Early Lessons Learned from Cannabis
A Critical Conversation for Regulatory Professionals

A Critical Conversation™ from the Regulatory Governance Initiative — Hosted by Carleton University's School of Public Policy and Administration

April 8, 2019

Note to participants

This Critical Conversation on Cannabis from the Regulatory Governance Initiative is an opportunity for professional regulators to learn from one of the largest, most complex and most challenging regulatory initiatives undertaken by a government in a single term. Legalizing cannabis is about much more than legislation and regulation. It also offers opportunities to learn lessons for other regulatory fields.

This has been a period of extraordinary activity and great complexity, affecting multiple players in many sectors. It's important for participants to come prepared to think about the sort of data that regulators need to collect on a systematic basis over the long term. The important early lessons learned about cannabis regulation will be joined by potentially even more important longer-term lessons as key players such as government, law enforcement and the cannabis industry accumulate ever-increasing knowledge and experience.

This paper is designed to prepare you to participate in a half-day conversation focused on answering these two questions.

- **What are the three most important lessons from cannabis since October 2015?**

- **What are three things we've learned from cannabis that will contribute most to better regulatory management?**

Event format and schedule

Presenters

- John Clare, Acting Director General, Strategic Policy Directorate, Controlled Substances and Cannabis Branch, Government of Canada
- Dale Tesarowski, Executive Director, Corporate Initiatives Branch, Integrated Justice Services, Government of Saskatchewan
- Greg Engel, Chief Executive Officer, Organigram Inc.

Each presenter will share his particular perspective and experience on the cannabis regulatory regime. There will be an opportunity to engage with and ask questions of these presenters, participate in small group roundtable discussions (your table number is listed on the back of your nametag), and draw conclusions about portable learnings this file has to offer.

Discussion

The group roundtable discussions will have 40 minutes to answer the two questions listed on the previous page, using the framework and considerations in this paper as background. Each group will have a flipchart to write their answers. After the 40 minutes, all participants will be asked to vote on the answers from all groups using green stickers to signal agreement and red stickers to signal disagreement. Participants who use a red sticker may be asked to share their reasoning. A group discussion will ensue.

Susan Phillips, Professor, School of Public Policy and Administration at Carleton University, will serve as a rapporteur and summarize the conversation. A final report of the event will be posted on the Regulatory Governance Initiative website. Chatham House Rules will apply to the entire event.

Date and venue

April 8, 2019, 08:00-13:00
Breakfast and light refreshments will be provided

Carleton University School of Public Policy and Administration
Richcraft Hall Conference Rooms (2220-2228)
1125 Colonel By Drive
Ottawa, Ont., K1S 5B6

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The Focus of This Critical Conversation on Cannabis

This Critical Conversation focuses on cannabis, but participants are strongly encouraged to consider the wider regulatory lessons we can learn.

The broader regulatory implications emerging from cannabis legalization are in many respects unique, or rarely encountered in a single file.

- An unprecedented level of collaboration is required between all orders of government, the private sector and civil society.
- Federal, provincial, territorial, municipal and Indigenous governments all have particular authorities to exercise. But all the parties share one challenge: they have specific, limited authority combined with unlimited public accountability. Failure in one part of the system imperils the whole system.
- Ground-breaking measures were employed to build a consensus among federal, provincial and territorial governments.
- Within every order of government, the multi-ministerial dimension of legalizing and regulating cannabis raises questions relating to the requirements for high levels of interdepartmental cooperation and responsibility.
- Limited scientific knowledge is available to support and inform legal and enforcement questions. This has been exacerbated by a long history of prohibition and stigma, which has led to an absence of data to drive decisions.

Important ongoing policy discussions could potentially benefit from lessons learned from cannabis legalization and regulation.

- Dealing with online privacy concerns and the dissemination of false information online shares some of the fast-evolving and legally complex challenges relating to cannabis legalization.
- The opioid crisis has safety, health, law enforcement and international features that are echoed in cannabis regulation.
- Cybersecurity issues involve complex interactions between orders of government, Canada's ability to innovate and the need to neutralize criminal elements. Canada's cannabis regime shares these same characteristics in varying degrees.

Canada's cannabis timeline: from prohibition to legalization

2018
October 18, the *Cannabis Act* comes into force.

2017
Bill C-45 is introduced in Parliament. It would allow people aged 18 and older possession of up to 30 grams. Provisions are not made for legal sales, and the bill would allow provinces to restrict possession, sale and use.

2016
A national poll by Nanos Research finds that 7 out of 10 Canadians are in favour of legalizing marijuana.

2015
The Liberal Party of Canada makes legalizing cannabis part of its election platform.

The Government of Canada's Cannabis Mandate

The Liberal Party of Canada's 2015 election platform promised to "legalize, regulate, and restrict access to marijuana." This represented a fundamental shift in policy. The governing Conservative Party of Canada remained focused on limiting access to cannabis for medical reasons while also continuing to support a tough-on-crime approach to recreational cannabis.

Once elected, the new Liberal government began formally advancing its cannabis legalization agenda, ensuring cannabis legalization was featured in the Speech from the Throne and in ministerial mandate letters. In all instances, the government reaffirmed its commitment to regulation going hand-in-hand with legalization.

Four federal ministries were given responsibility for different aspects of cannabis legalization. This meant the legalization process could work effectively only with the close cooperation of a variety of parties.

Border Security and Organized Crime Reduction, Health Canada, the Department of Justice, and Public Safety and Emergency Preparedness, were all designated as playing central roles. Each of these players was expected to play a regulatory role.

This explicitly collaborative approach to regulation has implications not just at the federal level but across all the players in the legalization process. Focusing on establishing the networks needed for broad collaboration across orders of government and industry is likely to be a hallmark of any successful approach to managing Canada's legal cannabis regime.

Collaborative networks will also help address a key challenge for many of the players involved — the challenge of having specific, limited authority combined with unlimited public accountability.

The Speech from the Throne and ministerial mandate letters

"… the Government will introduce legislation that will provide greater support for survivors of domestic violence and sexual assault; that will get handguns and assault weapons off our streets; **and that will legalize, regulate and restrict access to marijuana**."

—Speech from the Throne to Open the First Session of the 42nd Parliament of Canada, December 4, 2015

"With support from the Ministers of Health, Justice and Public Safety and Emergency Preparedness, **lead the legalization and strict regulation of cannabis across Canada**, including working with the provinces and territories to develop and implement these regulations. **Your key**

2014
Patients and producers authorized under the old regulations are required to destroy stocks of marijuana and cannabis seeds, although a Federal Court granted a temporary injunction allowing continued use of home-grown medical marijuana until legal arguments can be heard.

The federal government says the unforeseen growth of its medical marijuana program has "seriously compromised" the goal of providing the drug to patients while ensuring public safety. It says the number of people authorized to possess marijuana under the federal program has risen from fewer than 100 in 2001 to 37,000.

2013
New regulations change the Canadian medical marijuana access rules, shifting to licensed commercial growers for supply and away from homegrown.

Justin Trudeau, while campaigning for leadership of the Liberal Party, says he is in favour of legalizing cannabis.

Uruguay becomes the first country in the modern era to legalize cannabis.

priorities are public safety, responsible usage and keeping cannabis away from children."

—Minister of Border Security and Organized Crime Reduction Mandate Letter, August 28, 2018

"Work with the Ministers of Justice and Public Safety and Emergency Preparedness, as well as the Leader of the Government in the House of Commons, and the Representative of the Government in the Senate, to help ensure timely passage of Bills C-45 and C-46, **leading to the legalization and strict regulation of cannabis**."

—Minister of Health Mandate Letter, October 4, 2017

"Working with the Ministers of Public Safety and Emergency Preparedness and Health, create a federal-provincial-territorial process that will **lead to the legalization and regulation of marijuana**."

—Minister of Justice and Attorney General of Canada Mandate Letter, November 12, 2015

"Support the Minister of Justice and the Minister of Health on efforts that will lead to the **legalization and regulation of marijuana**."

—Minister of Public Safety and Emergency Preparedness Mandate Letter, November 12, 2015

Framework and Basic Considerations for This Critical Conversation

The *Cannabis Act* creates a strict legal framework for controlling the production, distribution, sale and possession of cannabis across Canada. The Act aims to accomplish three goals:

- Keep cannabis out of the hands of youth.
- Keep profits out of the pockets of criminals.
- Protect public health and safety by allowing adults access to legal cannabis.

A wide range of players need to cooperate to ensure Canada's cannabis regime lives up to its potential and remains firmly in line with the priorities of the *Cannabis Act*. While these players have differing backgrounds, responsibilities and objectives, they all share one important characteristic — no single entity can act entirely independently. This is a determining factor for all aspects of program design and implementation. The resulting complex web of interdependency is dynamic and must be self-adjusting to maintain integrity and public trust.

2012
Ballot measures in Colorado and Washington legalize recreational use of small amounts of marijuana.

2001
Canadian Medical Marijuana Access Regulations grant legal access to cannabis for individuals with HIV/AIDS and other illnesses. Authorized patients can grow their own cannabis or obtain it from authorized producers or Health Canada.

2000
The Ontario Court of Appeal rules Canadians have a constitutional right to use cannabis as a medicine.

1999
Two Canadian patients get the federal OK to smoke cannabis.

1996
California becomes the first state to legalize medical marijuana.

1978
New Mexico passes the first state law recognizing the medical value of marijuana.

Without a cooperative, self-adjusting approach to Cannabis regulation, Canada runs the risk of making mistakes with large societal implications in the short and long term.

Six building blocks for a dynamic cannabis regulatory regime

The bold political decision to introduce the *Cannabis Act* must necessarily be accompanied by an equally dynamic approach to program design and implementation. We have identified the key players and selected six building blocks that are central to accomplishing the goals of the *Cannabis Act*. The bullets below are intended to catalyze discussion.

Politics
- Building consensus was a long haul. It had to survive ministerial and government changes that have occurred (and will occur in future).
- How was a consensus developed and how is it being maintained?

Governance and jurisdiction
- How are you organized to manage this interdependent web where you have limited authority and unlimited accountability in the public's mind?
- How did you manage this in the development phase and how are you evolving into implementation, compliance and enforcement?
- Are you starting tough and will relax later if the data suggest it could be possible?
- What political, scientific and operational data are you collecting and what forum will you use to apply it?
- What is the balance between enforcement and price mechanisms to deal with illegal players?
- Initial legal sales have been disappointing. What does this say about underground sales?
- How do we ensure Indigenous input is given full consideration along the same lines as input from other orders of government?
- Are there existing government models we can learn from when it comes to bringing in unsanctioned players? Do we need a separate approach for large and small operators in the underground economy?

Knowledge
- Knowledge for decision-makers — what do we know, what do we know we don't know, significance?
- How do we prepare for what we don't know we don't know? When cannabis was illegal, only limited scientific work was possible, resulting in big lacunae and a dependence on anecdotal information — more so than with comparable issues such as drugs and chemicals. How can this situation be improved?

1977
Then-prime minister Pierre Trudeau tells a group of students, "If you have a joint and you're smoking it for your private pleasure, you shouldn't be hassled."

1976
The Netherlands effectively decriminalizes marijuana.

1972
The Le Dain commission recommends decriminalizing simple cannabis possession and cultivation for personal purposes.

1969
The Canadian government establishes a commission of inquiry into the non-medical use of drugs, known as the Le Dain commission after its chairman, Gerald Le Dain.

1960s
Popular counterculture movements in Canada and the U.S. bring psychedelic drugs and cannabis into popular use. But anti-cannabis laws are enforced strongly, resulting in a dramatic increase in arrests and convictions.

- What do we know about cannabis and health (both individual and population)?
- What parts of the population are most at risk?
- How do we protect youth (e.g., access, product approvals for products such as gummies)?
- How does cannabis fit into the federal government's pharmacare plans?
- What scientific answers do we need but don't know we need?
- How do we acknowledge and incorporate Indigenous knowledge?

Investments
- This policy shift has created a multi-billion-dollar industry.
- What have we learned from the creation of this new industry?
- What are the applications for other policy areas and initiatives?

Markets
- How do/did we develop ideas around market functioning?
- What licensing model did you borrow from and what features are truly novel?
- How are you approaching the underground economy and what did you borrow from?
- What are the terms and conditions you have applied?
- Licences have become valuable items. How do you manage this or is it the market?

People
- What common qualities are shared by this remarkable group of government staff?
- What was the process like from the inside?
- How were staff recruited?
- What competencies and proficiencies are you looking for?
- How do you train and develop your people?
- How are you going to retain this talent?
- How did they prepare for implementation?
- How did they prepare people to keep track of progress and problems and to make adjustments?
- What skills are needed at different stages of the process?

1932
Canadian law enforcement seizes marijuana for the first time.

1923
Cannabis is added to the Schedule of the *Opium and Drug Act*.

1922
Pioneering feminist Emily Murphy publishes an inflammatory book, *The Black Candle*. She claims that marijuana turns its users into homicidal maniacs.

1800s
The Government of Canada uses hemp to help stimulate the economy by handing out hemp seeds to farmers with hopes that they would cultivate the plant for its many uses. By 1822, the provincial parliament of Upper Canada begins to set money aside to incentivize hemp cultivation and purchase machinery for its processing.

Adaptive Management

All governments follow established and demanding procedures to produce regulations. The process typically requires a great deal of time for consulting and negotiating with interested parties over benefits and costs. When a regulation is finally proclaimed, it is the embodiment of a great deal of effort and commitment.

However, as excellent as a planning process may be, it is difficult to predict the results. Cannabis is a prime example of this. We should expect to learn a great deal as regulations are put into practice and the private sector and civil society adjust to the new regulatory environment.

There is substantial evidence that once a regulation is in place it tends to endure and there is typically little support for making changes until they are unavoidable. This is why adaptive management usually offers the best approach. It is the practice of collecting performance data at every step of the regulatory lifecycle, from planning to designing, implementing, evaluating and adjusting.

Regulatory failure typically occurs at the implementation stage. The practice of adaptive management encourages better outcomes at the implementation stage. Adaptive management allows for a systematic approach to be taken so regulations are adjusted as warranted in a process of continuous improvement rather than through major changes associated with infrequent upheaval.

Conclusion

The recommendations from each roundtable will be framed by these two questions:

- **What are the three most important lessons from cannabis since October 2015?**

- **What are three things we've learned from cannabis that will contribute most to better regulatory management?**

The rapporteur will summarize and synthesize the group's key findings during the plenary session. A full report will be posted on the Regulatory Governance Initiative website.