



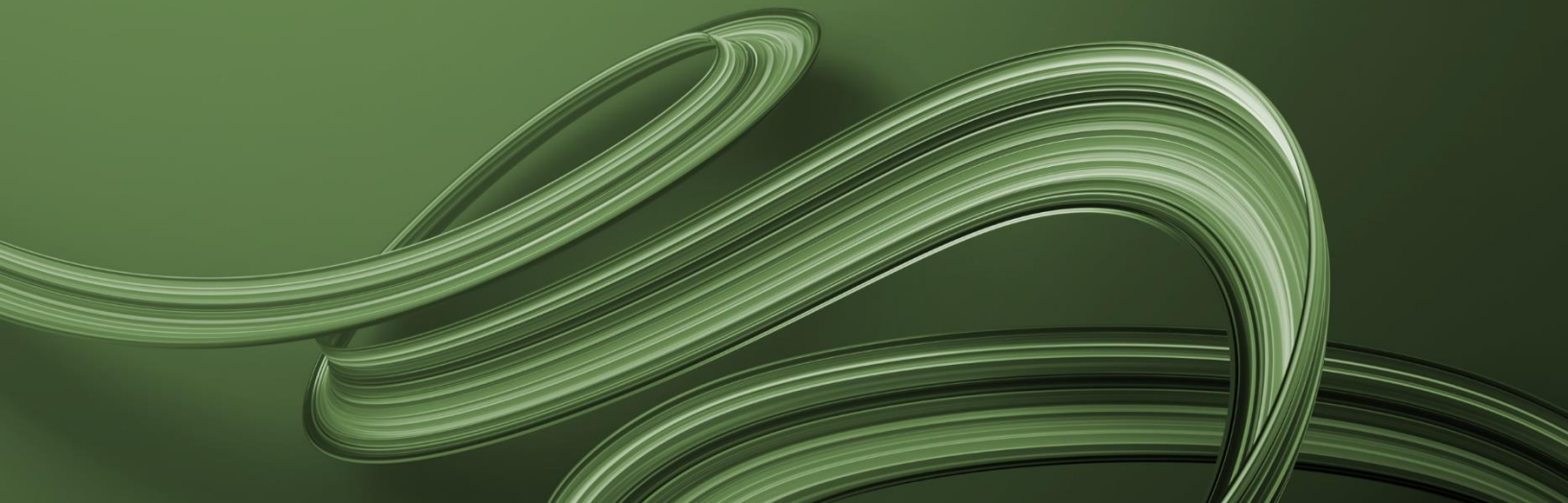
Competition Bureau
Canada

Bureau de la concurrence
Canada

Canada

Planting the seeds for competition

Competition Bureau submission to Health
Canada and the Expert Panel to support the
Cannabis Act legislative review



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Purpose

In fall 2022, the Competition Bureau began a targeted review of the state of competition in Canada's cannabis industry in response to Health Canada's legislative review of the *Cannabis Act*.

In its announcement for the legislative review, Health Canada notes that one of the objectives of the *Cannabis Act* is to provide “for the establishment of a diverse and competitive legal industry made up of small and large players to displace the illicit market.”¹ This resonated with the Bureau as an organization mandated to protect and promote competition for the benefit of Canadian consumers and businesses, prompting the Bureau's review of the industry.

The objectives of the Bureau's review are threefold:

1. gain a deeper understanding of the competitive dynamics of Canada's cannabis industry
2. determine if there are aspects of the *Cannabis Act* and its related regulations that may be impeding competition, innovation and choice in the industry
3. make recommendations to strengthen competition and support Health Canada in creating a more competitive legal industry

Competition in the Canadian cannabis industry matters. Competition fosters business innovation, incentivizes the creation of value, and benefits consumers by providing them with increased choice and quality. Importantly, these benefits of competition also serve to further displace illicit market activity and make for a stronger legal industry. Healthy competition also drives productivity, which stimulates economic growth. As such, it is crucial for industry regulators and policymakers (collectively, decision-makers) to examine how laws, regulations and policies (collectively, policies) shape competition in the industry. Where possible, decision-makers should tailor policies to maximize the benefits of competition to both businesses and consumers.

The Bureau fully recognizes that recommendations it makes in this report must be carefully balanced with other important public policy goals, including public health and safety. The Bureau is not an expert in these matters, and understands the need for certain regulatory safeguards to protect Canadians. The Bureau therefore relies on Health Canada and other subject-matter experts to determine how to strike the right balance between these goals and competition policy considerations.

¹ Health Canada (2022), [Government of Canada Launches Legislative Review of the Cannabis Act](#).

Although this report makes recommendations on matters that fall under Health Canada's purview, this complex industry involves other federal, provincial and territorial decision-makers. Thus, the Bureau encourages all industry decision-makers to consider the impact that their policies may have on competition, innovation and choice, and take measures to promote pro-competitive policy reform where possible.

Executive summary

This report explores the competitive dynamics of Canada’s cannabis industry, investigates potential barriers to competition, innovation and choice, and makes recommendations to enhance competition and support a more competitive legal industry.²

The Competition Bureau undertook its study of the cannabis industry to support the goals of Health Canada’s legislative review of the *Cannabis Act*. Although cannabis industry regulation is a shared responsibility of federal, provincial, and territorial governments, the focus of the legislative review is on matters within federal jurisdiction, specifically those under the remit of the Minister of Health and the Minister of Mental Health and Addictions. As such, other federal matters (e.g., excise duties), as well as issues that fall under provincial and territorial oversight (e.g., cannabis distribution and retail sale), are outside the scope of the legislative review.³

The Bureau believes that the *Cannabis Act* is being reviewed at an important time. While recreational cannabis legalization is still relatively new, the industry has grown and evolved over the last five years and there remains tremendous potential to shape its future path. Government policy is central to driving competition, and it is important to identify competition issues at an early stage in policy development. By reviewing how industry policies have fared since recreational cannabis legalization — and modernizing those policies where needed — Health Canada can ensure the objectives of the *Cannabis Act* are being met, while also supporting the longer-term competitiveness and viability of the industry.⁴

This report provides Health Canada and members of the [Cannabis Act legislative review Expert Panel](#) (Expert Panel) evidence-based advice to inform the review and modernization of policies that can benefit businesses, cannabis consumers and the cannabis industry more broadly. Through its study, the Bureau identified five barriers to competition that pose challenges for cannabis cultivators and processors (collectively,

² This study will not predetermine the Commissioner of Competition’s position in any current or future investigation or intervention pursuant to the [Competition Act](#).

³ Health Canada (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#).

⁴ On March 25, 2023, Health Canada published a [Notice of Intent](#) seeking feedback on potential amendments to the *Cannabis Regulations*. In the Notice of Intent, Health Canada acknowledges that “...the legal cannabis industry has matured, the marketplace has evolved, and there is increased knowledge and data on public health and public safety risks associated with certain activities.” Health Canada further acknowledges that “...there may be regulatory measures that could be made more efficient and streamlined without compromising the public health and safety objectives in the [*Cannabis Act*].”

cannabis producers) to enter and expand in the industry. Individually and collectively, these barriers have affected business productivity, innovation and consumer choice. Three of these barriers fall under the legislative framework of the *Cannabis Act*, and have directly affected how cannabis producers can compete effectively in the industry:

- **licensing requirements and regulatory compliance costs**, which can make entry into the legal industry challenging and impact the ability of cannabis producers to establish themselves and compete effectively
- **delta-9-tetrahydrocannabinol (THC) limits on edible cannabis products**, which limit consumer choice and make it difficult for cannabis producers to compete effectively with their illicit market counterparts
- **prohibitions on cannabis promotion, packaging and labelling**, which limit the ability of cannabis producers to innovate and compete on non-price aspects of competition

Although outside the scope of Health Canada's legislative review, this report also touches on two other barriers to competition. These two issues were raised extensively by industry stakeholders, and have ultimately impeded the ability of cannabis producers to compete effectively in the industry:

- **Canada's excise duty framework**, which makes profitability and viability in the industry challenging, particularly for small and medium-sized cannabis producers
- **a lack of industry standardization**, which makes it difficult for cannabis producers to get products to market and compete across provincial and territorial boundaries

To promote a more competitive legal industry, the Bureau recommends the following:

1. **Health Canada should review the cannabis licensing process and related regulatory compliance costs to ensure policies are minimally intrusive to competition, where possible.**
2. **Health Canada should review and consider adjusting THC limits on edible cannabis products, as appropriate, to allow legal cannabis producers to meet consumer demand and better compete with the illicit market.**
3. **Health Canada should review and consider easing restrictions on cannabis promotion, packaging and labelling, as appropriate, to empower consumers to make informed purchasing decisions and to provide cannabis producers with more flexibility to compete and innovate.**

Steps taken to promote more competition will enable cannabis producers to compete more effectively, including with their illicit market counterparts. This in turn will stimulate business innovation, allow consumers to access a wider range of quality-controlled, safe cannabis products, and ultimately help to divert consumers to the legal industry.

By adopting these recommendations, the Bureau firmly believes that Health Canada can improve the competitiveness of Canada's legal cannabis industry now, and in the long run.

About the Competition Bureau

The Competition Bureau is an independent law enforcement agency that protects and promotes competition for the benefit of Canadian consumers and businesses. As part of its mandate, the Bureau advocates for increased competition in regulated sectors of the economy.⁵

Competition is a catalyst of growth and innovation: it drives businesses to become more productive, to improve product and service quality, and to lower prices. Competition also empowers consumers by delivering the variety of products, services, and information they require to make informed purchasing decisions.

Government policy is central to driving competition. That is why the Bureau works with decision-makers to assess the competitive impact of new and existing policies, and to champion the essential role of competition in the economy.

⁵ See sections 125 and 126 of the [Competition Act](#), R.S.C., 1985, c. C-34.

Methodology

The Competition Bureau gathered information and data from a range of primary and secondary sources, including public research, news sources and other reports. This report also incorporates confidential information and data shared with the Bureau by various industry stakeholders, including cannabis businesses, industry associations, subject-matter experts and government entities.⁶

The Bureau interviewed more than 20 industry stakeholders between November 2022 and March 2023.

The Bureau would like to thank everyone who took the time to participate in these interviews and provide information and data to help advance this important work.

⁶ Confidential information provided to the Bureau is treated in accordance with the protections set out in section 29 of the *Competition Act*. References to such information have been anonymized. For detailed information regarding how the Bureau handles confidential information, see Competition Bureau (2013), [Information Bulletin on the Communication of Confidential Information Under the *Competition Act*](#).

Background: Canada's cannabis industry and the state of competition

Canada has been a trailblazer in recreational cannabis legalization and has set an example for cannabis policy on the international stage.

A legal framework for medical-use cannabis has been in place in Canada since 2001.⁷ In 2018, however, Canada became the second country in the world — and the first G7 nation — to legalize cannabis for recreational use.⁸ Since then, Canada's recreational cannabis industry has grown and evolved.

This section provides an overview of Canada's cannabis industry,⁹ including its path to legalization, how legalization has affected cannabis consumption and the effect this has had on the broader Canadian economy. It also examines the state of competition in the industry to set the stage for the recommendations made later in this report.

Canada's journey toward cannabis legalization

Canada's journey toward cannabis legalization has been long, involving many steps over the last century.¹⁰

Although Canada deemed cannabis illegal in 1923,¹¹ medical-use cannabis was legalized just over two decades ago.¹² This resulted in the creation of the *Marijuana Medical Access Regulations*, which came into force in 2001.¹³

⁷ Senate of Canada, Senate Special Committee on Illegal Drugs (2001), [Chapter 13: Regulating Therapeutic Use of Cannabis](#) and Health Canada (2016), [Understanding the New Access to Cannabis for Medical Purposes Regulations](#).

⁸ Health Canada (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#) and Toronto Star (2022), [History of the legalization of cannabis in Canada](#).

⁹ Throughout this report, unless otherwise noted, references to the cannabis industry refer to the recreational cannabis industry.

¹⁰ Ontario Chamber of Commerce (2019), [Supporting Ontario's Budding Cannabis Industry](#).

¹¹ Robin MacKay and Karin Phillips, Library of Parliament (2016), [The Legal Regulation of Marijuana in Canada and Selected Other Countries](#).

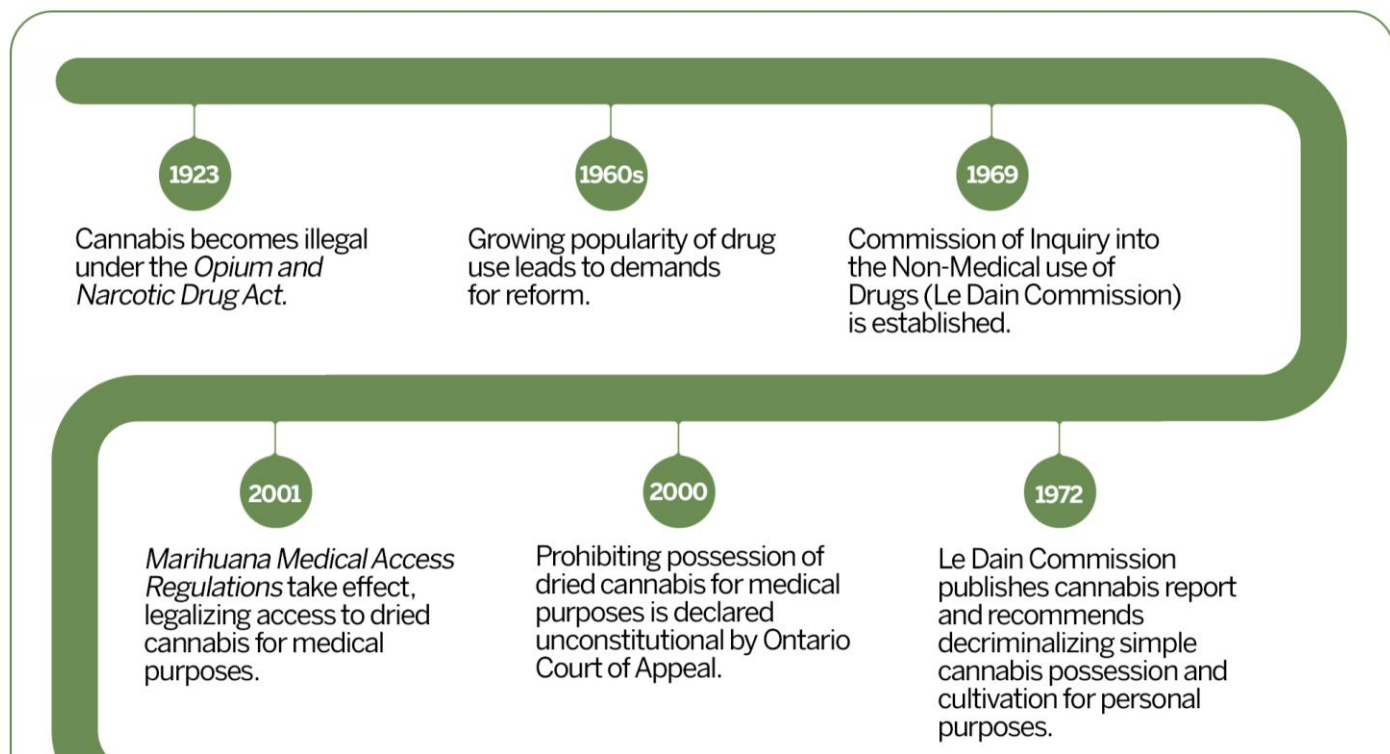
¹² YouthREX Research and Evaluation eXchange (2021), [What's With Weed? A History of Cannabis in Canada](#) and Toronto Star (2022), [History of the legalization of cannabis in Canada](#).

¹³ Senate of Canada, Senate Special Committee on Illegal Drugs (2001), [Chapter 13: Regulating Therapeutic Use of Cannabis](#) and Health Canada (2016), [Understanding the New Access to Cannabis for Medical Purposes Regulations](#).

The *Cannabis Act* came into force on October 17, 2018, making the sale, possession, production and distribution of recreational cannabis legal across Canada.¹⁴ Among other things, the first wave of recreational cannabis legalization under the *Cannabis Act* allowed adults to purchase dried and fresh cannabis, cannabis oil and cannabis seeds from authorized retailers.¹⁵ During the second wave of recreational cannabis legalization (2019), the sale of edible cannabis, cannabis extracts and cannabis topicals was legalized.¹⁶

Further details regarding Canada's path toward cannabis legalization can be found in Figure 1.

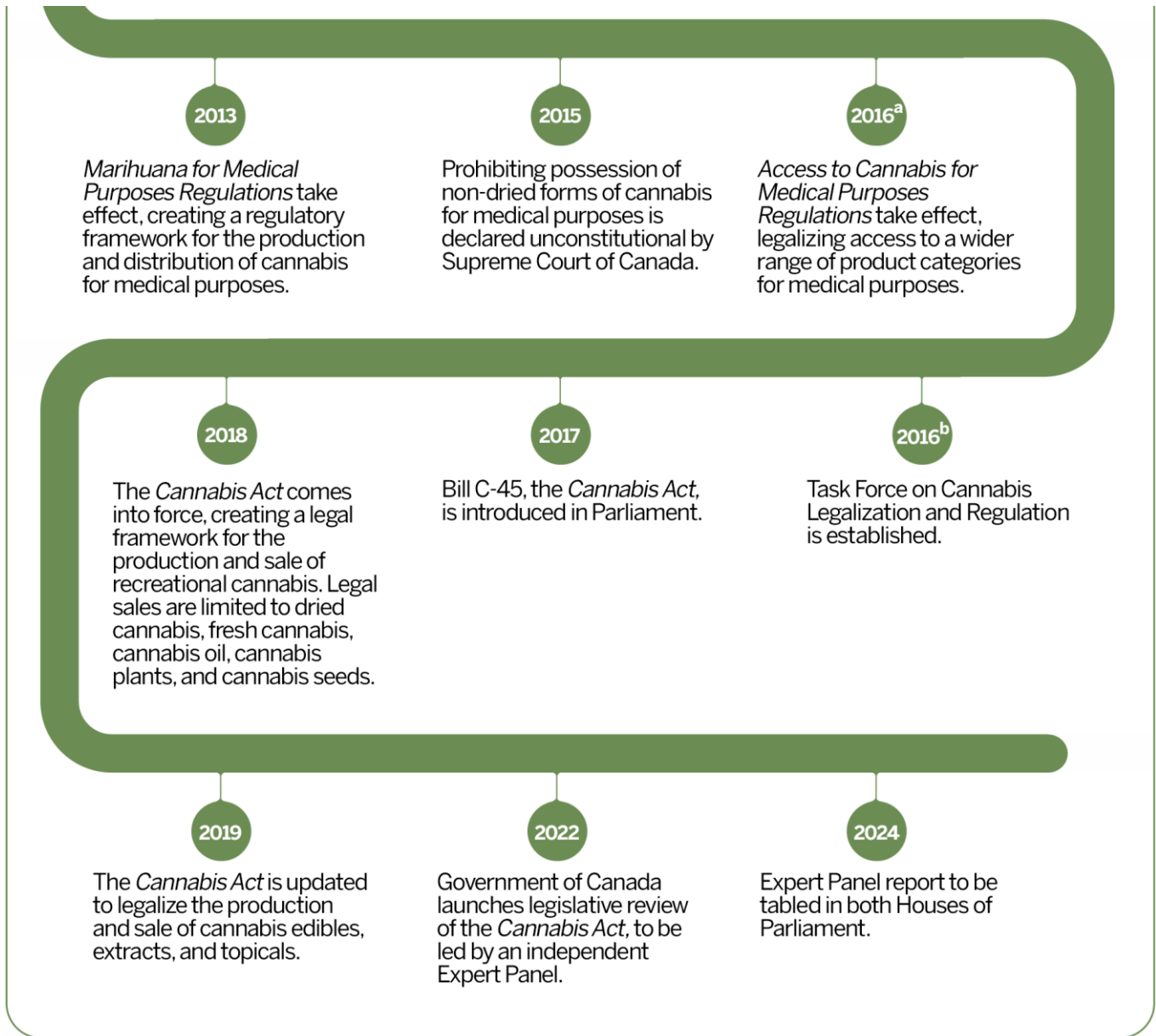
Figure 1: Canada's cannabis legalization timeline



¹⁴ Health Canada (2018), [The Cannabis Act: The Facts](#).

¹⁵ For additional information regarding what became legal during the first wave of recreational cannabis legalization, see Health Canada (2018), [The Cannabis Act: The Facts](#).

¹⁶ Health Canada (2023), [Regulations under the Cannabis Act](#).



Sources: **1923:** Robin MacKay and Karin Phillips, Library of Parliament (2016), [The Legal Regulation of Marijuana in Canada and Selected Other Countries](#); **1960s:** Senate of Canada (2002), [Cannabis: Our Position for a Canadian Public Policy](#), Report of the Senate Special Committee on Illegal Drugs, Summary Report; **1969:** Canadian Drug Policy Coalition (2023), [History of Drug Policy in Canada](#); **1972:** Commission of Inquiry Into the Non-Medical Use of Drugs (1972), [Cannabis: A Report of the Commission of Inquiry Into the Non-Medical Use of Drugs](#); **2000:** *R. v. Parker* (2000), [2000 CanLII 5762 \(ON CA\)](#); **2001:** Senate of Canada, Senate Special Committee on Illegal Drugs (2001), [Chapter 13: Regulating Therapeutic Use of Cannabis](#), Health Canada (2016), [Understanding the New Access to Cannabis for Medical Purposes Regulations](#) and LawNow, Centre for Public Legal Education Alberta (2020), [The Constitutional Right to Marijuana in Canada: R. v. Parker](#); **2013:** Health Canada (2016), [Understanding the New Access to Cannabis for Medical Purposes Regulations](#); **2015:** *R. v. Smith*, [2015 SCC 34 \(CanLII\)](#), [2015] 2 SCR 602; **2016^a:** Health Canada (2016), [Understanding the New Access to Cannabis for Medical Purposes Regulations](#); **2016^b:** Health Canada (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#); **2017:** Health Canada (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#); **2018:** Health Canada (2018), [Canada legalizes and strictly regulates cannabis](#) and Health Canada, (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#); **2019:** Health Canada (2019), [Statement from the Minister of Health on the Introduction of New Cannabis Products into the Legal and Regulated Market](#) and Health Canada (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#); **2022:** Health Canada (2022), [Government of Canada Launches Legislative Review of the Cannabis Act](#) and Health Canada (2023), [Expert panel: Cannabis Act legislative review](#); **2024:** Exact date to be determined. The report is expected to be tabled no later than 18 months following the start of the legislative review. See Health Canada (2022), [Government of Canada Launches Legislative Review of the Cannabis Act](#) and Health Canada (2023), [Expert panel: Cannabis Act legislative review](#).

Impact on the Canadian economy

Since the legalization of recreational cannabis in 2018, many consumers have shifted away from illegal cannabis purchases.¹⁷ With more consumers turning to legal sources of supply, the industry has grown significantly.¹⁸ In 2017, the year prior to recreational cannabis legalization, Statistics Canada estimated that Canadian households spent more than \$5.5 billion on cannabis (medical and non-medical). In 2022, Statistics Canada estimated Canadian household spending on cannabis (medical and non-medical) to be nearly \$8 billion, an increase of over 40% from before legalization.¹⁹

According to a study by Deloitte and the Ontario Cannabis Store, since the legalization of recreational cannabis, the industry has contributed \$43.5 billion to Canada's gross domestic product and helped create 151,000 jobs across the country. It has also contributed significantly to government tax revenue. Between 2018 and 2021, it is estimated that the cannabis industry, including both medical and non-medical cannabis, made up \$15.1 billion in government tax revenue for Canada.²⁰

Given the importance of the cannabis industry to Canada's economy, in Budget 2022, the federal government committed to advancing dialogue with cannabis businesses and industry stakeholders, and identifying areas for collaboration to help grow the legal industry.²¹

The cannabis supply chain and its oversight

Regulation of the cannabis industry falls under federal, provincial and territorial oversight. While the federal government is primarily responsible for cannabis production (i.e., cultivation and processing), provincial and territorial governments have jurisdiction over

¹⁷ Michelle Rotermann, Statistics Canada, Health Reports (2021), [Looking back from 2020, how cannabis use and related behaviours changed in Canada](#).

¹⁸ Shawn McGrath, IBISWorld (2022), Industry Report 11141CA: Cannabis Production in Canada.

¹⁹ Statistics Canada. [Table 36-10-0124-01 Detailed household final consumption expenditure, Canada, quarterly \(x1,000,000\)](#).

²⁰ Deloitte and the Ontario Cannabis Store (2021), [An industry makes its mark: The economic and social impact of Canada's cannabis sector](#).

²¹ Department of Finance Canada (2022), [Chapter 2: A Strong, Growing, and Resilient Economy | Budget 2022](#).

other aspects of the industry, including wholesale distribution and retail sales in the recreational industry.²²

Canada's cannabis supply chain (see [Figure 2](#)) begins with cannabis cultivators, who produce cannabis seeds, cannabis plants, and fresh and dried cannabis. Cultivators generally provide their products to cannabis processors, who process and package them for retail sale. Cannabis cultivators who have cannabis processing licences (see below) are also able to process and package products for retail sale.²³ For simplicity, this report refers to cannabis cultivators and cannabis processors collectively as cannabis producers, where applicable.

To operate in the legal cannabis industry, cannabis producers must be licensed. Cannabis producers can have various types of licences:

- a **micro-cultivation licence** for the production of plants and seeds, and fresh and dried cannabis, with a grow surface area of up to 200 m²
- a **nursery licence** for the production of plants and seeds for sale to other licence holders as starting materials, with a grow surface area of up to 50 m² for growing flowering and budding cannabis plants
- a **standard cultivation licence** for the production of cannabis plants and seeds, and fresh and dried cannabis with no size limit on grow surface area
- a **micro-processing licence** for the processing, packaging and labelling of harvested cannabis and industrial hemp, with a possession limit of up to 600 kg of dried cannabis (or its equivalent) per year
- a **standard processing licence** for the processing, packaging and labelling of harvested cannabis and industrial hemp, with no limit on cannabis possession²⁴

Provincial and territorial governments are responsible for determining how recreational cannabis can be distributed and sold within their jurisdiction.²⁵ Generally, once products are packaged and ready for retail sale, they are sold to provincial and territorial

²² Health Canada (2019), [Industry roles and responsibilities under the Cannabis Act](#). Note that sale for medical purposes falls under federal jurisdiction. See also, Health Canada (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#).

²³ Health Canada (2023), [Types of cannabis and industrial hemp licences](#) and Health Canada (2018), [Supply Chain for the Commercial Production and Sale of Cannabis: Federal Licences](#).

²⁴ Health Canada (2023), [Types of cannabis and industrial hemp licences](#), Health Canada (2022), [Applying for a micro-cultivation, nursery and micro-processing licence](#), and Health Canada (2018), [Supply Chain for the Commercial Production and Sale of Cannabis: Federal Licences](#).

²⁵ Health Canada (2022), [Authorized cannabis retailers in the provinces and territories](#) and Statistics Canada (2019), [The Retail Cannabis Market in Canada: A Portrait of the First Year](#).

wholesale distributors.²⁶ However, in some instances, cannabis producers may be able to supply directly to retailers²⁷ or adult consumers.²⁸

From the wholesale level, products are then distributed to cannabis retailers, which include brick-and-mortar and online stores. While the sale of medical cannabis falls under federal jurisdiction, non-medical sales fall under the jurisdiction of the provinces and territories.²⁹ Retail sales models vary by province and territory. In most jurisdictions, a hybrid sales model exists where both the province or territory and private businesses play a role in the sale of recreational cannabis.³⁰

²⁶ Canadian Centre on Substance Use and Addiction (2019), [Composition of Boards Overseeing Retail Cannabis Sales and Wholesale Distribution across Canada](#).

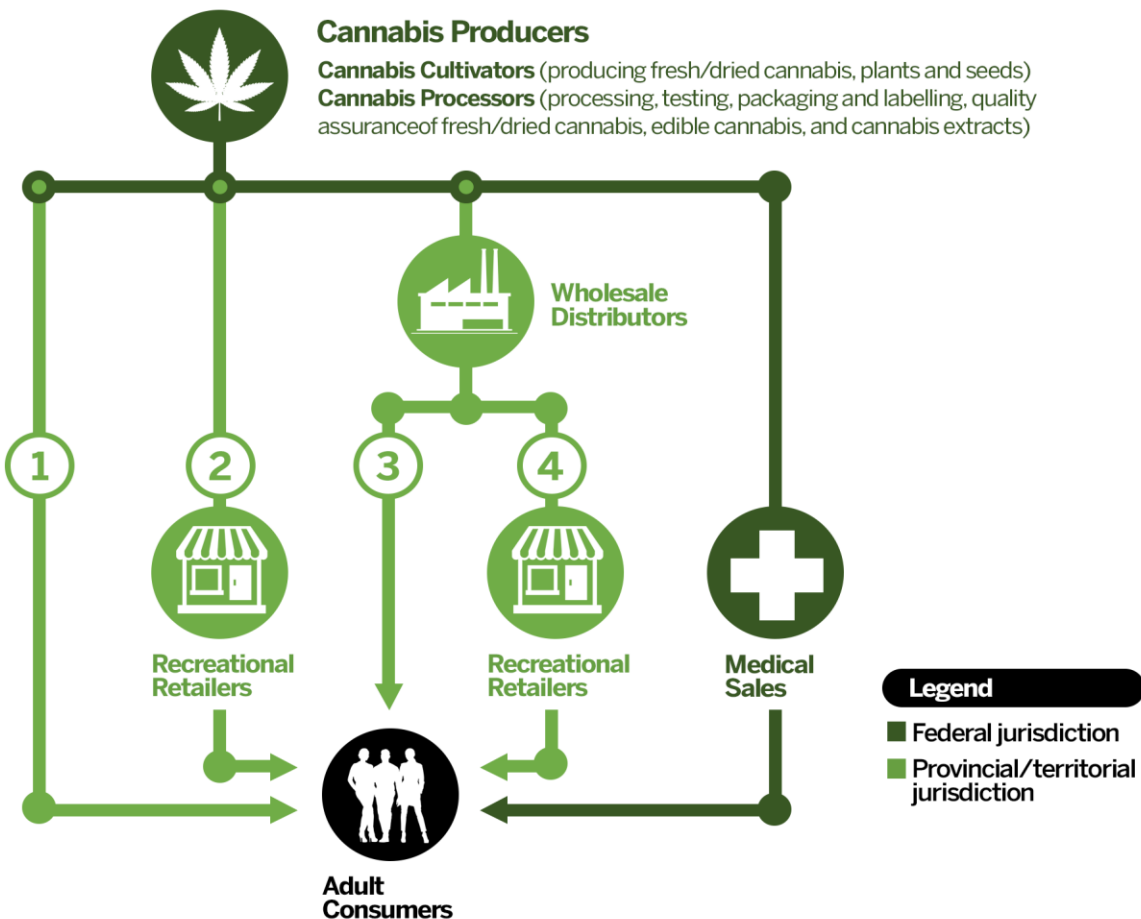
²⁷ For example, see Rebecca Hardin, Cannabis Retailer (2022), [Level the Playing Field: Direct Delivery](#) and British Columbia Liquor Distribution Branch (2022), [LDB's Direct Delivery Program](#).

²⁸ For example, the Ontario Cannabis Store permits farmgate stores (licensed and regulated by the Alcohol and Gaming Commission of Ontario), which allow cannabis producers to sell products directly to adult consumers without having to first ship that product to a distribution centre. See Ontario Cannabis Store (2022), [Farmgate: What is a "Farmgate" store?](#).

²⁹ Health Canada (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#).

³⁰ Canadian Centre on Substance Use and Addiction (2023), [Policy and Regulations \(Cannabis\)](#) and Retail Council of Canada (2023), [Cannabis Regulations Across Canada](#).

Figure 2: General overview of Canada's cannabis supply chain



- 1 Sales model in which cannabis producers are able to sell certain packaged cannabis products directly to adult consumers. (Note: After cultivation, dried cannabis is sent to cannabis processors to be processed and packaged prior to being sent back to cannabis cultivators for direct-to-consumer sales.)
- 2 Sales model in which cannabis producers sell certain packaged cannabis products directly to recreational retailers. (Note: After cultivation, dried cannabis is sent to cannabis processors to be processed and packaged prior to being sent to retailers.)
- 3 Sales model in which packaged cannabis products are sold by government-operated provincial or territorial retail outlets (brick and mortar or online stores).
- 4 Sales model in which packaged cannabis products are sold by licensed, privately operated recreational retailers (brick and mortar or online stores).

Note: This diagram is for illustrative purposes only; there is some variation in the supply chain by jurisdiction.

The state of competition in Canada's cannabis industry

While many cannabis producers operate in the Canadian cannabis industry, a crude count of competitors is not the only indicator of industry competitiveness.³¹ In this report, the Bureau discusses a number of barriers to competition under the current regulatory framework. Together, these barriers create a significant cost burden on cannabis producers and stifle innovation. Reducing these barriers will enhance the ability of businesses to compete, and could create better outcomes for small and medium cannabis producers, as well as for consumers.

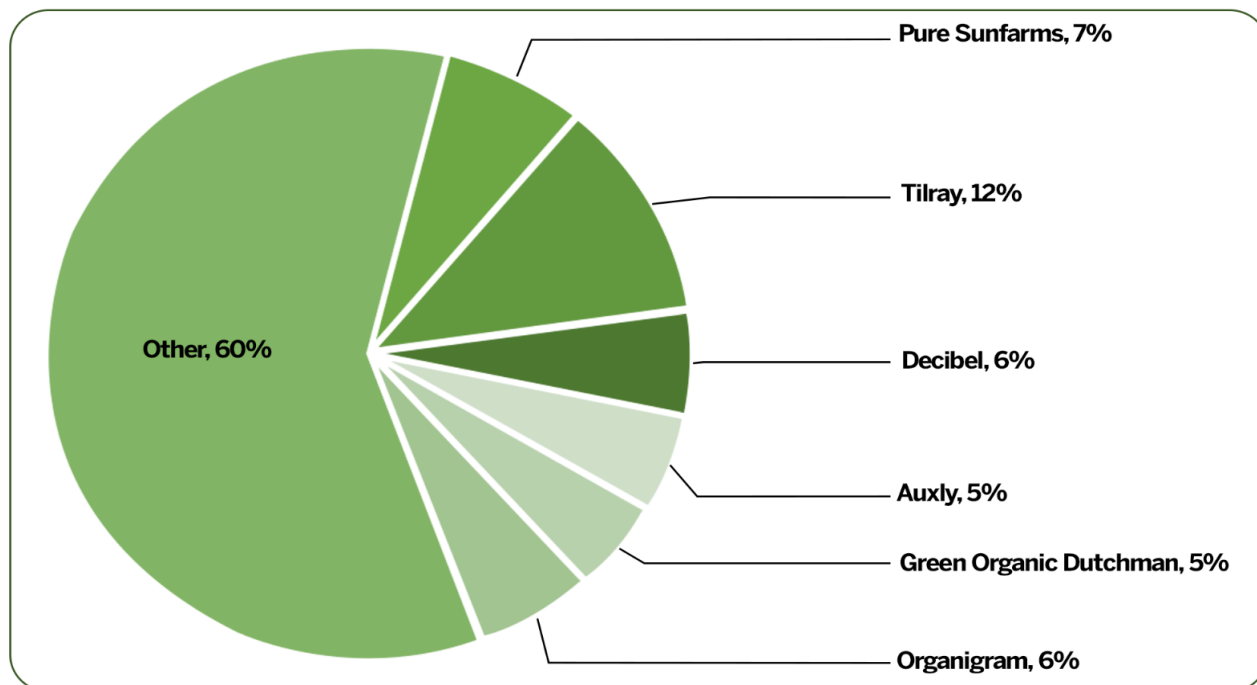
Key industry players

The cannabis industry in Canada has many cannabis producers — small, medium and large. While market shares vary by product line and by province, data available to the Bureau suggests that, overall, the recreational cannabis industry in Canada is characterized by a small number of large cannabis producers and a large number of smaller cannabis producers. While the industry is emerging and evolving, some degree of consolidation has already occurred,³² and stakeholders interviewed by the Bureau expect further consolidation to occur. It is therefore difficult to forecast how the industry will continue to evolve in the future. At present, according to data derived from [Headset.io](https://www.headset.io), the largest cannabis producer has an overall industry market share of just over 10%, suggesting a high level of fragmentation (see [Figure 3](#)).

³¹ As of May 8, 2023, there were more than 970 authorized licence holders for cultivation, processing, or selling cannabis. See Health Canada (2023), [Licensed cultivators, processors, and sellers of cannabis under the Cannabis Act](#) for the most recent number of authorized licence holders.

³² The Bureau has reviewed more than a dozen mergers involving cannabis producers since 2018. For more information, see the Bureau's [Monthly report of concluded merger reviews](#).

Figure 3: Shares of total revenue by cannabis producer (March 2022 – February 2023)



Source: All data derived from [Headset.io](#). Based on data from British Columbia, Alberta, Saskatchewan and Ontario.

Note: Tilray's market share in Figure 3 is inclusive of HEXO Corp. further to the April 12, 2022, [announcement of a strategic alliance](#) between the two companies. On April 10, 2023, a [definitive arrangement agreement](#) for Tilray to acquire HEXO Corp. was announced.

How do cannabis producers compete?

Cannabis producers compete on a variety of factors, including price, quality, and other business characteristics and product attributes. According to 2022 data from Health Canada's Canadian Cannabis Survey, respondents who used cannabis in the past 12 months chose product price (30%), safe supply (23%) and product quality (12%) as the top factor determining where they purchased cannabis. Product quality was also ranked as the second-most important factor by 23% of respondents.³³

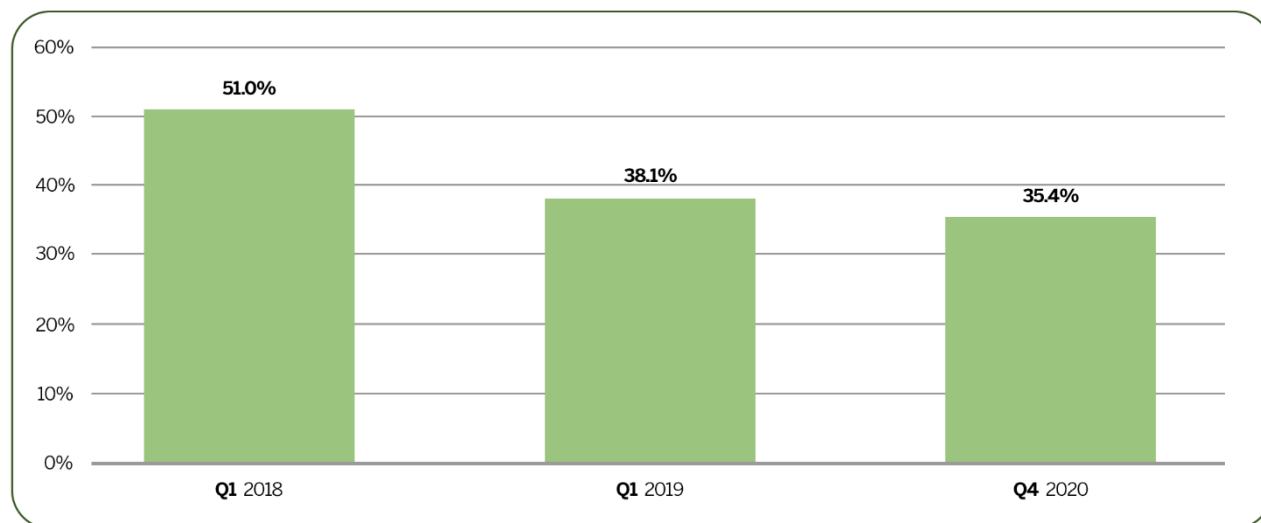
Cannabis producers also compete with the illicit market. Illicit market players are not bound by licensing requirements and do not face the same costs or regulatory restrictions as licensed cannabis producers. The Bureau heard that, because of these factors, illicit market players can offer a wider range of (unregulated) products to consumers, often at lower prices.

³³ Health Canada (2022), [Canadian Cannabis Survey 2022: Summary](#) (see Figure 14).

Competition with the illicit market

As noted, the illicit market is a prime competitor of licensed cannabis producers. While strides are being made to combat the illicit market, it continues to play a significant role in the Canadian cannabis industry (see Figure 4).

Figure 4: Percentage of cannabis consumers accessing illegal cannabis (Q1 2018, Q1 2019, Q4 2020)



Source: Statistics Canada (2021), [Table 4: Number and percentage of consumers who accessed cannabis from each source, by selected demographics, time relative to legalization and quarter, Canada \(provinces only\), first quarters of 2018 and 2019, and fourth quarter of 2020](#). Data from Health Canada's 2022 Canadian Cannabis Survey further show that in 2022, 33% of those using cannabis in the past 12 months obtained some cannabis from illegal sources (5% always purchase from illegal sources, 5% mostly purchase from illegal sources, 8% sometimes purchase from illegal sources, and 15% rarely purchase from illegal sources). For more information, see Health Canada (2022), [Canadian Cannabis Survey 2022: Summary](#).

A 2022 study from the University of Waterloo's School of Public Health Sciences tracked the reasons cannabis consumers chose to purchase cannabis from illicit sources. Though many reasons were cited, the most common were price, the inconvenience of legal sources, product quality and product selection.³⁴

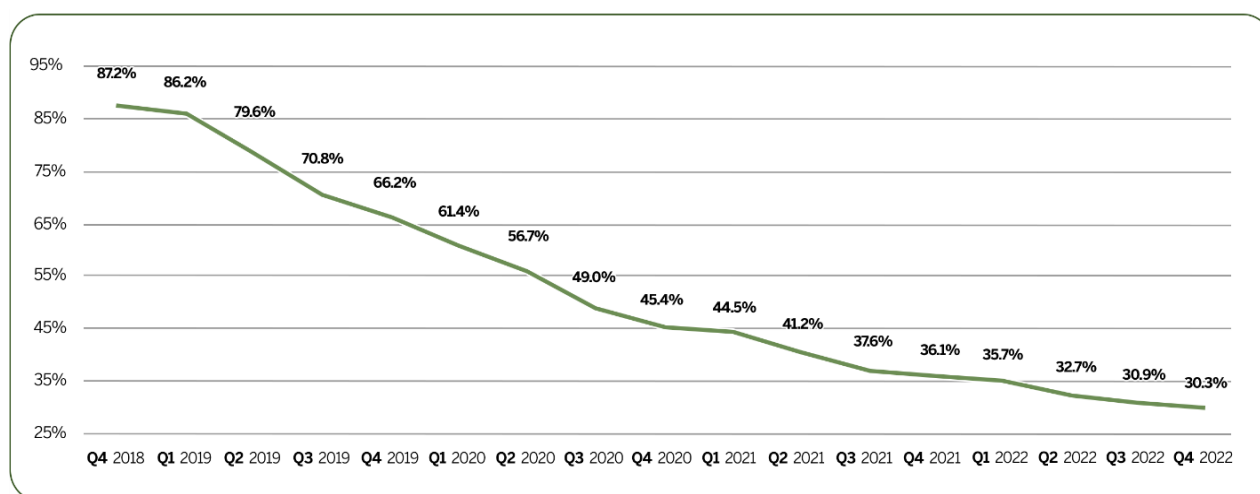
Nonetheless, Canada's legal cannabis industry has had some success in displacing its illicit market counterpart. According to Health Canada's 2022 Canadian Cannabis Survey, nearly one half (48%) of those who used cannabis in the past 12 months purchased cannabis exclusively from legal sources, an increase from 43% in 2021. Data

³⁴ Samantha Goodman, Elle Wadsworth and David Hammond (2022), [Reasons for Purchasing Cannabis from Illegal Sources in Legal Markets: Findings Among Cannabis Consumers in Canada and U.S. States, 2019-2020](#).

from Statistics Canada also suggests that the legal industry has made consistent gains against the illicit market (see [Figure 5](#)).³⁵

While most stakeholders interviewed by the Bureau agree that progress has been made, some believe the true share of the illicit market is higher than what has been estimated. This is due to difficulties estimating the size of a market that is deliberately opaque.

Figure 5: Share of the illicit cannabis market in Canada (non-medical use, Q4 2018 – Q4 2022)



Source: Statistics Canada. [Table 36-10-0124-01 Detailed household final consumption expenditure, Canada, quarterly \(x 1,000,000\)](#).

³⁵ Data from Statistics Canada estimates that the illicit market's share of the industry has declined from nearly 90% in the early phases of legalization to around 30% of the industry by the end of 2022. See Statistics Canada. [Table 36-10-0124-01 Detailed household final consumption expenditure, Canada, quarterly \(x 1,000,000\)](#).

Making the case for competition

Competition is the driver of Canada's economy. It increases Canada's productivity, and benefits Canadian businesses and consumers alike. Competition fosters business efficiency and innovation, and encourages firms to deliver new and innovative products and services to the marketplace. This in turn provides consumers with competitive prices and product choices.³⁶

In the cannabis industry, competition matters for a number of reasons. It can ensure consumers have access to a variety of products and the information they need to make informed purchasing decisions. Competition can also help displace illicit market activity and bolster the strength of the legal industry. Without the ability to compete vigorously and effectively against an entrenched illicit market, businesses operating in Canada's nascent legal industry cannot, and will not, succeed.

Decision-makers in the cannabis industry have the very important job of protecting the health and safety of Canadians. Certain regulatory safeguards support this goal. However, as the cannabis industry continues to evolve, healthy competition can reinforce these public policy objectives. Even well-intentioned regulations can be self-defeating if they push consumers away from tested, legal sources of cannabis toward potentially unsafe illegal suppliers.

By proactively considering the impacts of policies on competition and making changes where possible to allow for increased competition, decision-makers can foster a robust and vibrant cannabis industry, both now and for years to come.

³⁶ Competition Bureau (2022), [Why competition matters](#).

Barriers to competition

During this review, the Competition Bureau identified five barriers affecting competition in Canada's cannabis industry. While the Bureau acknowledges that many cannabis producers currently operate in the industry, these five barriers have made industry entry more challenging, and directly impeded the ability of cannabis producers to innovate, scale up their operations and become truly effective competitors.

Barriers 1 through 3 fall under the legislative framework of the *Cannabis Act*, and are therefore within the scope of Health Canada's legislative review. While barriers 4 and 5 fall outside the scope of the legislative review, they still affect the ability of cannabis producers to compete effectively. They also highlight the regulatory complexity of the legal cannabis industry, and the need for government collaboration to promote its competitiveness and long-term sustainability.

Although not an exhaustive list of barriers to competition, the five barriers discussed below were frequently raised by the industry stakeholders interviewed by the Bureau and appear extensively in the literature.

Barrier 1: Licensing requirements and regulatory compliance costs

Stakeholders told the Bureau that licensing requirements and regulatory compliance costs³⁷ can make industry entry challenging and hinder the ability of cannabis producers to establish themselves and compete effectively. The Bureau heard that this can be particularly burdensome for small and medium-sized businesses, which may not have the financial resources or know-how to navigate the many regulatory requirements. The Bureau also heard that these factors can deter illicit market participants from transitioning to the legal industry.

How do licensing requirements and regulatory compliance costs act as barriers to competition for cannabis producers?

Requiring a cannabis producer to have its facility nearly completed before licensing. The Bureau heard that businesses may need to invest millions of dollars before even receiving approval to operate in the industry. Before a cannabis producer

³⁷ Excise duties constitute a significant operating cost and are addressed separately under Barrier 4.

can obtain a licence, it must have a fully built site.³⁸ For some, this may involve retrofitting an existing site and investing in the infrastructure required to comply with regulations (e.g., physical security measures such as visual recording devices),³⁹ while for others, this may involve building a site from the ground up. While the Bureau recognizes that there are currently a large number of cannabis producers in the industry, it heard that these high start-up costs can make entering and gaining a foothold in the industry more challenging for some businesses.

To raise the funds to build a facility, businesses need to secure capital through investors or banks. This is difficult for small to medium-sized businesses without a licence or business brand/reputation. Some stakeholders said obtaining loans from banks is challenging, making it extremely difficult for businesses to raise capital. An ongoing class-action lawsuit alleges that Canadian banks have engaged in financial discrimination against legal cannabis businesses, including refusing to open bank accounts and denying businesses access to mortgages and lines of credit.⁴⁰

Lengthy and costly security processes and requirements. To obtain a licence from Health Canada, cannabis producers are required to obtain security clearance for key personnel.⁴¹ While these security checks have a valid and important purpose, they impose additional costs⁴² and, in some cases, can take anywhere from a few months to over a year to complete.⁴³

As mentioned, cannabis producers also need to comply with a number of physical security measures to secure a cannabis site, adding to their up-front costs.⁴⁴

The Canada Revenue Agency (CRA) requires security requirements in addition to those from Health Canada. The CRA requires a minimum \$5,000 financial security (or bond) for

³⁸ According to Health Canada, this requirement was introduced in 2019 to reduce wait times for more mature applications and to better allocate the resources required to review applications. See Health Canada (2019), [Statement from Health Canada on changes to cannabis licensing](#) and Health Canada (2022), [Before you start applying for a cannabis licence: Cultivation, processing and sale for medical purposes licence](#).

³⁹ Government of Canada (2021), [Physical Security Measures Guide for Cannabis: Requirements under Part 4 of the Cannabis Regulations](#) and [Cannabis Regulations](#) (SOR/2018-114).

⁴⁰ Cour supérieur du Québec, Registre des actions collectives (2023), [Aperçu de la demande d'action collective 200-06-000256-233](#) and Montreal Gazette (2023), [Cannabis company seeks class-action lawsuit against Canadian banks](#). As the case is ongoing, these allegations have not been proven in court.

⁴¹ Health Canada (2022), [Cannabis organizational security plan](#).

⁴² The security clearance fee is \$1,654 per application. See Health Canada (2018), [Cannabis Fees Order Guide](#).

⁴³ Health Canada (2022), [About the process: Cannabis security clearances](#).

⁴⁴ Government of Canada (2021), [Physical Security Measures Guide for Cannabis: Requirements under Part 4 of the Cannabis Regulations](#) and [Cannabis Regulations](#) (SOR/2018-114).

all cannabis cultivators and a maximum of \$5 million in financial security for cannabis processors.⁴⁵

Application and annual regulatory fees. Obtaining and maintaining a cannabis licence can be expensive for cannabis producers in terms of application and annual regulatory fees alone (see [Table 1](#)).⁴⁶ Although the goal of these fees are to recover costs, the Bureau heard that they may be so great they deter industry entry and increase industry exit. Furthermore, while many micro cannabis producers may not want to expand their business, those who do may be less likely to pursue a standard licence due to the higher costs.

Navigating the legal framework. The Bureau heard that some cannabis producers struggle to navigate the legal rules surrounding licensing. While some stakeholders told the Bureau this process has improved, others said there is little clarity on how to prepare a successful application and the process is administratively burdensome.

⁴⁵ For further details regarding how financial security is calculated, see Government of Canada (2022), [Cannabis duty - Apply for a cannabis licence from the CRA](#).

⁴⁶ These fees vary based on class of licence-holder. For additional details on these fees and how they are calculated, see Health Canada (2018), [Cannabis Fees Order Guide](#). As noted in the [Cannabis Fees Order Guide](#), the annual regulatory fee “recovers the Government of Canada’s aggregate costs of administering the cannabis regulatory program that are not covered by [other] transactional fees” (e.g., application screening fees, security clearance fees, etc.).

What are the approximate minimum costs necessary to become and operate as a licensed cannabis producer?

Table 1: Minimum entry and post-entry fees for cannabis producers

	Health Canada Application Fee ^a	Health Canada Security Clearance Fee ^b	Minimum Entry Costs (Application Fee + Security Clearance Fee)	Sample Annual Revenue ^c	Health Canada Annual Regulatory Fee ^d		Minimum Annual Post-Entry Compliance Costs (Greater of the Minimum Health Canada Site Fee or the Revenue-Based Health Canada Site Fee) ^g
					Minimum Health Canada Site Fee ^e	Revenue-Based Health Canada Site Fee ^f	
Micro Cannabis Producers	\$1,638	\$1,654	\$3,292	\$500,000	\$2,500	\$5,000	\$5,000
				\$1,500,000	\$2,500	\$34,500	\$34,500
Standard Cannabis Producers	\$3,277	\$1,654	\$4,931	\$500,000	\$23,000	\$11,500	\$23,000
				\$1,500,000	\$23,000	\$34,500	\$34,500

Source: Health Canada, (2018), [Cannabis Fees Order Guide](#).

Note: These figures do not account for additional regulatory compliance costs such as: (1) physical building requirements; (2) physical security costs; and (3) CRA regulatory costs (security bond requirements and excise duties and stamps).

- ^a See section 5.1 of Health Canada's [Cannabis Fees Order Guide](#).
- ^b See section 5.2 of Health Canada's [Cannabis Fees Order Guide](#).
- ^c Sample annual revenue provided for illustrative purposes only. These are arbitrary revenues used to highlight minimum possible entry and post-entry compliance costs for cannabis producers with revenues below and above a \$1 million threshold.
- ^d See Section 6.0 of Health Canada's [Cannabis Fees Order Guide](#) for detailed information on the annual regulatory fee. Note that the timing and application of the annual regulatory fee for a Health Canada site may vary depending on which of the three periods the licence holder finds themselves in: the entry year, first year or subsequent years.
- ^e The minimum Health Canada site fee is \$2,500 for micro-class licence holders and \$23,000 for standard licence holders. For more information, see section 6.1.1 of Health Canada's [Cannabis Fees Order Guide](#).
- ^f For micro licence holders, this fee is 1% for cannabis revenue of \$1 million or less and 2.3% on any cannabis revenue in excess of \$1 million. For standard licence holders this fee is 2.3% of cannabis revenue. For more information, see section 6.1.3 of Health Canada's [Cannabis Fees Order Guide](#).
- ^g See section 6.1 of Health Canada's [Cannabis Fees Order Guide](#).

Illicit cannabis producers do not face these regulatory compliance costs or certain other additional costs (e.g., physical building requirements, physical security costs, CRA regulatory costs). Furthermore, stakeholders noted that wholesale prices (where applicable) are effectively set by provincial and territorial wholesale distributors, though there are some exceptions. In the illicit market, cannabis producers can set their own prices. Legal cannabis producers need to be much more efficient in their operations, given the additional regulatory compliance and other costs that they face.

Balancing regulation and competition

As noted in Health Canada’s engagement paper for the legislative review, “[t]he licensing system is designed to enable a diverse, competitive legal industry comprised of both large and small players. The system allows for a range of different activities and aims to reduce the risk that organized crime will infiltrate the legal industry while facilitating the transition of illegal producers into the legal industry.”⁴⁷

Licensing plays a necessary and important role in regulating and overseeing cannabis production in Canada, as noted. Certain aspects of the licensing process, however, combined with regulatory compliance costs, may be impeding cannabis producers from competing successfully in the industry. Operating costs may become too high to be sustainable, and businesses may exit the industry completely.⁴⁸

Although the industry is currently characterized by a relatively large number of cannabis producers, the number of competitors in and of itself is not an accurate measure of industry competitiveness. By minimizing the regulatory burden of the licensing process and reducing compliance costs, where possible, decision-makers can reduce barriers to entry and expansion, as well as stimulate even more effective competition — both within the legal cannabis industry as well between legal cannabis producers and their illicit market counterparts. This would allow businesses to become more productive and efficient in their operations, thereby increasing their chances of success in the industry.

Lower regulatory barriers can also stimulate innovation, leading to more variety and choice for consumers. Reducing the regulatory burden can also help decision-makers meet other important public policy goals, such as displacing the illicit market and protecting the diversity and vitality of Canada’s legal cannabis industry.

⁴⁷ Health Canada (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#).

⁴⁸ Between January 1 and December 22, 2022, approximately 40% of all companies that have been granted protection under the *Companies’ Creditors Arrangement Act* (CCAA) operate in the cannabis space. For more information, see Office of the Superintendent of Bankruptcy (2023), [CCAA records list](#).

Diversity and inclusion in Canada's cannabis industry

Through interviews with stakeholders, the Bureau heard that regulatory barriers, particularly those surrounding licensing and financing, may disproportionately affect underrepresented groups, such as women and racialized communities.

Certain aspects of the [cannabis licensing process](#) — including detailed background checks, for example — were put in place to prevent individuals linked with organized crime from entering the legal industry, and to ensure licence holders do not pose unacceptable risks to public health or safety. However, these requirements, coupled with challenges that certain groups have [accessing capital](#), have directly affected many applicants' ability to become licenced and compete in the legal industry.

Health Canada has already implemented [certain measures to increase diversity and inclusion](#)* in the legal cannabis industry. The Bureau encourages the department to continue examining how policies affect underrepresented groups, and how policies can be modified to promote a more competitive and diverse legal industry.

*For example, Health Canada provides certain services specifically for Indigenous and Indigenous-affiliated licensee applicants, including, for example, a two-stage review process which permits qualified applicants to have their applications reviewed before having a fully built site.

Barrier 2: THC limits for edible cannabis products

Delta-9-tetrahydrocannabinol — or THC — is the main psychoactive compound in cannabis.⁴⁹ It is responsible for how the brain and body responds to cannabis, including its intoxicating effects. The potency of THC is typically represented as a percentage of THC by weight or by volume, depending on the cannabis product in question.⁵⁰

In Canada, the amount of THC that can be present in cannabis products is regulated to reduce risks associated with overconsumption (including from accidental consumption).⁵¹ While these public health and safety objectives are important, policies vary by product category, and may have an unintended effect of giving the illicit market a competitive advantage, particularly in the edibles segment.

⁴⁹ Zerrin Atakan (2012), [Cannabis, a complex plant: different compounds and different effects on individuals](#), Therapeutic Advances in Psychopharmacology.

⁵⁰ Health Canada (2023), [About cannabis](#).

⁵¹ Health Canada (2019), [Guide on composition requirements for cannabis products](#).

In its engagement paper, Health Canada notes that there is no limit on the THC content for dried cannabis products in order to facilitate the legal industry’s ability to compete with and displace the illicit market.⁵² However, this is inconsistent with the approach taken toward other cannabis product categories, including edibles (see [Table 2](#)).

Table 2: THC limits per unit and per container/package by product category

Product category	THC limit per unit	THC limit per container/package
Fresh or dried cannabis	None	None
Cannabis extracts and topicals	10 mg	1,000 mg
Edible Cannabis (e.g., gummies, chocolate, baked goods, beverages)	10 mg	10 mg

Source: Health Canada (2019), [Guide on composition requirements for cannabis products](#). For additional information on requirements by product category see Section 6.0.

While the THC limit for cannabis edibles is strictly regulated, edibles sold in the illicit market are not subject to any restrictions. Industry stakeholders identified this as a significant barrier to competition, as it limits the ability of cannabis producers to compete effectively in the edibles segment. Research supports this, suggesting that one of the biggest drivers of the continued viability of the illicit market is the wide range of edible products available to consumers.⁵³

Empowering consumers through choice

In competitive markets, businesses produce and sell products that consumers want at prices they are willing to pay. Thus, when businesses operate in competitive markets, consumers hold the power.⁵⁴ Policies regarding THC limits for edible cannabis products

⁵² Health Canada (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#).

⁵³ A recent assessment of illicit cannabis retail websites found that consumers have access to hundreds of edible cannabis products with reported THC levels ranging from 5 to 2,000 mg of THC per container/package. See Ontario Cannabis Store (2022), [Opportunities to Improve the Canadian Federal Cannabis Framework: Perspectives from the Ontario Cannabis Store](#).

⁵⁴ Competition Bureau (2022), [Why competition matters](#).

limit the ability of cannabis producers to offer a wide range of choices to consumers that wish to source these products from legal suppliers.

Given the number and type of higher-potency edibles available in the illicit market, previous illicit market consumers expect to be able to purchase comparable products through legal means.⁵⁵ However, consumer preference research indicates that frequent cannabis consumers interested in purchasing edibles are more likely to source them from the illicit market.⁵⁶

With increased flexibility, cannabis producers will be motivated to innovate and develop edible products that better align with consumer preferences. This can help put consumers back in the driver's seat, and transition them away from sourcing unregulated, potentially harmful edible products from illegal sources.

Leveling the playing field

In regulating this industry, decision-makers have the difficult task of balancing public health and safety objectives with other policy considerations, including competition. However, to create a competitive legal industry that can displace the illicit market, it is important to create a level playing field by reducing unnecessary regulatory barriers to competition. Adjusting THC limits for cannabis edibles can do just this.

Some industry stakeholders shared that simply increasing the THC limit per container/package (i.e., from 10 mg to 100 mg) could make edible cannabis products more appealing to consumers, especially those currently sourcing them from the illicit market.⁵⁷ If legal cannabis producers had more flexibility, they could expand their product offerings, better meet the needs of consumers, and compete more vigorously with their illicit market counterparts.

Improving the productivity of cannabis producers

Adjusting the THC limit for edible cannabis products, particularly the limit per container/package, may also improve the productivity and efficiency of the cannabis

⁵⁵ Ontario Cannabis Store (2022), [Opportunities to Improve the Canadian Federal Cannabis Framework: Perspectives from the Ontario Cannabis Store](#).

⁵⁶ 40% of respondents to the Ontario Cannabis Store survey cited potency limits as a reason for frequenting illicit sources and many stated that the THC potency in regulated edible products is “so low that it isn't worth it.” See Ontario Cannabis Store (2022), [Opportunities to Improve the Canadian Federal Cannabis Framework: Perspectives from the Ontario Cannabis Store](#).

⁵⁷ See also David Brown, StratCann (2022), [Canada's 10mg edibles limit empowering black market, hamstringing legal industry](#).

supply chain. Industry stakeholders suggested that increasing the permissible amount of THC per container/package would reduce packaging costs, drive efficiencies, and enable licensed producers to better compete with the illicit market.⁵⁸

International spotlight: United States

The Bureau compared THC potency limits for edible cannabis products in Canada with those of various jurisdictions in the United States where recreational cannabis is legal. As illustrated in [Table 3](#), the majority of U.S. states that have legalized recreational cannabis have adopted a THC limit of 10 mg per unit and 100 mg per container/package.

As the legal industry has matured, some states have taken steps to increase the THC limit for edible cannabis products. For example, in the last two years, both Alaska and Oregon increased the THC limit from 5 mg per unit and 50 mg per container/package to 10 mg per unit and 100 mg per container/package.⁵⁹ These changes brought both Alaska and Oregon more in line with THC limits in other U.S. states. Oregon's regulatory body explained that these updated policies try to balance consumer health and safety concerns with economic interests in an effort to displace the illicit market.⁶⁰ Sales data from Oregon shows stronger consumer preference for larger container/package sizes after the limits increased, as 50 mg container/package purchases decreased from 83.1% to 22.7% of edible sales.⁶¹

[Table 3](#) highlights differences in edible market shares, represented as a percentage of total cannabis sales, between Canada (5.8%) and the U.S. (11.8%). This data suggests that there may be a missed opportunity for the legal edibles segment in Canada to benefit from increased competition, possibly owing in part to lower THC limits per container/package compared with the U.S.⁶²

⁵⁸ See also Ontario Chamber of Commerce (2022), [Supporting Ontario's Budding Cannabis Industry](#).

⁵⁹ Jana D. Weltzin, Marijuana Venture: The Journal of Professional Cannabis Growers and Retailers (2021), [Edibles regulations vary widely from State to State](#) and John Ross Ferrara, Portland Mercury (2022), [New Oregon Bill Allows for Double the Amount of THC in Edibles](#).

⁶⁰ Oregon Liquor & Cannabis Commission (2021), [News Release: Commission approves changes for cannabis industry](#).

⁶¹ Data derived from [Headset.io](#).

⁶² Headset (2022), [Cannabis Edibles: An analysis of category trends & performance](#).

Table 3: Comparison of edible market shares and THC limits in Canada and the U.S.

		THC limit per unit	THC limit per container/package	Edibles market share ^a (percentage of total cannabis sales, January–September 2022)	
Canada^c	Alberta	10 mg	10 mg	5.8%^b	5.3%
	British Columbia	10 mg	10 mg		6.4%
	Ontario	10 mg	10 mg		5.9%
	Saskatchewan	10 mg	10 mg		5.2%
United States^d	Alaska	10 mg	100 mg	11.8%^b	-
	Arizona	10 mg	100 mg		9.6%
	California	10 mg	100 mg		11.4%
	Colorado	10 mg	100 mg		14.8%
	Connecticut	5 mg	100 mg		-
	Illinois	10 mg	100 mg		-
	Maine	10 mg	100 mg		-
	Maryland	10 mg	100 mg		11.8%
	Massachusetts	5.5 mg	110 mg		13.8%
	Michigan	10 mg	200 mg		12.7%
	Montana	10 mg	100 mg		-
	Nevada	10 mg	100 mg		11.8%
	New Jersey	10 mg	100 mg		-
	New York	10 mg	100 mg		-
	Oregon	10 mg	100 mg		11.4%
	Rhode Island	10 mg	100 mg		-
	Vermont	5 mg	50 mg		-
Washington	10 mg	100 mg	9.1%		

Sources:

- ^a Headset (2022), [Cannabis Edibles: An analysis of category trends & performance](#).
- ^b Average percentage of total cannabis sales by country based on provinces (Canada) and states (U.S.) for which edible market share data is available. See Headset (2022), [Cannabis Edibles: An analysis of category trends & performance](#).
- ^c Sources for Canadian provinces: Health Canada (2019), [Guide on composition requirements for cannabis products](#).
- ^d Sources for U.S. states: Alaska Department of Health, Division of Public Health (2023), [Marijuana Edibles Safety: Be Careful When You Eat and Drink Marijuana](#); Arizona Department of Health Services, Bureau of Marijuana Licensing (2020), [Arizona Administrative Code, Title 9, Chapter 18, Adult-Use of Marijuana Program, Section 313\(A\)\(5\)\(b\)](#); California State Legislature (2016), [California Code of Regulations, Title 4, Division 19, Chapter 10, Article 2, Section 17304](#); State of Colorado (2023), [Safety with edibles](#); State of Connecticut (2022), [What kind of edibles will be available for consumers in the adult-use cannabis market?](#); Illinois General Assembly (2019), [Public Act 101-0027 \(Cannabis Regulation and Tax Act\) Article 55, Section 21\(k\)](#); State of Maine, Office of Cannabis Policy (2022), [Guidance on Variance in the Amount & Potency of THC in Edible Cannabis Products](#); Maryland Medical Cannabis Commission (2021), [Bulletin 2021-006: Edible Cannabis Products - Effective Date of Regulations](#) (data relates to THC limits in the medical industry) and Maryland Cannabis Administration (2022), [Adult Use Cannabis Legislation](#); Commonwealth of Massachusetts, Cannabis Control Commission (2021), [935 CMR 500.150\(4\)](#); Michigan Cannabis Regulatory Agency (2022), [Technical Bulletin: Maximum THC Concentrations for Marijuana-Infused Products](#); Montana Department of Revenue, Cannabis Control Division (2023), [Cannabis Sales and Licensing FAQ](#); State of Nevada, Nevada Cannabis Compliance Board (2020), [Regulation 9, Section 045\(2\)](#); State of New Jersey, [Cannabis Regulatory Commission](#) (2021), [New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, Chapter 16, Section 48\(g\)](#); New York State, [Office of Cannabis Management](#) (2023), [Marihuana Regulation and Tax Act, Part 123.6\(f\)\(1\)](#); Oregon Liquor & Cannabis Commission (2022), [News Release: Potency increases in Oregon cannabis edibles](#); State of Rhode Island, Department of Business Regulation, Office of Cannabis Regulation (2022), [Guidance on Adult-Use and Medical Products](#); Vermont General Assembly (2021), [Title 7, Chapter 33, Section 881\(3\)](#); and Washington State Legislature (2013), [Title 314, Chapter 55, Section 095\(1\)\(a\)\(b\)](#).

Barrier 3: Prohibitions on cannabis promotion, packaging and labelling

A business's ability to provide information to consumers is an important aspect of competition. It allows them to inform and educate consumers about their business, their products and their services, as well as to promote their areas of competitive advantage — whether that is price, quality, innovation or otherwise. Without this ability, businesses are limited in how they can attract and retain customers, and consumers have less information with which to make purchasing decisions.⁶³ While this is true in any sector of the economy, it is particularly important in new and emerging industries because it allows businesses to establish a brand, promote brand recognition, and convey to consumers the unique selling points of their products.

Limitations on cannabis promotion

The *Cannabis Act* generally prohibits cannabis licence holders from promoting cannabis, cannabis accessories and services related to cannabis, with limited exceptions to inform adult consumer choice. This is intended to protect youth and enhance public awareness of the health risks associated with cannabis use.⁶⁴ While the *Cannabis Act* does permit informational and brand-preference promotion under certain conditions, the way this information can be provided to consumers is limited.⁶⁵

In new and emerging industries such as Canada's cannabis industry, innovation can help businesses gain a competitive edge. Since legalization, some cannabis producers have developed new and unique products and processes. However, current restrictions make it difficult for cannabis producers to promote their innovations, which in turn can have a chilling effect on competition. A number of stakeholders told the Bureau that existing policies restrict the ability of cannabis producers to effectively promote innovative products or processes, which they could have used to compete with other cannabis producers (including those in the illicit market) on these non-price aspects of competition.

⁶³ Competition Bureau (2016), [Advertising Restrictions](#).

⁶⁴ Health Canada (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#).

⁶⁵ See section 17 of the [Cannabis Act](#), S.C., 2018, c.16.

Packaging and labelling restrictions

The *Cannabis Act* and *Cannabis Regulations* also prescribe what, where and how information may appear on cannabis product packages and labels.⁶⁶ They also stipulate a broad range of requirements — from plain packaging and neutral colours, to font type and size.⁶⁷ The Bureau heard that these restrictions can make it difficult for cannabis producers to highlight certain aspects of their businesses or characteristics of the products they produce. This type of information can bring credibility to cannabis producers, set them apart from their competitors and help consumers decide which products best meet their preferences and needs.

How do these prohibitions affect the ability of cannabis producers to compete effectively in the industry?

Existing restrictions on promotions — coupled with strict packaging and labelling requirements — make it difficult for cannabis producers to educate consumers, differentiate their businesses and products, and provide information that can help build and maintain brand loyalty with their customer base.⁶⁸ As previously mentioned, this includes limitations on where and how certain attributes of cannabis products can be communicated, as well as information regarding business characteristics, processes or values that may be of interest and importance to consumers when deciding what products to purchase and from whom.

When businesses have the ability to innovate and educate consumers on their areas of competitive advantage (including non-price aspects of competition), they can become more effective competitors. Allowing businesses to tell their story can also empower consumers to make more informed purchasing decisions.⁶⁹ More flexibility to

⁶⁶ See sections 25-28 of the [Cannabis Act](#), S.C., 2018, c.16. See also [Cannabis Regulations](#), SOR/2018-144. The product package must include the quantity of THC and CBD upon purchase, and once activated, the type of cannabis, weight, and a health warning, amongst other things.

⁶⁷ Health Canada (2022), [Packaging and labelling guide for cannabis products](#).

⁶⁸ See Ernst & Young Global Limited (2019), [As 2.0 opportunities emerge, can you still compete with 1.0 strategies? Canadian cannabis consumer insights for legalization 2.0](#). Also, as reported in the Canadian Marketing Association's [November 2022 submission to Health Canada](#), in 2022, only about 27% of Canadians 19 years of age or older were aware of any cannabis brands. This goes to show that current restrictions may be making it difficult for businesses to establish brand awareness and maintain brand loyalty. This also limits the ability of consumers to make future purchasing decisions based on past personal experiences using certain cannabis products.

⁶⁹ Competition Bureau (2016), [Advertising Restrictions](#). See also C. Robert Clark (2003), [Advertising Restrictions and Competition in the Children's Breakfast Cereal Industry](#) and Sass, T. and Saurman, D. (1995), [Advertising Restrictions and Concentration: The Case of Malt Beverages](#). These studies speak to the important role of advertising as an

communicate with consumers can also help legal cannabis producers compete more effectively with their illicit market counterparts who do not face similar restrictions on promotion, packaging and labelling, and have found ways to promote illicit products despite potential legal repercussions.

Barriers to competition outside the *Cannabis Act's* legal framework

Although a primary goal of this report is to evaluate whether there are aspects of the *Cannabis Act* and its related regulations that are creating barriers to competition in the cannabis industry, the Competition Bureau's review found barriers to competition that exist outside of the *Cannabis Act's* legal framework. These barriers are having a meaningful impact on the state of competition in the cannabis industry, and were raised by many industry stakeholders.

Barrier 4: The excise duty framework

In Canada, cannabis is subject to a type of tax called an excise duty.⁷⁰ Many stakeholders interviewed by the Bureau raised Canada's excise duty framework — and excise duty rates specifically — as a major barrier to competition in the cannabis industry. These stakeholders told the Bureau that the current excise duty regime makes profitability and viability in the industry very challenging.

Canada's excise duty framework for cannabis officially came into force in 2018 when recreational cannabis was legalized.⁷¹ While the Department of Finance oversees matters of tax policy, the CRA is responsible for the administration and enforcement of the cannabis provisions in the *Excise Act, 2001*, for the legal industry.⁷²

information tool for consumers. When advertising is prohibited or limited, it can be more difficult to attract customers to newer, less familiar products or services. In addition, the Supreme Court of Canada has found that general restrictions on advertising violate Section 2(b) of the *Canadian Charter of Rights and Freedoms* where regulations limited consumers' access to "information that is necessary or relevant" to their choice. According to the court, this type of expression serves an important public interest by enhancing individuals' ability to make informed choices. To justify impairing Canadians' right to freedom of expression, restrictions must be targeted and proportionate to their objective. See [Rocket v Royal College of Dental Surgeons of Ontario](#), [1990] 2 S.C.R. 232.

⁷⁰ [Excise Act, 2001](#) (S.C. 2002, c. 22).

⁷¹ Department of Finance Canada (2017), [Proposed Excise Duty Framework for Cannabis Products](#).

⁷² Justice Canada (2023), [Excise Duties on Cannabis Regulations](#), SOR/2019-78 and Canada Revenue Agency (2018), [EDN54 General Overview of the Cannabis Excise Stamps](#).

Under this framework, businesses that want to cultivate, produce or package cannabis (some may be exempt) must obtain a licence from the CRA under the *Excise Act, 2001*.⁷³ As described below, the licensing objectives under this act differ from Health Canada's licensing objectives under the *Cannabis Act*:

- First, they are intended to ensure the imposition and payment of excise duties on certain packaged cannabis products intended for retail sale.
- Second, they are intended to control the production of cannabis as well as the possession of non-duty paid cannabis products.
- Third, they are intended to ensure stamping requirements for packaged cannabis products are met.⁷⁴

Under the *Excise Act, 2001*, all cannabis producers who enter a cannabis product into the duty-paid market or on whose behalf a cannabis product is entered into the duty-paid market (including provincial and territorial wholesale distributors, retailers or end-consumers) must pay excise duties to the CRA.⁷⁵ These duties are imposed on packaged and stamped cannabis products at the time of delivery.

Excise duty rates

For dried and fresh cannabis, cannabis plants, and cannabis plant seeds that are packaged, duties are the higher of a \$1 per gram flat rate or a 10% per gram rate based on the total dutiable amount of the cannabis product.⁷⁶ For cannabis edibles, extracts and topicals, the cannabis duty is a flat rate based on the number of milligrams of total

⁷³ Canada Revenue Agency (2018), [Cannabis duty – Apply for a cannabis licence from the CRA](#). All packaged cannabis products destined for retail sale in Canada require an excise stamp. These stamps differ by province and territory. Cannabis producers who package cannabis products are required to affix the appropriate provincial/territorial stamp to cannabis products before they enter the retail segment. For more information on excise stamps, see Canada Revenue Agency (2018), [EDN54 General Overview of the Cannabis Excise Stamps](#).

⁷⁴ Canada Revenue Agency, [Cannabis Taxation Program](#).

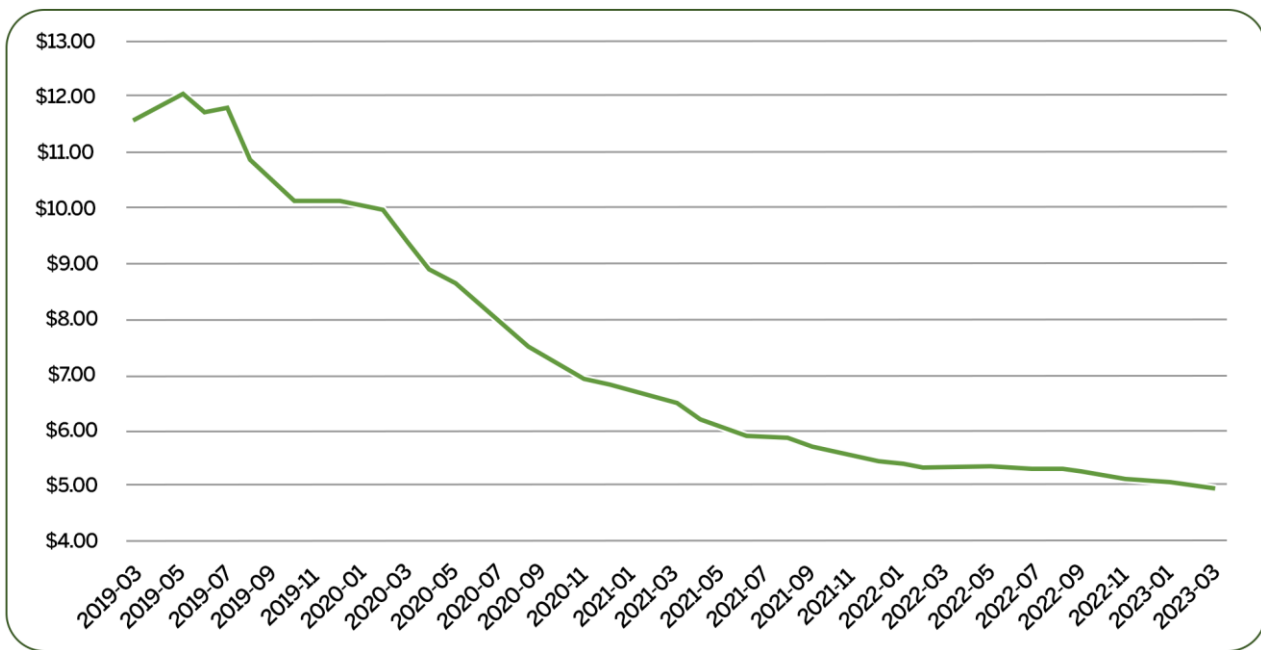
⁷⁵ Canada Revenue Agency (2018), [EDN53 General Information for Cultivators, Producers and Packagers of Cannabis Products](#) and Canada Revenue Agency (2023), [Cannabis duty – Calculate the excise duty on cannabis](#).

⁷⁶ This is referred to as an *ad valorem* duty. For additional details on cannabis duties, including how to calculate the *ad valorem* duty, see Canada Revenue Agency (2018), [EDN55 Calculation of Cannabis Duty and Additional Cannabis Duty on Cannabis Products](#) and Canada Revenue Agency (2023), [Cannabis duty – Calculate the excise duty on cannabis](#).

THC in the cannabis product. There are additional duties for cannabis products delivered to buyers in Alberta, Nunavut, Ontario, and Saskatchewan.⁷⁷

With the average price per gram for dried cannabis falling since legalization (see [Figure 6](#)), excise duties now take up a more significant portion of cannabis producers' revenues. Although excise duties are just one of many costs incurred by cannabis producers,⁷⁸ they are estimated to impact cannabis producers' gross revenues by 30% or more.⁷⁹ Stakeholders shared that this significantly affects the profitability and viability of cannabis producers.

Figure 6: Average price per gram for dried cannabis (Canadian dollars, March 2019 – March 2023)



Source: All data derived from [Headset.io](#). Based on data from British Columbia, Alberta, Saskatchewan and Ontario.

Industry stakeholders have stressed the need for the federal government to review excise duty rates and make changes, as needed, to allow cannabis producers to

⁷⁷ Canada Revenue Agency (2023), [Cannabis duty – Calculate the excise duty on cannabis](#). Adjustment rates for the additional cannabis duties are as follows: Alberta (16.8%), Nunavut (19.3%), Ontario (3.9%), and Saskatchewan (6.45%).

⁷⁸ Information on other costs faced by cannabis producers is presented earlier in the report (see Barrier 1). The Bureau recognizes that there are costs above and beyond those mentioned in this report that may also be incurred by cannabis producers, in particular at the wholesale and retail levels of the supply chain. However, owing to the scope of the legislative review, these costs were not examined in detail as part of the Bureau's study.

⁷⁹ Standforcraft.com in association with the Cannabis Council of Canada and the Canadian Chamber of Commerce (2022), [Call for Emergency Cannabis Excise Relief](#).

generate enough income to compete effectively with the illicit market. An industry paper suggests that a tiered approach to excise duties would enable smaller cannabis producers to be taxed at a lower rate than larger producers, which would enable these businesses to focus on product innovation and become more effective competitors.⁸⁰

Terms of payment and unpaid excise duties

The total amount of unpaid cannabis excise duties has continuously been rising since legalization, as shown in Figure 7. As of September 2022, 66% of licensees required to remit excise duties had an outstanding debt with the CRA.⁸¹

Figure 7: Total unpaid cannabis excise duties (Canadian dollars, 2019 – 2023)



Source: Matt Lamers, MJBizDaily (2022), [Canadian cannabis producers' unpaid tax bills soar as industry seeks reform](#). The values shown are based on CRA data and represent unpaid excise duties per fiscal year ending in March.

*Value shown for 2023 is inclusive only through September 2022.

Until recently, cannabis producers licensed under the excise duty regime were required to remit excise duties to the CRA monthly.⁸² Many cannabis producers found this challenging, as not all cannabis buyers pay for products on a monthly basis. For example, the Ontario Cannabis Store has 60 days to pay cannabis producers for their products. However, the CRA generally requires cannabis producers to pay excise duties within 30 days of selling their products to wholesale distributors such as the Ontario

⁸⁰ Standforcraft.com in association with the Cannabis Council of Canada and the Canadian Chamber of Commerce (2022), [Call for Emergency Cannabis Excise Relief](#).

⁸¹ Matt Lamers, MJBizDaily (2022), [Canadian cannabis producers' unpaid tax bills soar as industry seeks reform](#).

⁸² Department of Finance Canada (2022), [2022 Budget, Tax Measures: Supplementary information](#) and Department of Finance Canada (2023), [Budget 2023, Tax Measures: Supplementary Information](#). See also Canada Revenue Agency (2022), [EDN76 Budget 2022 – Quarterly Filing and Remitting for Cannabis Licensees](#).

Cannabis Store. This puts added pressure on cannabis producers to finance working capital, and makes it difficult to manage cash flow.⁸³

That said, in Budget 2022, the Government of Canada proposed changes that would allow certain smaller cannabis producers to remit excise duties quarterly, rather than monthly.⁸⁴ Budget 2023 goes one step further, by proposing to allow all cannabis producers to remit excise duties on a quarterly basis.⁸⁵ The Bureau believes that this is an important step in the right direction. The Bureau heard that aligning the payment schedule for excise duties with the payment terms of buyers will enable cannabis producers to better manage payroll, remit federal excise taxes on time and avoid insolvency issues. With more working capital, small and medium-sized businesses in particular will be better positioned to establish themselves in the industry, and compete more effectively with larger cannabis producers.

Barrier 5: Lack of industry standardization

As mentioned, regulation of the cannabis industry is a shared responsibility of federal, provincial and territorial governments. The federal government has jurisdiction over cannabis production, and provincial and territorial governments oversee wholesale distribution and retail sales.⁸⁶

Many stakeholders told the Bureau that it can be difficult to navigate the different federal, provincial and territorial policies that govern the industry. This regulatory complexity can make it challenging and administratively burdensome for cannabis producers to operate in multiple jurisdictions across the country. Not only can this stifle industry expansion, but it can also hinder innovation and limit consumer choice.

Getting products to market

Many stakeholders raised concerns directly related to the cannabis supply chain, elements of which fall under federal, provincial and territorial oversight (see [Figure 2](#)).

⁸³ Ontario Chamber of Commerce (2022), [Health Canada's Statutory Review of the Cannabis Act](#).

⁸⁴ The option for quarterly remittances is available only to businesses that are required to remit less than a total of \$1 million in excise duties in the four previous fiscal quarters. For additional details, see Department of Finance Canada (2022), [2022 Budget, Tax Measures: Supplementary information](#) and Department of Finance Canada (2023), [Budget 2023, Tax Measures: Supplementary Information](#). See also Canada Revenue Agency (2022), [EDN76 Budget 2022 – Quarterly Filing and Remitting for Cannabis Licensees](#).

⁸⁵ Department of Finance Canada (2023), [Budget 2023, Tax Measures: Supplementary Information](#).

⁸⁶ Health Canada (2019), [Industry roles and responsibilities under the Cannabis Act](#) and Health Canada (2022), [Taking stock of progress: Cannabis legalization and regulation in Canada](#).

Specifically, stakeholders told the Bureau that the path to market can often be unclear, given varying requirements and different wholesale distribution and retail sales frameworks across Canada. This affects businesses' ability to effectively expand and compete in the industry.

Some stakeholders told the Bureau that the product listing process can lack clarity as well as consistency between provinces and territories. Some said that products can be rejected based on what provincial and territorial wholesale distributors already have in their product catalogue — that is, they may choose not to list products that have very similar characteristics. A lack of guidance regarding what may qualify as “too similar” can make it difficult for cannabis producers to navigate the listing process and bring their products to market. This in turn can discourage innovation in the industry by hindering the development of new products, which ultimately impacts competition.

Stakeholders told the Bureau that increased transparency and clarity regarding the product listing process, as well as more consistent listing policies between jurisdictions, would make it easier for cannabis producers to sell their products across Canada. This could incentivize business innovation, lead to more choice for consumers, and stimulate healthy competition between cannabis producers across provincial and territorial boundaries.

Recommendations

To promote a more competitive legal cannabis industry in Canada, decision-makers should take steps to evaluate and reduce regulatory barriers to competition. This can be accomplished by ensuring policies are designed to support competition. By fostering more competition, decision-makers can promote innovation, increase consumer choice, and enable the legal cannabis industry to thrive and compete more effectively with the illicit market.

To that end, the Competition Bureau has three specific recommendations to support Health Canada and the Expert Panel in the legislative review of the *Cannabis Act*.

Recommendation 1: Health Canada should review the cannabis licensing process and related regulatory compliance costs to ensure policies are minimally intrusive to competition, where possible.

Licensing plays an integral role in Canada's legal cannabis industry, and is designed to protect the health and safety of Canadians. However, licensing can impose significant compliance costs on cannabis producers. Stakeholders told the Bureau that certain elements of the licensing process can make it challenging for cannabis producers — particularly small and medium-sized businesses — to enter and expand in the industry. In addition to the administrative burden and time required to become licensed, the Bureau also heard that high regulatory compliance costs impede the ability of cannabis producers to compete effectively in the industry.

To evaluate the cannabis licensing process and its related compliance costs through a competition policy lens, the Bureau encourages Health Canada to consult the [Competition Assessment Toolkit](#) (Toolkit). The Toolkit provides a step-by-step guide to help decision-makers assess the competition impact of new and existing policies, and provides guidance on how to tailor policies to maximize the benefits of competition to the economy.

Reducing barriers created by licensing and regulatory compliance can still permit Health Canada to continue to achieve the policy goals of the *Cannabis Act*, while also preserving and enhancing the economic benefits of competition in the cannabis industry.

Recommendation 2: Health Canada should review and consider adjusting THC limits on edible cannabis products, as appropriate, to allow legal cannabis producers to meet consumer demand and better compete with the illicit market.

In Canada, THC limits for edible cannabis products are currently 10 mg per unit and 10 mg per container/package. Stakeholders told the Bureau that these limits are perhaps the most significant factor impeding their ability to compete with the illicit market.

To better equip legal cannabis producers to compete effectively in the edibles segment, Health Canada should review and consider adjusting existing THC thresholds. By increasing the competitiveness of legal edible cannabis products, Health Canada can help bring consumers into the legal industry, and deter them from sourcing unregulated and potentially harmful illicit products.

The Bureau recognizes and supports the need to carefully balance the potential benefits of higher THC limits with potential risks to public health and safety. Absent policy change, however, cannabis producers will continue to struggle to compete with the illicit market. This will prevent them from attracting consumers to the legal edibles segment, and illicit cannabis producers will maintain their entrenched position in this area.

Recommendation 3: Health Canada should review and consider easing restrictions on cannabis promotion, packaging and labelling, as appropriate, to empower consumers to make informed purchasing decisions and to provide cannabis producers with more flexibility to compete and innovate.

Cannabis producers are limited in how they can promote cannabis products and services, as well as what information they can convey on product packages and labels. Stakeholders told the Bureau that these limitations make it challenging to compete in the industry.

By easing restrictions on cannabis promotion, packaging and labelling, cannabis producers can build and raise brand awareness, and better differentiate their businesses and products from those of their competitors. This will facilitate non-price aspects of competition, by enabling cannabis producers to compete on a range of business characteristics and product attributes, not simply THC content and price. This will also

enable cannabis producers to better inform and educate consumers, who will be empowered to make informed purchasing decisions.

Less restrictive promotion, packaging and labelling rules can also help create a more level playing field for legal cannabis producers. This would allow them to compete more effectively with their illicit market counterparts, who are not subject to the same strict regulatory requirements and have found ways to promote illicit products despite potential legal repercussions.

The Bureau recognizes that Health Canada must carefully balance the easing of any promotion, packaging and labelling restrictions with public health and safety considerations. However, by carefully reviewing and amending existing policies, Health Canada can stimulate healthier competition in the industry, and continue to achieve these important, and complementary, public policy goals.

Conclusion

The Competition Bureau hopes this report and its recommendations are able to support Health Canada and the Expert Panel in the legislative review of the *Cannabis Act*.

The Bureau encourages other decision-makers to take note of these findings and consider using the [Competition Assessment Toolkit](#) to evaluate other industry policies to determine if they are impacting competition, innovation and choice.

Government policy is central to ensuring that the legal cannabis industry benefits from competition. The Bureau welcomes the opportunity to work with decision-makers to facilitate the continued development and implementation of pro-competitive policies in the cannabis industry.

How to contact the Competition Bureau

Anyone wishing to obtain additional information about the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act*, the *Precious Metals Marking Act* or the program of written opinions, or to file a complaint under any of these acts should contact the Competition Bureau's Information Centre:

Website

www.competitionbureau.gc.ca

Address

Information Centre
Competition Bureau
50 Victoria Street
Gatineau, Quebec
K1A 0C9

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