



# Cannabis in Canada

## *The State of the Law*

*Current as of October 2018*

October 17, 2018 marks a historic day in the evolution of cannabis regulations both domestically and abroad. As the first state in the G20 to regulate recreational cannabis, Canada has become the international leader in the development of sensible and progressive policies governing the cultivation, processing, sale and possession of cannabis. After nearly a century, the end of cannabis prohibition has provided an opportunity for Canada to be at the forefront of the emergence of a new, legal, consumer goods industry. The economic, social, legal, political and business realities of this new industry provide an opportunity for leadership on an international stage that is unprecedented in the global economy of the 21st century – one that we may not see again for generations to come.

On April 13, 2017, the Canadian Federal Government introduced the first draft of the *Cannabis Act* setting out the federal regulatory framework for the legalization of cannabis for non-medical purposes. The federal legislation, focused on public health & safety, includes personal possession limitations, minimum age requirements, authorization for personal production and restrictions on the locations for cannabis consumption. Following its introduction and several revisions, the *Cannabis Act* received Royal Assent on June 21, 2018. Further details on the federal *Cannabis Act* and regulations are set out below under the heading “[Federal Regime.](#)”

The *Cannabis Act* reserved significant discretion for the provinces with respect to retail sales of cannabis. While Quebec, New Brunswick, Nova Scotia, Prince Edward Island and the Northwest Territories distribute cannabis through crown corporations, Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Newfoundland, Yukon Territory and Nunavut permit retail sales by private brick-and-mortar retailers. In Saskatchewan and Manitoba, private brick-and-mortar retailers are also permitted to sell cannabis online throughout the province. Further details on the distribution models of each province and territory are set out below under the heading “[Provincial Distribution Models.](#)”

Furthermore, the *Cannabis Act* provided provincial and territorial governments with discretion to determine where individuals would be permitted to smoke or vape cannabis. Details on the restrictions of each province and territory are set out below under the heading “[Consumption Options.](#)”

Health Canada released the Cannabis Regulations on July 11, 2018. The regulations contemplate specific authorizations to be granted that differentiate between cultivation, processing and sales licenses. In addition, micro-cultivation and micro-processing licenses as well as industrial hemp and nursery cultivation licenses may be granted by Health Canada. Further details on the regulations are set out below under the heading “[Federal Regulations.](#)”

As of the implementation of the *Cannabis Act*, Health Canada had issued 132 licenses to producers of medical cannabis across Canada. Each license issued under the medical cannabis regime permits the producer to conduct the same activities for recreational purposes. As each license is tied to a specific property, certain companies hold multiple licenses with Canopy Growth Corporation, for instance, controlling nearly 10% of the licenses issued to date. Moreover, not all licenses issued by Health Canada permit the same activities. Certain licenses only authorize cultivation or production without the right to sell cannabis products until Health Canada issues a license amendment. Other licenses permit the cultivation and/or sale of dried flower only whereas some permit the production and/or sale of cannabis oils. To date, Health Canada has not proposed to limit the number of licenses that the federal government will issue.



As Canadians begin to see cannabis stores open across the country, the current medical cannabis regime remains intact. Patients with a valid medical prescription may continue to purchase cannabis from a licensed producer through direct mail orders. While current product options for medical and recreational cannabis are limited to fresh or dried cannabis, cannabis oil, plants and seeds, the *Cannabis Act* does contemplate regulations permitting the production and sale of cannabis concentrates and edibles by October 17, 2019. Further details on the types of products to be available in Canada are set out below under the heading “[Product Options](#).”

## Federal Regime

The *Cannabis Act* allows adults who are 18 years or older to legally:

- ◆ possess up to 30 grams of legal dried cannabis or equivalent in non-dried form;
- ◆ share up to 30 grams of legal cannabis with other adults;
- ◆ purchase dried or fresh cannabis and cannabis oil from a provincially-licensed retailer;
- ◆ grow up to four cannabis plants per residence for personal use from licensed seed or seedlings; and
- ◆ make cannabis products, such as food and drinks, at home provided that organic solvents are not used.

Each province and territory is permitted to:

- ◆ increase the minimum age to purchase and consume cannabis;
- ◆ lower the personal cannabis possession limit;
- ◆ create additional rules for growing cannabis at home; and
- ◆ restrict where adults can consume cannabis, such as in public or in vehicles.

Accordingly, certain provinces and territories have passed various regulations to further restrict the use of cannabis as summarized in the chart below.

Provincial State of Cannabis Laws re: Minimum Age, Possession, and Personal Cultivation			
	Minimum Age	Possession Limit	Additional Personal Cultivation Restrictions
BC	19	30g	Plants must not be visible from public spaces. Home cultivation banned in any dwellings used as daycares or assisted living facilities.
AB	18	30g	
SK	19	30g	
MB	19	30g	Personal cultivation not permitted.
ON	19	30g	
QC	18*	30g (maximum of 150g in home)	Personal cultivation not permitted.
NL	19	30g	
NB	19	30g	Personal cultivation to be permitted indoors in a separate locked space. Personal cultivation to be permitted outdoors in a locked enclosure at least 1.52m high.
NS	19	30g	Landlords permitted to amend leases but must provide four months’ notice before April 30, 2019 and the tenant may choose to terminate the lease.
PE	19	30g	
YK	19	30g	
NT	19	30g	



Provincial State of Cannabis Laws re: Minimum Age, Possession, and Personal Cultivation			
	Minimum Age	Possession Limit	Additional Personal Cultivation Restrictions
NU	19	30g	

\* The newly elected government in Quebec is proposing to raise the legal age to 21.

## Criminal Penalties and Related Enforcement Frameworks

The Federal Government introduced new penalties under the *Criminal Code* (Canada). Penalties for the illegal sale of cannabis, possession of cannabis over the prescribed limit and production of cannabis beyond personal cultivation limits range from tickets for minor infractions to a maximum of 14 years in prison. The penalty for taking cannabis across Canadian borders carries a maximum penalty of 14 years in prison. The *Cannabis Act* also contains two new criminal offences, one for giving or selling cannabis to a youth, and the other for involving a youth to commit a cannabis-related offence. Both new offences carry maximum penalties of 14 years in prison.

Bill C-46, *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts*, provides new testing powers and penalties for drug-impaired driving. Currently, police officers cannot test for the presence of drugs at a roadside stop. Bill C-46 allows police officers to test oral fluid or demand a blood sample if they reasonably suspect that a driver is impaired by drugs. The new penalties for drug-impaired driving are set forth in the chart below. Certain provinces have also introduced additional enforcement measures to supplement the baseline requirements under federal law.

Offence	Penalties	
Driving with 2 nanograms (ng) but less than 5ng of THC per 1 millilitre (ml) of blood	Maximum \$1,000 fine	
Driving with 5ng or more of THC per 1ml of blood	First offence	Maximum \$1,000 fine
	Second offence	Mandatory imprisonment for 30 days
	Third and subsequent offences	Mandatory imprisonment for 120 days
Driving with 2.5ng or more of THC per 1ml of blood and 50 milligrams of alcohol per 100ml of blood	First offence	Minimum \$1,000 fine
	Second offence	Mandatory imprisonment for 30 days
	Third and subsequent offences	Mandatory imprisonment for 120 days

## Federal Regulations

### Licensing

The regulations under the *Cannabis Act* contemplate cultivation licenses for standard cultivation, micro-cultivation, industrial hemp cultivation and nursery cultivation, standard and micro-processing licenses.

### Packaging, Labelling and Promotion

The regulations require packaging for cannabis products to have a single, uniform colour. Producers can use a brand name and logo on the packaging, but they are subject to size limitations and can only be used once on the principal display. Other graphics, images or alterations to the packaging (such as special coatings, embossing or cut-outs) are prohibited, though the size, shape and material used in the packaging is not standardized. All packaging must be child resistant as well as opaque or translucent and tamper evident.



Packaging must display certain specified information about the product, including the name and contact information of the producer, product description, THC and CBD content, potential allergens and the statement “Keep out of reach of children.” All packaging must also include a standardized cannabis symbol in the form of a stop sign as well as a health warning message inside a yellow box printed in the largest font on the label. Similar to the warnings on cigarettes, the messages rotate and include things such as “Cannabis smoke is harmful,” “Do not use if pregnant or breastfeeding” and “Regular use of cannabis can increase the risk of psychosis and schizophrenia.”

The *Cannabis Act* places restrictive rules on the promotion of cannabis, cannabis accessories and services related to cannabis. The *Cannabis Act* prohibits promotions containing testimonials or endorsements or depictions of people, characters or animals, lifestyle advertising and packaging and promotions that are appealing to youth. The *Cannabis Act* does provide exceptions to these restrictions, most notably for informational and brand preference promotions that are not reasonably accessible by young persons.

**Taxes**

The Federal Government imposed a federal excise duty on the sale of cannabis. The total federal duty rates and provincial-territorial taxes on cannabis products is equal to the greater of \$1.00 per gram and 10% of the sale price of a product. The Federal Government will receive 25% of revenues up to a cap of \$100 million whereas the Provincial Governments will receive the other 75% of revenues and 100% of the revenues over and above the \$100 million federal cap. In addition, cannabis product sales, both medical and recreational, are taxable under the Goods and Services Tax/ Harmonized Sales Tax (GST/HST).

**Provincial Distribution Models**

Similar to the distribution of alcohol, each provincial and territorial government determines how cannabis is distributed within their respective provinces and territories. In each of the provinces and territories, except for Saskatchewan, a provincial distributor is responsible for purchasing cannabis from producers and selling products to its regulated retail distribution channels. In addition, in every province and territory, other than Saskatchewan and Manitoba, the provincial distributor is solely responsible for online sales.

Provincial State of Cannabis Laws re: Retail Distribution			
	Brick & Mortar Retail	Initial Number	Additional Information
BC	Privately + publicly owned stores ( <i>BC Cannabis Stores</i> )	Unknown	
AB	Privately owned stores	Unknown	First year estimate: 250 stores
SK	Privately owned stores <sup>1</sup>	51	
MB	Privately owned stores <sup>1</sup>	4 master licenses	Phase 2 tender process closed
ON	Privately owned stores	0	Storefronts to open April 2019
QC	Publicly owned stores ( <i>Societe Quebecoise du Cannabis</i> )	20	
NL	Privately owned stores + publicly owned stores where no stores	24	
NB	Publicly owned stores ( <i>Cannabis NB</i> )	20	
NS	Publicly owned stores ( <i>NSLC Cannabis</i> )	12	All stores are co-located with existing liquor stores
PE	Publicly owned stores ( <i>PEI Cannabis</i> )	4	



Provincial State of Cannabis Laws re: Retail Distribution			
	Brick & Mortar Retail	Initial Number	Additional Information
YK	Privately owned stores but publicly owned stores to start	1	
NT	Publicly owned stores ( <i>N.W.T. Liquor Commission</i> )	6	
NU	Privately + publicly owned stores	0	

<sup>1</sup> Private retailers in Saskatchewan and Manitoba are permitted to sell cannabis online within the province.

### **Alberta**

In Alberta, cannabis retail sales are handled by privately run stores while online sales are managed by a government-operated website. The Alberta Gaming and Liquor Commission (AGLC) began accepting private retail license applications on March 6, 2018. Potential retailers and workers are subject to mandatory background checks and no individual(s) or entity is permitted to hold more than 15% of all retail cannabis licenses in the province. Retail locations are required to be a minimum of 100 metres away from provincial health care facilities, schools, and municipal school reserves, although municipalities may amend the minimum distance requirements. Retail locations cannot sell pharmaceutical products, tobacco, or alcohol.

### **British Columbia**

In British Columbia, cannabis is sold pursuant to a hybrid public-private model. The BC Liquor Distribution Branch (LDB) is operating standalone retail stores and offering online sales under the brand BC Cannabis Stores. Private retailers may also operate standalone retail stores but the government has yet to issue any licenses to private retailers. In urban areas, licensed retailers cannot sell cannabis in the same stores as liquor or tobacco. Certain exceptions apply for rural cannabis stores similar to those for rural liquor stores which permit the sale of liquor by independently-owned full-service general grocery stores.

The LDB oversees the distribution of cannabis, while the Liquor Control and Licensing Branch (LCLB) is responsible for licensing and monitoring the retail sector. The LDB is the sole wholesale distributor of cannabis to public and private retailers.

British Columbia restricted the vertical integration of cannabis businesses. Specifically, no retail licenses will be issued, renewed, transferred or amended to or for: (i) a person who has arranged, or agreed to arrange, with another person to sell the cannabis of a licensed producer to the exclusion of the cannabis of another licensed producer; (ii) a licensed producer or the licensed producer's agent; or (iii) a person who is associated with, connected with or financially interested in a licensed producer or a licensed producer's agent if that person is likely to promote the sale of such licensed producer's cannabis. In addition, no applicant or group of related persons is permitted to hold more than 8 retail store licenses in the province.

### **Manitoba**

In Manitoba, four applicants were granted master retail licenses pursuant to the province's RFP process which provide these private retailers the right to sell cannabis in specified locations across the province and through their own online retail platforms. The Manitoba Liquor and Lotteries Corporation is responsible for regulating the licensing, purchasing, storage, supply, and distribution of cannabis and has issued a second request for pre-qualifications to increase the number of retail cannabis stores in the province. Each municipality may choose to prohibit cannabis retail stores in their communities.



### ***New Brunswick***

In New Brunswick, NB Liquor controls the distribution of cannabis through 20 freestanding, crown-controlled stores in 15 communities across the province. NB Liquor also operates a platform to purchase cannabis online.

### ***Newfoundland and Labrador***

In Newfoundland, the sale of cannabis through private retailers is permitted by applicants approved by the Newfoundland and Labrador Liquor Corporation (NLC). Initially, only 24 applications were approved, 10 of which were for Loblaw Companies Ltd. The NLC has developed an online platform to satisfy demand and may establish its own retail locations to sell cannabis products in areas that are not otherwise serviced by private retailers.

### ***Nova Scotia***

In Nova Scotia, cannabis is sold by the Nova Scotia Liquor Corporation (NSLC) both in existing NSLC locations and via an online platform. Initially, 12 NSLC locations are selling cannabis throughout the province. Nova Scotia is the only province that plans to sell cannabis in the same location as alcohol products. In places where cannabis is sold, signs are posted about the dangers of using cannabis and alcohol together, there can be no cross-promotion of cannabis and alcohol, and cannabis products are sold in a separate area where they won't be visible from the rest of the store and where youth under the age of 19 won't be allowed.

### ***Ontario***

In Ontario, the new Government introduced legislation on September 27, 2018 providing a revised regulatory framework for the retail sale of cannabis. The Alcohol and Gaming Commission of Ontario (AGCO) will act as a regulator for privately run cannabis stores in Ontario. The two-part regulatory approach will include a requirement for businesses to obtain a retail operating licence and a retail store authorization from the AGCO.

Initially, cannabis can only be purchased by consumers 19 years of age and older via an online retail channel provided by the Ontario Cannabis Store (OCS). The province will begin a consultation process in advance of implementing a regulated private retail model by April 1, 2019. There will be no limit to the number of stores permitted to sell recreational cannabis in Ontario, however, the proposed legislation provides flexibility to allow the province to restrict the number of licences a single entity can hold. Notably, licensed producers and their affiliates are only permitted to hold a single retail licence to be located at a production site.

In addition, municipalities will have a one-time window through which they may elect to opt-out of permitting brick-and-mortar retail stores within their boundaries. Municipalities will be required to opt-out in advance of the January 19, 2019 deadline.

### ***Prince Edward Island***

In Prince Edward Island, cannabis is sold through the Liquor Control Commission at four retail store locations that are distinct from the province's alcohol retail stores. The province permits online orders for home delivery as well.

### ***Quebec***

In Quebec, the distribution of cannabis is organized through its liquor board, the Société des alcools du Québec or Quebec Alcohol Corporation (SAQ). Cannabis is only sold by the Société québécoise du cannabis (SQDC), a subsidiary of the SAQ, in cannabis retail outlets and through an online platform. Initially, the SQDC is opening 20 cannabis stores across the province.



### **Saskatchewan**

In Saskatchewan, the Saskatchewan Liquor and Gaming Authority (SLGA) regulates the wholesale distribution and retailing of cannabis through licenses to private retailers and wholesalers. The SLGA has approved 51 retail permits in 32 communities. Licensed retailers may sell cannabis both in-store and online, and are permitted to sell cannabis, cannabis accessories and ancillary items as defined by the SLGA. In addition, Saskatchewan is the only province or territory in Canada where a provincial distributor is not responsible for purchasing cannabis from producers and selling products to its regulated retail distribution channels.

### **Northwest Territories**

In the Northwest Territories, the N.W.T Liquor Commission is responsible for the distribution and sale of cannabis. Cannabis is initially being sold through 6 existing liquor stores, but the legislation provides for the possibility of cannabis-only stores in the future, regulated by the N.W.T Liquor Commission. In communities without a liquor store, consumers are permitted to order cannabis through the current mail order system used by the N.W.T Liquor Commission for alcohol.

### **Nunavut**

In Nunavut, the Nunavut Liquor Commission (NULC) oversees the territory's cannabis system. The NULC has direct control over cannabis but pursuant to an "agency" model, the Minister is permitted to appoint one or more agents to sell cannabis on behalf of the NULC which would permit private retailers to sell cannabis in the territory, subject to oversight from the NULC on matters such as type of cannabis sold, product price, reporting, sales locations, and messaging. The NULC or its agents may sell cannabis through physical stores and online sales. The NULC does not plan to open a physical location in 2018. Remote sales are permitted, either online or by phone.

### **Yukon**

In Yukon Territory, the Yukon Liquor Corporation is responsible for importing, warehousing, transporting and distributing cannabis. The Cannabis Licensing Board will issue retail licenses to private cannabis retailers, except that initially there is one government-owned cannabis retail location to service the territory.

## Product Options

Individuals of age in their province or territory are able to purchase fresh or dried cannabis, cannabis oil, plants and seeds for cultivation from approved distributors. The *Cannabis Act* allows for an individual of legal age to possess up to 30 grams of dried legal cannabis in public. For the other permitted products, the Federal Government provided a conversion chart to establish possession limits. As such, one gram of dried cannabis is considered to be equal to: 5 grams of fresh cannabis, 15 grams of edible product, 70 grams of liquid product, 0.25 grams of concentrates (solid or liquid), or 1 cannabis plant seed.

As previously noted, consumers will not be able to purchase edible or concentrated forms of cannabis until October 2019.

## Consumption Options

While consumers product options are generally standardized across the country, each provincial and territorial government has determined where individuals are permitted to consume cannabis.



### ***Alberta***

In Alberta, individuals are permitted to consume cannabis in their homes and in certain public spaces where smoking tobacco is allowed, but consumption in cars is prohibited, except those being used as temporary residences, such as a parked RV.

Public smoking or vaping of cannabis in Alberta is prohibited in any place where tobacco is restricted as well as hospitals, schools, child care facilities, playgrounds, sports field, zoos and outdoor pools, among others.

Consumption of cannabis at cannabis retail outlets is also prohibited. Though cannabis cafes and lounges are not initially permitted, Alberta's legislation contemplates regulation of these forms of establishments should the province decide to allow them at a later date.

### ***British Columbia***

In British Columbia, adults can use cannabis in public spaces where tobacco smoking and vaping are permitted. However, to minimize child and youth exposure, smoking and vaping of non-medical cannabis is banned in areas frequented by children, including schools, community beaches, sports fields, parks, school properties and playgrounds. Use of cannabis in any form is banned for all occupants in vehicles and boats.

Local governments may set additional restrictions, as they do now for tobacco use. In addition, landlords and strata councils can restrict or prohibit non-medical cannabis smoking at tenanted and strata properties.

### ***Manitoba***

In Manitoba, the consumption of cannabis in any public place is prohibited, subject to certain limited exceptions.

### ***New Brunswick***

In New Brunswick, the consumption of cannabis in any public place is prohibited.

### ***Newfoundland and Labrador***

In Newfoundland, cannabis consumption is not permitted in public and individuals are only able to consume cannabis products in their homes or on private property.

### ***Nova Scotia***

In Nova Scotia, public consumption of cannabis is restricted by the *Smoke-free Places Act*. Smoking of cannabis is prohibited in all indoor public places and workplaces and in many outdoor spaces, including schools, daycare grounds, bar and restaurant patios, and within four metres of an entrance air intake.

### ***Ontario***

In Ontario, the legislation proposed by the new government allows for the consumption of cannabis in all locations where smoking tobacco is currently permitted. Consuming cannabis in non-exempt areas such as enclosed public spaces and workplaces remains prohibited, as well as circumstances where an individual has care and control over a vehicle or boat.

### ***Prince Edward Island***

In Prince Edward Island, consumption of cannabis is only permitted in private residences and yards attached to private homes. In rented or shared spaces where smoking is permitted in designated areas, cannabis may be consumed in those designated areas.



### **Québec**

In Quebec, individuals are prohibited from smoking or vaping cannabis in all locations where smoking tobacco is currently prohibited as well as certain other designated areas, such as health and social services institutions, universities and bus shelters.

### **Saskatchewan**

In Saskatchewan, the consumption of cannabis in all public places is prohibited as well as in schools and daycares.

### **Northwest Territories**

In the Northwest Territories, individuals are permitted to smoke cannabis in private residences, subject to landlord or building regulations. Consumers are also permitted to consume cannabis in certain public areas, including on trails, highways, roads and streets, and in parks when not in use for a public event, provided that smoking or vaping cannabis is prohibited in areas frequented by children and crowds, in vehicles, and in any place where smoking tobacco is not permitted. Municipal governments may enact bylaws that restrict smoking cannabis in certain areas.

The territory allows communities to restrict or ban cannabis by holding a plebiscite, similar to regulations for liquor in the Northwest Territories. Prohibited communities ban the possession, consumption and transport of cannabis whereas restricted communities place limits on the quantity or types of cannabis that may be possessed, consumed or transported.

### **Nunavut**

In Nunavut, the consumption of cannabis is permitted in private homes and in some public spaces where smoking tobacco is allowed. The territory prohibits smoking or vaping cannabis where tobacco is restricted and in certain other areas including vehicles, school grounds hospital or health centre grounds and playgrounds.

### **Yukon**

In Yukon Territory, the consumption of cannabis is limited to privately owned residences and adjoining property, where permitted by the owner.

## **We Can Help**

For more information on how Cassels Brock can assist your business, please contact [info@casselsbrock.com](mailto:info@casselsbrock.com) or a member of our firm's cross-disciplinary [Cannabis Group](#).



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