

CAPTURING THE MARKET:

Cannabis regulation in Canada

Executive summary.



On 17 October 2018, Canada legally regulated cannabis for adult, non-medical use. While the federal government has retained control of regulating production, it has given individual provinces and territories the responsibility of regulating retail sales in their regions.

The stated purpose of legal regulation was to protect children, promote public health and reduce crime in drug markets. This report analyses how different provinces have sought to achieve these outcomes, and what different regulation models have been applied. We focus on how regulations have been applied to production, sale and the marketing of cannabis products.

Production

Federal regulations establish two classes of production licence: a 'cultivation' licence, which authorises holders to grow cannabis, and a 'processing' licence, which authorises holders to produce cannabis products (such as edibles). There are also 'micro-cultivation' and 'micro-processing' licences, which authorise the growing and production of cannabis on a smaller scale. All cultivation and processing licence holders are subject to federal controls in relation to the security of the premises, aimed at reducing risk of theft of cannabis for diversion, as well as good production practices and product quality controls.

There are potency limits for certain products. For example, edibles are limited to 10mg THC per 'immediate container' (the outermost package), and if a package contains multiple units, these must in any event add up to no more than 10mg THC.¹ Particularly dangerous products (such as those intended to be used in the eye) are prohibited entirely.² The content and types of products may be further restricted at provincial level. For instance, 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.³

Sale

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.⁴ The licensing regime differs across provinces, and depending on whether it applies to 'bricks-and-mortar' shops or online sales. In all cases, the limit allowed for personal possession in public is 30g of dried cannabis.

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

¹ Government of Canada (2018). Cannabis Regulations (SOR/2018-144). s102.7. <https://laws-lois.justice.gc.ca/eng/Regulations/SOR-2018-144/index.html>

² Cannabis Regulations, s98(a),(b), 99.

³ 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>

⁴ 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>

Province/ Territory	Age limit	In-person sales	Online sales	Possession limits
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
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.⁵

**Yukon operated a temporary government-run retail store until October 2019 when private retailers were up and running.⁶

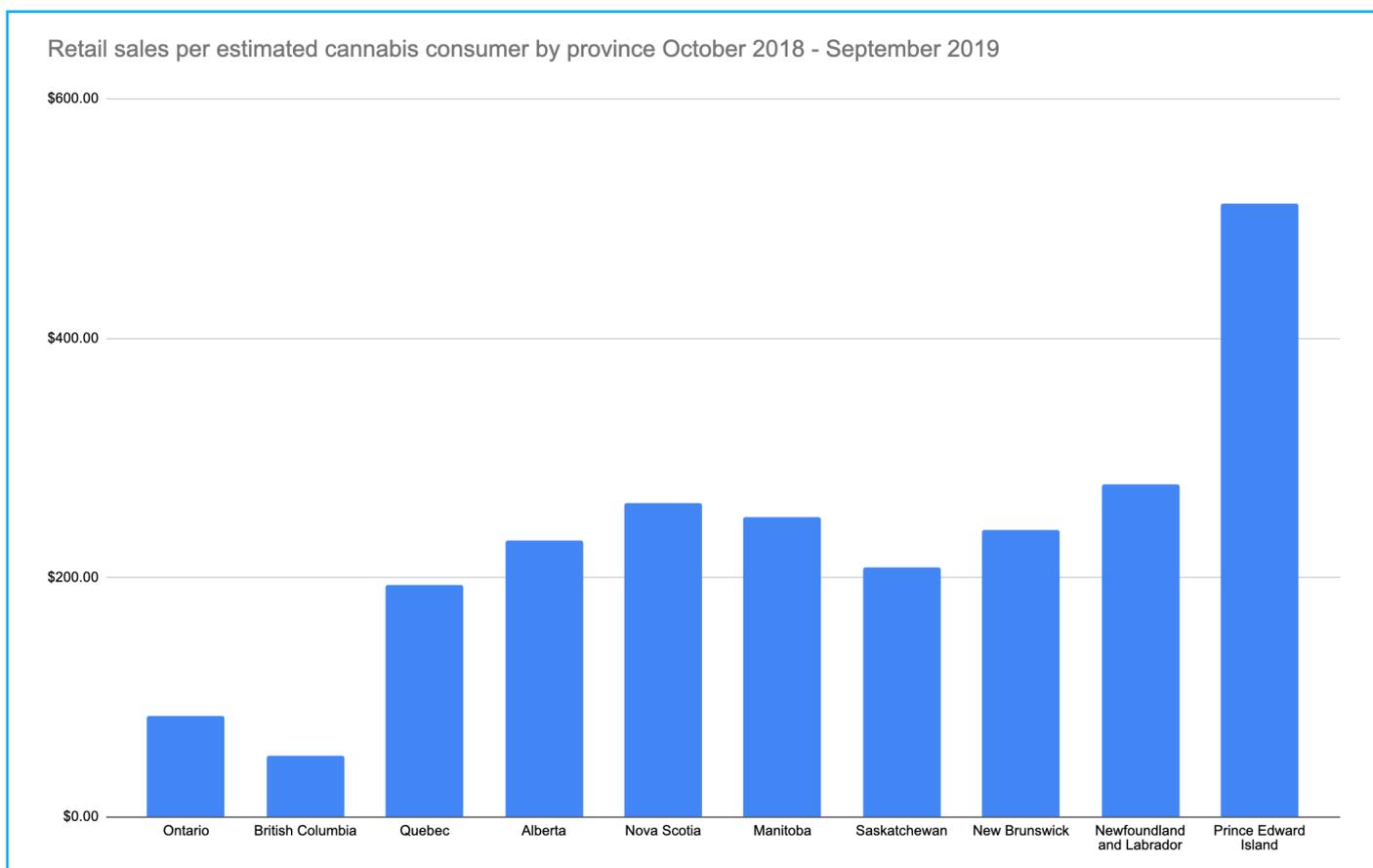
All provinces have designated government agencies that oversee the regulation of retail markets. In most cases, these are agencies that already had responsibility for overseeing alcohol regulation.

⁵ 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>

⁶ 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>

Some provinces have adopted a system of government-run retail stores, while others allow private companies to apply for a retail licence. Licence-holders are then subject to provincial regulations. In Ontario, the provincial government implemented an initial cap of 25 retail licences across the province. This has since gradually been lifted, partly due to problems linked to under-supply but also as part of a phased approach. As part of this, the province also limited the amount of retail licences that could be allocated per applicant (whether an individual or a company).⁷

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 Canopy Growth and AgMedica.⁸ However, new legislation approved in March 2020 is beginning to pave the way for the registration of suppliers and licensing of cannabis retail operations.⁹ Online sales (which in most provinces are government-only) have made up progressively less of total sales revenue in Canada as more bricks and mortar stores have become available. Online sales in September 2019 were less than half of the \$17,166,000 spent across Canada in October 2018.¹⁰



Data sourced from Statistics Canada¹¹

As of February 2020, Alberta had the highest number of retail stores in operation (415). Except for the

⁷ 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>

⁸ 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>

⁹ 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>.

¹⁰ 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>

¹¹ 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>.

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>

Northwest Territories, 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 \$7,500, and a further \$1,500 for the first year of the licence and every year at renewal.¹² By contrast, in Alberta, application fees are just \$400 while licence fees are \$700.¹³

The location of retail stores is also subject to regulation. In Ontario regulations specify the maximum number of retail stores allowed in each area of the province.¹⁴ 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.¹⁵

Licences for retail stores are also subject to municipal zoning requirements, and local municipalities may opt to prohibit retail stores entirely. While this helps ensure local communities have an influence on how cannabis retail operates in their area, it risks inhibiting access to legal cannabis markets for consumers in areas where no, or very few, stores are allowed. Ontario has sought to counter this by providing \$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.¹⁶ Nevertheless, overall the availability of cannabis remains uneven: in July 2019, the average distance for Canadian residents to the nearest cannabis store was 34km.¹⁷

Marketing and design

Product marketing is strictly regulated at the federal level. The Cannabis Act prohibits promotion of cannabis by appealing to young people, by means of an endorsement, or by associating cannabis use with ‘glamour, recreation, excitement, vitality, risk or daring’.¹⁸ Similarly, products are prohibited from creating the impression of ‘health or cosmetic benefits’ (except where they are licensed and relevant medical products).¹⁹

The federal Cannabis Regulations provide that containers must be opaque or translucent; they must prevent cannabis from being contaminated; keep the cannabis dry (if it’s dried cannabis); 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).²⁰ They also ban packaging from being bright or eye-catching in ways that detract from important health information required on the product. Health warnings are set out on the Canadian Government website and amended from time to time, with regulations requiring that these messages be displayed in rotation on containers to ensure their equal recognition.²¹

Consumption and possession

Under federal laws, adults are permitted to have up to four cannabis plants per residence. In the

¹² 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

¹³ 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

¹⁴ Government of Ontario. Cannabis Licence Act, 2018: Ontario Regulation 468/18. s8.1(2). <https://www.ontario.ca/laws/regulation/180468#BK10>.

¹⁵ Saskatchewan (2018). The Cannabis Control (Saskatchewan) Regulations. s5-1(2). <https://www.saskatchewan.ca/government/cannabis-in-saskatchewan>

¹⁶ City of Toronto (2018). 2018 Cannabis Legalization. <https://www.toronto.ca/city-government/council/2018-council-issue-notes/cannabis-legislation/>

¹⁷ 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>;

¹⁸ Government of Canada (2018). Cannabis Act (S.C. 2018, c. 16). s17(1). <https://laws-lois.justice.gc.ca/eng/acts/C-24.5/>

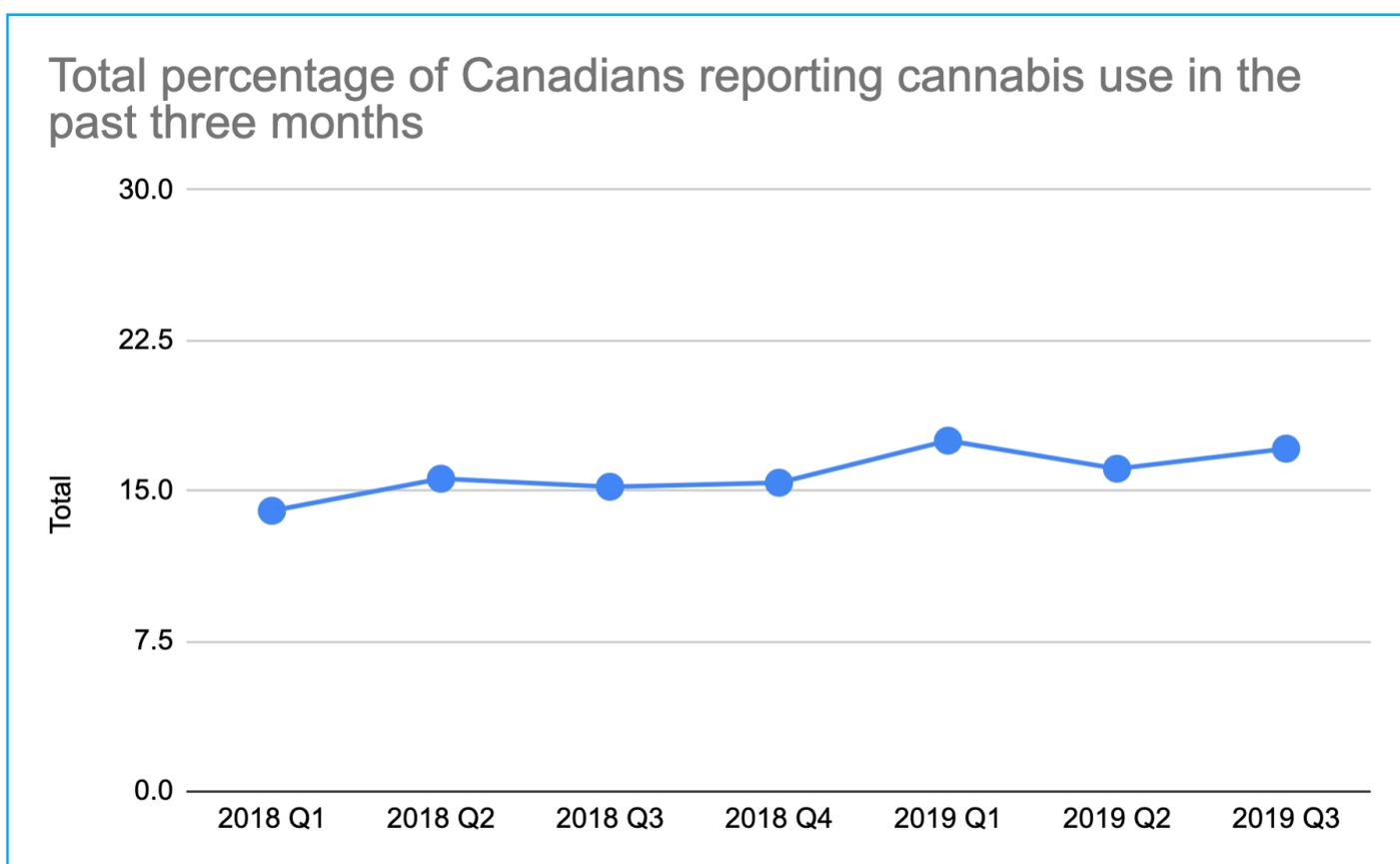
¹⁹ Cannabis Regulations, s104.12, 104.14.

²⁰ Cannabis Regulations, s108.

²¹ Cannabis Regulations, s123(4).

majority of provinces, this limit has been kept, but home growing has been regulated. In contrast, Quebec and Manitoba have sought to prohibit home growing entirely. Federal regulation also allowed provinces to individually determine age-access thresholds and, in all provinces bar two (Quebec and Manitoba), the minimum age for purchase and possession of cannabis was set at the equivalent age for alcohol in the area.

The federal limit of possessing no more than 30g dried cannabis in public is unchanged across provinces. However, provinces have sought to restrict where cannabis may be consumed. In Ontario, cannabis may be smoked or vaped in sidewalks and parks (although this may be further restricted by local municipalities).²² In contrast, smoking or vaping cannabis is prohibited on sidewalks in Saskatchewan, and parks in British Columbia.²³ Prohibiting consumption on (or near) school properties is a common restriction, although in Québec it is also prohibited to possess cannabis on the grounds of schools, or universities (except student residences).²⁴ 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. This is to ensure that school authorities are encouraged to enforce consumption laws.²⁵



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

Assessment

Statistics Canada has been collating self-reported consumption and purchasing data since the beginning of 2018. While there are methodological issues with this data (particularly response bias), it

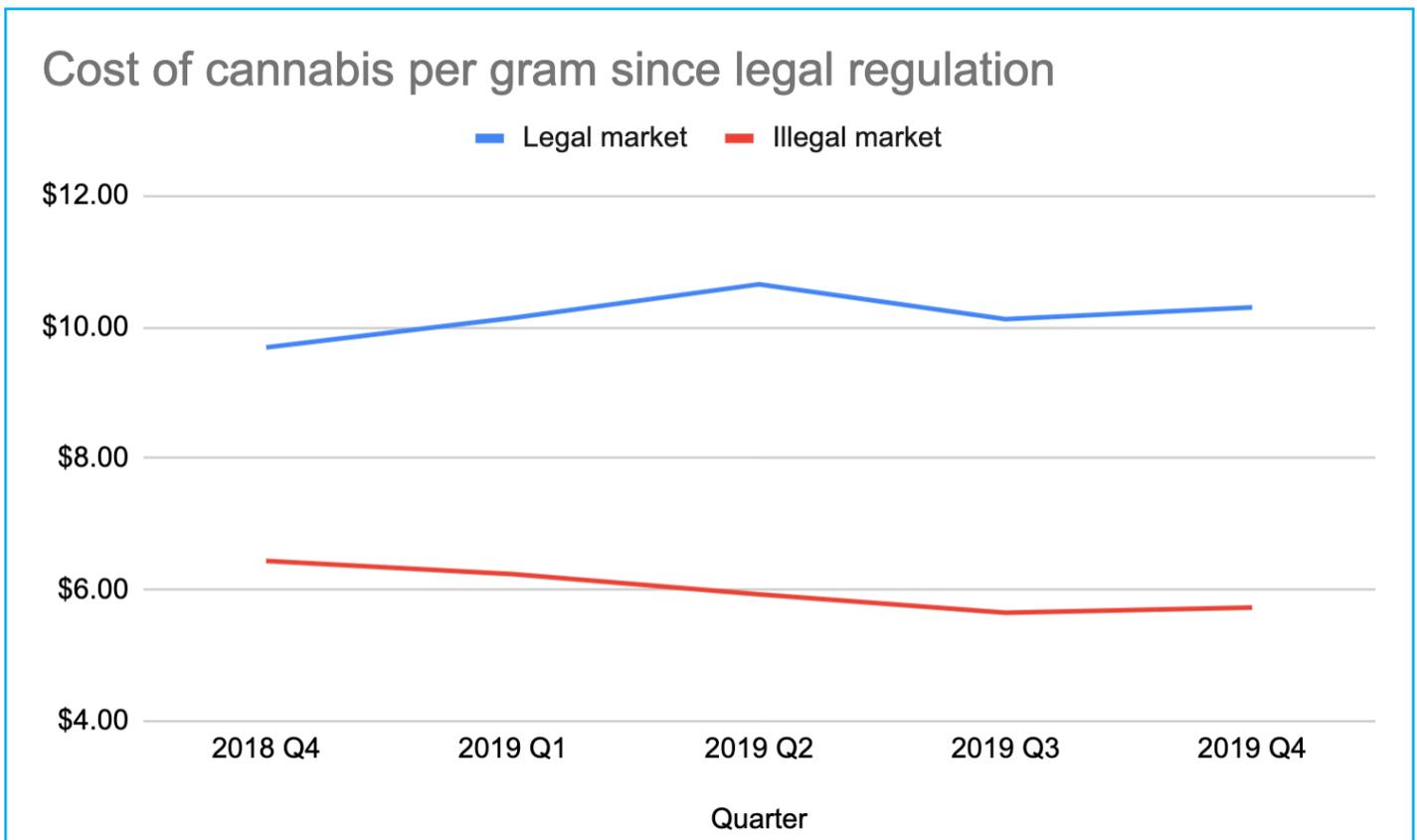
²² Government of Ontario (2019). Cannabis laws. <https://www.ontario.ca/page/cannabis-laws>

²³ 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>

²⁴ Encadrement du Cannabis au Québec. The legislation on cannabis. <https://encadrementcannabis.gouv.qc.ca/en/loi/loi-encadrant-le-cannabis/>

²⁵ British Columbia (2018). Cannabis Control and Licensing Act. s68(1). <http://www.bclaws.ca/civix/document/id/complete/statreg/18029#section61>

indicates that there has been no sharp rise in levels of consumption. This is also true among younger populations, with figures even suggesting that consumption rates among 15 to 17 year olds have fallen since cannabis was legally regulated.²⁶



Source: Statistics Canada (2018-2019). 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 this has been partly driven by comparatively high prices for legal cannabis.²⁷ By the fourth quarter of 2019, the average price of cannabis on the illegal market was less than the previous year (\$5.73, compared to \$6.44), whereas the average price of cannabis on the legal market was slightly higher (\$10.30 up from \$9.69). This means the price gap was wider after a year than it had been shortly after legalisation.²⁸ Nevertheless, inroads have been made into illegal sales. 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’.²⁹ Separate estimates from Brock University have similarly suggested that 30% of the market is now made up in legal sales.³⁰

There has been criticism over the retention of criminal penalties for behaviours outside the scope of regulations — including possession over the limit. The severity of such penalties varies between provinces. In Quebec, a minor found in possession of cannabis may be subject to a fine of \$100, while in Saskatchewan, they may be fined \$2,000.³¹ Much stricter penalties are applied for failure to

²⁶ 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>

²⁷ Statistics Canada (2019). National Cannabis Survey, third quarter 2019. <https://www150.statcan.gc.ca/n1/daily-quotidien/191030/dq191030a-eng.htm>

²⁸ Statistics Canada (2019). Crowdsourced cannabis prices. <https://www150.statcan.gc.ca/n1/daily-quotidien/200123/dq200123c-eng.htm>

²⁹ 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>

³⁰ 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-first-anniversary-in-canada-whats-next-124871>

³¹ Encadrement du Cannabis au Québec (2020). The legislation on cannabis. <https://encadrementcannabis.gouv.qc.ca/en/loi/loi-encadrant-le-cannabis/>; Saskatchewan (2018). The Cannabis Control (Saskatchewan) Act. s2-1. <https://www.saskatchewan.ca/government/cannabis-in-saskatchewan>

comply with licensing conditions, including unauthorised sale.

There has also been criticism of the failure to incorporate comprehensive social equity measures. For example, little has been done to support access to the retail market among social groups who were disproportionately impacted by cannabis prohibition. Neither was there scope in the original legislation for the expungement of criminal records. This has also led to concerns in relation to the power now being afforded to large, corporate producers — often at the expense of smaller suppliers, and those who were previously subject to criminalisation for supply.

Federally-licensed Canadian producers have been able to profit heavily from the new industry, which has in turn allowed them to position themselves to capture the developing international cannabis market. Market capture by multinational, often Canadian, corporations has drawn particular criticism in South America. There is increasingly widespread, and justifiable, concern that legal reform which should have achieved wider social justice goals may create new inequalities, as well as opportunities for corporate capture of policymaking. This wariness over powerful corporate cannabis entities and their power to shape national and international markets has been heightened by the investment of tobacco and alcohol companies in a number of the larger cannabis companies.

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.³² Similarly, effective monitoring, evaluation and sharing of best practice between countries planning, or implementing, reform, will be essential to developing policies that achieve the best social outcomes.

³² 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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