

THE IMPACT OF THE *CANNABIS ACT* ON INDIGENOUS PEOPLES

**THE UNREALIZED POTENTIAL OF THE *CANNABIS*
ACT AS A TOOL FOR RECONCILIATION**

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CANNABIS IN INDIGENOUS COMMUNITIES

As distinct and diverse Nations, Indigenous Peoples hold a wide variety of views on cannabis and its place in Indigenous culture.

For some Indigenous people and groups, cannabis acts as medicine and a source of healing, using it in ceremony throughout their cultural history.

However, it is important to remember that Indigenous practices and the interests of Indigenous Peoples are not frozen in time and vary greatly between Nations and individuals. There are equally many Indigenous groups who do not use cannabis as a part of their cultural practices, or who are interested in the legalization of cannabis for more economic reasons, and we must not reduce Indigenous Peoples' culture to "specific anthropological curiosities and potentially racialized Aboriginal stereotypes" (*Sappier, Gray*).



"Cannabis was used widely by various Indigenous or First Nation tribes thousands of years before colonization of Turtle Island"

- National Indigenous Medical Cannabis Association



Prohibition of cannabis has also impacted Indigenous communities' ability to benefit from the economic opportunities related to cannabis. As noted on the Indigenous Cannabis Cup website, despite nearly 100 years of cannabis criminalization, "Indigenous involvement in the cannabis industry has remained consistent" and "countless numbers of Indigenous people have sustained themselves and their families by growing and selling cannabis."

"Indigenous people have long had an affinity to cannabis, and have been inhaling a wide variety of dried plant matter for spiritual, medicinal, and 'recreational' reasons since time immemorial."

- Indigenous Cannabis Cup

CANADA'S HISTORY OF CRIMINALIZING INDIGENOUS PEOPLE WHO USE DRUGS

The racism underpinning Canada's legal system has resulted in the systemic over-policing and over-incarceration of Indigenous individuals, leading to distrust of the new *Cannabis Act* amongst Indigenous groups.



1995

The Ontario Commission's Report on Systemic Racism found that police often stopped working-class people of colour based on the "assumption that they had illegal drugs in their possession."



2015

Indigenous Peoples continued to be overrepresented in cannabis possession arrests in the period before legalization, despite cannabis use being reported as similar across racial groups.

In Calgary, Indigenous individuals are 3x more likely than white individuals to be arrested for cannabis possession. In Regina, this number rises to 9x more likely.

1990s

The Community Contacts Policy promoted racial profiling practices in drug enforcement. Police officers were trained to explicitly profile certain racial and social groups, including Indigenous Peoples.



1996

The *Controlled Drugs and Substances Act* ("CDSA") was created.

The CDSA added resources to make arresting and prosecuting drug users and sellers more efficient. Given the scrutiny placed on communities of colour, individuals in these communities are more likely to be charged with possessing a prohibited substance compared to those in neighbourhoods less frequented by police. The CDSA also legislated more severe sentences for possession and trafficking, increasing the overrepresentation of Indigenous Peoples in the federal prison system.



October 18, 2017

The *Cannabis Act* came into effect, legalizing the recreational use of cannabis in Canada.

WHAT IS THE *CANNABIS ACT?*



WHEN DID IT COME INTO FORCE?

October 17, 2018



WHAT DOES IT DO?

Provides Canadians with legalised access to recreational cannabis

Regulates how cannabis is grown, distributed, and sold



WHO DOES IT APPLY TO?

Canadians who consume cannabis recreationally

Federally licensed producers

Licensed retailers

WHO EVEN MAKES THESE DECISIONS?

FEDERAL GOVERNMENT

PROVINCIAL GOVERNMENT

INDUSTRY



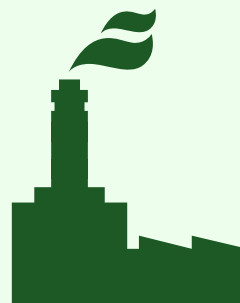
DISTRIBUTION



RETAIL



SALE FOR MEDICAL PURPOSES



PROCESSING



CULTIVATION

BUT... WHAT ABOUT INDIGENOUS GOVERNMENTS?

INDIGENOUS CONCERNS WITH THE *CANNABIS ACT*

Prior to the enactment of the *Cannabis Act*, Indigenous groups expressed concerns with the proposed Act. The Canadian government ignored these concerns.

Lack of Meaningful Consultation

Exclusion from Economic Opportunities

Denial of Self-Determination

The federal government has a duty to consult with Indigenous peoples when they are engaging in conduct which might interfere with an Aboriginal or Treaty right protected under section 35 of the Constitution (*Haida, Clyde, Rio Tinto*). The scope of this duty is contested however, ranging from notice (*Little Salmon*) to consent (*Delgamuukw*).

The Assembly of First Nations unanimously supported pushing the federal government for "priorities and incentives to ensure that First Nations are given the opportunity to participate and benefit fully from the development" of the new cannabis industry.

As affirmed in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Indigenous Peoples have the right to self-determination. This means they have the right to "freely determine their political status and freely pursue their economic, social and cultural development."

HOW DID THE FEDERAL GOVERNMENT RESPOND TO THESE CONCERNS?

GOVERNMENT'S RESPONSE TO INDIGENOUS CONCERNS

LACK OF MEANINGFUL CONSULTATION

In June 2016, the Federal Task Force on Cannabis Legalization and Regulation was assembled to “consult and provide advice on the design of new legislative and regulatory framework.” The Task Force engaged in public consultations with provincial, territorial and municipal governments, experts, patients, advocates, and Indigenous groups through roundtables and meetings. An additional online consultation form was made available to the public and generated 30,000 submissions, 17% of which were submitted by Indigenous governments or groups.

These consultations were insufficient, and Indigenous groups' concerns with the proposed Act were not properly acknowledged or addressed.

In May 2018, five months before the *Cannabis Act* came into effect, the Standing Senate Committee on Aboriginal Peoples published a report on Bill C-45, highlighting the concerns of many Indigenous groups who had not been consulted:

"There was an alarming lack of consultation particularly given this Government's stated intentions of developing a new relationship with Indigenous people, respecting section 35 Aboriginal and treaty rights recognized under the Constitution Act, 1982, and the rights of Indigenous communities to be consulted."

During Senate hearings in 2018, First Nations, Inuit, and Métis leaders expressed disdain for their exclusion from the creation and deliberation of the *Cannabis Act*. In a meeting of the Standing Senate Committee on Aboriginal Peoples, Deputy Chair Scott Tannas asked the Minister of Health to identify one change the government had made to its draft legislation as a result of their engagement with Indigenous communities. **The Minister was unable to identify a single example.**

The Assembly of First Nations formally requested a one year delay for the implementation and legalization so the impacts on Indigenous people and communities could be assessed thoroughly. **The federal government denied the request and moved towards enactment.**

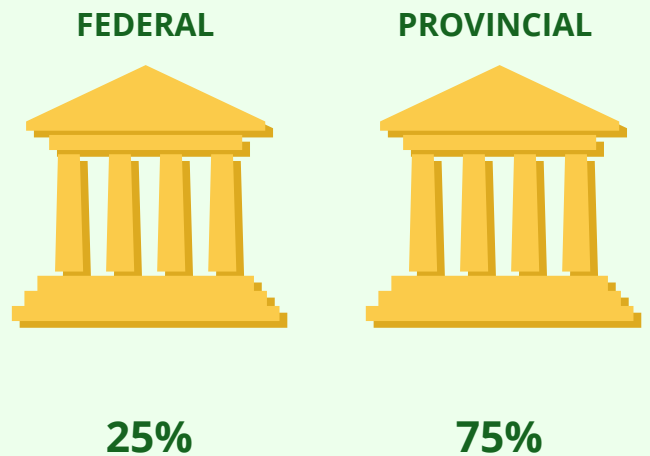
DENIAL OF SELF-DETERMINATION

The Act effectively “excludes Indigenous communities from making key economic and political decisions regarding cannabis on their own territories.” This is evident when we look at the taxation scheme for cannabis.

The regulation of the sale and trade cannabis is similar to that of untaxed tobacco. Excise duties and taxes are required on alcohol, tobacco, and cannabis products. Excise taxes are applied at the point of packaging, and not when the consumer purchases the final product (though the excise tax is included in the final price paid by consumers). Indigenous cannabis producers and retailers must pay the excise tax, despite the tax exemptions set out in section 87 of the *Indian Act*.

But what about Indigenous governments?

Additionally, the federal and provincial governments have agreed to split the revenue generated by excise taxes on cannabis, with 75% going towards the provinces and 25% to the federal government. **Notably absent from this split are Indigenous governments, who receive none of the revenue, despite Indigenous producers being required to pay the excise tax.**



EXCLUSION FROM ECONOMIC OPPORTUNITIES

If an individual has a prior conviction, they cannot work in the cannabis industry. This disproportionately impacts Indigenous communities, who were hardest hit with possession charges (see page 2). **Many Indigenous Peoples are therefore barred from participating in the economic benefits of the industry.**

This is worsened by the lack of amnesty provisions in the Act.

Of the 10,000 individuals eligible for cannabis pardons, only 484 have been granted since 2019.

IMPACT OF INDIGENOUS EXCLUSION ON DIVERSITY OF CANNABIS INDUSTRY

A 2020 study from the Centre on Drug Policy Evaluation and the University of Toronto based on responses from 700 executives and directors at 222 cannabis companies found 73 per cent were Caucasian men, 12 per cent were Caucasian women, 14 per cent were racialized men and 2 per cent were racialized women.

The racialized slice of Canada's cannabis leadership was made up of 40 per cent people of South Asian origin, 19 per cent East Asian, 15 per cent Indigenous, 12 per cent Arab, and 7 per cent each for those identifying as Hispanic and Black.

WHAT'S HAPPENING IN OTHER JURISDICTIONS?

In Canada, the *Cannabis Act* has perpetuated systemic inequalities in the cannabis industry. In comparison, other jurisdictions have prioritized social equity in their cannabis markets.



Several US states have incorporated social equity programs into their adult-use legislation. Social equity programs aim to promote equitable ownership and employment opportunities in the cannabis industry. The intent of these programs is to address the disproportionate impacts of the War on Drugs on marginalised communities.

In New York, the *Marihuana Regulation and Taxation Act* has several initiatives to forward social equity:

1.

50% of all adult-use dispensary licenses are given to social and economic equity applicants (eligibility for social equity extends to a variety of applicants, including "Individuals from communities disproportionately impacted by the enforcement of prohibition" and "minority-owned businesses")

2.

\$200 million in public-private funding to provide direct capital and startup financing to social equity applicants

3.

Preference for licenses that propose a plan for benefiting communities and people disproportionately impacted by the enforcement of cannabis laws

4.

Waived or reduced application fees for social equity applicants