

Opportunities and Risks Arising from the Legalization of Recreational Cannabis

March 29, 2018

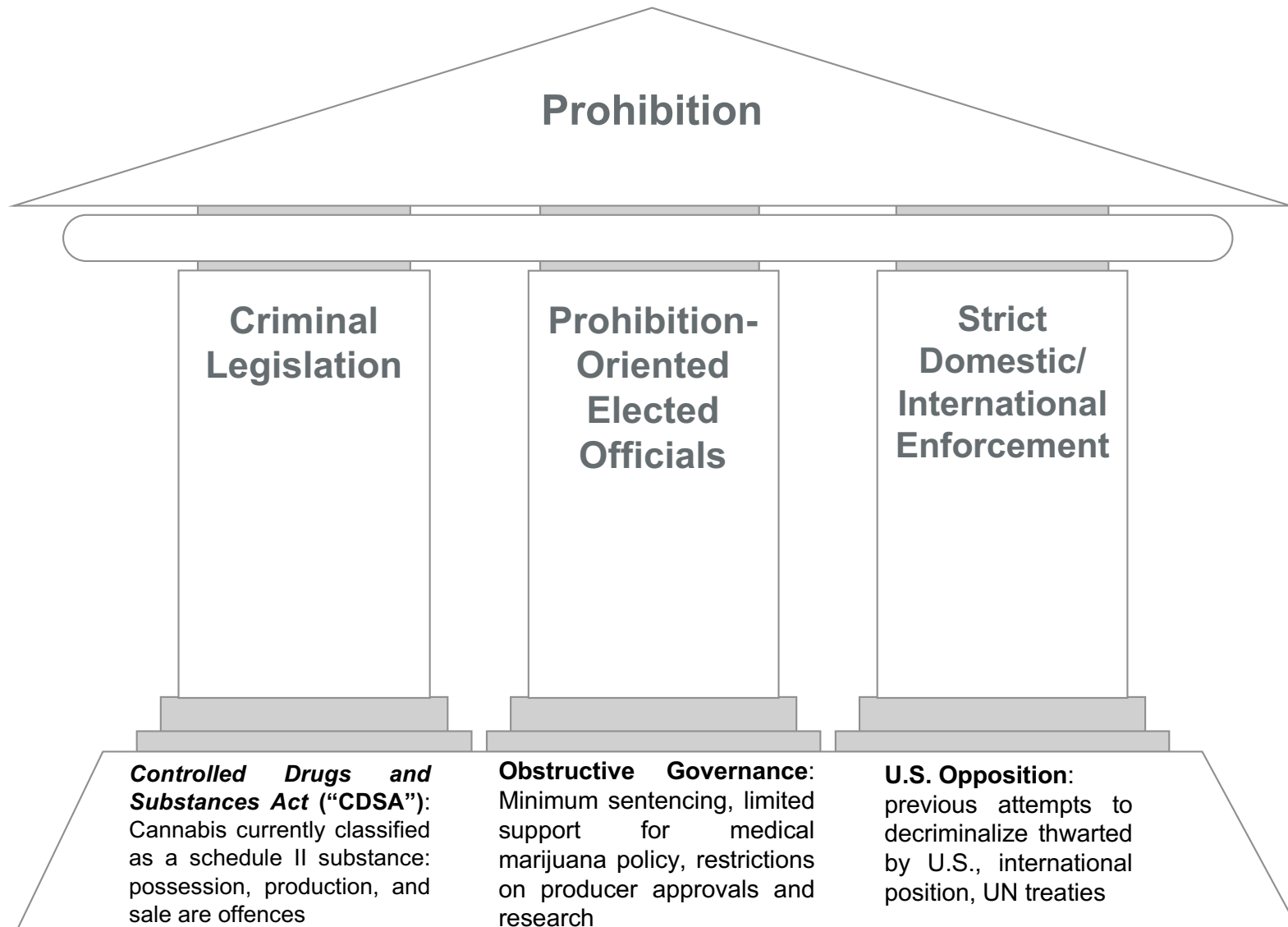


The Canadian Cannabis Market

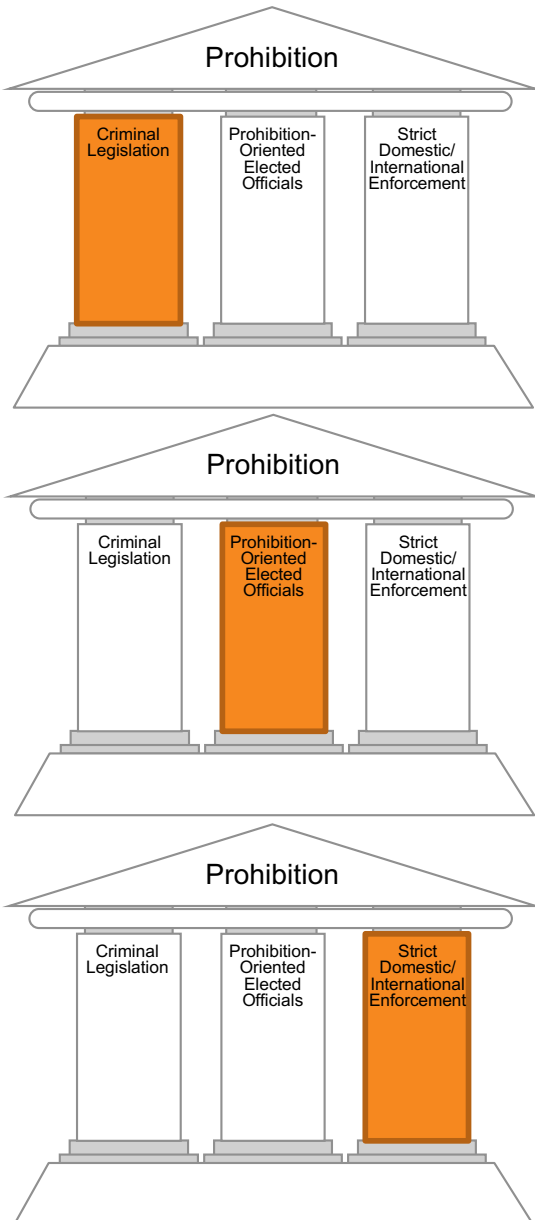
Greg Turnbull, QC



The Past: Cannabis Prohibition in Canada since 1923



The Present: Disruption of the Prohibitionist Approach



Key Disruptive Trends

- **Charter Challenges:** since as early as 2000, appellate courts have consistently found medical users have a right of access to a safe supply of cannabis
- ***Marihuana For Medical Purposes Regulations* (“MMPR”):** Due to the unconstitutionality of previous regulations, the Federal Government introduced the MMPR regime under the CDSA in 2014; this has enabled large-scale commercial production of marijuana for medical consumption
- **Electoral Change:** On October 19, 2015, campaigning on a platform openly calling for cannabis legalization, the Liberal Party of Canada defeated the incumbent Conservative Party—under Conservative Leadership despite receiving over 1,400 applications for an MMPR production license, only 27 licensed producers had been approved
- **Rising Enforcement Costs:** Statistics from B.C. indicate 47% of all possession incidents are resolved without criminal charges and in 2013, the Canadian Association of Chiefs of Police urged the Minister of Justice to amend the CDSA to provide authority to issue tickets rather than enforce possession laws
- **U.S. “Legalization”:** Over 50% of the U.S. population now supports legalization and Colorado, California, Nevada, Massachusetts, Washington State, Alaska, Oregon, Vermont and Washington, D.C. have, or are planning to enact some form of legalization of recreational marijuana while 29 states have legalized cannabis for medical purposes.



New Market Opportunities

The Future: Shift Towards Cannabis Legalization

New Policy Objectives

- Prevent access by young persons
- Reduce burden of enforcement and prosecution for minor possession offences
- Deny a revenue stream for organized crime
- Increase tax revenue
- Align policy and associated costs with actual harms^[1]

Liberal Cannabis Policy Shift

Policy Preference

Legalize

Outcome:
Legalization refers to the abolition of laws prohibiting possession and personal use of marijuana and allows the government to regulate and tax its use and sale

Decriminalize

Outcome:
Decriminalization refers to the loosening of criminal penalties imposed for personal marijuana use even though the manufacturing and sale of the substance remain illegal

^[1] Liberal Party of Canada, "Marijuana", 2015 Electoral Platform, online: <<https://www.liberal.ca/realchange/marijuana/>>.

Current Legal Framework









Legal Standing of Current Cannabis Suppliers

The *Access to Cannabis for Medical Purposes Regulations* came into effect and replaced the MMPR as of August 24, 2016.

	Current Players	Legal Standing	Enforcement Stance
Legal, Heavily Regulated	ACMPR Licensed Producers (Medical Marijuana)	Legal: permitted to cultivate, possess, and sell to customers with appropriate medical documentation	Work in tandem with authorities: producers work with police, medical licensing authorities, and Health Canada
	Personal Use Growers	Illegal: cultivation, sale, and possession remain illegal under the <i>Controlled Drugs and Substances Act</i> ("CDSA")	Low police enforcement priority: recreational users more likely to receive caution rather than to be charged by police
Illegal, unregulated	Dispensaries/ Cannabis Clubs	Illegal: cultivation, sale, and possession remain illegal under the CDSA	Low police enforcement priority: inconsistent enforcement, but raids do occur where there are sales to minors or ties to other crimes
	Organized Criminal Enterprises	Illegal: cultivation, sale, and possession remain illegal under the CDSA	Highest police enforcement priority: police have diverted majority of enforcement efforts to criminal enterprises

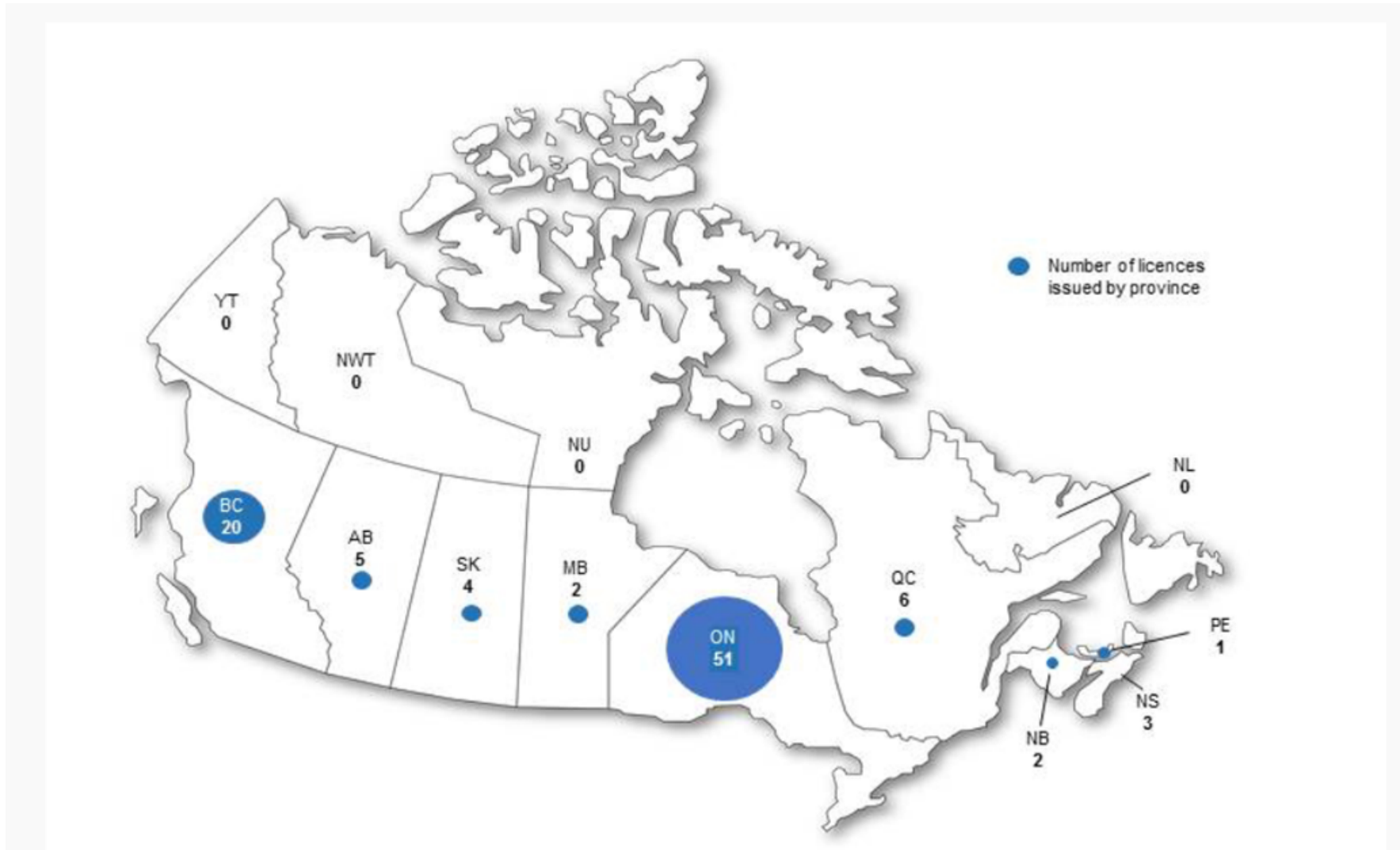
Current Medical Marijuana Market

Sizing The Medical Marijuana Market

Licensed Producers		Publicly Traded		Retail Market Size	
<ul style="list-style-type: none"> There are currently 94 licensed producers of marijuana 20 of these licensed producers are based in British Columbia 5 of these licensed producers are based in Alberta 		<ul style="list-style-type: none"> 23 of these licensed producers are publicly listed companies Market capitalization exceeds \$12 billion 		<ul style="list-style-type: none"> The value of the Canadian medical marijuana market is expected to be \$1.3 billion by 2024 (status quo)^[2] 	
 TSXV:OGI	 TSXV:THCX	 TSXV:EMH	 TSXV:CGC	 TXV:APH	 CSE:ACB
Private Alberta Licensed Producers or Applicants					
					

^[2] Marijuana for Medical Purposes Regulations, SOR/2013-119 Canada, "Regulatory Impact Analysis Statement", online: <<http://gazette.gc.ca/rp-pr/p1/2012/2012-12-15/html/reg4-eng.html>>.

Authorized Licensed Producers of Cannabis



The Current Medical Marijuana Model

Regulation of the Retail Value Chain



Health Canada conditional "Ready to Build Letter" allows LP to seek financing

Inputs/Start-up Requirements	Production	Marketing/Sales	Channels/Distribution	Service
<p>Pre-License Inspection Health Canada must confirm no risks to public health, safety, and security</p> <p>Storage/Security Health Canada imposes storage/security requirements</p> <p>Sanitation LPs must maintain a sanitation program with a designated QA person</p> <p>Personnel Checks Security Clearances must be obtained for certain key employees</p> <p>Seeds and Inventory MMPR allows an LP to purchase seeds and dried marijuana from another LP by a written order</p>	<p>Sow/Harvest Record LP must record dates of propagation, seed sowing, and harvest as well as an inventory record of at the end of each quarter</p> <p>Pest Control LPs must operate an integrated pest management program</p> <p>Analytical Testing LPs must test for contaminants and percentages of <i>delta-9-tetrahydrocannabinol</i> and <i>cannabidiol</i></p> <p>Packaging/Labelling Strict lot ID, branding, child proofing, expiry, and sanitation requirements</p>	<p>Client Identification LP must only sell to persons ordinarily resident in Canada and must gather name and address information</p> <p>Client Documentation LP must obtain the original prescribing medical document as well as a client statement</p> <p>Verification Required LP must verify the medical document and the prescribing practitioner</p> <p>Registration Required Client to be registered and verification of registration by LP sent with a unique client identifier</p>	<p>Order Required LP must receive a written, or a recorded verbal order with the unique client identifier</p> <p>Payment System Online orders typically fulfilled through Credit Card, Bill e-Payment, money order, or cheque</p> <p>Shipping Physical transfer of possession can only occur by shipping</p> <p>Accompanying Documents LP must include a Health Canada document and client-specific info document with each order</p>	<p>Product Monitoring Appointed QA person responsible to receive client complaints</p> <p>Recall System Capability to recall any lot of marijuana and report all recalls and any adverse product reactions to Health Canada</p> <p>Client Validity LP must monitor validity of client registration and is required to refuse orders in certain circumstances</p> <p>Requests for Client Information Upon demand to Health Canada and Police authorities</p>

Continuous Requirements

- Record Keeping / Record Retention
- Ministry Spot Checks / Requests for Information
- MMPR Good Production Practices

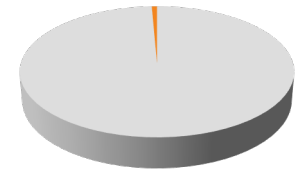
Sizing The Potential Recreational Marijuana Market in Canada

Significant Growth Potential – acknowledge pressures on Health Canada

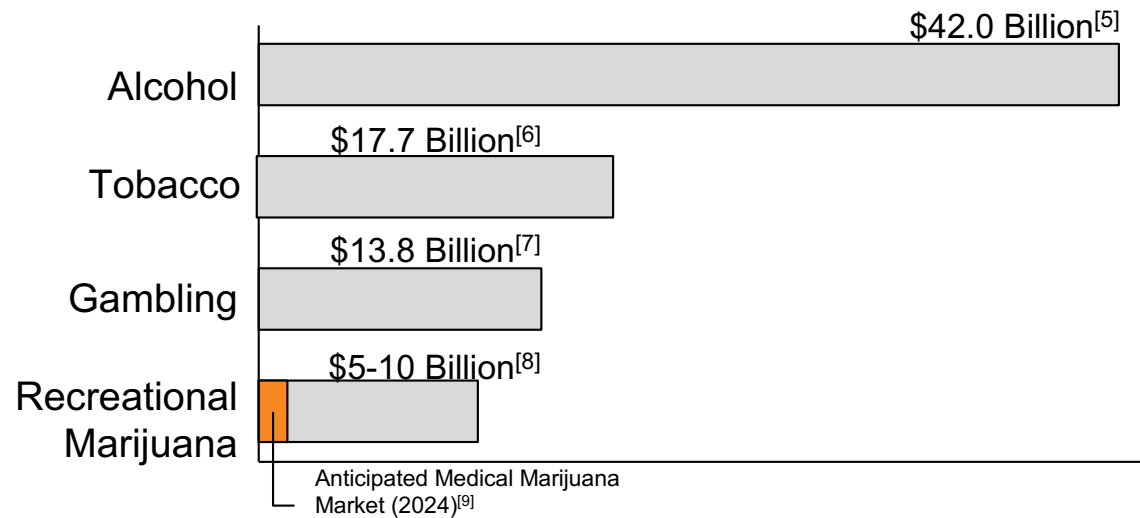
Following legalization, an estimated 1 in 3 Canadians over the age of 18 will be a consumer^[3]



Of the estimated 8 million Canadians who purchased marijuana in 2015, only 55,180 did so legally through a licensed producer^[4]



Estimating the Size of Recreational Marijuana Market



^[3] Ashley Csanady, "As many as seven million possible customers for legal weed in Canada as support hits new heights: Poll", *National Post* (9 November 2015), online: <http://news.nationalpost.com/news/canada/as-many-as-seven-million-possible-customers-for-legal-weed-in-canada-as-support-hits-new-heights-poll>.

^[4] Pete Evans, "20% of Canadians smoked pot last year, but more than 30% would if legal, poll suggests", *CBC News* (10 November 2015), online: <http://www.cbc.ca/news/business/marijuana-pot-poll-survey-1.3312151>.

^[5] Agriculture and Agri-Food Canada, "Consumer Trends: Wine, Beer and Spirits in Canada", *Agriculture and Agri-Food Canada Market Indicator Report* (September 2013), online: <http://www5.agr.gc.ca/resources/prod/Internet-Internet/MISB-DGSIM/ATS-SEA/PDF/6476-eng.pdf>.

^[6] MarketLine, "Tobacco in Canada", *MarketLine Industry Profile* (September 2015).

^[7] Katherine Marshall, "Gambling 2011" *Statistics Canada* (September 23, 2011), online: <http://www.statcan.gc.ca/pub/75-001-x/2011004/article/11551-eng.pdf>.

^[8] Bruce Cheadle, "Legal pot taxes could add \$5B a year to government coffers, CIBC says", *CBC News* (28 January 2016), online: <http://www.cbc.ca/news/politics/pot-revenue-government-5-billion-1.3423705>.

^[9] *Marihuana for Medical Purposes Regulations*, SOR/2013-119 Canada, "Regulatory Impact Analysis Statement", online: <http://gazette.gc.ca/rp-pr/p1/2012/2012-12-15/html/reg4-eng.html>.

The Government of Canada is helping to build a world class cannabis industry.

- Canada's target is to provide regulated and restricted access to cannabis no later than September 2018.
- If successful, Canada will become only the second nation in the world to legalize both medical and recreational marijuana. (Uruguay was the first)
- Forecast total demand for marijuana will be approximately 800,000 kilograms (kg) in 2018. This equates to a market value of approximately \$6.0 billion. To satisfy this requirement, a whole new industry is being built from the ground up.
- Canada is not the only country with a more liberal view toward marijuana.
- A growing number of countries – Germany, Australia, Switzerland, Netherlands, Italy, Denmark, South Africa - are not prosecuting individual cannabis users, and many jurisdictions have made publicly reported statements suggesting a move toward legalized cannabis for medical purposes or the decriminalization of marijuana in some capacity.

Supply/Demand

- Forecast total demand for medical and recreational marijuana to be approximately 800,000 kg in 2018. Despite an aggressive build-out, analysts forecast that licensed producers will exit 2017 with marijuana production capacity of just over 100,000 kg/year, which will not nearly be enough to fulfill near-term demand. No supply/demand equilibrium is expected until late 2020.
- More than \$4 billion in financing has been raised in the cannabis industry since January 2014, and the majority of these funds have been directed at expanding existing facilities or building new ones. The production shortfall will result in product shortages and retail price volatility. As a result, I believe the illicit market will continue to be a principal source of supply for the majority of recreational users for the foreseeable future.

Bill C-45

Proposed Cannabis Act

- The proposed *Cannabis Act* provides a strict legal framework to control the production, distribution, sale, and possession of marijuana across Canada.
- The objectives of the *Cannabis Act* are to prevent young people from obtaining cannabis and to reduce criminal activity by imposing serious penalties for those operating outside the legal framework. The legislation takes into account many of the recommendations from the Task Force on Cannabis Legalization and Regulation report, “A Framework for the Legalization and Regulation of Cannabis in Canada,” which was released in December 2016.

Bill C-45 – continued

Proposed Cannabis Act

House of Commons

- First Reading – April 13, 2017
- Second Reading – June 8, 2017
- Committee Review
- Committee Reporting the Bill with Amendments – October 5, 2017
 - Fundamental Change – Item 1 of Schedule II of the Controlled Drugs and Substances Act will be repealed.
- Third Reading – November 27, 2017

Senate

- First Reading – November 28, 2017
- Second Reading – approval in principle (vote 44 – 29) on March 22, 2018
 - 5 senate committees to report back by May 1, 2018
- Final debate and vote by Senate – June 7, 2018
- Anticipated legalization date 8 – 12 weeks later (i.e. August – September, 2018)

Bill C-45 – continued

Proposed Cannabis Act

- The Minister of Justice can authorize the possession, production, distribution, sale, importation, and exportation of cannabis, and can suspend, amend, or revoke those authorizations when warranted.
- Holders of existing licences relating to medical marijuana under the Access to Cannabis for Medical Purposes Regulations (ACMPR) will automatically be licensed under the Cannabis Act with respect to both medical and nonmedical activities.
- Separate access to cannabis for medical purposes is maintained, including a provision that import and export licences and permits will only be issued in respect of cannabis for medical or scientific purposes.
- Provinces and territories will be responsible for distribution and retail sales.
- In provinces that have not established a regulated retail framework, individuals will be able to purchase cannabis online from a federally licensed producer with secure home delivery through the mail or by courier.
- Legal sales of marijuana will be restricted to people 18 years of age and over; however, provincial governments have the discretion to increase the minimum legal age.

Bill C-45 – continued

Proposed Cannabis Act

- Adults will be legally able to possess up to 30 grams of legal cannabis in public and will be allowed grow up to four plants per household to a maximum height of one metre from a legal seed or seedling.
- There will be restrictions on promoting, packaging, and labeling cannabis and cannabis accessories, similar to the restrictions applicable to tobacco products under the Tobacco Act.
- Until the new law comes into force, cannabis will remain illegal everywhere in Canada, except for medical purposes.
- The Act will create new cannabis-related offences targeting individuals who distribute or sell cannabis to Canadian youth. These new proposed offences carry a maximum penalty of 14 years' imprisonment.

An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to the other Acts – published April 13, 2017

The Criminal Code will be amended to modernize and simplify the transportation provisions, strengthen the criminal law responses to impaired driving, and facilitate the effective and efficient investigation and prosecution of drug and alcohol-impaired driving.

House of Commons

- First Reading – April 13, 2017
- Second Reading – May 31, 2017
- Committee Review
- Committee Reporting – October 25, 2017
- Third Reading – October 31, 2017

Senate

- First Reading – November 1, 2017
- Second Reading – December 14, 2017
- Referral to Committee December 14, 2017
- Decision to suspend study of Bill C-46 until May, 2018 in order to focus on Bill C-45 (and deal with criminal code provisions first)

- December 11, 2017- An agreement with the federal government that would see the majority of cannabis revenue flow to the Provinces was reached.
- The federal and provincial governments have agreed to a 75/25 revenue split, with the provinces receiving 75% of cannabis-specific tax revenue, and the federal government receiving 25%. The federal government has also agreed to a \$100-million cap on its share of the tax revenue. Any revenue collected by the federal government above the \$100-million cap would be returned to the provinces.
- The proposed cannabis-specific tax will not exceed \$1 per gram or 10% of the final producer's selling price, whichever is higher.
- Upstream as an excise tax - similar to the federal excise taxes on other controlled substances, such as liquor and tobacco.
- The First Nations have raised concerns over their ability to share in the cannabis taxation revenues.

Retail Distribution

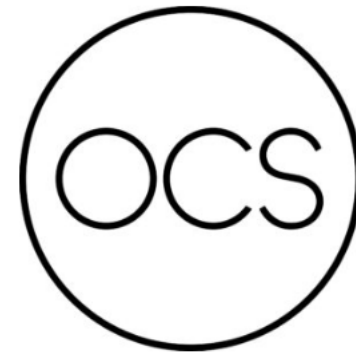
Though the provinces will be responsible for retail distribution of marijuana once it is legalized, it is not clear whether they will be ready to fulfill that role. All provincial governments are studying what the best retail model will be for their jurisdictions.

Ontario

Announced framework on September 8, 2017 - government will control all aspects of retail cannabis distribution, including online distribution.

Industry proponents that have been leading the fight to get recreational marijuana legalized have been totally excluded from the retail distribution channel.

Expect to have 40 stores ready for this summer.



Retail Distribution

Alberta

- Announced retail framework on October 9, 2017, with more details announced on February 16, 2018
- Plans to go with the private retail model with the government controlling wholesale distribution
- Put policies into place before July 2018
- Retail cannabis licence applications commenced on March 6, 2018

- Goals:
 - Keep cannabis out of the hands of children
 - Protect public health
 - Promoting safety on roads, in workplaces and in public spaces
 - Limiting the illegal market for cannabis

- Alberta will directly manage wholesale and distribution (like alcohol)
- Cannabis standalone stores – no alcohol, tobacco or pharmaceuticals
- Over 18 years
- Possess up to 30 grams of legally produced cannabis in public
- Consume at home and in public spaces where smoking is allowed
- Grow at home indoors – 4 plants, maximum height of 100cm

Impact of Municipal Laws

- Business licenses and by-laws for locations

Retail Distribution

British Columbia

- Released the first policy decisions on cannabis regulation on December 5, 2017
- Minimum age to possess, purchase and consume cannabis will be 19
- BC will have a government-run wholesale distribution model - BC Liquor Distribution Branch (LDB) will be the wholesale distributor of non-medical cannabis
- Establishing a retail model that includes both public and private retail opportunities
- LDB will open the first government-operated non-medical retail store by late summer
- E-commerce model for on-line stores
- Liquor Control and Licensing Branch (LCLB) will be responsible for licensing and monitoring the retail non-medical cannabis sector
- Rules governing the non-medical cannabis retail stores will be similar to those currently in place for liquor retail stores.
- Public and private retailers will have similar operating rules.

Retail Distribution

British Columbia

- Non-medical cannabis retail will not be co-located with any other business, such as liquor stores or pharmacies.
- Non-medical cannabis retail stores must be a self-contained business – no exceptions for rural stores, similar to rural liquor stores
- Public and private non-medical cannabis retail stores will be permitted to sell dried cannabis and cannabis accessories – rolling papers, holders, pipes, bongs; cannabis edibles are expected to be available within 12 months of legalization
- Retailers allowed to sell a maximum of 30 grams of dried cannabis to an individual at one time
- Private retail stores will not be permitted to offer online sales.
- Minors will not be permitted to enter non-medical cannabis retail stores

Marijuana in the Workplace

Will Cascadden



FEDERAL GOVERNMENT TASK FORCE

“A Framework for the Legalization and Regulation of Cannabis in Canada: The Final Report of the Task Force on Cannabis Legalization and Regulation”

MARIJUANA IN THE WORKPLACE

Task force said that regulators will need to:

- Facilitate and monitor ongoing research on cannabis and impairment, considering implications for occupational health and safety policies.
- Work with existing federal, provincial and territorial bodies to better understand potential occupational health and safety issues related to cannabis impairment.
- Work with provinces, territories, employers and labour representatives to facilitate the development of workplace impairment policies.

MARIJUANA IN THE WORKPLACE

What employers should do:

- Prepare for legalization – employees will use (continue to use) marijuana.
- Modify policies to expressly deal with employee marijuana use (similar to alcohol),
 - no work while under the influence,
 - no possession or use in the workplace,
 - testing and implications of positive test.
- Ensure that all impairing drugs (legal, illegal, prescription) are addressed.
- Communicate policies and train employees and supervisors.

MARIJUANA IN THE WORKPLACE

Issues:

- Employees working in safety-sensitive positions vs. employees not working in such positions.
- Medical prescriptions and accommodation (disclosure required?).
- Employee addiction and dependency.
- Poor performance by employees working in non-safety sensitive positions.
- Is “zero tolerance” acceptable?

GENERAL ISSUES AND PROBLEMS

- Testing.
- Measuring Current Impairment.
- Transition (from now to actual legalization).
- Do people have the “right” to use marijuana?

Questions



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