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Recommendations for Marijuana Legalization and Regulation in Canada

by

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EXECUTIVE SUMMARY

The federal government has confirmed its intention to proceed with the legalization and regulation of marijuana use, with appropriate checks; however, there is still discussion around how that specific system should look like.

Important political actors throughout the country like Ontario Premier Wynne and BC Minister of Health Terry Lake have argued that the liquor model offers a useful template to transitioning restricted but generally unproblematic substances like cannabis into a more acceptable, controlled and non-criminalized framework.

The objective of this report is to offer some possible direction to policymakers for an efficient and sustainable framework for legalized marijuana. There is of course a long list of policy designs to consider, but the primary focus of this report is on how to safely and effectively distribute and retail marijuana so that is done in the most socially responsible way possible. The key recommendations are:

- 1 Age controlled liquor stores should be the sole retailer for selling recreational marijuana in Canada. If provincial/territorial governments regulate the retail landscape through the existing liquor control mechanism the high level of compliance and safety of the liquor system can follow through to the marijuana retail system.
- 2 Provinces/territories should design their own distribution systems based on the current liquor model with the primary objective being public health and limiting black market sales.
- 3 Provincial/territorial liquor licensing control boards should manage distribution and licensing the retail operations in their respective jurisdictions.
- 4 Similar to the liquor industry, the federal government should manage and oversee the entire supply and distribution system by using “vetted” producers to ensure the safety and quality of all marijuana products and to instil confidence among the public.
- 5 The government should allow liquor boards to monitor and even control the retailing of marijuana.
- 6 Similar to the prohibition model, marijuana must be brought to the mainstream alongside low taxes and non-cumbersome regulation. Flexibility is necessary, since taxation rates and regulation will have to be amended once the legal market can bear higher prices.



CASE STUDY: LESSONS LEARNED FROM PROHIBITION IN CANADA

The legalization debate around marijuana in Canada should begin by taking into consideration lessons learned and current strategies in place from the country's first and only present legal controlled substance – liquor. Following the repeal of prohibition during the early 20th century, the federal, provincial and territorial governments regulated the production, distribution and retailing of alcohol. Most of these regulations are still in place today and Canada's liquor regulatory system is a model that should be used for introducing other legal controlled substances into the country, especially marijuana.

Post-Prohibition Liquor Regulations

Beginning in 1919 with Quebec, each province withdrew its liquor prohibition and created provincial liquor control boards to manage its sale and consumption. The mandate was not to prohibit drinking, but rather to facilitate moderate drinking while maintaining social order. Regulations were created to allow Canadians to consume alcohol through legal means and were adapted to suit changing conditions within each province.

From a post-repeal perspective, there are a few specific insights to be noticed:¹

- Liquor laws and regulations are widely obeyed by industry and consumers.
- Regulations were not perceived as restrictive by customers, at the end of prohibition people were happy they could legally enjoy liquor and generally deemed any restrictions as fair and reasonable.
- Alcohol regulations didn't focus on temperance but rather on addressing liquor as an element of society and including it in broader educational and health discussions about the implications of alcohol use.

Legalizing liquor in Canada and regulating it through provincial and territorial liquor control boards moved alcohol away from being an illicit and clandestine activity to a manageable aspect of the Canadian lifestyle.

The Legal Status of Liquor in Canada

At present, all provinces and territories within Canada maintain government monopolies over the wholesale distribution of liquor, and, with the exception of Alberta, all are the dominant retailers of alcohol in their respective jurisdictions. Within this basic structure of government control, however, there is substantial variation in how provinces manage liquor distribution. The majority of jurisdictions (eight of the 13 provinces and territories) use mixed systems involving private and government outlets to distribute alcohol, three jurisdictions (Prince Edward Island, New Brunswick and Northwest Territories) have exclusive government monopolies and one jurisdiction (Alberta) is wholly private.²

Lessons Learned from Prohibition

Provincial and territorial liquor systems have nearly a century of experience controlling the distribution of a controlled substance. Adding marijuana to the mandate means the established control infrastructure can manage the worst features of cannabis consumption that were rooted in illegality and focus on introducing it as a managed aspect of life in Canada. Marijuana, as with liquor, can benefit from government management of distribution and oversight of its manufacturing helping promote an approach that can address problems quickly, while calming the fears of everyday citizens.³

1 Levine, H.G. (2004). *Alcohol prohibition and drug prohibition. Lessons from alcohol policy for drug policy*. Retrieved from CEDRO: <http://www.cedro-uva.org/lib/levine.alcohol.html>

2 Thomas, G. (2012). *Analysis of Beverage Alcohol*. Canadian Centre on Substance Abuse.

3 Malleck, D. (2015, December 15). *Why should liquor control boards manage weed sales? The already know how*. Retrieved from The Globe and Mail: <http://www.theglobeandmail.com/opinion/why-should-liquor-control-boards-manage-weed-sales-they-already-know-how/article27757191/>

Key Recommendations

- Responsibility for defining production, supply and distribution regulations and permissible limits of marijuana consumption should lie with the federal government, with insights to be taken from post-prohibition liquor regulation.
- Similar to post-prohibition, production and supply regulation of marijuana should remain at the federal level (similar to the current situation for medical marijuana) to ensure uniform standards across the country. Federal control will be necessary for seamless coordination and regulation of national supply, with Health Canada monitoring production, facilities and product safety.
- Provinces and territories should design their own distribution systems through the pre-existing liquor control boards, with retail distribution through approved government controlled suppliers. The primary objective would be limiting black market sales through the development of a reliable community of suppliers, ultimately leading to the normalization of marijuana in society and the inclusion of it in discussions surrounding public health and safety.

A PRODUCTION AND SUPPLY FRAMEWORK FOR MARIJUANA IN CANADA

Government oversight and management of the entire marijuana production and distribution cycle will be imperative for ensuring quality control, maintaining consistent THC levels and for eliminating the criminal element of the current marijuana marketplace. Regulating the supply and distribution mechanism of the new recreational marijuana market will be crucial for earning the public's confidence around the safety, legality and growing of marijuana and marijuana-infused products. A major focus needs to be placed on marijuana quality control.

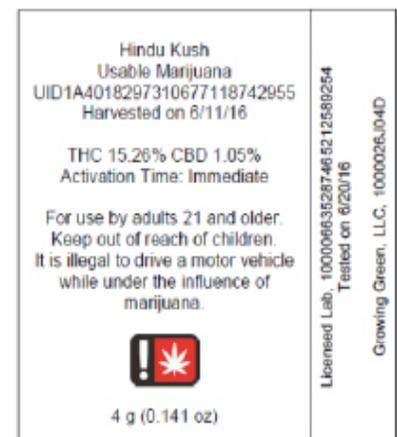
Labeling and Packaging Regulations

One of the most important elements for legalized marijuana in Canada will be providing consumers accurate information on what they are consuming. The great unknown with marijuana used today is the amount of Tetrahydrocannabinol (THC) included in each marijuana strain and marijuana-infused product. To eliminate this unknown, the government needs to implement federal regulations as to the labelling requirements of marijuana; a policy framework similar to that currently in place in the state of Washington should be used.

Strict labeling requirements must be met when selling marijuana and marijuana-infused products in the State of Washington, as all labels and packages must be approved by the Washington State Liquor and Cannabis Board (WSLCB).⁴

Usable Marijuana Requirements

- The business or trade name of the licensees that produced, processed and sold the marijuana or marijuana products.
- The 16 digit inventory ID number assigned by the WSLCB's traceability system, which must be the same number that appears on the transport manifest.
- Net weight in ounces and grams or volume as appropriate.
- If solvents were used, statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.
- Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.



Packaging and labelling requirements. (2016, May 18). Retrieved from Washington State Legislature: <http://apps.leg.wa.gov/wac/default.aspx?cite=314-55-105>.

Edible Marijuana Requirements

- “This product contains marijuana.”
- Date manufactured and best before date.
- Serving size and the number of servings contained.
- Total amount in milligrams of active THC or Delta 9 and Cannabidiol (CBD).
- List of all ingredients and major food allergens as defined in the Food Allergen Labelling and Consumer Protection Act of 2004.
- “Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours.

All marijuana and marijuana-infused products must not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act. These products must also include accompanying material that is attached to the package or is given separately to the consumer containing the following warnings:

- “Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health”
- “There may be health risks associated with consumption of this product”
- “Should not be used by women that are pregnant or breast feeding,”
- “For use only by adults twenty-one and older. Keep out of reach of children,” and
- “Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.”

A Suggested System for Marijuana Supply and Distribution

Regulating such stringent labelling and packaging requirements will ensure consumers are provided with accurate information regarding the marijuana product they are purchasing. However, ensuring Canada’s marijuana supply and distribution system is comprised of “vetted” producers in both the private and public sector will help to elevate the public’s trust in the Canadian marijuana system. Since the provincial and territorial liquor control boards are currently controlling Canada’s liquor supply and distribution system, regulating the supply and distribution of another controlled substance, such as marijuana makes regulatory and common sense.

A Model for Marijuana Licensing

The federal, provincial and territorial governments should look to current provincial/territorial policies on retail liquor licenses as a starting point. We believe it is key that both the private and public systems have a role in the new licensing regime. In addition, license penalties should also be created from the basis of current liquor policies and regulations in Canada. For example, all private liquor store owners in the Province of British Columbia are subject to criminal record checks and can be denied their request for or stripped of their license following a serious criminal conviction or administrative contravention.

Another system that measures “suitability” is the Washington State Liquor and Cannabis Board. It does criminal history checks on marijuana license applicants and uses a points system to determine if the applicant qualifies for a license or not. The board will not issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below. In addition, the board will not issue a marijuana license to a person who has three or more public safety violations, four or more regulatory violations, or one or more license violations.⁵

Description	Points Assigned
Felony conviction	12 points
Gross misdemeanor conviction	5 points
Misdemeanor conviction	4 points
Currently under federal/state supervision for a felony conviction	8 points

⁵ Marijuana Licenses, Application Process, Requirements, and Reporting. (2016, May 18). Retrieved from Washington State Legislature: <http://apps.leg.wa.gov/wac/default.aspx?cite=314-55&full=true#314-55-040>



Key Recommendations

- Provincial liquor Licensing control boards should manage distribution and the licensing of retail operations in their respective jurisdictions. Ongoing compliance will be ensured through a required renewal process for all license classes.
- To ensure criminal activity and black market products are excluded, regulations should be in place for criminal record checks and strict quality control mechanisms for all license applicants and holders.
- Similar to the liquor industry, the federal government should manage and oversee the entire supply and distribution system by using “vetted” producers to ensure the safety and quality of all marijuana products and to instill confidence among the public.

COMPLIANCE AND SAFETY

The issue of compliance and safety must be a central goal of any new system that will distribute and retail recreational marijuana. The following compliance objectives should be at the core of this new system: 1) keep marijuana out of the hands of underage children and youth; 2) legalize, legitimize, and tax profits and eliminate the illicit black market elements; 3) ensure Canadians are well informed on the health implications of marijuana use and are educated to avoid excessive use and understand the risks involved; and 4) monitor the program by collecting baseline data and inform the public on how the system is performing.

The current liquor control system has an excellent track record of compliance and safety when it relates to controlled substances. In fact many of the principles of compliance that are stated around the legalization of marijuana can find their roots in the alcohol control regime and we should follow and learn from this system as a guide for the introduction of recreational marijuana. It is useful to look at how compliance evolved from the era of prohibition. From a post-repeal perspective, there are a few specific insights to be noticed:⁶

- Most alcohol laws and regulations are obeyed. Liquor stores stop serving at the required hours; they observe regulations regarding minimum pricing levels, age compliance, security requirements, in short the industry is required to follow a vast array of regulations.
- Customers do not view post prohibition repeal regulations as overly restrictive. The level of access to alcohol has evolved over the many decades but has kept pace with societal attitudes.
- Third, post-repeal alcohol control does not focus on trying to prevent people from drinking. Rather, it builds public health campaigns in conjunction with the alcohol beverage industry to ensure Canadians have access to the right information to make informed choices.

Regulatory Framework and Compliance:

Compliance has been a major aspect of marketing and controlling substances that have a potential negative public aspect. Since the end of the era of prohibition we have regulated and controlled liquor through various means- including minimum pricing protocols, safe handling and storage rules, random compliance checks, strict licensing requirements including a provision to take liquor licenses away from people deemed to be associated with elements of crime. All told thousands of different rules, regulations, and policies make up the liquor control regime in Canada. Now with the move to legalize marijuana we should look no further than what is already practiced in the legalized liquor industry. Decades of experience with both success and failure, but mostly success can be found in this system.

⁶ Levine, H. G. (2004). *Alcohol prohibition and drug prohibition. Lessons from alcohol policy for drug policy*. Retrieved from CEDRO: <http://www.cedro-uva.org/lib/levine.alcohol.html>

Regulation of marijuana, like taxation, presents opportunities for shaping who consumes, what they consume, and how they consume. Regulation can influence prices, product variety, product consistency, and the information made available to consumers, as well as the extent of diversion in the form of illegal sales to minors.⁷ Regulation can affect production, intermediary markets, and final retail markets. However, regulation can be costly to enforce. In addition, burdensome regulations can also limit the speed and completeness with which the legal market displaces the illicit market. The commercial marijuana regimes in Colorado and Washington have led the way in regulatory experimentation but are too recent to provide much empirical evidence about their strengths and weaknesses.⁸ It is for this very reason that it is beneficial to look to how liquor is currently regulated in Canada and the compliance rates of liquor retailers.

Objective 1: Keep marijuana out of the hands of underage children and youth

Compliance Rates



The current liquor control system has an excellent track record of compliance and safety when it relates to controlled substances. Compliance has been a major aspect of marketing controlled substances that have a potential negative public aspect. As a result, since the end of the era of prohibition we have regulated and controlled liquor through various means; this includes the very successful infrastructure for strong age checks.

In British Columbia, the Liquor Control and Licensing Branch (LCLB) created the Minors as Agents Program to monitor compliance with the legislative prohibition against selling liquor to minors. During this period from January 2016 to June 2016, the BC LCLB reported a private and public store compliance rate of 93 per cent. The LCLB's Compliance and Enforcement Division run this program.⁹ If caught selling liquor to minors, B.C. liquor stores face a first offense fine of \$7,500 and a second offense fine of 20 to 30-day license suspension.¹⁰ In addition, B.C. provincial liquor regulations allow for fines of \$575 for liquor retail staff members that sell to minors.¹¹

Alberta and Ontario's liquor store compliance rates are just as impressive. According to the 2014-15 annual report of the AGLC in Alberta, nearly 88 per cent of liquor licenses were inspected and 94.6 per cent complied with legislation, regulation and policy.¹² As of 2015, the Liquor Control Board of Ontario reported a compliance rate of nearly 91 per cent. The compliance rates are not perfect, but suggest that most liquor store employees, both public and private, are in compliance, thereby confirming that the infrastructure is there to stop underage use.



It is also worth noting the compliance rates and regulations around underage use of marijuana in Washington. The compliance rate of medical and recreational retailers in Washington as of July 2016 is 88 per cent, according to the Washington State Liquor and Cannabis Board. Although loosely based on a dispensary model, it is worth noting that it is the Liquor Board that controls this, and so, Washington is following the liquor control model closely. Hence, right from the start, Washington saw the advantages to using the liquor model to ensure high compliance rates.

7 Caulkins, J.P. et al (2015). *Considering Marijuana Legalization. Insights for Vermont and Other Jurisdictions*. Retrieved from: RAND Corporation: http://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR864/RAND_RR864.pdf

8 Caulkins, J.P. et al (2015). *Considering Marijuana Legalization. Insights for Vermont and Other Jurisdictions*. Retrieved from: RAND Corporation: http://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR864/RAND_RR864.pdf

9 (2014). *Liquor Control and Licensing Branch Minors as Agents Program*. BC Liquor Control and Licensing Branch

10 Hoekstra, G. (2012, November 16). *Liquor store sting: Private B.C. stores more likely to sell booze to minors*. Retrieved from Vancouver Sun: <http://www.vancouversun.com/Liquor+store+sting+Private+stores+more+likely+sell+booze+minors/7562319/story.html>

11 (2015) BC Liquor Control and Licensing Branch: <http://www.pssg.gov.bc.ca/lclb/docs-forms/LCLB063.pdf>

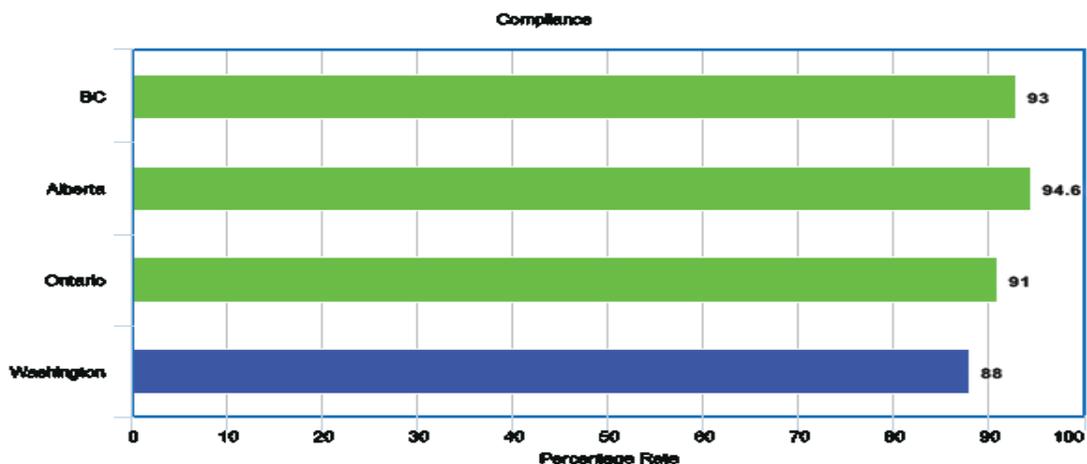
12 Pike, H. (2014, October 28). *Booze Control: AGLC reminds twentysomethings to bring ID before enjoying a cold-one*. Retrieved from Metro Calgary: <http://www.metronews.ca/news/calgary/2014/10/28/booze-control-aglc-reminds-twentysomethings-to-bring-id-before-enjoying-a-cold-one.html>

Keep Legalized Marijuana Out of Hands of Kids

Many researchers have suggested that regulators can learn lessons from the liquor sector to keep harmful products away from young people. One idea is to use tax policy to keep prices high, but this may prop up the illicit market place. Hence, the retail availability of marijuana, like liquor, should be tightly regulated. Examples of such regulation could include the following:

- As is the case for alcohol, provinces should have the mandate to set the legal age for possession of marijuana. A standardized age across both controlled substances will make it easier to ensure high compliance rates, especially if both were to be sold in liquor stores. At the beginning of marijuana legalization it is recommended that more compliance audits occur.
- Most provinces allow civil and sometimes criminal penalties for minors caught possessing, using, or purchasing alcohol. The possession, use, and purchasing of marijuana by people under the legal drinking age should be restricted.
- Liquor stores in Canada make sure to have no youth-oriented marketing materials. Hence, cartoon figures, animals, and other marketing images geared toward youth around marijuana will also be prohibited.
 - According to the BC Liquor Act, all advertisements must be responsible and not encourage any form of alcohol abuse or underage drinking. They can also in no way be directed at minors.¹³
- In Canada, retailers of alcohol must ensure that customers are of legal age by requiring age checks and retailers to face severe escalating fines for offenses that result ultimately to losing their license privileges. These policies are suitable for marijuana regulation.
- Liquor stores are already located in areas away from playgrounds and schools, which research has shown can reduce risk of youth use.
 - This regulation is becoming more stringent. For example, The City of Coquitlam recently passed a zoning bylaw requiring liquor stores to be located a minimum of 300 metres from schools, public parks, places of worships and other liquor stores.¹⁴
- Products sold in liquor stores are difficult for young children to open; this would be transferred to marijuana.

The criminalization of marijuana has created an unregulated market of dealers who have no compunction about selling marijuana to minors. A regulated and legalized system that is part of the liquor model can help avoid this since the penalties for offenses will affect a legal business.



*Note: graph depicts current liquor compliance rates for BC, Alberta and Ontario and current recreational marijuana compliance rates in Washington State.

13 (2013). *B.C. Liquor Policy Review Final Report*. British Columbia Ministry of Justice.

14 (2015). *Liquor Licensing Policies & Regulations Review*. Retrieved from: Coquitlam City Planning & Development: <http://www.coquitlam.ca/planning-and-development/zoning/liquor-licensing-policies-regulations-review>

Objective 2: Legalize, legitimize, and tax profits and eliminate the illicit element

Post-repeal regulation transformed the alcoholic beverage industry. Prior to prohibition, saloons were the one-stop-shop for alcohol; a place where Canadians drank beer, wine and spirits and purchased alcohol for off-premises consumption.

After repeal, provinces created government controlled liquor boards to manage the sale of alcohol and began issuing licenses to specific restaurants and bars to allow on-premises consumption of beer, wine and spirits. The control board's regulations encouraged residents to follow the rules and consume alcohol through legal means.

To encourage such adherence, the provincial agencies needed to be flexible, adapting the regulations to suit the changing conditions within each province. As a result, legalizing alcohol and regulating it accomplished what most temperance and prohibition supporters claimed impossible. It moved alcohol away from being a "scandalous" home wrecking substance to being a managed and regulated aspect of the Canadian lifestyle

The above should also hold true also for marijuana and how it can become a managed and regulated aspect of our Canadian society. Similar to the prohibition model, marijuana must be brought to the mainstream alongside a reasonable level of taxation and based on proven regulation in the area of controlled substances. This will help to ensure the legal market displaces the illicit market.

It is also worth noting that the government has full control on who can currently get into the liquor business. This should be applied to marijuana once legalized. If someone has a criminal record, its retail or production license should be confiscated or not issued at all. Vetting the entire system, as is the case with liquor, should occur.

Objective 3: Ensure Canadians are well informed on the health implications of marijuana use and are educated to avoid excessive use and understand the risks involved

Alcoholic beverages are subject to various regulations to make sure that the ingredients are properly labeled, the contents are safe, and that necessary warning statements are included. This can be transferred to marijuana as demonstrated in Colorado. Packaging and Labeling Requirements for recreational marijuana in Colorado states that proper labeling includes specific warning statements for marijuana and marijuana-infused products must be on the packaging.¹⁵ With the current labeling infrastructure in place in Canada around liquor, producers and retailers should follow a similar regulatory structure.

To properly educate the population on the risks involved with marijuana, it is advised that a proportion of revenue generated by marijuana sales go to prevention campaigns designed or run by the provincial public-health agencies.

In addition, rather than tell people not to use marijuana, it is recommended that the public instead be educated about the facts so they know how to use the drug responsibly. The State of Colorado did just that with its "Good to Know" campaign, which educates residents and tourists about how to responsibly use recreational marijuana. In the first statewide public education campaign, Colorado's health department spent \$5.7 million USD to roll out information brochures, radio spots and community training sessions. To provide some context, Colorado brought in over \$12 million USD in revenue from legal marijuana sales each month from January 2016 to May 2016.¹⁶

The Colorado campaign is primarily targeting people who may not realize the potential effects of using the drug. Health officials also want to dissuade people from driving a car after smoking, as well as discourage them from sharing their pot with teens, who are prohibited from using marijuana.¹⁷

15 (2015). *Colorado's Packaging and Labeling Requirements for Retail Marijuana*. Colorado Department of Revenue.

16 (2016). *Taxes on Marijuana*. Retrieved from Colorado Norml: <https://colorado.gov/pacific/revenue/colorado-marijuana-tax-data>

17 (2015, January 7). "Good to Know" Campaign Educates Colorado Residents on Responsible Weed Use. Retrieved from ThinkProgress: <https://thinkprogress.org/good-to-know-campaign-educates-colorado-residents-on-responsible-weed-use-945a766e25bc#91qbeu8ov>



Informational brochures on marijuana would be similar to materials developed for current liquor educational programs.



Marijuana is here to stay, and so it is important to regulate it in a way that the people who want to use it safely can use it without affecting others. The federal, provincial and territorial governments need to develop, adopt, monitor, and evaluate strict regulatory mechanisms to control marijuana production, sales, and use while advancing the public health goals of preventing access by minors, protecting and informing consumers of legalized marijuana, and protecting third parties from unwanted consequences of legalized marijuana use. These mechanisms should include taxes, age limits, product labeling requirements, product quality testing, potency limits, labeling requirements, motor vehicle operation restrictions, and advertising restrictions. If the government is the sole buyer of marijuana products it can more easily do the above, just like it has with liquor since prohibition. Clear rules that are easy to follow need to be set, and looking to alcohol post-prohibition regulation and legislation can help achieve this.

Objective 4: Monitor the program by collecting baseline data and informing the public how the system is performing.

The answer to this is simple; compliance rates should be made transparent just like they are with liquor compliance. Data is regularly released around how much liquor is consumed and how much tax revenue is made from sales. This model can be used to conduct rigorous, ongoing data collection around marijuana use and compliance. This will include gathering baseline data, monitoring the impact of the regulatory framework and inform gradual change to best meet policy objectives and reduce negative impacts.¹⁸ This data should also be available to the public.

As the first states to enact a legalized regulatory framework for cannabis, Colorado and Washington are in a unique position to contribute to the evidence based on the impacts of regulatory change. There are many different perspectives, for example, on potential tax revenue, impact on organized crime and health, and impact on rates of use among both adults and youth.¹⁹

Monitoring impacts is also necessary to determine if policy objectives are being met, and to identify unanticipated impacts in a timely manner. Many stakeholders in Colorado and Washington expressed frustration that a lack of baseline data meant they could not answer many fundamental questions about the impact of legalization.²⁰ Selling marijuana in liquor stores means that the monitoring tools to collect baseline data are already in place.

Key Recommendations

- Provincial and territorial governments should allow liquor boards to monitor and even control the retailing of marijuana. Washington has corroborated that this is an effective method to ensuring high compliance rates. Moreover, Canada's current liquor control system has an excellent track record of compliance and safety when it comes to controlled substances. This infrastructure can easily be applied to another controlled substance like marijuana.
- Provinces and territories should design their own distribution systems based on the current liquor model with the primary objective being public health and limiting black market sales.
- As they do with liquor, provincial and territorial governments should have full control on who can get into the marijuana business. The entire distribution and retailing system should be vetted.
- When looking at a public health policy, it is recommended that the federal, provincial and territorial governments have a plan in place prior to legalization.
- Provincial and territorial governments should have a monopoly on the purchasing of marijuana products so it can effectively monitor the distribution and retailing of marijuana.

18 (2015, November). *Canabis Regulation: Lessons Learned in Colorado and Washington State*. Retrived from Canadian Centre on Substance Abuse: <http://www.ccsa.ca/Resource%20Library/CCSA-Cannabis-Regulation-Lessons-Learned-Report-2015-en.pdf>
19 Caulkins, J.P. et al (2015). *Considering Marijuana Legalization. Insights for Vermont and Other Jurisdictions*. Retrieved from: RAND Corporation: http://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR864/RAND_RR864.pdf
20 (2015, November). *Canabis Regulation: Lessons Learned in Colorado and Washington State*. Retrived from Canadian Centre on Substance Abuse: <http://www.ccsa.ca/Resource%20Library/CCSA-Cannabis-Regulation-Lessons-Learned-Report-2015-en.pdf>

HOW TO REGULATE POSSESSION AND RETAIL DISTRIBUTION

To ensure uniform standards across the country, Canada's federal government should define permissible limits of marijuana and marijuana-infused products individuals may purchase in a single transaction and possess. Current cases, such as the states of Washington, Colorado and Oregon, illustrate reasonable allowances for dried marijuana, concentrates, edibles and liquid cannabis products and can act as a guideline for regulation in Canada.

Retail Distribution

Provincial and territorial liquor control boards should seek to find a balance between effective retail distribution and appropriate product choice to ensure safe marijuana consumption for all Canadians. While we can expect differences in approach among provinces and territories – similar to the current liquor model – retailing marijuana through liquor stores across the country is an obvious choice.

The argument for using the tried and true method of selling controlled substances through liquor stores is strong, as the infrastructure for compliance checks and inspection programs already exists as part of the regulations enforced by the provincial and territorial liquor control boards. While the legal age limit varies, enforcement and compliance policies remain numerous and strict across the nation. An example of this is British Columbia's Minors as Agents Program, which was created by the Liquor Control and Licensing Branch (LCLB) to monitor compliance with the legislative prohibition against selling liquor to minors. In the first year of operation, this program increased B.C.'s compliance rates by 42 per cent.²¹ The current compliance rate sits at 93 per cent.²² This rate of compliance has been achieved within the current private and public retailing model in BC, showing that a private and public model of marijuana retailing can achieve similar results.

Provinces and territories should also seek to develop regulations surrounding the location of marijuana retailers in regards to schools, playgrounds, public parks, child care centres, family recreations centres and other marijuana retailers. Current legislation in place regarding the location of liquor stores can be easily adapted to meet any marijuana policy requirements. For example, the City of Coquitlam, B.C. currently states that there must be a minimum of 300 meters between a liquor store and school and B.C. rules on a minimum distance of 1 km between each liquor store.²³

For ease of control and compliance, marijuana retailers can be located within existing liquor stores and take on a "store-within-a-store" model. This is similar to BC Health Minister Terry Lake's pharmacy style counter proposal. Temperature and humidity controlled glass-enclosed display cases would provide customers with visuals on the available marijuana and marijuana-infused products, but educated staff would need to discuss individual consumer needs before providing the requested products for purchase. This would all take place within the strict age controlled environment where no minors would be permitted.

Customer Experience

Recent research and customer testimonials suggest that having an educated and well-trained staff elevates the overall recreational marijuana experience. Similar to the regulations in the United States, provinces and territories should mandate that staff have a minimum level of knowledge and expertise to sell and recommend marijuana and marijuana-infused products. Liquor stores and their employees are already covered by many minimum requirements when it comes to education through programs such as serving it right and others. Serving It Right is British Columbia's mandatory self-study course that educates licensees, managers and servers about their legal responsibilities when serving alcohol, and provides effective techniques to prevent problems related to over-service. Serving It Right Certification holders are required to take an updated course



Example of a temperature and humidity controlled glass-enclosed marijuana display case.

21 (2013). *B.C. Liquor Policy Review Final Report*. British Columbia Ministry of Justice.

22 Scott, D. (2016). BC Liquor Control and Licensing Branch Assistant Deputy Minister and General Manager.

23 (2015). *Liquor Licensing Policies & Regulations Review*. Retrieved from: Coquitlam City Planning & Development: <http://www.coquitlam.ca/planning-and-development/zoning/liquor-licensing-policies-regulations-review>

and test every five years to revalidate their certificate.²⁴

Testimonials from Colorado have also found that a government regulated marijuana is much safer, as staff are able to provide customers with specific details regarding their purchases, including information on where and when a plant was grown, when the plant was harvested, if any pesticides were used during the growing process and the THC levels in a certain product.²⁵

Key Recommendations

- Similar to the liquor industry, provinces and territories should have their own marijuana distribution systems through the pre-existing liquor control boards and purchase safe and high quality marijuana through approved government controlled suppliers.
- To ensure a quality and customized retail experience for customers, liquor control licensing branches should introduce minimum requirements and offer a standardized marijuana training courses for people to work in a marijuana store. This will allow staff members to accurately provide suggestions on what best fits each customer's needs and talk about responsible use, something liquor store employees are trained to do now.
- Age Controlled Liquor stores should be the sole retail location for selling recreational marijuana in Canada. If provincial governments regulate the retail landscape through the existing liquor control mechanism, the high level of compliance and safety of the liquor system can follow through to the marijuana retail system.

HOW TO REGULATE PRICING AND TAXING MARIJUANA

Revenue is not the only goal, and maybe not even the primary goal, of a legalized marijuana tax scheme. In the case of legalization, the biggest challenge for policymakers is to set an optimal level of taxation that does not foster an increase in black market activity or create an upsurge of problem use and underage use. Therefore, it cannot be too high or too low, and so, finding the optimal level of taxation will pose a challenging and ongoing problem. In addition to finding an ideal tax level, policy-makers will need to determine how to and at what stage in the production-distribution-retail cycle tax will be collected, while also determining the base value of the marijuana tax.

Similarly to liquor, taxes on marijuana can be collected at various points along the supply chain, allowing for government tracking from seedling to retail store to prevent leakage. With regard to taxation, a variety of models can be used, including price-based (ad valorem), gross weight and potency (per unit of THC). Washington State's current model uses ad valorem taxes, while Colorado has combined ad valorem taxes with a de facto weight-based tax on marijuana producers. A potency tax has not yet been tried by any jurisdiction that has legalized marijuana.

Should taxes be high or low?

While high taxes on marijuana could work to decrease undesirable side effects due to overuse and help to limit consumption, low taxes could permit a nascent market to compete with local back and grey markets, provide a low-cost product to consumers, limit regressivity, and increase compliance with tax laws thereby reducing enforcement and collection costs.²⁶ Low taxes can also increase underage use and the percentage of substance use disorders, while only slightly benefiting casual users.

24 (2016). *Serving it Right*. Retrieved from: BC's Responsible Beverage Service Program: <http://www.servingitright.com/>

25 Koerber, B. (2015, April 20). *The farm-to-table marijuana experience is here*. Retrieved from Mashable: <http://www.mashable.com/2015/04/20/farm-to-table-weed/#92D5JaGGkqh>

26 Caulkins, J.P. et al (2015). *Considering Marijuana Legalization. Insights for Vermont and Other Jurisdictions*. Retrieved from: RAND Corporation: http://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR864/RAND_RR864.pdf



In contrast, too high of tax will keep marijuana prices higher than illicit market prices, therefore discouraging consumers and retailers from making legal market place purchase. High taxes will also create a greater incentive for evasion, resulting in the need for costly, increased enforcement. Implementing a high tax percentage would be equivalent to Canada's current marijuana prohibition, ultimately strengthening the illicit marijuana industry.

Bases for taxing marijuana

Taxing marijuana presents unique challenges due to the variety of forms the product takes on. Excise taxes on other products are historically imposed at a specific amount regardless of the retail price, especially with gasoline tax and the federal cigarette tax. Because marijuana can be purchased as a flower, edible, liquid, or concentrate, all with a wide variety of THC levels, a specific excise tax is untenable. As a result, most jurisdictions that have legalized marijuana have so far framed its tax as a certain percentage of the retail or wholesale sales price.²⁷

Price (ad valorem) base tax

In Canada, controlled substances including liquor, chewing tobacco and other non-cigarette tobacco products are taxed with an ad valorem retail excise tax. The same applies to the United States, which is a primary reason why Colorado and Washington chose this taxation scheme. In Colorado, voters approved two ad valorem taxes on marijuana: a 10 percent tax on retailers and a 15 percent tax on producers.²⁸ Washington enacted three 25 percent taxes on retailers, processors and producers, but companies that hold both processor and producer licenses only pay one tax.²⁹

A price-based tax on marijuana has some advantages. First, it is simple and does not require indexing or equipment. Secondly, a price base tempers regressivity, for they tend to favour low-priced benefit scrimping purchasers, who tend to have a lower income.

However, experts have warned about a serious disadvantage of a price-based tax on marijuana – it automatically amplifies changes in pre-tax prices. During the beginning stages of legalization, supply may not be able to meet demand, generating abnormally high pre-tax prices – similar to what happened in Colorado and Washington – and allowing the black market and the largely illegal medical market to retain market share. As time goes on, legal operators will become more efficient, and as they expand and achieve economies of scale, their costs can drop dramatically. If they pass cost savings on to consumers, pre-tax prices decline, and a price-based tax automatically declines with them. But as the after-tax price drops, the dangers of youth use and abuse grow, a price base tax can lead to taxes that are too low, which could be a problem for a maturing marijuana industry.³⁰

Weight base tax

The Canadian federal government tax cigarettes and many other tobacco products by weight. A weight base tax is easier to set up and to administer than a potency base, but harder than a price-base, especially because moisture must be accounted for. An advantage of a weight base tax is that it provides more stable revenue than a price base. However, taxing based on weight creates an incentive to pack the most intoxicating material into each gram, which could be dangerous. Only an extremely low rate tames such an incentive, but that also reduces revenue potential.³¹

Potency base tax

There is currently no jurisdiction that has levied a THC tax on marijuana, although a bill introduced in the Massachusetts legislature in 2013 proposed imposing a tax of \$1,000 on THC. Unlike distilled spirits, which is a homogenous liquid, the THC content in marijuana can vary from bud to bud within a single plant, and powerful trichomes make material even from a single bud heterogeneous.³² Potency testing is already at work, informing and even warning consumers about products they are purchasing. For consumers, ballpark numbers are helpful and usually adequate. For taxation, ballpark numbers are problematic.

27 Henchman, J. (2016, April 20). *Marijuana Legalization and Taxes: The Impact of Section 280E*. Retrieved from: Tax Foundation Special Report.

28 (2015, November 26). New Regulations Shake Up Colorado Edibles Industry. Retrieved from High Times: <http://hightimes.com/edibles/new-regulations-shake-up-colorado-edibles-industry/>

29 (2016). *FAQs on Taxes*. Retrieved from Washington State Liquor and Cannabis Board: <http://liq.wa.gov/mj2015/faqs-on-taxes>

30 Caulkins, J.P. et al (2015). *Considering Marijuana Legalization. Insights for Vermont and Other Jurisdictions*. Retrieved from: RAND Corporation: http://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR864/RAND_RR864.pdf

31 Caulkins, J.P. et al (2015). *Considering Marijuana Legalization. Insights for Vermont and Other Jurisdictions*. Retrieved from: RAND Corporation: http://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR864/RAND_RR864.pdf

32 Caulkins, J.P. et al (2015). *Considering Marijuana Legalization. Insights for Vermont and Other Jurisdictions*. Retrieved from: RAND Corporation: http://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR864/RAND_RR864.pdf



As a result, ensuring representative samples would be critical for an auditable THC tax on raw usable or concentrate marijuana. Even so, setting up the world's first tax-worthy THC-testing regime would require significant planning and resources. At first, the cost of testing might be passed on to consumers, to the benefit of the black market. Hence, it would be more advisable to start such testing once the black market is so marginalized that the legal market can bear high prices. Regulators might implement a particular potency base once they have time to set up a workable system.

Taxation Collection Point

In addition to choosing a tax base, jurisdictions that decide to tax marijuana need to decide where the tax base will be collected. Similarly to liquor in Canada, which is a centralized system, the provincial, territorial and federal governments can collect taxes at various points along the supply chain; this would include producers, processors and retailers.

The benefits of a centralized taxation system that overlooks the entire supply chain can be seen with the liquor model. The government is able to track alcohol importation, manufacturing and retailing in order to ensure that there is no diversion of a legal product before the collection of tax. Colorado and Washington, which did not adopt the liquor model, are currently in the midst of implementing such a scheme, which is costly, so it can track marijuana from seedling to retail store, to prevent leakage. For Canada it would therefore be cost-effective to apply this existing liquor model to marijuana since the monitoring and compliance mechanisms are already in place. In addition, public and provincial liquor store personnel are already trained on the process and regulations involved in supply chain taxation collection.

Concluding Thoughts

Finding the right taxation base for marijuana is complicated for a variety of reasons. Firstly, marijuana comes in many different forms and a variety of concentrations and so one specific excise tax is not feasible. Secondly, there are economic arguments for lower taxes, but social arguments for higher ones. The difficulty is therefore striking the right balance in order to ensure that while legal consumption of marijuana increases, underage usage and negative side effects do not. As a result, experts have come out in favour of adopting a similar taxation model to that of alcohol and liquor.³³ The rationale being that the compliance and monitoring mechanisms already exist due to each province in Canada having an alcohol/liquor control commission with the mandate of regulating the sale, service and consumption of alcoholic beverages. The directive for taxing marijuana could therefore rest with the same entity. As in the case of alcohol, provinces could set a minimum price net of taxes, at a level that does not encourage an ongoing black market.

Key Recommendations

- Colorado, Washington and Oregon have all taken steps to reduce their marijuana tax rates after initial rates of 30 percent or more did not reduce the black market sufficiently. Flexibility will be needed in Canada when devising the level of tax on marijuana. It is recommended that taxes first be set low to crowd out the black market and be increased once the legalized market is strong enough to bear higher prices. Those designing a taxation regime must therefore first decide how much discretion they will allow to adapt and adjust over time.
- Tax rates on final retail sales have proven the most workable form of taxation. Other forms of taxation that have been proposed, such as taxing marijuana flowers at a certain dollar amount, taxing at the processor or producer level rather than the retail level, or taxing products by their level of THC have faced practical implementation difficulties.

33 Ubelacker, S. (2014, October 9). *Pot should be legalized, regulated and sold like alcohol: addiction center*. Retrieved from: The Globe and Mail: <http://www.theglobeandmail.com/life/health-and-fitness/health/pot-should-be-legalized-regulated-and-sold-like-alcohol-addiction-centre/article20995728/>

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- While the revenue from marijuana can be exorbitant, it takes a lead-time to develop. Revenues started out slowly in Colorado and Washington, as consumers became familiar with the new system and after state and local authorities spent time and money setting up new frameworks and regulatory infrastructure. Adopting the liquor model approach is therefore advisable since it is both cost-effective and the infrastructure for tax collection and compliance already exists. Hence, revenue can be collected more quickly.
 - Like liquor, the provincial and territorial governments should track the entire marijuana supply chain in order to ensure there is no diversion of a legal product before the collection of tax.
 - The tax revenue from legalized marijuana could fund a host of programs from addictions recovery, prevention programs aimed at youth, and education about the dangers of impaired driving to more general programs like health and education.

ARGUMENTS FOR AND AGAINST THE LIQUOR MODEL

While the sale of recreational cannabis through liquor stores may not be perfect, it currently offers the best suited infrastructure to retail legalized marijuana in Canada in a socially responsible way. Criticisms exist, especially from the National Access Cannabis and the Canadian Association of Medical Cannabis Dispensaries, on the lack of expertise liquor stores have on safe dispensing and that selling cannabis alongside liquor could create more public health problems.³⁴ The former argument can easily be disputed, as liquor store employees can be well trained on the potential risks of marijuana, just like they are on alcohol with the Serving It Right education program in BC.

Moreover, the infrastructure for strong age checks already exists reducing the risk of underage use and compliance levels are regularly published for the public to see. The latter argument is a bit more complicated, but can be solved through the strict licensing of stores, regular inspections and using the “store-within-a-store” model to sell cannabis at a pharmacy-type counter, with a safe-guarded glass display case.

Remarks by Ontario Premier Kathleen Wynne³⁵ and BC Health Minister Terry Lake add to a slow-but steadily growing number of high-level voices that oppose the dispensary model. The rationale is simple: in BC and Ontario there is already an excellent system for distributing and retailing alcohol. Creating a new, parallel system for marijuana would be costly, time consuming, and would divert revenue from more important social and educational programs. Most Canadian provinces and territories already have a regulatory system in place for alcohol that could be easily modified to include the important regulatory requirements for distributing and selling marijuana. Support for such a scheme is also gaining ground in New Brunswick, Alberta and Manitoba.

34 McClure, J. (2016, March 7). *This Tiny Province is paving the Way for Cannabis Sales in Liquor Stores*. Retrieved from Civilized: <https://www.civilized.life/articles/new-brunswick-marijuana-liquor-stores>

35 MacPherson, A. (2015, December 21). *Wall wary about Selling Weed in Sask. Liquor Stores*. Retrieved from Saskatoon Star Phoenix: <http://thestarphoenix.com/news/local-news/wall-wary-about-selling-weed-in-sask-liquor-stores>



Perhaps the most compelling argument for selling recreational cannabis through liquor stores is that the government can assure consumers that their products are safe from contaminants or as potent as advertised. Currently, the thousands of Canadians who buy their cannabis from illegal dispensaries have no assurance their products are safe.³⁶ The primary reason for this is that most dispensaries obtain their products from growers who operate outside the legal medical cannabis system.³⁷ A liquor distribution and retail model would source its marijuana product from government approved suppliers, which would regulate cannabis across the entire supply chain, a system that would be far more difficult for marijuana dispensaries to achieve. Firstly, their supply chain is more fragmented than if marijuana were sold in private and public liquor stores that purchase product from the government and secondly, an entirely new bureaucratic model would need to be created, which would be time-consuming and costly.

Key Recommendations

- Dispensaries are operating in a “gray” market area and are sourcing the majority of their marijuana from illegal suppliers. Legal licensed producers of cannabis are generally not fond of the illegal but often tolerated dispensaries.
- Important political actors throughout the country argue that the liquor model offers a useful template for transitioning restricted but generally unproblematic substances like cannabis into a more acceptable, controlled and non-criminalized framework.
- Government would supply cannabis to the liquor stores for retail and so would be responsible for making sure that product is tested at laboratories that are accredited by Health Canada.

36 Hager, M. (2016, August 12). *Pot dispensaries shut out of Health Canada's new safety-testing rules*. Retrieved from The Globe and Mail: <http://www.theglobeandmail.com/news/national/pot-dispensaries-shut-out-of-health-canadas-new-safety-testing-rules/article31396807/>

37 Hager, M. (2016, August 12). *Pot dispensaries shut out of Health Canada's new safety-testing rules*. Retrieved from The Globe and Mail: <http://www.theglobeandmail.com/news/national/pot-dispensaries-shut-out-of-health-canadas-new-safety-testing-rules/article31396807/>



CONCLUSION

The Federal Government needs to ensure that recreational marijuana is retailed in the most socially responsible way possible. Liquor stores provide the most strictly controlled system for accessing a controlled substance, and are best suited for the retailing of non-medical marijuana. They have an effective warehousing, retail, and distribution system in place, and so, there is no need to reinvent the wheel by formulating and implementing a costly new bureaucracy to monitor and regulate marijuana dispensaries. The liquor model is cost effective and simple for government to implement and monitor as the infrastructure is already in place.

- 1 Similar to post-liquor prohibition, **regulations and policies should be developed by both the Federal, Provincial and Territorial Governments** to ensure uniform standards across the country. This will allow for the seamless coordination and regulation of national supply, while also ensuring that Health Canada has the ability to monitor production, inspect facilities and create a sufficient market supply of safe products.
- 2 **Provinces and territories should design their own distribution systems through the pre-existing liquor control boards.** This will help to eliminate black market sales, normalize the moderate use of marijuana in society and ensure its inclusion in public health and safety discussions and educational programs.
- 3 Provincial/territorial governments **should manage and oversee the entire supply and distribution system** and rely on vetted marijuana producers to ensure the safety and quality of all marijuana products and to instil confidence among the public.
- 4 Marijuana **taxation should be flexible**, since taxation rates and regulation will have to be amended once the legal market place can bear higher prices. Provincial governments should use a proportion of revenue generated by marijuana sales for prevention campaigns designed or run by the provincial public-health agency.
- 5 **Provincial and territorial liquor control boards should offer standardized marijuana certificate training courses** for current liquor store employees. This will allow staff members to accurately provide suggestions on what best fits each customer's needs and talk about responsible marijuana use.
- 6 **Age controlled liquor stores should be the sole retail location for selling recreational marijuana in Canada.** This will allow for the liquor system's high level of compliance and safety to follow through to the marijuana retail system.