

One-Year Anniversary of Pot Legalization: Should Canadians be Popping Champagne?

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Today is the one-year anniversary of the legalization of recreational cannabis in Canada. The past year has allowed for reflection on the effectiveness of the legalization of cannabis by the Canadian government. Some are calling the first year a failure due to various glitches including, lack of bricks-and-mortar retail stores, cannabis supply shortages followed by a glut, marketing and labelling restrictions, the Ontario retail license lottery fiasco, the CannTrust regulatory scandal, missed profit projections, tightening of available financing and the recent plummet in the price of publicly traded cannabis stocks. There are many critics pointing fingers.

Is the criticism and doom and gloom attitude justified? Has the legalization of cannabis been an overhyped bust? To answer the critics and these questions, one needs to look at what was the mandate of the cannabis legislation, what was and wasn't promised.

The Task Force on Cannabis Legalization and Regulation

- Canadian cannabis legislation was shaped by the final report of the Task Force on Cannabis Legalization and Regulation
- The Report was released on November 30th, 2016
- The Report took a largely public health approach, crafting a proposed strategy governed by an overarching harm-reduction objective^[1]
- It has been described as “realistic” and “balanced”^[2]
- This Report outlined the proposed framework, covering the following set of priorities for cannabis legislation^[3]:
 - Minimizing harms of use
 - Establishing a safe and responsible supply chain
 - Enforcing public safety and protection
 - Medical access
 - Implementation

- The Task Force supported the concept of a diverse supply chain that includes small producers in addition to larger ones in order to prevent the monopolization of the cannabis industry^[4]
- These recommendations from the Task Force's report were implemented into the *Cannabis Act* ("the Act")

The *Cannabis Act*

- The Act allows adults to possess and access regulated, quality-controlled, legal cannabis, and focuses on restricting youth access and exposure
- It establishes strict rules for the cultivation, processing and sale of cannabis
- It enhances public awareness of the health risks associated with cannabis use
- It imposes serious criminal penalties for import, export, or distribution of illegal cannabis
- It transitioned patients who were registered under the Access to Cannabis for Medical Purposes Regulations (ACMPR) to the Act

How the Act Attempts to Achieve Health Canada's Stated Goals

(1) Controlled Access

- Recreational cannabis to be regulated as a shared responsibility between the federal, provincial, and territorial governments
- Individuals allowed to grow up to a maximum of four plants per residence for personal use

(2) Youth Protections

- The Act created two new criminal offences, both holding maximum penalties of 14 years imprisonment:
 - Giving or selling cannabis to youth; and
 - Using a youth to commit a cannabis-related offence
- The Act also prohibits, with contravention leading to severe penalties (fines up to \$5 million or 3 years in jail, or both):
 - Products that are appealing to youth
 - Packaging or labeling cannabis in a way that make it appealing to youth
 - Selling cannabis through self-service displays or vending machines
 - Promoting cannabis, except in narrow circumstances where the promotion could not be seen by a young person

(3) Strict Regulation

- Federal responsibilities:
 - Strict requirements for producers who grow and manufacture cannabis
 - Set industry-wide rules and standards, including:
 - Types of cannabis products allowed to be sold
 - Packaging and labelling requirements
 - Standardized serving sizes and potency
 - Prohibiting the use of certain ingredients
 - Restrictions on promotional activities
- Provincial/Territorial responsibilities
 - May increase minimum age for consumption (cannot lower it)
 - May lower the personal possession limit
 - May create additional rules for growing cannabis at home

- Restrict where adults may consume cannabis

What Has Gone Wrong

Regulations

- Difficult to reconcile goals of Health Canada
- The task of rolling out the regulation of cannabis was met with conflicting principles that proved difficult to reconcile, namely, the promotion of health and safety and the elimination of the black market.
- Example: advertising - in order to achieve the public health and harm reduction goals, the task force looked to the advertising restrictions of tobacco and recommended that similar restrictions be used for cannabis.[\[5\]](#) Currently, the cannabis regulations impose rigorous advertising, packaging and labelling restrictions on cannabis companies[\[6\]](#):
- Plain-packaging requirements
- Mandatory information labels
- Mandatory child-proof opening and closing mechanisms
- Brand element is prohibited on interior and exterior surface of any container in which a cannabis product is packaged (this is where combating the black market seems next to impossible)
- Colour of interior and exterior surface of product package must be uniform
- Restrictions on what colours/materials may be used (i.e. prohibitions on lustre of metals, shine, etc.)
- However, a direct comparison between the cannabis industry and the tobacco industry is not the most informative method of creating a successful cannabis advertising and branding framework, since the elimination of the black market is one of the chief public policy goals stated by Health Canada, which is not a goal of the tobacco industry.
- This is an important distinction because the existence of a cannabis black market currently poses a threat to multiple public policy goals, including the promotion of public health, the promotion of quality-tested cannabis in the market, and the prevention of child and youth cannabis use.
- Cannabis shortages, quality and high prices of cannabis still allowing the black market to thrive[\[7\]](#)
- The cannabis product being legally sold is inconsistent and often times sub-par.[\[8\]](#)
- So long as the product of government-approved licensed producers is not making the grade, or is unable to supply the demand, the illicit market will continue to fill the void.
- Failure of the Lottery System in Ontario
- The selection of the private retail store spaces was done through a lottery system operated by the Alcohol and Gaming Commission of Ontario under the oversight of a third-party fairness and transparency monitor.
- Despite this, accusations have been made regarding the fairness of these lotteries.
- The winners of the most current lottery, which took place on August 21st, 2019, have led many to question whether there are loopholes in the lottery process. Amongst the winners included a company which advertised for the opening of several new stores on its website before the results were even announced; the son of the co-founder of a large cannabis licensed producer; and the wife of legal counsel for the Alcohol and Gaming Commission of Ontario.[\[9\]](#)
- Further, due to the nature of the retail licensing distribution being 'random', the representation of retail stores across the province is disproportionate. For example, the Town of Innisfil, with its population of less than 37,000 won three cannabis retail shop locations (all

located on the same street), whereas the city of Ottawa, with a population of more than 25 times that of Innisfil, will only have four locations.

- While the cannabis legislation allowed for new markets in distribution, according to some, the policies put in place by the government are preventing companies from catching up and leading the rest of the world in cannabis production and distribution.[\[10\]](#)
- The fact that the regulation of cannabis is partially the responsibility of the provinces creates problems:
- Lottery system in Ontario putting a halt on the opening of retail stores due to the failure of numerous licensing applicants to meet the rigorous requirements that must be met by lottery winners in a short time.[\[11\]](#)
- Dozens of Ontario municipalities have opted out of the lottery system, this decision to disallow cannabis sales in some regions is not available in all provinces, where some of the provinces have implemented public retail stores.
- The criminalization of home cultivation in Manitoba and Quebec.

Litigation

- Problems with the imperfect introduction of cannabis legislation and regulations have already led to litigation in the country.
- The provinces of Manitoba and Quebec had banned the cultivation of cannabis plants at home by individuals. However, on a challenge to the Quebec Superior Court, the ban was struck down on the basis that it infringed on the federal government's jurisdiction over criminal matters.[\[12\]](#)
- This Quebec decision could open up the door to anyone in Manitoba who wished to challenge the legal validity of the cultivation ban there.
- Other potential litigation matters are likely to arise, such as constitutional challenges for the method of drug-testing used to fine and convict citizens of driving under the influence offence.

What Has Gone Right

- Discussions on cannabis legalization have remained front and center in Canada over the past 12 months. The Canadian public is slowly being educated and becoming more sophisticated consumers.
- The repeal of laws prohibiting simple possession and cultivation of cannabis for personal use was a positive step that was long overdue in this country since the LeDain Commission recommended this in 1969.[\[13\]](#)
- Around the world, the decriminalization and legalization of marijuana is being considered by countries and advocated for by their citizens as a result of Canada's lead. Its criminalization halts promising research into the therapeutic benefits of cannabis, hinders patient access to medical marijuana, and ties up valuable judicial resources and prison cells.
- Canada implemented the legalization of medical marijuana in 2001[\[14\]](#), and has now taken a step further with the legalization of recreational cannabis. Not only does this remove the above-mentioned negative consequences that accompany the criminalization of cannabis, but it creates a promising business opportunity throughout Canada. According to Statistics Canada, recreational sales of cannabis in July 2019 alone was \$104 million.[\[15\]](#)
- The Canadian government took on the difficult job of drafting cannabis legislation that addresses the health and safety concerns, while also attempting to successfully combat the black market with sales.
- Leading the way in the creation of legislation for the legalization of cannabis is no small feat. Without effective example legislation to turn to, the government must turn to other existing laws to draw parallels as guidance. Should cannabis regulation be most similar to tobacco? To alcohol? To pharmaceuticals? Cannabis is similar, yet distinctly different from all of the

above, proving its regulation to be complicated. Yet, Canada's decision to take on this challenge in order to pave the way for the availability of recreational cannabis should nonetheless be considered a success story.

- The Canadian government purposely delayed the implementation of edibles for a full year. This has allowed Canadians to get used to the regulated smoking of cannabis and become more informed on the effects of cannabis. This is a good thing that is in line with the stated goal of safety because there is a significant difference between ingesting versus smoking cannabis. The use of cannabis infused edibles often results in a more potent high because the THC or intoxicating part passes through the liver and directly into the bloodstream. The psychoactive effect of ingested edibles are less quickly felt but last longer and is more difficult to adjust or manage.[\[16\]](#)

Conclusion

- While there were no doubt some kinks in the unveiling of new Canadian cannabis legislation, the first of its kind in the world, on the whole they are merely kinks in an otherwise good piece of legislation. The legalization of cannabis, while posing numerous challenges, is a goal worth pursuing. As Canada begins to become more comfortable navigating the recreational cannabis industry, these kinks will undoubtedly begin to be ironed out.
- Canada has now created a multi-billion dollar cannabis industry with close to 10,000 employees across the country, primarily in rural and formerly depressed areas where the price of buildings and infrastructure are economically more viable.
- The Canadian government did not purport to eliminate the cannabis black market in one year. The rules are now there for enforcement to come over time.
- The developing cannabis industry is now an international movement looking to Canada's intellectual property and best practices.
- After 95 years of prohibition, important research has started in Canada on the potential health benefits of cannabis and hemp. Canadian citizens may criticize the product quality, but in the U.K. epileptic children still struggle to access medical cannabis oil.[\[17\]](#)
- The stigma of cannabis has lessened worldwide with reputable medical institutions (like Harvard, John Hopkins etc.) researching cannabis.
- Yes there are critics. It seems there are always critics when something new and promising is introduced. However, Teddy Roosevelt (funny I quoted him in my very first cannabis article) had it so right when he so eloquently stated:

"It is not the critic who counts; ... who points out ... where the doer of deeds could have done them better. The credit belongs to the [one] who is actually in the arena, ... who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; ... who at the best knows in the end the triumph of high achievement, and who at the worst, if [he/she] fails, at least fails while daring greatly, so that [his/her] place shall never be with those cold and timid souls who neither know victory nor defeat."[\[18\]](#)

Today is a day of celebration.

Cheers to all those in the Canadian cannabis industry!

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[1] Brad Poulos, "Why I'd Give an A- to the Task Force on Cannabis Legalization and Regulation", (18 December 2016), online at: www.linkedin.com/pulse/why-id-give-a-task-force-cannabis-legalization-brad-poulos/.

[2] *Ibid.*

[3] A Final Report of the Task Force on Cannabis Legalization and Regulation "Executive Summary" (2016), online at: www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/task-force-cannabis-legalization-regulation/framework-legalization-regulation-cannabis-in-canada.html

[4] *Supra* note 1.

[5] *Supra* note 3.

[6] *Cannabis Regulations*, SOR/2018-144 Part 7.

[7] Sylvain Charlebois & Janet Music, "Canada's legalization of weed edibles is another global social experiment", *The Conversation*, (15 May 2019), online at: <https://theconversation.com/canadas-legalization-of-weed-edibles-is-another-global-social-experiment-116919>.

[8] Enzo Dimatteo, "Canada's first summer of legalization: it's a shitshow", *Now Magazine*, (29 July 2019), online at: <https://nowtoronto.com/news/canada-cannabis-legalization-dispensaries-canntrust/>.

[9] Lisa Campbell, "Ontario's cannabis lottery: the deck is stacked in favour of big money", *Now Magazine*, (24 August 2019), online at <https://nowtoronto.com/news/ontario-cannabis-lottery-cafe-bitcoin-highlife-aphria/>.

[10] *Supra* note 7.

[11] Paola Loriggio, "Ontario judge grants cannabis store licensing stay, rejected applicants seek review", *Financial Post*, (13 September 2019), online at:

<https://business.financialpost.com/cannabis/cannabis-business/ontario-judge-grants-pot-shop-licensing-stay-rejected-applicants-seek-review>.

[12] Cameron MacLean, "*Ruling that Quebecers can grow pot at home could boost challenge of Manitoba's law*", *CBC News*, (8 September 2019), online at: <https://www.cbc.ca/news/canada/manitoba/manitoba-cannabis-home-growing-quebec-case-1.5274169>.

[13] *Supra* note 8.

[14] *Supra* note 8.

[15] Michael J. Armstrong, "*A campaign promise kept: Canada's modestly successful cannabis legalization*", *The Conversation*, (23 September 2019), online at: <https://theconversation.com/a-campaign-promise-kept-canadas-modestly-successful-cannabis-legalization-122380>.

[16] Bruce A. MacFarlane, Robert J. Frater & Croft Michaelson, *Cannabis Law*, (Thomson Reuters, 2018).

[17] *Supra* note 15.

[18] Theodore Roosevelt, "*Citizenship in a Republic: The Man in the Arena*" (Address delivered at Sorbonne, Paris, April 23, 1910).