

Five Years After Cannabis Legalization, Is It Time to Ease Restrictions on Promotion?

Cinq ans après la légalisation du cannabis,
est-il temps d'assouplir les restrictions sur la promotion?



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Abstract

In the spring of 2024, the federal government is expected to report on its legislative review of the *Cannabis Act* (2018). One of the most contentious issues is whether to relax restrictions on cannabis promotion. This commentary describes the tension between the public health aims of legalization and the secondary aim of displacing the illicit market. We maintain that among jurisdictions that have legalized cannabis, Canada stands out as having the stated

primary objective of safeguarding public health, and its restrictions on promotion are evidence-based and innovative. These measures must be preserved, even in the face of growing industry pressure to loosen them.

Résumé

Au printemps 2024, le gouvernement fédéral devrait présenter un rapport sur son examen législatif de la *Loi sur le cannabis* (2018). Une des questions les plus controversées est de savoir s'il faut assouplir les restrictions sur la promotion du cannabis. Ce commentaire décrit la tension entre les objectifs de la légalisation en matière de santé publique et l'objectif secondaire d'un remplacement du marché illicite. Nous arguons que, parmi les administrations qui ont légalisé le cannabis, le Canada se distingue par son objectif principal déclaré, qui est de protéger la santé publique, et par ses restrictions sur la promotion qui sont novatrices et qui se fondent sur des données probantes. Ces mesures doivent être préservées, même face à la pression croissante de la part de l'industrie pour les assouplir.

Introduction

The federal government is expected to report on its legislative review of the *Cannabis Act* (2018) in the spring of 2024. Crucial to this review is assessing the degree to which the Act meets its main goal of strictly regulating the production, distribution and sale of cannabis in order to protect public health and safety and minimize cannabis-related harms. One of the most contentious issues is whether to relax restrictions on promotion. The cannabis industry has been lobbying against these restrictions for years, arguing that they prevent legal producers and retailers from competing with illegal ones (Laba 2020; Raycraft 2022). Some go further, suggesting that these restrictions actually endanger public health by pushing cannabis users to the illicit market and its unregulated products (Cannabis Council of Canada 2022). Even the federal government's own Competition Bureau has added its voice, agreeing that marketing restrictions should be eased (Competition Bureau Canada 2023). However, these arguments are at odds with the evidence that the promotion of psychoactive substances is associated with increased consumption, especially among youth, and is detrimental to public health.

Discussion

There is a strong public health case for cannabis legalization. It can be summarized as follows (Crépault et al. 2016):

- Cannabis is not benign. Harm is concentrated among people who use cannabis frequently and/or heavily and especially those who began doing so early in life. Importantly, these risk factors are modifiable.

- Prohibition exacerbates these health harms and, through the criminalization of users, causes social harms.
- Legalization gives governments the opportunity to address the modifiable risk factors for cannabis-related harm via evidence-informed regulation. Ultimately, the population-level benefits of legalization depend on the implementation of regulations that prevent increases in problematic use – especially among young people, who are at greater risk of experiencing harm from cannabis use.

In the years prior to the introduction of the *Cannabis Act* (2018), leading organizations in the public health and substance use sectors coalesced around a vision for a public health approach to cannabis (CAMH 2014; Chapados et al. 2016; CPHA 2017). The goal was the establishment of a regulatory system in which Canadian adults who use cannabis are no longer criminalized and have access to quality-controlled products and reliable information, but with strong safeguards against early use and inducements to problematic use. Central to these safeguards were limits on retail availability; controls on price; a ban on advertising, marketing and promotion; and strict labelling requirements. Significantly, these elements were all included in the “public health approach” recommended by the federal government’s Task Force on Cannabis Legalization and Regulation (Health Canada 2016: 2).

In the *Cannabis Act* (2018) itself, the legislation’s first listed purposes are “to protect public health and public safety and, in particular, to (a) protect the health of young persons by restricting their access to cannabis; (b) protect young persons and others from inducements to use cannabis”. To support these objectives, the government opted for strict regulations around cannabis promotion (Health Canada 2024). Promotion of cannabis products and accessories is generally prohibited, apart from informational promotion at the point of sale (i.e., in stores, either brick-and-mortar or online); permissible promotion must not appeal to young people, may not depict people, animals or cartoons and may not use testimonials. Products must be sold in plain, standardized packaging that includes mandatory health warnings and leaves little room for branding. These regulations are evidence-informed and innovative – the kind of approach that is often recommended for psychoactive substances (Babor et al. 2023; WHO 2017) but seldom implemented.

Despite these measures, Canadians’ level of exposure to cannabis promotion is high. A federal government survey (Health Canada 2022) found that 49% of Canadians noticed cannabis advertisements or promotions in 2022. Some of this exposure would have come from legal promotion; for example, some respondents reported noticing promotion inside or outside a cannabis store (13% and 24%, respectively). But respondents also reported exposure to cannabis promotion through social media (14%), on TV or radio (10%) and on public billboards or posters (10%) – striking figures in view of the fact that all of these forms of promotion are illegal under the *Cannabis Act* (2018) and its regulations. Indeed, researchers have documented widespread violations of existing promotion rules by licensed cannabis producers and retailers, including lack of age restrictions, passing branded content as education,

lifestyle advertising, omission of risks, unsubstantiated medical claims and brand glamorization, among others (Asquith 2021; Fournier and Gagnon 2023; Sheikhan et al. 2021).

The cannabis industry has made various proposals to ease federal restrictions on promotion, which it considers emblematic of the Act's "nanny state" over-regulation" (Cannabis Council of Canada 2021: 8). These range from recommendations to loosen plain packaging and labelling rules to allow producers and retailers to provide "evidence-based information" about the characteristics and effects of cannabis products (Cannabis Council of Canada 2022) to suggestions that the rules for cannabis should be brought in line with those for alcohol (Laba 2020; Lagerquist 2020). Such proposals are presented as necessary elements toward "eliminating the illicit market, one of legalization's key public health objectives" (Cannabis Council of Canada 2022; see also Legislative Review Secretariat 2023: 70–77) but, in fact, prioritize commercial interests over public health (Barry and Glantz 2016; CAMH 2023).

The purpose of promotion – and marketing in general – is to increase consumption among existing customers and to draw in new consumers by increasing brand/product recognition and appeal. Alcohol, tobacco and early cannabis research have shown that the promotion of these substances is associated with increased consumption, especially among youth (Jernigan et al. 2017; Lovato et al. 2011; Whitehill et al. 2020). When the industry argues that the Act's restrictions limit the ability of cannabis producers and retailers to compete with the illicit market, it ignores these known harms.

The industry also overemphasizes the current harms of the illicit market. While legal, regulated products are indeed preferable from a health perspective to illicit, unregulated ones, the population-level harms we can expect from further commercialization – increased consumption and problematic use – would in all probability exceed any harms of continued illicit cannabis use. It should also be noted that the proportion of Canadians accessing cannabis in the illicit market has been steadily decreasing and continues to do so: the share of the illicit market has decreased from 86% in early 2019 to just 30% in 2022 (Statistics Canada 2023). And, importantly, the industry offers no evidence to support its claims that easing restrictions on cannabis promotion would further accelerate the reduction of the illicit market.

Overall, early evidence of legalization's impacts on public health suggests a complex picture. There are unequivocal wins; notably, decreases in arrests and convictions; areas of ambiguity, such as adolescent use remaining at the high-prevalence levels seen prior to legalization and mixed effects in cannabis-impaired driving; and areas of concern, especially increased use in adults and a rise in pediatric emergency room visits and hospitalizations (Fischer et al. 2023; Hall et al. 2023; Rubin-Kahana et al. 2022). Given that the negative outcomes relate to health-related effects from increased cannabis use, it is important to not make policy changes that will further exacerbate these harms. More research (and time) will be needed to determine the long-term public health and safety impacts of the *Cannabis Act* (2018). But in the area of adolescent use, promotion restrictions are likely helping: early

research on Canada's plain packaging suggests that it successfully achieves the goal of making products less appealing to young people (Goodman et al. 2021).

There are certainly aspects of Canadian cannabis policy that can be improved. One important area is ensuring compliance with the *Cannabis Act* (2018) to counter the widespread flouting of promotion regulations noted earlier and the continued existence of illicit production and sales. In addition, there is no standard tetrahydrocannabinol (THC) unit in Canada, which makes it difficult for consumers to estimate and understand their THC intake; this could be remedied by setting a standard THC unit and requiring its use on cannabis packages and labels. The Centre for Addiction and Mental Health and the Canadian Institute for Substance Use Research recently made 10 recommendations to the expert panel conducting the legislative review (Box 1), and the first recommendation is to maintain the Act's restrictions on advertising, marketing and promotion. Canada's current regulations in this area are a rare instance where public health evidence and best practices have been designed as recommended.

BOX 1. CAMH/CISUR recommendations to the expert panel conducting the *Cannabis Act* (2018) legislative review

- The *Cannabis Act's* (2018) regulations around advertising, marketing and promotion, including packaging and labelling requirements, should be maintained in their entirety. The federal government should also ensure compliance, including at points of sale and online.
- Health Canada should launch a consultation to determine the optimal standard THC unit. Once set, the use of the standard unit should be added to labelling requirements.
- The federal excise tax on cannabis should not be reduced. The federal government should move toward an excise tax based on THC for dried and fresh cannabis in order to incentivize the consumption of less potent products.
- The limit of 10 mg of THC per package for edibles should be maintained. In addition, Health Canada should investigate whether different kinds of legally available edibles appeal to youth.
- The federal government should ensure widespread dissemination of the lower-risk cannabis use guidelines, as well as the versions adapted for particular subpopulations.
- Evidence-informed education campaigns around cannabis should be led by Health Canada and developed free of industry involvement.
- Though this does not fall under the *Cannabis Act* (2018), we encourage provinces and territories with private retail systems to introduce limits on cannabis retail density and clustering and to regulate cannabis availability with public health as the main criterion.
- The federal government should work with the provinces and territories to address illegal storefronts.
- The federal government should continue to address the over-policing and over-incarceration of racialized people and communities.
- The federal government should expunge all convictions for personal possession of cannabis.

Source: CAMH and CISUR 2022: 2-3.

CAMH = Centre for Addiction and Mental Health; CISUR = Canadian Institute for Substance Use Research; THC = tetrahydrocannabinol.

Conclusion

Many jurisdictions have legalized recreational use of cannabis, but Canada stands out as having done so with the stated primary objective of safeguarding public health. Displacing the illicit market is an objective of the *Cannabis Act* (2018), but a secondary one, subordinate to its public health aims. The Act not only serves as a model for regulating cannabis in other jurisdictions but also sets a precedent for the regulation of other legal substances in Canada.

Should restrictions on cannabis promotion be eased? If the federal government remains serious about protecting young people from inducements to use cannabis and from cannabis-related harms, then the answer is no.

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