



# Not Done Yet Report Card



Canada's legalization of adult-use cannabis is now three years old. Thank you, Canada, for your leadership. Together, we've shown the world that cannabis legalization can be done responsibly.

With the Statutory Review of the Cannabis Act set to begin, the cannabis community is coming together at this critical juncture to share our thoughts on the accomplishments and unrealized opportunities of the Trudeau government's historic adult-use cannabis legalization initiative.

<i>Subject</i>	<i>Grade</i>
<b>Government Objectives</b>	
<i>Keeping Cannabis Out of Hands of Youth</i>	<b>B</b>
<i>Protecting Public Health</i>	<b>B</b>
<i>Combatting the Illicit Market</i>	<b>F</b>
<i>Operation and Administration of Cannabis Act</i>	<b>D</b>
<i>Taxation Policy</i>	<b>F</b>
<i>Consumer Education and Awareness</i>	<b>F</b>
<b>Cannabis Community Objectives</b>	
<i>Sustainability</i>	<b>C</b>
<i>Justice, Equity and Diversity</i>	<b>D</b>
<i>Medical Cannabis Access</i>	<b>D</b>
<i>Research, Innovation and Jobs</i>	<b>C</b>
<i>Financial Viability</i>	<b>F</b>

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For an explanation of our grading rationale, please see attached "Grading Rationale"



# Cannabis Legalization Report Card Grading Rationale

We have come together to evaluate Canada's adult-use cannabis legalization initiative on a range of subjects. A grade supported by an explanation of the rationale is the most effective way of sharing our perspectives with Canadians about the accomplishments and unrealized opportunities of cannabis legalization.

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## 1. Keeping Cannabis Out of Hands of Youth

Youth are defined as people aged 12 to 17. Young people are defined as people aged 18 to 24. *The National Cannabis Survey* and *Canadian Cannabis Survey* have shown that since legalization of adult-use cannabis:

1. Youth cannabis consumption rates have not increased;
2. There has not been an increase in the age of initial cannabis use; and,
3. There has not been an increase in cannabis consumption among 18 to 24 year olds.

We give legalization a "B" when it comes to keeping cannabis out of the hands of youth

The Government of Canada, provincial and territorial governments, and the cannabis community should acknowledge the success of Canada's approach to retail and the age-gating of all cannabis advertising and marketing. Yet, we can't give legalization a top grade because youth access to cannabis from illicit market sources, including illicit market websites. Unfortunately, this lack of action is also evidenced by the incidence of child poisonings from high potency illicit market cannabis edibles and the very limited response to this issue from governments.

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## 2. Protecting Public Health

Legalization protects public health by ensuring that legal cannabis products are produced under quality controlled conditions, tested to ensure compliance with the law, and that these products are legally available and broadly accessible. Protecting public health also involves informing consumers about the risks of consuming cannabis.

We give legalization a "B" when it comes to protecting public health.

This grade is a function of the lack of government action in response to illicit market cannabis products. At least half of all sales of cannabis products in Canada are from the illicit market. Numerous studies have shown that illicit market cannabis products contain toxins, mold, bacteria, banned pesticides, and other additives unfit for human consumption (*RPC: Analysis of illicit and legal cannabis products for a suite of chemical and microbial contaminants and BC Gov News*).

Governments, both federal and provincial, have largely failed to deploy any substantive public or consumer education campaigns about the dangers of illicit cannabis in contrast to the public health protections provided by legal cannabis. Consumer confusion also extends into the CBD sector, where unregulated and counterfeit products are widely available from illicit websites and accessible product pathways for consumers remain ill-defined.

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### **3. Combatting the Illicit Market**

Eliminating the illicit cannabis market is one of the primary public policy objectives of cannabis legalization. This objective was identified by the Task Force on Cannabis Legalization and Regulation in *A Framework for the Legalization and Regulation of Cannabis in Canada* and is referenced throughout the objectives of the *Cannabis Act*.

Legalization gets an “F” when it comes to combatting the illicit market..

The illicit market which accounts for at least 50% of all cannabis sales in Canada. This means that at \$4 billion dollars per year of cannabis sales are diverted to the illicit market, costing hundreds of millions of tax dollars and lost opportunities for communities and individuals in legal industry.

Governments have left legal license holders on their own when it comes to combatting the illicit market. The federal excise tax rate on cannabis, based on the premise of a \$1 tax on a 10\$ gram of cannabis flower, was set far too high and has failed to evolve. The impact of the excise tax on cannabis products is compounded by provincial distributor mark-ups and provincial taxes. The mark-up policies of many provincial distributors have also failed to evolve in response to price competition from the illicit market. License holders and private retailers are bearing the burden of price competition with the illicit market.

While some provincial law enforcement agencies have increased efforts to shut down the illicit market, the abuses of Health Canada personal production licenses under the *PART 14 - Access to Cannabis for Medical Purposes* regulations and the widespread ubiquity of illicit online cannabis sales are further evidence of our governments’ failures regarding the objectives of eliminating the illicit market.

The illicit cannabis industry’s marketing and advertizing practices, especially in the online domain, are a stark contrast when compared to the prohibitions on these activities faced by the legal cannabis industry. We must also signal the current state of affairs where legal cannabis business struggle to access financial services from the federally regulated banking sector, yet online illicit cannabis websites use INTERAC e-transfer to process payments.

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### **4. Operation and Administration of the Cannabis Act**

The administration and operation of the Cannabis Act refers to the day to day reality of operating a licensed cannabis business under the Cannabis Act and its regulations.

License holders pay a 2.3 % annual regulatory fee on revenues from all cannabis sales to “recover the Government of Canada’s aggregate costs of administering the cannabis regulatory program that are not covered by the transactional fees.” License holders also pay “transactional fees” for permits, such as license screening applications, security clearances, and export permits, not to mention a myriad of fees and taxes imposed by other levels of government.

We give legalization a “D” when it comes to the administration and operation of the Cannabis Act.

We submit the following as examples of the administrative and operational challenges facing license holders:

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- Prior to licensing, applicants have a very difficult time in getting information back from the government officials. There is a need for a new service standard for license screening applications.
  - The new product notification process is causing a bottleneck for licensed producers and processors. New products and innovation are an important means of competing with the illicit market, which is not governed by a similar process. Simply put, the legal sector needs the product notification process to move at a faster speed.
  - There has been an improvement in processing times for medical cannabis export permits. We are encouraged by this effort and are committed to working with the departmental officials to make Canada's process the best in the world when it comes to processing time and safety.
  - Despite the fact license holders pay regulatory and transactional fees, services provided in exchange for these fees customarily fail to meet departmental service standards.
  - When it comes to the annual regulatory fee, set at 2.3 % of revenues, we must signal the urgent need to revisit this matter. When one adds licensing fees to the larger than predicted excise tax license holders are paying almost 30% of their top line revenue in taxes and fees to the government (see *Canadian Cannabis Spot Index*).
  - The excise stamp program causes significant operational and administrative problems for license holders. Stamps designed for standardized tobacco packages do not work for cannabis, where packaging is not standardized. License holders expend considerable effort in managing the excise stamp program, adversely impacting their operational performance. The excise stamp program is in desperate need of reform.

We must signal our concern about the Canada's unequal approach to enforcement of the Cannabis Act. Getting the profits of cannabis out of the hands of criminals is one the three objectives of cannabis legalization and that is why there is an illicit market dimension to each of the Act's seven objectives. The overwhelming majority of the federal government's cannabis enforcement efforts have focused on license holders, ignoring the omni-presence of the illicit market and its flouting of the law's promotional prohibitions.

The lack of enforcement of designated production authorizations under the Access to Cannabis for Medical Purposes regulations despite its abuses by criminal elements (see: *Ontario Association of Chiefs of Police Resolution 2021-03*) is a significant source of concern for license holders, including the many micro-producers and small and medium license holders who have made significant personal investments in legal cannabis licenses.

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## 5. Taxation Policy

Taxation policy is the choice governments make as to what taxes to levy on cannabis, in what amounts, and on whom.

Legalization has been successful in generating significant tax revenues for the federal, provincial and territorial governments from the Excise Tax. Legalization has also generated many other tax benefits for governments including: the HST/GST, provincial sales tax, corporate tax and personal incomes taxes. Nonetheless, the current approach to the taxation of cannabis contributes to the loss of hundreds of millions of dollars in government revenues due to the diversion of sales to the illicit market.

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Legalization gets an “F” when it comes to tax policy.

Tax policy gets a failing grade because of the failure to keep excise taxes as predicted (\$1 in \$10) in support of the objectives of legalization and the systemic injustice of taxes on medical cannabis.

The Excise Tax on cannabis stands at \$1 per gram for dried cannabis flower. The \$1/gram excise tax is based a pre-legalization market prediction that legal cannabis would retail for \$10/gram. In today’s legal cannabis retail market, the average price of a gram of cannabis flower has some producers earning \$3.99 per gram in revenue and paying \$1 of this amount towards the excise tax resulting in a 25% excise tax rate versus the 10% premise of the tax, in this example (see: *Canada Cannabis Spot Index*).

The impact the excise tax rate is only compounded by the fact that the provincial distributor mark-ups and sales taxes are based on the price of cannabis which includes the inflated cannabis excise tax as well as Health Canada licensing and transactional fees.

Governments have failed to revise the excise tax rate or cannabis distributor mark-ups and have forced license holders to bear the burden of aggressive price competition from the illicit market. The practical implication of these decisions is the current business environment where most license holders are struggling to pay their bills – large, small, medium and micro. The financial health of license holders, which produce quality controlled tested products sold under strict conditions, is instrumental to the success of the legalization of cannabis. Cannabis tax policy is undermining the public policy objectives of legalization.

Excise taxes serve two purposes, first to raise money for governments and second to serve as a policy lever to influence public behaviour regarding the good being taxed. Excise taxes are levied on gasoline, fuel, tobacco, alcohol, gambling products, and cannabis. Rather than recognize the benefits of medical cannabis for patients, Canada applies an excise tax on medical cannabis that is authorized by a medical practitioner and protected by our constitutional law.

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## **6. Consumer Education and Awareness**

For cannabis, consumer education and awareness are about having an informed consumer and an informed citizenry.

We give the legalization an “F” grade on consumer education and awareness.

The government has failed to inform Canadians about the dangers of consuming illicit cannabis products and to help Canadians differentiate legal from illicit cannabis. This despite studies which have identified the toxicity of illicit cannabis products (*RPC: Analysis of illicit and legal cannabis products for a suite of chemical and microbial contaminants and BC Gov News*) and the mainstream media coverage of child poisonings from then consumption of illicit market edibles.

We note that the Government of Canada “is support(ing) community-based and Indigenous organizations across the country that are helping to educate the public about cannabis” (see: *Health Canada announces funding for community-based cannabis public education and awareness initiatives*), but we have failed to see any information on the public health information campaigns and safety implications of purchasing illicit cannabis. We submit that the lack awareness about the differences between legal and illicit cannabis demonstrated by medical professionals, law enforcement and the media are evidence of the need for action on this front.



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Adult-use cannabis is legal. The current prohibitions on the promotion of cannabis products, branding and advertising have created a situation where companies cannot inform consumers about the characteristics of their products. The result is a consumer market where the principal source of consumer education and information is the well-intentioned but unaccountable budtender. The other consequence of this prohibition is the prevalence of consumer consumption of cannabis flower products with high THC concentrations. The unintended consequences of the cannabis promotion prohibitions have resulted in a situation that is at odds with public health community's concerns about high THC concentration products and it's "start low and go slow" advice. Regulation of consumer education and information should be based on evidence, not stigma.

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## **7. Sustainability**

Sustainability when applied to cannabis means the creation of cannabis products through economically-sound processes that minimize negative environmental impacts while conserving energy and natural resources. Sustainable manufacturing also enhances employee, community and product safety.

Legalization gets a "C" when it comes to sustainability.

The environmental impact of the Cannabis Act Regulations was not considered during their design. All product formats must adhere to similar child resistant packaging requirements regardless of their dramatically different risk profiles for children and youth. The result is an industry facing numerous consumer complaints for its packaging and emerging provincial stewardship mandates, which serve as a reminder of the environmental challenges of cannabis packaging regulations. Rethinking the approach to child resistant packaging for cannabis flower, which account for about 50 percent of sales, would yield significant sustainability benefits.

There are a number of rules governing cultivation and processing which fail to take sustainability into account including the regulations governing the disposal of cannabis plant matter waste. The industry wants to do better for the planet but is limited by government regulations that result in wasteful actions.

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## **8. Justice, Equity and Diversity**

The longstanding injustice of the excise tax on medical cannabis is a bad omen for social progress tied to recreational cannabis legalization.

Justice means ensuring that people who have suffered because of the criminalization of the possession of cannabis have had their criminal records expunged and that governments are investing a portion of their cannabis tax revenues into communities that have suffered the most from the past criminalization of cannabis. Estimates suggest that 500,000 Canadians have a criminal record for cannabis possession, with over-representation of BIPOC communities.

Equity means that all Canadians have the same opportunities to participate in the legal cannabis industry. Governments should invest cannabis taxation revenues toward programs that support BIPOC communities, individuals, and businesses in the legal cannabis industry.

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Diversity means that cannabis license holders have hiring programs and human resource policies in place which support the participation and success of members of BIPOC communities in legal cannabis. This includes promoting diversity throughout corporate hierarchies, from entry-level positions through C-suites and corporate boards.

We give legalization a “D” grade when it comes to “Justice, Equity and Diversity”.

To date, little progress has been made with respect to clearing the records of people criminalized for possession under the previous legal regime. Governments have failed to establish any meaningful initiatives to redistribute a portion of tax revenue back to the communities most harmed by prohibition. The cannabis industry has done a better job of directing CSR programs to support opportunities for members of BIPOC communities and others harmed by the cannabis prohibition, yet overall industry leadership has remained low. More effort needs to be taken by everyone in the community and the industry to advance diversity and inclusion.

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## 9. Access to Medical Cannabis

Providing access to medical cannabis means ensuring that cannabis patients have safe and equitable access to an affordable supply of medical cannabis products, under the authorization of a medical practitioner.

Legalization gets a “D” grade when it comes to access to medical cannabis. Unfortunately, patient needs have taken a backseat to concerns of suspected misuse of the medical stream. While parity between the medical and adult-use frameworks on issues including product formats, packaging, taxes and duties was designed to address this misuse, it has come at the much greater cost of impaired patient access. The needs of millions of Canadians using cannabis for medical purposes must come first and warrant a specialized approach.

These challenges have had a real impact on patient use of the regulated medical market. Despite Health Canada’s Canadian Cannabis Survey (CCS) estimating that around 4 million Canadians use cannabis for medical purposes, the latest data on cannabis for medical purposes highlights under 350,000 active registrations (medical documents) from a health care practitioner.

What’s more, having a medical document is a key determinant of whether patients will seek medical guidance on the use of cannabis as their treatment. The medical cannabis patient survey (MCPS) reports that 74% of those who have had a medical document go to a health care practitioner or a pharmacist for guidance on cannabis use for medical purposes, compared to just 24% of those who have never had a medical document.

So, what are the key issues that we need to address?

**Affordability:** Medical cannabis is subject to both excise duties and sales taxes that contribute significantly to the cost of treatment. What’s more, very few medical cannabis patients have full insurance coverage.

Removing duties and taxes from medical cannabis is a key step. The MCPS found that over 90% of patients are supportive of the elimination of taxes on medical cannabis, with nearly 60% saying they think this would reduce the costs of their treatment, and around a quarter saying it would reduce their use of the unregulated market.

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Additionally, expanding public and private benefits for those in need will help reduce the cost burden.

**Accessibility:** Packaging is a key physical access barrier for many patients. Mandatory child resistant packaging makes it difficult for patients experiencing joint pain, weakness or restricted mobility to open the very medication needed to help alleviate these symptoms. Currently, the Act limits the ability of producers to develop patient-centric solutions to issues like packaging.

Additionally, the way medical cannabis is distributed under the Act limits patient access. Patients who wish to purchase cannabis products from a licensed medical seller must do so online or by phone, with delivery occurring by mail. The lack of dedicated ‘bricks and mortar’ access points for medical cannabis products leads many patients to forego medical oversight and purchase from an adult-use retail store or untested products from an unregulated source. It is important to expand access points for patients.

**Product formats:** Medical cannabis products are governed by regulations designed for adult-use cannabis. As we’ve seen with packaging, medical cannabis patients have unique needs which are ill-served by the existing rules. One such example is the 10mg/unit THC limit on cannabis edibles. This low dose level does not meet the needs of cannabis patients where the common daily dose can be substantially higher. If patients want to consume legal edibles, they must consume multiple units and pay the additional costs and taxes for their medicine and bear the impact of a significant burden on their paychecks.

The limit of 10mg THC ‘per activation’ of cannabis extracts has also limited the ability to use syringes to dose higher concentration extract and has forced producers to switch to other integrated dispensing mechanisms such as sprays, which are difficult for some patients to use.

*The Medical Cannabis Access section and grade were developed with input from Medical Cannabis Canada.*

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## **10. Research, Innovation, and Jobs**

For the cannabis industry to protect the jobs it has created and to create new direct and indirect jobs, governments must ensure that researchers, both private and public, are able to conduct research that companies are able to develop innovative products, and that license holders can access government support programs and services.

Legal cannabis has created tens of thousands of well-paying Canadian jobs. These include direct jobs with cannabis license holders (producers, processors, testing labs, research labs, cannabis-based drug makers and medical cannabis providers), cannabis retailers, and provincial cannabis distributors. Legal cannabis has also created many more thousands of indirect jobs for people working in companies that provide goods and services to the cannabis industry (transportation, equipment, supplies, professional services, etc.)

We have to give legalization a “C” for its research, innovation, and job creation in our sector.



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Today, cannabis-related research is stalled because of a regulatory regime that is designed for the pharmaceutical industry and not for an agricultural consumer product. Canada is the first G7 country to legalize adult-use cannabis and a leader in the export of medical cannabis, yet we have no economic strategy or vision for international or domestic cannabis. CBD-only consumer products available outside of cannabis dispensary settings present yet another domestic and global business opportunity calling for government leadership on the research, innovation and job creation fronts.

The Government of Canada has a broad range of policies, regulations, programs, and services in place to support business success and job creation. These include programs to support research and development, policies which support market access and exporting, and investment support agencies like EDC and BDC. Underpinning all of this are policies and regulations built with industry input. Cannabis is a plant, yet the cannabis industry is unable to access funding programs for agriculture or agri-business. Accessing funding support from government agencies like EDC and BDC remains a challenge for legal cannabis businesses. Cannabis regulations are developed with little input from industry. While cannabis is legal, the stigmatization of cannabis across the Government

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## **11. Financial Viability**

Financial viability refers to the ability of licensed producers and licensed processors to pay their bills, much less earn a profit, while contributing to the public policy objectives of the Cannabis Act, adhering to Cannabis Act regulations and other government laws (federal, provincial and municipal), paying provincially mandated distributor mark-up fees, and meeting the needs of consumers.

We give legalization an “F” on the financial viability of the cannabis industry.

The tax and regulatory fee burden borne by license holders is threatening their financial viability. The reality facing the industry is that it is frequently selling cannabis at a loss because of combined federal, provincial and territorial government taxation, regulation, and policies. Despite this, the cannabis industry faces indifference from governments in response to industry calls for leadership.

Provincial distributor mark-up practices that squeeze producers and processors also bear a responsibility for the financial viability challenges plaguing the sector. In practice, the burden of price competition with the illicit market is largely being borne by federal license holders and private sector retailers.

The failing grade is also a function of the “nanny state” over-regulation of cannabis, which is evidenced by things such as:

- public possession limits;
- the prohibitions on promotion;
- the 10mg limit on cannabis edibles and beverages;
- the cannabis equivalency formula;
- cannabis labelling rules;
- the prohibitionist approach to public education; and,
- restrictive retail rules.

The nanny state over-regulation of cannabis contributes to the competitive advantage of the illicit cannabis industry and the emerging pull of the US-cannabis industry.

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The cannabis industry needs governments at all levels to come together with renewed energy and to reset their approaches to cannabis if Canada wants to accomplish the objectives of the Cannabis Act and fulfill the promise of cannabis legalization.

Canada, we are Not Done Yet!

**\* The “Not Done Yet Report Card” is a collaborative effort from Cannabis Amnesty, the Cannabis Council of Canada and NORML Canada. Note that Medical Cannabis Canada’s participation is limited input on the grade for “Access to Medical Cannabis”.**

**DATE:** October 17, 2021

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of Canada**

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