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Recreational Cannabis in Ontario: An Evaluation of the First Year of Legalization

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By

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ABSTRACT

Recreational cannabis was legalized in Canada on October 17, 2018 and has created new

business and income for the country. Focusing on Ontario, this paper analyzes how the province

failed to benefit from legalization during its first year. As a result of the change in provincial

government—which led to ineffective sales models, delays, and financial losses—Ontario has

failed in cannabis legalization. Using the theory of federalism, this paper explores the division of

power within Canada's levels of government and its impact on cannabis legalization and sales.

Further, this paper includes a case study on Alberta and its free-market success with alcohol and

cannabis to assess Ontario's rollout of cannabis sales and argues that, despite the failures of its

first year, Ontario has potential for success in the future.

    Keywords: cannabis, legalization, Ontario, Alberta, government, federalism,

Conservative, Liberal

DEDICATION

This paper is dedicated to my parents, Arleta and Jim, my fiancé David and my friends who have

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CHAPTER I: INTRODUCTION

On October 17, 2018, the Canadian government legalized the recreational use of cannabis through *The Cannabis Act*. The main goals of this federal legislation are to shield youth, keep profits from criminals, and protect public health by offering a safe supply.[1] *The Cannabis Act* mandated that provincial governments regulate the distribution of cannabis, determine the legal age of cannabis consumption, set rules for individual and private possession, create growth parameters, decide on public areas where cannabis could be consumed, and implement province-specific roadside tolerance policies. This paper examines the first year of legalization in Canada, focusing on the province of Ontario. It will argue that the first year of legalization in Ontario was a failure and will analyze why this was the case.

It is important to note the change of Ontario's government from Liberal to Conservative during the rollout of legalization as well as how it affected the sales model the province used. The sales model changed from a mainly government-controlled entity to one that allowed private retailers to govern the market. A review of the first year of cannabis legalization in Ontario reveals that delays in opening store fronts, determining the logistics of commerce, and the financial losses incurred when cannabis did not bring in the profit it was expected to, led to failure. The inability to overcome these issues during its first year of legalization created challenges for Ontario. Even though Ontario's first year failed in comparison to other provinces, success is still possible through the free-market approach it has adopted.

Grounded in understanding federalism's framework, this paper will examine the way federalism affects public policy in Canada in regard to the legalization of cannabis. The

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1. *The Cannabis Act*, *Statutes of Canada* 2018 (CA) https://laws-lois.justice.gc.ca/eng/acts/c-24.5/.

theoretical framework of federalism highlights the importance of understanding that "each order of governance is autonomous within its [own] sphere of authority" however, this autonomy may be rendered powerless within their realm of responsibility when higher levels of government intervene.[2] This paper will scrutinize provincial responsibilities as well as power and provide a brief case study of alcohol regulation in Alberta compared to their cannabis legalization thus far. This example will contrast Ontario's government-controlled alcohol market to Alberta's free-market as well as how both provinces have handled cannabis legalization.

This paper will reveal that the federal government's *The Cannabis Act* placed restrictions on provinces such as Ontario and contributed to the delays and financial losses incurred during the first year of legalization. Nevertheless, the province can still succeed due to the current free-market sales model in place. This paper will focus on the shift of Ontario's government from Liberal to Conservative leadership as a key development in the legalization process. Elaborating, it will examine the extent to which the Conservative government amended its predecessor's plans for legalization and whether they were successful during this first legal year.[3]

This paper will proceed in the following manner: a brief review of the history of cannabis and its medical legalization in Canada, to its recreational legalization; an explanation of federalism and its relevance to the provincial level of government; a description of the shift from Liberal to Conservative government in Ontario; and how the shift to private sales has promise for the future of legal cannabis use in Ontario. The projected success of a free-market and a private

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2. Herman, Bakvis and Grace Skogstad, eds., *Canadian Federalism: Performance, Effectiveness and Legitimacy*, (Don Mills: Oxford University Press, 2002), 2.

3. Ministry of the Attorney General, "Ontario's Plan to Regulate Legalized Cannabis," Government of Ontario, September 8, 2017, https://news.ontario.ca/mag/en/2017/09/ontarios-plan-to-regulate-legalized-cannabis.html.

sales model will be demonstrated through an evaluation of alcohol operations in the province of

Alberta. Through this comparison, we will be able to conclude that, despite the Conservative

government's initial failures with cannabis, Ontario is still on route for success.

CHAPTER II: HISTORY OF CANNABIS LEGALIZATION

Cannabis regulation has been a difficult subject since 1923, when Parliament originally criminalized the substance with no clear justification.[4] It was not until the early 1990s that access to medical cannabis was granted to medical patients under extreme circumstances.[5] After the R. v. Parker 2000 case, a court case revolving around Terry Parker who used cannabis to help his epilepsy, the first policy was created. The Medical Marijuana Access Regulations 2001 (the MMAR) was a set of regulations that "surveyed production, distribution and [the] use of marijuana for medicinal purposes."[6] The MMAR was soon replaced by Marijuana for Medical Purposes Regulations 2013 (MMPR), followed by the Access to Cannabis for Medical Purposes Regulations 2016 (ACMPR), which remains in place today. The ACMPR reinstated "personal production program" that the MMAR had previously installed, which is similar to personal allowances under *The Cannabis Act.*[7] Nationally, medical cannabis must be purchased from a federally licensed producer and delivered by a postal services carrier.

The Liberal Party of Canada promised in 2015, under the leadership of Justin Trudeau, to legalize and regulate cannabis for recreational use.[8] As such, the Liberal Party's initial plan for

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4. Catherine Carstairs, *Jailed for Possession: Illegal Drug Use, Regulation, and Power in Canada*, *1920-1961* (Toronto: University of Toronto Press, 2006), 31.

5. Benedikt Fischer, Sharan Kuganesan, and Robin Room, "Medical Marijuana Programs: Implications for Cannabis Control Policy – Observations from Canada," *International Journal of Drug Policy* 26, no. 1(2015): 16, https://www.sciencedirect.com/science/article/abs/pii/S0955395914002734?via=ihub.

6. Fischer, Kuganesan, and Room "Medical Marijuana" 18.

7. "What Is the ACMPR?," Canabo Medical Clinic, August 30, 2018, https://www.canabomedicalclinic.com/what-is-the-acmpr/.

8. Josh Elliott, "Liberals 'Committed' to Legalizing Marijuana: Trudeau," *CTV News*, September 30, 2015, https://www.ctvnews.ca/politics/election/liberals-committed-to-legalizing-marijuana-trudeau-1.2588260.

decriminalization involved professional input from law enforcement and sought to introduce a strictly regulated system of profit and distribution in a government-controlled setting.[9] They fulfilled their promise by introducing and passing *The Cannabis Act*. *The Cannabis Act*, first introduced in 2016 as Bill C-45, underwent extensive parliamentary scrutiny and debate before passing in 2018 and making cannabis legal on October 17th of that same year. It was revised in October 2019 as well and was further expanded on based on the first year's findings. For example, *The Cannabis Act* controls the types of products being sold, including dried cannabis and cannabis oil and, more recently in 2019, subcategories including topicals, extract for ingesting and extract for inhaling were added.[10]

Furthermore, *The Cannabis Act* lays out the responsibilities of each level of government (federal, provincial, and municipal) in the legalization of cannabis. Federally, the government creates basic restrictions that each province must follow and build upon. For example, on the medical market, organizations such as Health Canada, a federal agency that monitors and audits licensed producers, help companies create quality procedures and regulations. These regulations allow the companies to control and track the production of cannabis through measures such as requiring medical documents to be written by physicians.

The Cannabis Act only extends certain responsibilities to the provinces and territories such as determining the age at which cannabis can be purchased, the number of plants that can be grown and used, the workplace safety regulations, the penalty for youth offences, and the

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9. Liberal Party of Canada *A New Plan for a Strong Middle Class* (Ottawa: Liberal Party of Canada, 2015), p.55.

10. *The Cannabis Act*, *Statutes of Canada* 2018 (CA) https://laws-lois.justice.gc.ca/eng/acts/c-24.5/.

regulations regarding home cultivation and possession.[11] Specifically, the provinces are responsible for establishing a license, distribution, and sales model. Through regulation, *The Cannabis Act* ultimately gives provinces the same responsibility as they have with respect to alcohol.[12] The cannabis policy affected all of Canada.

This paper, however, will focus on Ontario because of its economic importance to the nation. The legalization of recreational cannabis brought forth a third option, a physical storefront, which had notable consequences for every province but arguably the most significant impact was on Ontario. In analyzing these changes, it is important to understand the power and authority of various levels of government as well as how Canada's governing system works.

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11. Chelsea Cox, "Cannabis in Canada: Municipal, Provincial & Federal Responsibilities," Legal Information Society of Nova Scotia, 2019, https://www.legalinfo.org/legal-information-topics/cannabis-in-canada-municipal-provincial-federal-responsibilities.

12. *The Cannabis Act*, *Statutes of Canada* 2018 (CA) https://laws-lois.justice.gc.ca/eng/acts/c-24.5/.

CHAPTER III: FEDERALISM

Canada is a multicultural and diverse entity under the emblem of a "single nation-state."[13] As such, dealing with its divisions of power could be difficult if it were not for federalism. Federalism is an idea that combines a shared rule on the federal, provincial, and local municipal levels of government. It encompasses three levels of power that allows self-rule on specific local issues or decisions pertaining to a region's identity.[14] It is most important to note that the three levels of government, federal, provincial, and municipal, are not equal. Municipalities can be referred to as "creatures of the province," and are notably not included in the constitution.[15] Thus, comparing them to provincial, and federal rule is not productive.

Within the Canadian federal system, the federal government adopted legislation to legalize the use of cannabis, which the provincial governments implemented within their respective jurisdictions. Federalism reinforces "that each order of government is autonomous within its sphere of authority."[16] Evidently, passing *The Cannabis Act* forces provinces to create restrictions and for municipalities to conform with new federal law. This paper will demonstrate how these changes occurred in provincial governments and how federalism allowed for various public policy making as seen in the examples of Ontario and a comparison with Alberta. Federalism allows for policy experimentation and policy flexibility in its implementation

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13. Herman, Bakvis and Grace Skogstad, eds., *Canadian Federalism: Performance, Effectiveness and Legitimacy*, (Don Mills: Oxford University Press, 2002), 2.

14. Bakvis and Skogstad, *Canadian Federalism,* 2.

15. Kristin R. Good, "Municipalities Deserve More Autonomy and Respect," *Policy Options*, November 29, 2019, https://policyoptions.irpp.org/magazines/november-2019/municipalities-deserve-more-autonomy-and-respect/.

16. Good, "Municipalities," 2.

compared to a unitary state. Some provinces, such as Alberta, made extensive preparations for legalization and were able to put in a private sales model. Others, such as Ontario, had to rush their decisions and processes due to a provincial election and had to change decisions already put in place by the previous governing provincial party. As such, the process of legalization occurred differently in each of them.

Contrary to Ontario, Alberta handled the first year of cannabis legalization through effective preparation and efficient decision making. Ontario and Alberta took different approaches in implementing the legalization of cannabis. A case study of these provinces in Chapter VI will provide an example of the variation that public policy may have in a federal system.

In the case of Ontario's cannabis legalization, the province was slow to authorize store fronts for sale of the now-legal substance. Ontario also failed to create a steady financial income from retail stores, and failed to lure consumers away from the illicit market. Although the federal government created *The Cannabis Act*, Ontario made its own decisions when implementing the legalization of cannabis but was overpowered in some respects by *The Cannabis Act* which laid out obligatory guidelines for provinces to follow. Federal systems are complicated and remain unpredictable. This is not only as a result of the division of power between two levels of government (federal and provincial), but also because they are subject to political change, as was demonstrated in the province of Ontario.

CHAPTER IV: LEGALIZATION IN ONTARIO

In 2017, the Ontario Liberals prided themselves on creating a safe and sensible framework for the legalization of cannabis. The provincial Liberal government's plan was in line with the federal government's original three main goals of minimizing public harm by protecting minors, providing a safe and reliable method of sale as well as deterring illicit sales. This plan was made under a strict timeframe with a target legalization date of July 1st, 2018. The Liberals felt this tight deadline was essential to maintaining control over the legalization process for the province. They promised a minimum age of 19 for legal use, that the Liquor Control Board of Ontario (LCBO) would oversee the legal retail operation through the Ontario Cannabis Store (OCS), and that they would close illicit cannabis dispensaries.[17]

The provincial Liberal government's plans for legalizing cannabis occurred at the same time as the support for the government was declining. This drop in support led to their defeat in the 2018 election, which ultimately impacted the outcome of the legalization of cannabis in Ontario.[18] The original cannabis legalization plan initiated by the Liberal government was implemented and administered by the Conservative Party of Ontario following their victory in the 2018 provincial election.

The Conservative government took office in June 2018. Their election platform called for "prosperity that will benefit every resident of Ontario," while reiterating that the province was

17. Ministry of the Attorney General, "Ontario Releases Safe and Sensible Framework To Manage Federal Legalization of Cannabis," Government of Ontario, September 8, 2017), https://news.ontario.ca/mag/en/2017/09/ontario-releases-safe-and-sensible-framework-to-manage-federal-legalization-of-cannabis.html.

18. Tim Alamenciak, Chantal Braganza, and Daniel Kitts, "The Good, the Bad, and the Ugly: A Look Back at 15 Years of Liberal Government," *TVO*, June 15, 2018, https://www.tvo.org/article/the-good-the-bad-and-the-ugly-a-look-back-at-15-years-of-liberal-government.

"open for business".[19;20] This platform allowed the supply and price of cannabis to be determined by market forces. Upon taking office, the Conservative government's first prominent change to the legalization policies pertained to the Liberal government's planned OCS stores. The Liberal government had planned for the OCS to operate locally and be the sole store front for recreational cannabis. Additionally, Ontario was planning to involve the public by allowing them to submit questions and comments before the stores were put in place in their communities. The Conservative government changed the concept of OCS stores and made it clear that they did not wish to have as rigid a control on the market as the Liberals had originally proposed. The Conservatives deemed the OCS the official provincial online wholesaler but allowed private retailers to engage in physical sales to the public. This opened the opportunity for private retail, reinforcing the free-market approach endorsed by Doug Ford, the Conservative Premier of Ontario, and supported by the cannabis industry.[21] Ford believed in free-markets and wanted to have private retailers involved in the way cannabis was sold. He used his power to establish what qualifies as a retail storefront as well as a private sales model.[22] While changing parts of the sales model, the Conservative government kept other parts consistent with the Liberals' previous

19. "Doug Ford's victory speech: 'Ontario is open for business' — full transcript" *Macleans*, June, 7 2018, https://www.macleans.ca/politics/doug-fords-victory-speech-ontario-is-open-for-business-full-transcript/.

20. Jacob Lorinc and Arik Ligeti, "Morning Update: Doug Ford's Victory and What It Means for Ontario," *The Globe and Mail*, June 8, 2018, https://www.theglobeandmail.com/canada/article-morning-update-doug-fords-victory-and-what-it-means-for-ontario/.

21. Geoff Zochodne, "Ontario Cannabis Regime in Political Crosshairs," *Financial Post*, March 14, 2018, https://business.financialpost.com/business/doug-ford-opens-door-to-looser-cannabis-sales-in-ontario-and-the-industry-doesnt-hate-it.

22. Zochodne, "Ontario Cannabis."

plan. The Conservatives made sure the age for use, possession, and growth of recreational cannabis were aligned with the legal age for the sale and consumption of tobacco and alcohol.

The federal, provincial, and municipal governments all face a difficult problem when it comes to deterring young people from cannabis use. Federally, *The Cannabis Act* aims to protect the health of young people - as seen in section 7 of *The Cannabis Act*[23] - by limiting their access to cannabis and reducing incentives and colourful packaging that may encourage the use of cannabis among youth. Ontario adopted the federally suggested age of 19 to match the age of alcohol consumption, as did many provinces. It was previously shown by the Canadian Medical Association (CMA) that human brains do not fully develop until they are in their early 20s. Canadians are near the top of a list of the 43 countries in the world who have the youngest users - some being as young as 15.[24] Ontario-specific studies demonstrate that 19% of youth aged 12-18 consumed cannabis within the year they were surveyed.[25] Thus, we can see that criminalization, as strict as it was, still failed to deter youth from consumption. The higher the legal age, the likelier the use of cannabis by underaged youth.[26] However, in spite of creating an appropriate age of use and tackling one of *The Cannabis Act*'s main goals of protecting the youth, the industry still faced initial failure during its first year.

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23. *The Cannabis Act, Statutes of Canada* 2018 (CA) ss. 7. https://laws-lois.justice.gc.ca/eng/acts/c-24.5/.

24. Lorian Hardcastle, "Decriminalization of Cannabis and Canadian Youth," University of Calgary Faculty of Law, December 3, 2018, https://ablawg.ca/2018/12/03/decriminalization-of-cannabis-and-canadian-youth/.

25. Hardcastle, "Decriminalization."

26. Hardcastle, "Decriminalization."

The Conservative government adopted many of the guidelines and decisions already set out by its predecessor Liberal government. The main element they changed was the sales model, something with which the province had no prior experience. This decision might have hindered the speed of legalization due to the implementation of the lottery system. This system chose who was able to open a private store at random.[27]

Cannabis regulation in the province of Ontario encompasses everything from minimizing public harm by protecting minors, to providing a safe and reliable method of sale. This aimed to achieve *The Cannabis Act*'s three main goals (protecting the youth, upholding public safety and stopping illicit sales). The legalization process sped up when the new Conservative government tried to make a deadline for legalization. Upon further scrutiny, it is evident that the new provincial government still followed the stipulations in *The Cannabis Act* itself but was unable to perform with effectiveness or efficiency. While attempting to complete the implementation as quickly as possible and having to subject to federal regulations, the province of Ontario experienced delays and financial losses.

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27. Mark Blinch, "Doug Ford, Year One: A Recap of Ontario's Tumultuous 12 Months," *The Globe and Mail*, June 20, 2019, https://www.theglobeandmail.com/canada/article-doug-ford-year-one-ontario-premier-explainer/.

CHAPTER V: FIRST YEAR ANALYSIS

DELAYS

With the turn to private retailers and the province in charge of wholesaling products, several delays occurred, most notably when only nine of the original 25 stores opened on April 1, 2018.[28] Currently, there are 28 legal cannabis stores in Ontario because of the government lottery licensing system that had been in place.[29] Due to this lottery system, Canadians were not granted physically accessible legal cannabis and had either the OCS, as an online source, or the illicit market as their options for purchase.

The delay occurred due to the lengthy approval process put in place by the Conservative government.[30] As previously mentioned, the method Ontario had chosen was a lottery system, described as arbitrary and without merit by Lawyer Caryma Sa's.[31] This system showed promise by having no bias and selecting its recipients at random. Furthermore, the Conservative government initially stated that there would not be a limit on retail stores, alluding to multiple store fronts.[32] However, in December 2018, the government decided to issue only 25 licenses for the coming April.[33] Now, in 2020, the lottery system has been "scrapped" and the province

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28. Blinch, "Doug Ford."

29. "Cannabis Canada: Doug Ford Expects Ontario to Lead the Nation in Pot Shop Locations - Article," *BNN Bloomberg*, last modified January 30, 2020, https://www.bnnbloomberg.ca/cannabis-canada-1.1382496.

30. Shawn Jeffords and Armina Ligaya, "Over Half of Ontario Cannabis Store Openings Delayed," *Canadian Underwriter*, April 3, 2019, https://www.canadianunderwriter.ca/risk/over-half-of-ontario-cannabis-store-openings-delayed-1004161582/.

31. Jeffords and Ligaya, "Over Half."

32. Jeffords and Ligaya, "Over Half."

33. Jeffords and Ligaya, "Over Half."

promised to open up an abundance of cannabis stores under new regulations but has only added 3

new stores to the provinces total since the beginning of the year.[34] Store openings are still being

delayed, with "over 600 applications for cannabis shops waiting for approval," regardless of the

new systems put in place.[35]

Furthermore, as a precaution to prevent supply issues, Ontario's finance minister Victor

Fedeli directed stores to open up in phases, so as to not overwhelm the public. This approach,

however, represented a shift from the original Conservative open-market system and created

further time constraints. The Liberal plan was to open 40 stores on the original date of

legalization, July 1, 2018, and have 150 operating by the end of the year 2020. Fedeli countered

this plan by explaining that Quebec had suffered supply shortages and had to limit their stores'

operating days due to lack of supply and believed that Ontario would have suffered the same fate

if they had rushed store openings.[36] Analysts predicted within the first two years that the losses

would be significant until 2020-2021 when Ontario's portion of federal cannabis excise duties

and the Ontario Cannabis Retail Corporation's net income would be almost at par.[37]

Today, the OCS uniquely operates online, and it is the private retailers who have the

physical storefronts. The OCS corporation, authorized by the Alcohol and Gaming Commission

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34. Colin Butler, "Here's What Scrapping the Ontario Cannabis Retail Lottery Means for London in 2020," *CBC News*, December 15, 2019, https://www.cbc.ca/news/canada/london/london-ontario-cannabis-stores-1.5395242.

35. "Cannabis Canada: Doug Ford Expects Ontario to Lead the Nation in Pot Shop Locations - Article," *BNN Bloomberg*, January 30, 2020, https://www.bnnbloomberg.ca/cannabis-canada-1.1382496.

36. Travis Dhanraj, "Ontario Government Changes Rules for Pot Shops, Only 25 Stores to Open April 1," *Global News*, December 13, 2018, https://globalnews.ca/news/4761165/ontario-government-pot-shops-opening/.

37. Dhanraj, "Ontario Government."

of Ontario, is funded and governed by the province. Recreational cannabis can either be purchased online from the OCS (which sells regulated products from all over Canada) or from a physical storefront authorized by the Alcohol and Gaming Commission, thus fulfilling *The Cannabis Act*'s goal of a safe and reliable supply for adult users.

One major difference between the Liberal and Conservative plans relates to the private sale of cannabis. Instead of giving the Liquor Control Board of Ontario (LCBO) sole control over cannabis sold through the OCS outlet, the Conservative government allowed for licensed and regulated private stores to distribute cannabis products. They determined how cannabis would be sold, which, consequently, delayed in-person sales because of the shift from a province-led retail model to a private retail model, to a lottery system to eliminating the lottery system.[38] This decision allowed Ontario to attempt to stop illegal businesses by providing a safe and reliable method of distribution. In theory, monitoring any controlled substance is easier when a government corporation oversees the distribution of the substance to the public. Currently, Ontario does this monitoring through the OCS, a licensed retail seller, much like the LCBO stores.

The Ontario government faced several challenges, many specifically pertaining to the short time in which they had to complete legalization. Due to time constraints laid out by *The Cannabis Act*, many delays occurred in supply chains, such as the requirement for third-party testing, which can take up to three weeks to obtain approval before releasing product for sale. New products require 60-day waiting periods with Health Canada before being made available to

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38. Moira Warburton, "Ontario's Slow Rollout of Weed Stores Could Help the Black Market Thrive for Longer," *Financial Post*, July 8, 2019, https://business.financialpost.com/cannabis/cannabis-news/cannabis-legislation/ontarios-slow-rollout-of-weed-stores-could-help-the-black-market-thrive-for-longer.

the public, and the 'Good Production Practices 'subject companies to maintain rigid quality-assurance and controls before releasing a product. These restrictions contribute towards delaying product availability while the illicit market progresses further and continues to remain the government's greatest competition.[39]

In regard to workplace regulations, consumption of recreational cannabis remains illegal, while medical cannabis is held to the standard of most prescription drugs. However, its recreational counterpart is treated cautiously. Researchers, such as Robin Room, repeatedly state that cannabis users are still at risk while under the influence, comparing the drug's effects on drivers to alcohol impairment.[40] Legally, users can smoke or vape cannabis in six designated areas: private residences, outdoor public places (such as smoking pits), designated smoking guest rooms, residential vehicles and boats, scientific research and testing facilities, and controlled areas. Municipal bylaws may add more restrictions on where users can and cannot consume. At this time, smoking cannabis is prohibited in indoor common areas, places where children gather, many universities, hospitals, hospices, publicly owned spaces, and vehicles and boats that are being driven or will be driven in the near future. These restrictions, though essential, may further delay law enforcement's ability to manage the substance due to the need for additional training and unforeseen circumstances with impairment that research will continue to uncover.

39. Health Canada, "Guidance Document: Good Production Practices Guide for Cannabis," Government of Canada, December 4, 2019, https://www.canada.ca/en/health-canada/services/cannabis-regulations-licensed-producers/good-production-practices-guide/guidance-document.html#appe.

40. Robin Room, *Cannabis Policy: Moving beyond Stalemate* (Oxford: Oxford University Press, 2010), 18.

Although some of these delays did stem from timeframes outlined by *The Cannabis Act*, it is the planning and lack of time-sensitive implementation created by the province that led to these initial problems.

FINANCIAL LOSSES

One of the most notable features of the first year of cannabis legalization was the financial cost to the province. In the 2019 fiscal year, Ontario made $64 million through cannabis sales; however, the province lost $42 million from privately operated sales and online OCS sales.[41] This does not account for the excise tax, a cannabis specific tax on all cannabis products placed by the federal government. This omission is problematic when analyzing these numbers because it omits the profit the federal government has made. The OCS generated $64 million in the 2018-2019 fiscal year, but its expenses were $106 million, significantly higher than the $6 million reported in the 2017-2018 fiscal year. This was largely because the OCS was not able "to book wholesale revenue from selling into the first wave of physical retail stores in the latest fiscal year."[42]

Despite legalization, the illicit market continues to thrive and outsell the government because of the competitive prices offered. According to Statistics Canada, cannabis prices from the legal market were on average 40% higher than those on the illicit market.[43] The illicit market also has a number of products available that are not available in legal storefronts, such as high-tetrahydrochloride (THC) dosed edibles, a form of ingestible cannabis that have only came to legal shelves in early 2020 with a 10% THC restriction. Non-regulated retailers and sellers have

41. David George-Cash, "Ontario's Cannabis Business Posts $42-Million Loss in Last Fiscal Year," *BNN*, September 13, 2019, https://www.bnnbloomberg.ca/ontario-s-cannabis-business-posts-42-million-loss-in-last- fiscal-year-1.1315895.

42. George-Cash, "Ontario's Cannabis."

43. Adam Rasmi, "Canada's Black Market for Weed Is Thriving-Even after Legalization," *Quartz*, April 30, 2019, https://qz.com/1605614/canadas-black-market-for-weed-is-thriving-even-after-legalization/.

ignored the government's restrictions in favour of their own affordable and readily available product.[44] Thus, Ontario's prohibitive approach on THC restrictions in edible and ingestible products facilitates the illicit market's success as they can provide products that bypass these restrictions.[45] Some of these regulations can be associated directly with *The Cannabis Act,* which implemented additional costs with growing under the 'Good Production Practices' and therefore poses a challenge when competing with the illicit market.[46]

These failures dominated the first year of cannabis sales in Ontario but do not define its future. Ontario's cannabis industry has failed to be profitable but shows promise as a result of the free-market model that is now in place. This will open the market to the public, but its success depends on how quickly they can administer store licenses, which is a dilemma at the moment. Though the primary focus of the Conservative budget in 2019 was alcohol sales, renewed focus on the free-market for cannabis may present an opportunity to re-evaluate the sales model.[47] Ontario, which has only had government-regulated entities managing legal substances, such as the LCBO, is new to the free-market approach and can learn from the example Alberta has already set with alcohol and cannabis. The next section will provide a brief analysis of Alberta's alcohol sales model in order to understand how a privatized market may have advantages over a provincial government-controlled approach.

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44. Rasmi, "Canada's Black Market."

45. Rasmi, "Canada's Black Market."

46. Health Canada, "Government of Canada," Government of Canada, July 12, 2018, Annex: 3, https://www.canada.ca/en/health-canada/programs/consultation-proposed-approach-cost-recovery-cannabis/document.html.

47. Alan Freeman, "Marijuana vs. Beer: The New Divide in Canadian Politics," The *Washington Post*, May 3, 2019, https://www.washingtonpost.com/world/the_americas/marijuana-vs-beer-the-new-divide-in-canadian-politics/2019/05/02/740e4360-6ac0-11e9-bbe7-1c798fb80536_story.html.

CHAPTER VI: COMPARING ONTARIO AND ALBERTA

This section will use a case study to further explicate the potential of Ontario's free-market sales model by examining the success the model has had with Alberta's alcohol sales. The sale of alcohol has been a highly successful business in the province of Alberta, employing thousands of citizens and boosting revenue through a private sales model. In 1993-1994, Alberta privatized the sale of alcohol at remarkable speed. There were 202 government run liquor stores operating on the day of privatization in September 1993. Within three months, two-thirds of those stores had closed, and after six months, once the initial decision to privatize occurred, all of the remaining stores closed in early March 1994.[48] The private sector now operates 1,982 retail outlets and the number of products offered increased from 2,200 in 1993 to over 19,000 presently. In the fiscal year of 2017-2018, sales were $866 million dollars.[49] Alberta offers competitive prices, the highest social responsibility, and a three-billion-dollar industry. The province has a fully open free-market that does not block products from other provinces or countries, thus vendors and store owners have ample opportunity to introduce their customers to new products.[50] As an example of their varieties, individual Albertan liquor stores offer a greater

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48. Mark Milke, "What Other Provinces Can Learn From Alberta's Liquor Store Privatization" *HuffPost Canada*, November 26, 2013, https://www.huffingtonpost.ca/mark-milke/alberta-privatized-liquor-stores_b_3984754.html.

49. "Liquor Quick Facts," AGLC, March 31, 2020, https://aglc.ca/about-us/quick-facts.

50. Ivonne Martinez, "Don't Believe What Ontario's Beer Store Is Saying about Liquor Sales in Alberta," *National Post*, June 21, 2019, https://nationalpost.com/opinion/dont-believe-what-ontarios-beer-store-is-saying-about-liquor-sales-in-alberta.

selection of beers than all of Ontario.[51] Most importantly, the Alberta Gaming, Liquor &

Cannabis (AGLC) has a 90% consumer satisfaction rating.[52]

However, despite these innovative practices, there are some critics. The self-labeled

Consumers Association ran a study and speculated that Alberta's prices were higher than those

of British Columbia due to the privatization model. In addition, Parkland Institute's David

Campanella and Greg Flanagan claimed that the province lost $1.5 billion in revenue.[53]

However, both accusations have been challenged. The Consumers Association only used

medians on certain products in their study and ignored the Real Canadian Liquor Store chain, a

substantial contributor to alcohol sales. Parkland Institute's claims on lost revenue were

countered by Mark Milke from the Huffington Post. Milke conducted a study in 2002 and

compared the lowest available prices on over 1,800 products before finding that beer, wine and

spirits were cheaper in Alberta in a fair analysis.[54] Campanella and Flanagan, who had claimed

that the province suffered significant losses, did not reflect the markups on beers and wines that

had reaped $729 million in 2013 on their own.[55] There are many analyses that fail to see the true

51. Martinez, "Ontario's Beer Store."

52. Martinez, "Ontario's Beer Store."

53. David Campanella, Greg Flanagan, "Impaired Judgement The Economic and Social Consequences of Liquor Privatization in Western Canada" *Parkland Institute*, October 30, 2012. https://www.parklandinstitute.ca/impaired_judgement.

54. Mark Milke, "What Other Provinces Can Learn From Alberta's Liquor Store Privatization" *HuffPost Canada*, November 26, 2013, https://www.huffingtonpost.ca/mark-milke/alberta-privatized-liquor-stores_b_3984754.html.

55. Ivonne Martinez, "Don't Believe What Ontario's Beer Store Is Saying about Liquor Sales in Alberta," *National Post*, June 21, 2019, https://nationalpost.com/opinion/dont-believe-what-ontarios-beer-store-is-saying-about-liquor-sales-in-alberta.

benefit of a free-market.[56] Some analysts and policy gurus believe that because the number of products has been slightly reduced over the years in Alberta, the Ontario LCBO model is successful in comparison. This is a false claim because the number of products in Alberta still exceeds the variety available in Ontario. The number of products available in each province differs as well as the different ways that alcohol is governed in free-markets and government-controlled markets. There were also claims made by Ontario's Beer Store that a 24-pack of Coors Light costs more in Alberta.[57] This is contradictory because the Beer Store is owned by Labatt's and Molson (National Brewers) who set the price of their product in each province.[58]

We can infer that the privatization of business enables more creative freedom for store owners as well as opportunities for jobs and economic growth. Alberta's provincial government effectively and efficiently conquered alcohol sales and obtained legitimacy from its public by their service. This change allowed the people of Alberta to see these stores in their community and support them, as demonstrated through their high approval rating. Supporting business owners as opposed to just another government-run monopoly appeals to Albertans. In regard to cannabis, Ontario has been given the opportunity to establish a free-market of similar capacity to that of Alberta; having led by example, Alberta once again tackled the issues of regulation and utilization of a free-market approach head on and quickly.

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56. "Monitored: The costs of liquor privatization" *Canadian Centre for Policy Alternatives*, last modified September 1, 2014, https://www.policyalternatives.ca/publications/monitor/monitored-costs-liquor-privatization.

57. "Monitored: The costs."

58. "Monitored: The costs."

Ontario had a slow start in establishing retail outlets for cannabis. Alberta had 283 stores within the first year and continues to expand that number, offering a greater opportunity to collect data and interpret customer behaviour in this budding market.[59] This resulted from two main factors: the province's free-market approach and the manner in which the province of Ontario prepared itself for cannabis legalization.

Alberta took a free-market approach with cannabis, as with alcohol, and had more than 300 cannabis private retail stores within the first two years, most of them in city centers such as Edmonton and Calgary.[60] City centers are where the majority of the population is concentrated and allows for the best profit potential. To further elaborate how the province of Alberta was able to succeed it is important to highlight that they were not interrupted by a provincial election, as was the case in Ontario. Their decision making led to Calgary leading the nation with 85 licensed stores. They started panels and discussions with health experts and local entrepreneurs as early as February 2017. This early jump to action ensured Calgary had a say in provincial and federal regulation drafts while researching other jurisdictions (such as those in the United States) and their successes in the cannabis industry. Bylaws were determined months before legalization as well as virtual mapping systems so citizens could find their stores online.

After a few issues in the beginning, such as a freeze on new retail licenses the week after legalization day, Alberta reported $24.5 million in sales of legal recreational cannabis before the

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59. Bill Kaufmann, "More than 200 cannabis stores approved in Calgary; city says market's the limit," *Calgary Herald*, 2019, https://calgaryherald.com/cannabis/cannabis-business/more-than-200-cannabis-stores-approved-in-calgary-city-says-markets-the-limit.

60. Kaufmann, "More than 200."

end of 2018.[61] This brought the province to 38 percent of all legal sales in Canada, leading the country in purchases per capita.[62] This early success was extraordinary and due mainly to Alberta's speed in adapting its system to the legislation.

Ontario's success foundered on one main challenge: the transition from Liberal to Conservative government, which left the province re-creating their plan for legalization. Ontario had only 25 cannabis retail stores in the first year of legalization to serve 14 million people while Alberta, a province of only 4 million people, had almost 200 stores within the same timeframe.[63] Ontario has not made substantial profits nor created a significant increase in retail stores over the first year and, as a result, has underserved its population. It has not made sufficient efforts to stop the illicit market, nor has it generated a significant industry growth or tax revenue yet. The current plan is to authorize 20 retail stores per month under the new non-lottery system, but Ontario will not reach 1000 stores until 2024. A faster rate, as mentioned by co-chair of the Ontario Cannabis Policy Council, Daniel Safayeni, would improve the market and consumer satisfaction.[64] A faster rate of store openings could help Ontario's consumers' rating and uphold

61. Bill Kaufmann, "Alberta's per capita legal cannabis sales leaves other provinces in its smoke," *Calgary Herald*, 2019, https://calgaryherald.com/cannabis/cannabis-business/albertas-per-capita-legal-cannabis-sales-leaves-other-provinces-in-its-smoke/.

62. Kevin Maimann, "Alberta Accounted for 38% of Canada's Legal Weed Sales in 2018: Report," *Toronto Star*, April 9, 2019, https://www.thestar.com/news/cannabis/2019/04/09/alberta-accounted-for-38-of-canadas-legal-weed-sales-in-2018-report.html.

63. Bill Kaufmann, "Alberta, with 22 per Cent of National Sales, Is the per Capita Leader in Legal Cannabis Purchases," *Calgary Herald*, December 12, 2019, https://calgaryherald.com/cannabis/cannabis-business/alberta-with-22-per-cent-of-national-sales-is-the-per-capita-leader-in-legal-cannabis-purchases/.

64. Daniel Safayeni, "Change Needs to Come Faster for Ontario Cannabis," *Policy Options,* December 23, 2019, https://policyoptions.irpp.org/magazines/december-2019/the-

the legitimate value of federalism within the provincial government. The OCS still acts as the

province's exclusive wholesaler and online retailer, as originally designed in the Liberal

government's plan. However, a licensed producer's relationship with retailers would allow for

independent retailers and craft licensed producers to come forth and offer new products to the

market.

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province-is-on-the-right-track-but-it-cant-afford-to-wait-four-years-to-get-1000-stores-and-its-
retailers-need-a-direct-line-to-producers/.

CHAPTER VII: CONCLUSION

The future of cannabis in Ontario is still unclear, and policies will be amended as time passes. The shift in provincial parties and policies and a year of unsuccessfully tackled challenges has left Ontario in an ambiguous situation. Ontario failed in its first year in terms of delays and finances but set up the province for future success with the private sector and free-market approach, as proposed by the Conservative government. Based on Alberta's rising liquor and cannabis sales, this can be seen as a potential road to success. Furthermore, Ontario has tackled two of the three goals of *The Cannabis Act* of having safe and reliable product and keeping it out of the hands of youth but has yet to fully conquer the illicit market, a challenge the nation faces as a whole.

The Cannabis Act itself is flawed and differs greatly from the campaign promises that the federal Liberal Party made in 2015. Their platform endorsed decriminalization of cannabis possession, a joint task force with the provinces and the federal government, and the input of professionals in sectors such as law enforcement to create a strictly regulated system of profit and distribution.[65]

Legalization is functional in theory but has proven logistically difficult in practice, as clearly illustrated by how a Liberal plan has been carried out by the Conservative government. There have been many challenges associated with training and education, more commonly known as "start-up costs," which played a large part in the losses within the first year of legalization.[66]

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65. Liberal Party of Canada *A New Plan for a Strong Middle Class* (Ottawa: Liberal Party of Canada, 2015), p.55.

66. The Canadian Press, "The Ontario Government Lost $42M Selling Cannabis in the Last Year," *CBC News*, September 14, 2019, https://www.cbc.ca/news/canada/toronto/ontario-cannabis-loss-1.5282994.

The future of legalization depends on continued federal and provincial action. In Canada, federalism aims to remove barriers by having the federal government delegate the majority of the responsibility to local bodies to ensure fair and transparent channels of power. These channels are established so that local bodies can maintain an understanding of what citizens want and still receive access to information. Even though the provinces created their own guidelines and legislation in regard to cannabis legalization, *The Cannabis Act* itself still stipulates and governs certain processes. This is demonstrated through agencies such as Health Canada and the 'Good Production Practices' that licensed producers must follow. Cannabis sales and regulation are not something that one level of government can tackle on its own; rather, it requires an effort from all levels of government. The input of provinces and licensed producers could better address future market needs and improve sales.

There are concerns that it may take provinces including Ontario and Alberta a few years to turn a significant profit. Currently, the AGLC regulates online retail sales and its budget reflects its reality in which the costs of retail and administrative set up exceeds the potential for sales. The organization's spokeswoman, Heather Holman, said that generating a profit from selling cannabis wholesale to private retailers may take a few years because the government is not charging the whole markup price to retailers in an attempt to appeal to consumers and deter illicit market sales.[67] This profit is reflected in the excise tax the government collects as well as provincial taxes on cannabis. As opposed to the liquor model, the AGLC does not collect or report on these funds. While the alcohol industry is expected to increase in future sales, cannabis projections are rather grim in comparison. Though the province of Alberta has done well in

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67. Trevor Howlett, "Why Alberta Continues to Lose Money on Legal Cannabis," *CBC News*, March 5, 2020, https://www.cbc.ca/news/canada/edmonton/alberta-cannabis-lose-money-1.5484830.

tackling legalization and maximizing opportunity for retailers, the first year of 2018-2019

reported a $34 million loss with more losses expected: $31 million in 2019-2020, $34 million in

2020-2021 and $24 million in 2021-2022.[68] Cannabis consumption has been weaker than

projected, which has set Alberta back slightly. However, in a free-market, the opportunity for

new ideas and growth may inspire future sales.

The analysis in this paper is limited to Canadian examples. Other countries and areas of

the world have had cannabis legalized for quite some time and may have worked out solutions to

certain challenges and problems Canada has not encountered yet. A cross-province analysis of all

of Canada may also be insightful as well for how the country can use a free-market approach as a

whole. Although the first year has been full of trial and error, it has allowed the sale of cannabis

to be examined as an efficient business model. This paper is limited by the number of cases and

amount of data available for Ontario and Alberta. To further understand this system, an analysis

of the licensed producer and retailer relationship would be insightful.

Future research could generate comparisons between cannabis and alcohol. The Ontario

Conservative government's alcohol-focused budget may allow additional research to focus on

impaired driving and cannabis.[69] Currently, the driving regulations maintain a zero tolerance for

anyone 21 and under holding a G1, G2, M1 or M2 license, anyone driving an A-F license for

commercial vehicles, as well as anyone driving a road-building device. The penalties include

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68. Alanna Smith. "Cannabis Market Proving Costly for Province, no Sign of Turning a Profit," *Calgary Herald*, October 25, 2019, https://calgaryherald.com/news/politics/cannabis-market-proving-costly-for-province-no-sign-of-turning-a-profit/.

69. Mark Stephen Longo, "Cannabis Regulation and Public Health: Using the Experience of Alcohol Regulation to Maximize Public Health Outcomes in Ontario," PhD diss., University of Toronto, 2017), https://tspace.library.utoronto.ca/handle/1807/79261.

license suspensions and financial repercussions in addition to government education and

treatment programs for repeat offenders. This "zero tolerance" approach exempts medical

cannabis users to some degree, although they will still face penalties and criminal repercussions

if they have been impaired while driving. Ontario's website explains how to avoid impaired

driving and describes how long the amount of time being "high" can last as well as the

breakdown of THC levels in the body. Within individual communities, the police enforcement

units are becoming more familiar with the new forms of licensing and regulations as well as how

to designate growing operations, processing operations and cannabis retail operations within

their communities.[70]

Currently under government control, cannabis consumption can be monitored more

closely than it had been with the illicit market. Through private retail and free-market vendors,

there is the potential to create an industry with the promise of growth. With the proper decision-

making and rational thinking, a policy maker could use the information provided by research

available to create changes that would allow all of Canada to benefit. Analyzing any future

amendments and public opinion changes on provincial legalization of cannabis could prove

beneficial. Moreover, analysis of the illicit market and the success of the free-market approach

cross-Canada when businesses are privatized and not monopolized by the government would

create valuable information. Although the literature available on cannabis is still emerging, these

findings are crucial to building future cannabis profits.

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70. Rosalie Liccardo Pacula et al., "Developing Public Health Regulations for Marijuana: Lessons from Alcohol and Tobacco," *American Journal of Public Health* 104, no. 6 (June 2014) 1021-1028, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4062005/.

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