



## Preliminary Analysis Expert Panel Legislative Review of Cannabis Act April 2024

### BACKGROUND

After a one-year delay, the Government of Canada appointed an independent Expert Panel in September 2022 to conduct a review of the Cannabis Act. Under the Act, this mandatory review was supposed to have been completed last year.

In response to the appointment of the Expert Panel, the BC Craft Farmers Co-Op (BCCFC) submitted a series of recommendations to Health Canada in November 2022 and Panel representatives in March 2023. These reflected previous BCCFC submissions recommending improvements to micro-cannabis regulations, financial incentives for transitioning licence holders, health research and respect for First Nations sovereignty.

The Expert Panel's 97-page report includes 54 recommendations to improve the Cannabis Act and 11 observations. The following summary focuses on Panel recommendations related to:

- assisting craft farmers and micro-processors
- federal regulations
- provincial regulations
- medical access and research
- First Nations sovereignty

### ASSISTING CRAFT FARMERS and MICRO-PROCESSORS

- Cannabis is not like other products; a large illicit cannabis market existed in Canada before legalization, and that history, and the people that were part of it, must be factored into the continued implementation of the Act.
- Canada sought to encourage a diverse, competitive market, with smaller and larger players distributed across the country through the creation of "micro" class licences and other measures. In principle, small-scale cultivators and processors distributed throughout the country could increase consumer access to a greater variety of cannabis products (for example, "craft" products manufactured by small, local businesses).
- At the outset of legalization, there was a missed opportunity to address the harms of prohibition.
- The commercial production model implemented via the Act relies on financially viable private sector participants to supply the legal cannabis market.
- With others, craft farmers and micro-processors raised urgent concerns about their financial viability in the current market. We believe these concerns are well-founded.
- The majority of micro-class licence holders appear to be struggling to gain a foothold in the legal market. It will be very challenging for smaller companies to succeed without some government intervention and measures that provide some specific advantages or flexibilities.



- Many small legacy producers exhibited passion about the quality of their product and a clear desire to participate in the legal industry. The legal market might provide them with an opportunity to find a niche for their businesses. But we fear, currently does not.
- If barriers to success are not addressed, many will see no advantage to joining the legal market. Some who have done so may decide to return to the illicit market.
- Cannabis revenues are not divided in a way that allows licensed cultivators and processors to be consistently profitable. In particular, smaller licence holders appear to be struggling as they cannot compete with larger companies on price and have less ability to secure shelf space with provincial distributors (who often look for large quantities of product).
- We heard about the challenges micro-class applicants face, such as limited access to capital, regulatory burdens and difficulties navigating the licensing process.
- The federal government must play a role to support inclusivity and remove barriers.
- There is room to revise regulatory requirements without compromising public health or safety. For example, Health Canada should:
  - Take a broad view of diversity so programs consider how to support the inclusion of smaller-sized businesses.
  - Re-consider whether the requirement to have a pre-built site can be eliminated for micro-license applicants.
  - Allow licensed craft farmers to sell dried or fresh cannabis directly to distributors.
  - Consider reducing the costs it imposes for micro-class applicants, including by reducing or eliminating regulatory fees related to applying for a licence.
  - Review current personnel security requirements as they may not be needed for some types of employees.
  - Review controls related to physical site security that may not be essential, such as visual monitoring of areas not in use.
  - Harmonize reporting with CRA to avoid duplication and reduce burden for low-risk activities like waste, destruction and time required to store visual and other records.
  - Adopt a comprehensive approach that looks beyond the issuance of a licence, to include pre/post-licensing supports that help micro-license holders navigate regulatory compliance and other business-related responsibilities.
  - Work with relevant departments to ensure micro-licence holders are informed of existing programs for grants/loans/incentives that may assist in establishing and running their businesses.



## FEDERAL REGULATION

- The Cannabis Act marks a radical departure from a century of prohibition.
- It has been 5 years since the Act came into force and Canada's experience is still in its early days. There has been limited time to collect data and evaluate results, and barriers to research remain.
- Beyond measures related to micro-license holders and medical access, here is a sample of the Panel's feedback related to packaging, edible limits, excise tax, criminal records and industrial hemp production:
  - Some reforms requested on packaging and labelling relate to practices that do not actually contravene the current controls. These might be helpful to adult consumers could include in-store displays of information about how products from a particular company were produced ("sun-grown", "hand-trimmed") or where they were made. Such information could be displayed on product labels to help adult consumers differentiate between products.
  - Health Canada should provide clear guidance on promotion restrictions, packaging and labelling requirements. Some latitude in this regard may help reduce the focus on THC quantity or concentration as the primary product indication of quality.
  - Health Canada should maintain the current limit of 10 milligrams of THC per package in edible cannabis products and continue to develop the knowledge base in this area to determine whether there are conditions under which the limit could be raised without unduly impacting public health.
  - Opportunity exists to change cannabis use behaviour by developing a progressive excise tax regime where higher-potency products are subject to more tax than lower-potency products.
  - An automatic record sequestration process will come into force in November 2024 that will address all simple possession offences for all controlled drugs and will apply even if there are other non-drug offences involved. This new process only addresses offences under the Controlled Drugs and Substances Act and not those under the Cannabis Act. Canada should consider whether offences under the Cannabis Act should be considered under the automatic record sequestration process.
  - Industrial hemp (varieties of cannabis with 0.3% THC or less in their leaves and flowers) is regulated under the Act. While cannabis and hemp come from the same plant family, they carry different risks. The industrial hemp industry has been negatively impacted by the legalization of cannabis, with less production and sales today than in 2017. They advocated for a new approach that treats industrial hemp as an agricultural commodity, with changes that would increase the maximum allowable limit of THC and associated derivatives. The industry also raised other potential uses of industrial hemp (including industrial hemp-derived cannabinoids or biomass).
  - Health Canada and Agriculture Canada should review of the regulation of industrial hemp and make recommendations about the most appropriate regulatory framework and dedicated pathway for cannabis health products containing cannabidiol (CBD).



## PROVINCIAL REGULATIONS

- Provincial distributors hold a great deal of influence over the success of prospective suppliers, as they are the main purchasers of cannabis.
- **Provincial distributors must make choices about how they operate, and in most jurisdictions, they have exercised their monopsony power (that is, being the sole buyer in a market) in a way that we see as detrimental to licensed BC cannabis producers and processors.**
- This scenario, where provincial distributors dictate terms, often leads to adverse effects, including lower prices for cannabis producers, reduced incentives for innovation and an overall imbalance in the bargaining power.
- Reforms at the provincial level that accommodate additional direct-to-consumer sales outside of the physical retail environment may create opportunities for smaller cannabis cultivators and processors to establish a niche for their products and generate revenue.
- We note how important direct-to-consumer sales are for craft breweries. To have a positive impact, we believe any province or territory that sees benefit in allowing direct-to-consumer sales (for example, farmgate programs, or mail order within a province) would need to allow cultivators and processors to retain a larger share of revenue (for example, reducing or eliminating mark-ups and fees).
- Jurisdictions exploring direct-to-consumer sales should consider whether and how these programs could be targeted so that they support independent craft farmers to promote the market diversity envisioned at the time of legalization and keep more revenue than they would by selling cannabis through distributors.
- Provincial distributors should consider regularly reviewing their mark-ups, fees, purchasing practices and the amount of shelf space they allocate to different products and different licence holders to improve prospects for small sized companies that are currently struggling.
- We encourage provincial governments to evaluate their frameworks, including laws, regulations, policies, programs and interventions, on an ongoing basis.
- Distributors and retailers should stock cannabis products with diverse ranges of THC quantities or concentrations and take steps to encourage customers to choose lower-THC products whenever appropriate.
- There is also an opportunity for provincial distributors to reserve space for and highlight products from small licence holders.



## MEDICAL ACCESS and RESEARCH

- We recognize longstanding court-affirmed rights to reasonable access to cannabis for medical purposes.
- However, legalization changed the context for this form of access. There is no longer an absolute prohibition on cannabis, as was the case when the medical regime was developed in the early 2000s.
- This initial regime provided a way for people to legally possess and produce cannabis, and later to legally purchase cannabis, for their own medical use without the fear of being investigated, charged and possibly jailed.
- The medical regime now exists within a broader legal framework where all adult Canadians can legally purchase and possess cannabis, and in most provinces, legally grow up to 4 plants.
- Patients who wish to use the medical access program must have a medical document from a health care professional, which includes an authorized daily amount based on medical need.
- As of September 2023, over 200,000 Canadians were registered to obtain cannabis for medical purposes. This includes 15,000 Canadians registered with Health Canada for personal and designated production.
- At the time of legalization, over 370,000 Canadians were registered to access cannabis for medical purposes. 26,000 held a personal and designated production license.
- As of November 2023, there have been 2,942 refusals and revocations, compared to 431 in September 2021. The majority were refused on the basis of risks to public health or safety.
- Health Canada provides regular reports to provincial authorities on health care professionals authorizing over 25 grams per day. As of September 2023, over 225 were associated were associated with authorizations between 25 and 100 grams/day. They are concentrated in Ontario (104) and BC (72).
- While there may be a legitimate medical need for larger amounts, such exceptional cases should be investigated by the relevant regulatory authorities in these provinces.
- Patients continue to report many challenges obtaining reasonable access to cannabis for medical purposes, as well as difficulties finding reliable information, specific products and supportive and knowledgeable health care professionals.
- There is a need to continue to support the 200,000+ registered patients who rely on the medical access system, as well as enhancing the program for future registrants.
- The impact of Veterans Affairs program is unclear. In 2021–2022, veteran benefits of over \$153 million were paid for cannabis - nearly double the amount paid for all prescription drugs combined (\$79 million). The department forecasts that costs will rise to over \$380 million by 2026–2027. Prescription drugs costs are forecast to rise to \$124 million.
- Despite 2015 Task Force recommendations to promote and support pre-clinical and clinical research into the use of cannabis for medical purposes, little progress has been made.
- Health Canada, Public Safety Canada, Statistics Canada, Canadian Institutes of Health Research and other partners should work with stakeholders - including those with lived and living experience and from marginalized communities - to identify key research priorities to guide ongoing investment in cannabis-related research.



- Federal, provincial and territorial governments should allocate a portion of cannabis revenues to fund cannabis-related public health and public safety initiatives.
- The High Hopes Foundation is a non-profit initiative focused on harm reduction programming for substance users in Vancouver’s Downtown East Side. In 2022, the Foundation was issued a medical sales licence from Health Canada. High Hopes offers compassionate cannabis pricing and aims to minimize costs to patients. The Foundation is the pickup site for individuals who are authorized to use cannabis for medical purposes but who do not have a fixed address or who experience homelessness.
- Health Canada should consider:
  - Permitting pharmacies to distribute cannabis products to individuals holding a medical authorization from a health care professional. Provinces and regulatory authorities for pharmacists should consider this access channel for patients once federal changes are made.
  - Amend regulatory requirements related to medical documents allowing care professionals to include information about the product format and patient dose, similar to prescriptions for other substances.
  - Encourage Finance Canada to review whether the excise tax should be applied to medical cannabis products.
  - Limiting the number of registrations for personal or designated production of cannabis for medical purposes at a single site – from 4 to 1.
- While patients should continue to have this form of access available to them, some law enforcement officials pointed to the abuse of the personal and designated production of cannabis for medical purposes program as a contributor to illicit supply.
- Notwithstanding other priorities, we encourage law enforcement to focus their efforts on the diversion of cannabis from personal and designated production sites.
- Health Canada has made progress in reducing the number of registrations in the personal and designated production program, and the number of plants grown under these registrations. We encourage the department to continue to carefully scrutinize applications and to refuse those that pose risks to public health and safety.



## FIRST NATIONS SOVERIGNTY

- While the Act represents a paradigm shift in the government's approach to cannabis, for many Indigenous leaders, it is a reminder of the systemic barriers they face in their dealings with governments.
- While the Act defines the authorities of the federal and provincial governments, it is silent on the authority of Indigenous governments.
- Canada has made a commitment through the UN Declaration on the Rights of Indigenous Peoples Act to take measures to ensure the laws of Canada are consistent with Declaration.
- We understand that issues related to cannabis legalization and the control of cannabis-related activities are linked to broader issues of self-determination and reconciliation.
- Over the longer-term, it is our hope that learnings and outcomes from these agreements and other processes could be used to inform the UN Declaration on the Rights of Indigenous Peoples implementation work for cannabis.
- There are significant gaps in the cannabis framework that negatively impact the public health, public safety and equitable treatment of Indigenous communities and individuals.
- Recommendations aim to improve outcomes in health, safety and economic participation.
- We call for amendments to the Cannabis Act, facilitating a collaborative process with Indigenous communities that would allow those who wish to exert more control over cannabis-related activities in their territories to enter into nation-to-nation agreements with Canada based on agreed-upon standards to protect public health and safety.
- Interested Indigenous governments should have the funding necessary to be full partners in working to make the recommended amendments to the Act and to build the capacity to take on the responsibility of overseeing commercial cannabis activities in their communities, alongside supports for public health interventions and police services.
- It must be emphasized that unauthorized retail stores are different than stores that are sanctioned by First Nations community leadership. Stores sanctioned by the community may be operating outside of the provincial frameworks, but we understand that in these cases, the communities largely have the same public health and safety objectives as in the Act. We saw several examples of community laws that articulate this commitment and heard from some communities about the steps they have taken to set up licensing and oversight bodies. From our perspective, the real concern is retail outlets on Indigenous territories that are operating without any authorization and that may be affiliated with organized crime groups.
- Finance Canada should work with First Nations to identify options for the development of an excise tax-sharing framework as part of its discussions on fuel, alcohol, cannabis and tobacco.
- There should also be authority under the Act for nation-to-nation agreements that would provide greater community control of commercial activities with cannabis. This approach would require Canada to collaborate and co-develop legislative amendments with First Nations, Inuit and Métis, with the aim of enabling agreements that provide for Indigenous government authority.



## PRELIMINARY CONCLUSION

Among other things, Canada's Expert Panel reviewing the Cannabis Act concluded:

- Urgent challenges to the sustainability and inclusion of craft cannabis farmers and processors in the government's legal market are very real.
- By far, governments are the primary beneficiaries of sales generated by cannabis legalization.

While the Panel captured some of the themes regularly presented by the BC Craft Farmers Co-Op since 2020 related to micro-cannabis licencing, provincial regulations and First Nations sovereignty, other elements related to medical access and federal regulations are highly questionable.

We are thankful the Expert Panel agreed with many of BCCFC's policy positions. However, we fear it may be too little too late for too many craft farmers, BC processors and independent retailers that took a leap of faith to the government's legal market.

Unfortunately, the Panel's report demonstrates the good faith demonstrated by these passionate cannabis leaders has not been fully honoured or respected by federal and provincial governments.

BC has the most to lose by the exclusion of our world-class craft cannabis farmers from the legal market.

If the federal government can't respond rapidly to these recommendations in favour of craft farmers and micro-processors, it will be time to consider delegating authority for cannabis production and processing to First Nations and provincial governments before next year's federal election.

**The Expert Panel's report will be a key topic of discussion at BCCFC's 2024 BC Craft Cannabis Summit April 19 to 21, 2024 in Prince George, BC.**

BCCFC has invited representatives of Health Canada and the Expert Panel to attend the Summit and prepare a final response to the Report that reflects feedback received from Summit delegates.