

# NDARC

National Drug &  
Alcohol Research Centre

The Difference is Research

## Cannabis legalisation in Canada: The challenges in a federated country

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# Outline

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- Background
- Legalisation of cannabis overview
- Lessons from other products
- A framework for considering policy options

# Background

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- 12.2% of Canadians reported consuming cannabis in past year (2012 data)
- A third (33.3%) of 18 to 24 year-olds reported using in the past year & 4.9% report daily use
- Projections: Canadians will consume 655 metric tonnes of cannabis in 2018
- Inconsistent application of cannabis laws with accusations of racial profiling
- 2015 election promise by Justin Trudeau and the Liberal Party to legalise, regulate, and restrict youths' access to marijuana

# Medicinal cannabis history

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- 1999 – Medicinal cannabis permitted by issuing exemptions (challenged in Supreme Court)
- 2001 – Regulatory framework for cannabis (MMAR)
  - only personal cultivation permitted
- 2014 – Marijuana for Medical Purposes Access Regulations (MMPR) following further court challenges
  - commercial production only
  - producers licenced by Health Canada
- 2016 – Constitutional challenge: commercial production did not provide reasonable access
  - Access to Cannabis for Medical Purposes Regulations
  - licenced producers and home growing permitted
- This has led to > 60 companies listed as trading in cannabis/ cannabis products/ cannabis implements

# Canadian Cannabis Act (Bill C-45)

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- Introduced into Canadian Parliament on April 2017
- Intent - recreational cannabis to be legalised on 1/7/2018
- Parliamentary hearings ongoing

## Stated objectives

- to restrict young persons access to cannabis
- to protect public health and safety thru strict product safety and quality regulations
- to deter criminal activity by imposing serious criminal penalties for operating outside the law
- to reduce the burden on the criminal justice system

# Devil is in the detail (or not)

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## The *Act* (as it is currently proposed)

- Permits *possession* of 30 grams of dried cannabis (or equivalent) per person & up to 4 plants per household
- No sale of edibles at this time
- Restricted to those at least *18 years of age*
- Permits on-line sales for regions not able to supply
- Authorises persons to possess, sell or distribute cannabis if they are authorised to do so under a provincial Act
- Prohibits any promotion, packaging and labelling that might be appealing to young persons
- Authorises making of regulations re: quality, testing, composition, packaging and labelling of cannabis

# Devil is in the detail (or not)

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Creates indictable offences for:

- Illegal possession: potential penalties of fines up to \$5000 &/or imprisonment of not more than 6 months
- Illegal distribution: potential penalties of fines up to \$15,000 &/or imprisonment of not more than 18 months
- For an organisation a fine of not more than \$100,000

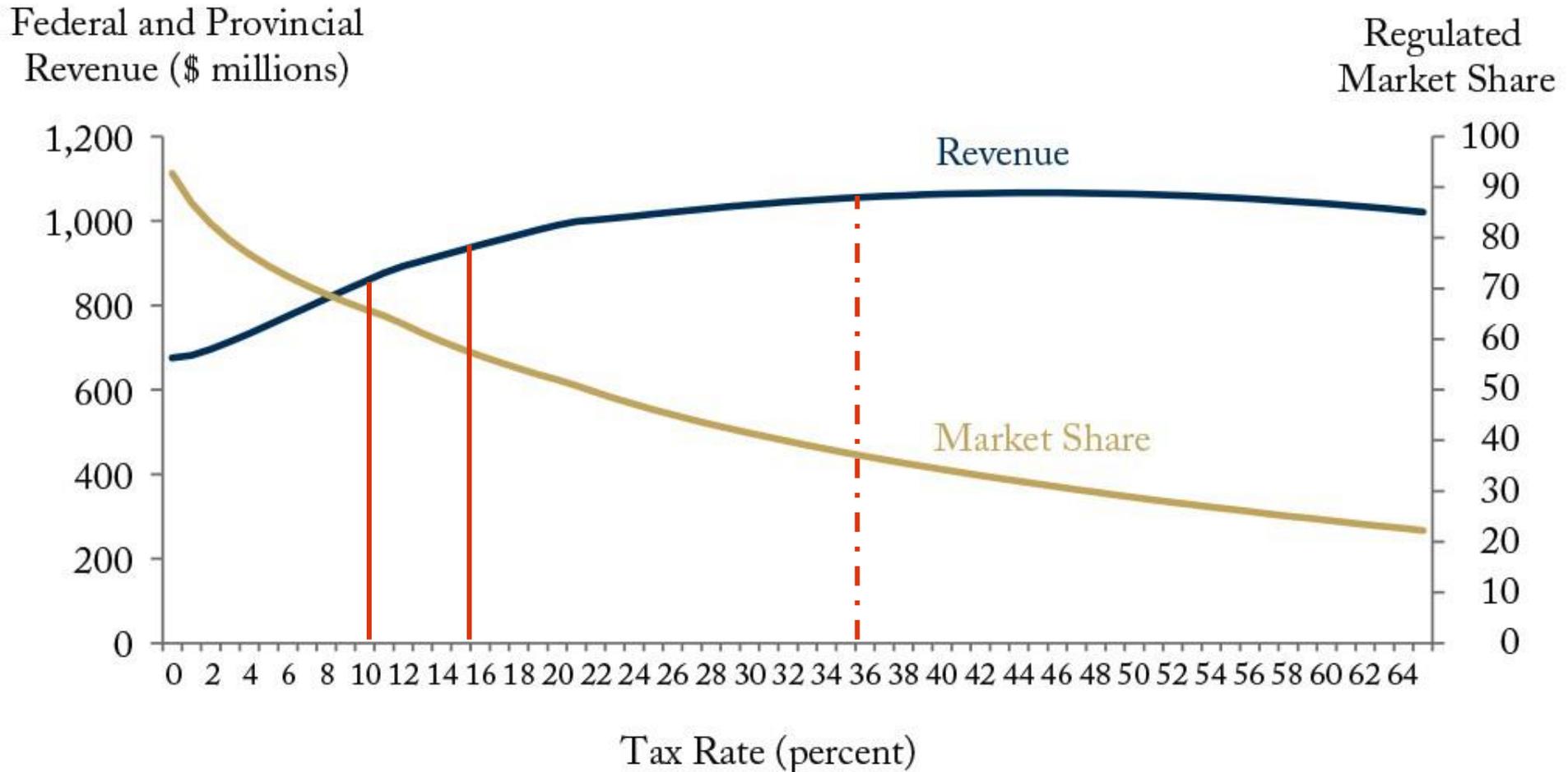
# Provincial and territory responsibilities

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- Federal Act recognises constitutional roles of the provinces and transfers considerable responsibility for, e.g.
  - Enforcement of the distribution and retail structure (government monopoly, private or mix)
  - Establishing zoning regulations
  - Restrictions on where cannabis can be consumed
  - Safe driving laws and enforcement
  - Minimum age, as long as it is at least 18 years
  - Decide who gets production rights
- Setting prices and tax rates – Federal GST is 5% and PST from 0% to 10%

# Trade-off between taxation and markets

## Taxation of Regulated Marijuana Market



Source: R Wyonch CD Howe Institute 2017

# Provincial proposals to date:

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- Ontario (proposed):
  - Minimum age 19 years
  - Consume only in private residences (not in public places, workplaces, or in motor vehicles)
  - Illegal dispensaries will be shut down
  - Sold in 150 standalone stores, government controlled
  - Staff trained for socially-responsible sales
  - Product will all be behind the counter
  - Driving: zero tolerance (no detectable cannabis) if aged  $\leq 21$ , novice drivers, and all commercial drivers

# New Brunswick (NB)

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- Created a Crown Corporation to oversee sales of recreational cannabis
- Signed supply agreements with 2 federally licensed medical cannabis producers

## British Columbia (BC) suggestions that

- Distribution might vary by location (& include private owned dispensaries)
- Municipalities will likely have decision making powers
- Likely will not follow Ontario
- Age likely to be harmonised with alcohol (19 years)

# Lessons from Alcohol sales

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- Constitutionally the sale of alcohol is a provincial responsibility
- Traditionally limited movement across borders but there has always been illegal movement of alcohol across provincial borders (recent challenges in Supreme Court)
- Sales taxes vary by province from 5% to 15% of price;
- Prices have varied considerably from one province to another
- Provinces can set the prices for products where they control retail sales

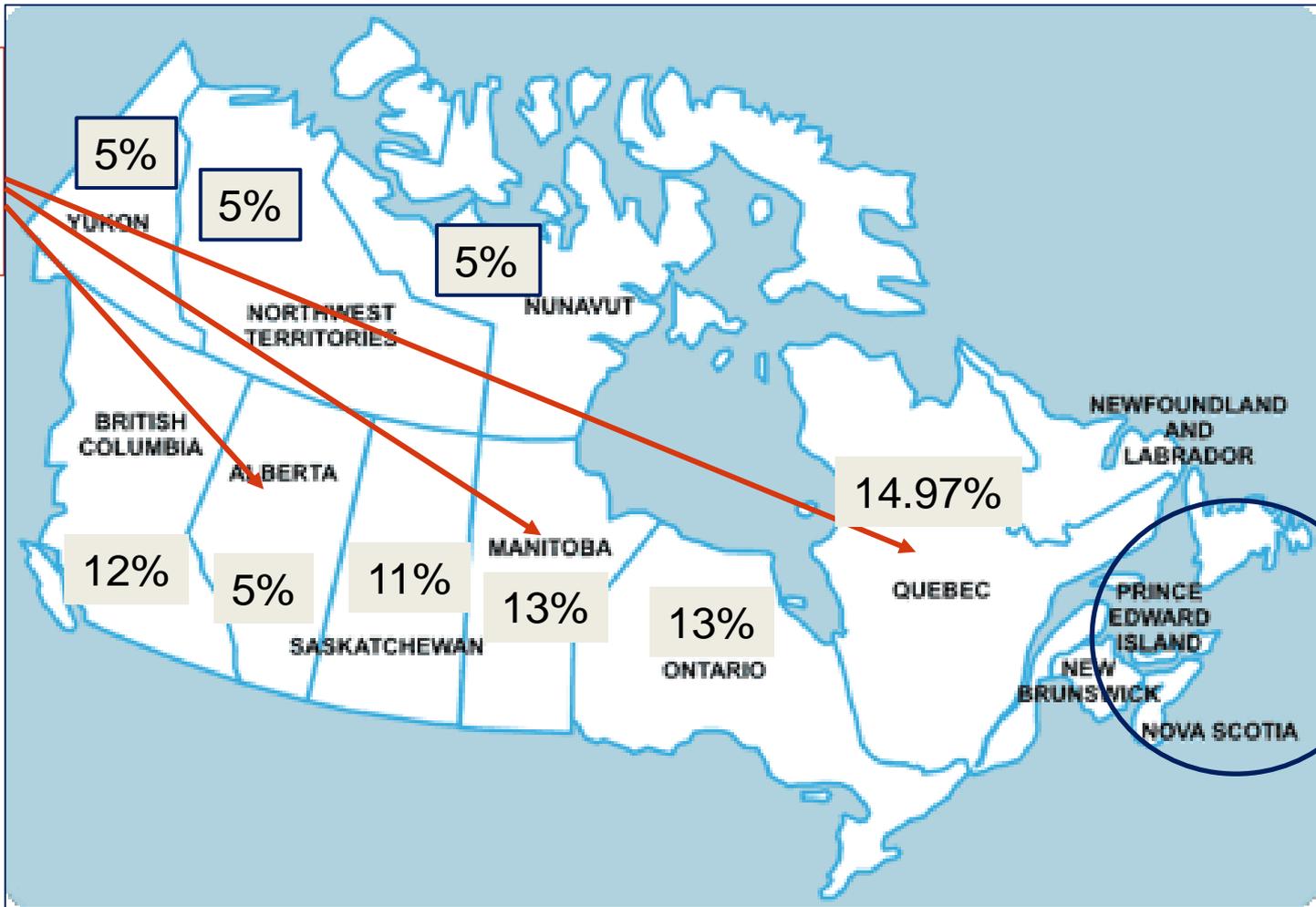
# Location of alcohol sales (10 provinces)

	Convenience / Grocery Stores	Gov't run outlets/ or licenced franchise	Some private sector outlets	Private Sector only
Beer	3	9	9	1
Wine	3	9	4	1
Spirits	0	9	3	1

# Legal age for alcohol & taxes on goods/services

Minimum Legal Age For alcohol 18 years

All other Provinces 19 years



# Supply management – agricultural marketing boards

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## Federal government has

- limited the import of certain agricultural products
- permitted producers to act collectively to
  - coordinate the production through quotas
  - manage distribution of certain agricultural products
  - to stabilise prices and not rely on taxpayer subsidies

# Wheat marketing board (WMB)

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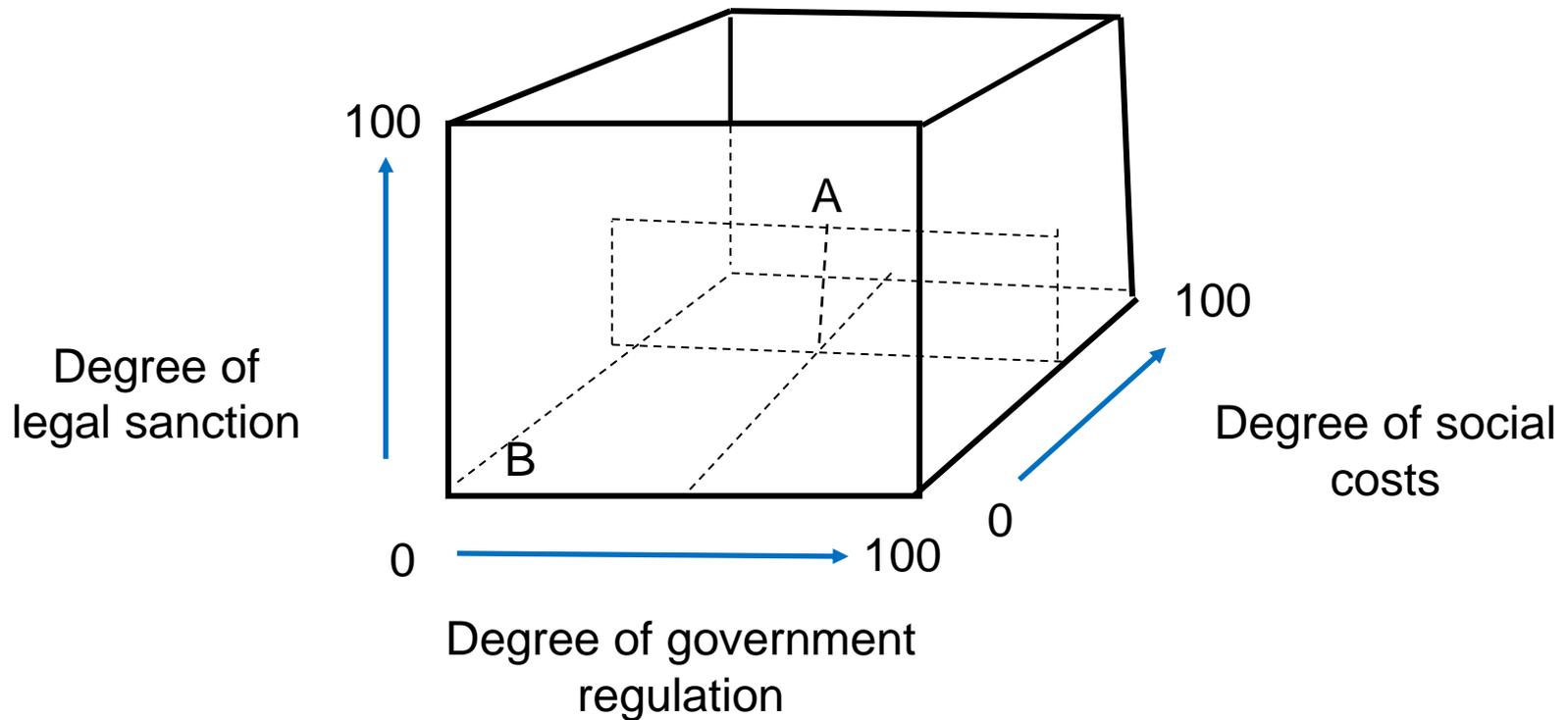
- All prairie farmers were *required* to sell to WMB (est 1935)
  - farmers were concerned about individual pricing power
  - an initial average price was paid to farmers
  - once on-sold a residual payment was distributed
- Single-desk model was discontinued in 2012, and the CWB became a voluntary marketing organisation
  - despite plebiscite where 62% of wheat farmers wanted it to remain (disparity east to west, between large and small farmers)
  - based on “a plebiscite shouldn’t trump the “individual rights of farmers to market their own grain” (PM Harper).
- Model used for other agricultural products in Canada
- WMB opposed by WTO and US (NAFTA)

# Canadian dairy industry

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- Managed supply
- 2<sup>nd</sup> largest agricultural industry in Canada
- Planned domestic production
- Pricing and dairy product import controls
- Highly contested by the US (which has oversupply and lower prices)
- Currently under threat

# Social costs, state regulation and legal sanctions



**Thank-you**  
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# Other Issues

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- Contaminated cannabis – who is responsible?– suggestion that none of the available fungicides are suitable for a product which will undergo combustion
- International drug control treaties
  - Appears Canada has not applied to withdraw
  - Options
    - Withdraw (timing)
    - Ignore (problematic)
    - Apply for special exception (special snowflake as the press puts it)
    - Amend the constitution (difficult if not impossible)

# Cannabis start-up

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- Major Canadian stock market refusing to list companies producing/ selling cannabis if they also do business in the US (b/c cannabis illegal in the US)
- There **TSX Venture Exchange Canadian Securities Exchange**
- Many CEOs, CFOs, investors have strong political connections
- US Federal banks and government