

# Cannabis Legalization in Canada and Combatting the Illicit Cannabis Market

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## Abstract

Despite the elimination of the illegal cannabis market being a fundamental element to cannabis legalization, as outlined in the Cannabis Act (S.C. 2018, c. 16), the Canadian federal government's efforts have had a mild impact in mitigating its influence. In analyzing possible contributions to the illicit sector's sustainability, these factors are in large part due to the federal government failing to understand consumer behaviours in recreational cannabis usage, as evidenced by lack of accommodation for frequent users, pricing and quality of legal cannabis compared to illegal cannabis, alongside faulty enforcement of cannabis law due to issues of conciseness and discretionary powers between the police and federal government. However, there are some suggestions that could better help the federal government in achieving its goal of combatting the illegal cannabis market. The potential amendments to cannabis policy include lowering tax on legal cannabis to better compete with illegal cannabis at the market level while refocusing on addressing public health concerns through promoting the safety of legal cannabis, controlling accessibility of legal cannabis, and providing public education regarding cannabis consumption. If done correctly, each amendment made would address the flaws within cannabis policy, allowing the Canadian federal government to combat the illegal cannabis market more efficiently.

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## Introduction

When the federal Government of Canada passed the Cannabis Act (S.C. 2018, c. 16), one of the central goals was the elimination of the illegal cannabis market. In evaluating the effectiveness of achieving this goal, legalization has made an overall mild impact in combatting illicit cannabis consumption. It is true that legal cannabis consumption rates have been increasing since 2018, but it does not equate to a total shift away from the black market. In fact, the illicit market for recreational cannabis use is still thriving and continues to innovate in response to faulty federal government regulations and a severe underestimation of its capabilities.

Factors contributing to the persistence of the illegal sector follow the common themes of lacking awareness regarding consumer behaviour, ambiguity around cannabis law leading to lacking law enforcement, and conflicting national interests regarding the intentions of cannabis legalization: maximizing tax revenue versus protecting public health. However, some efforts can be made to further combat the illegal cannabis market, but with a more meaningful and equitable methodology. One suggestion is reducing the amount of tax being paid on legal cannabis purchases and improving the quality of said cannabis with the end goal of out-competing the illicit cannabis market. Amendments to legislation would make it easier for

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police officers to enforce the law on illegal cannabis traffickers and could remove redundant regulations that facilitate its operation. Another undertaking could be incorporating public health interests regarding cannabis consumption, which could deter people away from purchasing illegal cannabis. By establishing a more research-based and economically oriented approach to illicit cannabis consumption, then its eradication becomes more feasible.

### **Aiding the Illegal Cannabis Market**

Prior to legalization in 2018, the illegal cannabis market had a significant and influential presence throughout all provinces in Canada, which can be attributed to two general factors: supply and demand. Cannabis is “the most widely used illicit drug in the world”, and Canada specifically has one of the highest consumption rates when compared to other countries (World Drug Report, 2017, as cited in Hathaway et al., 2021, p. 308). Because of this high demand before legalization, while the government was at an impasse in discussing cannabis policy, multiple black-market suppliers and organized crime groups emerged to take advantage of the situation.

While the data may be obscured in analyzing these suppliers before the passing of the Cannabis Act, their influence can still be felt afterward as the research conducted by Mahamad et al. (2020) details “a market in the early stages of transition, with a greater number of [Illicit Cannabis Retailers] than [Legal Cannabis Retailers]” (p. 345). Even with the presence of Illicit Cannabis Retailers (ICRs) remaining strong, the amount of people consuming legally sourced cannabis continues to rise despite this observation (Horak & Frei, 2023, p. 6). Therefore, it can be inferred from the data that it is not so much the fact that one market is outdoing the other, but rather they are growing in scale almost equally and remain at a competitive standstill. If the scale of both operations is somewhat equal, it is then imperative to understand consumer behaviour as it will show why a significant portion of the population still uses the illegal cannabis market.

### **Understanding Consumer Behaviour**

How the federal government inadvertently aids the illicit market is their lack of understanding of cannabis consumers within Canada, as shown on multiple occasions within certain rules and regulations. At a very basic level, the government was correct in legalizing cannabis at the recreational level to decrease the likelihood of people going to the black market, as people, in general, would prefer to purchase something without fear of legal consequences (Amlung et al., 2019; Syed & Hammond, 2019 as cited in Hathaway et al., 2021, p. 313). However, it appears that the Canadian federal government is only correct in these elementary aspects and fails to further engage with the complexities of the cannabis market.

#### *Frequent Users*

An example of faulty regulation can be seen in the Cannabis Act with the statute that refers to how much dry herb cannabis an individual may purchase at a time from a legal dispensary, which is 30 grams or approximately 1 ounce (*Cannabis Act*, 2018, as cited in Wadsworth et al., 2022, p. 1). The problem with this regulation is that the government only sees consumers who buy more than 30g at a time as potential drug traffickers, but this is not always the case. The

more likely scenario is that people who buy more than 30g of dry herb cannabis are frequent users and go through their supply faster than that of infrequent users; this is further supported by a correlation between frequency of usage and which market is chosen given that “more frequent consumers are transitioning slower than others [away from illicit sources].” (Wadsworth et al., 2022, p. 6). Additionally, this showcases the federal government’s lack of awareness regarding the cannabis market because “most heavy, frequent, [cannabis] users account for the majority of cannabis consumed”, and they fail to accommodate them (Hathaway et al., 2021, p. 307).

Wadsworth et al. (2022) provide further elaboration on their findings by explaining that both illicit and legal cannabis retailers provide quantity discounts to attract frequent users. Still the former is far superior for buying in bulk as they are not limited by a 30g regulation which results in a better bulk discount (p. 6). Thus, “those who use most heavily and frequently are most resistant to adopting legal sources of supply, and more likely to cite price as determining supply source.” (Hathaway et al., 2021, p. 328).

### *Pricing of Cannabis*

The most important contributing factor to how the government ensures the survival of black-market cannabis is how legal cannabis is priced. Even with the noble intentions of fighting drug traffickers, as shown in the Cannabis Act, there still exists a for-profit model in doing so as the “federal government collects taxes on licensed cannabis products and shares the revenue with provincial and territorial governments.” (Hall et al., 2022, p. 2063). Despite the parasitic implications, there is nothing inherently wrong with collecting tax revenue on cannabis sales; however, those who collect the taxes do not understand how it may influence consumer behaviour and how it may lead to engagement with the illicit sector. As found in a study conducted by Mahamad et al. (2020), the “price of illegal [dry herb cannabis] was significantly lower than legal [dry herb cannabis]”, and it is solely because of absurd taxation practices (p. 339).

Legal cannabis retailers also have influence over pricing, as exemplified by an instance in time when “cannabis prices declined during the first two years after cannabis legalization”, which was attributed primarily to “lowered production costs”; simultaneously, this price reduction was also observed within illegal cannabis distribution and sale (Hall et al., 2022, p. 2065). Yet this equal price reduction does not change the fact that illicit cannabis is still cheaper than legal cannabis, with the primary reason being that traffickers do not have to follow government mandates, which means there is no tax included in their pricing methods. As a result, people will logically engage with illegal sources for lower-priced cannabis as “current taxation and pricing policies are overpricing legally sold cannabis” (Childs & Stevens, 2019, p. 660).

### *Quality of Legal versus Illegal Cannabis*

Alongside the difference in pricing, the quality of illegal cannabis plays a significant role in determining whether or not people engage in the illicit market. When examining legal dry herb cannabis, Mahamad et al. (2020) found that the THC and CBD levels of the substance “were 16.1% and 1.7%, respectively” (p. 342). On the other hand, illegal dry herb cannabis possessed

THC and CBD levels that “were 20.5% and 2.4%, respectively.” (Mahamad et al., 2020, p. 343). Comparing these two numbers, it is clear that both the illegal and legal markets have similar levels of cannabis quality; however, there does exist the trend that illegal cannabis is slightly better than its legal counterpart.

This is problematic for two main reasons, with the first being that illegal cannabis is much more enticing to consumers than legally sourced cannabis as it is better quality for better pricing. Second, the federal government’s desire for tax revenue and the utilization of the “Pigouvian consumption tax” in their pricing - where a tax is imposed on a product to deter consumption - becomes inadvertently harmful as it is encouraging people to consume illicit cannabis even more given these quality findings (Childs & Stevens, 2019, p. 657). This is not to say that the Pigouvian tax is fundamentally flawed, but rather that it does not work in the current state of the cannabis market as the “availability of an untaxed close substitute limits the effectiveness of a Pigouvian tax” (Childs & Stevens, 2019, p. 657).

### **Problematic Law Enforcement**

Outside of the market space, the government’s implementation of its rules and regulations as outlined in the Cannabis Act has also had mixed results. Although the “legalization of cannabis use in Canada has greatly reduced cannabis arrests”, which has saved police agencies time and resources, cannabis trafficking remains an issue (Hall et al., 2022, p. 2069). Police officers are on the frontlines when it comes to enforcing the statutes of the Cannabis Act, but it is at this level where the most difficulty is present. For starters, there exists “differences in the priority of enforcement” among officers with some viewing it as “low priority” and others as “high priority”; however, this is more indicative of a greater problem that shows law enforcement is lacking uniformity (Boyd & Reid, 2023, p. 39). For example, a trend that was noticed among police officers was that “Cannabis charges were unlikely to be issued on their own”, and instead they were used as a means of extracting information for more serious offenses (Boyd & Reid, 2023, p. 39). Threatening to press charges against someone for information is not a new law enforcement tactic still, the implication here is that this shows that police possess too much discretionary power if they are primarily using cannabis trafficking charges as a bargaining chip. Even still, the fault is not entirely on heterogeneous policing policy. After all, the federal government is responsible for codifying cannabis laws, which “were clear prior to legalization”, but in years shortly after, “cannabis was socially acceptable and there was greater ambiguity regarding the approach of enforcement” (Boyd & Reid, 2023, p. 40). This is also compounded by the lack of clarity from the federal government, which is seen in law enforcement’s “concerns for a lack of training and resources” regarding applying the law (Boyd & Reid, 2023, p. 39).

### *Impact on the Illicit Market*

One argument within the realm of cannabis legalization in terms of law enforcement is that “the illicit market should be reduced” as it is “likely to be associated with decreases in other crimes that are connected to the illicit drug trade” (Boyd & Reid, 2023, p. 41). However, the research tends to show mixed results as to whether this claim is true, as some areas in the United States, as seen in Boyd & Reid’s (2023) research, showed increases in crime after legalization while others showed decreases. Even still, illegal cannabis traffickers tend to evade the

consequences of breaking the law because “cannabis legalization was not an effective mechanism for reducing serious crime nor arresting serious criminal offenders” (Maken et al., 2019; Jorgensen & Harper, 2022, as cited in Boyd & Reid, 2023, p. 42). If the government wishes to enforce these laws better, then it is necessary to make amendments to the Cannabis Act itself.

### **Addressing the Illicit Market**

Despite all the failures the federal government has had in fighting the illicit market, they’re still taking steps in the right direction, albeit haphazardly. First and foremost, the government needs to reorganize its priorities and decide if combatting the illicit market for public health is more important than tax revenue. However, a compromise does exist between these two competing interests to minimize the loss of tax revenue-which can be further balanced out with the inclusion of public health considerations.

#### *Price Adjustment*

There is nothing inherently wrong with collecting tax on the sale of legal cannabis, as the federal government does with other goods and services like tobacco or gas through GST. However, there is a great need for a price adjustment as the “level of taxation, and pricing policies more generally, will play a key role in the success of the legalization project”, which is in limbo as “current taxation and pricing policies are overpricing legally sold cannabis” (Childs & Stevens, 2019, pp. 657-660). The idea is that the federal government needs to allow for lower taxation on cannabis to combat illegal cannabis retailers because “the optimal legal price [of legal cannabis] is always lower than the illicit market price”, which provides consumers with a much-needed incentive to remain with the legal cannabis market (Childs & Stevens, 2019, p. 662). But that is not to say that there is no precedent to be set regarding public health in terms of pricing and excessive use, which is what the government was trying to achieve via the Pigouvian tax.

As outlined in the Cannabis Act, one goal was to “reduce the harms caused by cannabis consumption”, and the deterrence provided by a Pigouvian tax was the government’s answer to this problem (Childs & Stevens, 2019, p. 664). As it was mentioned prior, it is only the circumstance that legal and illegal cannabis are considered close substitutes that make the Pigouvian less effective; if this was not the case, “an increase in the legal cannabis price will not induce consumers into the illicit market” (Childs & Stevens, 2019, p. 664). If the government were to provide superior quality cannabis somehow, then they would have to be too concerned with reducing taxation. Yet if the federal government cannot provide this superior quality, they must price-match illegal cannabis and sacrifice some tax revenue. However, the federal government must remember that “Falling prices are associated with more use and greater use intensity”, which could create another social welfare problem on its own (Hathaway et al, 2021, p. 312).

### **Public Health Considerations**

Striking a balance between tax revenue and public health interests is essential in finding a compromise that damages the illicit market and brings money back into the public sphere. In

achieving this consensus, some thought should be given to advertising, regulating accessibility, and providing cannabis education to the public.

### *Advertising Safe Cannabis*

One way in which the government could deter consumers from the illicit market while keeping taxes from dropping could be advertising to the public on the health risks associated with its usage and how legal cannabis is the safest cannabis. Unsafe cannabis is more prevalent within the illegal market, as they not only do not have to pay taxes on their business but also do not have to follow any kind of consumer safety measures. Even something as simple as cultivation standards is a safety concern for illegal cannabis, as it was found that there is a “high presence and concentration of pesticides in illicit [cannabis] samples” (Gagnon et al., 2023, p. 6). By promoting the idea that legal cannabis is far safer than illegal cannabis, people might be more willing to pay a higher price for that peace of mind, and the government gains some control over their consumer behaviours.

### *Accessibility Concerns*

Accessibility poses the greatest public health problem as it is advantageous and potentially harmful. To better compete with the illegal market, the federal government should decrease the cost, and consider “increasing convenience of regulated products to more gainfully compete” (Hathaway et al., 2021, p. 313). This makes sense as it would take advantage of a fundamental flaw within the black market, which is the fact that most illegal cannabis users “avoided impersonal transactions with street dealers, buying instead from friends connected to a dealer, or directly from a friend who is a dealer” in order to keep their business discreet (Hathaway et al., 2021, p. 310). Yet there is a need not to make cannabis too accessible to meet another public health goal set out by the Cannabis Act, which is “restricting [cannabis] availability to youth” (Hathaway et al., 2021, p. 307). One suggestion that could alleviate anxieties around youth consumption could be public education regarding the health risks of cannabis consumption.

### *Cannabis Awareness Education*

Given how many legal cannabis retailers there are and the significant reduction of stigma surrounding recreational cannabis usage, the government would do well to remind themselves and others of the potential dangers in cannabis use, whether it be illegal or legal. For example, a study conducted by Rup et al. (2022) explains, “Cannabis can induce acute effects for which some users seek medical attention”, and there, “is extensive evidence linking chronic cannabis use to an increased risk of developing psychotic disorders and schizophrenia” (p. 719). From this, there is a precedent to be set by the federal government if they are to address the health risks of cannabis use, regardless of taxation concerns.

Currently, the public has a “laissez-faire” attitude towards cannabis, which stems from the “government’s attempt to reduce black market sales and increase product safety”, given the massive increase in accessibility and reduction in social stigma (Sinnatamby et al., 2020, p. 7). Therefore, it is within the realm of possibility that recreational users still engage with the illicit market simply because they are ambivalent or ignorant as to where their cannabis comes from.

It is important to note that “Knowing cannabis’ harms will not completely stop its consumption”, thus, the federal government should not be too concerned about losing out on profit (Sinnatambay et al., 2020, p. 10). Even still, in the case that the government does lose out on significant tax revenue as a result of promoting cannabis education, it would still be worth pursuing given that “the lack of knowledge or consideration for cannabis’ effects may foster an increase in dangerous outcomes” and that a decrease in legal cannabis use from health concern should lead to an equivalent decrease in illegal cannabis usage (Sinnatambay et al., 2020, p. 7).

## **Conclusion**

### *Continuity of the Illicit Cannabis Industry*

Despite the federal government’s goal of eliminating the illegal cannabis market, as outlined by the Cannabis Act, research has shown that this goal has been unsuccessful in doing so. It is not purely incompetency or bureaucracy that hinders the government’s abilities in dealing with the illegal cannabis industry, but more so, it’s an underestimation of the illicit sector’s capabilities and not understanding consumer behaviours regarding recreational cannabis users. That is not to say that the legal cannabis market has not grown since legalization, as research has shown that the population of legal cannabis users continues to rise; the problem, however, is that the illegal market is also growing in proportion. When examining potential reasonings as to why some remain within the illegal cannabis industry, it broke down into four general areas.

Firstly, frequent users of cannabis were more likely to continue engaging with the illicit market as compared to infrequent users. This was primarily due to the limitation of the cannabis regulation of people not being allowed to purchase more than 30g at a time of dry herb cannabis from legal retailers. The government gave justification that it was to address the risk of allowing for drug trafficking, but the inadvertent side effect was that it gave the illicit market another selling point to frequent consumers; additionally, this is catastrophic in terms of combatting the black market as these frequent users being turned away represent the average cannabis consumer.

The second area of concern was the pricing of legal cannabis compared to illegal cannabis, which is arguably the most important aspect of the latter’s continuity. On the market level, production costs are almost similar when comparing illegal and legal cannabis retailers, and it should follow that they would share similar pricing. However, the government is taxing legal cannabis to collect revenue to put towards public health services and deter people from using cannabis excessively. But the taxes imposed on legal cannabis only serve to drive people into purchasing illegally sourced cannabis, because the higher price of legal cannabis is encouraging users to pursue the cheaper alternative.

The third consideration for illegal cannabis consumers was observing the quality of illegal cannabis in contrast to legal cannabis. Measurements of THC and CBD levels showed that the quality of illegal cannabis was like legal cannabis, if not better. This then allows for illicit cannabis to serve as a substitute for legal cannabis, thus making the Pigouvian tax null and void. This superior or equivalent quality of illegal cannabis also creates a horrifying scenario for

the government, with the case now being that black-market cannabis can provide better quality for a better price.

Lastly, enforcing the law on those who engage with the illicit market is systematically flawed and makes it so that this market continuously avoids legal recourse. The government is at least correct in focusing on trafficking rather than consumption, but the permeating ambiguity and arbitrariness of cannabis law makes it difficult to make arrests. That is, police officers are given too much discretion in determining how to apply cannabis law to illegal cannabis traffickers; meanwhile, the government's codification of these cannabis laws lack universal application and clarity, which thus allows heterogeneous enforcement.

## **Recommendations**

To better compete with the illegal cannabis market, the federal government must renegotiate its pricing of legal cannabis via tax. While it may be the case that the government could lose out on the profits of the cannabis industry, it is important to remember that they legalized recreational cannabis for the sake of addressing public health concerns as well. If they are willing to lose out on this money for public health, then a devastating blow can be delivered to the illicit sector. As it was found, illegal cannabis serves as a close substitute for legal cannabis except for pricing; however, if legal cannabis were to have a lower or similar price, consumers would probably opt for the legal option, so they do not face criminal sanctions.

Another recommendation for combatting the illegal cannabis market would be to refocus on public health concerns, as cannabis-whether legal or illegal-is still dangerous if consumed excessively. Advertising legal cannabis as the safer alternative could serve as a form of deterrence away from illegal cannabis consumption, as it would be a form of controlling consumer behaviour. Better regulation of legal cannabis accessibility would be taking advantage of the illegal cannabis market's discrete nature, while at the same time addressing excessive or youth use concerns. Public education on the risks associated with cannabis use could also be beneficial in combatting the illicit market, as a general reduction in cannabis use from health concerns means less consumers in the illegal market.

As it is, the statutes and regulations around illegal cannabis trafficking are too unclear and lack universality in terms of enforcing the law. If the government were to make cannabis laws more concise and understandable, then it would surely be easier for police officers to enforce it on illegal cannabis traffickers. With that being said, the police also need more resources from the government to educate themselves on cannabis law, and they should have some discretionary power removed in laying these charges, to ensure that they are enforced in a homogenous manner and that offenders are given due process.

Overall, the federal government must make amendments to the Cannabis Act itself. Yet this idea is easier said than done, as the federal government decided to allow provincial governments to have discretionary power in defining elements of cannabis law within their respective jurisdictions. This then makes it more difficult to establish a universal approach to the enforcement of cannabis law, and perhaps applies to the other recommendations made, as the federal government needs to ensure that all provinces approve of these changes before moving



forward. Even so, the task of pushing through nationwide reform to combat the illicit market is a difficult endeavor, but not an impossible one.

### **Acknowledgements**

Thank you to Dr. Daniel Alati for encouraging me to submit this for publication, and to my mother, who is forever supporting me in my academic endeavors.

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