly attempts to prevent cannabis from being marketed in the way that tobacco, alcohol or even energy drinks have been previously.

Sponsorship of persons, entities or events — to prevent certain positive associations, such as with someone's favourite sports team — are also expressly prohibited.[113] The Cannabis Regulations further prohibit cannabis products from creating the impression of 'health or cosmetic benefits' (except for licensed and relevant medical products), and prohibit promotion which implies that an edible cannabis product may meet dietary requirements.[114] They also specifically prohibit promotion which may reasonably link a cannabis product to an alcoholic beverage, or tobacco or non-cannabis vaping products.[115] This is also the case when such promotion is on packaging and labelling.[116]

Branding is designed to maximise market share through the creation of a distinctive identity, but can also make the product itself (in this case, cannabis) more attractive. The Cannabis Act does not specifically exclude brand elements, so long as these elements are not associated with children (or where they could reasonably be believed to appeal to children), and do not display 'a thing that is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring'.[117] The size and content of brand elements is also controlled: where included 'on a thing that is not cannabis or a cannabis accessory' they must be smaller than 300cm squared, and characters must be 4cm or less.[118]

While promoting consumption is certainly at odds with federal aims of regulation, promoting responsible consumption is not. The prohibition of promotion therefore expressly does not apply to 'informational promotion' aimed at a particular adult.[119] Equally, the Cannabis Act states that it does not apply to promotion 'at the point of sale if the promotion indicates only its availability, its price or its availability and price'.[120] This qualification is necessary, as otherwise almost anything done by vendors in retail stores could be classed as 'promotion'.

Provincial level

Further restrictions may be applied by provincial governments to further synchronise their own aims of regulation. In British Columbia, there is a prohibition on marketing, advertising or promoting cannabis to minors, unless reasonable steps were taken to ascertain that the individual was not a minor.[121] Legislation in British Columbia also uniquely provides for a 'marketing licence', which authorises the licensee 'to promote cannabis for the purpose of selling it'.[122] This is subject to provincial controls, such as prohibitions on providing samples of cannabis, offering benefits to retail store licensees in return for the store buying or promoting products, and offering discounted products in exchange for marketing benefits. A licensee may, however, conduct market research surveys and invite retail store licensees to promotional events and pay for their travel, meals, accommodation and entertainment expenses up to $1,500 a year per retail licensee, in order to promote products.[123]

112 Government of Canada (2018). Cannabis Act (S.C. 2018, c. 16). s17(1). https://laws-lois.justice.gc.ca/eng/acts/C-24.5/
113 Cannabis Act, s17(20),(21)
114 Cannabis Regulations, s104.12, 104.14.
115 Cannabis Regulations, s104.15, 104.16.
116 Cannabis Regulations, s132.28, 132.3, 132.31, 132.31.
117 Cannabis Act, s17(6)
118 Cannabis Regulations, s104.2, 111.; Cannabis Act 17(6)
119 Cannabis Act, s17(2),(5).
120 Cannabis Act, s17(2),(5).
121 British Columbia (2018). Cannabis Control and Licensing Act. s71. http://www.bclaws.ca/civix/document/id/complete/statreg/18029#section61
122 British Columbia (2018). Cannabis Control and Licensing Act: Cannabis Licensing Regulation. s3(1), 11. http://www.bclaws.ca/civix/document/id/complete/statreg/202_2018#section3
123 Province of British Columbia (2019). Marketing: Terms and Conditions. https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/liquor-regulation-licensing/guides-and-manuals/marketing-handbook.pdf

Legal cannabis product packaging in a Vancouver retail store

On the one hand, this represents a pragmatic attempt at constraining inevitable commercial activities. On the other, it does raise questions given the level of commercial capture that is already happening in the legal market (see commercial capture). In contrast, in Alberta, retail licensees are expressly prohibited from receiving gifts from cannabis suppliers or representatives, nor can they 'rent or borrow any furniture, furnishings, storage equipment, fixtures, decorations, signs, supplies or other equipment' from suppliers.[124]

Provinces are also able to shape marketing and promotion inside retail stores. In Manitoba, retail licences are divided into a 'controlled-access licence' and an 'age-restricted licence'. The former authorises the licensee to sell cannabis so long as it is stored behind a counter or shelving to prevent products being viewed until after purchase, while the latter authorises the licensee to sell cannabis so long as minors are prohibited from entering the store.[125]

Packaging and design

The federal Cannabis Act prohibits selling cannabis with labels that depict persons, characters or animals that may reasonably be believed to appeal to children, or that evoke 'a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring'.[126] There is a similar general prohibition on cannabis or cannabis accessories having 'an appearance, shape or other sensory attribute or a function that there are reasonable grounds to believe could be appealing to young persons'.[127] This is similar to a number of states in the US, which have banned the use of characters that appeal to children, such as cartoons, on cannabis packaging.[128] Implementation may be difficult in practice as many cannabis accessories (like bongs) may be used for other purposes, making enforcement of regulation difficult.

The Cannabis Regulations provide specific detail on ensuring packaging is safe, difficult for children to access and promotes responsible consumption. They specify that containers must: be opaque or translucent; prevent cannabis getting contaminated; keep the cannabis dry (if it's dried cannabis);

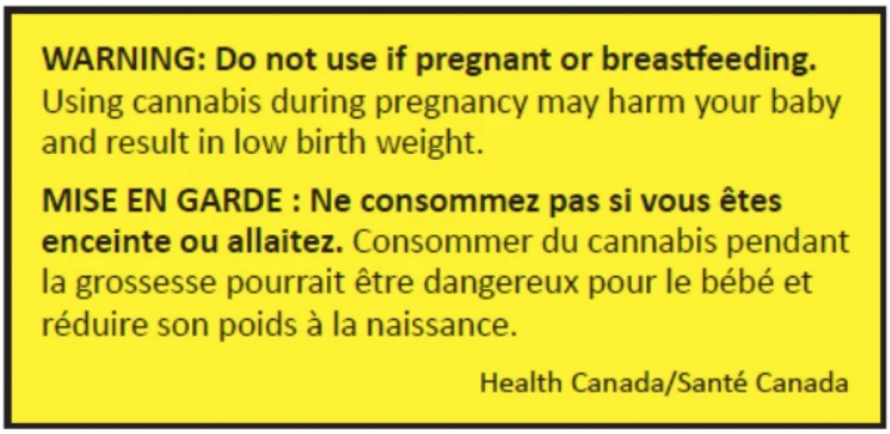
124 Province of Alberta (2018). Gaming, Liquor and Cannabis Act: Gaming and Liquor Amendment Regulation. s119. http://www.qp.alberta.ca/documents/orders/Orders_in_Council/2018/218/2018_027.pdf
125 Manitoba (2018). The Liquor, Gaming and Cannabis Control Act (as amended). s101.4(3). https://web2.gov.mb.ca/laws/statutes/ccsm/l153e.php
126 Cannabis Act, s26.
127 Cannabis Act, s31.
128 See, e.g., Alcohol and Marijuana Control Office (Updated 2019). 3 AAC 306 Regulations for the Marijuana Control board. 565 Packaging of marijuana products. https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/3AAC306%209.18.19.pdf

have a feature (i.e. a seal or blister pack) demonstrating that the product has not been previously opened; be child-resistant; and not contain more than 30g of dried cannabis (or equivalent).[129] Where there are panels on containers for cannabis edibles, these must be resealable and able to 'withstand repeated openings and closings without detaching from the immediate container under customary conditions of use'.[130] This is similar to the US, where resealable, child-resistant packaging is required in all states.[131]

The Regulations seek to prevent packaging from being bright or eye catching in a way that detracts from important health information. They require that each individual surface of a cannabis container must be 'one uniform colour', must not be fluorescent and must create a contrast with the yellow of the standard health warning message and the red of the standardised cannabis symbol.[132] The texture of containers must be smooth, and must not emit any scents or sounds, or have features like heat-activated ink.[133] These highly prescriptive requirements are, again, similar to many states in the US, which operate varied 'universal symbol' requirements, as well as warning requirements including potential driving hazards and a need to keep away from children.[134]

The Regulations also require that the product brand name must be smaller than the health warning message, and the brand element must be smaller than the mandated red cannabis (THC) warning symbol.[135] This is clearly aimed at ensuring the health information is more prominent to consumers and therefore draws more attention. There is evidence to support such measures. Research in the United Kingdom has found that, since the introduction of a plain packaging law, twice as many smokers notice the health warnings on cigarette packs.[136]

Standardised cannabis symbol
Source: Health Canada



One of the cannabis warning messages

Labelling

Labelling presents an opportunity for regulators to ensure their own messaging is on products — such as health warnings. The Cannabis Regulations outline that containers must specify:

— The contact details of the cultivator or manufacturer

129 Cannabis Regulations,s108.
130 Cannabis Regulations,s132.27(3).
131 Slade, H. (2020). Altered States: Cannabis Regulation in the US. p18. Transform Drug Policy Foundation. https://transformdrugs.org/wp-content/uploads/2020/06/Altered-States-Digital-2020.pdf
132 Cannabis Regulations,s113(1).
133 Cannabis Regulations,s116(1), 117.
134 See, e.g., Oregon Liquor Control Commission (Undated). Recreational Marijuana Program: Packaging and Labeling. https://www.oregon.gov/olcc/marijuana/Documents/Packaging_Labeling/ChecklistandGeneric.pdf.
135 Cannabis Regulations,s130(4), 130(9).
136 International Tobacco Control Policy Evaluation Project (2020). Standardised Packaging for Tobacco Products in England - Evidence of Policy Impact from the International Tobacco Control Policy Evaluation Project | Feb 2020. https://itcproject.org/findings/reports/standardised-packaging-tobacco-products-england-evidence-policy-impact-international-tobacco-control-policy-evaluation-project-feb-2020/

— The class of cannabis
— The brand name and lot number of the product
— The product's recommended storage conditions
— The packaging date of the product
— The expiry date (or a statement that none has been determined)[137]
— The warning '*KEEP OUT OF REACH OF CHILDREN / TENIR HORS DE LA PORTÉE DES ENFANTS*' (in capitals)
— One of the health warning messages set out on the Canadian Government website
— The standardised cannabis symbol (where THC is greater than 10 µg/g)
— The equivalent quantity of dried cannabis[138]

The health warning messages set out on the Canadian Government website are amended from time to time, and the Regulations specify that these messages should be displayed in rotation on containers to ensure their equal recognition.[139] This is similar to existing tobacco regulations, such as those in the UK, where varied warning messages are included on tobacco packaging to (in theory) prevent a particular warning becoming commonplace and losing impact.

The requirement to display the equivalent quantity of dried cannabis links to a table of equivalence in Schedule 3 of the Cannabis Act. This outlines that 30g of dried cannabis (the most an individual is allowed to possess in public) is equivalent to 150g of fresh cannabis; 450g of edibles; 2100g of liquid product; 7.5g of concentrates; or 30 cannabis plant seeds. Converting between these different cannabis currencies is not easy. The display requirement is, therefore, helpful in allowing individuals to more easily calculate whether the amount of cannabis in their possession is within the public possession limit. However, it also reflects what is effectively a standardised measure of cannabis content across different product types (albeit based primarily on volume, rather than psychoactive content). Standardised measures are already used commonly with alcohol, where units are included on products to ensure that, even if a consumer is mixing beer with wine or spirits, they can be aware of roughly how much alcohol is in each product. With cannabis products, standardised measures are still being debated — and research indicates that current attempts are fairly ineffective — but they remain in principle an important way of ensuring consumers are aware of how much cannabis, and active cannabis content, they are consuming when mixing product types.[140]

Equivalent Amounts

	Column 1	Column 2
Item	Class of Cannabis	Quantity that is equivalent to 1 g of dried cannabis
1	dried cannabis	1 g
2	fresh cannabis	5 g
3	solids containing cannabis	15 g
4	non-solids containing cannabis	70 g
5	cannabis concentrates	0.25 g
6	[Repealed, SOR/2019-207, s. 1]	
7	cannabis plant seeds	1 seed

Source: Schedule 3, Cannabis Act.

137 Expiry dates are established in the case of dried/fresh cannabis as the date where the THC and CBD content deviate 20% either way, whilst edible cannabis must not include an expiry date: Cannabis Regulations, s123(2), 123(2.1).
138 Cannabis Regulations, s123.
139 Cannabis Regulations, s123(4).
140 See: Leos-Toro, C., Fong, G.T., Meyer, S.B. and Hammond, D. (2020). Cannabis labelling and consumer understanding of THC levels and serving sizes. Drugs and Alcohol Dependence. https://doi.org/10.1016/j.drugalcdep.2020.107843; Volkow, N.D. and Weiss, S.R.B. (2020). Importance of a standard unit dose for cannabis research. Addiction. https://doi.org/10.1111/add.14984

Product information

The federal Regulations require that all cannabis products include detailed contents information. Product information required includes:

— Net weight (in addition to net volume if in liquid form)
— THC concentration
— CBD concentration
— Intended use of the product[141]

If the product is packed in discrete units (i.e. inside the container there are multiple servings of the product, packaged separately), then the following information must also be detailed:

— Number of units
— Net weight in each unit[142]

For cannabis extracts, edibles and topicals, the following must also be included:

— List of ingredients
— Names of food allergens present (except for topicals)
— Identity of product in common name[143]
— THC per unit (when in discrete units)
— CBD per unit (when in discrete units)

Requirements in relation to ingredients and allergens are synchronised with existing food legislation. Where ingredients are listed, these must be set out in descending order by weight.[144] For cannabis edibles, gluten must be additionally named, as must any sulphites. A Nutrition Facts Table must also be included, which highlights information such as energy value and fat content.[145]

Where fresh/dried cannabis is not intended for inhalation, the quantity of THC and CBD must be detailed, as opposed to the concentration. This is also the case for some cannabis topicals and for edible cannabis.[146] All information included on the label must be both in English and French, prominently displayed, smaller than the size of the health warning and on a white background.[147] This is, again, highly prescriptive, but is aimed at ensuring that consumers are drawn to warnings which require less cognitive processing.

Taxation

Under the Canadian framework, cannabis is taxed at both a federal and provincial level — through both excise taxes and taxes on goods. General taxes on goods range from 5% in Alberta to 15% in New Brunswick, Nova Scotia, and Prince Edward Island. Excise taxes are charged at either $1 per gram or 10% of the transaction price — whichever is higher — with provision for further adjustments in certain provinces.[148]

141 Cannabis Regulations, s124.
142 Cannabis Regulations, s125.
143 Cannabis Regulations, s132.11, 132.12, 132.15.
144 Cannabis Regulations, s132.14, 132.17, 132.18.
145 Cannabis Regulations, s132.18, 132.22.
146 Cannabis Regulations, s132.18(1)
147 Cannabis Regulations, s130(3)
148 According to the Government of Canada, 'The adjustment rates for the additional cannabis duty required when packaged and stamped cannabis products are delivered to a purchaser in a listed specified province are as follows: Alberta, 16.8%; Nunavut, 19.3%; Ontario, 3.9%; Saskatchewan, 6.45%': Government of Canada (Undated). Cannabis duty – Calculate the excise duty on cannabis. https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/excise-duties-levies/collecting-cannabis.html

Cannabis product	Cannabis duty (federal)		Additional cannabis duty (provincial; not applicable in Manitoba)	
	Flat-rate	Ad valorem	Flat-rate	Ad valorem
Dried/fresh cannabis	$0.25/gram of flowering material $0.075/ gram of non-flowering material	2.5% of the dutiable amount for the cannabis product	$0.75/gram of flowering material $0.225/ gram of non-flowering material	7.5% of the dutiable amount for the cannabis product
Cannabis plants and cannabis plant seeds	$0.25/plant $0.25/seed	2.5% of the dutiable amount for the cannabis product	$0.75/plant $0.75/seed	7.5% of the dutiable amount for the cannabis product
Cannabis oil, edible cannabis, cannabis extracts and cannabis topicals	$0.0025/ milligram of total THC	0% of the dutiable amount for the cannabis product	$0.0075/ milligram of total THC	0% of the dutiable amount for the cannabis product

Source: Government of Canada (Undated). Cannabis duty – Calculate the excise duty on cannabis. https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/excise-duties-levies/collecting-cannabis.html

According to Statistics Canada, in the first six months after cannabis was legalised, the federal government collected $55 million in both excise and goods taxes, while provincial governments collected $132 million.[149]

Where do taxes go

In theory, tax revenue acquired by provinces can be spent on anything. However, one potential attraction of legal regulation is that tax income can go directly towards pursuing public health and treatment aims, curbing wider drug harms and enforcing licensing regulations. Some provinces have therefore sought to specifically earmark revenue for these purposes.

In Quebec, all dividends from the government-run cannabis agency go into the 'Cannabis Sales Revenue Fund'. The majority of the fund's revenues are paid into the province's Cannabis Prevention and Research Fund, which provides monitoring and research activities relating to the health effects of cannabis, curative care in relation to cannabis use and cannabis harm prevention (and health promotion) programmes.[150]

Similar approaches have been taken in the US. In Illinois, 20% of state taxes go to Community Services to 'address substance abuse…prevention and mental health concerns' and 2% go to the Drug Treatment Fund to assist in its public education campaign and analysis of public health impacts as a result of regulation.[151] In Oregon, 20% of taxes go directly to the Mental Health Alcoholism and

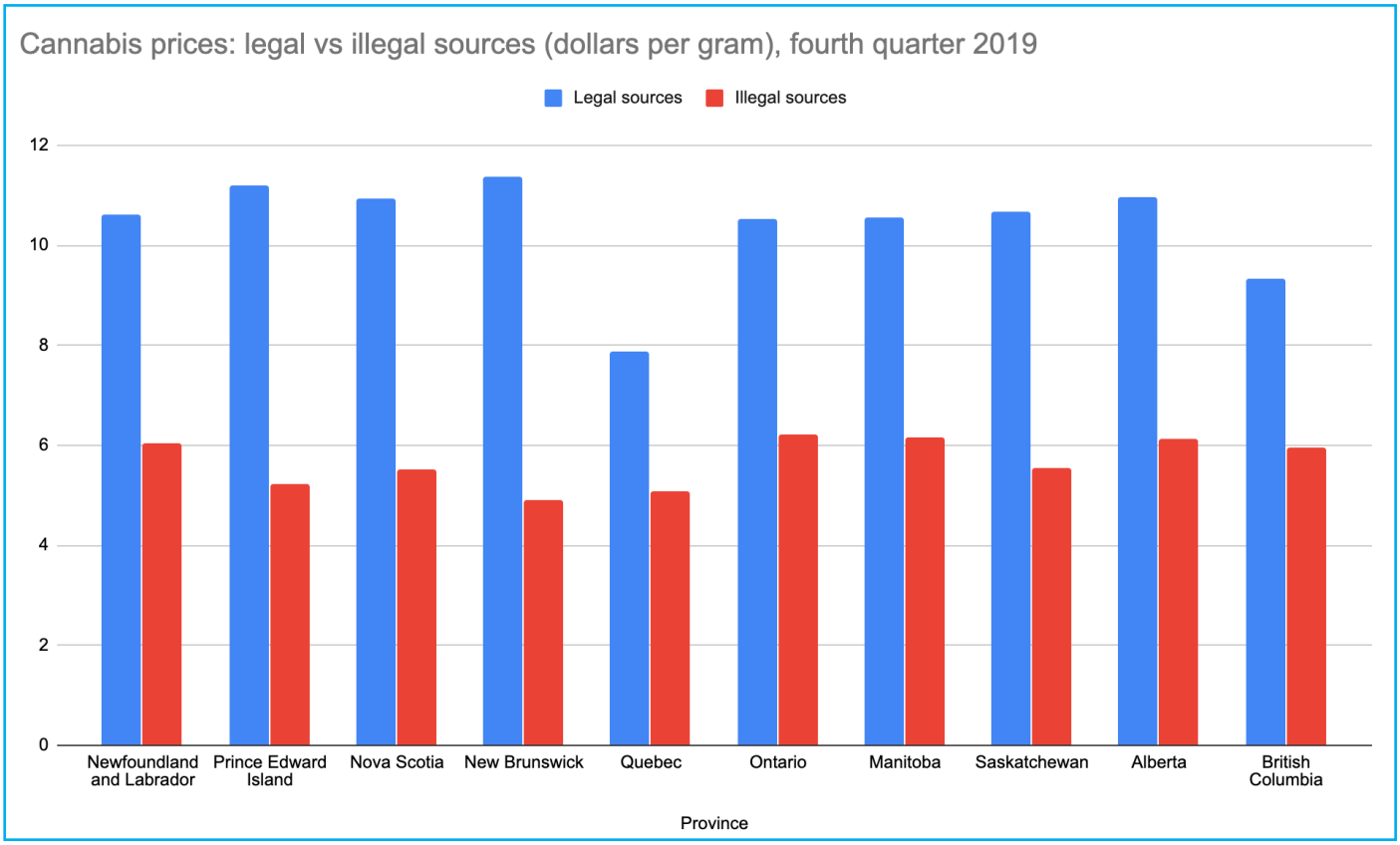
149 Government of Canada (Undated). Cannabis duty – Calculate the excise duty on cannabis. https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/excise-duties-levies/collecting-cannabis.html

150 Encadrement du Cannabis au Québec (2020). The Cannabis Regulation Act. https://encadrementcannabis.gouv.qc.ca/en/loi/loi-encadrant-le-cannabis/; Encadrement du Cannabis au Québec (2020). The legislation on cannabis. https://encadrementcannabis.gouv.qc.ca/en/loi/loi-sur-la-societe-des-alcools-du-quebec/

151 Government of Illinois (2019). Adult Use Cannabis Summary (24 June). https://www2.illinois.gov/IISNews/20242-Summary_of_HB_1438__The_Cannabis_Regulation_and_Tax_Act.pdf

Drug Services Account which assists with drug abuse prevention, intervention and treatment and a further 5% directly to the health authority for alcohol and drug abuse prevention.[152]

Price controls



Source: Statistics Canada (2019). Crowdsourced cannabis prices. https://www150.statcan.gc.ca/n1/daily-quotidien/200123/dq200123c-eng.htm

Various tools are available to provinces in order to control the price at which cannabis is sold. This may be achieved indirectly, through taxation, or directly through fixed pricing. In Ontario, legislation expressly provides for the implementation of minimum pricing for cannabis (though, as yet, this has not been implemented).[153] Similarly, in Alberta, the Gaming, Liquor and Cannabis board 'may set the minimum price at which cannabis, or a class of cannabis, may be sold' by a retail licensee.[154] In Newfoundland and Labrador, regulations establish the power of the Liquor Corporation to fix prices.[155] In British Columbia, there is a prohibition on selling cannabis purchased from the government for a price that is less than the price paid by the retail licensee.[156]

In provinces where stores are government-run, there is an even more direct level of control over pricing of individual products. The Nova Scotia Liquor Corporation, for instance, may not only determine the types of cannabis it sells, but the 'prices therefor', and 'do anything the Corporation considers necessary or advisable to effectively carry out its objects with respect to cannabis'.[157] This establishes a very broad brush with which the provincial government can exercise control over the market.

152 Government of Oregon (Undated). Recreational Marijuana — FAQs: Taxes. https://www.oregon.gov/olcc/marijuana/Pages/FAQs-Taxes.aspx.; 2017 Oregon Revised Statutes, Volume 10, Chapter 430. Mental Health Alcoholism and Drug Services Account. https://www.oregonlaws.org/ors/430.380
153 Government of Ontario (2018). Cannabis Licence Act, 2018, S.O. 2018, c.12, Sched. 2. s7(3). https://www.ontario.ca/laws/statute/18c12
154 The Legislative Assembly of Alberta (2017). Bill 26: An Act to Control and Regulate Cannabis. s124(1). https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_29/session_3/20170302_bill-026.pdf
155 Newfoundland and Labrador (2018). Bill 20: An Act Respecting the Control and Sale of Cannabis. s73(1). https://assembly.nl.ca/HouseBusiness/Bills/ga48session3/bill1820.htm
156 British Columbia (2018). Cannabis Control and Licensing Act: Cannabis Licensing Regulation. s26. http://www.bclaws.ca/civix/document/id/complete/statreg/202_2018
157 Nova Scotia Legislature (2018). Cannabis Control Act. s9(1). https://nslegislature.ca/legc/bills/63rd_1st/1st_read/b108.htm

Retaining control over pricing allows provincial governments to act quickly should cannabis prices drop to a level that, for example, may encourage higher levels of consumption. On the other hand, if prices become too high, consumers are unlikely to move over from purchasing cannabis on the illegal market (or may be pushed back to the illegal market). This is a critical issue since the illegal market is still undercutting cannabis prices on the illegal market to a significant extent.

In a retail licensing model, both retailers and government have a shared aim of attracting buyers away from the illegal market. Therefore, both have an interest in keeping prices relatively low. However, the full cost to retailers includes overheads (rent, staffing, regulatory costs, etc.) which can push up the retail price. Therefore, provinces often use a combination of product pricing and adjustment to licensing fees to balance the overall costs to retailers and help maintain a competitive price to consumers.

Ensuring compliance

Record keeping

Under the Cannabis Regulations, licence holders are obliged to keep a range of information, including documents for each batch of cannabis produced or package, with relevant dates.[158] This helps ensure that close records are kept of all relevant activities by market actors. Inventories must be kept including dates of production and net weight of produce.[159] Producers must keep information on substances used in the production of cannabis, when they were used, and why.[160] Samples of each distinct cannabis product package and label used at any point must be kept, as must details of any cannabis bought or sold.[161] The majority of these records must be kept for two years.[162]

Holders of cultivation or processing licences must keep a record of key investors, including details of transactions, which must be submitted annually to the Minister of Health.[163] This is a pragmatic measure given the degree of corporate capture to which the Canadian market has already been subject, and huge levels of investment which led to the so-called 'green rush'.

Provinces are able to set specific requirements for retail store licensees, which may include cannabis purchase and sale records, records of disposal, contracts with other licensees, invoices and employee records. In British Columbia, there is a requirement to keep such records for six years while the licence is still held, and a further six months after licence expiry or revocation.[164]

Reporting and inspections

Record-keeping in itself does not allow complete government oversight of market activities. Further engagement by the federal or provincial government is required to verify whether an actor's activities are in compliance with their own regulations.

At the federal level, if the Minister has reasonable grounds to believe non-compliance, they may request documents.[165] Licence holders must also, as a matter of routine, provide the Minister with

158 Cannabis Regulations, 224(1), 224(2).
159 Cannabis Regulations, 225(1).
160 Cannabis Regulations, 231(1)(c).
161 Cannabis Regulations, 226(1), 227(1), 233.
162 Cannabis Regulations, 224(3)
163 Cannabis Regulations, 241(1), 241(7).
164 British Columbia (2018). Cannabis Control and Licensing Act: Cannabis Licensing Regulation. s24(1). http://www.bclaws.ca/civix/document/id/complete/statreg/202_2018#section24
165 Cannabis Regulations, 243(1).

information about their promotional activities.[166] There are also detailed provisions requiring licence holders to take action, and provide information to the Minister, when there has been an adverse reaction to one of their products, including keeping annual reports of all adverse reactions, which must be kept for 25 years.[167] Reporting regulations also allow information to be disclosed to third parties — such as the International Narcotics Control Board, provincial governments and the police — to help ensure compliance with broader national and international legal frameworks.[168]

Provincial regulations allow for inspection of premises to ensure compliance. Inspections serve both as a deterrent against malpractice and a means to determine whether businesses are non-compliant. In Ontario, inspectors may examine records and inquire into financial transactions and have the power to seize items.[169] Very similar powers of inspection are granted in British Columbia and Newfoundland and Labrador.[170]

Where action is needed, federal law provides detailed regulation to ensure that actors are able to recall products efficiently.[171] Similar sanctions apply at the provincial level: in Alberta, existing liquor legislation was amended to extend rules already in place for alcohol in relation to seizing inventory and facilitating product recall.[172] Where it is not the product but the retailer that is non-compliant, both federal and provincial law establish classes of offence (and coinciding penalties) to which actors may be subject (see reducing criminality in the illegal market).

Consumption and possession

As discussed at the beginning of this report, a number of powers are used to control consumer access and behaviours.

Age access

No province or territory has sought to vary the public possession limit set by federal law of 30g of dried cannabis or equivalent — although Quebec has restricted the amount of cannabis an individual may possess in a private residence to 150g, and British Columbia has set this at 1000g.[173] In all provinces bar two, the minimum age for purchase and possession of cannabis has been set at the equivalent age for alcohol in the area. In Quebec, the age limit was raised in October 2019 from 18 (the equivalent age limit for alcohol) to 21, making it the only province or territory to set an age over 19.[174] Manitoba, where the drinking age is 18, is the only other province to have a cannabis age limit out of sync with that for alcohol, setting it at 19.

Impaired driving

At the federal level, there are two offences in relation to impaired driving: 2-5ng of THC per ml of blood (less serious); or 5 ng+ of THC per ml of blood (more serious). There is a maximum $1,000

166 Cannabis Regulations, 245(1).
167 Cannabis Regulations, 248(1).
168 Cannabis Regulations, 251(1), 249(2).
169 Government of Ontario (2018). Cannabis Licence Act, 2018, S.O. 2018, c.12, Sched. 2. s28(2),(7). https://www.ontario.ca/laws/statute/18c12
170 British Columbia (2018). Cannabis Control and Licensing Act. s84. http://www.bclaws.ca/civix/document/id/complete/statreg/18029#section61; Newfoundland and Labrador (2018). Bill 20: An Act Respecting the Control and Sale of Cannabis. s48. https://assembly.nl.ca/HouseBusiness/Bills/ga48session3/bill1820.htm
171 Cannabis Regulations, 46.
172 The Legislative Assembly of Alberta (2017). Bill 26: An Act to Control and Regulate Cannabis. https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_29/session_3/20170302_bill-026.pdf
173 Encadrement du Cannabis au Québec. The legislation on cannabis. https://encadrementcannabis.gouv.qc.ca/en/loi/loi-encadrant-le-cannabis/; Government of British Columbia (Undated). Factsheet: Growing non-medical cannabis at home in British Columbia. https://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/public-safety/cannabis/grow-nonmedical-cannabis-factsheet.pdf
174 Lindeman, T. (2019). Quebec raises legal consumption age for cannabis to 21. The Guardian 30 October. https://www.theguardian.com/world/2019/oct/30/quebec-cannabis-legal-age-21

fine, regardless of whether it is a first, second, or third offence — with no provision for imprisonment. However, there is a separate offence of combining more than 50mg of alcohol per 100ml of blood and 2.5ng per ml of blood, for which a first offence results in a $1,000 fine as the mandatory minimum, with the maximum penalty being 10 years' imprisonment.[175]

Rules on impaired driving may be stricter at the provincial level, however. For instance, in Quebec, the Highway Safety Code was amended to introduce a zero tolerance of cannabis — with separate provision that 'Until the equipment of detection by saliva is used to detect the recent consumption of cannabis, peace officers continue to use the evaluations that enable them to detect that a person is impaired by cannabis or other drug.'[176] Some provinces have updated impaired driving laws to include cannabis zero tolerance rules specifically for young and novice drivers.[177] Following legal regulation, the federal government sought to assuage concerns about impaired driving by investing heavily to assist smaller provinces and territories in enforcing impaired driving laws.[178]

Public consumption

As a starting point, provinces have generally sought to restrict smoking or vaping of cannabis in the same places — and in the same way — as existing tobacco legislation, as has been done in Alberta, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island.[179] Beyond this, however, provinces may set other restrictions. In Ontario, cannabis may be smoked or vaped in sidewalks and parks, designated guest rooms in hotels (where the hotel allows) as well as controlled areas in care homes, hospices and supportive housing. These rules may, in turn, be restricted by municipalities.[180] In contrast, smoking is prohibited on sidewalks in Saskatchewan, and parks in British Columbia.[181] In British Columbia, smoking or vaping is also prohibited at locations including swimming pools and bus stops. In Alberta, this also extends to outdoor pools, as well as zoos.[182]

In Ontario, there is a general restriction on smoking or vaping cannabis within 20m of where children gather (i.e. schools) or within 9m of a hospital entrance, a restaurant or a bar patio.[183] Prohibiting consumption on (or near) school properties is a common restriction, although in Quebec it is also prohibited to possess cannabis on the grounds of schools, or universities (except student residences).[184] In British Columbia, if individuals consume cannabis (including by ways other than smoking or vaping) on a school property, the education authority, Superintendent and Principal are each deemed vicariously liable, to ensure that school authorities are encouraged to enforce consumption laws.[185]

175 Canada, Department of Justice. Impaired Driving Laws. https://www.justice.gc.ca/eng/cj-jp/sidl-rlcfa/index.html
176 Quebec Government. Amendments to the Highway Safety Code in relation to the legalization of cannabis. https://encadrementcannabis.gouv.qc.ca/en/loi/modification-du-code-de-la-securite-routiere/
177 See, e.g.: Government of New Brunswick (2018). New measures to reduce drug-impaired driving take effect Dec. 18. https://www2.gnb.ca/content/gnb/en/news/news_release.2018.12.1322.html;
Government of Ontario (2019). Cannabis and driving. https://www.ontario.ca/page/cannabis-and-driving

178 Government of Canada (2019). Government of Canada invests $2 million for Prince Edward Island to tackle drug-impaired driving. https://www.canada.ca/en/public-safety-canada/news/2019/08/government-of-canada-invests-2-million-for-prince-edward-island-to-tackle-drug-impaired-driving.html; Government of Canada (2019). Government of Canada invests $2 million to keep Yukon's roads safe from drug-impaired drivers. https://www.canada.ca/en/public-safety-canada/news/2019/07/government-of-canada-invests-2-million-to-keep-yukons-roads-safe-from-drug-impaired-drivers.html; Salloum, A. (2019). Feds announce $5.4M to combat drug-impaired driving in Sask. CBC 30 August. https://www.cbc.ca/news/canada/saskatchewan/drug-impaired-driving-money-from-federal-government-1.5266367
179 The Legislative Assembly of Alberta (2017). Bill 26: An Act to Control and Regulate Cannabis. s90.28. https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_29/session_3/20170302_bill-026.pdf; Government of Nova Scotia (Undated). Nova Scotia's cannabis laws. https://novascotia.ca/cannabis/laws/; Newfoundland and Labrador (2018). Bill 20: An Act Respecting the Control and Sale of Cannabis. s75(1). https://assembly.nl.ca/HouseBusiness/Bills/ga48session3/bill1820.htm; Prince Edward Island (2018).Cannabis Control Act. s16. https://www.princeedwardisland.ca/sites/default/files/legislation/c-01-2-cannabis_control_act.pdf
180 Government of Ontario (2019). Cannabis laws. https://www.ontario.ca/page/cannabis-laws
181 British Columbia (2018). Cannabis Control and Licensing Act. s63(3). http://www.bclaws.ca/civix/document/id/complete/statreg/18029; The Cannabis Control (Saskatchewan) Act (2018). s2-14. https://www.saskatchewan.ca/government/cannabis-in-saskatchewan
182 British Columbia (2018). Cannabis Control and Licensing Act. s66. http://www.bclaws.ca/civix/document/id/complete/statreg/18029#section66; The Legislative Assembly of Alberta (2017). Bill 26: An Act to Control and Regulate Cannabis. s90.28. https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_29/session_3/20170302_bill-026.pdf
183 Government of Ontario (2019). Cannabis laws. https://www.ontario.ca/page/cannabis-laws
184 Encadrement du Cannabis au Québec. The legislation on cannabis. https://encadrementcannabis.gouv.qc.ca/en/loi/loi-encadrant-le-cannabis/
185 British Columbia (2018). Cannabis Control and Licensing Act. s68(1). http://www.bclaws.ca/civix/document/id/complete/statreg/18029#section61

Growing cannabis

Quebec and Manitoba operate total prohibitions on growing cannabis for non-medical purposes, and are the only provinces or territories that have sought to further tighten the federal limits of four plants per residence.[186] Other provinces have instead sought to regulate personal cultivation, within the four-plant limit established at the federal level. For instance, in New Brunswick and Prince Edward Island, if plants are cultivated outdoors (e.g. in a garden), they must be 'surrounded by a locked enclosure having a height of at least 1.52m'.[187] Regulations in Prince Edward Island and British Columbia further clarify that plants must not be visible from any public space.[188]

In New Brunswick, if cultivation is done indoors, plants must also be in a separate, locked space.[189] Prince Edward Island simply requires that plants are kept in a space 'inaccessible to' any person under 19 years of age or those without an invitation to the property.[190] While federal law authorises individuals to cultivate up to four plants, this is by no means a right. An individual's ability to cultivate may, therefore, be constrained by leasehold agreements, for instance. In Prince Edward Island, regulations further outline that personal cultivation must comply with existing municipal bylaws such as those in relation to fire safety.[191]

Assessing legal regulation

Less than two years on, measures are still being developed to assess the successes and failures of legal regulation in Canada. However, with what measures are currently available, it is important that regulation is judged against the Canadian government's stated aims: to protect public health; to protect young people; and to reduce criminality. As discussed above, market instability limits the conclusions that can be drawn, particularly given variances in product accessibility across different provinces.

Protecting public health

Since the beginning of 2018, Statistics Canada has been collating self-reported consumption and purchasing data in the 'National Cannabis Survey'. This has allowed it to monitor changes in cannabis-related behaviour both before and after legalisation. Previous national survey data showed a long history of high levels of cannabis consumption in Canada. Use has been rising since 2012-13 (4-5 years before the legal non-medical market opened) across all age groups, bar a contrasting reduction in use amongst 15-17 year olds.[192]

186 Manitoba Laws (2018). The Liquor, Gaming and Cannabis Control Act. C.C.S.M. c. L153. s101.15: No residential cultivation of cannabis. https://web2.gov.mb.ca/laws/statutes/ccsm/l153e.php; Government of Québec (2020). The legislation on cannabis in brief. https://encadrementcannabis.gouv.qc.ca/en/loi/cadre-legal-en-bref/

187 New Brunswick (2018). Cannabis Control Act. s16(1). https://www.gnb.ca/legis/bill/FILE/58/4/Bill-16-e.htm; Prince Edward Island (2018). Cannabis Control Act: Cannabis Control Regulations. s6(1). https://www.princeedwardisland.ca/sites/default/files/legislation/c01-2-1_cannabis_control_regulations.pdf

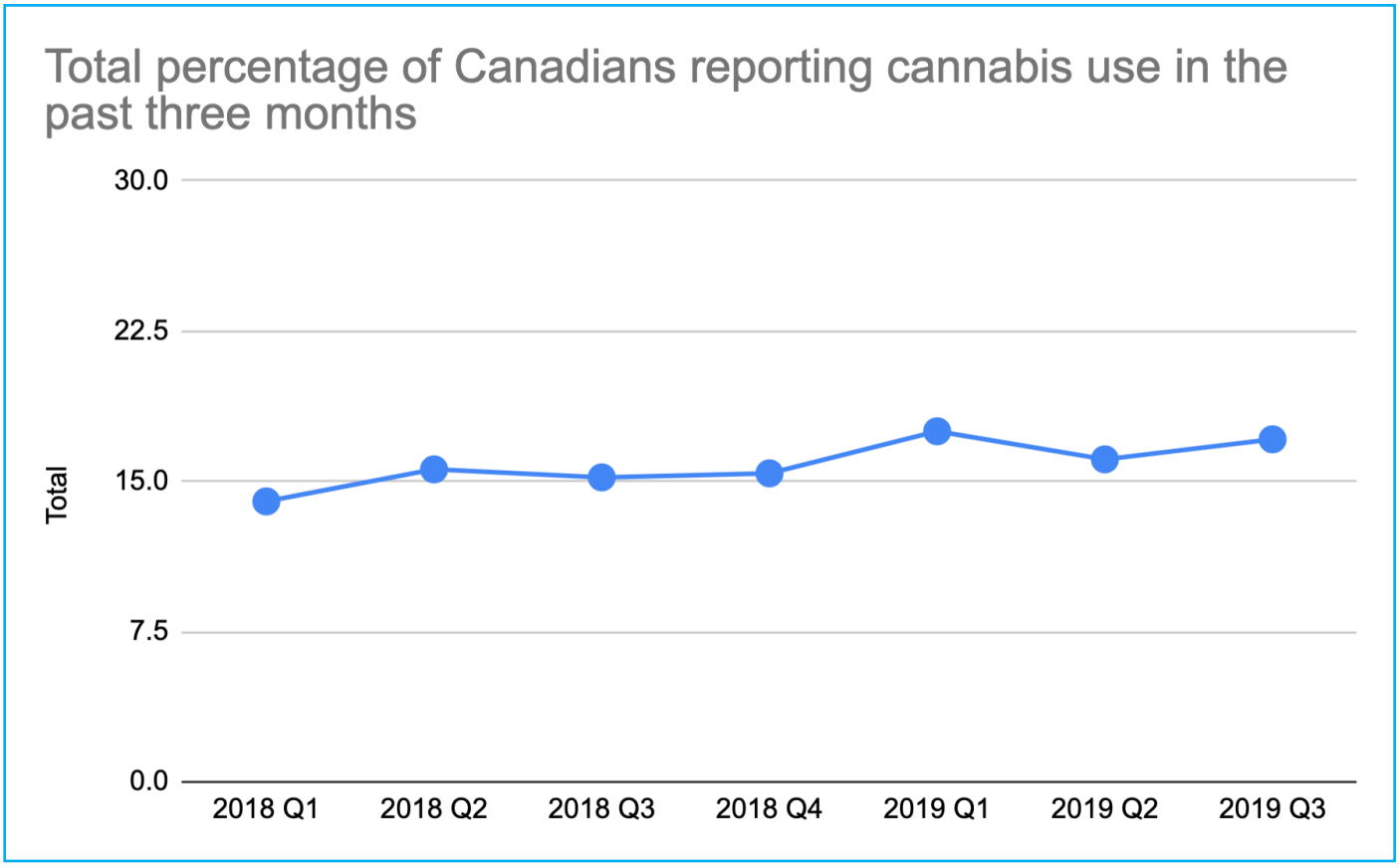
188 Prince Edward Island (2018). Cannabis Control Act: Cannabis Control Regulations. s6(2). https://www.princeedwardisland.ca/sites/default/files/legislation/c01-2-1_cannabis_control_regulations.pdf; Government of British Columbia (Undated). Factsheet: Growing non-medical cannabis at home in British Columbia. https://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/public-safety/cannabis/grow-nonmedical-cannabis-fact-sheet.pdf.

189 New Brunswick (2018). Cannabis Control Act. s16(1). https://www.gnb.ca/legis/bill/FILE/58/4/Bill-16-e.htm

190 Prince Edward Island (2018). Cannabis Control Act: Cannabis Control Regulations. s5(3). https://www.princeedwardisland.ca/sites/default/files/legislation/c01-2-1_cannabis_control_regulations.pdf

191 Prince Edward Island (2018). Cannabis Control Act: Cannabis Control Regulations. s5(1). https://www.princeedwardisland.ca/sites/default/files/legislation/c01-2-1_cannabis_control_regulations.pdf

192 Statistics Canada (2019). Analysis of trends in the prevalence of cannabis use and related metrics in Canada. https://www150. statcan.gc.ca/n1/pub/82-003-x/2019006/article/00001-eng.htm



Source: Statistics Canada (2018-2019). National Cannabis Survey. https://www150.statcan.gc.ca/n1/daily-quotidien/191030/dq191030a-eng.htm

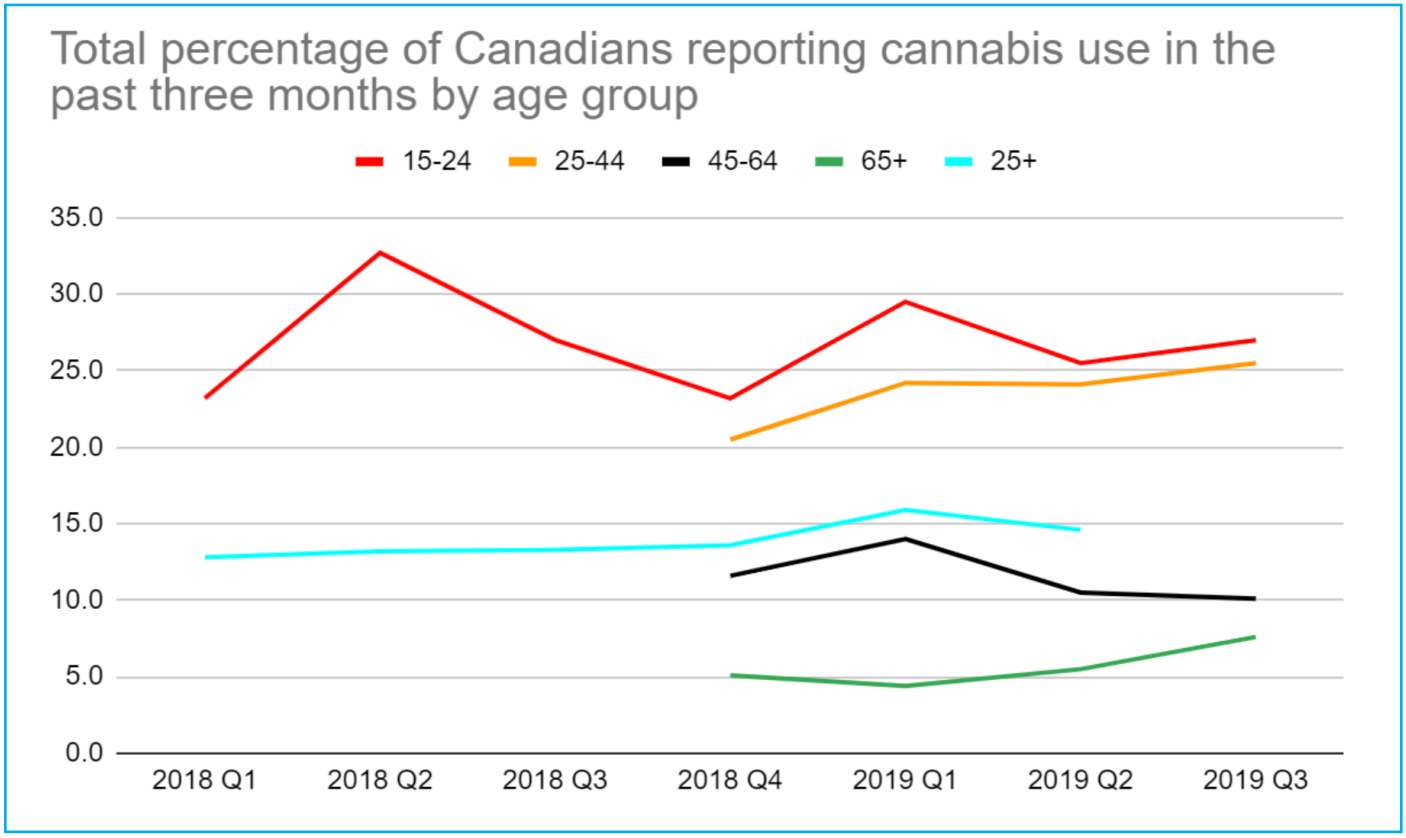
There are a number of methodological issues with this data — primarily response bias. Individuals may feel more comfortable reporting consumption of cannabis post-legalisation, for instance. Another major issue is that data does not differentiate between medical and non-medical use. While Statistics Canada has surveyed individuals on their type of use, individuals variously report medical use without a medical document (meaning their sales would be recorded as part of the legal non-medical market in any event), or both medical and non-medical use.[193]

Survey data suggests the prevalence of cannabis use has remained relatively stable since legal reform, however. After a small rise in the first quarter of 2019, reported consumption fell back to pre-October 2018 levels in the second quarter. In the third quarter of 2019, consumption increased slightly, but there has certainly been no significant rise in consumption levels.

There is, however, some evidence that those who already consumed cannabis prior to regulation are consuming more. Data from the first quarter of 2019 indicates that the number of occasional users increased compared to the same quarter in 2018. Those who reported consuming cannabis 'once or twice' over the past three months rose from 4.3% to 5.8%, while weekly users rose from 2.4% to 3.6%.[194] This could be linked to a novelty 'blip' and changes in survey honesty following the law change. However, we need to wait for longer-term trend data to gain a clearer picture.

193 See: Statistics Canada (2019). Percentage of cannabis users reporting non-medical, medical and both medical and non-medical cannabis use, by age group, Canada, second and third quarters combined 2019. https://www150.statcan.gc.ca/n1/daily-quotidien/191030/cg-a004-eng.htm
194 Statistics Canada (2019). National Cannabis Survey, first quarter 2019. https://www150.statcan.gc.ca/n1/daily-quotidien/190502/ dq190502a-eng.htm

Protecting young people



Source: Statistics Canada (2018-2019). National Cannabis Survey. https://www150.statcan.gc.ca/n1/daily-quotidien/191030/dq191030a-eng.htm

The National Cannabis Survey recorded an increase in first-time users in the first quarter of 2019, with the number who consumed cannabis for the first time within the past three months doubling from 327,000 in the first quarter of 2018 to 646,000 in the first quarter of 2019. This represented 12% of total users in the same time period but, interestingly, over half of these individuals were aged 45 or older.[195] While this, too, may be subject to survey bias, it is of note that it was not primarily young persons driving the rise in consumption.

There was an observed rise in consumption levels among 15-24 year olds in the first quarter of 2019 as against the previous quarter — which was reported by some commentators as a sign that legalisation was driving up youth use — but this should be viewed in a wider context. Levels of consumption in this age group, in fact, remained lower than the second quarter of 2018, and subsequently fell for the second quarter of 2019 in line with general consumption. Consumption then rose in the third quarter of 2019, but is still below levels recorded shortly after legalisation, suggesting that while the novelty of legalisation may encourage greater consumption initially, this trend is short-lived. Further, an analysis of data on the youngest group of those surveyed has actually suggested with caution that use is down among 15-17 year olds since cannabis was legally regulated.[196]

Reducing criminality in the illegal market

It is still too early to analyse all measures of criminality associated with the cannabis market. Data from Statistics Canada has suggested that the likelihood of an individual reporting driving after

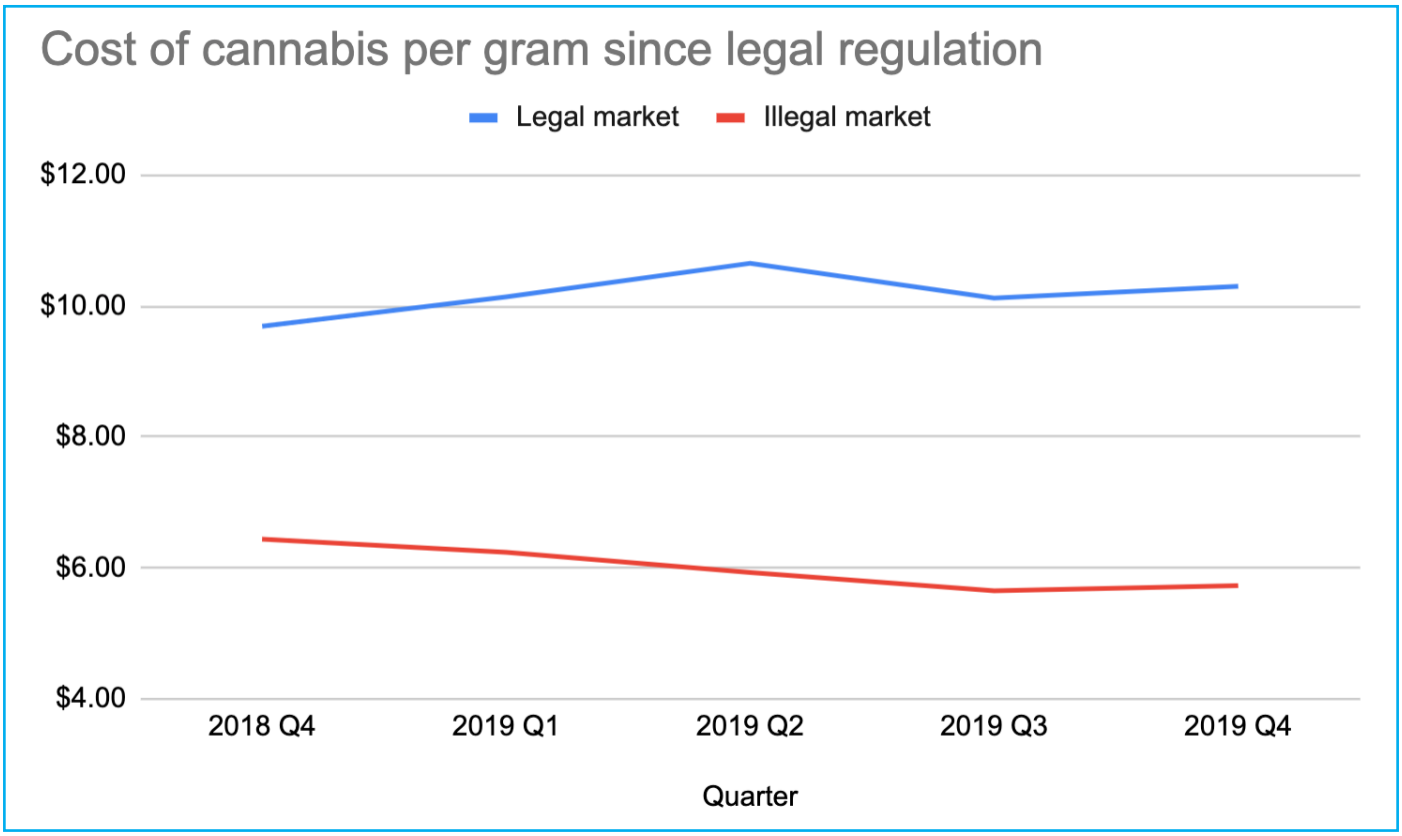
195 Statistics Canada (2019). National Cannabis Survey, first quarter 2019. https://www150.statcan.gc.ca/n1/daily-quotidien/190502/ dq190502a-eng.htm

196 Rotermann, M. (2020). What has changed since cannabis was legalized? https://www150.statcan.gc.ca/n1/pub/82-003-x/2020002/article/00002-eng.htm

cannabis consumption has not changed since legal regulation.[197] However, the best measure that we have to evaluate legal regulation at present is the prevailing size and scope of the illegal market.

By allowing for legally regulated sale and possession, it would be expected that supply and possession offences would be markedly down. However, no legal market can be expected to eclipse a longstanding illegal market right away. Individuals who consume cannabis may already have trusted suppliers and products they enjoy. The illegal market has thus not disappeared overnight, and remains the primary measure currently available to assess the level of criminality in relation to cannabis.

Price issues



Source: Statistics Canada (2019). Crowdsourced cannabis prices. https://www150.statcan.gc.ca/n1/daily-quotidien/200123/dq200123c-eng.htm

There are concerns that the legal cannabis market has developed more slowly than some would have hoped, and that comparatively high prices for legal cannabis have partly driven this.[198] According to Statistics Canada, 'an estimated 29.4% of cannabis users [in 2019] reported obtaining all of the cannabis they consumed from a legal source'.[199] Separate estimates from Brock University have similarly suggested that 30% of the market is now made up in legal sales.[200]

In Canada as a whole, evidence suggests that the price of cannabis is still markedly higher on the legal market than it is on the illegal market. By the fourth quarter of 2019, the average price of cannabis on the illegal market was less than the previous year ($5.73 down from $6.44), whereas

197 Rotermann, M. (2020). What has changed since cannabis was legalized? https://www150.statcan.gc.ca/n1/pub/82-003-x/2020002/article/00002-eng.htm
198 Statistics Canada (2019). National Cannabis Survey, third quarter 2019. https://www150.statcan.gc.ca/n1/daily-quotidien/191030/dq191030a-eng.htm
199 Statistics Canada (2020). What has changed since cannabis was legalized? https://www150.statcan.gc.ca/n1/pub/82-003-x/2020002/article/00002-eng.htm
200 Armstrong, M.J. (2019). A campaign promise kept: Canada's modestly successful cannabis legalization. The Conversation 23 September. https://theconversation.com/a-campaign-promisekept-canadas-modestly-successful-cannabis-legalization-122380; Armstrong, M.J. (2019). Legal cannabis celebrates its first anniversary in Canada: What's next? The Conversation 15 October. https://theconversation.com/legal-cannabis-celebrates-its-firstanniversary-in-canada-whats-next-124871

average price of cannabis on the legal market was slightly higher ($10.30 up from $9.69), meaning that the gap was wider than it had been shortly after legalisation.[201] While data is limited, this suggests that the illegal market may have responded to legal regulation by dropping prices. Should such trends continue, action may be needed by provincial governments to adjust prices accordingly. The level of federal regulation has also been pointed to as potentially slowing down capture of the illegal market (which includes persisting illegal online dispensaries), with it being noted that strong regulation is 'cutting the industry's ability to use marketing and public relations to market the commodity...in order to capture the audience and reach the potential consumer'.[202]

Getting the balance right is difficult, and it is clear that excessively high prices push consumers back towards illegal sources. However, there remains a strong case for adopting the precautionary principle and erring on the side of more stringent regulation to begin with. Slow uptake in itself may be outweighed by the benefits of developing an efficient regulatory regime — although it is less likely to present an attractive model to potential businesses looking to secure profit. Survey data have suggested that Canadians value quality over price, indicating that the legal market does not have to completely undercut the illegal market in order to draw consumers over.[203] Conversely, this also points to present failings of the legal market to provide better quality products than those available on the illegal market.

Capturing a third of the market within just over a year of regulation should not be regarded as failure. Canada is the largest country to legally regulate cannabis and is learning and evaluating under close scrutiny from the rest of the world. Were cannabis prices in Canada on the legal market to be significantly cheaper, it is likely that greater inroads would have been made into the persisting illegal market — but there may have been greater coinciding risks from setting prices too low, such as higher overall consumption.

Criminal penalties

Legal regulation of cannabis has not meant the removal of all criminal penalties related to cannabis. Cultivation, distribution, sale and possession, while legalised, remain subject to regulation. Activities outside the scope of these regulations may still be subject to penalties, some of which are criminal in nature.

The severity of penalties has drawn criticism from some quarters — in particular those who would prefer a more libertarian model of regulation. There is particular concern regarding comparatively harsher penalties for cannabis offences than there are for alcohol and tobacco. The question is one of balance: setting penalties at a level which is proportionate to the harm caused by the offence, while facilitating the aim of deterring non-compliance with regulations. In the case of small possession-related offences, for instance, it is difficult to justify large fines. The absence of penalties at all, however, would leave legal possession limits toothless and impossible to implement. Similarly, enforcement action must be taken against non-compliant retailers, as the benefit of a regulated market is that actors behave within the scope of the regulations.

The Cannabis Act lays a framework of the penalties for offences at the federal level. These range from 'ticketable' offences, subject to small fines, to imprisonment.

201 Statistics Canada (2019). Crowdsourced cannabis prices. https://www150.statcan.gc.ca/n1/daily-quotidien/200123/dq200123c-eng.htm
202 Tijerina, S. (2020). The Experiment of the Canadian Marijuana Market. Points: The Blog of the Alcohol & Drugs History Society. https://pointsadhs.com/2020/02/11/the-experiment-of-the-canadian-marijuana-market/; Hager, M. (2019). Police struggle to stamp out online cannabis shops. The Globe and Mail 20 August. https://www.theglobeandmail.com/cannabis/article-police-struggle-to-stamp-out-online-cannabis-shops/
203 Statistics Canada (2019). National Cannabis Survey, second quarter 2019. https://www150.statcan.gc.ca/n1/daily-quotidien/190815/dq190815a-eng.htm

Offence	Penalties
Possession over the limit	• tickets for small amounts • up to 5 years less a day in jail
Illegal distribution or sale	• tickets for small amounts • up to 14 years in jail
Producing cannabis beyond personal cultivation limits or with combustible solvents	• tickets for small amounts • up to 14 years in jail
Taking cannabis across Canada's borders	• up to 14 years in jail
Giving or selling cannabis to a person under 18	• up to 14 years in jail
Using a youth to commit a cannabis-related offence	• up to 14 years in jail

Source: Canada, Department of Justice.

Provinces set differing levels of penalties for offences. In Quebec, a minor found in possession of cannabis may be subject to a fine of $100. This is the case regardless of whether they are a repeat offender. In comparison, an individual who grows a cannabis plant may be subject to a fine of up to $750 on first instance, or up to $1,500 where they are a repeat offender.[204] In Saskatchewan, the fine for a minor found in possession of cannabis is considerably more ($2,000).[205] In Nova Scotia, an 18 year-old found in possession may be fined up to $150 and restorative justice programmes may be used. However, for under-18s, possessing more than 5g is treated as a criminal offence.[206]

In British Columbia, failure to comply with licensing conditions — for instance by allowing disorderly conduct, serving intoxicated persons, or allowing the display of cannabis in view of minors — is generally subject to fines of between $7,000 and $11,000 and a licence suspension of 7-11 days on first instance.[207] In Newfoundland and Labrador, sale in contravention of the Act as a first offence results in a fine of $300 - $10,000, imprisonment of up to six months, or both.[208] A similar provision in Prince Edward Island in relation to unauthorised vendor sales allows for a fine of $500 to $10,000 on a first offence, with no corresponding provision for imprisonment.[209] In Saskatchewan, breach of any provision without a specified penalty in the Act leaves an individual liable to a fine of $25,000, imprisonment of up to 6 months, or both.[210]

Enforcement of regulation by provinces and municipalities has caused friction in some communities, with Toronto spending more than $350,000 to 'install — and then reinstall — giant concrete slabs to block the entrance to four illegal cannabis shops in Toronto'.[211] Levels of regulation have also been criticised by some campaigners favouring a more liberal approach. It has also been suggested that legal products are too often of a lower quality than illegal alternatives, as the market has not incorporated the established cultivators and sellers who were providing cannabis previously. Going forward, this raises questions of how regulation can ensure that large-scale markets do not compromise product quality.

204 Encadrement du Cannabis au Québec (2020). The legislation on cannabis. https://encadrementcannabis.gouv.qc.ca/en/loi/loi-encadrant-le-cannabis/
205 Saskatchewan (2018). The Cannabis Control (Saskatchewan) Act. s2-1. https://www.saskatchewan.ca/government/cannabis-in-saskatchewan
206 Government of Nova Scotia (Undated). Nova Scotia's cannabis laws. https://novascotia.ca/cannabis/laws/
207 British Columbia (2018). Cannabis Control and Licensing Act: Cannabis Licensing Regulation. Schedule 2. http://www.bclaws.ca/civix/document/id/complete/statreg/202_2018#Schedule2
208 Newfoundland and Labrador (2018). Bill 20: An Act Respecting the Control and Sale of Cannabis. s95(1). https://assembly.nl.ca/HouseBusiness/Bills/ga48session3/bill1820.htm
209 Prince Edward Island (2018).Cannabis Control Act. s32. https://www.princeedwardisland.ca/sites/default/files/legislation/c-01-2-cannabis_control_act.pdf
210 Saskatchewan (2018). The Cannabis Control (Saskatchewan) Act. s5-2. https://www.saskatchewan.ca/government/cannabis-in-saskatchewan
211 Ngabo, G. (2020). Blocking off illegal pot stores with concrete slabs cost more than $350,000, Toronto says. The Star 20 January. https://www.thestar.com/news/gta/2020/01/20/blocking-off-illegal-pot-stores-with-concrete-slabs-cost-more-than-350000-city-says.html

Social justice and equity measures

While social justice and equity weren't explicit aims of the Canadian government, they are coming increasingly into focus as more jurisdictions seek to legally regulate cannabis. This is particularly the case in the US, where, under prohibition, people of minority ethnic backgrounds have, to an extraordinary degree, borne the brunt of law enforcement.

Legal regulation offers an opportunity for reparations to communities disproportionately impacted by the prohibition of cannabis. Since non-medical cannabis is a potentially lucrative industry — for both retailers and the jurisdictions that collect tax revenue — these communities must be given the chance to benefit from it also. Additionally, legal regulation offers an opportunity for prior injustices to be addressed through, for example, the removal of historical criminal records associated with cannabis supply.

Social equity measures

Indigenous Canadian communities represent roughly 5% of the nation's population.[212] Historically these groups have experienced high levels of social and economic exclusion, and the legal regulation of cannabis presented one important opportunity to redress this by ensuring the involvement of Indigenous peoples in shaping, and benefiting from, regulation.[213]

However, the degree of Indigenous involvement has largely been limited to protective powers: i.e. provisions through which Indigenous groups can refuse the granting of licences on their land. In Alberta, retail licences may not be granted on an Indian reserve unless band council approval has been given, or on Metis settlement land without the settlement council's approval.[214] In British Columbia, Indigenous nations must first recommend to the Liquor and Cannabis Regulation Branch that a cannabis retail licence be issued before the Branch can consider whether to issue such a licence in an Indigenous area. This does not mean the Branch is obligated to licence a retail store on the land, but it does prevent unwanted stores being licensed.[215] Similarly, in Saskatchewan, Indian bands may prohibit retail stores on a reserve.[216]

In Ontario, legislation makes clear that Indigenous groups are able to request that retail stores are not authorised on reserves.[217] However, the province also took a valuable step to facilitating Indigenous participation in the market, by allocating 26 retail licences specifically for First Nations Reserves.[218]

How to facilitate participation of disproportionately impacted groups has become a major question in cannabis regulation in recent years. A number of US states have adopted measures to facilitate access and promote social equity, including: points for diversity on licence applications in Nevada and Illinois; the requirement for licensees to have a detailed 'social equity plan' in Michigan; licence fee reductions and low-interest loan schemes for impacted groups in Illinois; and training, technical

212 Statistics Canada (2017). Aboriginal peoples in Canada: Key results from the 2016 Census. https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm
213 In this context, 'Indigenous peoples' is a collective name for the original peoples of North America and their descendants. The Government of Canada outlines that 'The Canadian Constitution recognizes three groups of Aboriginal peoples: Indians (more commonly referred to as First Nations), Inuit and Métis.' Provincial legislation uses various terminology to refer to specific groups, and in this section the terminology used in provincial legislation and regulation is retained. See: Government of Canada (Undated). Indigenous peoples and communities. https://www.rcaanc-cirnac.gc.ca/eng/1100100013785/1529102490303
214 Province of Alberta (2018). Gaming, Liquor and Cannabis Act: Gaming and Liquor Amendment Regulation. s105(2). http://www.qp.alberta.ca/documents/orders/Orders_in_Council/2018/218/2018_027.pdf
215 Province of British Columbia (Undated). Cannabis Retail Store Licence. https://justice.gov.bc.ca/cannabislicensing/policy-document/cannabis-retail-licence; British Columbia (2018). Cannabis Control and Licensing Act. s33(1). http://www.bclaws.ca/civix/document/id/complete/statreg/18029
216 Saskatchewan (2018). The Cannabis Control (Saskatchewan) Regulations. s3-16. https://www.saskatchewan.ca/government/cannabis-in-saskatchewan
217 Government of Ontario (2018). Cannabis Licence Act, 2018, S.O. 2018, c.12, Sched. 2. s43(1). https://www.ontario.ca/laws/statute/18c12.
218 Alcohol and Gaming Commission of Ontario (2019). Stores on First Nations Reserves. https://www.agco.ca/cannabis/stores-first-nations-reserves

assistance and mentoring to facilitate market access in Massachusetts.[219] The lack of comparable social equity programmes in Canada has been heavily (and justifiably) criticised, leading to the underrepresentation of minority groups in the industry and with one expert commenting that 'it was disappointing to see Canada as a global leader in one regard, but totally miss the market on...social justice measures'.[220] While social equity schemes in the US have also been criticised in a number of states, the range of potential measures provides useful examples going forward.[221]

Expungement and record sealing

The legal regulation of cannabis is not only a dramatic legal shift, but a dramatic moral one. Criminal records are a lasting stigma for individuals who carry them. 'Expungement', meaning the destruction or deletion of an individual's criminal record, allows for this burden to be lifted and, to a certain extent, acknowledges the errors of previous repressive cannabis laws. An individual whose record has been expunged may then deny ever having been arrested or charged for such offence, providing a degree of reparation. In the US, all states where non-medical cannabis is legal except Michigan (which has only recently opened its retail market) and Alaska have, or intend to have, procedures to seal or expunge criminal records for certain historic offences in relation to cannabis.

In the US, the conversation has, generally, moved beyond whether expungement or record sealing (where a record still exists, but is sealed and hidden from view) is necessary, to whether such processes should be automatic. In California, Assembly Bill 1793 requires the Department of Justice to review past cannabis convictions to determine all cases which are eligible for recall or dismissal of a sentence, dismissal and sealing, or redesignation, by 1 July 2020.[222] This process has been celebrated as good practice in some quarters, as record sealing is effectively automatic; the duty is on the Department of Justice to seal individual records, rather than on the individuals themselves to submit their own applications. This is an important distinction as, where the onus is on individuals to clear their own records, they may face a number of barriers ranging from stigma and the fear of re-traumatisation to court filing fees and queues.

In some areas of California, tech solutions have helped streamline the process of identifying eligible individuals. For instance, Yolo County was able to automatically seal 728 convictions with the assistance of a non-profit tech partner, Code for America. This particular programme has since been made available to 'any district attorney in California', although there may be issues in implementing it on a state-wide scale.[223] In February 2020, Los Angeles worked with Code for America to dismiss 66,000 cannabis convictions, meaning the non-profit has helped expunge or seal 85,000 cannabis convictions across five counties in California.[224]

In comparison, the social justice and equity components of Canadian regulation appear inadequate, and something of an afterthought in the legal regulation process. Post-legalisation, new legislation (Bill C-93) was passed, albeit only after the 'tireless advocacy of civil society groups'.[225] This sought to expedite and remove cost-barriers from the criminal records suspension process, however, more than 500,000 people continue to live with criminal records and the stigma stemming from prior

219 Slade, H. (2020). Altered States: Cannabis Regulation in the US. Transform Drug Policy Foundation. p24. https://transformdrugs.org/product/altered-states-cannabis-regulation-in-the-us/

220 Transform Drug Policy Foundation (2019). What do experts think of Canada's first year of legalising cannabis? (Part 2) https://transformdrugs.org/what-do-experts-think-of-canadas-first-year-of-legalising-cannabis-part-2/

221 Jardine, J (2019). Don't Forget About Social Equity in Cannabis. The Stranger 12 June. https://www.thestranger.com/slog/2019/06/12/40456572/dont-forget-about-social-equity-in-cannabis; Marijuana Business Daily (2019). Washington state regulators consider revamping marijuana rules. Marijuana Business Daily 28 August. https://mjbizdaily.com/washington-state-regulators-consider-revamping-marijuana-rules/

222 California Legislative Information (2018). AB-1793 Cannabis Convictions: Resentencing. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1793

223 Cowan, J (2019). Thousands of Californians Could Get Their Marijuana Convictions Cleared. But It's Complicated. California Today 5 September 2019. https://www.nytimes.com/2019/09/05/us/marijuana-proposition-64-code-for-america.html.

224 The Guardian, Staff and Agencies (2020). Los Angeles to dismiss 66,000 marijuana convictions. The Guardian 14 February. https://www.theguardian.com/us-news/2020/feb/14/los-angeles-marijuana-convictions-dismissed

225 Transform Drug Policy Foundation (2019). What do experts think of Canada's first year of legalising cannabis? (Part 1). https://transformdrugs.org/what-do-experts-think-of-canadas-first-year-of-legalising-cannabis-part-1/

cannabis convictions.[226] Bill C-93 was criticised for not providing a fair and effective amnesty as it only provides for expedited pardons for simple possession of cannabis, so does not amount to expungement or even record sealing in any meaningful way.[227] A pardon is seen as forgiveness for a crime that was committed, but does not allow an individual the ability to deny such a crime ever took place. This is to be contrasted with the Californian experiment, where an estimated 218,000 individuals are due to benefit from wide scale sealing of criminal records.[228]

Corporate capture

In our report, Challenges for a world where drugs are legally regulated, a key theme that arose following consultation with numerous drug policy experts was guarding against the negative impacts of corporate capture — including prevention through legislation. One of the key recommendations was:

> ***Mitigating the risks of corporate capture should be a priority in drug policy development.***
>
> *The drug policy field needs to establish clear positions on industry engagement and the risks of vested interests becoming involved in policy design, research and the activities of civil society groups.*[229]

The emergence of the largest regulated market of cannabis to date contributed to the so-called 'green rush' among stock market investors, with huge investment going into what was seen as an extremely profitable new commodity. While the large benefit to select Canadian businesses in the area was not necessarily an intention of regulation, it was certainly foreseeable and raises important questions for legal regulation going forward.

Following legalisation, a number of federally-licensed producers profited greatly and benefited from large (mainly speculative) investments. Heavy early investment was scaled back once the market picture became clearer, however, and stock prices dropped dramatically in the second half of 2019. The value of Canopy Growth and Cronos Group more than halved between April and November, while Aurora Cannabis dropped by around three quarters in the same period. There has since been a small upturn in the market, but the cannabis industry speculator 'bubble' has seemingly burst. This has resulted in reduced investment, the selling of harvest on the cheap, as well as job losses.[230] This is not to say that the industry is evaporating — there is still great demand for cannabis and the market may yet grow again (particularly as the illegal market continues to be subsumed). However, there certainly appears to have been initial overestimation of potential profitability, and market perceptions are realigning. It is also still the case that a select number of Canadian companies have still profited substantially and are in prime position to shape not just the Canadian cannabis market, but the international market, as more and more of the world seeks to regulate cannabis.

226 Government of Canada (2019). Bill C-93 – No-fee, Expedited Pardons for Simple Possession of Cannabis. https://www.canada.ca/en/public-safety-canada/news/2019/06/bill-c-93--no-feeexpedited-pardons-for-simple-possession-of-cannabis.html; McAleese, S. (2019). Canada's new lacklustre law for cannabis amnesty. The Conversation 27 June. http://theconversation.com/canadas-new-lacklustre-law-for-cannabis-amnesty-119220

227 Cannabis Amnesty (2019). Statement on Bill C-93. https://www.cannabisamnesty.ca/statement_on_bill_c_93; Government of Canada (2019). Bill C-93 – No-fee, Expedited Pardons for Simple Possession of Cannabis. https://www.canada.ca/en/public-safety-canada/news/2019/06/bill-c-93--no-fee-expedited-pardons-for-simple-possession-of-cannabis.html

228 California Legislative Information (2018). Assembly Bill No. 1793. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1793; Schnell, L. (2018). Marijuana reform: New California law gives people with records a do-over. USA Today 2 October. https://eu.usatoday.com/story/news/2018/09/30/california-passes-landmark-marijuana-law-residents-reclaimlives/1340729002/

229 Transform Drug Policy Foundation, St George's House (2020). Challenges for a world where drugs are legally regulated. Transform Drug Policy Foundation. https://transformdrugs.org/wp-content/uploads/2020/02/St-Georges-House-Report-WEB.pdf

230 Gaviola, A. (2019). Major Weed Companies Are Cutting Hundreds of Jobs as the Industry Struggles. VICE 25 October. https://www.vice.com/en_ca/article/zmjk7w/major-canadian-weed-companies-are-cutting-hundreds-of-jobs-as-the-industry-struggles; McBride, S. (2019). Aurora Cannabis Is Dumping Its Pot, Which May Be A Sign It's All Over. Forbes 21 October. https://www.forbes.com/sites/stephenmcbride1/2019/10/21/aurora-cannabis-is-dumping-its-pot-which-may-be-a-sign-its-all-over/#329811305775

The beneficiaries

Despite hopes that the introduction of 'micro-cultivation' licences would open the market to smaller producers, this has not been the case. In 2019, the federal government announced that, in order to apply for a licence, potential suppliers were required to already have a production facility in place.[231] This meant that those unable to risk the initial investment costs were immediately deterred from applying. This has contributed to an emerging market dominated by a relatively small number of large corporate actors, in turn fueling the risk of monopolisation. The dynamics of corporate capture and related distortions of the policymaking process (of the kind seen especially in the alcohol and tobacco industry) are a significant and pressing concern, and one that has not been diminished by significant investment from alcohol and tobacco corporations in the Canadian cannabis sector.

The majority of money in the market is being made by larger producers, such as Canopy Growth. Canopy Growth, alongside other large producers like Cronos Group and Aurora Cannabis is represented on the board of the Cannabis Council of Canada, the national organisation of Canada's federally-licensed cannabis producers, which aims to 'act as the national voice for...members in their promotion of industry standards'.[232] However, Canopy in particular has also made moves in provincial retail markets. As discussed, in Nunavut, cannabis can only be purchased online from the Nunavut Liquor and Cannabis agency's 'approved agents', which are Canopy Growth and AgMedica, meaning the two in effect already have a duopoly.[233] Canopy has also been reported as a frontrunner to take over Cannabis New Brunswick (CNB), the agency overseeing all retail sale in New Brunswick, which would mark a shift from a government monopoly to a corporate monopoly in the region.[234] In other provinces, however, the potential for cannabis corporations to dominate the market is limited by regulations: in Alberta, for instance, individuals or 'groups of persons' are not allowed to hold more than 15% of total licences at any one time.[235] This kind of licence limitation is essential to both preventing monopolies and to facilitating market access to smaller companies and people with less economic power.

International corporate capture

As the prime actors in the first major legally regulated market, Canadian companies have been able to establish a strong base for international expansion. So far, since few countries have as yet legalised cannabis for non-medical purposes, this has predominantly meant capturing the medical cannabis market. Nevertheless, because medical and non-medical cannabis are the same product — albeit potentially subject to different regulations — diversifying from one to the other is relatively simple. This is particularly the case given that many of the Canadian producers were, prior to October 2017, already licensed producers in the Canadian medical market. We are therefore seeing Canadian companies taking up international space very quickly as it appears: Canopy Growth already has established a medical presence in Australia, Europe, Africa and South America, largely through its subsidiary, Spectrum Therapeutics, while Cronos Group similarly operates across five continents.[236]

Establishing a presence in other continents positions Canadian companies to take first advantage over potential medical — or non-medical — cannabis legalisation. In France, for example, a market battle was sparked in early 2020 between Canadian companies and French producers ahead of a

231 Government of Canada (2019). Cannabis duty - Apply for a cannabis licence. https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/excise-duties-levies/apply-cannabis-licence.html
232 Cannabis Council of Canada (Undated). About. https://cannabis-council.ca/about
233 Nunavut Liquor and Cannabis (Undated). Cannabis Purchasing. https://www.nulc.ca/news/?id=addf6310-40ce-e811-a979-000d3af49637; Government of Nunavut (2019). Buying cannabis legally in Nunavut. https://www.gov.nu.ca/finance/news/buying-cannabis-legally-nunavut
234 Magee, S. (2020). Eight companies seek to take over Cannabis NB. CBC 13 January. https://www.cbc.ca/news/canada/new-brunswick/cannabis-pot-new-brunswick-companies-1.5424992
235 Province of Alberta (2018). Gaming, Liquor and Cannabis Act: Gaming and Liquor Amendment Regulation. s106. http://www.qp.alberta.ca/documents/orders/Orders_in_Council/2018/218/2018_027.pdf
236 Spectrum Therapeutics (Undated). Global Footprint. https://www.spectrumtherapeutics.com/international/en; Cronos Group (Undated). Brands. https://thecronosgroup.com/brands.php#

French trial of medical cannabis.[237] In 2019, Aurora Cannabis bought facilities in the Netherlands following news that the Dutch government was potentially expanding scope for medical cannabis beyond the Dutch monopoly-holder Bedrocan (which, in turn, previously operated a joint licensing agreement with Canopy Growth in Canada).[238] In Mexico, which is moving towards legally regulating cannabis for non-medical consumption, Aurora Cannabis acquired the first Mexican company to obtain a medical cannabis distribution licence in 2018, while, in June 2019, Canopy announced a $3.4 billion deal to purchase US-based cannabis company Acreage, with a specific requirement being that the US legalises non-medical cannabis at the federal level within the next 7.5 years.[239] If it doesn't, the deal is voided. Canopy reportedly has at least two other similar deals with US companies.[240]

Market capture by Canadian companies in South America has drawn particular criticism. The Colombian Association of Cannabis Industries has estimated that medicinal cannabis companies in Colombia are nearly 75% owned by foreign investors. Over $600 million was invested in the Colombian market between January 2018 and June 2019, predominantly from Canadian companies.[241] In 2018, Canopy Growth purchased Colombian company Spectrum Cannabis for $60 million, which it has since rebranded into its international medical subsidiary, Spectrum Therapeutics. Through Spectrum, it is licensed to produce cannabis over 13.6 million square feet in Colombia.[242] Meanwhile, Cronos Group has established a joint venture with an affiliate of Colombia's leading agricultural services provider to 'develop, cultivate, manufacture and export cannabis-based medicinal and consumer products for the Latin American and global markets'.[243] Elsewhere in South America, Aurora Cannabis, which has investment in 25 countries, purchased 'ICC Labs' in 2018, obtaining over 70% market share in Uruguay in the process.[244]

While South America has drawn the majority of attention at present, this will no doubt be an issue elsewhere going forward; Canadian companies have also been quick to exploit the opportunity created by the legalisation of medical cannabis production in Lesotho, with multi-million dollar investments in local farms and companies.[245] International corporate capture is not the fault of Canadian regulation efforts, which can only be aimed at controlling the market internally. However, it does raise important questions for the international community going forward about how markets should be structured and how traditional cannabis growing communities can be protected, as well as how fair trade and sustainable development can be guaranteed.[246] By becoming prime actors in the first large-scale legally regulated cannabis market, it is simply the case that Canadian companies have been able to establish themselves more quickly than cannabis actors in other countries.

237 Connexion Journalist (2020). French medical cannabis trial sparks market battle. The Connexion 7 February. https://www.connexionfrance.com/French-news/French-medical-cannabis-trial-sparks-market-battle-between-Canadian-and-European-firms
238 Pascual, A. (2019). Netherlands to expand cannabis production, potentially creating competition for Bedrocan. Marijuana Business Daily 24 April. https://mjbizdaily.com/netherlands-to-expand-cannabis-production-potentially-jeopardizing-bedrocans-monopoly/
239 Aurora Cannabis Inc (2018). First License to Import, Manufacture, Store, and Distribute Medical Cannabis Containing THC in Mexico. Cision PR Newswire 10 December. https://www.prnewswire.com/news-releases/aurora-cannabis-to-acquire-mexicos-farmacias-magistrales-sa-300762402.html; Dorbian, I. (2019). Canopy And Acreage Shareholders Approve $3.4 Billion Deal, But Don't Party Yet. Forbes 21 June. https://www.forbes.com/sites/irisdorbian/2019/06/21/canopy-and-acreage-shareholders-approve-3-4-billion-deal-but-dont-party-yet/#22ff1cda26d0
240 Linnane, C. (2019). Cannabis stocks higher as Canopy shareholders meet, CannTrust unveils California venture. Market Watch 20 June. https://www.marketwatch.com/story/cannabis-stocks-higher-as-canopy-shareholders-meet-canntrust-unveils-california-venture-2019-06-19

241 Rivera, N.M. (2019). The Challenges of Medicinal Cannabis in Colombia: A look at small - and medium - scale growers. Transnational Institute. p16. https://www.tni.org/files/publication-downloads/policybrief_52_eng_web.pdf
242 Troup, R. (2019). Canopy Growth Provides International Update on Latin America, Australia, Europe and Africa, Signs Multi-Year Colombia Deal. Cannabis Investor 17 June. https://www.thecannabisinvestor.ca/canopy-growth-provides-international-update-on-latin-america-australia-europe-and-africa-signs-multi-year-colombia-deal/; Rivera, N.M. (2019). The Challenges of Medicinal Cannabis in Colombia: A look at small - and medium - scale growers. Transnational Institute. p16. https://www.tni.org/files/publication-downloads/policybrief_52_eng_web.pdf
243 NCV Newswire (2018). Cronos Group Enters Latin America with Colombia Joint Venture. New Cannabis Ventures 29 August. https://www.newcannabisventures.com/cronos-group-enters-latin-america-with-colombia-joint-venture/
244 Paley, D.M. (2019). Canada's Cannabis Colonialism. https://towardfreedom.org/story/canadas-cannabis-colonialism/; Trefis Team (2018). Aurora Cannabis Makes Inroads Into South America With Latest Acquisition. Forbes 11 September. https://www.forbes.com/sites/greatspeculations/2018/09/11/aurora-cannabis-makes-inroads-into-south-america-with-latest-acquisition/#34cf2f7c4ca1
245 Vickers, E. (2019). The small African kingdom that's perfect for growing cannabis, but maybe not for regulating it. Quartz Africa 9 November. https://qz.com/africa/1744366/lesotho-is-perfect-growing-cannabis-but-not-regulation/
246 See: Jelsma, M., Kay, S. and Bewley-Taylor, D. (2019). Fair(er) Trade Options for the Cannabis Market. Swansea University and Transnational Institute. https://www.tni.org/files/publication-downloads/fair_trade_options_for_the_cannabis_market.pdf

Cross-sector investment

The legal cannabis market has also led to a great deal of excitement (and wariness) in other sectors: including other regulated drugs, with cannabis presenting opportunities for alcohol and tobacco companies to diversify their market space. This raises obvious concerns, given that the lobbying power of tobacco and alcohol companies has historically been at odds with public health.

Altria, one of the world's largest tobacco producers, has invested over a billion dollars into Cronos Group, where it now owns a 45% stake and has three out of seven seats on the board.[247] Altria's work with Cronos has included investment in Cronos' research and development centre in Israel, focused on vaping devices — investing both resources and Altria employees to assist in the research.[248] Constellation Brands (the third largest market share holder of all beer companies) owns a 38% share in Canopy Growth and has four out of seven seats on the board, while AB inBev and Molson Coors (two of the largest alcohol companies in the world) have joint partnerships with Canadian cannabis companies Tilray and HEXO respectively, to create drinkable cannabis products.[249]

Investment works both ways, meaning that Canadian companies are similarly able to invest their own newfound wealth to shape other industries. For instance, Canopy Growth has purchased a majority stake in BioSteel Sports Nutrition, which is claimed to be bought by 70% of teams across North America's four major sports leagues, with plans to introduce a CBD sports nutrition drink in 2020.[250] Similarly, Aurora Cannabis operates a research collaboration with the Ultimate Fighting Championship (UFC) to research potential uses of CBD products for MMA (mixed martial arts) fighters.[251] The CEO of Molson Coors (which, as discussed above, has its own joint venture with HEXO) has previously said that drinkable products could 'soon make up 20 to 30 percent of cannabis sales'.[252] A large amount of spending by cannabis companies is focused on product development, highlighting the speculative nature of the market as well as a desire for innovation, made possible by a legally regulated market; former Canopy Growth CEO, Mark Zukelin, has previously stated that 'the IP [intellectual property] moat around our business' is one of the company's greatest assets, boasting over 110 patents and 290 patent applications.[253]

Investment in Canadian cannabis has now become mainstream — with big shareholders in Canopy Growth including Morgan Stanley and the Bank of Montreal.[254] Major shareholders in Aurora Cannabis include JP Morgan and the Norges Bank's Government Pension Fund Global, which invests revenue from Norway's oil and gas resources.[255] There has also been the development of cannabis exchange-traded funds (ETFs), like Alternative Harvest ETF, which invest heavily in Canadian cannabis companies across the board — Alternative Harvest owning stakes in Cronos, Aurora, Canopy and many others.[256]

247 Hirsch, L. (2018). Altria to invest $1.8 billion in cannabis company Cronos Group, exits some e-cig brands. CNBC 7 December. https://www.cnbc.com/2018/12/07/altria-to-invest-1point8-billion-in-cannabis-company-cronos-group.html
248 Peters, B. (2019). Why An Analyst Calls This Cannabis Stock The 'New King In The North'. Investor's Business Daily 18 October. https://www.investors.com/news/cronos-group-stock-king-in-north/
249 Canopy Growth (Undated). Governance. https://www.canopygrowth.com/investors/governance/board-of-directors/; Lewis, A.C. (2019). Drink up, stoners. The Verge. https://www.theverge.com/2019/7/30/18639829/weed-beer-drinkable-marijuana-cannabis-drinks-alcohol
250 LoRé, M. (2019). Canopy Growth And BioSteel To Introduce CBD Products To Sports Nutrition Market. Forbes 23 October. https://www.forbes.com/sites/michaellore/2019/10/23/canopy-growth-and-biosteel-to-introduce-cbd-products-to-sports-nutrition-market/#5b6edbbef9b7
251 Button, A. (2019). Why the Aurora Cannabis-UFC Partnership Is a Huge Deal. https://www.fool.com/investing/international/2019/05/29/why-the-aurora-cannabis-ufc-partnership-is-a-huge.aspx
252 Lewis, A.C. (2019). Drink up, stoners. The Verge. https://www.theverge.com/2019/7/30/18639829/weed-beer-drinkable-marijuana-cannabis-drinks-alcohol
253 Paley, D.M. (2019). Canada's Cannabis Colonialism. Toward Freedom 8 October. https://towardfreedom.org/story/canadas-cannabis-colonialism/
254 Fintel (Undated). CGC / Canopy Growth Corporation - Institutional Ownership and Shareholders. Accessed 20 February 2020. https://fintel.io/so/us/cgc
255 CNN Business (2020). Aurora Cannabis Inc. Accessed 19 February 2020. https://money.cnn.com/quote/shareholders/shareholders.html?symb=ACB&subView=institutional; Norges Bank Investment Management (Undated). About the fund. https://www.nbim.no/
256 Wathen, J. (2018). 5 Things You Should Know About the Hottest Marijuana ETF. The Motley Fool 5 January. https://www.fool.com/investing/2018/01/05/5-things-you-should-know-about-the-hottest-marijua.aspx

Shaping regulation

Any model of legal regulation which allows for the involvement of private actors will see certain actors profit heavily. Historically, this is what has driven the need for competition law — to regulate market space and prevent the creation of monopolies at the expense of consumers. The Canadian market is clearly still developing, and fluctuating, and the federal government should be mindful of the growing lobbying power of corporate actors. The Cannabis Council of Canada has previously argued against increased regulation — including proposed limits on THC levels and bans on edibles in Quebec — as well as calling on the Ontario government to open more retail stores.[257] There is merit in these calls, and it is important that industry is represented (particularly while legal retail markets still flounder in some provinces, and corporate actors have key insights into tackling this). However, it is vitally important that regulation is shaped by government, not commercial entities, and that the focus remains the promotion of public health, protection of children, and reduction of criminality — not simply the facilitation of profit.

Compliance with the United Nations drug control treaties

Canada's move to a legalised and regulated cannabis market for non-medical use means it is now non-compliant with key UN drug treaty provisions that mandate the prohibition of cannabis for non-medical or scientific uses. This non-compliance has been highlighted in successive UN International Narcotics Control Board Annual reports (The INCB is the 'independent and quasi-judicial monitoring body for the implementation of the United Nations International drug control treaties').[258]

Of the countries that have already moved to regulate non-medical cannabis, Canada is the first to make a clear formal acknowledgement that it is 'in contravention of certain obligations related to cannabis under the UN drug conventions.'[259] This would seem preferable to either sidestepping the issue (Uruguay), or falling back on dubious legal arguments (USA).

Conscious of the international scrutiny and their default leadership role on this question amongst reform oriented countries, Canada has assumed a status that has been described by the Global Commission on Drugs as one of 'Respectful Non-Compliance'.[260] Canada has acknowledged its non-compliance, but also made the case for reform rooted in UN Charter principles — the health and wellbeing of its citizens — as well as engaging in dialogue with the INCB and proactively seeking to resolve the obvious tensions between its domestic treaty commitments. Canada has also been open and active in dialogue in key international forums including the 2016 UNGASS, and Annual Commission on Narcotic Drugs, as well as informal discussions with like minded states exploring or implementing cannabis reforms.[261] One possible way forward Canada has acknowledged as being considered is Inter se treaty modification — a mechanism specified in the 1969 Vienna Convention

257 Cannabis Council of Canada (2019). Cannabis Council of Canada Urges the Ontario Government to Open More Retail Locations. https://cannabis-council.ca/media/cannabis-council-of-canada-urges-the-ontario-government-to-open-more-retail-locations; Cannabis Council of Canada (2019). Cannabis Council of Canada Response to draft Regulation under the Cannabis Regulation Act published in the Gazette Officielle du Quebec. https://cannabis-council.ca/files/advocacy/Cannabis-Council-of-Canada-Quebec-Regulatory-Submission-English.pdf

258 See: International Narcotics Control Board (Undated). Our Mission. https://www.incb.org/; INCB (2019). Annual Report: Chapter IV: Recommendations to Governments, the United Nations and other relevant international and national organizations. p112. https://www.incb.org/documents/Publications/AnnualReports/AR2019/Annual_Report_Chapters/AR2019_Chapter_IV.pdf

259 Senate of Canada (2018). The Standing Senate Committee on Foreign Affairs and International Trade Evidence. [online] Ottawa: Parliament of Canada. Available at: https://sencanada.ca/en/Content/Sen/Committee/421/AEFA/53882-e

260 Global Commission on Drugs (2018) Regulation: The Responsible Control of Drugs. https://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf (English); https://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/SPA-2018_Regulation_Report_WEB-FINAL.pdf (Spanish).

261 See: Government of Canada (2016). Plenary statement for the Honourable Jane Philpott Minister of Health-UNGASS on the world drug problem. https://www.canada.ca/en/health-canada/news/2016/04/plenary-statement-for-the-honourable-jane-philpott-minister-of-health-ungass-on-the-world-drug-problem.html

on the Law of Treaties which allows for a group of member states to modify a treaty 'amongst themselves'.[262]

Lessons learned

Legal regulation in Canada is still a relatively new project, but an extremely important one. With the eyes of the world watching, the legal market has seen modest successes and is providing a valuable case study for regulators seeking to reduce the harm caused by drugs and drug markets. The Canadian government has set its own aims to be judged against and, going forward, developing measures to evaluate these will be essential.[263] Similarly, effective monitoring and sharing of experiences and best practice between the different tiers of government domestically, and between Canada and other reform minded jurisdictions, will remain an essential part of effective policy making.

262 See: Jelsma, M., Boister, N., Bewley-Taylor, D., Fitzmaurice, M., Walsh, J. (2018). Balancing Treaty Stability and Change: Inter se modification of the UN drug control conventions to facilitate cannabis regulation. [pdf] Swansea: Global Drug Policy Observatory. Available at: https://www.tni.org/files/publication-downloads/balancing_treaty_stability_and_change.pdf

263 See: EMCDDA (2020). Monitoring and evaluating changes in cannabis policies: insights from the Americas. http://www.emcdda.europa.eu/publications/technical-reports/monitoring-and-evaluating-changes-in-cannabis-policies-insights-from-the-americas_en; Hammon, D., Goodman, S., Wadsworth, E. et al. (2020). Evaluating the impacts of cannabis legalization: The International Cannabis Policy Study. International Journal of Drug Policy 77. https://www.ncbi.nlm.nih.gov/pubmed/32113149

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About Transform Drug Policy Foundation

Transform is a charity working to promote public health, social justice and human rights through drug policy reform. We believe the legal regulation of drugs is essential to achieving these goals.

Transform Drug Policy Foundation is a UK-based registered charity (#1100518) and limited company (#4862177)

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Twitter: **@TransformDrugs**
Facebook: **facebook.com/transformdrugs**

About México Unido Contra la Delincuencia

MUCD is a Mexican NGO working to improve justice, security and peace conditions in Mexico since 1997.

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