



## A missed opportunity? Cannabis legalization and reparations in Canada

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### Abstract

As Canada moves towards the legalization of cannabis, the *Cannabis Act* itself remains void of any complementary social justice measures. Decades of criminalization for the possession, production, and sale of cannabis will remain unscathed under this ostensibly new approach, leaving intact laws that have disproportionately and prejudicially impacted Indigenous people and people of colour. This includes the overpolicing and criminalization of these communities, furthering criminal justice disparities, and the lack of meaningful initiatives to aid communities of colour and Indigenous communities in participating in the legal cannabis industry. Despite the continuing impacts, the Government of Canada has made no commitment to tandem initiatives that address the issues of reparation for those who have been most heavily targeted under cannabis prohibition. Public health implications are discussed.

### Résumé

Alors que la légalisation du cannabis approche au Canada, la *Loi sur le cannabis* elle-même n'inclut aucune mesure de justice sociale complémentaire. Des décennies de criminalisation pour la possession, la production et la vente du cannabis demeureront indemnes selon cette prétendue nouvelle approche, laissant intactes des lois qui ont démesurément affecté les personnes autochtones et les personnes de couleur de manière discriminatoire. Ces lois incluent une présence policière excessive et la criminalisation de ces communautés, soutenant ainsi les inégalités au niveau judiciaire, et l'absence d'initiative significative pour aider les communautés de couleur et autochtones à participer au marché légal du cannabis. Malgré des impacts continus, le Gouvernement du Canada ne s'est pas engagé à créer des initiatives parallèles à la légalisation du cannabis pour adresser les enjeux de dédommagement pour ceux et celles qui ont été le plus ciblé(e)s sous sa prohibition. Les implications au niveau de la santé publique sont abordées.

**Keywords** Cannabis · Legalization · Public health · Indigenous · Cannabis Act · Reparations · Policy

**Mots-clés** Cannabis · Légalisation · Santé publique · Autochtone · Loi sur le cannabis · Réparations · Politique

While Canada continues to receive international praise for its public health framing of the regulation and legalization of cannabis, the *Cannabis Act* itself remains void of any

complementary social justice measures. Decades of criminalization for the possession, production, and sale of cannabis will remain unscathed under this ostensibly new approach, leaving intact laws that have disproportionately and prejudicially impacted Indigenous people and people of colour. This includes the overpolicing and criminalization of these communities, furthering criminal justice disparities, and the lack of meaningful initiatives to aid communities of colour and Indigenous communities in participating in the legal cannabis industry. Despite the continuing impacts, the Government of Canada has made no commitment to tandem initiatives that address the issues of reparation for those who have been most heavily targeted under cannabis prohibition. Reparations must include a variety of initiatives on both the individual

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and structural levels, such as expungements for offenses which will be legal by October 2018, government-supported programs which minimize barriers to cannabis industry licenses, and allocated investments back into communities which have been overpoliced in the name of cannabis prohibition.

In 2015, approximately 96,000 *Controlled Drug and Substance Act* offenses were reported to the police; and of these offenses, more than half were for cannabis possession (Allen 2016). The prohibition of cannabis has been linked to a range of repressive criminal justice tactics, and residual mandates of this regulatory approach continue to create a number of difficulties for those seeking to reenter the labour force, as well as those looking to travel or access social services (Thompson 2017). Surprisingly, there is relatively little data on the race of individuals arrested for cannabis offenses. Police agencies, for example, do not collect race-based aggregate data, a policy that is common throughout the justice system.

Some mainstream media outlets have attempted to fill this void, and have demonstrated the disparity in how, for example, black communities are overpoliced when it comes to cannabis in Toronto, one of the most multicultural cities in Canada (Rankin and Contenta 2017). Others have reported even more startling results through freedom of information requests—for example, Indigenous people in Regina were nine times more likely to be arrested for cannabis possession when compared to their white counterparts from 2015 to early 2017, despite cannabis use being relatively similar across groups (Browne 2018).

With the coming legalization of cannabis in Canada, we can no longer ignore the fact that people of colour and Indigenous populations continue to be overrepresented in provincial correctional institutions (Owusu-Bempah and Wortley 2014) and federal prisons in Canada (Sapers 2016). There is a public health imperative to address the overincarceration of these groups in Canada, as those in correctional facilities have poorer health outcomes across a range of indicators, including higher rates of mental health issues, communicable diseases, and some chronic diseases (Kouyoumdjian et al. 2016). The link between racially discriminatory policing practices and the perpetuation of the war on drugs is concerning when those who have been historically invested in the drug war have been among the first to pivot into the legal cannabis industry. This includes many former high-profile police, RCMP officers, and Conservative MPs, who now hold executive roles in many legal cannabis companies in Canada (Kassam 2017; CBC Radio 2017). While former enforcement and policy leaders have been free to join the emerging legal industry, those impacted by these and other actions have been left behind and continue to be negatively affected by criminal records and policing efforts. Communities that have been disproportionate targets of

cannabis laws and policing may not be better off under a legal cannabis framework, particularly if they continue to carry criminal records for activities which will be legal by the end of 2018 in Canada.

A public health approach to the regulation of drugs requires more than mere lip service to the importance of treating drug use as a health issue as opposed to a criminal violation. While the Cannabis Act removes cannabis from the Controlled Drug and Substances Act, it also proposes approximately 45 new criminal offenses, including harsher penalties for the possession of “illicitly sourced” cannabis (Bill C-45 2018). So, too, does it authorize up to 14 years in prison for selling cannabis to minors (Bill C-45 2018), a grossly disproportionate potential sentence when compared to infractions involving any other legal drug in Canada. Considering these new penalties, and the lack of attention to reparations for communities most harmed by cannabis prohibition, we can expect the same disparities and prejudicial approaches in policing to persist in a legalized context.

Further, as the Cannabis Act moves through the Senate, there have been two central issues identified around people of colour and Indigenous communities, including how to ensure these groups have equitable access to participate in the emerging industry, particularly addressing the impact of cannabis criminal records on the ability to pursue these opportunities, and for Indigenous communities, how and if cannabis regulations will apply on Indigenous land. The current medical cannabis industry certainly paints a clear picture: out of more than 100 Licensed Producers of cannabis under the Access to Cannabis for Medical Purposes Regulations, only approximately four have “very close partnerships with Indigenous communities and businesses” (Parliament, Senate of Canada 2018). Health Canada has implemented a “navigator service” designed to assist self-identified Indigenous applicants through the actual licensing process. However, because this primarily involves a direct line of contact with a Health Canada licensing professional, it does not provide adequate support to communities marginalized by the ongoing impacts of colonialism and structural racism, including barriers to financial capital, social networks, and security clearance, and continues to presuppose a level of business acumen that may not be equally accessible.

There is a lack of meaningful initiatives which can and should prioritize people of colour and Indigenous opportunities as central to reconciliation in a post-drug-war era. These should be developed in close partnership with various stakeholders, such as the National Indigenous Medical Cannabis Association (NIMCA), centralizing the emerging legal cannabis industry as a potential economic opportunity for Indigenous communities across Canada. NIMCA has criticized the federal government for their lack of consultation with Indigenous communities, and its official position includes, “protecting Indigenous sovereignty and Inherent

rights to the cannabis plant and our right to cultivate, process, dispense and transport cannabis and hemp” (National Indigenous Medical Cannabis Association n.d.) as a primary objective. These rights are not clearly defined in Bill C-45. However, it should be noted there exists substantial diversity among Indigenous communities in Canada around how the cannabis industry should proceed on sovereign land, with some communities opting out of production and retail sales—not dissimilar to the diversity found across various municipalities across Canada. The K’atl’odeeche First Nation Reserve in Northwest Territories, for example, is one of six dry communities in the territory, and the prohibition on intoxicants will likely extend to cannabis (Last 2018), while other communities, such as the Tyendinaga Mohawk Territory in Ontario, already have approximately 30 or more retail cannabis stores ahead of legalization (Barrera 2018). However, the bottom line is allowing Indigenous communities the authority to decide and engage in its own consultation process with community members.

Ignoring reparations—an important element in the ethical liberalization of drug laws—does not mean these disparities will disappear. In fact, in US states that have legalized non-medical access to cannabis, cannabis-related charges have largely decreased while racial disparities have persisted (Last 2018). Reparations should not just refer to the expungement of criminal records and non-conviction records; they should also address how we structure opportunities to participate in the emerging cannabis sector. Appropriate levels of government should offer tools and support to those harmed directly by the policing of cannabis, support that should include attention to those with past cannabis-related charges and the opportunity to participate in the legal cannabis industry.

To be truly progressive and sincerely invested in public health in a post-prohibition environment, we must consider expungements for Canadians convicted of cannabis offenses. So, too, should we ensure equal access to participate in the cannabis industry, as both employees and entrepreneurs, while also offering clear commitments to invest directly in the communities that have been disproportionately affected by cannabis prohibition. Cannabis legalization in Canada, as it currently stands, addresses none of these crucial areas; and as such, many Canadians will not be better off under legalization than they have been under prohibition.

### Compliance with ethical standards

**Conflict of interest** The authors declare that they have no conflict of interest.

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