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Regulating the Legal Cannabis Market: How is Canada doing?



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About CAMH

The Centre for Addiction and Mental Health (CAMH) is Canada's largest mental health teaching hospital and one of the world's leading research centres in its field. CAMH conducts groundbreaking research, provides expert training to health care professionals and scientists, develops innovative health promotion and

prevention strategies, and advocates on public policy issues at all levels of government. CAMH has a long history of developing and advocating for evidence-based public policy in the area of substance use. In 2014, we released a report making the case for the cannabis legalization.¹

About this document

Legal cannabis markets can take many forms. Among jurisdictions that have legalized cannabis, some have chosen a commercial model while others have regulated legal cannabis in the interest of public health. With the *Cannabis Act*, passed in 2018, the Canadian government opted for the latter approach, while leaving many areas of regulation to the provinces and territories.

The *Cannabis Act* contains a requirement that the legislation be reviewed three years after it comes into effect in order to assess its impact on public health. This report examines cannabis legislation and regulation across the country to determine the

extent to which Canada's model for legal cannabis is consistent with a public health approach. Overall, we find that Canada's regulations are optimal in the area of advertising, marketing and promotion, adequate with respect to minimum age as well as tax and price, while some provinces and territories – especially those with private retail systems – have work to do around controlling availability. As various levels of government review their cannabis regulations in the months and years to come, policy decisions should be made with public health as the primary and overriding criterion.

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Introduction

Legal cannabis markets can take many forms, from commercial approaches involving minimal restrictions on how cannabis is bought and sold to more public health-oriented models aiming to mitigate health impacts through regulation.² With the *Cannabis Act*, passed in 2018, the Canadian federal government chose the latter, promising to adopt a “public health approach” to cannabis.³

Three and a half years after cannabis was legalized in Canada, this report asks the following question: do Canada’s cannabis regulations align with a public

health approach? To answer it, we will begin with recommendations made by the Task Force on Cannabis Legalization and Regulation to the federal government in 2016. A review of the regulations in place at the federal and provincial/territorial levels will show that Canada has best practices in place for advertising, marketing and promotion, is relatively well aligned with a public health approach in the area of minimum age as well as tax and price, and has much room to improve with respect to controlling retail outlet density (i.e. the number of storefronts per capita or in a given geographic area).

Recommendations of the Task Force on Cannabis Legalization and Regulation

In 2016, the Canadian government initiated the process of legalizing and regulating cannabis. It struck a Task Force on Cannabis Legalization and Regulation and gave it the mandate of examining the evidence regarding the regulation of other substances, consulting Canadians, and designing a realistic and feasible regulatory framework for cannabis.

The Task Force delivered its final report in November 2016.⁴ It recommended that Canada adopt a public health approach to cannabis. While definitions of a “public health approach” to psychoactive substances vary greatly,⁵ the group defined it as being comprised of “a focus on reducing harm and promoting health at the population level, targeted interventions for high-risk individuals and practices, a concern with fairness, [and] an evidence-based approach.”⁶

The Task Force’s recommendations are wide-ranging; they cover the entire cannabis supply chain as well as impaired driving and medical cannabis. Here, we are concerned with regulations governing access to non-medical cannabis - how it is bought and sold. The Task Force’s recommendations in this area are presented and discussed in chapter 2 of its report, entitled “Minimizing Harms of Use.”⁷ For the full list of these recommendations, see Appendix. For our purposes, they can be summarized as follows.

1. Minimum age

- Set a national minimum age of 18, with provinces/territories able to raise it if desired

2. Advertising, marketing and promotion

- Apply comprehensive restrictions to the advertising and promotion of cannabis and related merchandise, similar to the restrictions on promotion of tobacco products (limited promotion, in areas only accessible by adults)
- Require plain packaging with only factual product information, including THC content (potency) and warnings about health risks

3. Tax and price

- Establish a price “that balances health protection with the goal of reducing the illicit market”
- Develop strategies to encourage consumption of less potent cannabis, including a price and tax scheme based on potency

4. Retail sales

- Limit retail outlet density (i.e. number of storefronts per capita or in a given geographic area)
- Limit retail location (i.e. appropriate distance from schools, community centres, public parks, etc., and no co-location of cannabis sales with alcohol or tobacco)

These measures may seem unusual for a legal product. However, in developing its recommendations, the Task Force states that it “drew lessons from the way governments in Canada have regulated tobacco and alcohol.”⁸ Decades of research have shown that careful regulation of those substances can mitigate their population-level impact. Indeed, restrictions on advertising, limits on physical availability, and price controls are known to be particularly effective ways to reduce harms related to alcohol⁹ and tobacco¹⁰. And while research on cannabis regulation is still in its infancy, there is emerging evidence that this is

the case for cannabis as well.¹¹ In other words, these Task Force recommendations appear remarkably consistent with best practices in alcohol and tobacco regulation; in turn, based on early indications, those best practices also seem applicable to cannabis. The Task Force recommendations also reflected earlier calls for a public health approach to cannabis in Canada, notably from the Centre for Addiction and Mental Health (CAMH)¹² and the Canadian Public Health Association (CPHA).¹³ For all these reasons, the recommendations are a good benchmark by which to assess Canada’s cannabis regulations.

Cannabis legislation and regulation in Canada

The *Cannabis Act* came into force on October 17, 2018. The federal government introduced the Act with three goals: to “keep cannabis out of the hands of youth, keep profits out of the pockets of criminals, [and] protect public health and safety by allowing adults access to legal cannabis.”¹⁴ To accomplish these goals, the *Cannabis Act* establishes a minimum age and possession limits and restricts advertising and promotion; it also sets standards in areas like the

types of cannabis products available for sale as well as quantity of product and THC in a package.¹⁵ The Act allows provinces and territories to apply stricter rules for minimum age and possession limits. Some areas of regulation, notably the retail system, are under provincial/territorial jurisdiction entirely. Provinces and territories have passed their own legislation addressing the areas of cannabis policy under their jurisdiction.

Methods

To assess Canada’s status with respect to cannabis regulation, we began by synthesizing the recommendations of the Task Force on Cannabis Legalization and Regulation around access to non-medical cannabis.¹⁶ This gave seven recommendations, which we divided into four categories. We then reviewed the relevant portions of the *Cannabis*

Act and its associated regulations.¹⁷ For areas of regulation under provincial/territorial jurisdiction, we utilized the Canadian Centre on Substance Use and Addiction’s database of provincial and territorial cannabis regulations.¹⁸ Finally, we created a table outlining Canada’s status with respect to the Task Force recommendations.

Results

Our findings are summarized in the table below. This review shows that many of the Task Force’s recommendations for a public health approach to cannabis are in place. An important determining factor here seems to be the level of government responsible for the policy area in question. Of the recommendations we examined, those fully under federal jurisdiction

—minimum age as well as advertising, marketing and promotion—have been implemented. Tax and price controls, which fall under both federal and provincial/territorial jurisdiction, are less straightforward to assess, as we will discuss in the next section. Limits on retail outlet density stand out as the one area where the relevant Task Force recommendation has not been implemented.

RECOMMENDATION*	IN PLACE?
Minimum age	
Set a national minimum age of 18	<p>Yes.</p> <p>The <i>Cannabis Act</i> set a national minimum age of 18.¹⁹</p> <p>Most provinces and territories opted to harmonize their minimum ages for cannabis and alcohol. This meant leaving the minimum age at 18 for AB and QC and raising it to 19 for BC, SK, ON, NB, NS, PEI, NL, YT, NT and NU. MB raised the minimum age for cannabis to 19 despite having a minimum drinking age of 18. In 2020, QC raised its minimum age to 21.²⁰</p>
Advertising, marketing and promotion	
Comprehensive restrictions on advertising and promotion	<p>Yes.</p> <p>Per the <i>Cannabis Act</i> and associated regulations, advertising and promotion are generally prohibited, with exceptions for “informational promotion or brand-preference promotion” (e.g. product characteristics, availability, price) in spaces (“real” or virtual) where only adults aged 18+ will be present (e.g. cannabis stores and adult websites).²¹</p>
Plain packaging with factual information only	<p>Yes.</p> <p>Regulations under the <i>Cannabis Act</i> prescribe certain packaging and labelling features, including a single uniform colour. Brand elements are limited; apart from brand name, only one element is allowed, and it must conform to several size and content requirements.</p> <p>Packages must carry a cannabis symbol and health warning message, both standardized. Labels must state cannabis class as well as THC and CBD content. Regulations generally leave room only for factual information on labels.²²</p>

* Task Force on Cannabis Legalization and Regulation, 2016, pp. 15-29

RECOMMENDATION	IN PLACE?
Tax and price	
Price that balances health protection with illicit market reduction	<p>Unclear.</p> <p>There are no set minimum product prices at the federal or provincial/territorial levels. Cannabis prices in Canada continue to fluctuate by jurisdiction and product type, and have been decreasing as the market stabilizes.²³ However the optimal price – high enough not to incentivize problematic use but low enough to entice people to purchase from the legal versus illegal market – has not been determined.</p>
Strategies to encourage consumption of less potent cannabis	<p>No (but it’s complicated).</p> <p>Taxation of dried/fresh cannabis and cannabis plants and seeds is based on overall quantity or price rather than by levels of THC, therefore does not incentivize the purchase of lower-THC products.</p> <p>The 2019 federal budget announced that excise duties on cannabis edibles, extracts, and topicals would be imposed based on the quantity of THC in the final product,²⁴ thereby creating a very modest price incentive for lower-THC products of those types. No province or territory has implemented its own price / tax scheme based on THC concentration.</p>
Retail sales	
Limits on storefront density	<p>No.</p> <p>No province or territory has a formal cap on cannabis retail density. QC, NB, NS, PEI, and NWT all have public retail systems, which tend to expand less quickly than private retail systems.²⁵</p>
Limits on storefront location	<p>Differs by province/territory.</p> <p>There are three models for storefront location restrictions: 1) rules preventing cannabis stores within a certain distance (usually 150 metres) from schools (AB, MB, ON, QC), 2) conditions set locally/by the community (BC, SK, YT, NT, NU), 3) no specified rules around location (NB, NS, PEI, NL).</p> <p>No jurisdiction allows co-location of tobacco and cannabis. AB, SK, MB, ON, QC, NB and YT forbid co-location of alcohol and cannabis. BC, NS, PEI, NL and NT allow it with certain restrictions. Not applicable to NU due to its unique alcohol retail system.²⁶</p>

Discussion

The Task Force, in fulfilling its mandate to advise the Canadian federal government on a legislative and regulatory framework for legal cannabis, proposed a public health approach. As discussed above, its recommendations for minimizing harms of use reflect best practices in tobacco and alcohol regulation, are supported by emerging evidence, and echo earlier calls for a public health approach to cannabis. As such, they provide a solid standard by which to assess the current state of cannabis regulation. In this section, we will use those recommendations to outline the areas where Canada is doing well in aligning with a public health approach, and where regulations can be improved.

Minimum age: A fine balance

Due to the negative impact of THC on the developing brain, it is recommended that cannabis use be delayed as long as possible.²⁷ However, 18-24 is the age group with the highest rates of cannabis use in Canada.²⁸ In the lead-up to legalization, the question of the optimal minimum age was a controversial one. In general, the medical community tended to prefer a minimum age of 21,²⁹ while those taking a population-level or public health perspective preferred age 19.³⁰ Indeed, when the Québec government announced in 2019 its intention to raise the minimum age for cannabis from 18 to 21, the province's public health institute warned that this could have the unwanted effects of criminalizing young cannabis users and leaving them dependent on the illicit market and its unregulated products.³¹ A recent study suggests, based on research around health and educational attainment, that 19 may indeed be the optimal minimum age for cannabis.³² The deleterious effects of early cannabis use make the public health measures discussed below even more important.

Advertising, marketing and promotion: Best practices are in place

It is clear that advertising and promotion of alcohol and tobacco lead to more consumption, particularly among youth.³³ Comprehensive restrictions on advertising and promotion of alcohol and tobacco are deemed among the most cost-effective and feasible measures to reduce the harms associated with those substances.³⁴ Canada's

requirements for plain packaging and restrictions on advertising and promotion, described in Table 1, align with both the best evidence and the legislative objectives of the *Cannabis Act* related to protection of young people, and should be maintained.

Tax and price: There is much we don't yet know

As discussed, experience with alcohol and tobacco indicates that price is a valuable lever to mitigate public health harms associated with consumption, both by curbing overall consumption and steering users towards less potent products. This is more complicated in the case of cannabis due to the pre-existing and ongoing presence of an illicit market. The federal government has implemented taxation according to quantity of THC for cannabis oils, extracts, edibles, and topicals, providing a modest price incentive for the purchase of lower-THC products. No province or territory has put in place minimum pricing for cannabis and cannabis products, although most maintain at least some control over price via government-operated retail sales. Populations most at risk of cannabis-related negative impacts, including youth and those who consume higher quantities, are most sensitive to increases in pricing.³⁵ Higher retail prices are likely to reduce purchases; however, they may also incentivize purchases from the illegal market when a reliable supply already exists. The quality and regulatory controls necessary to fulfill the public health and safety objectives of legalization, and the likelihood of incentivizing increased purchases, mean that using price to compete with the illegal market may not be practical or desirable. In the short term, the way forward here may be to implement the Task Force's recommendation that "the federal government, in co-ordination with its provincial and territorial counterparts, should conduct the necessary economic analyses to determine a tax level that achieves the balance between public health objectives and reducing the illicit market."³⁶

Retail sales: Limits are needed

Increases in availability, notably in the form of retail outlet density, are another factor known to increase prevalence and harm.³⁷ Pre-legalization calls for a public health approach to cannabis recommended

that there be a government monopoly on retail sales, partly because such retail models tend to expand more slowly.³⁸ Generally, government control of retail sales of psychoactive substances tends to be preferable to private retail from a public health perspective.³⁹ Public systems can make decisions on retail density based on meeting population demand, rather than capturing market share from competitors. As indicated in Table 1, no province or territory currently has a cap on retail locations. Ontario initially limited the number of retail licenses available to 25, awarded in January 2019, with an additional 50 licenses added in August 2019. These temporary caps were lifted effective January 2020.⁴⁰ Provinces and territories with a public retail system, notably Québec, tend to have a lower retail density.⁴¹

Those provinces opting for fully private storefront retail have seen a proliferation of storefronts - especially Alberta⁴² and, more recently, Ontario.⁴³ It is of course necessary for a legal retail system to be established and available to current users. But in Alberta and Ontario, there are now more cannabis stores than liquor stores, even though alcohol consumers outnumber cannabis consumers by about 4 to 1.⁴⁴ Given what we know about the relationship between availability and harm, provinces and territories with private retail systems would do well to closely monitor retail expansion and, rather than leaving it to the market, set limits on retail outlet density.

The future of cannabis regulation in Canada

Written into the *Cannabis Act* is a requirement that the legislation be reviewed three years after it comes into force. The cannabis industry has long been preparing for this review, and it is already challenging plain packaging requirements and the ban on advertising and promotion.⁴⁵ The industry has been vocal about its opposition to these public health measures, which it considers “nanny state over-regulation” and “regulatory burdens” that must be removed if the illicit market is to be eliminated.⁴⁶ The industry frequently points to alcohol, arguing that there should be regulatory “parity” when it comes to the advertising and promotion of alcohol and cannabis.⁴⁷ But from a public health perspective, alcohol is under-regulated in Canada, with measurable and significant impacts on alcohol-related harms.⁴⁸ In fact, comprehensive rules on advertising, marketing and promotion are frequently cited as essential components of evidence-informed alcohol policy.⁴⁹ And perhaps most importantly, in keeping with the stated purpose of the *Cannabis Act*, the legislation makes clear that the three-year review

is to prioritize the impact of cannabis legalization and regulation on “public health and, in particular, on the health and consumption habits of young persons in respect of cannabis use.”⁵⁰ For these reasons, existing rules that do in fact align with a public health approach must be maintained.

For provinces and territories with private retail systems, availability must be closely monitored. It is worth noting that the industry has frequently cited 1 legal storefront per 10,000 people as the number needed to replace the illicit market.⁵¹ Alberta and Yukon are already well past that point, with Ontario very nearly there.⁵² From a public health perspective, the benefits of legalization depend in part on providing people who use cannabis with legal sources of cannabis without inducing them to use more frequently and without introducing non-users to cannabis.⁵³ The public health evidence and the objectives of legalization both point to the importance of introducing limits on retail density.



Conclusion

The Canadian federal government explicitly adopted a public health approach to cannabis legalization,⁵⁴ and that intention is reflected in the *Cannabis Act* and its regulations. Replacing the illicit market with a functioning legal one is a goal of cannabis legalization, but it does not preclude or override the goal of promoting public health. A central tenet of a public health approach to cannabis is that public health must always supersede commercial considerations.⁵⁵ Using the recommendations of the Task Force on Cannabis Legalization and Regulation

as a benchmark, we see that Canada is doing very well in the area of advertising, marketing and promotion, relatively well with minimum age as well as tax and price, while some provinces and territories - especially those with private retail systems - have work to do if they are to align with recommendations related to controlling availability. As various levels of government review their cannabis regulations in the months and years to come, policy decisions should be made with public health as the primary and overriding criterion.

Appendix

Recommendations of the Task Force on Cannabis Legalization and Regulation in the area of “minimizing harms of use.”*

Minimum age

- Set a national minimum age of purchase of 18, acknowledging the right of provinces and territories to harmonize it with their minimum age of purchase of alcohol.

Promotion, advertising and marketing restrictions

- Apply comprehensive restrictions to the advertising and promotion of cannabis and related merchandise by any means, including sponsorship, endorsements and branding, similar to the restrictions on promotion of tobacco products.
- Allow limited promotion in areas accessible by adults, similar to those restrictions under the Tobacco Act.
- Require plain packaging for cannabis products that allows the following information on packages: company name, strain name, price, amounts of THC and CBD and warnings and other labelling requirements.
- Impose strict sanctions on false or misleading promotion as well as promotion that encourages excessive consumption, where it is allowed.
- Require that any therapeutic claims made in advertising conform to applicable legislation.
- Resource and enable the detection and enforcement of advertising and marketing violations, including via traditional and social media.

Cannabis-based edibles and other products

- Prohibit any product deemed to be “appealing to children,” including products that resemble or mimic familiar food items, are packaged to look like candy, or packaged in bright colours or with cartoon characters or other pictures or images that would appeal to children.

- Require opaque, re-sealable packaging that is childproof or child-resistant to limit children’s access to any cannabis product.
- Additionally, for edibles:
 - Implement packaging with standardized, single servings, with a universal THC symbol.
 - Set a maximum amount of THC per serving and per product.
- Prohibit mixed products, for example cannabis-infused alcoholic beverages or cannabis products with tobacco, nicotine or caffeine.
- Require appropriate labelling on cannabis products, including:
 - Text warning labels (e.g., “KEEP OUT OF REACH OF CHILDREN”)
 - Levels of THC and CBD
 - For edibles, labelling requirements that apply to food and beverage products.
- Create a flexible legislative framework that could adapt to new evidence on specific product types, on the use of additives or sweeteners, or on specifying limits of THC or other components.

THC potency

- Provide regulatory oversight for cannabis concentrates to minimize the risks associated with illicit production.
- Develop strategies to encourage consumption of less potent cannabis, including a price and tax scheme based on potency to discourage purchase of high-potency products.
- Require all cannabis products to include labels identifying levels of THC and CBD.
- Enable a flexible legislative framework that could adapt to new evidence to set rules for limits on THC or other components.
- Develop and implement factual public education strategies to inform Canadians about the risks of problematic use and to provide guidance on lower-risk use.

* Verbatim from Task Force on Cannabis Legalization and Regulation 2016, pp. 18-25, 35

Tax and price

- Conduct the necessary economic analysis to establish an approach to tax and price that balances health protection with the goal of reducing the illicit market.
- Work with provincial and territorial governments to determine a tax regime that includes equitable distribution of revenues.
- Create a flexible system that can adapt tax and price approaches to changes within the marketplace.
- Commit to using revenue from cannabis as a source of funding for administration, education, research and enforcement.
- Design a tax scheme based on THC potency to discourage purchase of high-potency products.

Retail sales

- No co-location of alcohol or tobacco and cannabis sales, wherever possible. When co-location cannot be avoided, appropriate safeguards must be put in place.
- Limits on the density and location of storefronts, including appropriate distance from schools, community centres, public parks, etc.
- Dedicated storefronts with well-trained, knowledgeable staff.
- Access via a direct-to-consumer mail-order system.

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